

Comment of



to the

Public Consultation

**Draft
REMIT
Requirements
for the registration of
Registered Reporting Mechanisms (RRM)
Public consultation document**

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Bayerngas GmbH, EWE Aktiengesellschaft, HEAG Süd Hessische Energie AG, Mainova Aktiengesellschaft, MVV Energie AG, Pfalzwerke AG, PGNiG Sales & Trading GmbH, Stadtwerke München GmbH and VNG Verbundnetz Gas Aktiengesellschaft, are taking part in this consultation together as regional or local energy companies or trading platforms which fall under the requirements of REMIT.

1. Do you agree with the Agency's view that post-trade events related to wholesale energy products shall be reported by trade matching or trade reporting systems?

- Before enumerating the requirements for becoming a RRM it is - according to our opinion - absolutely necessary to define exactly who is meant by being a RRM. Until date of consultation it is for example unclear who will be the RRM in case of a chain of reporting parties (i.e.: Party A will report not only for herself but as well for Party B concerning those contracts concluded together. Party A will then engage a third party fulfilling the reporting obligations to ACER for party A and party B.) In our perception party A will not be a RRM and has not to fulfill the preconditions as RRM will have to.

These uncertainties are especially problematic vis-à-vis the proposed high level requirements for a RRM. These requirements would in case of a reporting-chain lead to the situation

- on the one hand that more market participants than expected in case they are able to fulfil the requirements would directly report to ACER and would avoid to use a third party (they won't see the additional benefit of using a third party)
 - and on the other hand that those parties who are not able to fulfil the requirements (especially small and medium-sized companies) lose market shares. Already today clients ask their energy supply company if they are willing to take over the reporting-obligation for contracts concluded between them or even concluded with a third party. In case the energy supply company is not able to, the clients search for a new supply company who will report for them.
- For the term „post-trade events“ a proper definition is needed, as it is unclear what is meant concretely with “post-trade events”. In this context, we want to point out, that a consistent use of the wording between ACER and ESMA is of utmost importance. Our understanding of the term “post trade event” is that a deal is adjusted afterwards. There exist three categories:
 1. Close out (mutual cancellation of a contract)
 2. Flex – contract (routine adjustment of a contract, i.e. power plant gas contract with daily notification)

3. Tranche contract with price adjustment afterwards (via Tranche or formula)

Only the first category (aforementioned under point 1) is possible in standard contracts and only in this case the reporting platforms don't know that a close-out took place. Therefore in this case the OTC-Partner needs to report the post-trade event.

However the close-out takes place so seldom that a manual reporting is applicable.

The other two categories (aforementioned under point 2 and 3) are in our point of view modifications of Non-Standards that have to be reported anyway.

2. Do you agree that the standards and electronic formats to be established by the Agency according to Article 10(3) of the draft Implementing Acts shall apply to trade repositories and ARMs for the reporting of data covered by EMIR and / or other relevant financial market legislation? If not, please justify your position.

- In our point of view it is absolutely sufficient, if a Trade Repository (TR) fulfils the standards according to EMIR. An additional permission or additional standards beyond that isn't necessary and causes higher administrative burdens and costs. If a TR is approved under EMIR, it should be automatically considered as approved as RRM regarding the common standards and requirements. Only a verification that the interface to ACER (CEREMP) corresponds to the standards is needed.
- The technical requirements for a RRM are still that unclear, so under the current information it is not possible to prepare. Because of the ambiguity it is furthermore not possible to give a statement, whether or not the requirements are adequate and suitable.

3. Do you agree that the requirements set out above adequately ensure the efficient, effective and safe exchange and handling of information without imposing unnecessary burdens on reporting entities?

The answer to this question depends on who is meant to be a RRM. As outlined in our answer to question 1 it is necessary to clarify that in a reporting chain not all parties have to become a RRM, but only the one who will be face to face with ACER.

If the requirements will apply to parties who will report via a third party to ACER as well as to their clients, the energy supply companies – especially small and medium-sized ones – will have problems to comply with the preconditions. Especially the conditions according to point 5.1 and 5.2 would overburden the companies. They do have neither the manpower nor the money to implement all the mechanism.

