

Position Paper

REMIT

Trade Reporting User Manual

PC_2014_R_02

Public consultation paper

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1 Introduction:

BDEW welcomes the opportunity to comment on the Draft Trade Reporting User Manual (TRUM), which we believe is an important document in order to help market participants understand the requirements for the implementation of the REMIT transaction reporting requirements, as well as it will help ACER understand how to further develop such a user manual to ensure a successful start of the transaction reporting.

BDEW welcomes the planning of publishing the TRUM together with the official publication of the Implementing Acts. In this context BDEW would like to emphasize that it is also crucial that the still outstanding documents “Requirements for Registered Reporting Mechanisms” and “Technical Specifications for Registered Reporting Mechanisms” are quickly consulted with market participants and ideally released together with the Implementing Acts.

Taking into account the short timeframe for the implementation, together with the complexity of the task, BDEW would like to urge ACER to allow an adequate time for the implementation as well as ensuring the highest degree of clarity of the requirements. Essentially, market participants should have all the available information on the reporting mechanism at the time of the publication of the Implementing Acts, to ensure that they will have at a minimum 6 months to implement their REMIT reporting.

2 Main comments:

BDEW would like to highlight points that have been of specific concern for our member companies.

2.1 RRM processes

The current TRUM does not adequately clarify the actual reporting processes, and many points concerning RRM remain open.

BDEW would like to point out, that we expect Germany to have the highest number of registered market participants. Many of those market participants may want to delegate their reporting obligation to their counterparty. These counterparties may prefer to use a third party RRM for the reporting. This is a clear requirement of the German market. Thus, market participants must be able to delegate the reporting obligation to their counterparty and this counterparty must be able to use a third party RRM for the submission of both legs of the transaction. (This is an already available procedure under EMIR).

BDEW would in addition like to propose two variants on RRM level: The requirements for reporting for oneself and one’s group should be different from those for companies reporting on behalf of clients.

Our understanding is that Trade Repositories licensed under Regulation (EU) No 648/2012 (EMIR) will not need to become RRMs, but will be nevertheless allowed to report data to

ACER. Thus BDEW considers the reporting obligations under REMIT as fulfilled, when Trade Repositories receive data relevant for the REMIT reporting obligation, as mentioned in Section 4.2 “Transactions executed and reported through an RRM”: *“According to Article 8(1) of REMIT, the transaction reporting obligation on the market participant shall be considered to be fulfilled once the required information is received from a person or authority listed in points (b) to (f) of Article 8(4) of REMIT.”*

For the same reason BDEW considers the obligations as fulfilled in those cases, where organised market places and TSOs report relevant transaction data to ACER. Therefore, no additional reporting of these transactions is necessary.

BDEW would welcome at least three different categories of RRM:

- A) Reporting for oneself and for related group members
- B) Reporting for oneself and for related group members and for counterparties
- C) Third party reporting on behalf of clients (while not being a counterpart to the transaction).

BDEW would like to emphasize that the requirements for companies, which wish to become an RRM in order to report their own transactions, the transactions of their group companies or the transactions of their counterparties they traded with (as the data are already in the own database) should be different from those companies, which wish to professionally offer such a service.

2.2 RRM and organised market places

The TRUM does not clarify, if trading venues reporting to ACER will need to become a RRM or need to use a RRM or whether they will be obliged to report to ACER without becoming RRM.

If a venue will always report transactions irrespective of the activities that the market participants may perform to report transactions, BDEW assumes that the trading venue will report all information whether or not it was mandated by the market participant. First of all, the venue should only report the data which it was mandated for. Secondly if the venue is obliged by ACER to report all data, the obligations for market participants should be lowered to report the remainder on demand. Furthermore, market participants cannot be held liable for false reporting of the market place, if they did not mandate the reporting.

It must be clear that if trading venues report to ACER there is no necessity for market participants to report the same data.

2.3 New Products

The FAQs propose that new products must be registered with ACER before they are traded. BDEW strongly rejects the notion and does not see any legal justification for this interpreta-

tion. In fact, market participants are only obliged to ensure the transaction reporting and ACER's mandate only covers the monitoring of the market.

2.4 Differentiating Standard and Non-Standard Products

It remains unclear how ACER differentiates between standard and non-standard products. BDEW would recommend ACER to maintain and publish a list of standard products under REMIT to clarify this for market participants.

