Position by Europex:

Draft Implementing Acts under REMIT

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I. Introduction

We welcome the opportunity to take part in the consultation on the Draft REMIT Implementing Acts by DG Energy. In this paper we focus on Article 5 ("Uniform rules for the reporting of records of transactions, including orders to trade") and on Article 9 Implementing Acts.

An important issue for EUROPEX is that we consider it as necessary that from the start of the full implementation of REMIT market participants are required to report trading data from all market places – be it exchanges or brokers, regardless whether the contracts are standardised or non-standardised in order to avoid any reporting gaps. The deadlines for the implementation of the reporting infrastructure should therefore be harmonised.

In order to be as concrete as possible we have made our comments in the text, giving the explanation beneath (crossed-out: proposal that these words should be deleted; yellow: new proposal).

Related EUROPEX Positions / Responses:

All responses can be found on the EUROPEX website in the section of the Working Group on Transparency & Integrity, WGTI: http://www.EUROPEX.org/index/pages/id_page-43/lang-en/

Comments

Article 5: Uniform rules for the reporting of records of transaction, including orders to trade

1. *Market participants shall report records of transaction and orders to trade in wholesale energy products executed at organised market places to the Agency through the organised market place concerned, or if the market places do not report through trade matching or trade reporting systems.*

Explanation:

a. Europex has always advocated that orders to trade are necessary to conduct effective market monitoring. From a purely pragmatic point of view energy exchanges are in support of providing transactions, including orders to trade to the Agency. To stay within the legal scope of REMIT this can only be on behalf of the market participant submitting those orders. That is why the reporting of "orders to trade" should be added to the first paragraph while a "direct" obligation on exchanges as foreseen by paragraph 2 is not be seen as legally possible and should therefore be left out.

b. The principle should be that market participants under 5.1 report records of transactions, including orders to trade through the organized market place where the orders were submitted and/or transactions were concluded. If the organized market place does not provide this service the market participants can choose to report transactions and orders to trade via a trade-reporting or trade-matching system.

   The main reason for this "two-step" approach is that in general a consistent reporting by the market places themselves will help ACER to better handle and to process the received data. Secondly transactions and especially the orders to trade are of highly sensitive nature. In order to ensure confidentiality reporting through third trade-reporting or trade-matching systems should be the exemption and only possible once the organized market place does not provide this service.

~~*c. Organised market places and, if applicable trade matching and trade reporting systems shall capture and maintain their order books including unmatched orders in wholesale energy products for a period of at least 5 years. They shall at request make these records available to the Agency in a manner and form as required by the Agency. The Agency shall be able to require the supply of the records of transactions on an ad-hoc or continuous basis.*~~

Explanation:

a. As we suggest adding "orders to trade" to the first paragraph, Art. 5 II can be completely removed. From our perspective REMIT doesn't provide a legal basis for a "direct" obligation on market places[1].

b. Further if the Agency has already obtained the data from the organized market places or trade-matching or reporting systems on a daily basis via Article 5.1, the Agency will have this data in their data reporting system and hence will not need to request from the organized market place on an ad-hoc or continuous basis.

c. In order to obtain clarity and predictability for the implementation of IT infrastructure Europex opts for the addition of annexes including the common data for reporting orders.

d. Market Participants can choose to report records of transaction and orders to trade in wholesale energy products which they have executed OTC either by themselves or through third parties as provided in Article 8(4) of Regulation (EU) No 1227/2011.

Explanation: From our perspective orders to trade do exist in the OTC sector and should therefore be reported.

[1] In Art. 8.1 REMIT it is stated that "Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade." In Art. 8 II REMIT it is stated that "The Commission shall, by means of implementing acts: (a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1 and appropriate de minimis thresholds for the reporting of transactions where appropriate;"

Article 9, paragraph 2 & 3

1. Entry into force […]
2. The reporting obligation pursuant to Article 6(1) and 7 shall apply ~~six~~ twelve months following the adoption of this regulation.

The reporting obligation pursuant to Article 6(2) shall apply twelve months following the adoption of this regulation.

Explanation: The entry into force of the reporting obligations should be equal for standardized as well as for non-standardized contracts. Having in mind the necessary considerable IT-implementation efforts it seems to be reasonable to foresee a reporting obligation 12 months after the adoption of the regulation. In any case the reporting obligation for standardized contracts (Article 6), fundamental data (Article 7) and non-standardized contracts (Article 6.2) should be the same.

Without having a comprehensive set of data (including data on both standardized and non-standardized contracts) from the beginning, ACER will be unable to effectively monitor gas and electricity markets for market abuse.

Furthermore, given the experience of reporting by energy exchanges, six months to put in place a reporting system for transactions and order to trade in an unknown format seems extremely short and risky. Therefore to make sure that the reporting system has adequate time to be tested by organized market places, third parties, and market participants twelve months for all data to be reported is a reasonable time-frame.