

**REMIT**

**Functioning and Usefulness of the European Register  
of Market Participants**

**Evaluation of Responses**

**PC\_2016\_R\_01**

**[6 December 2016]**

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## 1 Introduction

The Agency launched a public consultation on the Functioning and Usefulness of the European Register of Market Participants ([PC 2016 R 01](#)) which ran from 18 March to 22 April 2016. The European Register of Market Participants is based on Article 9 of Regulation (EU) No 1227/2011 (REMIT).

The purpose was to collect input from stakeholders regarding the European Register of market participants with the perspective to improve the current Registration Format in light of the experience gained so far. A second objective was to get stakeholders' views regarding the functioning and usefulness of the European Register of market participants with the long term perspective of enhancing the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants

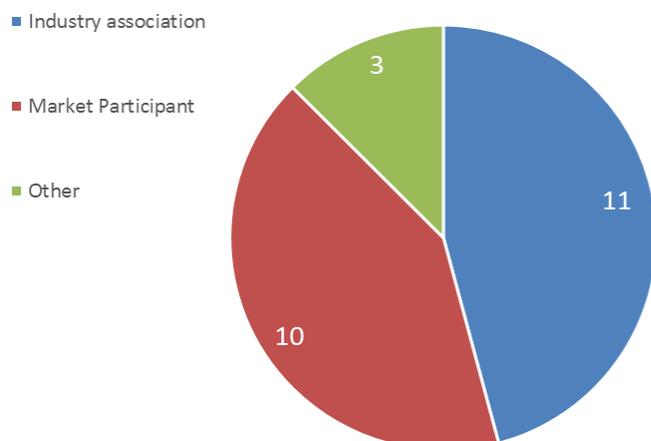
This document summarises the responses received to the consultation document. Based on the input received, discussions with National Regulatory Authorities, and on its own assessment, the Agency will decide whether to:

1. update the Registration Format adopted in ACER Decision No 01/2012. NRAs would then have to update their national registers accordingly.
2. submit to the European Commission a report evaluating the functioning and usefulness of the European Register proposing solutions that can enhance the overall transparency and integrity of the wholesale energy markets while ensuring a Union-wide level playing field for market participants (as per Recital 21 of REMIT).

## 2 Respondents

Twenty four stakeholders responded to this public consultation representing the interests of individual market participants, industry associations and other stakeholders from different EU Member States. Figure 1 provides further detail on the type of respondents participating in the public consultation (Annex II lists the respondents by their activity and country of origin).

**Figure 2 Type of respondents to the public consultation**



One respondent requested to keep its identity and response confidential.

### 3 Responses received and ACER’s view

The Agency consulted stakeholders on potential specific improvements to the format of the European Register of Market Participants as well as more generally on its functioning and usefulness. The following sections provide an overview and analysis of the responses received in the public consultation focusing on key issues raised by the respondents.

*Disclaimer: the summary of responses is not exhaustive. Neither does it attempt to catalogue every comment received, but rather provides a general overview of the main messages from the respondents. All non-confidential public responses can be consulted on the ACER website [here](#).*

#### **Questions on improvements of the Registration Format of the European Register**

##### **3.1 Question on VAT Number**

Regarding fields 112 and 316 (**VAT number** of the market participant and ultimate controller), taking into consideration that some market participants and ultimate controllers do not have a VAT number, ACER proposes to add an additional checkbox labelled: ‘I do not have a VAT number.’ Moreover, taking into account that different formats for VAT identification apply outside the European Union, ACER proposes to adopt a more flexible format for fields 112 and 316 for non-EU market participants.

**Do you agree with this change? If not, please justify your reply.**

##### *Respondents’ feedback*

The majority of the respondents agree with the proposal to add an additional checkbox for cases when a market participant does not have a VAT number and to adopt a more flexible format for

the respective field. Respondents pointed out that this would allow for more flexibility in order to accommodate the registration form to the diversity of legal structures existing across the EU as well as in any other third countries.

Some respondents, while not opposing the change, wondered about the benefit of requiring VAT numbers for the purpose of REMIT. They would prefer to delete this field, if it is not necessary for REMIT purposes.

One respondent while supporting the principle suggested an alternative. Instead of having two fields for dealing with VAT (i.e. 'VAT code' and 'I do not have VAT code' checkbox) they proposed a more flexible company identification code (a text field for "Company Identification").

#### *The Agency's view*

The Agency welcomes the support for the proposed changes. The VAT number should remain an obligatory field in the registration form according to Article 9(2) of REMIT. The Agency considers to add a checkbox (i.e. "I do not have VAT code checkbox") as it facilitates data processing. It will also consider to allow for more flexibility in the characters submitted for non-EU market participants.

### **3.2 Question on EIC Codes**

- a) EIC codes are widely used for reporting transaction and fundamental data. The current registration format allows only one EIC code to be provided by a market participant, although there may be several different types of EIC codes related to the same market participant and used for reporting. Moreover, although the EIC codes are publicly available, other pieces of information, such as the location of the facility identified by the EIC code, are not public. Taking into consideration the need to identify for monitoring purposes to which market participants different EIC codes belong to, the current registration format can be developed to allow the introduction as mandatory fields of all EIC codes (i.e.: EIC X, EIC Y, EIC Z, EIC T, EIC W and EIC A) related to the same market participant.

