

# Stellungnahme

# REMIT

## Requirements for the registration of Registered Reporting Mechanisms (RRM)

Berlin, 02. September 2014

Interest Representative Register ID: 20457441380-38

## **1 Do you agree with the Agency's view that post-trade events related to wholesale energy products shall be reported by trade matching or trade reporting systems?**

The data fields "confirmation timestamp" and "confirmation means" require post-trade modifications for all trades which are not concluded via exchanges (where no confirmation is issued) as it is not possible in general to confirm the trades by end-of-day. If the contract has been reported via organized marketplace the requirement to report post-trade events via trade matching or trade reporting systems is not feasible. There is no link between the trade (and the order) which is available in a reporting system. This would mean that the link would have to be established by also transferring the information to the reporting system. In addition to this, the market participant needs to submit the information regarding confirmation to the reporting system. It should be mentioned that a part of confirmations is exchanged manually, especially with smaller counterparties and is not available to trade matching systems. The market participants would have to set up two different reporting (and verification) processes which leads to very high operational and technical complexity and costs.

Under EMIR most market participants report their contracts themselves to the trade repository or use the reporting service of their counterparty and hence are not faced with this problem.

Due to the issues described above and due to the fact that if the trade can be matched to the respective one of the other counterparty in ARIS, ACER has an indirect confirmation anyways, we propose to delete the data fields "confirmation timestamp" and "confirmation means".

Other modifications which require post-trade events, e.g. early terminations, novations to a different counterparty etc. occur much less frequently. They should be realised either via the organised market place or by the counterparty itself. Requirement for the latter is an adequate interface provided by ARIS.

For the term „post-trade events“ a proper definition is needed. In this context, BDEW wants to point out, that a consistent usage of the wording between ACER and ESMA is of utmost importance. Our understanding of the term "post trade event" is that a deal is adjusted afterwards. There can be three categories:

1. Close out (mutual cancellation of a contract)
2. Flex – contract (routine adjustment of a contract, i.e. power plant gas contract with daily notification)
3. Tranche contract with price adjustment afterwards (via tranche or formula)

Only the first category (aforementioned under point 1) is possible in standard contracts and only in this case the reporting platforms don't know that a close-out took place. Therefore, in this case the OTC-Partner needs to report the post-trade event.

However, the close-out takes place so rarely that a manual reporting is applicable.

The other two categories (aforementioned under point 2 and 3) are in our point of view modifications of Non-Standards that have to be reported anyway.

**2 Do you agree that the standards and electronic formats to be established by the Agency according to Article 10(3) of the draft Implementing Acts shall apply to trade repositories and ARMs for the reporting of data covered by EMIR and / or other relevant financial market legislation? If not, please justify your position.**

First of all, we think that no additional requirements should be given to these undertakings to ensure a smooth process of registration and reporting. We think that standards and formats used in EMIR reporting are well established and could be sufficient. Once new formats and standards will be used for REMIT reporting, it could bring additional administrative and financial burden on them. Consequently, it could influence the service provision regarding EMIR reporting, even more to make EMIR reporting more expensive as a consequence of these new formats and standards. In other words, we would not want obligations being put on trade repositories that could ultimately affect the reporting channels market participants have in place with such trade repositories/ARMs.

**3 Do you agree that the requirements set out above adequately ensure the efficient, effective and safe exchange and handling of information without imposing unnecessary burdens on reporting entities?**

We support ACER's effort to set up robust and prudential rules for RRM; however we do not agree that all requirements should be applied for all reporting entities, regardless of whether they report their own data or third-party data.

We indeed consider these requirements very strict especially for companies, who decide to report by themselves, on behalf of their group members or their counterparties concerning those contracts concluded together. We do not consider that such strict requirements are needed for these market participants especially given that during the registration process market participants will have to fulfil testing requirements Already REMIT legislation gives strict penalties and enforcement, if market participants do not comply with reporting obligation in a complete and timely manner. The reporting testing could be for these market participants the sole and most important condition for passing the registration process. The requirements (especially the yearly compliance report) are going well beyond what is necessary. At the same time under such timeframe for registration, it is very challenging even impossible to fulfil all these requirements. It brings huge administrative burdens and will require additional costs for compliance.

At the same time once market participants holds relevant ISO certificates (e.g. ISO 9001/2008), this implicitly demonstrates market participants' fulfilment of all ACER RRM requirements.

For further details, please see our answers to question 4.

