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29.04.2014

**Public Consultation on REMIT TRUM  
Comments by Oesterreichs Energie (Register ID number: 80966174852-38)**

Dear Madam,  
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to comment on the consultation document: REMIT Trade Reporting User Manual (TRUM), 27 March 2014. Oesterreichs Energie represents more than 140 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

**General remarks**

Before responding to the consultation questions we introductorily would like to highlight Recital 19 of Regulation (EU) No 1227/2011: “[...] Reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. The uniform rules on the reporting of information should therefore undergo an ex-ante cost-benefit analysis, should avoid double reporting, and should take account of reporting frameworks developed under other relevant legislation. [...]”.

We appreciate the overall approach of the Agency that reporting of standardized transactions should be done through the trading venues involved (especially organized market places or other parties professionally arranging transactions), ensuring the Agency’s “one-report-only” approach.

Therefore organized market places or other parties professionally arranging transactions should have a clear obligation to offer data reporting on behalf of market participants in standardized transactions.

- The Agency currently understands that the attached data fields (see Annex I of the draft TRUM) for the reporting of transactions in standardised and non-standardised contracts will be included in the Commission's implementing acts. Please provide us with your views on the attached data fields.

Overall, we miss a specification which fields are mandatory and which fields are expected to match when trades are reported separately.

The last known draft of the implementing acts provides a one workday deadline for reporting standard transactions which in our view is far too short especially for bilateral deals.

Given the extent of the expected implementing acts with all these data fields given we have to state the target defined in recital 19 REMIT has definitely been missed.

- Please provide us with your general comments on the purpose and structure of the draft TRUM, annexed to the consultation paper.

With reference to the legal mandate of Article 4 of the draft Implementing Acts, purpose and scope are well described in the first release of the Trade Reporting User Manual. However, TRUM is not an officially and legally binding legislation. Thus, as mentioned in the preface of the present statement the proposition "as much as necessary and as little as possible" shall apply to the interpretations given by the TRUM regarding the records of wholesale energy market transactions, including orders to trade.

- The Agency has currently identified a set of standard formats to be used in the reporting framework (see Chapter 5 of the draft TRUM). Do you consider these standard formats relevant? Are there any other standards that the Agency should consider?

We do consider these standard formats relevant and sufficient.

- Please provide us with your views on the field guidelines for the reporting of transactions in standardized supply contracts (see Chapter 6 of the draft TRUM).

In contrast to the proposition "as much as necessary and as little as possible" we do believe that the field guidelines in Chapter 6 constitute an unduly broad interpretation of the required records of transactions in standard energy commodity contracts according to the draft implementing acts. Besides our remarks on data fields the aforementioned statement is reflected by example of data field No26 "Transaction Time Stamp" that shall contain even a value for milliseconds.

### **Comments on data fields:**

#### **No3 Trader ID as identified by the organized market place**

This field will cause irritations especially for purely OTC contracts not traded on an organized market place. Furthermore several market places allow that one account may be used by more than one individual. Therefore this field should not be mandatory.

**No4 Trader ID for the market participant or counterparty**

With respect to the reporting of identification of traders, we generally consider this provision disproportionate as it results in unnecessarily high costs especially for smaller market participants. As a matter of fact, small market participants use a login for more than a single person. We understand the fact that market participants shall enable regulators to identify a natural person in case of concrete suspicion. Nevertheless, this information can be provided upon request by the market participant. Finally, there is no need to provide regulators with that information without any concrete suspicion.

**No12: Initiator/Aggressor**

This field shall be mandatory for records of transactions of wholesale energy products as defined in Article 2 paragraph 4 of Regulation (EU) NO 1227/2011 provided that they are traded on a regulated market, a MTF or an OTF. Normally this information is not recorded by market participants as it is totally irrelevant.

**No23: Contract ID**

If a unique product ID is reported that contains the relevant product information data fields No24, No25, No27, No44, No45, No47, No49, No50, No51, No52, No53, No54, No55, No56, No58 shall not be additionally reported / the respective information shall not be mandatory.

**No24 Contract type**

It is totally unclear why this data field is needed as the required information is offered by other data fields. In our view it should be deleted.

**No26: Transaction time stamp**

In case of transactions executed through brokers or on organized market place this is well defined. In case of OTC-trading it is impossible to set a transaction time stamp expressed in milliseconds. As the contract can precisely be identified by No23, the transaction time stamp is not relevant.

**No27: Contract name**

What information should or could be gained in addition to No23?

**No23/28: Contract ID/Transaction identification**

It is not quite clear if this field contains different information in case of OTC-transactions not concluded by using third parties professionally arranging transactions. Does field 28 represent the UTI as defined in EMIR? Please consider the chaos caused by the UTI under EMIR in the absence of a clear definition how this identifier should be generated. We strongly suggest describing the precise path to calculate a unique transaction identification number.

**No29: Linked transaction ID**

It is unclear what is meant by linked transaction. Please provide some examples.