2.5 Generating Unique Trade Identifiers (UTIs)

Due to the experience, the market gathered with constructing UTIs under EMIR, BDEW strongly advises ACER to provide one well structured system how UTIs should be generated for REMIT purposes. Under EMIR it was a burdensome and time consuming task to agree on the way UTIs should be generated with every single counterparty. Since market participants need to report many more trades under REMIT and there are many more market participants, we consider it very important to be able to rely on one steady UTI system. Furthermore, it would reduce the number of wrong reports significantly.

3 Consultation Questions

3.1 The Agency currently understands that the attached data fields (see Annex I of the draft TRUM) for the reporting of transactions in standardised and non-standardised contracts will be included in the Commission's implementing acts. Please provide us with your views on the attached data fields.

BDEW has identified quite a few issues that need to be further clarified. In general, the list is missing a description of which fields ACER expects to be mandatory general information to be reported with each transaction.

3.1.1 Field No. 1

The foreseen field offers the largest flexibility possible for market participants to choose the ID type, which fits the best to their needs. Still it would be helpful, if ACER would prioritise the use of such IDs. Our preferred option would be to use a LEI if available. Using a BIC and EIC could be alternatives in that order.

3.1.2 Field No. 3

It is unclear what Trader ID the market participant should report, in cases of OTC transactions.

3.1.3 Field No. 4

It should be permitted to report more than one Trader ID for one individual, e.g. in case of a multiple deal capture system. In our opinion, the ID of the Trader as specified by the technical

system or the organized market place will be the same as the ID of the counterparty or market participant the trader is acting for.

Please also note that some market places that offer generic trader IDs that are being used by more than one natural persons.

3.1.4 Field No. 5

It is unclear how market participants shall acquire the unique counterparty ID. The reporting entity cannot ensure that the ID of the counterparty is the same as registered at ACER as required in the TRUM. For example, it is possible that the counterparty itself registers with the LEI but informs the reporting party only with the BIC code. To ensure efficiency of regulatory reporting it should be in the discretionary of the market participants to use an ID of their choice. As LEI codes have to be applied and used for EMIR and are already in the system for the transaction reporting, the LEI can be also used for REMIT and an alignment of reporting process can be ensured. Otherwise for the same counterparty different IDs have to be stored and used for the daily regulatory reporting which increases costs and potential errors. For cleared contracts, the other counterparty is usually the Clearing Member, not the Clearing House or CCP (see ESMA Q&A). Therefore the clearing member should be mentioned.

3.1.5 Field No. 7

Please refer to our main comment on the RRM and especially on clients or subsidiaries delegating the reporting to their counterparty.

3.1.6 Field No. 23

The difference to field No. 28 is unclear. If contracts ID shall be interpreted as ISIN for shares or bonds and provided by ACER as part of the published list of standard contracts, fields No. 24 and No. 25 should be redundant. Also in the draft IA no other contract related information are required if this field is available.

3.1.7 Field No. 24

The required information is partially redundant. Most types can be derived from start/end date/time of that transaction. The field should include Weekend contracts as separate category and the separation between D+1 and FWD should be in line with EMIR where FWD and Spot is used but Spot includes the two business days following the trade date and not only D+1. Generally, a clear reference or definition should be given for each of the products.

3.1.8 Field No. 26

ACER should consider that standardised contracts are also executed bilateral via phone or fax confirmation. In such cases a detailed transaction time stamp is not available for the market participants. So it would be better to use the trade date instead. If ACER sees the time stamp as essential, BDEW would recommend renaming the field "voice-brokered" to "non-

brokered/ non platform” that could be checked and in such cases the timestamp field could be left blank.

3.1.9 Field No. 27

It may occur that one product (e.g. block products) has different names at different market places. It is unclear what the product will be named and by which name it should be reported if traded OTC.

3.1.10 Fields No. 28

In the EMIR reporting this requirement has led to enormous discussions between the involved counterparties to agree on a certain method. For bilateral contracts is often a manual process necessary to import the UTI into the own system if generated by the counterparty. Therefore BDEW strongly recommends providing a universal algorithm for the generation which can be used by both parties independently.

BDEW would also urge ACER to further explain the difference between “Transaction Identification” and “Transaction Reference Number” as mentioned in field No. 31.

3.1.11 Field No. 29

It is unclear what the purpose of the linked transaction ID is. This should be clarified.

3.1.12 Field No. 30

It is unclear what the purpose of the linked transaction ID is. This should be clarified.

