

Recommendations
to the Commission
as regards the records of wholesale energy market
transactions, including orders to trade,
according to
Article 8 of Regulation (EU) No 1227/2011

23 October 2012

According to Article 7(3) of Regulation (EU) No 1227/2011 on wholesale Energy Market Integrity and Transparency (“REMIT”), the Agency for the Cooperation of Energy Regulators (the “Agency” or “ACER”) may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively monitor wholesale energy markets.

The Agency has consulted with interested parties, including with National Regulatory Authorities (“NRAs”), competent financial supervisory authorities in the Member States, national competition authorities and ESMA.

This document contains the Recommendations to the Commission as regards the REMIT records of wholesale energy market transactions, including orders to trade, which it considers necessary to effectively monitor wholesale energy markets and as regards the REMIT implementing acts according to Article 8 of REMIT.

Related Documents

- ACER Work Programme 2012,
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf
- ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 2nd edition 2012,
http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf
- ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 1st edition 2011,
http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf
- ACER Decision No 1/2012 relating to the Registration format pursuant to Article 9(3) of Regulation (EU) No 1227/2011,
http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf
- REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>
- REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF>
- REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border

exchanges in electricity and repealing Regulation (EC) No 1228/2003,
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- REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005,
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REGULATION (EU) No 648/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012 on OTC derivatives, central counterparties and trade repositories,
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- Directive 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on insider dealing and market manipulation (market abuse),
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- Directive 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on markets in financial instruments,
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- DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0038:EN:PDF>
- European Commission proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), 20 October 2011, COM(2011) 651 final,
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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0654:FIN:EN:PDF>
- European Commission proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories, COM(2011) 652 final,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF>
- European Commission proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council, COM(2011) 656 final,
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- ESMA Final Report: Draft Technical Standards under the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories, 27 September 2012, ESMA/2012/600, http://www.esma.europa.eu/system/files/2012-600_0.pdf

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Acronyms used

ACER	Agency for the Cooperation of Energy Regulators
ARM	Approved Reporting Mechanism according to EU financial market rules
BIC	Bank Identifier Code
CCP	Central Counterparty
EIC	Energy Identification Code
EMIR	European Market Infrastructures Regulation – Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, Central Counterparties and Trade Repositories
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	European Network of Transmission System Operators for Gas
ESMA	European Securities and Markets Authority
FSA	Financial Services Authority
GLN	Global Location Number
ISIN	International Securities Identification Number
LEI	Legal Entity Identifier
LNG	Liquefied Natural Gas
LSO	LNG System Operator
MAD	Market Abuse Directive - Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive - Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,
MTF	Multilateral Trading Facility
NRA	National Regulatory Authority
OTC	Over the Counter
OTF	Organised Trading Facility
REMIT	Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency – also referred to as “the Regulation”
RIS	Regulated Information Service
RRM	Registered Reporting Mechanism
SSO	Storage System Operator
TRs	Trade Repositories
TSO	Transmission System Operator

1 Introduction

Background

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency¹ (hereafter referred to as “the Regulation” or “REMIT”) was published in the Official Journal of the European Union on 8 December 2011 and entered into force 20 days later, on 28 December 2011.

The Regulation introduces provisions to improve integrity and transparency in wholesale energy markets and establishes common rules on the prohibition of market abuse in wholesale energy markets. It envisages the collection of wholesale energy market data and the monitoring of wholesale energy markets by the Agency and the enforcement of the prohibitions against market abuse at national level. The Regulation, in its Article 8(2) and (5), confers powers to the European Commission (hereafter referred to as “the Commission”) to adopt implementing acts as regards data collection by the Agency.

According to Article 7(3), second paragraph, of the Regulation, the Agency may submit recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and the European Securities and Markets Authority (ESMA). In fact, national regulatory authorities have been deeply involved in the preparation of the recommendations presented in this document, through their participation in the Agency’s working groups. The Agency is extremely grateful for this contribution by national regulatory authorities.

Since the records of transactions are closely linked to and interdependent with the implementing acts, this document also covers aspects related to the implementing acts according to Article 8(2) and (5) of the Regulation.

The Agency’s public consultation on the REMIT records of transactions and implementing acts

On 21 June 2012, the Agency launched a public consultation on its draft recommendations. The public consultation document consisted of 10 Recommendations and 20 Questions on the records of transactions and REMIT implementing acts concerning data collection under Article 8 of REMIT. ESMA and financial supervisory authorities and competition authorities were consulted separately by letter of 21 June 2012 to ESMA and the European Competition Network. A public workshop was held on 19 July 2012 to discuss the public consultation document with stakeholders. The consultation period ended on 6 August 2012.

The consultation resulted in a total of 51 responses from 58 stakeholders, 8 of which were provided by European associations. A summary of the responses received from stakeholders, together with the resulting position of the Agency are presented in this document.. For further details on stakeholders’ contribution during the public consultation, please refer to the Evaluation of responses provided in a separate document.

¹ OJ L 326, 8.12.2011, p. 1.

In addition to the consultations above, the Agency benefitted from the contribution of its REMIT implementation *ad hoc* expert group and its market surveillance *ad hoc* expert group. The role of the *ad hoc* expert groups is to provide advice and support to the Agency during the implementation phase of REMIT. The *ad hoc* expert groups consist of experts from individual market participants and organised market places.

The extensive involvement of stakeholders described above has provided the Agency with important insights into the issue of data collection under REMIT. Valuable input has been given particularly on which information regulators and market surveillance experts consider necessary to effectively and efficiently monitor wholesale energy markets, which has been taken into consideration when finalising these recommendations.

In the meantime, the Commission services from the Directorate-General for Energy (DG ENER) launched, on 14 September 2012, a stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets². The final report on Technical Advice for setting up a data reporting framework delivered by DG ENER's consultants (hereafter referred to as "the DG ENER's consultant advice") on 20 June 2012 was attached to the public consultation document. The DG ENER's consultant advice is referred to in this document when relevant and appropriate in the context of these recommendations.

Objective of the recommendations

The purpose of the recommendations presented in this document is to assist the Commission in drafting the REMIT implementing acts according to Article 8 of the Regulation.

These recommendations were closely coordinated with ESMA in order to ensure consistency of reporting requirements under REMIT and EU financial market legislation as much as possible.

²http://ec.europa.eu/energy/gas_electricity/consultations/doc/20121207_wholesale_energy_markets_consultation_paper.pdf.

2 Recommendations as regards Article 8(1) of the Regulation

According to Article 8(1), first subparagraph, of REMIT, the information to be reported shall include ***“the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information”***. The Commission, pursuant to Article 8(2) of REMIT, by means of implementing acts, shall adopt uniform rules on the reporting of information which shall be provided in accordance with the first subparagraph of Article 8(1) of REMIT.

2.1 Definitions

Background

Article 8 of the Regulation contains several terms which are crucial for data collection without defining them. It is therefore advisable that these terms, as well as terms newly introduced for data collection, are defined in the implementing acts in order to avoid any ambiguity for market participants who have to report information. The public consultation document proposed some draft definitions to be included in the REMIT implementing acts.

Responses on the Consultation Paper

In general, respondents welcomed the approach to introduce definitions in the implementing acts. However, harmonisation with definitions in EU financial market legislation and a redrafting of proposed definitions was advised. Some definitions were put into question and asked being deleted, whilst some additional definitions were suggested.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 1: The implementing acts should define crucial terms for data collection under REMIT in order to avoid ambiguity for market participants subject to reporting obligations. Definitions which should be specified in the implementing acts include the notions of “derivative”, “energy commodity contract”, “standardised contract”, “non-standardised contract”, “standard framework energy trading agreement”, “organised market place”, “energy exchange”, “broker”, “market operator” and “OTC”. In addition, newly introduced notions herein like “Registered Reporting Mechanism (RRMs)”, “Regulated Information Services (RIS)” and “regulated information” should be defined.

Explanatory text

The Agency recommends applying the following definitions for the purposes of the implementing acts according to Article 8 of the Regulation (in order of appearance) and to include them in the implementing acts:

“Derivative” or “derivative contract” means a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006.

“Energy commodity contract” means any wholesale energy contract that is not a financial instrument.

“Standardised contract” includes a contract admitted to trading at an organised market place, or for which a request for admission to trading on such a market place has been made, irrespective of whether or not the transaction itself actually takes place on that market place or OTC, a contract that can be cleared, a contract subject to a standard framework energy trading agreement or any other contract included in the ACER database of standardised contracts.

“Standard framework energy trading agreements” govern all transactions the parties enter into for the purchase, sale, delivery and acceptance of flat quantities of a commodity for which the parties agree a delivery point (each such transaction being an "individual contract"). The parties enter into a standard agreement and into individual contracts on the understanding that all individual contracts and the standard agreement shall form a single agreement between the parties. The provisions of such a single agreement constitute an integral part of, but may be supplemented by the terms of, each individual contract.

“Non-standardised contract” means any wholesale energy contract that is not a standardised contract.

“Organised market place” or “organised market” means an energy exchange, broker platform or balancing market place acting in its capacity as such, and, where appropriate, a system outside the Union with similar functions to an energy exchange or a broker platform.

“Energy exchange” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in wholesale energy products – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the wholesale energy products admitted to trading under its rules and/or systems.

“Broker” or “broker platform” means

- any system or facility, which is not an energy exchange, operated by a market operator, which brings together multiple third-party buying and selling interests in wholesale energy products – in the system and in accordance with non-discretionary rules – in a way that results in a contract,
- any system or facility, which is not an energy exchange, operated by a market participant or a market operator, in which multiple third-party buying and selling interests in wholesale energy product are able to interact in the system in a way that results in a contract, or
- a market participant which, on an organised, frequent and systematic basis, deals on own account by executing client orders outside an energy exchange.

“Market operator” means a person who manages and/or operates the business of an energy exchange or broker platform. The market operator may be the energy exchange or broker itself.

“Over-the-counter” or “OTC” means any transaction carried out outside an energy exchange.

“Registered Reporting Mechanism (RRM)” means a mechanism or entity reporting records of transactions, including orders to trade, on behalf of a market participant and fulfilling the registration requirements for reporting defined by the Agency. A market participant may become a RRM if it fulfils the registration requirements for reporting defined by the Agency.

“Regulated Information Service (RIS)” means a service reporting inside information on behalf of a market participant and fulfilling the registration requirements for reporting defined by the Agency.

“Regulated information” means inside information and transparency information.

“Transparency information” means fundamental data information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

The above definition of derivative is aligned with the definition of derivative in Article 2(5) of Regulation (EU) No 648/2012 (European Market Infrastructure Regulation - EMIR).

The definitions of organised market place, energy exchange, broker and market operator correspond *mutatis mutandis* to the definitions of regulated market, MTF, systemic internaliser and market operator in Article 4 of Directive 2004/39/EC (Markets in Financial Instruments Directive - MiFID), including the concept of OTF of the MiFID review, but are applied to wholesale energy products, instead of financial instruments, in order to also cover energy commodity contracts.

The definition of OTC differs from the definition of OTC in Article 2(7) of Regulation (EU) 648/2012, as the concept of regulated market of Article 4(14) of MiFID only applies to financial instruments and not to commodity markets. Accordingly, for the purposes of the implementing acts of Article 8(2) of REMIT, the definition of OTC applies the concept of energy exchange.

All definitions are considered necessary for the recommended records of transactions, the recommended uniform rules on the reporting of information, the avoidance of double reporting and the recommended reporting channels.

2.2 Reporting of records of transactions

Background

According to Article 8(1) of REMIT, market participants, or a person or authority on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The Agency, according to Article 7(3) of REMIT, may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers necessary to effectively and efficiently monitor wholesale energy markets. The public consultation document included the Agency’s proposals on records of transactions, including orders to trade.

Responses on the Consultation paper

Several respondents requested a further alignment of reporting under REMIT and EMIR and further coordination of ESMA and ACER. Respondents agreed that a distinction should be made between reporting of records of transactions in standardised and non-standardised contracts, but questioned the need to report orders to trade, transactions in non-standardised contracts and information on the physical settlement. However, in case such data is to be reported, respondents favoured reporting of orders to trade through organised market places and reporting of physical settlement information through TSOs, or third parties acting on their behalf. Stakeholders provided detailed comments on the proposed Annexes II.1 and II.2 and suggested separate Annexes for the reporting of orders to trade and of physical settlement information.

Recommendations

On the basis of the Agency’s own views and taking into account the responses received, the Agency recommends the following for the implementing acts:

Recommendation No 2: The records of transactions for wholesale energy contracts should distinguish between records of transactions, including orders to trade, from organised market places (“organised market reporting form”), records of standardised transactions and records of transactions in standardised contracts (“standard reporting form”), records of transactions in non-standardised contracts (“non-standard reporting form”) and reporting of scheduling/nomination information (“scheduling/nomination form”).

Reporting of records of transactions should include lifecycle information on the pre- and post-trade stage of a transaction, namely information on orders to trade placed at organised market places, the execution of transactions at organised market places, the confirmation or clearing stage of transactions, including modifications of information already reported through the records of transactions and cancelations, and information on the physical settlement of the contract (nomination/scheduling).

Orders to trade placed and transactions executed at organised market places for both derivatives and energy commodity contracts should be reported separately by the organised market places or third parties acting on their behalf according to Annex II.1 (“organised market reporting form”). In addition, the implementing acts should stipulate that voice-brokered orders to trade by persons professionally arranging transactions should be stored by such persons for a period of at least 6 months in order to enable NRAs to require existing telephone records in the context of their investigations according to Article 13(2)(d) of the Regulation.

The records of standardised transactions and the records of transactions in standardised energy commodity contracts, including derivatives, should be reported at the confirmation or clearing stage taking into account reporting obligations under EMIR and MiFID according to Annexes II.2 (“standard reporting form”).