**What are the pros and cons of such an approach? Please explain.**

- b) In case the introduction of all EIC codes used for reporting by a market participant (see previous question) is allowed by the European register, the Registration Format could be expanded (see full explanation in the Consultation Paper).

**Do you agree with the possibility to add these mandatory fields in order to identify each EIC code? If not, please justify your reply.**

**Would you like to add/reformulate any other potential role/relationship of a market**

### *Respondents' feedback*

Many respondents think that the proposal makes the registration process unnecessarily burdensome as the benefits are unclear while the operational efforts imposed on market participants would be certain. In any case any increased complexity should be justified based on a cost benefit analysis. Respondents felt that for the identification of the market participant for market monitoring purposes the benefit of the additional information is questionable. A number of respondents pointed out that EIC codes may be updated over time. Adding and maintaining new EIC types will put an extra burden on market participants and add complexity to the registration process and that reporting obligations should be kept to a minimum. One respondent stated that the possibility to add the mandatory fields of EIC codes could be beneficial.

Some respondents suggested that this type of information (the listing all power plants, locations of the power plants, role of the market participant etc.) is not within the scope of information required in order to record legal entities for registration purposes. The purpose of the European Register is to identify market participants and not necessarily the objects associated to them (Y, W, Z & T EIC codes). As a register for legal entities it should not be a register for all the facilities of a market participant. The aim should be the unambiguous identification of market participants, hence only one EIC code is sufficient to achieve this (i.e. the EIC X code that is used to identify a party). Additionally, the European Register is already supposed to provide a unique identifier via the ACER code enabling a proper identification of each market participant.

A number of market participants considered the current schema sufficient for monitoring purposes and raised doubts about the usefulness of adding new EIC code types. One respondent wondered if the aim is to set up a master database for market participants with information about relations to other parties/objects.

Several respondents suggested that there are already databases of unique EIC codes that can be used by the Agency for any additional surveillance purposes. The Agency should collect information from those existing sources if possible to minimise the cost of data. A respondent pointed out that the first two characters describe the issuing office. The local issuing offices' databases should contain all the relevant information for the identified entity/object/system. In any case existing data sources should be utilised whenever possible in order to minimize unnecessary burden.

Many respondents stated that market participants do not necessarily possess the whole range of EICs or in some case do not even possess EIC codes. Hence if the usage of additional codes is allowed the field should remain optional.

One respondent proposed that if the Agency decides to expand the Registration Format by adding an additional checkbox labelled 'I do have additional types of EIC codes,' then if a MP selects this checkbox, additional fields should appear for the different type of EIC codes, where the fields for the remaining types of EIC codes, i.e. Y-type, Z-type, T-type, W-type, and A-type, are optional.

One respondent added that if all assigned EIC codes are made mandatory fields in EREMP, it will be useful to publish a centralised list of EIC codes (in particular of EIC codes type Y and Z) in order

to facilitate reporting for market participants, as these types of codes are required in data field 48 of the standard reporting form and data field 41 in the non-standard reporting form.

Some suggested that in case the Agency decides to expand the Registration Format bulk uploading of the EIC related data from a template (e.g. an .xls file) should be enabled. This way, market participants could prepare the required information in advance and easily upload it to EREMP.

As for the roles/relationships between the EICs and the identified entities/objects/systems, one respondent proposed the introduction of a free text field allowing market participants to specify undefined roles/relationships in the Registration Form.

### *The Agency's view*

The Agency needs to be able to identify market participants and 'objects' associated to them in order to run monitoring systems. Firstly, the identification of market participants is normally organized via the codes that they have provided in the registration in CEREMP. The provision of such codes is a mandatory legal requirement according to Article 10 (2) of Commission Implementing Regulation (EU) No 1348/2014. For certain data, e.g. where TSOs or ENTSOs are in charge to report to the Agency (especially transportation contracts [primary allocation] and nominations), industry standards are applied in order not to interfere too strongly with established communication standards. However, in consequence relevant codes used by TSOs/ENTSOs to identify the parties are missing. Adapting the registration format to oblige market participants to name all EICs and other codes they use for data reporting under REMIT to identify themselves could tackle this issue.

Secondly, it is highly relevant for an efficient surveillance to link market participants who manage infrastructure identified by EIC codes in order to identify potential insider trading. For example, information on production sites (EIC W code) needs to be assigned to market participants who own, control or operate the respective asset. Hence, the Agency considers adapting the registration format in such a way that the market participants have to name the identifying EIC-Codes for all assets reportable under REMIT where they are involved in the owning, controlling or operation of the asset. In addition, the Agency considers it necessary to ask for the role of the market participant with regard to the asset identified by the EIC W code. This is in order to have a clear distinction between the different players utilising physical assets – usually 'operators', 'owners' or 'controllers' which manage the asset and sell its output on the market (there can be overlaps in these categories). It is important for the Agency and NRAs to have a view on these differences from a market surveillance perspective. The Agency also considers offering the possibility to market participants (by ticking a box) to indicate that they do not possess the particular code(s) in order to be able to leave this field blank.

### **3.3 Question on GS1 Code**

|  |
|--|
| <p>Field 116 (Global Location Number of the market participant - '<b>GS1</b>' in the coding scheme) is rarely used by market participants. <b>Do you agree that this field is removed from the European Register? Please explain your reply.</b></p> |
|--|

### *Respondents' feedback*

The majority of market participants agree with the removal of the GS1 code as it is not widely used in the industry.