**4 Do you agree with the Agency's view that the same requirements shall apply to all RRMs?**

BDEW does not agree with ACER's view that the same requirements shall apply to all RRMs. We believe that a light version should be set up for RRMs reporting on their own behalf, on behalf of their group members or their counterparties concerning those contracts concluded together as data corruption in this case is lower and even if it occurs it would only affect a limited number of market participants (contrary to an organised market place or a trade matching system). If a light regime is not offered, it would increase the compliance costs and the administrative burden. In any case, we believe that REMIT legislation already puts strict conditions of compliance. If the market participant fails to report data in a complete and timely manner, it could be sanctioned by the national authorities. We believe this legislation is already a motivating factor for market participants to be fully compliant with reporting obligation.

In this lighter version of RRM requirements, we believe that it should not be necessary to have an annual external audit. An audit every 3-5 years/ only on request (with sufficient time period) should be sufficient.

Especially in cases when a market participant reports via a RRM and reports in the same way as well the contracts concluded with a counterparty on their behalf, it is not at all needed to become a RRM. This should be clearly stated in the final version of the RRM requirements.

**5 If your reply to question 4 above is negative, please explain which requirements should apply differently to different RRMs and why.**

See our answers to question 3 & 4.

**6 Notwithstanding the requirements on the validation of output (see Chapter 5.6), should the Agency offer to entities with reporting responsibilities the possibility to request access to the data submitted on their behalf by third-party RRMs?**

BDEW believes that once a market participant decides to report through a third party RRM, this RRM should be fully responsible for the completeness, accuracy and timeliness of the

data sent. At the same time, in case the market participant notices or suspects some inconsistencies or in case the market participants experience difficulties in getting the data from a third party, it would be indeed beneficial for the entities to have access to these reports. But the key element for market participants is to receive confirmation from RRM that all transactions and orders have been submitted.

To allow an RRM to confirm that all transactions and orders have been submitted, it will be necessary for the technical setup of ARIS to be modified. The diagram of ARIS in the draft TRUM suggests that only rejections will be notified and this will be done via email.

It is important that acceptances and rejections both are notified by ACER to the RRM and that the web-services are changed to operate two ways to allow the communication from ACER to be sent down this channel. Without the above changes, it will not be possible to know if there is a connection error or outage at the time of sending the data and it will also not be possible to automate the re-sending of failed trades.

**7 If the reply to question 6 above is positive, please explain how such access should be granted, taking into consideration the need to ensure operational reliability and data integrity.**

This could be done in a way that the entity will have access to reports sent by third party RRM or to the database of ACER (entity could identify by its ACER code and create its own account) but extreme care should be paid to possible risk of data leakage.

Standard contracts are reported solely by exchanges and trading platforms. The responsibility of the other market participants refers only to the confirmation process, but not on the integrity of the reported data via the RRM or ACER to other agencies.

Actually, all data of the business partners that will be reported to the exchanges or broker platforms are verified immediately by the market partners within the scope of the trade controlling. This verification reconciles the systems of both business partners so that an identical data base exists. The sole responsibility for the correct transfer of this data to ACER lies with the broker platforms or exchanges (RRM's). Otherwise the market partners would be obliged to get the data afterwards from ACER again to check if the RRM's made a correct report to ACER. This causes high costs and burdens both for ACER and the market partners.

**8 Do you agree that the compliance report must be produced by the RRM on a yearly basis or shall such report be compiled only at the request of the Agency?**

BDEW agrees with ACER that the obligation to produce a compliance report should be on a yearly-basis for organised market places and for trade matching/ reporting systems. We believe that a compliance report is an effective way to ensure continuous quality of RRM's. Fur-

ther on, we expect that ACER will publish main findings from RRM's compliance reports. It will bring additional value to the transparency of the energy industry.

However, we strongly disagree that self-reporting entities should prepare a compliance report on an annual basis, and even more to have it certified by external auditor. This seems like an onerous obligation. It would indeed increase the compliance costs. Furthermore, we would like to stress that this obligation is not imposed by the primary and secondary legislation. RRM's performance can be evaluated from the daily reporting, e.g. how timely the reporting of trade is done, how many transaction reports are accepted or rejected after ARIS validation process, etc., and not necessarily by the "comprehensiveness" of yearly compilation reports. Last but not least, we emphasize once again that REMIT obligations and potential enforcement sanctions are clear and enough to motivate market participants to be fully compliant with REMIT.

In our views, a request should be reasonable and justified and limited to occurring intermittently e.g. every 3-5 years. The ACER audit plan must be transparent and consulted on (due to cost concerns).

