



Agency for the Cooperation
of Energy Regulators

Head of Market Monitoring Department

Ljubljana, 7 January 2015
ACER-VZ-pp-2015-3

Subject: No-action Relief: List of contracts reportable at request of the Agency

Dear Sir or Madam,

This letter is issued by the Market Monitoring Department ('the Department') of the Agency for the Cooperation of Energy Regulators ('the Agency') to provide time-limited no-action relief from the requirement to report upon reasoned request of the Agency the contracts and details of transactions in relation to those contracts listed in Article 4(1)(a) to (d) of Commission Implementing Regulation (EU) No 1348/2014¹, unless concluded on organised market places. Commission Implementing Regulation implements Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 (REMIT)² as REMIT Implementing Acts.

I. Background

On 23 October 2012 and 26 March 2013, the Agency issued its recommendations on the records of transactions for the REMIT Implementing Acts to the European Commission on the basis of Article 7(3), second subparagraph, of REMIT. Before making such recommendations, the Agency consulted with interested parties.³ In view of the list of energy commodity contracts to be reported pursuant to Article 8(2)(a) of REMIT, the Agency recommended, *inter alia*, that the REMIT Implementing Acts excluded contracts for balancing services in electricity and natural gas, OTC intragroup contracts and certain OTC contracts below a threshold defined by the REMIT Implementing Acts and the details of transactions in relation to these contracts from the list of reportable contracts.

When providing its recommendations, the Agency recognised that balancing systems currently remain too different at national and/or regional level and standardisation of

¹ OJ L 363, 18.12.2014.

² OJ L 326, 8.12.2011, p. 1.

³ The recommendations are available on the Agency website:
<http://www.acer.europa.eu/remit/About/Recommendations/Pages/Recommendations-on-REMIT-Records-of-transactions.aspx>

balancing services contracts is limited and that national regulatory authorities would be better placed to monitor such markets, at least until the relevant network codes apply. Concerning certain OTC contracts below a threshold defined by the REMIT Implementing Acts and OTC intra-group transactions, the Agency considered that the risk of market abuse through such contracts is limited.

However, the Commission Implementing Regulation (EC) No 1348/2014 foresees a different approach. Its Article 4(1) stipulates that, unless concluded at organised market places, the following contracts and details of transactions in relation to those contracts shall be reportable upon reasoned request of the Agency and on an ad-hoc basis:

- a) Intragroup contracts,
- b) Contracts for the physical delivery of electricity produced by a single production unit with a capacity equal to or less than 10 MW or by production units with a combined capacity equal to or less than 10 MW,
- c) Contracts for the physical delivery of natural gas produced by a single natural gas production facility with a production capacity equal to or less than 20 MW,
- d) Contracts for balancing services in electricity or natural gas.

II. Time-Limited Staff No-Action

Based on the foregoing, the Department takes the view that granting time-limited no-action relief is warranted, given that the Agency's aforementioned reasoning expressed in its recommendations still applies and given the limited resources available to the Agency. Accordingly, the Department will not recommend that the Agency requests information on contracts and details of transactions in relation to those contracts listed in Article 4(1) of Commission Implementing Regulation (EU) No 1348/2014 at least until **31 December 2016**. This is without prejudice to the possibility of national regulatory authorities requesting such information under national law and to the possibility of the Agency to request additional information in relation to reported data according to Article 6(8) of Commission Regulation (EU) No 1348/2014.

This letter, and the positions taken therein, represent the view of the Department only, and do not necessarily represent the positions or views of the Agency or of any other office or department of the Agency. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements stipulated in REMIT or in Commission Regulation (EU) No 1348/2014. Further, this letter, and the relief contained therein, is based upon the information currently available to the Department. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact us under remit@acer.europa.eu.

Yours faithfully,



Volker Zuleger

Head of the Market Monitoring Department