Records of transactions in non-standardised energy commodity contracts should be reported at the confirmation stage according to Annexes II.3 (“non-standard reporting form”). At the same time the non-standardised contracts as such, shall be provided either as a pdf file or by registered post.

However, if transactions in non-standardised contracts take a standardised form, they should be reported as a standardised transaction.

Information on the physical settlement of transactions (“scheduling/nomination”), both for derivatives and energy commodity contracts, should be reported by TSOs or third parties delegated by TSOs according to existing standard formats (“scheduling/nomination form”).

The Agency considers that for records of transactions in contracts in balancing markets and in transportation contracts, Annexes II.1, II.2 and II.3 could be taken as a reference, but will consult on that issue separately with TSOs or persons organising these markets on behalf of TSOs before recommending records of transactions for the reporting of such information.

The unique identification of each market participant should be achieved through using the Legal Entity Identifier (LEI). Should the LEI not be available or applicable when reporting under REMIT starts, market participants should use either the BIC, e.g. if also active in derivatives markets and subject to reporting under EMIR, the GS1/GLN, the EIC, provided that the market participant has communicated a unique GS1/GLN or EIC used at the time of registration, or the “ACER code” for registration as interim solution as unique identifier until the LEI applies.

Explanatory text

In developing the records of transactions, ACER has considered the following key elements:

- a. the purpose and content of reporting;
- b. the elements to correctly identify the transactions and the corresponding counterparties; and
- c. the level of granularity.

Three main stages of the deal life of transactions in wholesale energy products shall be considered:

- a. orders to trade before a deal is entered into (“pre-trade stage”);
- b. execution of transactions (“execution stage”);
- c. lifecycle information of a transaction, namely confirmations, including modifications and cancellations, and, depending on the physical or financial settlement of the transaction, information on the contractual right for physical delivery which may include the use of optionality/flexibility at the agreed point in time after execution (“scheduling/nomination”) or information on whether the transaction was cleared (“post-trade stage”).

ACER’s recommendations on the Record of Wholesale Energy Market Transactions are presented in Annex II.

REMIT already indicates a minimum set of information which is required to be included in the records of transactions: The information reported shall include the precise identification of the wholesale energy product(s) bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction, the beneficiaries of the transaction and any other relevant information.

As regards the content of the records of transactions, the tables in Annex II are organised as follows:

- a. parties of the contract;
- b. contract type; and
- c. details on the transaction.

The Agency’s view is that the fields indicated in the tables of fields included under Annex II should be reported by market participants in order to comply with Article 8 of REMIT. These tables take account of the suggestions provided in the responses to the public consultation document.

The tables of fields distinguish between standardised and non-standardised contracts, with reporting of records of standardised transactions and the record of transactions in standardised contracts, including derivatives, being more detailed than reporting of records of transactions in non-standardised contracts. In general, the responses to the public consultation document were supportive of this proposal and therefore this approach has been maintained.

In order to allow flexibility, a market participant should be able to delegate the reporting of the records of transactions to the other market participant or a third party. Market participants should also be able to agree to delegate reporting to a common third party. In these circumstances and in order to ensure data quality, the report should indicate that it is made on behalf of both market participants and will contain the full set of details that would have been reported had the information been reported separately.³

2.2.1 Reporting of orders to trade and transactions from organised market places

Background

The Agency believes that reporting of contracts admitted to trading at organised market places should include reporting of both records of transactions and orders to trade.

Importance of information for effectively and efficiently monitoring market abuse

Pre-trade information, such as orders to trade, is important to detect insider trading - in particular through the acquisition or disposal of wholesale energy products to which that information relates -, according to Article 3(1)(a) of the Regulation, market manipulation, according to Article 2(2) of the Regulation, and attempts to manipulate the market, according to Article 2(3) of the Regulation.

One characteristic of the regular monitoring requirement for organised market places is to monitor pre-trade activities. However, as many organised market places are linked and are already sufficiently standardised to allow cross-venue comparison of price signals, it is insufficient to rely exclusively on those organised market places to monitor pre-trade activities, since, by their very nature, these venues will not have access to all the relevant data - e.g. information from other organised market places, on relevant OTC transactions or inside information disclosed by market participants according to Article 4(2) of the Regulation - or typically do not take such information into account in their monitoring activities.

The storing of voice-brokered orders will enable NRAs, when investigating suspected breaches of the market abuse prohibitions, to access this important information according to Article 13(2)(d) of REMIT. Currently, no obligation to store voice brokered orders applies for non-regulated organised market places.

Conclusion

Orders related to products traded on an organised market place and orders which are visible to more persons than the potential buyer and potential seller should be recorded and reported as if they were transactions. In addition, the monitoring of day-ahead auctions would be less relevant without the collection of orders to trade. Currently, contrary to derivatives markets, no harmonised supervisory framework applies at the European level for the supervision of organised spot market places⁴, which is an additional reason why such orders to trade should be collected.

³ According to ESMA's final report on Draft technical standards under EMIR (p. 55), the tables of fields for the EMIR records of transactions are divided in two sub-sets: (i) Table 1 – counterparty data (to be reported separately by each counterparty or their appointed reporting entity) ; and (ii) Table 2 - common data (may be reported by only one counterparty, if reporting also on behalf of the other, or an appointed reporting entity). For reasons of consistency between the reporting of derivatives under EMIR and REMIT, this approach may also be applied for reporting of derivatives under REMIT through trade repositories registered under EMIR according to Annex II.2.

⁴ See the CEER final advice on the regulatory oversight of energy exchanges. A CEER Conclusions Paper, Ref. C10-WMS-13-03a, 11 October 2011.

Accordingly, it is proposed that orders to trade are stored by the relevant organised market place in order to be monitored by the market surveillance team and collected by ACER on a continuous basis from these organised market places according to Annex II.1. Since orders to trade and related transactions will be difficult to separate, also the executed transactions should be collected from the organised market places according to Annex II.1.

2.2.2 Reporting of records of transactions in standardised transactions and contracts, including derivatives

Background

In developing the standard reporting form, the Agency has considered the objectives of REMIT including protection against market abuse and improving transparency in wholesale energy markets. A comparison has been made between reporting under REMIT, reporting under EMIR for energy commodity derivatives and the transaction reporting mechanisms already in place in the EU under MiFID. A number of respondents to the public consultation document urged the Agency to consider consistency between the various reporting requirements in the EU to avoid duplication and reduce the reporting burden on firms. Whilst efforts have been made to ensure that the data sets are aligned as much as possible, reporting under REMIT, as understood by the Agency, differs in scope than MiFID or EMIR. In addition, REMIT indicates a minimum set of information to be required and this is included in the standard reporting form.

Importance of information for effectively and efficiently monitoring market abuse

Reporting of transactions in standardised contracts and derivatives is the core basis for any monitoring of market abuse. Reporting should include all information necessary to detect market manipulation and insider trading.

Information on derivatives has to go beyond information to be reported under EMIR as not all information necessary for effectively and efficiently monitoring market abuse will be covered by EMIR (e.g. information necessary for monitoring of market abuse and other information potentially not covered by the Unique Product ID). Minor differences concern the different terminologies of the two regulations, the order of data fields and their descriptions due to the specificities of wholesale energy markets. Any further differences in the relevant Annex II.2 are caused by the different product scope under REMIT and EMIR, with REMIT also covering energy commodity contracts (fields 3, 6, 14, 16, 18, 25 and 32), and the different mandate of ACER and ESMA under REMIT and EMIR, i.e. monitoring of market abuse versus monitoring of systemic risks (fields 4, 7 and 23). However, information relating to the systemic risk will not be required under REMIT and insofar reporting under REMIT requires less information than reporting under EMIR.

Collection of information at the confirmation or clearing stage will minimise the administrative burden for market participants in reporting such data and allow the Agency to collect information on the beneficiary of a contract, as requested by Article 8(1) of the Regulation. In line with ESMA's understanding of the definition of beneficiary under EMIR, the Agency considers the party subject to the rights and obligations arising from the contract as a beneficiary. If the beneficiary of the contract is not a market participant, the reporting market participant should identify this beneficiary by a unique code or by a client code as assigned by the legal entity used by the beneficiary.

Conclusion

Records of transactions in standardised contracts and derivatives should be reported according to Annex II.2. The Records of transactions is harmonised as much as possible with the Records of transactions proposed by ESMA under EMIR. For bilateral contracts, it should be sufficient if only one party of the contract reports the standard reporting form through a RRM.

2.2.3 Reporting of records of transactions in non-standardised contracts

Background

Non-standardised contracts, like other OTC contracts, lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties.

Importance of information for effectively and efficiently monitoring market abuse

Market participants, particularly in the gas markets, enter into complex long-term transactions on a bilateral basis where it is often not possible to identify precise quantities, or prices at the time of execution. Such mechanisms may envisage different prices for the different time periods of delivery within the overall delivery time-range, which are based on pre-agreed indices, the nature of which tend to be complex and highly contract-specific. All such terms and optionalities are, however, agreed between counterparties before execution. In addition, quantities to be delivered have a high degree of optionality. Therefore, for these complex arrangements which are non-standardised and fall outside organised markets, a reporting regime that respects these highly customised contracts is required.

Reporting of records of transactions in non-standardised contracts is crucial to have a complete picture of the trading activities of market participants. Market abuse practices like ramping or cross-market manipulation could not or only hardly be detected without information on non-standardised contracts.

For instance, a market participant being a seller in a long-term contract with price components depending on developments of spot market prices could influence the spot market prices by buying at artificial high prices to benefit from these higher prices as a seller in the long term contract(s). If no information were available on the long-term contracts, the activity on the spot markets alone would not necessarily be sufficient to identify suspicious instances. Only with the knowledge about the long-term contracts the picture is complete.

The table of fields for the non-standard reporting form are considered decisive to receive a first glance of non-standardised contracts through the electronic reporting of records of transactions for the monitoring of wholesale energy markets. In addition, the non-standardised contract as such should be submitted to the Agency. This should be done either electronically, e.g. as a pdf file, or physically by registered post. The contracts may contain information necessary when investigating possible market abuse under REMIT. The contracts would be stored safely at the Agency and kept at disposal until needed for the analysis of suspicious cases.

Where individual transactions under a non-standardised contract fulfil the criteria of a standardised transaction and therefore can be considered as such, these transactions should be reported as standardised transactions according to Annex II.2.

The proposed approach of data collection on non-standardised contracts aims at avoiding reporting discrimination between standardised contracts typically traded at organised markets and non-standardised contracts traded OTC and information asymmetries for regulators between organised and OTC markets. Similar information asymmetries in the derivatives market led to the introduction of OTC reporting obligations under EMIR for mitigating those risks and improving the transparency of derivative contracts. The Agency strongly believes that the lessons learned in derivatives markets should also be considered in energy commodity markets to avoid recurrence.

Conclusion

Reporting of transactions in non-standardised contracts should be made to the Agency by filling the non-standard form for the reporting of records of transactions. Changes should be reported as modifications. It should be sufficient if only one party of the contract reports the non-standard reporting form according to Annex II.3.

2.2.4 Reporting of lifecycle information

Background

The Agency believes that reporting of records of transactions should include life-cycle information.

Importance of information for effectively and efficiently monitoring market abuse

Monitoring of market abuse must be based on accurate information. Starting investigations on non-accurate information should be avoided, both for the benefit of regulatory authorities and market participants. This means that lifecycle information has to be reported to the extent necessary to enable regulatory authorities to base their monitoring activities and possible investigations on accurate information.

Conclusion

Both reporting of transactions in standardised and non-standardised contracts should include lifecycle information of a transaction, to be reported at the confirmation stage, including modifications of the information previously reported and cancellations.

Depending on the physical or financial settlement of the transaction, information on the contractual right for physical delivery which may include the use of optionality/flexibility at the agreed point in time after execution (“scheduling/nomination”) or information on whether the transaction was cleared or uncleared (post-trade information) should be reported as well. Information on scheduling and nomination should be reported for all contracts, regardless any de minimis threshold or whether the underlying contract is reportable or not.

Whilst information on whether a transaction was cleared or not can be reported through separate fields in Annexes II.2, information on scheduling/nominations, including derivatives with physical delivery, which is considered vital to understand physical flows between as well as within markets and will provide an overview on overall transaction activity of market participants, should be reported by TSOs, or third parties delegated by TSOs, on behalf of market participants according to existing standard formats. The Agency concurs with the approach for reporting of scheduling/nominations through the “scheduling/nomination form” proposed in the DG ENER’s consultant advice⁵.

⁵ See the DG ENER’s consultant advice, Appendix I, p. 133 – 141.

2.2.5 Unique identifier of market participants for reporting

Background

The information transmitted to the Agency should uniquely identify the market participants involved in the transaction. Market participants have to register before entering into a transaction. Pursuant to Article 9 of the Regulation, the registration will be a two-layer process: first, at national level, for which each NRA has to establish a national register of wholesale energy market participants; second, at European level, for which the Agency has to establish the European register of market participants. The European register will be populated with the information collected at national level and transmitted to the Agency by the NRAs through a registration format that the Agency has determined and published on 26 June 2012.

Importance of information for effectively and efficiently monitoring market abuse

Identification of the market participant is key for market monitoring and the linking of information to one market participant.

Conclusion

In the light of comments received during the public consultation, the Agency proposes using the LEI. Should the LEI not be applicable when data collection under REMIT starts, market participants may use the BIC, if also active in derivatives markets. Moreover, market participants only trading in energy commodity contracts may rely on the EIC, provided that the market participant has communicated a unique EIC used at the time of registration, or the “ACER code” for registration. Each market participant will be identified through a pair of fields to allow the interoperability between the different codes in the records of transactions: one field will contain the value of the code and the other field will contain the type of code used.

