

**Response to the ACER consultation:
*REMIT Registration Format***

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I. Introduction

Europex welcomes the opportunity to take part in the ACER consultation on the “REMIT registration format.

The topic of registration is of **importance for energy exchanges** as REMIT states that “*Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident...*”, which means *argumentum e contrario* that market participants which fall under REMIT and **which are not registered are not allowed to trade at market places such as energy exchanges.**

Energy exchanges are the most visible results of the liberalisation of the energy markets in Europe. They offer trading platforms to generators, transmission system operators (TSO), importers, distributors, banks, traders, brokers, industries and large consumers buying and selling electricity, gas and emission allowances. The trading venues are optional and anonymous and **accessible to all participants satisfying admission requirements.** On the basis of being efficient market operators the main objective of energy exchanges is to ensure a transparent and reliable wholesale price formation mechanism.

Liquidity and a high number of market participants – representing different trading motivations – are important indicators for both the well-functioning of and the trust in the market. Requirements regarding the **access to energy markets have to take into consideration thoughts on security but also on efficiency.** Over the years energy exchanges have developed considerable knowledge in this field in order to best serve customers’ and market’s needs in the context of legal and regulatory requirements.

In line with our answer to the CEER consultation last year on the “*Europe-wide Energy Wholesale Trading Passport*” we explicitly welcome the registration approach by REMIT.

In our position at that time we stated that “*from our point of view it seems to be **more appropriate that a passport has the nature of registration rather than of a certification/licensing system.***” We further elaborated that “*a registration would ensure that all active trading companies are known both to national regulators as well as to ACER and that it is clear to whom REMIT applies. Certification and licensing in our perception go beyond that. The emission of a passport based on such a more detailed scope would certify in much more detail that the passport holder complies with certain requirements (e.g. demonstration of technical, financial and organisational capacity). The corresponding emission process would cause a considerable amount of administrative work; the controlling of the requirements for acquiring the*

passport would need a lot of experience and proximity to the market. In so far a cost-benefit analysis might come to the result that a registration process is more promising.”

Against this backdrop we plead that the **registration process is as clearly defined as possible, and coordinated with ESMA**, excluding the risk of imposing new or double requirements over the course of time “through the backdoor” (no “silent licencing regime”). In order to create fully integrated energy markets by 2014 as stated by the European Council at its meeting on 4 February 2011 the **overall principle** should always be that the well-functioning of the wholesale energy markets is **not disproportional limited but further facilitated**.

II. Answers to the questions

1. Is the registration format proposed in Section 2.1 sufficient for the purposes of market monitoring?

- (1) In line with the opinion of the European Parliament and Council in the legislative process of REMIT, registration **should not become a “silent licensing regime”**. The registration procedure should therefore be easily accessible, easy to comply with and have immediate effect. The background of the registration obligation was introduced under REMIT to identify the market participants active in those markets to which REMIT applies and allow for a transaction reporting regime. Any registration process should adhere to that aim, but not go further with additional requirements. Moreover, this means that the registration of market participant should have no consequence on their ability to trade, further than stipulated under REMIT.
- (2) An important aspect is the question whether specific contact persons need to be submitted as part of the registration. Since this is a complicating factor, Europex suggests to only request information on company level, but to refrain from registration requirements on a personal level.
- (3) In the light of a simple and straightforward process, Europex therefore believes that a personal identification code: such as a national security number should **not be required**. This level of information goes further than necessary for the initial purpose of registering under REMIT.
- (4) Information on traded products should remain out of scope, since this information will be available via the transaction reporting.

2. Which further information fields are needed for identifying the ultimate controller or beneficiary?

- (5) **A definition of beneficiaries should be provided.** Beneficiaries can be anything from large companies to small household consumers or shareholders. Only beneficiaries of a certain type should be of interest in this respect, and such beneficiaries should be registered with a unique identifier code.
- (6) Certain participants trade on behalf of third parties that are not directly active on the market (e.g. industrial end users); Europex would like to receive clarification whether these parties will fall under the definition of a 'beneficiary'. Generally, it should be clarified how to deal with the situation when a trade is committed for third parties with several parties several - e.g. by brokers – in between.

3. Do you agree with the proposed processes for registration and updating? Are there suggestions for further simplifying the process and the associated information flows in particular or the initial populating phase of the registers?