ACER should have in mind that the majority of market participants do not have order information in their own system and reference to those is not possible. In addition, for most of OTC transactions no order phase with a separate ID exists.

3.1.13 Field No. 32

This is unclear as OTC deals can also be concluded on organised market places.

3.1.14 Fields No. 34, 35 and 36

Prices per unit, which are fixed at the contract conclusion, can be reported. Also index references can be reported. The contract capturing systems however, will be unable to compute or update market data in cases of indexed pricing.

3.1.15 Field No. 38

This field can only be maintained for contracts with fixed prices and fixed amounts.

3.1.16 Field No. 40 and 41

It is unclear how quantity and total notional contract quantity should be understood. It is not clear what to report here, it would be helpful if ACER could provide some examples.

3.1.17 Field No. 42

Predefined fields are recommendable to avoid confusion of correct spelling, e.g. MWh/ Mwh/ M.W.h.

3.1.18 Field No. 43

For clarification: If there are any cash settled transactions to be reported under REMIT, this can only be spot transactions. Any forwards or futures that are not physically settled have to be reported under EMIR.

3.1.19 Field No. 44

Delivery end date in case of physical delivery or last payment date? Difference to field 52 is not clear.

3.1.20 Field No. 46 – 49

Products with which are defined as financial instruments under MiFID and are already subject of the EMIR reporting are excluded from REMIT reporting.

3.1.21 Field No. 53

This information seems to be redundant. BDEW highly recommends refraining from redundant information to reduce transforming/reporting mistakes and potential mismatches.

3.1.22 Field No. 55

How does this field match with field 24 in case of Weekends as there is only WD, D+1 and FW available? In case of trading a weekend contract on Friday you have to choose WE in field 55 but there is no suitable value in field 24.

3.1.23 Field No. 56

This seems to apply to non-standard (profiled) contracts. If so, the intervals should be specified by date and time, instead of just by time.

Field No. 57, 58, 59

It is unclear what should be reported in those fields. Please provide explanation/examples.

3.1.24 Field No. 62

The differentiation is not fully clear. Why should a post trade event be reported as 'new' instead of modify? Would it be easier to use 'new' only in case of the first report of a trade and any update could be reported as 'modify'?

3.2 Please provide us with your general comments on the purpose and structure of the draft TRUM, annexed to the consultation paper.

BDEW fully supports additional documents providing guidance for market participants in order to comply with the reporting requirements. The BDEW implementation guide is still in high demand and will remain so in the absence of official documents. It is therefore necessary that ACER reflects the current views in all documents whenever necessary.

For future changes in the TRUM we think ACER could additionally add newsletter as an efficient way of informing market participants.

Section 1 “Introduction” of TRUM states several times that it is the responsibility of the market participant to comply with its REMIT obligations regarding transaction reporting, as well as to stay informed about any relevant changes and make the relevant adjustments. Although BDEW agrees with this approach in general, we would like to highlight the following point:

- TRUM refers (page 4, Section 1.3 Target Audience) to the “compliance departments and compliance officers” as the ones, which/ who should understand the TRUM and initiate any amendments to relevant processes. The internal organisation, which enables every company to comply with relevant regulation, varies widely.
- BDEW would like stress the fact, that there is no firm legal obligation for installing a compliance department. Furthermore SMEs might not have the means for employing one or more persons only for compliance issues. In most cases, this will only be a function. Thus BDEW would suggest to ACER to refer to “REMIT responsible function”.

BDEW welcomes the intention of ACER to publish a European registry of market participants (Section 3.1 “Who needs to report”). This register should include all information, which is needed by the market participants in order to comply with their reporting obligations. For example in addition to the identification code of each market participant it should also include identifiers for all relevant organised market places (as specified in field 32). (Further details such as the list of reportable transactions would be very helpful).

Section 3.2 “Reportable records of wholesale energy market transactions” mentions that the Agency will draw up and maintain a public list of standardised contract types and organised market places and update it on a regular basis. We would appreciate this list to be exhaustive.

It is important that market participants can map the listed standard contracts to the transactions in their trading systems. It would be helpful if ACER explained how the standard contracts will be described and provide clear examples.

In respect to the announced lists of reportable and non-reportable contracts, BDEW would like to outline the potential gap of new contracts not listed in one of the lists. To avoid confusion and uncertainty ACER should carefully develop and update such lists. BDEW believes that it is very important for this list to be kept updated regularly; also this list needs to be exhaustive.

