

Eurogas Response to ACER Consultation on the requirements for the Registration of Registered Reporting Mechanisms (RRM)

GENERAL REMARKS

Eurogas welcomes ACER's public consultation on the Requirements for the Registration of RRM, and wishes to share with the present document the views of its members on the definition of a sound, clear and reliable framework for the registration of reporting mechanisms as per Regulation REMIT and its Implementing Acts.

Together with our answers to the questionnaire, we believe few general remarks – even above consultation questionnaire - are worth bringing to ACER's attention as to re-stress some aspects that we believe will be crucial in ensuring a workable system for market participants.

Two aspects remain crucial in our view for the RRM system: the first is the need to maintain the possibility of separate registration criteria and a separate registration process for market participants deciding to report on their own transactions and/or regulated information and, on the other hand, the need to ensure clear legal and contractual guarantees for market participants vis-à-vis RRM, should they decide to delegate their obligations to third parties. This will also ensure cost efficiency for market participants in absence of guidance on fees to be applied by service providers.

As stressed already in previous rounds of consultation on the same subject, we believe that a lighter version of criteria and registration process for market participants reporting on their own should be foreseen, aimed at assessing the compliance of their technical and organizational requirements with the requirements defined by ACER. This should be sufficient to ensure a workable, reliable and well-functioning reporting system.

This would be better achieved by clearly distinguishing third parties offering reporting services on one hand and market participants reporting on their own, by establishing for example a separate category of "Certified Self-Reporting Party", as already mentioned by ACER in its recommendation to the Commission on 23 October 2012 or PwC/Ponton's Technical Advice to the Commission from June 2012. Such an approach could indeed be suitable and cost-efficient solution also for non-standard contracts reported by one party of the contract, even on behalf of both counterparties of such contract, and we regret that this approach has never been really developed.

As a last remark, we wish to underline once again that we do not see a justification for the confidentiality of the technical specifications document for reporting entities. Interested parties and stakeholders should be given the possibility to express their view, and the whole process would benefit in terms of transparency and possible improvements through the extensive assessment.

LEGAL FRAMEWORK

Chapter 2.1 Rules on the reporting of trade data

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?

As post trade events are concerned, Eurogas agrees that most of them are not available to organized market places, and a solution should be envisaged.

To date we do not see alternative solutions other than reporting post-trade events through trade matching or trade reporting systems, although this could be very difficult as it would require a back-up / copy of all data sent by the Organized Market Operator in order to track previous transmissions not made by the market participant. Furthermore, a proper linkage of transaction reporting and post-trade reporting should be also captured by the document.

Should organized market places offer, at the request of the participant, a data reporting agreement, and if this data is expected to be reported by the organized market place, then we see no need to provide for any activation tool from the market participant such as the conclusion of a reporting service agreement.

Once again here, the decision to rely on organized market places or trade matching and trade reporting systems should be left to market participants.

Additional comments / Chapter 2.1

2.1.2. Wholesale energy products in relation to the transportation of electricity and natural gas – Primary allocation results

Since many transactions on capacity also occur on the secondary market, and these are also registered with the TSOs, Eurogas believes that what applies to primary capacity allocation should also apply to secondary capacity allocation. Indeed, the fact the capacity has been sold / purchased on the primary or secondary market has no influence on the level and the availability of information concerning these transactions for the TSOs.

2.1.3. Wholesale energy products reported in accordance with regulation n° 648/2012 (EMIR) or other EU financial market legislation

Double reporting should be avoided at any rate. Should Trade Repositories acting as per EMIR requirements not be willing to pick up orders too, then our opinion is that organised market places should be obliged to submit these data to ACER, even if today they are not required to do so.

2.1.4. Wholesale energy products concluded outside an organized market place

We note in the consultation document that ACER highlights that *"this is, therefore, the only instance where trade data may have to be reported by market participants themselves."* Eurogas does not agree with this statement. Indeed, even when the reporting is done by an organised market place, the market participants are also liable to report many ancillary information

concerning the orders and all subsequent events such as confirmation, termination, execution, etc.

2.2 Rules on the reporting of fundamental data

Additional comments / Chapter 2.2

Reporting obligations for LSOs or SSOs seem to be still quite unclear and consistency would be welcome with the provisions in the Manual of procedures on fundamental data reporting.