A correspondence table between the ACER code and the allowed existing codes will be maintained by the Agency through the information provided by each market participant to the relevant NRA. In case of any error detected by the Agency in the correspondence matching, the erroneous transactions will be rejected and sent back to the relevant market participant(s) or third party reporting on its/their behalf and shall be rectified in due time; in case of persistence of errors, the market participant could be obliged to use only the ACER code for reporting transactions.

As it is also envisaged that each trader, being the natural person or algorithm that initiates/aggresses the order and/or executes the transaction, is identified, the Agency proposes that each registered market participant has to maintain a list of its traders in such a way that each person is identifiable in case of an investigation. In the record of transactions, only an anonymous code, freely generated by each market participant or organised market place, will be requested, avoiding any collection of personal data.

3 Recommendations as regards Article 8(2) to (4) of the Regulation

3.1 List of contracts and derivatives which are to be reported and appropriate *de minimis* thresholds, Article 8(2)(a) of the Regulation

3.1.1 List of contracts and derivatives to be reported

Background

According to Article 8(2) of REMIT, the Commission, by means of implementing acts, shall draw up a list of the contracts and derivatives, including orders to trade, which shall be reported.

Responses on the Consultation paper

In general, respondents agreed with the proposed concepts of a generic list of contracts to be defined in the implementing acts on the basis of the list of contracts to be reported contained in Annex III, and a list of standardised contracts to be maintained on the ACER website, the proposal for an ACER taxonomy at least for energy commodity contracts and the proposed phased approach. Moreover, most stakeholders were not against excluding producers selling at administratively fixed prices, but disliked that it discriminates producers selling at other bonus models, which were not explicitly mentioned. Respondents from the gas market expressed the feeling that the proposed options are tailored for the electricity market and complained for the lack of gas-specific rules.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 3: The Agency recommends that concerning derivatives, the list of financial instruments as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006 should apply for reporting purposes under REMIT.

The list of energy commodity contracts to be reported pursuant to Article 8(2)(a) of the Regulation should be defined according to Annex III. With the establishment of this list of contracts to be reported, the implementing acts should stipulate a phased approach by delaying the reporting of balancing market contracts and transportation contracts by 6 months and exclude certain energy commodity contracts from the reporting obligation. The exclusion should apply to contracts at administratively-fixed prices, like renewable energy production at feed-in tariffs, as long as information on these contracts is provided with the reporting of scheduling/nomination data and/or with the reporting of information according to Article 8(5) of REMIT, and to OTC intra-group transactions, as long as the relevant group members are registered as market participants according to Article 9 of REMIT.

The implementing acts should stipulate that the Agency collects and publishes a set of information regarding the types of standardised wholesale energy contracts in a list of standardised wholesale energy contracts (REMIT database) to be made available through the

ACER website. Whilst product taxonomies and product IDs used for the reporting under EU financial market rules⁶ may also apply to energy derivative contracts under REMIT and facilitate the comparability of derivative contracts across the Union, no comparable product taxonomies and product IDs exist for energy commodity contracts. For an efficient and effective market monitoring of wholesale energy markets, the implementing acts should stipulate that the Agency develops a product taxonomy for the types of standardised wholesale energy contracts where no unique product ID applies as a basis to develop a unique product identification for these wholesale energy contracts. The consequence of the listing in the REMIT database would be the application of the standard reporting form according to Annex II.2 which contains all information considered necessary for an effective and efficient monitoring of wholesale energy markets. All non-listed energy commodity contracts would be considered non-standardised and are to be reported with the non-standard reporting form according to Annex II.3, but including a copy of the contract as such in order to enable the Agency to revert onto it in the market monitoring of wholesale energy markets in case of suspicious behaviours.

Explanatory text

The establishment of a list of contracts and derivatives to be reported according to Article 8(2)(a) of the Regulation depends on the scope of the definition of wholesale energy product according to Article 2(4) of the Regulation.

The following contracts and derivatives are defined as wholesale energy products, irrespective of where and how they are traded (Article 2(4), first subparagraph, of the Regulation):

- (a) contracts for the supply of natural gas or electricity with delivery in the Union;
- (b) derivatives relating to natural gas or electricity produced, traded or delivered in the Union;
- (c) contracts relating to the transportation of natural gas or electricity in the Union;
- (d) derivatives relating to the transportation of natural gas or electricity in the Union.

According to Article 2(4), second subparagraph, of the Regulation, contracts for the supply and distribution of natural gas or electricity for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of natural gas or electricity to final customers with a consumption capacity in the meaning of Article 2(5) of the Regulation greater than 600 GWh per year of either electricity or natural gas shall be treated as wholesale energy products.

As derivatives are defined as financial instruments as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006, the Agency does not consider it necessary to set up a separate list for derivatives and recommends to only set up a list of energy commodity contracts.

⁶ See in particular ESMA's final report on Draft technical standards under EMIR (ESMA/2012/600), p. 56 *et seq.*, and its Annex VII on Draft implementing technical standards with regard to the format and frequency of trade reports to trade repositories.

The proposed list of contracts in Annex III takes into account that there are different interests when setting up such a list. On the one hand, market participants generally have a high interest in having a list which is as precise as possible in order to be in a position to have sufficient clarity about the legal reporting requirements. On the other hand, there is also a need to have a certain degree of openness of the list to allow changes in products without an immediate need to adapt the list of products to be reported in accordance with Article 8(2)(a) of the Regulation. Accordingly, a similar approach to the one taken under MiFID was chosen and a general list of contracts similar to the definition of financial instrument in MiFID is proposed.

Although covered by the definition of wholesale energy products according to Article 2(4) of the Regulation and therefore subject to the monitoring of ACER and NRAs, it is currently proposed that reporting of contracts in balancing markets and transportation contracts are not collected by ACER in an initial phase of reporting under REMIT. The Agency recognises that balancing systems currently remain too different at national and/or regional level and standardisation of transportation contracts is limited. Reporting of such contracts should therefore start at a later stage and be postponed by 6 months.

In addition, the implementing acts should exclude certain energy commodity contracts from the reporting obligation. Firstly, this should include contracts at administratively-fixed prices (e.g. renewable energy production at feed-in tariffs). The exclusion of such contracts from the reporting obligation would significantly limit the scope of reporting for small market participants. Secondly, the exclusion should also apply to OTC intra-group transactions. The Agency acknowledges that the risk of market abuse through such contracts is limited. However, these exemptions should only apply under the following precise conditions:

- a. for contracts at administratively-fixed prices, only if the reporting of nomination/scheduling information and reporting of information according to Article 8(5) of REMIT apply, in order to allow the Agency to detect possible market abuse realised in the form of manipulation through capacity withholding;
- b. for OTC intra-group transactions, only if the group companies parties in an OTC intragroup transaction are registered as market participants under REMIT, in order to identify potential suspicious behaviour of market participants involving OTC intra-group transactions.

The Agency considers that if the above conditions are not respected, the exclusion cannot be granted and the implementing acts should foresee these conditions as compulsory for market participants that intend to use the above exemptions to their relevant transactions and contracts.

The implementing acts should assign the Agency with the task to collect and publish a set of information regarding all standardised contracts in a list of standardised wholesale energy contracts (REMIT database) that will comprise contracts admitted to trading on organised market places⁷, contracts subject to a standard framework energy trading agreement, contracts that can be cleared or any other contract considered as standardised by the Agency.

⁷ Please note that such list of standardised wholesale energy contracts collected and published by the Agency would not involve the Agency approving contracts admitted to trading on organised market places. This is why the Agency would under no circumstances have any possibility to reject any contract from being introduced by an organised market place. In addition, the Agency would not have the competences to refer the organised market place when introducing new contracts to be admitted to trading to use an already existing contract. The introduction and design of contracts would remain with the organised market place. The Agency would solely collect and publish information regarding wholesale energy contracts admitted to trading on organised market places.

A similar approach applies to a list of financial instruments according to Article 11 of the MiFID implementing Regulation (EC) No 1287/2006 which enables ESMA to collecting and publishing a list of financial instruments in the form of the MiFID databases (<http://www.esma.europa.eu/page/mifid-databases>). The information included in a similar REMIT database would increase transparency on such wholesale energy contracts, but particularly facilitate transaction reporting.

The ACER list of standardised wholesale energy contracts would specify the types of standardised contracts for which standard reporting is mandatory. All non-listed energy commodity contracts would be considered non-standardised and are to be reported with the non-standard reporting form according to Annex II.3, but including a copy of the contract as such in order to enable the Agency to revert to it in the market monitoring of wholesale energy markets in case of suspicious behaviours.

The ACER list of standardised wholesale energy contracts should be updated regularly.⁸

Each contract published in the ACER list of standardised wholesale energy contracts would be assigned a unique product identifier (Product ID) and would be categorised through a limited number of dimensions, in order to recognize if different products brands in different organised market place actually refer to the same substantial product. For instance, dimensions could cover

- a. commodity type (electricity/gas),
- b. transaction type (physical/financial),
- c. transaction category (commodity/transportation capacity),
- d. profile type (baseload, peak, off-peak, block-profiled),
- e. country code (ISO-country code 3166-1 of the country of physical delivery or underlying for derivatives).

Furthermore, such ACER list would provide a standard product taxonomy, i.e. a grouping of contract categories, for energy commodity contracts (using the above category dimensions) which is binding for the industry in order to categorize transactions by their product types in the context of reporting records of transactions.

Whilst for derivatives, the product IDs used for the transaction reporting of financial instruments (ISIN – International Securities Identification Number (ISIN); Aii – Alternative instrument identifier) may be used in reporting under REMIT, for energy commodity contracts the ACER product ID should be used for reporting, with positive effects on reported data quality.

⁸ For contracts admitted to trading at organised market places, the changes would include new contracts to be admitted to trading as well as de-listings. New admissions would have to be included on the first day of trading at the latest.

In effect, such ACER list of standardised wholesale energy contracts would be used for a phased approach of implementation of reporting records of transactions under REMIT by making the level of detail of reporting of records of transactions in wholesale energy contracts dependent from the time of recording in the REMIT database. ACER believes that such phased approach for the reporting of wholesale energy contracts could reflect the current level of standardisation in the market, taking into account the economic impact of the implementation.

3.1.2 *De minimis* thresholds for transaction reporting

Background

The public consultation document indicated three options for a *de minimis* threshold for reporting. In any case, any *de minimis* threshold should only apply if the market participant does not trade at organised market places.

Responses on the Consultation paper

Most respondents were not against excluding small producers from reporting obligations. However, their opinions differ in the way it should be done.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 4: In view of the feedback received in the consultation process, including from NRAs, the Commission should consider whether a *de minimis* threshold is introduced to exclude from the transaction reporting obligation under Article 8(1) of the Regulation production contracts traded by small producers having an installed capacity of up to 10 MW, trading only this capacity, and acting individually in the market, unless trading at organised market places or owned by a company subject to the reporting obligation. The *de minimis* rule should be reviewed after two years.

Any reporting exemption should be limited to non-standardised energy commodity contracts and not affect reporting obligations for derivatives according to EMIR.

Explanatory text

Article 8(2)(a) of the Regulation foresees the possibility of an appropriate *de minimis* threshold for the reporting of transactions in wholesale energy products. The definition of any such threshold will automatically affect the registration requirement for market participants according to Article 9(1) of the Regulation, as only market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of the Regulation need to register. The definition of a *de minimis* threshold therefore has to be balanced against the possibility of identifying the parties of the transaction according to Article 8(1) of the Regulation, if the transaction is reported by the counterparty of the transaction not benefiting from the *de minimis* threshold.

In considering a *de minimis* threshold for reporting, Recital 19 of the Regulation should be taken into account pursuant to which reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. It is considered that this applies in particular to small renewable energy producers acting individually where the risk of market abuse is minimized.

The Commission should consider introducing a *de minimis* threshold to exclude from the transaction reporting obligation under Article 8(1) of the Regulation production contracts traded by small producers having an installed capacity of up to 10 MW, trading only this capacity, and acting individually in the market, unless trading at organised market places. The application of such threshold to all small producers avoids discrimination between electricity and gas producers.

Small producers subject to the *de minimis* exemption should therefore not be considered as market participants subject to reporting obligations under Article 8(1) of the Regulation nor subject to the registration requirement according to Article 9 of REMIT, except in those cases in which the producer is trading at organised market places or controlled by a company with reporting obligations.

The rationale for the exclusion of such small producers from the reporting and registration obligations of REMIT rests on the limited impact that these producers can have in influencing, and possibly distorting, prices and other conditions in wholesale energy markets. However, this would mean that wholesale energy transactions from market participants subject to reporting obligations with small producers would still be reported from the market participant subject to reporting obligations and therefore by one party of the contract.

As the small producer would not be identified through a unique identifier provided through the registration at NRA level, the reporting market participant should identify the small producer by a unique code, if available at regional or national level and acknowledged by the Agency (for instance, unique code used by relevant bodies for incentives in favour of renewables producers or the EIC code), or by a code assigned by the reporting market participant and in this case the reporting market participant shall keep the list of small producers corresponding to its codes available for the Agency.

A similar approach applies in the EU financial market legislation as under MiFID, only investment firms have to register and indicate the beneficiary ID of their clients in the transaction reporting to financial market authorities. A similar concept could be applied under REMIT for small producers.

In the context of reporting of information according to Article 8(5) of REMIT, information concerning market participants benefiting from the *de minimis* exemption should be identified by the relevant reporting channel, either by a unique code acknowledged by the Agency (typically, the EIC code) or by a code assigned by the reporting channel and also in this case the reporting channel shall keep the list of small producers corresponding to its codes available for the Agency.

Any reporting exemption should be limited to energy commodity contracts and not affect reporting obligations for derivatives according to EMIR.

The *de minimis* rule should be reviewed after two years.

