

**EFET response to ACER Public Consultation  
on the common scheme for the disclosure of inside information  
(PC\_2015\_R\_03)**



**30 June 2015**

**General comments**

The European Federation of Energy Traders (EFET)<sup>1</sup> welcomes the consultation of the Agency for the Co-operation of Energy Regulators (ACER) on the common scheme for the disclosure of inside information under the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT). It is important that ACER clarify that the common schema for the disclosure of inside information applies only to inside information as defined under Article 2(1)(c) and (d) of REMIT. Also, once a final decision is made, market participants would need at least 3 to 6 months for implementation in areas that require changes in processes, systems or IT to be compliant.

Means of disclosure

In principle, as a long-term objective we are supportive of the establishment of a common EU platform for the publication of insider information *to replace*<sup>2</sup> regional solutions. Such a platform would certainly bring greater transparency and would offer a more cost-effective solution, as aggregation by commercial firms would add additional costs. We would also recommend alignment with the EMFIP transparency platform operated by ENTSO-E and the ENTSOG transparency platform.

However, before this transition takes place, we have to make sure that the common platform is sufficiently robust and that it meets the required operational standards especially in terms of timeliness and back-up solutions. Therefore, in the short and medium term regional platforms (e.g. EEX and Nordpool transparency platforms), which have already been recognised by national regulatory authorities (NRAs) - and firms' own websites as a fallback option in case platform malfunctioning - shall remain in place. As per ACER's recommendation in the Third Guidance, firms' websites should remain functioning as a fallback option even if a common EU platform is established.

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<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

<sup>2</sup> It is important to avoid adding an additional layer of complexity with respect to the publication requirements.

### Keeping historical information of the last 2 years

We welcome any initiative to enhance the consistent and harmonised publication of inside information under REMIT. However, any proposal or final decision in this context should serve the underlying purpose of bringing value-added to the market in terms of transparency and the implementation costs should be proportionate to the regulatory benefits.

We understand that keeping historical data is necessary for regulators to perform their monitoring duties. However, while the ACER Guidance on the application of REMIT recommends keeping records of published events, it is important to note that this is not a requirement under the REMIT legislation (the definition of *inside information*, in our interpretation, does not include historical data, e.g. information on events, which are no longer occurring).

Where platforms are used, the offer of historical data may already be available. If this is the case, requiring that market participants keep historical data on their websites would be disproportionate compared to the implementation costs. Going forward we would like to call for a proportionate approach and due consideration of the potential implementation costs.

### 1. Other additional fields that need to be added?

- An additional field should require the indication of the **“Transmission/ distribution network where the asset is connected”**. This is static information and should not add much complexity.
- The fields are very ‘generator-oriented’ and for transmission assets an **“Impact on NTCs or flow-based parameters”** field should be added.

### 2. Removal of any proposed fields?

- **Field 3 – “Event status”, value “Withdrawn”:**  
We recommend deleting the value ‘Withdrawn’ to simplify the information. The value ‘Cancelled’ can be used instead. In addition, the optional Field 17 - “Remarks” offers the possibility to provide further information that the market participant publishing the information considers relevant for the UMM.
- **Field 7 - “EIC of affected asset”:**  
This optional data field is unlikely to be used and we recommend its removal.
- **Field 9 – “Bidding & Balancing Zone”:**  
This field can be removed, as it is of limited value. The information that would be provided under this heading would be redundant, as the identification of the country where the asset is located provides the same information. It is only in exceptional cases that the bidding or balancing zone does not correspond to a country.
- **Field 10 – “Unavailable capacity”, Field 11 “Available capacity”, and Field 12 – “Nominal capacity”:**  
Each of the three fields can be calculated on the basis of the other two fields: *nominal capacity = unavailable capacity + available capacity*. Therefore, keeping all of the three fields does not add any value. Several options are available to simplify the matter:

- Removal of Field 10 – “Unavailable capacity”,
- Removal of Field 11 “Available capacity”, **or**
- Removal of Field 12 – “Nominal capacity”.

In case Field 12 – “Nominal capacity” is retained, its heading should be replaced by “Installed generation capacity”, which is the term used in the Transparency Regulation. The definition of such capacity shall also be aligned. Using different terms would mislead the market and create unnecessary complexities both for the users of the information and for the owners of the data who have to provide further explanations.

- **Filed 14 – “Decision time regarding the unavailability”:**

This data field is not necessary, as it does not provide additional value to the market. It requires a considerable amount of documentation, it offers too many loopholes and it may be difficult to audit. Therefore, we recommend removing it.

- **Field 20 – “Impact on carbon permit prices”:**

Although this information is only a mandatory obligation under MAR (Market Abuse Regulation, Regulation EU 596/2014), and not under REMIT, we would support the delivery of this data under the REMIT disclosure regime. The aim would be to avoid double reporting under MAR of the same insider information which may have an impact on carbon prices. However, the prerequisite will be that MAR and its implementing Acts provide for this approach and that under such a regime initially ACER and ESMA agree on it in a (legally) binding way. This will be necessary, in particular, if the MAR regime provides that certain outages of production and consumption facilities are deemed to be discloseable insider information, which are already subject to the REMIT disclosure obligation. We do not see the benefit of double disclosure of this information under MAR, as it would add no value to the market.