A few respondents were not in favour of removing GS1. One respondent claimed that GS1 is being used intensively in the Netherlands at the moment. Another respondent suggested that even if the use of this ID-scheme in the present phase of registrations is fairly limited, we should not underestimate the widespread use of GS1 identification in many countries, especially in the retail markets for both electricity and gas. The present difference in the observed relevance of activities, such as generation on the wholesale as opposed to the retail level, may well change in the near future. Additionally at a future point where a closer cooperation between TSOs and DSOs starts to take shape, an outspoken choice by ACER in favour of an ID-scheme mainly used by TSOs and a rejection of an ID-scheme mainly used by DSOs may well send the wrong signal.

Some participants drew attention to the use of GS1 in REMIT reporting. As long as GS1 is a valid code for data submission through the existing schemas for REMIT reporting, and the relevant reporting schemas are not updated to allow codes other than EIC codes and GS1 codes for the identification of market participants, the GS1 Coding scheme should remain in EREMP.

### *The Agency's view*

Although the Agency's own research indicates that the GS1 code is not widely used for REMIT purposes, it is sensitive to the arguments made by some respondents to this consultation, in particular those related to the split of usage between wholesale and retail markets and the TSO-DSO point. The Agency will continue to evaluate this issue together with NRAs and market participants, however it is unlikely that the GS1 code shall be removed as an option on the European Register at this moment.

## **3.4 Question on Trade Register**

Field 118 ('Trade Register') was requested by some NRAs. **Would it be adequate to allow for special characters in this field? If not, please justify your reply.**

### *Respondents' feedback*

The majority of the respondents supported the suggestion to allow special characters in Field 118 (Trade Register) as reasonable in order to address all the possible national specificities. It is important to note that field 118 is mandatory in the Registration Form if the relevant national regulatory authority has requested it.

It was also pointed out that this information is also publicly available through official, governmental websites.

Some respondents wondered what the benefit of having the trade register in the EREMP is for fulfilling REMIT obligations pointing to the difference between registration in the trade register and registration as a market participant.

Furthermore, some respondents stated that this field should not be mandatory.

#### *The Agency's view*

This is quite a simple change that has the broad support of industry and NRAs. The Agency will assist those NRAs and market participants to whom it is relevant while having next to no impact on others.

### **3.5 Question on Trader IDs**

The Implementing Regulation lays down the provision to include Trader IDs in transaction reports (field 3 of Table 1 in the Annex to the Implementing Regulation). The Trader ID is the login username or trading account of the trader and/or the market participant or counterparty as specified by the technical system of the organised market place. The field '**Trader IDs**' may be added to the European Register as part of the market participant's registration information to make it easier to link different trader IDs to one specific market participant for market monitoring purposes. **Do you agree with this proposal and what are the pros and cons of this? Please explain your reply.**

#### *Respondents' feedback*

Most respondents pointed out that every transaction record already contains the Trader ID of the person who executed the trade as well as the Market Participant ID making it easy for ACER and the NRAs to match companies to traders and traders to transactions. Hence, there is no apparent need to include this information also in EREMP.

Most respondents indicated that the Trader ID is considered dynamic information which is subject to frequent changes. Hence the maintenance of such information would require regular updates that may be burdensome and costly. Additionally, the flexibility of the system could be improved to facilitate the frequent introduction of changes. Currently, only one change can be made at a time and regulators' approval is required before the next change can be introduced in the system.

Some respondents say that the European Register should be limited to company related information as it is a register for market participants, not for their employees. Others stated that the European register already includes sufficient information about persons responsible for the market participants' operational and trading decisions.

One respondent pointed out some perceived difficulties in relation to the collection of Trader IDs, claiming that Trader IDs are neither unique nor entirely static identifiers. In certain cases a trader can be assigned more than one ID, e.g. when the same person enters orders through several front-end systems. The Trader ID is normally unique within a particular trading venue yet for some trading venues only in combination with the Member ID. There is no universal system in place to ensure that the same Trader ID is not assigned to different traders at the same time. Indeed, the same identifier may be used across multiple trading platforms or even within one trading platform to identify different persons.

One respondent did not object to the proposal, as long as the field is not mandatory, since not every MP is a Trader and not every MP has a Trader ID.

#### *The Agency's view*

The Agency considers the arguments with regard to the transaction record containing the Trader ID to be, for the most part, accurate. Therefore the Agency's view is that Trader IDs should not be required as part of the European Register for the foreseeable future. In any case, the Agency and/or NRAs can and will request information on the traders behind suspicious transactions if the review or investigatory process so requires, and the Agency will keep this issue under review for future updates to the European Register.

### **3.6 Question on Inside Information**

Field 120 ('**Publication Inside Information**') is currently filled by many market participants with a general link (for example, a link to the company's main webpage) and not with the exact location where the inside information publications are published.

**Do you agree to refine its definition so that it is clearly stated that the URL(s) should indicate the exact address where the inside information is disclosed publicly and, to create a new field indicating the location of the web-feed used for reporting the publications of inside information to ACER?**

#### *Respondents' feedback*

Many respondents agree with the proposal that the URL(s) should indicate the exact address where the inside information is disclosed publicly as it would facilitate other market participants access to such information at a minor cost for the market participant holding inside information.