Registration and reporting process still appear to be very burdensome and complex considering the fact that LSOs or SSOs just have to report information relating to the capacity and the use of the facilities. Requirements demanding a change in existing IT processes - that are already considered to be secured enough – should be avoided. Also it is not clear whether information already published on a platform will be reported to ACER by the platform itself, as in such a case our understanding is that LSOs or SSOs would not need to register as RRM anymore. Smooth and timely registration processes remain a crucial pre-requisite, in particular for LSOs or SSOs.

2.3 Technical and organisational requirements

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.

Eurogas agrees that the standards and electronic formats to be established by ACER for providing EMIR data shall apply to trade repositories and ARMS, provided that their implementation costs for REMIT reporting is not higher than if ACER were to adopt existing EMIR standards and electronic formats. As long as these costs would be likely charged on market participants in the end as an additional transaction fee, such a proposal on standards and electronic formats does not seem to be financially neutral. ACER should therefore opt for the less burdensome solution, even if this would mean adopting the existing EMIR standards and electronic formats for trade repositories and ARMs.

2.4 Responsibility for reporting data

Additional comments / Chapter 2.4

Eurogas welcomes the clarification provided on the allocation of responsibility between market participants and the third party reporting entity (§ 2.4, second paragraph). We understand that market participants, should they be able to prove that they have successfully transferred the information to the third party reporting entity, will not be deemed responsible for any failure on their behalf.

However, we note that, besides this general statement, the consultation document does not address at all the issue of liability of the third party reporting entity in case of (i) technical failure of their reporting systems, (ii) possible breaches of the security measures, (iii) reporting of erroneous transaction or data, (iv) non-reporting or non-publication of transaction or data.

Market participants should also be in a position to rely on control mechanisms for data and transaction reporting which need to be further specified by ACER in advance.

Finally, Eurogas notes that the last sentence of the § 2.4 (*“however, persons required to report...”*) is in contradiction with what is stated the second paragraph. As it is the case for EMIR, the market participants’ obligation is considered to be complied with once the required information is received by the third party reporting entity.

TECHNICAL AND ORGANISATIONAL REQUIREMENTS FOR THE SUBMISSION OF DATA

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?

Eurogas believes that these requirements are still too vague to be assessed in more detail and to achieve a reasonable level of guarantee for market participants; we consider ACER’s confidential approach to technical specifications for RRM’s as unsubstantiated and as a main barrier in this respect.

Moreover, it should be added in §5.9 and §5.10 that, in case of disruption of services or security breaches, RRM’s should have also the obligation to inform the persons on behalf on whom they report, and not only the Agency.

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

We find ACER’s arguments on *“having balanced requirements for all reporting entities and in the same time reducing burdens on them”* a bit unclear as regards self-reporting: as stated already, applying to self-reporting entities the same requirements than to third reporting party entities will, for sure, constitute a significant burden for many market participants. Therefore some requirements should be reconsider in this regard, in particular e.g. a requirement on annual audit (§5.13).

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

As we stated already in our general remarks, for market participants with a relatively small number of non-standard contracts, Certified Self-Reporting Party standards and electronic formats with adapted and simplified requirements would be a way more workable solution, and could significantly reduce the cost and the operational impacts of implementing REMIT reporting requirements.

As it has been wisely highlighted by ACER in its recommendation to the European Commission on October 2012, it is not a matter of RRM’s typology but a matter of the nature of contracts: the requirements should not be the same for standard contracts that have to be reported on a daily basis and for non-standard contracts that have to be reported on a monthly basis. Specific requirements could be envisaged for non-standard contracts, i.e. the possibility to send csv or xml files directly to ARIS (manually or automatically), with much lower expectations on control, validation, backup, continuity of service and governance procedures than specified in chapter 5.

For example, a market participant having to report transactions in non-standard contracts could be registered as a “Certified Self-Reporting Party for Non-Standard Contracts”. With a simple user access to ARIS and procedure, it could easily fulfil its reporting obligation in submitting a file directly to ARIS website every month. This option for market participants should be offered directly and should not end up as a service “offered” (not free of charge) by third party reporting entities to market participants, as it already the case for reporting under EMIR. Once again, we recall that costs for market participants should be reduced, and this could be achieved by letting market participants chose this option directly as part of ARIS functionalities for non-standard contracts.

Furthermore, so far some costs would be likely also passed on system users (market participants) at the end, we recommend considering also an adjusted registration process for TSOs due to their unique position with regard to delivery of certain set of data (scheduling/nominations) under REMIT reporting scheme.