- (7) An up-to-date registration is a pre-requisite in order to maintain a reliable and trustworthy registration system.
- (8) We would like to point out that the obligation to update registration details **shall clearly rest with the market participant.**
- (9) From Europex point of view the registration under REMIT does not replace any obligations under Market Rules of exchanges, such as informing the exchange when relevant (corporate) changes take place.

4. What do you consider as an adequate response period for completing the registration/updating process? Once the NRA has performed any check on the documentation required by national rules or if no additional documentation is required by such rules, should the process be completed in real or close-to-real time?

- (10) The mandatory registration of market participants under REMIT should be as **efficient and fast as possible** and when registration is completed, the market participant should be informed immediately.

- (11) Europex' position is that the initial registration process as well as any following updates should be conducted purely electronically. N The responding confirmation by the NRA should be sent immediately.
- (12) If ACER and the NRAs decide to allow for a (cross) check by the NRAs, binding timeliness should be provided that govern this process in order to provide for a transparent process and legal certainty to the market participants.
- (13) Furthermore, ACER should **define how will be dealt with situations** where:
- the applicant does not provide all relevant information
 - a NRA does not correspond immediately to a registration request
- (14) As withholding the registration constitutes a **de facto ban from the energy trading market**, it is essential that ACER clarifies how will be dealt with these situation. Will national administrative law apply or are there other legal basis on which a NRA can be held accountable **in order to ensure the appropriate level of legal certainty?**
- (15) Market participants should be provided with **sufficient time to prepare themselves for the for the registration obligations** before they enter into force. It is equally important that NRAs are equipped and ready to deal with the high number of requests for registration that will be filed in the beginning. There should also be sufficient time to
- a) inform the market of the upcoming obligations and
 - b) getting equipped and ready to deal with the incoming requests
- (16) As many participants will need to register, ACER and the NRAs should foresee a procedure that allows market participants to submit their request in time;
- (17) If the timely process of registration is not taken into account properly there is a potential risk for market disturbance
- (18) Europex assumes that the registration is an essential element in relation to the identification and communication of transactions under REMIT. However the registration (as well as updates) lies always within the **responsibility of the market participant**. Energy exchanges will in principle not do cross checks but rely on the information provided by the market participants. Energy exchanges cannot be held liable for registration problems of the market participants.

5. Do you agree with the Agency's proposals on publication of part of the European register? In particular, should additional information on market participants be made publicly available?

- (19) Publication of a register is acceptable for general information purposes, as this might **enhance market transparency and confidence**, which is one of the policy aims as defined under REMIT.
- (20) The information regarding corporate relationships with parent and related undertakings (i.e. within the same corporate group) included in the "Corporate structure information" section of the registration format should be published as this information might be of public interest and we see no legitimate reasons for keeping this information confidential.
- (21) Europex is wondering how updates will be communicated, and, if it is possible to deny the registration of a market participant.

6. Do you agree that the timeliness of the publication of both new registrations and updates is of paramount importance?

- (22) Yes. However, Europex would like to emphasize that the timeline and timeliness of the procedure, as described under Question 4, is as important as the timeliness of the publication of new registrations and updates. The latter relates to informing the market, the previous ensures an efficient and low burden process.
- (23) As provided under Q.4 Europex prefers the following cycle to apply to the registration process in order to allow for an efficient and straightforward process (keeping the burden on the market as low as possible)
- Publication of new registrations should be done by the NRA and ACER with immediate effect (immediately after receiving the information; should be a web form, including an identification code)
 - Publication of changes should be done by the NRA and ACER with immediate effect (after the changes have been made in the registration system, should be a web form)
 - A standard format should be defined by ACER how this information should be published on the website of ACER (database)

(24) Up-to-date information is in that respect the most critical part. **Market participants carry the ultimate responsibility, but NRAs and ACER should be held accountable for facilitating an efficient and straight forward process** in order to have registrations dealt without undue delay.

7. Given governance and operational requirements as outlined in this section, which of the three options listed in Section 6.4, if any, would you consider to be the most appropriate? Which one would minimise the overall implementation costs? Which existing code would be the preferred one in case Option A is selected? What are your views on the proposed format for a new code under Option C?

(25) The definition of the Unique Identifier Code (UIC) is primarily aimed at the market participants that fall under the scope of REMIT. It is expected that energy exchanges will mainly be affected in relation to the necessary adjustments in their trading database. On the other hand, **an UIC should not constitute an extra burden for an existing, or new, market participants** to be or become active on the trading market.