On the other hand a number of respondents claim that indication of the main webpage of the company should be sufficient. One respondent explained that the structure of company webpages (including the URLs) is frequently updated. Moreover it is often managed centrally, usually far away from the person responsible for updating the Register. This creates the need for additional internal processes and workflows that lead to additional administrative burden. Some respondents

claim that in any case this information has to be easily locatable so a link or banner is usually placed on the front page.

A number of respondents do not support creating a new field indicating the location of the web-feed used for reporting the publications of inside information to the Agency. Other respondents are supportive of including the exact address of where inside information is published but consider this sufficient and therefore do not support the creation of an additional field. One respondent pointed out that the most transparent practice is when the web feed and the disclosed inside information can be obtained via the same URL.

A few respondents pointed to the fact that a certain number of registered market participants will hardly ever have any inside information to publish (for instance, pure traders). In these cases the creation of a dedicated section on a website (if no other platform is available in the country) could represent an operational burden not justifiable by the expected concrete use of the publication page. As a consequence this field should be complemented with another conditional field (for example, 'is your company owner of assets and potentially originator of inside information'). If the answer is negative there should be no requirement to provide any link.

Some respondents indicated that information could be published by a market participant on specialised platforms (e.g. electricity and gas-related information) thus it makes sense to allow for the possibility in the European Register to list more than one URL location.

A respondent pointed out that the deadline of 1 January 2017 for web-feeds set-up needs to be coordinated with the proposed timeline for EREMP changes. The respondent proposed to implement functionalities that allow the following:

- The European Register to correctly differentiate cases if a market participant provided two or more links to two or more web-sites where it will publish UMMs: one for regular UMM publications and one for backup UMM publications;
- The European Register to correctly interpret the information if a market participant provided in the field more than one link to more than one web site where it publishes UMMs, and respectively is able to collect through web-feeds inside information from all locations mentioned.

### *The Agency's view*

The Agency is of the view it should refine the definition of Field 120 to clarify that it should be the exact address where inside information is publicly disclosed.

As per Question 4.1.5 of the FAQs on REMIT fundamental data and inside information (page 13) the website where the web-feed is embedded should be the same site as that used for disclosure of inside information. The web-feed has to be visible and accessible from the same site. However, it does not mean that the web-feed is technically located at the exact same URL. For this reason the Agency intends to allow for a field that contains the URL of the web-feed.

As many companies at the same time use their own website and a platform to disclose inside information the Agency intends to allow the registration of multiple URLs.

As any market participant, regardless of their field of activity, can at any time come into possession of inside information, all market participants should be prepared to disclose such information in a timely manner on a platform for the disclosure of inside information. If adequate platforms do not yet exist or when simultaneously publishing through a platform for the disclosure of inside information, market participants may, at least for an interim period and unless otherwise specified, publish inside information which they possess on their own website. For this reason all market participants are required to fill out field 120 of the Registration form.

### 3.7 Question on ACER code

Regarding field 121 ('**ACER code**'), taking into consideration the need to ensure the traceability of relevant changes in the registration records two new fields could be added to the Registration Format: one indicating previously used ACER codes; another identifying the relationship with the previous codes. (see full question in the consultation document)

**Do you agree with the above proposal? Please give reasons for your answer.**

**Do you see a more efficient way to ensure traceability of relevant changes in the registration records?**

#### *Respondents' feedback*

Many respondents agree with the proposed additional fields – one indicating previously used ACER codes and another identifying the relationship with the previous codes. This should improve the traceability of the relevant changes in the registration records. Some respondents highlighted specific circumstances when indicating the relationship between these different ACER codes that may be relevant such as a company that divided and relocated to another member state or a sole trader, which closes its business and starts a new one.

One market participant claimed that the introduction of either of the above fields would represent significant workload and that the Agency should aim to avert such unnecessary bureaucracy. Some did not find it necessary to provide reasons for a change of ACER ID. On the other hand many respondents considered that to increase transparency it might be necessary to indicate the previous ACER ID.

A large number of respondents pointed out that categories of relationship with the previous codes have to be well defined. The introduction of the new field would imply some difficulties in terms of clarification of the type of relationship with the previous codes to be provided. Some respondents suggested that the category "spin off from a registered market participant" should be excluded considering that it would actually lead to the birth to a new legal entity with its own legal responsibilities requiring the establishment of a new market participant with the obligation to register.

Respondents did not propose a more efficient way to ensure the traceability of relevant changes in the registration records. However some respondents pointed out that in any case these fields should be either optional or, if mandatory, they should be preceded by checkbox labelled: ‘Do you have a previous market participant registration and a valid ACER code?’ In case of a positive answer (checkbox – ticked), the new fields should then appear for completion.

#### *The Agency’s view*

The Agency believes that the original proposal for two new fields would assist the Agency and NRAs in monitoring changes in the registration records. The suggestions in how to apply these changes to those without a previous ACER code or registration are helpful and the Agency will strive to incorporate those in the changes proposed here.

### **3.8 Question on Corporate Structure**

Section 4 (**‘Corporate Structure’** of the market participant) does not currently provide full transparency on the corporate structure of the market participant. It has been proposed that every market participant registered indicates the VAT number, name, and percentage of ownership of all companies belonging to the same group<sup>1</sup> of the market participant (including company(ies) that are not market participants) as this would increase transparency from a market surveillance perspective.