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

Eurogas agrees. We believe it is of the utmost importance for entities with reporting obligation to have access to the data submitted to the Agency on their behalf by a third party RRM. The possibility to compare these data with the ones market participants record in their internal systems is the only way to implement Agency's recommendation of chapter 2.4: *“However, persons required to report data shall take reasonable steps to verify the completeness, accuracy and timeliness of the data which they submit through third parties”*.

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.

When registering as a market participant, each entity should be granted a certain number of user accounts giving the possibility to few staff members to consult and export all the data that concerns their company (trade data and fundamental data in a standard format as prescribed by ACER in advance, enabling smooth comparison of reported data with data received by ACER), no matter how and by who the data were submitted to ARIS.

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?

Eurogas disagrees with the requirement to produce the compliance report on a yearly basis and opposes the requirement for certification of such report by an external auditor. RRM's should be requested to produce a compliance report only in the frame of a global control procedure launched by the ACER. Moreover, the Agency should provide more information about the content of this report before the registration of RRM's (see our answer to question 14).

Additional comments / Chapter 5

On paragraph 5.2 our understanding is that ACER could request RRM's to produce procedures' documents upon or after the registration. Nevertheless the role of ACER regarding these

documents is unclear for Eurogas, in particular whether ACER will fully assess them or will just check that they have been issued. It is not clear as well what course of action would follow, should ACER disagree with the content of the procedures before or after the registration process has been completed.

On paragraph 5.9, we consider that 5 working days following the disruption to produce the requested report is far too short.

REGISTRATION

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?

Eurogas agrees and believes that trade repositories and ARMs should also be registered with the ACER, in order to enable the Agency to identify and collect EMIR data subject to REMIT without any additional solicitation of market participants.

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?

Eurogas agrees. Indeed these entities are already certified under EMIR for reporting purposes within more stringent criteria than those described in this consultation paper.

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

We also agree on this point.

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

Eurogas believes that a three month registration process would be too short, notably considering the number of RRM that will have to register. Moreover, this registration period will shorten the time left to reporting entities to develop and implement REMIT reporting procedures and systems. Indeed, fulfilling Agency's requirements for registration means having operational procedures completed and described, and IT systems ready to go-live. Reporting entities will then have three months less to implement reporting procedures and to realise IT developments. Therefore we strongly recommend prolonging this period and affording RRM an opportunity to receive technical specifications for RRM in advance.

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

On paragraph 6.2.3, we understand the applicants' obligation more as a simple statement than an attestation in stricto sensu. As regards the documentation to provide, we would have expected from ACER some more detailed information on the requirements and the content of the documentation.

On paragraph 6.2.4 we do not understand what the threshold refers to, what the criteria would be to assess this threshold and its level. More clarification on this part is indeed needed.

On paragraph 6.2.5 we do not understand the sentence: *“the RRM applicant is responsible for the establishment, production and delivery of an RRM.”* We invite ACER to elaborate more on this part.

Furthermore, a transaction reporting start-up should depend on successful registration of RRM.

ASSESSMENT OF COMPLIANCE WITH THE REQUIREMENTS

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

RRMs are required to put in place internal controls and procedures to ensure compliance with the Agency’s requirements. Therefore, we believe as Eurogas that the Agency should also put in place procedures such as audit to verify that an RRM fulfils its requirements. In this way once registered, a RRM should not have to go through another testing phase, nor have to send again documents already approved by the Agency.

Setting a control procedure rather than a yearly registration of RRM could be more efficient and globally less burdensome and costly. This control procedure could include (i) a request to provide a compliance report - including a request to RRM to deliver updates of procedures and documents - (ii) a control of completion and accuracy of the report directly from live system (with the same threshold than in registration process), and (iii) the possibility for the Agency to give recommendations or warnings to the RRM at the end of the control.

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

Before commenting on ACER’s assessment scheme, we expect from ACER to, first of all, harmonise some standards in conjunction with RRM’s obligations (e.g. output format/content or content of compliance report) as to facilitate smooth ACER’s assessment of compliance vis-à-vis such standards. Moreover, the assessment scheme as such should be also adjusted, taking into account the necessity to introduce a separate category of “Certified Self-Reporting Party”. In this regard, as already mentioned above, “a lighter version” of requirements related to compliance proof should be foreseen (e.g. only ad hoc report in conjunction with the control launched by ACER). For details concerning control procedure, see our response to question 14.

Once again, we would like to stress that the whole process will be much easier should ACER make available technical requirements for RRM timely as to enable RRM to comply with them and adapt their systems as soon as possible.