**No31: Transaction reference number**

Please explain the difference between No23 and No31. As far as we know this field is only used for exchange traded derivatives under EMIR.

**No33: Voice-brokered**

“Voice brokered” is not defined, there is no common market view defining which transactions are to be considered as voice brokered. Moreover, this information is irrelevant, usually even not recorded by market participants.

**No40/41: Quantity/Total notional contract quantity**

This information seems to be redundant. There is only a single quantity.

**No43: Settlement method**

Cash settled products have to be reported to trade repositories under EMIR, therefore this field is unnecessary.

**No44: Maturity date**

It is not clear which information is meant as the end of delivery is covered by No52. Presupposed that the last payment day is meant, we consider this information only relevant to the market participants involved, but not relevant to ACER.

**No53: Duration**

As the duration of the delivery period can be derived from data fields No51 “Delivery Start Date and Time” and No52 “Delivery End Date and Time” and in order to reduce the total number of data to be reported, there is no necessity to additionally report field No53. Moreover, hard defined formats will reduce the flexibility of the whole reporting scheme as well as for ARIS. Having in mind the suggested formats to be used for data field No53 the aforementioned argument is underlined by the fact that on EPEX Spot Intraday Market traded volume in quarter-hour contracts has increased significantly over the past few years.

**No54: Load type**

As the information of the format “D = Gas Day” to be used for data field No54 can be derived from data fields No25 “Energy Commodity” and No51 “Delivery Start Date and Time” and No52 “Delivery End Date and Time” it should not be a valid value for the definition of load types.

**No55: Days of the week**

As the information specifying the days of the week for the delivery period can be derived from data field No54 “Load Type” – in case of the values “B = Baseload”, “P = Peak” and “O = Off Peak” – and No51 “Delivery Start Date and Time” and No52 “Delivery End Date and Time” data field No55 shall only be mandatory if the reported value of data field No54 contain “H = Block Hours” or “S = Shaped”.

Moreover, due to the fact that contracts with load types “O = Off Peak” generally refer to Weekdays 00:00-08:00 and 20:00-00:00 and Weekends 00:00-00:00 inconsistencies of the expected data to be reported exist.

### **No60, 61: Confirmation**

This information is only available to the parties concluding a transaction and not for trading venues; therefore mandatory reporting of this information contradicts the general approach that all standardized transactions should be reported by trading venues.

Moreover, this information is not relevant in order to detect potential market manipulation or insider trading. Beyond that, REMIT does not include any obligation to introduce risk mitigation techniques as EMIR does!

- Do you agree that for the reporting of energy derivatives, the same standards that apply under EMIR and MiFID should apply under REMIT (see Chapter 7 of the draft TRUM)?  
No. Regulations such as EMIR and MiFID are under the supervision of financial authority and focus primarily on financial industry. Especially the standards that apply under EMIR are directly linked to the financial crisis. As long as the definition of financial instruments according to the Annex I Section C of Directive (EU) No 2004/39 also extends to certain wholesale energy products, utilities are subject to financial regulation. According to Article 8 (3) transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories shall not be subject to double reporting obligations relating to those transactions. On this account there is no necessity to generally adopt the standards of financial regulation for the reporting of energy derivatives to ensure integrity and transparency on wholesale energy markets as well as to rough-handle the definition of derivatives for wholesale energy products under the subject of REMIT.
- The Agency intends to include in the TRUM guidance on how trade reports shall be reported for different trading scenarios (see Chapter 8 of the draft TRUM). Please provide us with your views on which trading scenarios you would consider useful to cover in the TRUM.

It is totally unclear what is meant by trading scenarios. There is only an obligation for trade reporting in REMIT. Did you mean the reporting of certain trades or complex deals?

- Please provide us with your views on the section in the draft TRUM related to data integrity (see Chapter 9 of the draft TRUM).

In general the requirements on data integrity of chapter 9 are far too restrictive. In particular the compiled list of expectations on the market participant's compliance is inconsistent with the proposition that the controls or processes that market participants should follow for reviewing or confirming compliance to REMIT should be tailored to the market participant's activities and organizational structure. In addition the notification of the Agency in case of transaction reporting failures and errors shall be kept to a minimum. Information on the reason, range and expected duration of the failure are fully sufficient.

Listed details such as “who within the market participant has oversight responsibility for transaction reporting”, “details of the market participant’s systems and controls around transaction reporting [...]”, as well as “planned audit or compliance monitoring reviews of transaction reporting and the scope of these” overstep the mark in terms of “as much as necessary and as little as possible”. As failures and errors might be reason to technical problems the aforementioned information shall not be disclosed before any concrete suspicion under the scope of regulation (EU) No 1227/2011 has been raised at all.

As the Agency requires reporting via RRM, it has to be the Agency’s responsibility that only proper RRM’s are and will be approved by the Agency.

When will RRM’s be approved by ACER and presented to the market participants?

Thank you for taking our comments into consideration. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

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