**What are the pros and cons of such an approach? Please explain your reply.**

**Are there any improvements more generally to the corporate relationship section you would suggest?**

#### *Respondents’ feedback*

Many respondents voiced their views on the proposed change of Section 4.

Respondents pointed out that the proposed change would heavily increase the administrative burden on them. For large groups it means uploading hundreds of relationships which is operationally not manageable. This would create a time consuming administrative burden. Respondents considered that such a proposal is largely disproportionate compared to the goals pursued. Furthermore the definition of a percentage of ownership of all companies belonging to the same group is by nature dynamic data that requires frequent updates, again increasing burden and cost.

Some respondents suggested to keep the status quo as the currently implemented approach is sufficient and in line with the REMIT legislation. A number of respondents claimed that the proposal regarding the corporate structure of the market participant goes beyond the scope of REMIT. Any new requirement should demonstrate clear benefits for transparency and monitoring purposes while minimising the administrative burden on market participants. Many respondents did not see the reason to provide information for the companies that are not market participants. Some indicated that a company that is not a market participant would not have any reason to engage in market manipulation.

Many respondents stated that normally company structures are published on their websites, and also available from databases and commercial registers. Furthermore listed companies already report this information regularly to the relevant authorities. Regulators could ultimately also ask for any detailed intragroup relationships on an ad-hoc basis from the market participants. One respondent suggested that a pragmatic approach to have access to the desired data would be for the market participant to refer to public information about its corporate structure (e.g. a website explaining the structure).

Some respondents agreed with the proposal up to the extent of requiring name, VAT number and the country of registration of the parent and daughter companies only in cases where these companies are market participants. Some respondents pointed out that information about sister companies could be derived automatically from the EREMP database. Introducing the corporate relationship in section 4 already provides the ACER code of the related company giving the Agency the necessary information on VAT number, name and “major shareholder”.

One respondent suggested to consider the simplification of the process. Only the ultimate controller or parent company should be indicated in the Register, not all the relationships between all the companies. With this information the Agency will be able to understand independently and easily all the companies belonging to the same group which is sufficient information for the purposes of market monitoring.

#### **Many respondents suggested ways to improve the current processes of Section 4.**

- **BULK UPLOAD:** Some respondents signalled that the current system does not allow an easy update of information since changes need to be made one by one and require regulators’ approval. Therefore the bulk loading of information should be allowed in order to facilitate the updating procedure and thus avoid mistakes.
- **ALERTS:** Some respondents found operational difficulties uploading and updating data. Corporate relationships are discharged one by one meaning the business group should wait for the NRA’s verification of each discharged relationship before proceeding with the following relationship. As a result of this, the user mode is blocked for quite a long time during which a basic read-only-mode is permitted. In order to increase the efficiency of this Section, a system of “alerts” could be introduced in order to communicate in a timely manner to market participants every change to their corporate structure. In this way every market participant would have a clear view of its group records (and if the info is already present in the National Register) and would not need to regularly check the European Register to ascertain possible relevant changes.
- **AUTOMATIC UPDATE:** When a change is brought to the corporate structure by the interested company through the central register it should be automatically made applicable to the other related parties within the group.
- **DEFINITIONS:** One respondent stated they would appreciate a better explanation of what the Agency means by “Corporate structure”, i.e. does it encompass data about the daughter companies or all related undertakings, mother and sister companies of the same group. Some respondent pointed out the need for clear rules, which apply to the following concepts: “mother

company”, “controlled” and “other related companies” as well as for the concept of belonging to the “same group”. Some respondents proposed to apply competition rules and law in relation to mergers and acquisitions.

- **REJECTION of RELATIONSHIP:** It is not possible to reject a registration from another market participant (e.g. an external investor) as an ORU (Other Related Undertaking), meaning that a market participant cannot reject the relationship even though the registered information may be wrong. Notification emails should be sent to the users clearly stating that action is required (to accept/reject any corporate links) and it would also be useful if a reminder email is sent to the user after 30 days if a link is not accepted/ rejected.
- **VALIDATION of RELATIONSHIP:** One respondent suggested to put in place a notification and validation process for all involved market participants in “other” type relationships. A market participant (MP1) may erroneously indicate a relationship with another market participant (MP2) with an “other” type, for instance where there is only a commercial contract between two companies. When this happens, for “other” type relationships, only MP1 that created the link should be able to remove it. MP2 does not have the possibility to remove or even validate the link. MP2 needs to make a request to MP1 to remove the relationship and/or submit a similar request to its NRA.
- **DELEGATION of REGISTRATION:** Some respondents would find it useful to introduce the possibility of delegating all the processes of registration in a way that one company in a group is responsible for the maintenance of Section 4 while all the others would simply have to validate the uploaded information.
- **EXTRA FIELD:** A respondent suggested to add an extra field for the end date of corporate relationships. In Section 4 there is a field stating the start date of the relationship. However, shares of a company can be traded, therefore corporate relationships can end one day. The information concerning a relationship, however, should not disappear but remain in EREMP with an indication of the date when it ended.

### *The Agency’s view*

The Agency is committed to put forward only improvements to this section that put the least burden on market participants while continuing to allow the Agency and NRAs to pursue their market surveillance and conduct activities in the most efficient manner. The Agency hence favours a structure that capitalises on information already available in the European Register and only adds elements that are necessary for its surveillance practices. Changes are considered that add value to the information already collected to the extent they contribute to the analysis of total open positions for the whole group of companies that are under one controlling company. The Agency will continue to discuss potential changes to the fields and the guidance provided for these sections with NRAs to reach a decision on the optimal outcome for all concerned.