(26) The reason to introduce a unique identifier is to identify clearly a market participant in the transaction database hosted by ACER. From the perspective of a market operator, the **UIC should at least adhere to the following criteria:**

- Receiving a code should not create an extra burden for existing market participants
- Receiving a code in the case of a new entrants should not create an extra layer of registration
- It should be interoperable with other EU transaction reporting obligations, mainly under EMIR, but probably MiFID II as well
- It should be easily implemented IT-wise
- It must be a single code

(27) Depending on the assessment of existing coding schemes (e.g. VAT or EIC), and possibilities to adjust these coding schemes for the use under REMIT the outcome might result in the situation where a new coding scheme(**Option C**) needs to be developed and implemented. Further consultation of all stakeholders in conjunction with ESMA seems to be necessary.

Europex would like to receive clarification from ACER how ESMA is consulted in relation to the definition of the UIC.

8. Are there alternative options that could complement the three ones listed in Section 6.4, while satisfying the governance and operational criteria listed in Section 6.3?

(28) No answer

9. Is there any existing code which fits the informational and governance standards required?

(29) No answer – see answer Q 7

10. Are there any other comments you would like to raise in conjunction with this public consultation on the REMIT registration format?

(30) Europex would like to receive clarification on the **exact status** of the '*format*' that will be defined under art. 9(3) 1227/2011, and which is the focus of this Consultation.

- Will this be the standard format used by NRAs to register market participants, or will NRAs be allowed to deviate from this form and use national designed formats? The wording of art. 9(3) seem to only relate to the format to be used by NRAs to '*transmit the information in their national registers to the Agency*'. Although the Consultation introduces this format as 'the REMIT registration format', it in principle only applies to the relation NRA-ACER.

(31) Europex strongly advises to introduce **one standardized format** as registration forms will be used by all NRAs throughout the EU. NRAs should not use the REMIT registration obligation to introduce additional national requirements.

(32) Coherent data reporting and identification scheme for transaction reporting in the EU

Consistency of format and codification schemes is essential in order to allow for an efficient system that minimizes the administrative, IT and financial investment as much as possible; **ACER and ESMA should work towards a dataset which is interoperable**. We deem it the responsibility of ACER, as lead regulator regarding REMIT to ensure the appropriate involvement of ESMA in the consultation and proposals on registration and transaction reporting as well. **Joint working groups** should be established and market participants, including energy exchanges, should be

allowed to participate and provide input in order to introduce an acceptable, efficient and interoperable scheme.

(33) Clarification requested on art. 9(4)

It is unclear whether a market participant is already allowed to enter into transactions before approval of the registration or whether it is sufficient to submit the registration to the NRA. Art. 9(4) stipulates the following *'Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority prior to entering into a transactions which is required to be reported to the Agency in accordance with Article 8(1).* This does however not prohibit a market participant to enter into transactions after the registration form is submitted to the NRA. **Europex is of the opinion that ACER should clarify this situation before the registration scheme is introduced.**

(34) Definition of market participant

As there is some uncertainty among market participants it is a key element of a successful registration scheme that there is clarity on the question who needs to register – **who is deemed to be market participants under REMIT.**

Although not directly part of the consultation document, Europex wants to emphasize that the registration should only relate to the registration of market participants, required under REMIT and therefore should not request additional information for other purposes than necessary for the registration under REMIT.

(35) Exchanges remain responsible for their admission procedures

Additional requirements for trading activities related to trading on organized markets should remain out of scope and are the responsibility of the individual exchanges, which operate under national license systems or financial regulation.

Energy exchanges have - in addition to the obvious requirements on signing and abiding to terms in standard agreements for trading/clearing - developed high admission standards (e.g. proof of personal reliability, and/or successfully passed trader examination, "Know-Your-Customer-Rules", and Market Conduct Rules) over the last decade. It has to be clearly stated that a trading passport can neither be a compensation for any admission requirement of energy exchanges nor can it lead to an automatic access to a trading venue. Energy exchanges have in so far their own responsibility for maintaining a fair and orderly market.

- (36) Europex assumes that the registration is an essential element in relation to the communication of transactions under REMIT. However, as energy exchanges will apply their own admission procedures, it is the responsibility of the market participant to have its registration in place and provide for updates in case information changes. The energy exchanges will in principle not do a cross check but rely on the information provided by the applicant. Energy exchanges cannot be held liable in the case a market participant is active on its market, however is not informed by that market participant that changes to his REMIT registration took place.
- (37) Europex would also like to have clarification on what will happen if a market participant doesn't fulfill anymore certain registration requirements or its registration is denied.