3.2 Uniform rules on the reporting of information, Article 8(2)(b) of the Regulation

Background

According to Article 8(2)(b) of the Regulation, the Commission shall, by means of implementing acts, adopt uniform rules on the reporting of information which is to be provided in accordance with Article 8(1) of the Regulation. In addition, pursuant to the third sentence of Article 8(2) of the Regulation, the implementing acts shall take account of existing reporting systems. The public consultation document proposed reporting through Registered Reporting Mechanisms (RRMs).

Responses on the Consultation paper

In general, respondents agreed with the proposal to reporting through RRMs provided that direct reporting capability is available and information requirements are based on current practice among market participants, exchanges and other trading platforms. Several respondents requested that RRMs take liability for failure to report information correctly or timely and proposed that platform operators are mandated to report transactions in standardised contracts.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 5: The Agency recommends that records of transactions, including orders to trade, in derivatives and standardised energy commodity contracts are reported to the Agency through Registered Reporting Mechanisms (RRMs) to ensure operational reliability. Any organisation (e.g. organised market places, trade repositories, TSOs, trade matching or trade reporting systems) or market participants themselves should be eligible to become a RRM under REMIT, subject to conformity with organisational requirements which should be set on a harmonised basis, possibly including the use of existing standardised trade and process data formats and protocols for each class of data.

Reporting of derivatives is already mandatory for trade repositories under EMIR and trade repositories should fulfil the requirements of a RRM to report these derivatives to the Agency.

Organised market places, or third parties acting on their behalf, such as trade matching systems, should be required to become RRMs to report to the Agency, on behalf of market participants, the records of orders to trade placed and the records of transactions executed at the organised market place, including records of transactions in balancing market contracts, if subject to reporting.

Trade repositories registered by ESMA under EMIR should be required to report derivatives on behalf of market participants to ensure consistency with reporting under EMIR as much as possible.

Trade repositories, Central Counterparties, trade reporting or trade confirmation systems could become RRMs to report to the Agency, on behalf of market participants, confirmations of records of transactions in standardised energy commodity contracts and derivatives.

Market participants should report confirmations of records of transactions in non-standardised contracts themselves, unless RRMs provide such services on their behalf, through a non-standard reporting form to the Agency. The implementing acts should foresee that the reporting obligations for transactions in non-standardised contracts may be fulfilled if only one party of the contract reports the records of transactions.

TSOs, or third parties acting on their behalf, should be required to become RRMs to report scheduling/nomination information on behalf of market participants to the Agency.

The Agency recommends making use of existing codifications and standards as much as possible and that the Agency defines such standards, insofar as not stipulated in the implementing acts, for reasons of operational reliability, through guidelines for the reporting through RRMs. The Agency aims at developing draft technical standards for the transaction reporting under REMIT, taking into account the technical standards for the reporting under MiFID and EMIR, and guidelines for the registration of RRMs in the near future.

Explanatory text

The Agency believes that reporting through RRMs will improve the completeness and quality of the reporting by market participants and ensure operational reliability of the reporting system, but also help to avoid double reporting under REMIT and EU financial market legislation.

A similar concept of third party transaction reporting through RRMs is already being implemented under financial market rules through so-called "Approved Reporting Mechanisms (ARMs)", notably in larger Member States (e.g. Germany or United Kingdom) and will be applied within the reviewed transaction reporting scheme under MiFID/MiFIR currently under discussion. In fact, also EMIR foresees a third party transaction reporting to competent financial market authorities through trade repositories. Envisaging a similar approach for the transaction reporting under REMIT would therefore ensure a harmonised reporting under REMIT and EU financial market rules. Although there will legally be three separate reporting obligations on market participants under REMIT, EMIR and MiFID/MiFIR, in practice there would be no double reporting.

The effect of double reporting will be mitigated if a consistent identifier is used for every trade. Where a participant already has an established workflow to a trade repository and it would prove to be prohibitively expensive to re-engineer such a flow, a market participant should be free to use such a trade repository to fulfil their reporting requirements under REMIT.

For reasons related to the best functioning of the IT-system and operational reliability, RRMs should be uniquely identified for REMIT purposes through a registration. ACER intends to keep the registration of market participants separate from the registration of other companies acting as RRM providers and therefore involved in REMIT reporting functions, but different from market participants. Since RRMs will report to the Agency, they should register directly with the Agency.

Any organisation will be eligible to become a RRM under REMIT subject to conformity with operational requirements, which will be set on a harmonised basis to ensure operational reliability. For example, an organised market place, a trade matching or trade reporting system, trade repository or market participants themselves could become a RRM.

The main disadvantage of this approach is that it may impose additional costs on reporting market participants, as, for instance, the RRMs may charge a fee for the transmission of data on their behalf, notably when additional system investments are necessary. However, this fee may be lower than the costs incurred by the market participant when it chooses to report its transactions itself.

Transactions in non-standardised contracts should be reported directly to the Agency, but the implementing acts should foresee that only one party of the contract reports the records of transactions. This would avoid red tape for market participants and reduce their costs, but also the costs of the Agency as the mapping of information reported by at least two parties of the

transactions would become superfluous. The non-standardised contracts as such should either be submitted electronically as pdf files or by registered post.

Codes and standards for reporting, insofar as not already defined in the implementing acts, should be defined in ACER guidelines for the RRM for reasons of operational reliability. In general, the Agency believes that existing codes and standards should be used as much as possible.

The Agency currently considers that one format for each 'class' of data (pre trade, execution, confirmation and nomination/scheduling) could be applied. Competing alternatives of coding schemes should possibly be avoided. Alternative IT protocols should be minimised, possibly one protocol per data class and existing infrastructure should apply. The development of draft technical standards for the transaction reporting under REMIT will be one of the Agency's next priorities.

3.3 Timing and form in which information is to be reported, Article 8(2)l of the Regulation

Background

According to Article 8(2)(c) of REMIT, the Commission, by means of implementing acts, shall lay down the timing and form in which this information shall be reported.

Responses on the Consultation paper

In general, feedback from respondents was rather mixed as regards the timing of reporting. Several respondents suggested a different timing for reporting of non-standardised contracts, whilst others highlighted that the timing of reporting of different information should be harmonised for an effective and efficient monitoring.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 6: Records of transactions, including orders to trade, in standardised contracts should be reported as promptly as possible, and no later than the working day following the time of the reported event (the placing of orders to trade at an organised market place, the execution, the modification of information already reported or the cancelation of the transaction).

Records of transactions in non-standardised contracts should be reported no later than one month following their execution, modifications or cancelation of the contract.

The records of transactions should be reported in an electronic form.

Explanatory text

In order to ensure the timeliness and effectiveness of the monitoring of wholesale energy data, it is proposed to foresee a similar delay for the reporting of records of transactions in standardised contracts under REMIT to that foreseen under EU financial market rules, i.e. as promptly as possible and no later than the close of the first working day following the time of the reported event (the execution, the modification or the cancelation of the transaction for reporting of transactions in standardised contracts).

Transactions in non-standardised wholesale energy contracts should be required to be reported within a maximum period of one month following the execution of the transaction. The delay of reporting takes into account the current level of standardisation of such contracts and reduces the administrative burden for market participants to report such information. Any further delay of reporting would undermine an effective monitoring of wholesale energy markets. Where sufficient standardisation of the periodic transactions that are linked to non-standardised long-term contracts permit reporting of these transactions in a standardised way, the reporting of these transactions would have to be reported as records of transactions in standardised contracts, i.e. within one working day following its execution.

The records of transactions in wholesale energy products should be made in an electronic form.

3.4 Avoidance of double reporting obligations for derivatives, Article 8(3) of the Regulation

Background

The public consultation paper suggested a close cooperation between ACER and ESMA to ensure avoidance of double reporting under REMIT and EU financial market legislation, in particular under EMIR.

Responses on the Consultation paper

The majority of respondents supported ACER's general approach for the avoidance of double reporting in view of developments in EU financial markets and encourages a strong coordination among the competent authorities involved in data collection, monitoring and reporting on physical and financial products.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 7: The Agency and ESMA will cooperate closely concerning the data collection of derivatives to be reported under REMIT, EMIR and MiFID. Trade repositories under EMIR should report records of transactions in derivatives collected and maintained under EMIR to the Agency. Where any of the REMIT data requirements is not met under EMIR or MiFID, trade repositories or other RRM's acting on behalf of market participants, should be required to report this additional information directly to the Agency.

Explanatory text

Article 8(3), first subparagraph, of REMIT stipulates that persons referred to in Article 8(4)(a) to (d) of the Regulation who have reported transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories (EMIR) are not subject to double reporting obligations relating to those transactions. Recital 19 of REMIT states that reporting obligations should be kept to a minimum and do not create unnecessary costs or administrative burden for market participants.

The uniform rules for reporting should therefore undergo an ex-ante cost-benefit analysis and avoid double reporting. Therefore, they should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and/or from existing sources where possible. Article 8(3), second subparagraph, of REMIT stipulates that without prejudice to the first subparagraph, the implementing acts may allow organised market places and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions. Hence, reporting under MiFID to national financial market authorities and under EMIR to trade repositories have to be considered. However, according to Article 8(3), first subparagraph, of the Regulation, the avoidance of double reporting only applies to persons referred to in Articles 8(4)(a) to (d) of the Regulation and, therefore, particularly not to trade repositories registered or recognised under EMIR referred to in Article 8(4)(e) of REMIT.

Accordingly, there will not be double reporting for market participants if they report all derivatives data required under EMIR and REMIT to trade repositories. Trade repositories are required both under Article 81(3)(j) of EMIR and under Article 8(4)(e) of REMIT to reporting their records of transactions in energy derivatives to the Agency.

3.5 Reporting channels, Article 8(4) of the Regulation

Background

The public consultation document proposed that at least the entities listed in Article 8(4)(a) to (e) of REMIT, excluding competent financial market authorities, could apply to become RRM's under REMIT to report transactions on behalf of market participants.

Responses on the Consultation paper

Most of respondents agree with the proposed approach concerning reporting channels. However, several respondents requested additional clarification on the organizational requirements for RRM's and on data security standards. Moreover, expectations on the period necessary to implement organisational requirements differ significantly among respondents.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 8: The implementing acts should stipulate a mandatory reporting of orders to trade placed and records of transactions executed at organised market places through the organised market places, or trade matching or trade reporting systems on their behalf, a mandatory reporting of trade repositories concerning derivatives, a mandatory reporting of confirmations in standardised energy commodity contracts and derivatives through trade matching and trade reporting systems and a mandatory reporting of nomination/scheduling information and records of transactions on balancing market through TSOs, with the possibility of third parties reporting on their behalf. Other RRM's could report records of transactions on behalf of market participants on a voluntary basis.

Reporting channels, for reasons of operational reliability, should register with the Agency as RRM's.

The Agency, for reasons of operational reliability, should define organisational requirements for RRM (e.g. adequate policies and arrangements to report the information in a timely manner, effective administrative arrangements designed to prevent conflicts of interests with clients, operation and maintenance of sound security mechanisms to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access prevent information leakage, maintenance of adequate resources and back-up facilities, systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request re-transmission of any erroneous or missing reports). Organisational requirements should be harmonised with requirements for trade repositories under EMIR and for Approved Reporting Mechanisms (ARMs) under the MiFID review. Close coordination with ESMA will ensure that the requirements are harmonised with ESMA guidelines and recommendations defining requirements for trade repositories and ARMs.

The Agency should set these requirements through guidelines, subject to public consultation.

Explanatory text

In accordance with Article 8(4) of the Regulation, for the purposes of paragraph 1, information shall be provided by (a) the market participant, (b) a third party on behalf of the market participant, (c) a trade reporting system, (d) an organised market place, a trade-matching system or other person professionally arranging transactions, (e) trade repositories registered or recognised under EMIR or (f) a competent authority which has received this information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received this information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.

While overall responsibility rests with market participants, once the required information is received from a person listed in Article 8(4)(b) to (e) of the Regulation, the reporting obligation on the market participant in question shall be considered fulfilled (Article 8(1), third sentence, of REMIT). The Agency's regards the responses received during the public consultation as a confirmation that at least the entities listed in Article 8(4)(a) to (e), excluding competent financial market authorities, could apply to become RRM under REMIT to report transactions on behalf of market participants.

The implementing acts should allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions and stipulate a mandatory reporting for organised market places, including TSOs or third parties acting on their behalf, trade matching and trade reporting systems. Such mandatory reporting of organised market places, including TSOs or third parties acting on their behalf, trade matching and trade reporting systems would significantly reduce the administrative burden for market participants and take advantage of the information present to these entities. For instance, trade matching and trade reporting systems for the confirmation of brokered or OTC transactions are already widely used by market participants for standardised energy commodity contracts and derivatives. Any harness of these existing sources of information is considered to avoid unnecessary costs or administrative burdens for market participants.

4 Recommendations as regards Article 8(5) and (6) of the Regulation

Background

According to Article 8(5) of the Regulation, market participants shall provide the Agency and national regulatory authorities with the following information:

- Information related to the capacity and use of facilities for production of electricity or natural gas,
- Information related to storage of electricity or natural gas,
- Information related to consumption of electricity or natural gas,
- Information related to the transmission of electricity or natural gas
- Information related to the capacity and use of LNG facilities, including planned or unplanned availability of these facilities,

for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

The wording of the information listed in Article 8(5) of the Regulation is identical to the wording of Article 4(1), second sentence, of the Regulation concerning the inclusion of inside information to be disclosed, but also relates to fundamental data information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

Therefore, the public consultation document understood the definition of “information” according to Article 8(5) and (6) of the Regulation as “regulated information”. The concept of “regulated information” is used under the Transparency Directive (Directive 2004/109/EC, currently under review) for information which is required to be disclosed under that Directive, under Article 6 of MAD or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive. It was proposed to use a similar concept also under REMIT, so that information to be reported under Article 8(5) and (6) of the Regulation would include information to be disclosed under Article 4(1) of REMIT or under Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

Responses on the Consultation paper

Respondents requested further clarification of the definitions of inside / transparency / regulated information and their interaction with transparency guidelines. They considered that fundamental data information and inside information should be dealt with separately. In general respondents insisted on minimising the reporting obligations and maximising the use of existing sources (no double reporting). They stressed that the Agency should keep in mind the costs for market participants related to these procedures and the overall benefit. For the inside information, there is a general positive sentiment on RISs and platforms, except for some market participants who have already set up their own disclosing system. However, respondents stressed that any such services need to be set up quickly as REMIT is already into force.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 9: Information to be reported according to Article 8(5) of the Regulation should include inside information according to Article 4(1) of REMIT and transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

The information shall be reported as individual non-anonymous data.