For the general suggestions on how to improve Section 4, the Agency appreciates the feedback and will convey and discuss these technical improvements with the NRAs. The Agency is currently analysing the suggestions received during the Public Consultation regarding the application of

competition rules and law in relation to mergers control, the possibility for bulk uploads, among others.

### 3.9 Question on additions to Section 3 to 5

In Section 3 to 5, we understand that some fields may not be self-explanatory. In order to avoid the misinterpretation of the information inserted by a market participant, **do you think that some additional free text fields should be included to allow a better description of the particular situation of the market participant? Namely regarding:**

- the main activity of the market participant;
- how the ultimate controller performs such control;
- information about the existing/envisaged data reporting agreements.

#### *Respondents' feedback*

Many respondents agreed with the proposal to insert additional free text fields provided that they did not become mandatory.

A number of respondents disagreed with the proposal stating that the Agency should first assess the benefit of such information and whether it is strictly necessary to fulfil REMIT obligations. Other perceived disadvantages included that free text is not necessarily useful for automatic matching procedures and should be avoided. It was noted by one respondent that the examples of additional fields given seem to be an additional reporting requirement rather than an explanation of the existing fields. A few respondents felt that company websites and publically available documents provided detailed information with regard to Ultimate Controllers and that it would be difficult to summarise that, given the limitations of the registration fields.

One market participant noted that the interpretation of the fields depends on the registration manual developed by the NRA to describe what needs to be included in each field and that their experience of this had been good. Another suggested that the Agency should provide more guidance for those fields which the Agency or market participants consider unclear. Another participant requested a wide list of possible market participant roles be provided for selection (TSO, LSO, shipper, trader etc.) and that including 'Other' would allow free text input for non-defined roles.

#### *The Agency's view*

The Agency is grateful for the views received to this question. On balance the Agency may consider the introduction of additional free text fields only when strictly necessary.

The Agency will take the views expressed by respondents with regards to further guidance in consultation with NRAs. The Agency will endeavour to ensure that clarity is provided to market participants in the near future.

### 3.10 Any other comments

Do you have any other comment on the current fields provided in Annex 1 to ACER Decision 01/2012 on the Registration Format that can further improve the functioning and usefulness of the European register of market participants?

#### *Respondents' feedback*

The majority of respondents had no further comments with a few stating that the [currently] required information and data are sufficient for the transparency purposes defined in REMIT. However around one-third of respondents had further comments or suggestions which are summarised below.

One participant suggested various additional fields or changes to existing fields. Another suggested limiting the information requested for the natural person linked to the market participant, and that providing only one point of contact for all REMIT queries would help facilitate the internal compliance set up within market participants (a few other respondents suggested similar changes to Section 2 in particular). This respondent stated that the Ultimate Controller information should be simplified to the 'mother company' of a group of companies, or shareholders in case of a joint venture. Other registration errors with regards to RRM's were highlighted.

Another respondent felt that the current process was already lengthy and administrative and that additional burden should be minimised. It also felt that the recently implemented data-flows for Phase 1 and Phase 2 reporting should not be impacted by any changes to the European Register and the registration process.

With regard to Ultimate Controllers further guidance from the Agency was requested by one respondent in order to address difficulties in determining who is included in this definition, with the suggestion that competition law would be useful in this regard.

#### *The Agency's view*

The Agency is grateful for the comments and suggestions received to this question. In particular, the Agency is currently analysing the suggestions received during the Public Consultation regarding the application of competition rules and law in relation to mergers control to the concept of Ultimate Controller. The Agency continues to look for ways to improve the European Register, and REMIT registration processes more generally. The Agency would suggest any market participants with specific queries related to the guidance available on the European Register to address these directly to the Agency and the relevant NRA.

**Questions on the functioning and usefulness of the European Register**

**3.11 Question on barriers to entry**

In 2011, the Council of European Energy Regulators (CEER) issued a report recommending factors that are important in meeting the above aims. The current Registration regime was introduced, as it was considered that it provides the right regulatory balance to identify who is in the market and to enable monitoring markets to detect abuse. The Agency is keen to understand stakeholders' views on this balance, in particular in relation to the previously-raised concerns that different national administrative requirements, which trading companies need to meet in order to operate in the national wholesale energy markets, could represent potential barriers to the creation of a Union-wide level playing field for market participants.

**i. Do you consider these national administrative requirements a relevant barrier to entry and an obstacle towards a true pan-European energy market? Please provide examples of administrative requirements that you believe constitute an unjustified barrier to entry that could distort the level playing field at European level.**

**ii. If you believe there are barriers to entry, how could these be mitigated?**

**iii. Do you consider other possible regimes, compared to the existing registration regime, more useful to enhance the overall transparency and integrity of the wholesale energy markets and ensure a Union-wide level playing field for market participants (e.g. EU trading license regime)?**

*Respondents' feedback*

More than half of the respondents did not identify any barriers or submitted no comments to this question. A few suggested that harmonisation of the REMIT registration requirements across the EU would help provide a level playing field for market participants. Examples of problems here included non-availability of English language guidance or forms and difficulties for more than one person to access the register on behalf of a market participant. One respondent pointed out apparent misalignment between what different NRAs were asking for under the 'Corporate Structure' section.