At the same time it is important that a sufficient transition period is given, for the case where a new standard contract type or organised market place is put on the list, as market participants need sufficient time to adjust their IT-systems and interfaces, as well as internal processes.

BDEW would welcome standard phase-in periods for new contracts e.g. of 6 months.

Section 4.2 “Transactions executed and reported through a RRM” clarifies that a market participant’s registration must contain information about third party RRMs used to comply with reporting obligations.

BDEW would like to emphasise that at the point of registration market participants might not have the complete information whether or which RRMs they will rely on. Hence, it will be required to modify/ update this information occasionally, especially during the implementation process.

BDEW would appreciate that clear and reasonable deadlines will be established for the decision of organized market places whether they intend to offer any RRM services or not in order to have a clearly determined timeframe for market participants to establish all technical and organizational requirements with the relevant RRM.

3.3 The Agency has currently identified a set of standard formats to be used in the reporting framework (see Chapter 5 of the draft TRUM). Do you consider these standard formats relevant? Are there any other standards that the Agency should consider?

BDEW considers these standard formats relevant and appropriate.

3.4 Please provide us with your views on the field guidelines for the reporting of transactions in standardised supply contracts (see Chapter 6 of the draft TRUM).

ACER emphasises correctly that the field names might differ between the different RRM. Market participants have learned this with the EMIR reporting where a lot of workload was the understanding of correct field definition and content.

Therefore, BDEW highly recommends harmonising the requested fields of the RRMs in the ACER registration process. It would avoid additional interpretation work by the market participants and ease the burden to change the RRM and can therefore increase the competition between the RRMs.

3.5 Do you agree that for the reporting of energy derivatives, the same standards that apply under EMIR and MiFID should apply under REMIT (see Chapter 7 of the draft TRUM)?

BDEW agrees that the same standards that apply under EMIR and MiFID should apply under REMIT. Meaning specifically that reported data fields under EMIR and MiFID suffice for REMIT purposes and no other fields will be added.

3.6 The Agency intends to include in the TRUM guidance on how trade reports shall be reported for different trading scenarios (see Chapter 8 of the draft TRUM). Please provide us with your views on which trading scenarios you would consider useful to cover in the TRUM.

Useful trading scenarios to consider are: Novation, termination.

These trading scenarios will need business input. It would be useful to describe how the following trading scenarios shall be reported:

- a. Baseload product executed via Broker
- b. Baseload product executed via exchange
- c. Baseload product executed outside any organized market place on a bilateral basis between two counterparties
- d. Structured products executed without any organized market place
- e. Options (only if they are physically settled)

3.7 Please provide us with your views on the section in the draft TRUM related to data integrity (see Chapter 9 of the draft TRUM).

To our understanding ACER is trying to prevent a direct reporting of the market participants to ACER. Instead the reporting shall be submitted only through RRM. To get registered by ACER as a RRM a lot of restrict requirements have to be fulfilled. For energy companies this is feasible only for few major firms while the majority of firms have to contract third party RRM.

This outsourcing of functionality, which is induced by ACER, will require additional information channels and linkages to be set up and the service is of course not free of charge. BDEW disagrees with ACER that the market participant shall be kept liable for all kind of mistakes that could occur and have to check all data continuously. In fact, the service level agreement between the market participant and the RRM will determine the transfer of liability.

3.7.1 Specific comments to Chapter 9.1

BDEW does not see how a market participant can ensure the accuracy and completeness of the data which is reported by a third party RRM. Market participants should be able to rely on the data quality of third party RRM as have been admitted as RRM and thus need to fulfill the respective requirements as specified in their specific service level agreement.

BDEW would also comment on Question 10 of the FAQs: If an RRM fails to resolve technical problems, the Agency may proceed to request the concerned market participants to report transactions through another RRM. BDEW understands the necessity of such a step and but would like to point out that such a transfer from one RRM to another is possible only within a reasonable time frame and with significant costs, which should be considered by ACER.

3.7.2 Specific comments to Chapter 9.2

BDEW does not agree with ACER's proposition to validate the completeness and accuracy of the submitted reports by comparing the reports received by ACER with the reports they send from their systems. This is an unnecessary process and unduly burden to market participants. From BDEW's point of view it should be enough to submit the data correctly. Mapping, formatting and submission of this data by the RRM are not within the responsibility of the market participant. Especially as market participants are exactly going to be charged for this service.

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