Annexes I and II of the 2nd edition of ACER Guidance on the application of REMIT are considered as reference for potential inside information and reporting formats. Annexes IV.1 and IV.2 are considered as a reference for potential transparency information types and reporting formats which may have to be reviewed in the context of the development of new fundamental data transparency rules under Regulations (EC) No 714/2009 and (EC) No 715/2009.

Explanatory text

It is a prerequisite for the monitoring of insider trading that regulators have all inside information disclosed by market participants according to Article 4(1) of REMIT. This approach is based on the experiences with the reporting of inside information under EU Financial market legislation according to the Transparency Directive.

The main advantages of this approach are the following: regulators would receive not only the delayed inside information (which has to be reported to the Agency and NRAs according to Article 4(2) of REMIT) or the information on unplanned outages under the circumstances described in Article 3(4)(b) of REMIT), but all inside information published by market participants and, consequently, regulators would not need to search for the inside information on the market participants' websites in case they choose to proceed by using their own website for information disclosure; ACER and NRAs could orient the way this information is reported, i.e. by the RISs – Regulated Information Services, which can also provide market participants for the inside information publication service.

In addition, for the monitoring of both insider trading and market manipulation, regulators will require all information according to Regulations (EC) No 714/2009 and (EC) No 715/2009.

Inside information and transparency information have to be distinguished for the following reasons: The concept of inside information is defined in Article 4(1) of REMIT. The concept of "transparency information" contains all data that shall be published under the transparency obligation of Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

The concept of "inside information" comprises on the one hand only those transparency information that is likely to have a significant effect on the prices of wholesale energy products, but on the other hand goes even beyond and also includes other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product, insofar as this information is likely to have a significant effect on the prices of wholesale energy products.

This means that transparency information is periodic, structured data subject to Regulations (EC) No 714/2009 and (EC) No 715/2009 including applicable guidelines and network codes.

Inside information can be considered as an *ad hoc*, structured data that is likely to have a significant effect on price that has not been disclosed to the market. Such a requirement goes beyond the periodic and regular publication of data under the above regulations and may highlight or pre-empt certain transparency data.

Specifically, inside information may relate to any item of information that is within the scope of the above regulations as well as the following further information insofar as this information is likely to have a significant effect on the prices of wholesale energy products:

- Information relating to the capacity and use of facilities for production of electricity or natural gas, including planned and unplanned unavailability of these facilities;
- Information relating to the capacity and use of facilities for storage of electricity or natural gas, including planned and unplanned availability of these facilities;
- Information relating to the capacity and use of facilities for consumption of electricity or natural gas, including planned and unplanned unavailability of these facilities;
- Information relating to the capacity and use of facilities for transmission, including planned or unplanned unavailability of these facilities;
- Information relating to the capacity and use of LNG facilities, including planned and unplanned unavailability of these facilities;
- Information required to be issued in accordance with legal or regulatory provisions at Union, or National level;
- Information required to be issued in accordance with Market Rules;
- Information required to be issued in accordance with Contracts;
- Information required to be issued in accordance with Customs on the market;
- other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

The notion of “inside information” will likely be subject to interpretation by national courts and the Court of the European Union and has to take into account rulings on the definition of inside information under MAD insofar as the same concepts are applied under that Directive and under REMIT.

This is why both inside information and transparency information needs to be reported for monitoring of market abuse under REMIT and is considered to be covered by Article 8(5) of REMIT.

Information needs to be received as individual non-anonymous or non-aggregated data as otherwise any information received may not be linked to the relevant records of transactions of the market participants.

4.1 Uniform rules on the reporting of information, Article 8(6)(a) of the Regulation

Background

According to Article 8(6)(a) of the Regulation, the Commission shall, by means of implementing acts, adopt uniform rules on the reporting of information to be provided in accordance with Article 8(5) of the Regulation and on appropriate thresholds for such reporting where appropriate.

Responses on the Consultation paper

Most respondents agreed with reporting through platforms and RISs but insisted that third parties should not be mandatory and that they should be able to report directly to ACER. Most respondents insisted that ACER should state that the reporting obligation is considered fulfilled as soon as the information has been transmitted and that market participants should not be made liable for services failures afterwards.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 10: Regulated information should be reported to the Agency through registered Regulated Information Services (RIS).

Inside information should be reported through the service providers disclosing inside information on behalf of market participants or collecting the data through web feeds from company websites, when defined.

Transparency information should be reported according to applicable standards through the existing sources or sources currently being developed for the publication or reporting of such information, i.e. through ENTSO-E, ENTSO-G, or through the TSOs, SSOs or LSOs or RIS already reporting inside information directly if the information is otherwise not available, unless the sensitivity of the individual data requires direct reporting by the market participant to the competent NRA(s) and/or the Agency.

For reasons of operational reliability, persons wanting to become a RIS should register with the Agency. For the same reasons, the Agency will define organisational requirements for RIS similar to those for RRM through guidelines.

Concerning further codifications and standards, the Agency recommends making use of existing codifications and standards as much as possible and defining such standards for reasons of operational reliability through Agency guidelines for the reporting through RIS.

Explanatory text

On the basis of experiences from financial regulators on the implementation of Directive 2004/109/EC concerning the disclosure of inside information according to MAD, it is recommended that inside information is reported to the Agency through Regulated Information Services (RIS) registered by the Agency, in particular transparency platforms that may offer market participants to publish inside information.

The reporting through RIS would significantly reduce costs of reporting for market participants and facilitate data collection by the Agency. At the same time, RIS may serve as platforms for the disclosure of inside information according to Article 4(1) of the Regulation if they fulfil applicable technical preconditions on data security and operational reliability.

Thus market participants would only have to report the regulated information once to the RIS platform that would both disclose the information publicly and report it to the Agency. The concept of the disclosure of inside information through RIS platforms is also considered in the 2nd edition of the ACER Guidance on the application of REMIT.

Similar to the reporting of transactions through RRM, reporting of inside information through RISs would improve the quality of the reporting, on the one hand, and help avoiding double reporting, on the other hand. This approach would entail that all entities involved in reporting information on behalf of market participants are adequately registered and the standards that RISs need to comply with will be set on a harmonised basis.

The main disadvantage of this approach is that it may impose costs on reporting market participants, as the RISs may charge a fee for the transmission of data on their behalf, notably when additional systems investments are necessary. However, this fee may be lower than the costs incurred by the market participant when it chooses to report its information itself.

For reasons related to the functioning of the IT-system and operational reliability, also RIS should be uniquely identified for REMIT purposes through a registration. Therefore, the Agency believes that these entities acting as RIS should register at ACER. However ACER intends to keep the registration of market participants totally separated from the registration of other companies acting as RISs and therefore involved in REMIT reporting functions but different from market participants.

REMIT states that the reporting obligation shall be minimised by collecting such data or any part of them from existing sources if possible⁹. This leads to take into account existing and future transparency platforms from ENTSO-E and ENTSO-G under Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes. Accordingly, the collection of data by these transparency platforms could be considered sufficient for the data collection of transparency information by the Agency if on a non-aggregated and individual basis.

4.2 Timing and form in which information is to be reported, Article 8(6)(b) of the Regulation

Background

According to Article 8(6)(b) of the Regulation, the Commission shall, by means of implementing acts, lay down the timing and form in which that information is to be reported.

Responses on the Consultation paper

All respondents were in favour of an electronic format with high security standards. Several market participants were in favour of a one-hour delay for reporting of inside information and a two days-delay for reporting of fundamental data. For the respondents, ACER should collect the information directly from the platforms, as there could be delays if multiple channels are imposed.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 11: The implementing acts should foresee that regulated information is reported from RISs to the Agency in an electronic form within one working day following the event.

Explanatory text

⁹ Article 8(5) of the Regulation.

The implementing acts should foresee that inside information is reported within one working day following its disclosure through RIS platforms to the Agency and made available to the competent national regulatory authorities without delay. Similar rules apply in the EU financial market where Directive 2004/109/EC and its implementing Directive 2007/14/EC foresee the filing of regulated information, including inside information according to Directive 2003/6/EC, to the competent authority even at the same time the information is disclosed to the public. Fundamental data information under Regulations (EC) No 714/2009 and (EC) No 715/2009 should be reported within one working day.

The simultaneous reporting of regulated information and records of transactions will ensure an effective monitoring.

Furthermore, the implementing acts should foresee that regulated information should be reported in an electronic form.

5 Regular Re-examination of the implementing acts

Background

The Agency considers that the REMIT implementing acts should be reviewed at least once every two years in order to be able to take into account new developments in the market. The Agency should be consulted and be able to provide recommendations to the Commission after having consulted with stakeholders according to Article 7(3) of REMIT.

Responses received

Stakeholders welcomed the idea of a regular review of the REMIT implementing acts.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation No 12: Following the adoption of the implementing acts, the Commission should re-examine them, after consulting the Agency, at least once every two years.

Explanatory text

Similar re-examination clauses apply in EU financial market legislation.

6 Conclusions and taking the way forward

The Agency has made Recommendations on the Records of transactions and implementing acts under REMIT which it considers are necessary effectively and efficiently to monitor wholesale energy markets under the Regulation and concludes the following¹⁰:

- The implementing acts should clarify important definitions for the reporting of information according to Article 8 of REMIT. Although the Agency has already issued ACER Guidance to indicate its understanding on the application of definitions according to Article 2 of the Regulation, the Agency supports any further clarification from the Commission on REMIT definitions, but considers that the implementing acts can probably not be used for clarifying definitions outside the scope of the reporting obligations of Article 8 of REMIT. Instead, the Commission could consider applying its competences under Article 6 of REMIT to adopt delegated acts on REMIT definitions.
- For reasons of operational reliability according to Article 12 of REMIT, the Agency considers it necessary and appropriate that reporting of records of standardised transactions or of transactions in standardised energy commodity contracts, including derivatives, is performed through Registered Reporting Mechanisms (RRMs). Direct reporting by market participants is foreseen only for records of transactions in non-standardised contracts. The Agency welcomes the similar approach recommended in the DG ENER's consultant advice¹¹, which also suggests reporting of records of transactions through RRM or through market participants as so-called "Certified Self-Reporting Party". Since the Agency considers that market participants could also become RRM, the suggested approach in the DG ENER's consultant advice on reporting through Certified Self-Reporting Parties could particularly be envisaged for reporting of records of transactions in non-standardised contracts from one party of the contract.
- The Agency has consulted with ESMA on Records of transactions under EMIR in order to ensure a harmonised approach as much as possible. Any remaining differences in the Records of transactions according to Annex II.2 are well justified and caused by the different terminologies of the two Regulations, the different product scope under REMIT and EMIR, with REMIT also covering energy commodity contracts, the different mandate of ACER and ESMA under REMIT and EMIR, respectively, i.e. monitoring of market abuse versus monitoring of systemic risks, and the harmonisation of data collection under REMIT with the data collection under MiFID. However, the different procedural rules applying under REMIT and under EMIR (implementing acts versus delegated acts) and the different competences applying to the Agency and to ESMA (Recommendations versus Draft technical and Draft regulatory standards) made it cumbersome to fully harmonise the Records of transactions under REMIT and EMIR. But in any case, the implementing rules under REMIT and EMIR will have to be stipulated by the Commission and it is therefore up to the Commission to ensure that the REMIT implementing acts take into account the Commission delegated acts on technical and regulatory standards under EMIR and potentially new developments under the MiFID review.

¹⁰ The Agency's recommendations are provided under the assumption that the Agency is provided with the appropriate financial and human resources in order to adequately fulfil the additional tasks assigned to it under this Regulation as stated in Recital 28 of REMIT.

¹¹ See point 5.1.5 of the DG ENER's consultant advice, p. 100.

- In view of the feedback received in the consultation process, including from NRAs, the Commission should take into considerations whether a *de minimis* threshold could be introduced to exclude from the reporting obligation under Article 8 of the Regulation production contracts traded by small producers having an installed capacity of up to 10 MW, trading only this capacity, and acting individually in the market, unless trading at organised market places or owned by a company subject to the reporting obligation.
- The Agency has proposed a list of reportable instruments, but recommends that the implementing acts foresee that the Agency collects and publishes a set of information regarding the types of standardised wholesale energy contracts to increase transparency in wholesale energy markets and to facilitate data collection under REMIT. Whilst for energy derivatives, existing product taxonomies and product IDs used for the reporting under EU financial market rules may apply, the implementing acts should stipulate that the Agency develops a product taxonomy for the aforementioned types of energy commodity contracts as a basis to develop a unique product identification for the purpose of transaction reporting.
- The Agency recommends the following reporting channels and delays for the reporting of information under Article 8(1) of REMIT and considers the recommended approach as keeping reporting obligations to a minimum and not creating unnecessary costs or administrative burdens for market participants:
 - Records of transactions, including orders to trade, in wholesale energy contracts executed, or placed, at organised market places *through organised market places or third parties on their behalf within one working day,*
 - Confirmations of Records of standardised transactions or of transaction in standardised wholesale energy contracts, including derivatives, *through trade repositories, clearing houses, trade reporting systems or other RRMs within one working day,*
 - Confirmations of Records of transactions in non-standardised energy commodity contracts *through only one party of the contract or third parties on their behalf within one month and*
 - Scheduling/Nomination data *through TSOs or third parties on their behalf within one working day.*
- The Agency considers that reporting of records of transactions in non-standardised contracts, including a copy of the contract itself, as crucial to have a full picture of the trading activities of market participants and for an effective and efficient market monitoring of wholesale energy markets. The level of standardisation in the natural gas market appears still rather low and a limitation of reporting obligations to records of transactions in standardised contracts would therefore seriously undermine monitoring of the wholesale gas markets. However, the Agency considers reporting from one party sufficient for records of transactions in non-standardised contracts. For an effective and efficient detection of potential breaches of market abuse prohibitions, non-standardised contracts themselves should be reported, either electronically or by registered mail, in order to ensure that the Agency and national regulators have all relevant information at hand when monitoring wholesale energy market activities.

