

**Clarification on the role and responsibilities of organised
market places vis-à-vis market participants in general and
under REMIT in particular**

**EUROPEX position in the context of the stakeholder consultation by DG ENER on
the implementation of the Data and Transaction Reporting Framework for
Wholesale Energy Markets**

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EUROPEX

Rue Montoyer 31 Bte 9

BE-1000 Brussels

T. : +32 2 512 34 10

E.: secretariat@europex.org

I. Context: The role of Energy Exchanges

As the European Council at its meeting on 4 February 2011 reiterated the objective of the 3rd Energy Package to create a fully integrated energy market by 2014, we are confident that this can first and foremost be achieved for wholesale energy markets. Energy Exchanges are in this context some of the most visible results of the liberalisation of the energy markets in Europe. They facilitate the energy trading activity by offering electronic trading platforms as well as sophisticated clearing and settlement services to generators, transmission system operators (TSOs), importers, distributors, banks, traders, brokers and large (industrial) consumers.

Energy exchanges among other trading venues are at the disposal of the market. They offer anonymous and non-discriminatory access to all market participants given that the applicable admission requirements are met. Moreover, as market operators, Energy Exchanges are responsible for maintaining and ensuring a fair, orderly and safe trading environment, providing for transparent and reliable wholesale price formation mechanisms and indices. The latter are on their turn widely used as benchmarks by the market in supply and retail contracts.

Consequently, EUROPEX - representing the interests of exchange-based wholesale electricity, gas and environmental markets - is adamant about being proactive and cooperative throughout the REMIT implementation process.

In this context, we would like to point out the following concern: In the latest stakeholder consultation on the Implementation of a Data and Transaction Reporting Framework for Wholesale Energy Markets, the European Commission is under the impression that organised market places can be considered as market participants under REMIT¹. Given that Energy Exchanges fall under the purview of organised market places they can never be considered as market participants. This would clearly create a conflict of interest between their role and responsibility as entities that bring together market participants' buying and selling interests. It is therefore of utmost importance that Energy Exchanges are considered to be organised market places under REMIT only and **NOT** as market participants.

As the notion of being a market participant would have considerable and unintended consequences for the status of Energy Exchanges, this position paper shall provide arguments as to why this interpretation is erroneous and not in line with neither REMIT nor the 2nd edition of the ACER REMIT Guidelines.

¹ E.g. question 8: "Do you agree that reporting of orders to trade (bids) should not be collected by ACER from *market participants, other than organised market places*, at least initially?"

II. Supporting texts as to why an organised market place cannot be a market participant

- Article 2(7) of REMIT: The article provides a clear definition of the term 'market participant' which implicitly but undoubtedly distinguishes it from the definition of an 'organised market place'. It states that "'market participant' means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets".
 - This definition does by no means include organised market places, specifically Energy Exchanges, as they do not enter into transactions, nor do they place orders to trade. The role of Energy Exchanges is to **provide an infrastructure** that brings together multiple market participants' buying and selling interests - in an anonymous way and in accordance with non-discretionary rules – resulting in a contract.
 - Consequently, Energy Exchanges **NEVER** take a position on the market.
- Moreover, RECITAL 20 of REMIT reads: "It is important that the Commission and the Agency work closely together in implementing this Regulation and consult appropriately with the European Networks of Transmission System Operators for Electricity and for Gas and the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (4) (ESMA), with national regulatory authorities, competent financial authorities and other Member State authorities such as national competition authorities, and with stakeholders such as organised market places (e.g. energy exchanges) and market participants."
 - Here, REMIT makes a clear distinction between organised market places (e.g. energy exchanges) and market participants. Any overlap would result in great confusion, and could put the implementation as well as the overall integrity of REMIT at great danger.
- Article 17 (3) of REMIT reads: „Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant **or** market place cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation."
 - Once again, REMIT makes a clear distinction between the terms 'market participant' and 'market place'.
- In the 2nd edition of the Guidance on the application of REMIT (3.4 "Market Participant, p. 15), ACER states:, "In the light of the Agency's understanding of the notions of wholesale energy market and wholesale energy products, the Agency currently considers at least the following persons to be market participants under REMIT if entering into transaction, including orders to trade, in one or more wholesale energy markets: Energy trading companies, producers of

electricity or natural gas, shippers of natural gas, wholesale customers, final customers, transmission system operators, storage system operators, LNG system operators, investment firms”

→ As stipulated under Article 2(7) of REMIT, the key phrase that separates an organised market place from a market participant is the notion that the market participant enters into transactions and places orders. An Energy Exchange never enters into transactions or places orders. This would infringe upon its role, neutrality and responsibility as a market operator.

III. Conclusion

Against the background of the above mentioned text references which clearly emphasise the notion of market participant, Energy Exchanges cannot be considered as such. They do not enter into transactions nor do they place orders themselves but only provide a platform for trading. In this respect, they are correctly cited as an example under ‘organised market place’ in RECITAL 20 of REMIT.

The scope of REMIT has been clearly defined by the European Parliament and the Council of the European Union. Any modification of the scope and objectives of the framework regulation by the European Commission would jeopardize the correct implementation of REMIT itself.

We are highly supportive of REMIT and are keen to support its implementation as efficiently as possible. This also involves the provision of both transaction and fundamental data to ACER as stipulated in REMIT.

We remain open for any discussion.