4. Do you agree with the Agency's view that the same requirements shall apply to all RRM's?

The answer depends on whether the RRM is reporting only for itself or for third parties. If RRM's (in case only the last party in a chain is a RRM; see answers above) report for third parties, they have to fulfil the high-level requirements. If they report for themselves, the requirements could be lower.

5. If your reply to question 4 above is negative, please explain which requirements should apply differently to different RRM's and why.

No comment

6. Notwithstanding the requirements on the validation of output (see Chapter 5.6), should the Agency offer to entities with reporting responsibilities the possibility to request access to the data submitted on their behalf by third-party RRM's?

Yes.

7. If the reply to question 6 above is positive, please explain how such access should be granted, taking into consideration the need to ensure operational reliability and data integrity.

Standard contracts are reported solely by exchanges and trading platforms. The responsibility of the other market participants refers only to the confirmation process, but not on the integrity of the reported data via the RRM or ACER to other agencies.

Actually all data of the business partners that will be reported to the exchanges or broker platforms are verified immediately by the market partners within the scope of the trade controlling. This verification reconciles the systems of both business partners so that an identical data base exists. The sole responsibility for the correct transfer of this data to ACER lies with the broker platforms or exchanges (RRM's). Otherwise the market partners would be obliged to get the data afterwards from ACER again to check if the RRM's made a correct report to ACER. This causes high costs and burdens both for ACER and the market partners.

8. Do you agree that the compliance report must be produced by the RRM on a yearly basis or shall such report be compiled only at the request of the Agency?

Only at request.

9. Do you agree that trade repositories and ARMs shall be registered with the Agency, even if they only report data reportable under EMIR and / or other relevant financial market legislation?

No. TR and ARMs don't have to register separately/additionally, because no further reporting under REMIT is needed, if a report under EMIR already took place. According to article 8 III REMIT persons who report transactions in accordance with EMIR shall not be subject to double reporting obligations relating to those transactions, all reported transactions according to EMIR count as reported according to REMIT.

This means, that if a transaction is reported according to EMIR, there is no obligation left to report this transaction again under the REMIT regime. The basic understanding of REMIT and EMIR is to avoid double reporting for the market participants. Therefore we strongly underline, that there is no obligation for the market participants to report the data to ACER if the data was already reported under EMIR to ESMA (neither in the EMIR format nor in the REMIT-format). In fact ACER should arrange data sharing with ESMA and collect the reported data directly from ESMA. ACER has to abstain from the data already reported under EMIR to ESMA and the according data fields have to be deleted.

10. Do you agree that the Agency should foresee a simplified registration process for trade repositories and ARMs that only report data reportable under EMIR and / or other relevant financial market legislation?

See comment under Question 9.

11. Do you agree that CEREMP should be used for the identification of market participants that apply to become a RRM?

Yes.

12. What is your opinion on the timeframe needed to complete the registration process?

Regarding the timeframe it is necessary that no ambiguity (who has to register as RRM, which data have to be reported, terms and definitions?) is left. ACER obliges the market participants in general to report via RRM's. At first the RRM's have to register and define their requirements for the IT infrastructure and connections, before accordant IT projects can even be started by the market participants. According to the draft Implementing Acts the time limit for the reporting (6/12 months) starts directly after entering into force. Until the RRM's finish their IT infrastructure, the market participants can't prepare themselves for the reporting as they are depending on the concrete implementation/IT of the RRM's. Therefore the TRUM should be adapted along the lines of the implementation of EMIR whereby the time limit starts after the availability of RRM's. Otherwise the time for the implementation for the market participants is minimized if the RRM's needs more time than intended.

13. Do you have any comments on the registration process in general?

- Technical standards should be made public and not only be given to applicants for a Registration. The decision whether or not to become an RRM depends to a significant amount on the knowledge of the technical details. This should not be kept secret for market partners unless they sent an application to ACER.
- The REMIT process should be harmonised to the EMIR process as far as possible. Otherwise this will cause further barriers for the market participation of small and medium sized companies which will lead to an unrequested oligopolisation.
- RRM standards under REMIT should be the same the standards regarding the implementation of EMIR

14. Would the periodic renewal of registration be a valid alternative to the certified annual report?

No.

15. Do you have any other comments on the Chapter concerning the Agency's assessment of compliance with the RRM requirements?

No comment.