The proposed approach of data collection on non-standardised contracts aims at avoiding reporting discrimination between standardised contracts traded at organised markets and non-standardised contracts traded OTC and information asymmetries for regulators between organised and OTC markets. Similar information asymmetries in the derivatives market led to the introduction of OTC reporting obligations under EMIR for mitigating those risks and improving the transparency of derivative contracts.

The Agency strongly believes that the lessons learned in derivatives markets should also be considered in energy commodity markets to avoid recurrence.

- Reporting of records of transactions should include lifecycle information on the pre- and post-trade stage of a transaction, namely information on orders to trade placed at organised market places, the execution of transactions at organised market places, the confirmation of brokered and OTC transactions, including modifications of information already reported through the records of transactions and cancellations, and information on the physical settlement of the contract (nomination/scheduling).
- Finally, the Agency considers it crucial that reporting of information according to Article 8(5) of REMIT covers both reporting of inside information according to Article 4(1) of REMIT and reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes. As described above, any non-reporting of inside information would undermine the monitoring of the prohibition of insider trading and ignore experiences in EU financial markets.

The Agency considers these recommendations as a sound basis for the development of the REMIT records of transactions and implementing acts. The recommendations were consulted with relevant stakeholders, including ESMA, national financial market authorities and competition authorities. Responses received were taken into account as much as possible.

The Agency will further consult relevant stakeholders to provide any further input in the course of the preparation and further development of the REMIT records of transactions and implementing acts, including records of transactions for balancing market contracts and transportation contracts.

As a next step, the Agency is aiming at focussing on IT-related issues for the implementation of reporting under Article 8 of REMIT, in particular technical standards with regard to the rules, standards and formats of transaction reporting and guidelines for the registration of RRM and RISs, and will consult relevant stakeholders as appropriate.

The Agency is available to support the Commission services and to provide further recommendations in the course of the further development of the REMIT implementing acts and will continue its involvement of stakeholders on issues related to the implementation of REMIT.

Annex I: Summary of Recommendations

Recommendation No 1

The implementing acts should define crucial terms for the data collection under REMIT in order to avoid ambiguity for the market participants subject to reporting obligations. Definitions which should be specified in the implementing acts include the notions of “derivative”, “energy commodity contract”, “standardised contract”, “non-standardised contract”, “standard framework energy trading agreement”, “organised market place”, “energy exchange”, “broker”, “market operator” and “OTC”. In addition, newly introduced notions herein like “Registered Reporting Mechanism (RRMs)”, “Regulated Information Services (RIS)” and “regulated information” should be defined.

Recommendation No 2

The records of transactions for wholesale energy contracts should distinguish between records of transactions, including orders to trade, from organised market places (“organised market reporting form”), records of standardised transactions and records of transactions in standardised contracts (“standard reporting form”), records of transactions in non-standardised contracts (“non-standard reporting form”) and reporting of scheduling/nomination information (“scheduling/nomination form”).

Reporting of records of transactions should include lifecycle information on the pre- and post-trade stage of a transaction, namely information on orders to trade placed at organised market places, the execution of transactions at organised market places, the confirmation or clearing stage of transactions, including modifications of information already reported through the records of transactions and cancelations, and information on the physical settlement of the contract (nomination/scheduling).

Orders to trade placed and transactions executed at organised market places for both derivatives and energy commodity contracts should be reported separately by the organised market places or third parties acting on their behalf according to Annex II.1 (“organised market reporting form”). In addition, the implementing acts should stipulate that voice-brokered orders to trade by persons professionally arranging transactions should be stored by such persons for a period of at least 6 months in order to enable NRAs to require existing telephone records in the context of their investigations according to Article 13(2)(d) of the Regulation.

The records of standardised transactions and the records of transactions in standardised energy commodity contracts, including derivatives, should be reported at the confirmation or clearing stage taking into account reporting obligations under EMIR and MiFID according to Annexes II.2 (“standard reporting form”).

Records of transactions in non-standardised energy commodity contracts should be reported at the confirmation stage according to Annexes II.3 (“non-standard reporting form”). At the same time the non-standardised contracts as such, shall be provided either as a pdf file or by registered post.

However, if transactions in non-standardised contracts take a standardised form, they should be reported as a standardised transaction.

Information on the physical settlement of transactions (“scheduling/nomination”), both for derivatives and energy commodity contracts, should be reported by TSOs or third parties delegated by TSOs according to existing standard formats (“scheduling/nomination form”).

The Agency considers that for records of transactions in contracts in balancing markets and in transportation contracts, Annexes II.1, II.2 and II.3 could be taken as a reference, but will consult on that issue separately with TSOs or persons organising these markets on behalf of TSOs before recommending records of transactions for the reporting of such information.

The unique identification of each market participant should be achieved through using the Legal Entity Identifier (LEI). Should the LEI not be available or applicable when reporting under REMIT starts, market participants should use either the BIC, e.g. if also active in derivatives markets and subject to reporting under EMIR, the GS1/GLN, the EIC, provided that the market participant has communicated a unique GS1/GLN or EIC used at the time of registration, or the “ACER code” for registration as interim solution as unique identifier until the LEI applies.

Recommendation No 3

The Agency recommends that concerning derivatives, the list of financial instruments as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006 should apply for reporting purposes under REMIT.

The list of energy commodity contracts to be reported pursuant to Article 8(2)(a) of the Regulation should be defined according to Annex III. With the establishment of this list of contracts to be reported, the implementing acts should stipulate a phased approach by delaying the reporting of balancing market contracts and transportation contracts by 6 months and exclude certain energy commodity contracts from the reporting obligation. The exclusion should apply to contracts at administratively-fixed prices, like renewable energy production at feed-in tariffs, as long as information on these contracts is provided with the reporting of scheduling/nomination data and/or with the reporting of information according to Article 8(5) of REMIT, and to OTC intra-group transactions, as long as the relevant group members are registered as market participants according to Article 9 of REMIT.

The implementing acts should stipulate that the Agency collects and publishes a set of information regarding the types of standardised wholesale energy contracts in a list of standardised wholesale energy contracts (REMIT database) to be made available through the ACER website. Whilst product taxonomies and product IDs used for the reporting under EU financial market rules may also apply to energy derivative contracts under REMIT and facilitate the comparability of derivative contracts across the Union, no comparable product taxonomies and product IDs exist for energy commodity contracts. For an efficient and effective market monitoring of wholesale energy markets, the implementing acts should stipulate that the Agency develops a product taxonomy for the types of standardised wholesale energy contracts where no unique product ID applies as a basis to develop a unique product identification for these wholesale energy contracts. The consequence of the listing in the REMIT database would be the application of the standard reporting form according to Annex II.2 which contains all information considered necessary for an effective and efficient monitoring of wholesale energy markets. All non-listed energy commodity contracts would be considered non-standardised and are to be reported with the non-standard reporting form according to Annex II.3, but including a copy of the contract as such in order to enable the Agency to revert onto it in the market monitoring of wholesale energy markets in case of suspicious behaviours.

Recommendation No 4

In view of the feedback received in the consultation process, including from NRAs, the Commission should consider whether a de minimis threshold is introduced to exclude from the transaction reporting obligation under Article 8(1) of the Regulation production contracts traded by small producers having an installed capacity of up to 10 MW, trading only this capacity, and

acting individually in the market, unless trading at organised market places or owned by a company subject to the reporting obligation. The de minimis rule should be reviewed after two years.

Any reporting exemption should be limited to non-standardised energy commodity contracts and not affect reporting obligations for derivatives according to EMIR.

Recommendation No 5

The Agency recommends that records of transactions, including orders to trade, in derivatives and standardised energy commodity contracts are reported to the Agency through Registered Reporting Mechanisms (RRMs) to ensure operational reliability. Any organisation (e.g. organised market places, trade repositories, TSOs, trade matching or trade reporting systems) or market participants themselves should be eligible to become a RRM under REMIT, subject to conformity with organisational requirements which should be set on a harmonised basis, possibly including the use of existing standardised trade and process data formats and protocols for each class of data.

Reporting of derivatives is already mandatory for trade repositories under EMIR and trade repositories should fulfil the requirements of a RRM to report these derivatives to the Agency.

Organised market places, or third parties acting on their behalf, such as trade matching systems, should be required to become RRM to report to the Agency, on behalf of market participants, the records of orders to trade placed and the records of transactions executed at the organised market place, including records of transactions in balancing market contracts, if subject to reporting.

Trade repositories registered by ESMA under EMIR should be required to report derivatives on behalf of market participants to ensure consistency with reporting under EMIR as much as possible.

Trade repositories, Central Counterparties, trade reporting or trade confirmation systems could become RRM to report to the Agency, on behalf of market participants, confirmations of records of transactions in standardised energy commodity contracts and derivatives.

Market participants should report confirmations of records of transactions in non-standardised contracts themselves, unless RRM provide such services on their behalf, through a non-standard reporting form to the Agency. The implementing acts should foresee that the reporting obligations may be fulfilled if only one party of the contract reports the records of transactions.

TSOs, or third parties acting on their behalf, should be required to become RRM to report scheduling/nomination information on behalf of market participants to the Agency.

The Agency recommends making use of existing codifications and standards as much as possible and that the Agency defines such standards, insofar as not stipulated in the implementing acts, for reasons of operational reliability, through guidelines for the reporting through RRM. The Agency aims at developing draft technical standards for the transaction reporting under REMIT, taking into account the technical standards for the reporting under MiFID and EMIR, and guidelines for the registration of RRM in the near future.

Recommendation No 6

Records of transactions, including orders to trade, in standardised contracts should be reported as promptly as possible, and no later than the working day following the time of the reported event (the placing of orders to trade at an organised market place, the execution, the modification of information already reported or the cancellation of the transaction).

Records of transactions in non-standardised contracts should be reported no later than one month following their execution, modifications or cancelation of the contract.

The records of transactions should be reported in an electronic form.

Recommendation No 7

The Agency and ESMA will cooperate closely concerning the data collection of derivatives to be reported under REMIT, EMIR and MiFID. Trade repositories under EMIR should report records of transactions in derivatives collected and maintained under EMIR to the Agency. Where any of the REMIT data requirements is not met under EMIR or MiFID, trade repositories or other RRMs acting on behalf of market participants, should be required to report this additional information directly to the Agency.

Recommendation No 8

The implementing acts should stipulate a mandatory reporting of orders to trade placed and records of transactions executed at organised market places through the organised market places, or trade matching or trade reporting systems on their behalf, a mandatory reporting of trade repositories concerning derivatives, a mandatory reporting of confirmations in standardised energy commodity contracts and derivatives through trade matching and trade reporting systems and a mandatory reporting of nomination/scheduling information and records of transactions on balancing market through TSOs, with the possibility of third parties reporting on their behalf. Other RRMs could report records of transactions on behalf of market participants on a voluntary basis.

Reporting channels, for reasons of operational reliability, should register with the Agency as RRMs.

The Agency, for reasons of operational reliability, should define organisational requirements for RRMs (e.g. adequate policies and arrangements to report the information in a timely manner, effective administrative arrangements designed to prevent conflicts of interests with clients, operation and maintenance of sound security mechanisms to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access prevent information leakage, maintenance of adequate resources and back-up facilities, systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request re-transmission of any erroneous or missing reports). Organisational requirements should be harmonised with requirements for trade repositories under EMIR and for Approved Reporting Mechanisms (ARMs) under the MiFID review. Close coordination with ESMA will ensure that the requirements are harmonised with ESMA guidelines and recommendations defining requirements for trade repositories and ARMs.

The Agency should set these requirements through guidelines, subject to public consultation.

Recommendation No 9

Information to be reported according to Article 8(5) of the Regulation should include inside information according to Article 4(1) of REMIT and transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

The information shall be reported as individual non-anonymous data.

Annexes I and II of the 2nd edition of ACER Guidance on the application of REMIT are considered as reference for potential inside information and reporting formats. Annexes IV.1 and IV.2 are considered as a reference for potential transparency information types and reporting formats.

Recommendation No 10

Regulated information should be reported to the Agency through registered Regulated Information Services (RIS).

Inside information should be reported through the service providers disclosing inside information on behalf of market participants or collecting the data through web feeds from company websites, when defined.

Transparency information should be reported according to applicable standards through the existing sources or sources currently being developed for the publication or reporting of such information, i.e. through ENTSO-E, ENTSO-G, or through the TSOs, SSOs or LSOs or RIS already reporting inside information directly if the information is otherwise not available, unless the sensitivity of the individual data requires direct reporting by the market participant to the competent NRA(s) and/or the Agency.

For reasons of operational reliability, persons wanting to become a RIS should register with the Agency. For the same reasons, the Agency will define organisational requirements for RIS similar to those for RRM through guidelines.