**9 Do you agree that trade repositories and ARMs shall be registered with the Agency, even if they only report data reportable under EMIR and / or other relevant financial market legislation?**

No, BDEW does not agree. TRs and ARMs don't have to register separately/additionally, because no further reporting under REMIT is needed, if a report under EMIR already took place. According to article 8 III REMIT persons who report transactions in accordance with EMIR shall not be subject to double reporting obligations relating to those transactions, all reported transactions according to EMIR count as reported according to REMIT.

This means, that if a transaction is reported according to EMIR, there is no obligation left to report this transaction again under the REMIT regime. The basic understanding of REMIT and EMIR is to avoid double reporting for the market participants. Therefore there should not be an obligation for the market participants to report the data to ACER if the data was already reported under EMIR to ESMA (neither in the EMIR format nor in the REMIT-format). In fact ACER should arrange data sharing with ESMA and collect the reported data directly from ESMA. ACER has to abstain from the data already reported under EMIR to ESMA and the according data fields have to be deleted.

However, we do see a need for ACER to formally take note of these trade repositories and ARMs, but this should remain a formality.

**10 Do you agree that the Agency should foresee a simplified registration process for trade repositories and ARMs that only report data reportable under EMIR and / or other relevant financial market legislation?**

See answers to questions 2 and 9.

Yes, we agree. We expect that ARMs and TRs, already authorised by ESMA under MiFID or EMIR respectively, shall automatically fulfil all Agency's requirements on RRMs.

**11 Do you agree that CEREMP should be used for the identification of market participants that apply to become a RRM?**

Yes, we agree. However, we would like to stress that, it might not be fully clear yet during the registration process whether a market participant would like to report data directly or via a third-party RRM. In the second case, it might also not be fully clear yet, which RRM the market participant will choose. For those reasons, it should be very easy to change any data or status in CEREMP, when a market participant decides to change their status.

**12 What is your opinion on the timeframe needed to complete the registration process?**

Generally, requirements on RRM for registration are very extensive. We understand that this will consume a lot of time on both sides. Therefore, we do not think three months are sufficient time to fulfil all requirements for RRM registration, despite of the fixed period (3 and 6 months) defined by REMIT.

Thus, BDEW strongly advises ACER to soften the RRM requirements for self-reporting RRMs (or RRMs reporting on behalf of its group members). We really consider that the only and most important condition is to pass the reporting test. Because once an entity passes the test, it means that this entity applies all necessary measures to ensure smooth reporting process. And once again, REMIT itself motivates market participants to be fully compliant with registration and reporting obligation.

We believe that the RRM technical specifications should be available to RRMs well in advance before registration starts, otherwise it will be very challenging to set up all the systems according the requirements in such a short time. This is underpinned especially due to the fact the very strict RRM requirements are envisaged by ACER. According to ACER's proposal, the technical specifications are supposed to be available once the non-disclosure agreement is signed during registration process. We would like to remind ACER of the difficulties experienced some months ago for EMIR reporting. Trade repositories were put under strong time pressure due to the fact that all necessary documentation was not available on time. The result was that systems were not properly set up on time and IT problems are still prevailing nowadays. To avoid this situation under REMIT reporting, we strongly advise ACER to make available well in advance the above mentioned technical specifications.

### **13 Do you have any comments on the registration process in general?**

The process should be as easy as possible not to put additional administrative burdens for market participants. Once a market participant decides to report on behalf of itself or its group members, only the information according ACER decision 1/2012 should be required. At the same time registration manual would be really much welcomed.

If a RRM applicant fails in testing phase, it should be allowed to rectify issues that came up and to test again.

Last but not least, we would like to raise concerns whether transaction reporting process should be applicable after RRM registration approval process rather than in parallel with transaction reporting. For comparison we would like to point out that transaction reporting under EMIR was applicable after approval of Trade Repositories. BDEW would like to emphasize, that the documents for RRM Requirements and TRUM should ideally be finalised and released together with the Implementing Acts.

### **14 Would the periodic renewal of registration be a valid alternative to the certified annual report?**

We believe there is no need for periodic registration renewal if an RRM is regularly reporting without any issues. We also think that there is no need for certified annual compliance report. There should be at least a limit in the request for such report: e.g. if requested one year, such report should not be asked again for e.g. 3 years.

### **15 Do you have any other comments on the Chapter concerning the Agency's assessment of compliance with the RRM requirements?**

No.

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