With regard to other barriers, one respondent felt that different obligations existed across many countries in order to be able to trade. Double or triple-reporting due to overlapping national and EU rules was an example provided by another respondent.

Two respondents felt that more upfront discussions between the Agency and NRAs could help solve these problems. Another pointed out the reporting burden at national level could be reduced and streamlined if the Agency could provide NRAs, as well as the Commission and national governments with the relevant information (which market participants have already provided to the Agency under REMIT). Furthermore, another respondent thought that a level playing field should

be reinforced for the regulatory/supervisory fees which makes trading more costly in some countries.

Most respondents did not provide a response to part (iii) of this question. Some mentioned that the Agency should not look at another registering mechanism or regime, but rather should focus on fine-tuning the existing one.

One respondent explicitly mentioned another regime to say that despite the burden caused by differing national registration regimes they would not support the implementation of an EU trading licence regime. However another supported the implementation of a ‘one-size-fits-all’ licence based on the REMIT registration and mutual recognition of national licences between different Member States. Overall it felt that transparency could be enhanced via a European Passport or EU trading licence.

#### *The Agency’s view*

The Agency takes the issue of barriers to entry very seriously and thanks the respondents for their comments in this regard. The Agency welcomes the suggestions on how to further streamline the registration process for market participants under REMIT. The Agency takes note of the suggestions for improvement raised by some respondents and commits to addressing as many as possible.

With regard to other potential barriers mentioned, the Agency is working closely with NRAs and the European Commission in the context of the Regional Groups for Gas and Electricity and is committed to keeping these issues under review with the goal of improving competition and transparency in all EU gas and power markets. The Agency takes note of potential issues of double reporting and will discuss this with NRAs.

On the subject of an EU Trading Licence, the Agency notes that there does not appear to be a large appetite for such a development at present. However it will keep this issue under review and may consult on this subject again at some future point.

### **3.12 Question on Organised Market Places s requiring market participant registration**

Some counterparties and organised market places (OMPs) voluntarily require market participants to be registered in the European register of market participants before they can trade with them/in their platforms.

**Do you consider that the introduction of this as a legal requirement would benefit the integrity and transparency of the wholesale energy markets? What would be the pros and cons of introducing this legal obligation?**

### *Respondents' feedback*

Only a few respondents agreed with the suggestion stating that, while it would impose an extra burden on market participants wishing to trade on an OMP, it would benefit the integrity and transparency of the market. Another felt it could help facilitate reporting and monitoring by the Agency.

The majority of respondents disagreed with the proposal for a number of reasons. Some felt that although it reflected a legal requirement to register before entering into trades, it was not strictly speaking necessary as market participants were unlikely to start trading with a counterparty which did not have an ACER code. Others wondered how a non-EU counterparty could be compelled to register and proposed granting NRAs the power to issue ACER codes for new market participants in a short period of time so as not to impact on market functioning (one respondent suggested 5 days).

Another respondent wondered if making registration compulsory would impact the thresholds for reporting under REMIT. A few respondents indicated that the responsibility for registering lies with market participants and the responsibility for ensuring these rules were complied with lies with the Agency and NRAs. It was not appropriate to delegate this responsibility to OMPs, and would impose an unreasonable burden on them as they would need to verify the registration. In any case they would not be able to make a legal assessment of their client's legal status under REMIT, and a specific example from the TRUM Annex III was viewed as particularly problematic for a market participant trading derivatives which is also active in the physical market outside of the OMP.

### *The Agency's view*

The Agency thanks the many respondents to this question and notes the strong views expressed. The Agency would like to note that part of the rationale for this consultation is to look at more long-term improvements that could be made to the REMIT regime. The Agency will continue to examine such long term improvements and duly consult stakeholders.

### **3.13 Question on usefulness of public extracts of EREMP**

**Do you find the publicly available extracts of the European register of market participants useful for your business and/or for the transparency of the wholesale energy market? If not, which additional information should be published?**

### *Respondents' feedback*

The majority of respondents found the public extracts of the European register useful and use the information regularly including for counterparty checking. Other respondents which either found the public extract useful or of limited usefulness had the following suggestions for improvements:

- the actual registration date should be clarified and published

- the location of web-feeds disclosing inside information should be useful
- the role of the market participant should be published
- the VAT number of the market participant should be published to aid identification
- creating a centralised list of EIC codes or deliver points/zones used in reporting forms

There were several suggestions to make a REMIT contact point per market participant (i.e. an email address) publically available, with one respondent being against such publication.

#### *The Agency's view*

The Agency thanks the respondents for the replies received to this question. With regard to the REMIT contact point, the Agency feels it would not be proportionate to provide this data (i.e. an email address) to the public.

The other suggestions are useful contributions which the Agency will assess and, where they represent improvements, look to implement in future changes to the European Register.