Concerning further codifications and standards, the Agency recommends making use of existing codifications and standards as much as possible and defining such standards for reasons of operational reliability through Agency guidelines for the reporting through RIS.

Recommendation No 11

The implementing acts should foresee that regulated information is reported from RISs to the Agency in an electronic form within one working day following the event.

Recommendation No 12

Following the adoption of the implementing acts, the Commission should re-examine them, after consulting the Agency, at least once every two years.

**Annex II.1:
Records of Transactions, including orders to trade, from Organised Market
Places¹²**

Order View

Field No	Field Identifier	Description
	Parties to the contract	
1.	Reporting time stamp	Date and time of reporting indicating time zone (ISO 8601 date format / UTC time format).
2.	ID of market participant placing the order	The market party placing the order shall be identified by a unique code.
3.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
4.	Trader Login Username	The Login username of the trader or trading account as specified by the technical system of the organised market place.
5.	Organised market place identification	Identification of the organised market place by a unique code.
6.	ID of the reporting party	ID of the RRM reporting the order to trade as established with the RRM's ACER registration.
7.	Beneficiary	If the order was placed on behalf of a client, e.g. client member of an organised market place, identification of the client.
8.	Trading capacity	Identifies whether the order was placed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.
9.	Buy/sell indicator	Identifies whether the order was a buy or a sell for the market participant placing the order.
	Contract type	If a Product ID is reported and contains the relevant product information below, this information is not

¹² Note: If the same transaction contains either quantity or price changes for different “blocks” of energy according to a given load profile over time, the transaction must be split in several records, each of them reporting a single value for quantity and price, and referring to each time period in which both price and quantity are fix. In this case, all records belonging to the same transaction must have the same transaction ID. The split of the transactions in several records can happen also for different reasons, for instance several beneficiaries of the same transaction.

		required to be reported
10.	Taxonomy	The taxonomy used for describing the classification of the reported contract.
11.	Taxonomy type	The taxonomy type used to report the record of transactions.
12.	Product ID	The contract shall be identified by using a unique product identifier.
13.	Product code type	The code type used to report the record of transactions.
14.	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.
15.	Underlying code type	The code type used to report the record of transactions.
16.	Currency	The currency of the notional amount.
	Details of the order to trade	
17.	Order time stamp	The day and time the order was placed, modified or cancelled indicating time zone (ISO 8601 date format / UTC time format).
18.	Order type	The type of the order.
19.	Order ID	Unique identifier for an order as assigned by the organised market place where the order was placed.
20.	Price	The price per unit or derivative excluding, where applicable, commission and accrued interest.
21.	Price notation	The manner in which the price is expressed.
22.	Notional amount	Original value of the contract.
23.	Price multiplier	The number of units of a financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.

24.	Quantity	Total Number of units included in the order(s).
25.	Quantity unit	The unit of measurement used.
26.	Delivery type	Whether the contract is settled physically or in cash.
27.	Effective date	Date when obligations under the contract come into effect.
28.	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.
29.	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.
30.	Settlement date	Date of the settlement of the underlying.
31.	Option type	Specification of whether an option or any other wholesale energy product is a put or a call.
32.	Option style	Indicates whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).
33.	Strike price	The strike price of an option or other wholesale energy product.
	Delivery profile	
34.	Delivery point or zone	EIC code(s) for the delivery point(s) or market area(s) envisaged.
35.	Load type	Identification of the delivery profile (baseload, peak, off-peak, block hours or other) which corresponds to the delivery periods of a day.
36.	Delivery Start Date and Time	Start date and time of delivery.
37.	Delivery End Date and Time	End date and time of delivery.
38.	Transaction capacity	Quantity, i.e. number of units included in the order, per delivery time interval.
39.	Quantity Unit	The unit of measurement used.

40.	Price/time interval quantity	If applicable price per quantity per delivery time interval.
	Lifecycle information	
41.	Action type	<p>When the report contains:</p> <ul style="list-style-type: none"> - an order to trade for the first time, it will be identified as “new”; - a contract which contains either quantity or price changes for different “blocks” of energy according to a given load profile over time, the order must be split in several records, each of them reporting a single value for quantity and price, and referring to each time period in which both price and quantity are fix, it will be identified as “split”, - a modification of details of a previously reported order, it will be identified as “modify”; - a cancellation of a wrongly submitted report, it will be identified as “error”; - a termination of an existing contract, it will be identified as “cancel”; - any other amendment, it will be identified as “other”.
42.	Details of action type	Where field 41 is reported as “other” the details should be specified here.

Trade Execution View

Field No	Field Identifier	Description
	Parties to the contract	
1.	Reporting time stamp	Date and time of reporting indicating time zone (ISO 8601 date format / UTC time format).
2.	ID of buyer	The buying market participant shall be identified by a unique code.
3.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
4.	Buyer Trader Login Username	The Login username of the trader or trading account as specified by the technical system of the organised market place.
5.	ID of the seller	Unique identifier for the selling market participant.
6.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
7.	Seller Trader Login Username	The Login username of the trader or trading account as specified by the technical system of the organised market place.
8.	Organised market place identification	The organised market place shall be identified by a unique code.
9.	ID of the reporting party	ID of the reporting party (RRM) as established with the reporting party's ACER registration.
10.	Beneficiary	If the order was placed on behalf of a client, e.g. client member of an organised market place, identification of the client.
11.	Trading capacity	Identifies whether the transaction was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.
12.	Buy/sell indicator	Identifies whether the order was a buy or sell for the market participant placing the order.
	Contract type	If a Product ID is reported and contains the relevant product information below, this information is not

		required to be reported
13.	Taxonomy	The taxonomy used for describing the classification of the reported contract.
14.	Taxonomy type	The taxonomy type used to report the record of transactions.
15.	Product ID	The contract shall be identified by using a unique product identifier.
16.	Product code type	The code type used to report the record of transactions.
17.	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.
18.	Underlying code type	The code type used to report the record of transactions.
19.	Currency	The currency of the notional amount.
	Details on the transaction	
20.	Transaction time stamp	The day and time the transaction was executed, modified or cancelled, indicating time zone (ISO 8601 date format / UTC time format).
21.	Transaction type	The type of the transaction.
22.	Transaction identification	Unique identifier for a transaction as assigned by the organised market place of execution.
23.	Linked Transaction ID	Where a transaction is linked to another transaction, a referencing ID is required by the organised market place to link the transaction(s).
24.	Price	The price per unit or derivative excluding, where applicable, commission and accrued interest.
25.	Price notation	The manner in which the price is expressed.
26.	Notional amount	Original value of the contract.

27.	Price multiplier	The number of units of a financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.
28.	Quantity	Total number of units included in the contract.
29.	Quantity unit	The unit of measurement used.
30.	Delivery type	Whether the contract is settled physically or in cash.
31.	Effective date	Date when obligations under the contract come into effect.
32.	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.
33.	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.
34.	Settlement date	Date of the settlement of the underlying.
35.	Option type	Specification of whether an option or any other wholesale energy product is a put or a call.
36.	Option style	Indicates whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).
37.	Strike price	The strike price of an option or other wholesale energy product.
	Delivery profile	
38.	Delivery point or zone	EIC code(s) for the delivery point(s) or market area(s) envisaged.
39.	Load type	Identification of the delivery profile (baseload, peak, off-peak, block hours or other) which corresponds to the delivery periods of a day.
40.	Delivery Start Date and Time	Start date and time of delivery.
41.	Delivery End Date and Time	End date and time of delivery.
42.	Transaction capacity	Quantity, i.e. number of units included in the transaction, per delivery time interval.

43.	Quantity Unit	The unit of measurement used.
44.	Price/time interval quantity	If applicable price per quantity per delivery time interval.
	Lifecycle information	
45.	Action type	<p>When the report contains:</p> <ul style="list-style-type: none"> - a contract or post-trade event for the first time, it will be identified as “new”; - a contract which contains either quantity or price changes for different “blocks” of energy according to a given load profile over time, the transaction must be split in several records, each of them reporting a single value for quantity and price, and referring to each time period in which both price and quantity are fix, it will be identified as “split”, - a modification of details of a previously reported contract, it will be identified as “modify”; - a cancellation of a wrongly submitted report, it will be identified as “error”; - a termination of an existing contract, it will be identified as “cancel”; - any other amendment, it will be identified as “other”.
46.	Details of action type	Where field 45 is reported as “other” the details should be specified here.

**Annex II.2:
Records of Transactions in standardised Transactions and Contracts,
including Derivatives, for the reporting of market participants through
RRMs^{13,14}
("standard reporting form")**

Trade Confirmation or Clearing View

Counterparty Data		
Field No	Field Identifier	Description
Parties to the contract		
1.	Reporting time stamp	Date and time of reporting indicating time zone (ISO 8601 date format / UTC time format).
2.	ID of the market participant	The market participant on behalf of whom the record of transaction is reported shall be identified by a unique code.
3.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
4.	Trader Login Username for the market participant	The Login username of the trader or trading account as specified by the technical system of the organised market place.
5.	ID of the other market participant	Unique identifier for the other market participant of the contract.
6.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
7.	Trader Login Username for the other market participant	The Login username of the trader or trading account as specified by the technical system of the organised market place.
8.	Organised market place	In case the market participant uses an organised

¹³ This form is to be used for the reporting of transactions executed at organised markets only if the information already reported through the organised market was not complete, in particular concerning the information on the beneficiary.

¹⁴ Note: If the same transaction contains either quantity or price changes for different "blocks" of energy according to a given load profile over time, the transaction must be split in several records, each of them reporting a single value for quantity and price, and referring to each time period in which both price and quantity are fix. In this case, all records belonging to the same transaction must have the same transaction ID. The split of the transactions in several records can happen also for different reasons, for instance several beneficiaries of the same transaction.

	identification/OTC	market place to execute the contract, this organised market place shall be identified by a unique code.
9.	Reporting entity ID	ID of the reporting party (RRM) as established with the reporting party's ACER registration.
10.	Beneficiary Identification	If the transaction was placed on behalf of a client, identification of the client.
11.	Trading capacity	Identifies whether the transaction was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.
12.	Buy/sell indicator	Identifies whether the contract was a buy or sell for the market participant identified in field 2.
Common Data		
	Contract type	If a Product ID is reported and contains the relevant product information below, this information is not required to be reported
13.	Taxonomy	The taxonomy used for describing the classification of the reported contract
14.	Taxonomy type	The taxonomy type used to report the record of transactions.
15.	Product ID	The contract shall be identified by using a unique product identifier.
16.	Product code type	The code type used to report the record of transactions.
17.	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.
18.	Underlying code type	The code type used to report the record of transactions.
19.	Currency	The currency of the notional amount.
20.	Master agreement type	If the contract is not admitted to trading at an organised market, reference to any master agreement (e.g. ISDA Master Agreement, Master Power Purchase and Sale Agreement, European

		Master Agreement etc.)
21.	Master agreement version	Reference to the date of the master agreement version, if any (e.g. 1992, 2002,...)
	Details of the transaction	
22.	Transaction time stamp	The day and time the transaction was executed, modified or cancelled, indicating time zone (ISO 8601 date format / UTC time format).
23.	Transaction type	Indicator that signifies whether the transaction is an energy commodity contract or a derivative, e.g. a physical or financial forward, future or option.
24.	Transaction identification	Unique identifier for a transaction as assigned by the organised market place of execution, or by the two market participants in case of purely bilateral contracts.
25.	Linked Transaction ID	Where a transaction is linked to another transaction by a trading venue, a referencing ID is required by the trading venue to link the transaction(s).
26.	Transaction reference number	A unique identification number for the transaction provided by the reporting entity or a third party on its behalf.
27.	Price	The price per unit or derivative excluding, where applicable, commission and accrued interest.
28.	Price notation	The manner in which the price is expressed.
29.	Notional amount	Original value of the contract.
30.	Price multiplier	The number of units of a financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.
31.	Quantity	Total number of units included in the contract.
32.	Quantity unit	The unit of measurement used.
33.	Delivery type	Whether the contract is settled physically or in cash.
34.	Effective date	Date when obligations under the contract come into effect.

35.	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.
36.	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.
37.	Settlement date	Date of the settlement of the underlying.
38.	Option type	Specification of whether an option is a call or a put.
39.	Option style	Indicates whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).
40.	Strike price	The strike price of an option or other wholesale energy product.
	Delivery profile	
41.	Delivery point or zone	EIC code(s) for the delivery point(s) or market area(s).
42.	Interconnection Point	Identification of the border(s) or border point(s).
43.	Load type	Identification of the delivery profile (baseload, peak, off-peak, block hours or other) which corresponds to the delivery periods of a day.
44.	Delivery Start Date and Time	Start date and time of delivery.
45.	Delivery End Date and Time	End date and time of delivery.
46.	Transaction capacity	Quantity, i.e. number of units included in the transaction, per delivery time interval.
47.	Quantity Unit	The unit of measurement used.
48.	Price/time interval quantity	If applicable price per quantity per delivery time interval.
	Confirmation	
49.	Confirmation timestamp	Date and time of the confirmation.
50.	Confirmation means	Whether the contract was electronically confirmed, non-electronically confirmed or remains

		unconfirmed.
	Clearing	
51.	Cleared	Indicates whether clearing has taken place.
52.	Clearing timestamp	Time and date of submission to the clearing house.
53.	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.
	Lifecycle information	
54.	Action type	<p>When the report contains:</p> <ul style="list-style-type: none"> - a contract or post-trade event for the first time, it will be identified as “new”; - a contract which contains either quantity or price changes for different “blocks” of energy according to a given load profile over time, the transaction must be split in several records, each of them reporting a single value for quantity and price, and referring to each time period in which both price and quantity are fix, it will be identified as “split”, - a modification of details of a previously reported contract, it will be identified as “modify”; - a cancellation of a wrongly submitted report, it will be identified as “error”; - a termination of an existing contract, it will be identified as “cancel”; - any other amendment, it will be identified as “other”.
55.	Details of action type	Where field 54 is reported as “other” the details should be specified here.