Until such a regulatory agreement and a legal regime are put in place, compliance with Field 20 should remain optional. The field should also be renamed to “Potential impact on carbon price”. This is necessary as the calculation of such an impact tends to be very subjective, due to the nature of the decision, i.e. it is difficult for a facility operator to know the impact of its capacity on the price of CO<sub>2</sub>. Moreover, these prices tend to be influenced predominately by macroeconomic variables and the political decisions of EU institutions and Member States.

### 3. Any modification on description, etc.?

- **Field 4(b) – “Message type”**

Such a detailed list of circumstances is not needed and some of the elements are redundant. In particular, it is critical to amend the reference to contractual agreements, as it is not in line with the requirements in the level 1 text of REMIT.

According to Article 2(1) of REMIT, the information required to be made public refers to capacities and the use of facilities, not to contractual rights - lit. (a) to (c) are referring clearly to capacity assets. Therefore, we disagree with the proposal of the accepted value ‘import contract curtailment’ proposed by ACER. If such information is covered, then all contractual arrangements in gas and power should be in scope of this clause, not only import contracts as listed in 4(b) of the Consultation Paper.

Such interpretation is in no way justified. The conditions of bilateral contracts are private, confidential, and individually agreed between the counterparties. It is part of the business strategy of each company to build a portfolio with different contracts and locations. The publication of such information, esp. # 6b), 10b), 11b) and 12b), would harm significantly and sustainably the business of the concerned company.

To avoid immediate adverse effects on the business, the legislator defined in Art. 3.4 of REMIT exemptions under which publication is not necessary or can be postponed. However, Art. 3.4(b) is solely referring to the owner of capacity assets which also shows that the contractual rights and the counterparties to a contract are not in the scope of REMIT. The obligation to publish inside information in Art. 4.1 of REMIT is also referring only to the holders of capacity assets.

In addition to the lack of a legal basis in the level 1 text of REMIT, practical aspects are also against the inclusion of bilateral agreements. There is room for interpretation about what may constitute an “import” and what may constitute a “curtailment”, and it is unclear which party to an import contract should disclose a possible curtailment.

Bilateral contracts contain flexibility to manage the portfolio of both the buyer and the seller. The volumes, route and delivery period may vary significantly within the conditions of the contract, and it is not clear which circumstances may be qualified as “curtailment”. For instance, changes in nominations within the timeline for submission of revised nominations within contractual flexibilities of the counterparties cannot be understood as “curtailment”.

In case of a curtailment, the party suffering the curtailment may be informed ex-post of the event and the volumes affected by curtailment, as well as its duration, may be hardly predictable. Thus, the potential effect on the wholesale energy market cannot be assessed and the information to be disclosed may be misleading or confusing. Furthermore, the disclosure of the curtailment by the suffering party may raise legal consequences related to confidentiality undertakings (as emphasised in the Third ACER Guidance, a market participant should not disclose inside information on behalf of a third party).

In this respect, TSOs may be best placed to fulfill the disclosure obligation for information related to the use of the transportation facilities, which would reflect possible curtailments through the nomination programs. We understand that ACER supports this view for SSOs and LSOs for storage and LNG facilities. For the same reasons, this should be pertinent for TSOs, considering that they would be in a position to aggregate the data and disclose the flow impact for the different entry points, which is the most relevant for the market.

Lastly, any event that is not strictly related to capacity changes, but may be considered as inside information, should fall under the residual category ‘other type’, which by definition should allow for the possibility to use free text.

- **Field 8 – “Fuel Type”**

From a market participant’s perspective what is important is the availability of capacity. Although we understand that a very narrow classification may be insufficient, we do not see the value of such a broad classification.

- **Field 10a – “Unavailable capacity”, Field 11a “Available capacity”, and Field 12a – “Nominal capacity”:**  
These fields should all allow for entering free text, albeit limited to a numbers/ time format (also, please see our comment to Question 1 in relation to these three fields).
- **Field 15 – “Event start” and Field 16 – “Event stop”**  
These fields should offer the possibility to enter free text. This would allow for flexibility with regard to the time statements. Generally, it should be possible in these two sections to indicate if the specified time is fixed time or just estimated time to give an indication as to whether updates can be expected.
- **Field 17 – Remarks:**  
We suggest removing the recommendation to provide “[J]ustification in case of update of the UMM” in the description of the field, as such information adds little value.
- **The use of examples:**  
We would caution against the use of examples where those may or may not constitute inside information. For instance: the example of 50 MW in section 10(a) and the examples in brackets in footnote 3 (page 11). In relation to footnote 3 on page 11, it would be better placed as a note to the “Applicability” box in section 6(a).

**4. ACER recommends the use of the RSS or ATOM formats for the web feeds to enable users to subscribe and also ACER to collect the information published. Do market participants agree?**

In line with REMIT and the REMIT Implementing Acts, it is essential that ACER remain technology-neutral and do not prescribe a certain technology in relation to the web feeds.

RSS is an old pull technology that could compromise regulatory reporting, as frequent polling will be used to capture UMMs events and this could degrade website performance. The traditional pull-based architecture is only efficient when updates are produced at regular or well-known intervals. UMMs do not follow such regular patterns and therefore, users must repeat the pull request arbitrarily, sometimes every second. Frequent pulling turns into a scaling problem when many concurrent users try to capture all updates when they occur. As an alternative, we shall bring attention to more recent push technology using protocols like AMQP, Openwire or Stomp, which is more effective both for the publisher and for the recipient.