### **3.14 Question on other comments on European Register**

**Do you have any other comments on the functioning and usefulness of the European Register?**

#### *Respondents' feedback*

Many respondents suggested potential improvements/changes to the European Register system. These include:

#### Making the interface more user-friendly

- Both in notification emails and in the system market participants are only defined by their ACER codes. It could help if market participants would also be mentioned by name.
- Bulk-loading of information (without NRA validation at each separate stage)
- Interface available in local-language and English
- Remove need to resubmit Section 4 information for each individual corporate relationship
- The export facility information could be improved to allow market participants to more easily keep their information updated as per the Art 9(5) requirement
- More flexibility in the system to allow different processes to run in parallel, and to make more than one update at a time (again without NRA validation at each stage)
- The login token should be available for a longer period

- For public search, the possibility to view more than 10 market participants per page
- The possibility to download specific sub-sections of the public extract, not the entire file.
- Improve the search functionality to find linked market participants

#### Other improvements

- Speeding up communication between the Agency and the NRAs possibly by using alternatives to the European Register

Another respondent noted that, while the current assessment is required under REMIT, it is too early for market participants to give a full view since Phase 1 and 2 of data collection began only very recently. This respondent and a few others mentioned that the additional complexity of the requirements would only add to the burden felt by market participants.

Many respondents requested that the Agency limits the administrative burden placed on market participants by REMIT. One stated that the existing requirements to enter the pan-European energy market represented a high level of bureaucracy and were themselves a regulatory barrier. Many participants asked for more simplicity in the European Register and its processes. One respondent expressed similar views, but also emphasised the benefits and useful information provided by the European Register not only for the Agency and NRAs, but for market participants themselves.

Some respondents questioned the legal ground for market participants to provide views based on a consolidated and comprehensive experience of REMIT given that when the consultation was launched it had been only six months since the start of Phase 1 reporting, and Phase 2 had yet to begin. One respondent pointed out that some of the additional data which the consultation refers to is already reported via other REMIT processes and it contradicts Recital 19 of REMIT (i.e. to avoid double reporting). They also felt that the purpose of the consultation was moving away from the primary objective of the register, as per Article 9(2) of REMIT, and more to monitoring/reporting purposes.

#### *The Agency's view*

The Agency appreciates the comments and suggestions received to this question. The focus of this consultation is on the specific changes outlined in the previous questions and the Agency will focus its response on those for the short term. To the extent that some of the comments received for this question are not addressed in the other changes, the Agency will continue to assess these with a view to improving the processes and systems based on further technical analysis, and discussion with NRAs and market participants concerned.

**Question on the implementation timeline of changes in the European Register**

**3.15 Question on the implementation timeline**

Following consideration of responses to the public consultation, the Agency aims for any resulting modification to the European register of market participants and to the Registration Format to be adopted by 30 June 2016 and to apply as of 1 January 2017. **Do you agree with this proposed timeline? If not, please justify your reply and propose an alternative timeline.**

*Respondents' feedback*

Around one-third of respondents were happy with the proposed timeline for implementation.

About two-thirds of respondents conveyed concerns that the timeline was ambitious citing the ongoing implementation with regard to Article 8 of REMIT, Phase 2 troubleshooting, and the back-loading of contracts. This group of respondents asked for an extension of the implementation period, generally by between 6 and 12 months. It was requested that all relevant documentation and guidance should be published in advance in order for market participants to have enough time to implement the changes.

*The Agency's view*

The Agency appreciates the various challenges in terms of implementation facing market participants, as well as OMPs and NRAs. Although many of the changes are quite limited, some, in particular those concerning EIC codes, represent a challenge for MPs, NRAs and the Agency. For that reason the Agency will extend the deadlines originally proposed and will inform about them separately and in due time. The Agency will inform on changes in advance and foresees no change would apply before 2018.

## **Annex I - ACER**

The Agency for the Cooperation of the Energy Regulators (ACER) is a European Union body established in 2010. The Agency's mission is to assist National Regulatory Authorities in exercising, at Community level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action.

The work of the Agency is structured according to a number of working groups, composed of ACER staff members and staff members of the National Regulatory Authorities (NRAs). These working groups deal with different topics, according to their member's fields of expertise.

## Annex II – List of respondents

| No. | Respondent                                 | Type                         | Country |
|-----|--|------------------------------|---------|
| 1   | ANIGAS/ASSOGAS                             | Industry association         | IT      |
| 2   | BASF Antwerpen N.V.                        | Market Participant           | BE      |
| 3   | BASF Schwarzheide GmbH                     | Market Participant           | DE      |
| 4   | BASF SE                                    | Market Participant           | DE      |
| 5   | BDEW                                       | Industry association         | DE      |
| 6   | CEZ  | Market Participant           | CZ      |
| 7   | ebIX                                       | Industry association         | EU      |
| 8   | EDF Group                                  | Market Participant           | FR      |
| 9   | EFET                                       | Industry association         | EU      |
| 10  | Enagás                                     | Transmission System Operator | ES      |
| 11  | Enel Group                                 | Market Participant           | IT      |
| 12  | Energia VM                                 | Market Participant           | ES      |
| 13  | ENTSO-E                                    | Industry association         | EU      |
| 14  | ENTSOG                                     | Industry association         | EU      |
| 15  | Eurelectric                                | Industry association         | EU      |
| 16  | Eurogas                                    | Industry association         | EU      |
| 17  | Europex                                    | Industry association         | EU      |
| 18  | Iberdrola                                  | Market Participant           | ES      |
| 19  | IOGP                                       | Industry association         | Global  |
| 20  | Oesterreichs Energie                       | Industry association         | AT      |
| 21  | Slovenske elektrarne                       | Market Participant           | SI      |
| 22  | South Hook Gas                             | LNG Operator                 | UK      |
| 23  | Slovenský plynárenský priemysel, a.s (SPP) | Market Participant           | SK      |