**Annex II.3:
Records of Transactions in Non-Standardised Energy Commodity Contracts
from market participants
("non-standard reporting form")**

Trade Confirmation View

Counterparty Data		
Field No	Field Identifier	Description
Parties to the contract		
1.	Reporting time stamp	Date and time of reporting indicating time zone (ISO 8601 date format / UTC time format).
2.	ID of the market participant reporting the transaction	The reporting market participant shall be identified by a unique code.
3.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
4.	ID of the other market participant	Unique identifier for the other market participant.
5.	Type of code used	Indicate the type of code (LEI, BIC, EIC, GS1/GLN or ACER registration code).
6.	ID of the reporting entity	If applicable, ID of the third reporting party (RRM).
7.	Beneficiary	If the transaction was executed on behalf of a client, identification of the client.
8.	Trading capacity	Identifies whether the transaction was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client as a beneficiary.
9.	Buy/sell indicator	Indicator whether the transaction is a buy or a sell for the reporting party.
Common Data		
Contract type		
10.	Taxonomy	The taxonomy used for describing the classification of the reported contract.

11.	Taxonomy type	The taxonomy type used to report the record of transactions.
12.	Contract description	Free text to describe contract type.
13.	Currency	The currency of the notional amount.
	Details of the contract	
14.	Contract date	Transaction Date (UTC Date Time value).
15.	Contract type	Free text to describe transaction type.
16.	Contract ID	Unique identifier for a transaction as assigned by the two market participants.
17.	Delivery point area(s)	EIC code(s) for the delivery point(s) or market area(s).
18.	Delivery period	Start and end date of delivery period.
19.	Contract Value	Total value of the contract, possibly estimated.
20.	Quantity	Total number of units included in the contract. Use an estimation of the total quantity if necessary.
21.	Quantity Unit	The unit of measurement used.
	Additional information for non-standardised contracts	
22.	Enclosure of the non-standardised contract	Provision of the native data set as pdf file or by registered mail.
	Lifecycle information	
23.	Action type	When the report contains: <ul style="list-style-type: none"> - a contract or post-trade event for the first time, it will be identified as “new”; - a modification of details of a previously reported contract, it will be identified as “modify”; - a cancellation of a wrongly submitted report, it will be identified as “error”; - a termination of an existing contract, it will be identified as “cancel”;

		- any other amendment, it will be identified as "other".
24.	Details of action type	Where field 23 is reported as "other" the details should be specified here.

**Annex III:
List of contracts to be reported**

**Section A
Energy commodity contracts
for the supply of natural gas or electricity with delivery in the Union**

- (1) Balancing market contracts for contracting generation reserves and the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded,
- (2) Intraday or within-day contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;
- (3) Day-ahead contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;
- (4) Two-days-ahead contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;
- (5) Week-end contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they auctioned or continuously traded;
- (6) Physical forward contracts or other long-term contracts in electricity or natural gas that are settled physically where delivery is in the Union irrespective of where and how they are traded;
- (7) Any other energy commodity contract other than financial instruments as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006.

**Section B
Capacity contracts
for the transportation of natural gas or electricity in the Union**

- (1) Contracts relating to the transportation of electricity or natural gas in the Union between two or more locations/bidding areas, which includes, but is not limited to, contracts concluded as a result of capacity allocations (capacity rights and obligations) and secondary markets in relation to these contracts for cross-zonal or other capacity;
- (2) Actually confirmed schedules nominating capacities for electricity and gas transportation contracts irrespective whether they have been obtained in an allocation or by other means.

Annex IV: Transparency information to be reported

The information contained here shall be taken as a reference for potential transparency information types and formats.

Electricity transparency information

Fundamental electricity data listed below are mainly collected by national TSOs and are usually available in the TSOs databases. Therefore, the data could be provided from that database by the national TSOs or through ENTSO-E databases.

The database should contain the following system data:

- System operational data
- Generation data
- Consumption data
- Outages information
- Forecasts

Field name	Explanation
Day-ahead nominations per balance responsible entity	The market participants report to the TSOs the nominations. The TSO aggregate for calculating appropriate balancing summary
VPP usage	Individual PP owners, whose plants are part of a VPP, do not need to directly report their profile. The TSOs provide this service. Data provided: - VPP auction results - Actual VPP output
Implicit auctions: Available national transmission capacity	Data: - NTC (D-1) - Indicative - ATC for allocation (IntraDay, Daily, Month, Yearly) - ATC forecast (Day-Ahead, Week-ahead, Month-ahead, Year-ahead) - AAC (Week-ahead, Month-ahead, Year-ahead)
Explicit auctions: Available national transmission capacity	Data: - NTC (D-1) - Indicative - ATC for allocation (IntraDay, Daily, Month, Yearly) - ATC forecast (Day-Ahead, Week-ahead, Month-ahead, Year-ahead) - AAC (Week-ahead, Month-ahead, Year-ahead)
Cross border load flows	Actual flow of electrical energy in the system:

Field name	Explanation
	<ul style="list-style-type: none"> - Interconnections - Control (TSO) areas
Power plants installed capacity data	<p>A detailed installed power data table of power plants connected to the transmission grid</p> <p>Differentiation between unit types:</p> <ul style="list-style-type: none"> - Thermal - Hydro - Nuclear - Wind - Solar - Pumped storage hydro - Other
Actual generation	<p>Generation injected in the transmission network. Per unit and aggregated.</p>
Generation mix	<p>Actual generation mix of units connected to the transmission network and >100 MW (defined by the % of P_{total})</p> <p>Differentiation between unit groups:</p> <ul style="list-style-type: none"> - Thermal - Nuclear - Renewable (according to ENTSO-E) - Wind <p>(updated every year or at major events)</p>
Consumption data - annual	<p>Actual annual consumption in control area of TSO</p>
Outages	<p>Generation unavailability >x MW:</p> <ul style="list-style-type: none"> - Unplanned - Planned <p>Load unavailability > x MW:</p> <ul style="list-style-type: none"> - Unplanned - Planned <p>Transmission outages > y kV:</p> <ul style="list-style-type: none"> - Unplanned - Planned (defined by the % of P_{total})
Load forecasts Short Term	<p>Per TSO (M). Load forecasts:</p> <ul style="list-style-type: none"> - D+1
Load forecasts Long Term	<p>Per TSO (N). Load forecasts:</p> <ul style="list-style-type: none"> - W+1 - M+1 - Y+1
Actual load	<p>Actual hourly load profile.</p>
Load flow forecasts	<p>Load flow forecast between the: Interconnections Control (TSO) areas PTDFs. (D+1) forecast, estimated physical margins (MW), allocated capacity to critical branches.</p>
System generation forecasts Short Term	<p>Generation forecasts:</p> <ul style="list-style-type: none"> - D+1
System generation forecasts Long Term	<p>Generation forecasts:</p> <ul style="list-style-type: none"> - W+1 - M+1 - Y+1
Differentiated system generation forecasts (D+1)	<p>Differentiation between units:</p> <ul style="list-style-type: none"> - Thermal

Field name	Explanation
	<ul style="list-style-type: none"> - Hydro - Nuclear - Wind - Solar - Pumped storage hydro - Other
Balancing market data	Technical conditions of balancing market offer: <ul style="list-style-type: none"> - Capacity of activated balancing reserves - Price of activated balancing reserves - Capacity of offered balancing reserves - Price of offered balancing reserves Cross border balancing TSO-TSO <ul style="list-style-type: none"> - Exchange bids volumes - Min and max prices - Volume of balancing energy activated

Gas transparency information

The data listed below is already collected by all gas TSOs and is available in the gas TSOs databases. Therefore these data could be provided from the database of individual gas TSO or through ENTSO-G transparency platform.

The database should contain the following data:

- System operational data
- Consumption data
- Outages information
- Forecasts

Field name	Explanation
Installed Technical capacity	Installed capacity of the pipeline system C - capacity, t - time (day), M - TSO
Technical physical capacity	Real physical capacity available for transport C - capacity, t - time (day), M - TSO
Gas storage capacity	Information on gas storage capacity facilities in EU C - storage capacity, M - TSO
Operating pressure	Real measurement of pressure in the pipes PR - pressure, t - time granularity (daily), M - TSO
Firm capacity	Chartered capacity (intraday, D+1, D+2, D+3) Available capacity (intraday, D+1, D+2, D+3) C - capacity, t - time (day), M - TSO
Interruptible capacity	Chartered capacity (intraday, D+1, D+2, D+3) Available capacity (intraday, D+1, D+2, D+3) C - capacity, t - time (day), M - TSO
Interruption of interruptible	Planned

Field name	Explanation
capacity	Realized C - capacity, t - time (day), M - TSO
Daily forecast of transport	Entry (intraday, D+1, D+2, D+3) Exit (intraday, D+1, D+2, D+3) C - capacity, t - time (day), N - border, M - TSO
The forecast of maximum calorific value	Forecast of maximum calorific value (intraday, D+1, D+2, D+3) Cal - caloric value, t - time (day), M - TSO
Actual realized transport	Actual realized transport in one TSO area C - transport, t - time (day), N - pipeline, M - TSO
Actual maximum caloric value	Actual maximum calorific value Cal - caloric value, t - time (day), M - TSO/Hub
Forecast of balancing	The projected total balance at the end of the of transport day of TSO area C - capacity, t - time (day), M - TSO
Offers of secondary capacity	Offers of secondary capacity: P - Provider V - Validity E - Exit points C - Capacity % - The ratio at border points (%) M - TSO
Asks for secondary capacity	Asks of secondary capacity: P - Provider V - Validity E - Exit points C - Capacity % The ratio at border points (%)
Maintenance periods	Storage unavailability : - Unplanned - Planned Load unavailability - Unplanned - Planned Transmission unavailability - Unplanned - Planned C - capacity outage, t - time stamp, M - TSO
Consumption – TSO	Clients, connected to the transmission system C - consumption, t - time, M - TSO
Consumption - between T&D	Consumption per shipper at each interface point between T&D connection C - consumption, t - time, S - shipper, M - TSO, D - DSO
Imports/exports	Per shipper C - import, t - time, S - shipper, M - TSO
Imports/exports	Per interconnection C - import, t - time, S - shipper, M - TSO
Flows - balancing zones	Flows between balancing zones F - flow, t - time, M1 - Zone1, M2 - Zone2
Flows – markets	Flows resulting from organized gas markets

Field name	Explanation
	F - flow, t - time, M1 - Market1, M2 - Market2
In/out storage per shipper	Storage Shipper C - storage, t - time, S - shipper, M - TSO
Flows from LNG terminals	Per shipper F - flow, t - time, S - shipper, M - TSO
Production	Per production facility P - production, t - time, N - production facility ID, M - TSO
Allocated capacity per interface point	Interconnection points - Storages - Inter balancing zone links - LNG terminals C - capacity, t - time, N - interface point

**Annex V:
List of Respondents
to the Public Consultation Document from 21 June 2012**

No.	Respondent	Type	Country
1.	50hertz	TSO	Germany
	Amprion	TSO	Germany
	Tennet	TSO	Germany
	Transnet BW	TSO	Germany
2.	A2A Trading	Market participant	UK
3.	aet	Market participant	Switzerland
4.	AIGET	Industry association	Slovenia
5.	BDEW	Industry association	Germany
6.	ECT-Group (represented by Becker/Büttner/Held)	Market participant	Germany
7.	BG Group	Market participant	UK
8.	BP Gas Marketing Ltd	Market participant	UK
9.	Bryok	Advisor in financial markets and energy markets	UK
10	Bundeskartellamt	National competition authority	Germany
11	Centrica Energy Limited	Market participant	UK
12	EDF Group	Market participant	France
13	EFET	Industry association	EU
14	Electricity Association of Ireland	Industry association	Ireland
15	ELEXON Ltd	Service provider	UK
16	EnBW Trading GmbH	Market participant	Germany
17	Enel	Market participant	Italy
18	Energy UK	Industry association	UK
19	ENTSO-G	Industry association	EU
20	ESMA	Financial Authority	EU
21	Eurelectric	Industry association	EU
22	Eurogas	Industry association	EU
23	Europex	Industry association	EU
24	Eurostream	TSO	Slovakia
25	EWE AG	Market participant	Germany
	Mainova AG	Market participant	Germany
	Syneco Trading GmbH	Market participant	Germany
	Bayerngas GmbH	Market participant	Germany
	Stadtwerke München GmbH	Market participant	Germany
26	ExxonMobil International Limited	Market participant	UK
27	Fortum	Market participant	Finland
28	FSA	National Financial Regulatory Authority	UK
29	GDF Suez SA	Market participant	France

30	GEODE	Industry association	EU
31	GFMA	Industry association	Global
32	GIE	Industry association	EU
33	ICAP	Broker	UK
34	IWEA Irish Wind Energy Association	Industry association	Ireland
35	LEBA	Broker association	UK
36	MAVIR	TSO	Hungary
37	NAFTA	SSO	Slovakia
38	National Grid	TSO	UK
39	NOGEPa	Industry association	Netherlands
40	Oesterreichs Energie	Industry association	Austria
41	PGNiG	Market participant	Poland
42	POZAGAS	SSO	Slovakia
43	Shell Energy Europe Ltd.	Market participant	UK
44	SPP Storage	SSO	Czech Republic
45	Stadtwerke Gütersloh	Market participant	Germany
46	Statoil	Market participant	Belgium
47	Sungard	Service provider	UK
48	swisselectric	Industry association	Switzerland
49	Trayport	Service provider	UK
50	Verbundnetz Gas AG	Market participant	Germany
51	Vereniging Energie-Nederland	Industry association	Netherlands