21 May 2012

Agency for the Cooperation of Energy Regulators
Trg Republike 3
1000 Ljubljana
Slovenia

Via Email: consultation2012R08@acer.europa.eu

Re: REMIT Registration Format Public Consultation Paper

Dear Sirs,

The members of the Commodities Working Group of the Global Financial Markets Association (GFMA)[1] welcome the opportunity to provide comments to the Agency for the Cooperation of Energy Regulators (ACER) regarding the REMIT Registration Format Public Consultation Paper (CP)[2]. Our members are keen to maintain an active dialogue with ACER throughout this process of consultation, and would therefore like to offer some constructive comments that we hope will serve as part of that ongoing dialogue.

We welcome the development of an EU wide regime in which market participants register with a national regulatory authority (NRA) in a Member State and that registration is sufficient for the market participant to trade in any EU Member State. Therefore, we are supportive of the single EU registration process and of ACER's role in collating the data and publishing a register (with commercially sensitive information removed).

Rather than answering each question raised in the CP, we would like to highlight certain issues, and in particular raise some concerns that we have regarding REMIT Registration as described in the CP.

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[1]The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, please visit http://www.gfma.org.
[2] PC_2012_R_08

REMIT Registration Format

We are broadly supportive of the proposed registration format. In populating the register for the first time, we welcome ACER's proposal that it looks to leverage off existing data collected by current regulators to the extent it can where they provide reliable, authenticated data[3]. In particular, financial institutions which are already authorised by their national competent authority will have undergone a robust authorisation process in order to obtain that authorisation.

However, we are concerned that there is no common standard being prescribed regarding the information to be obtained by NRAs as part of the registration process and no minimum NRA standard of verification of the data provided by the participants. Therefore it is unlikely to result in a harmonised approach across the EU to the information supplied for inclusion on the register. In particular, we would like to raise the following concerns[4]:

Basic information:

Where possible, we would welcome that basic information requirements are expressed with as much specificity as possible (e.g. where an address is required, specify whether a registered address and/or principal place of business is required).

We note that the registration form will require each registrant to identify the "... place of publication of insider information..."[5] We would like to take this opportunity to re-iterate the issues raised in our letter to ACER and OGFEM dated 29 March 2012.[6]

Country-relevant information:

We note that the section on "country-relevant information" would permit NRAs to require market participants to provide any information that they may consider relevant. Further, section 4.1(a) provides that market participants may be required to submit as part of their application:

"... *if the NRA so requires*, *a complementary set of country-relevant information or supporting documentation ...*"

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[3] Section 4.1, "*For the phase of initially populating the registers, the process described above can be simplified for instance by recovering existing information already available to NRAs, at least in some countries.*"

[4] Refer Section 3.1

[5] Section 3.1, page 8

[6] GFMA Comments to ACER and Ofgem on the Regulation on Energy Market Integrity and Transparency (Also see Attachment 1).

We consider that ACER should seek to harmonise the information requirements for the registration form to the extent possible.

We believe that there should be common standards across the EU and the NRAs should not be able to impose their own additional requirements. We appreciate that there may be particular sensitivities or country-specific requirements in some member states, but we consider that it would be appropriate for NRAs to work with ACER to define the information required in each member state and develop a single harmonised registration format to be used by all NRAs.

We also believe that this lack of harmonisation creates a real possibility for regulatory arbitrage. Under the existing proposals, firms will be required to either register with the competent authority where they are established or, for non-EU firms, the EU country where they are "active".

If some countries set additional differential standards for registration, there is the possibility of regulatory arbitrage, particularly for non-EU firms which may be able to choose in which country they wish to be registered.

Corporate structure information:

We consider that the requirement to provide information on parent and related undertakings of market participants should be restricted to parent and related undertakings which are already registered with an NRA. Where a market participant is part of a large international group, it would be unreasonable to require the market participant to monitor the activities of all of its group members, particularly where they may only be related by virtue of having a common parent undertaking. Market participants should be able to rely on the European register of market participants established by ACER.

Section 3.2 of the CP indicates that this is ACER's intention, and this should be reflected in section 3.1(c).

Contact section:

We think that the details required under the contact section should be only those detailed needed in order to contact the individual (especially in view of the obligation to notify changes) and do not consider it necessary to include personal data such as a personal identification code for the person completing the information, as well as operational or trading personnel. A company identifier should suffice in such circumstances.

REMIT Registration Process and its update

We are concerned that elements of the REMIT Registration Process as described in the CP could be interpreted in such a way that the Process would go beyond the requirements of REMIT, leading to unintended consequences as discussed below.

We think that there is a risk of creating the impression that registration under REMIT is an approval process, similar to that applied to firms in the financial markets. Therefore, some market participants or consumers could regard registration with an NRA as an approval of the market participants themselves, thereby providing assurance in respect of all those matters concerning the participants which appear on the register. We know that this is not ACER's intention as the REMIT registration process is simply that i.e. a registration process for the purposes of enabling NRAs and ACER to monitor who the participants are in EU wholesale energy markets.

We note that ACER acknowledges this point in section 5, where it states that:

"It should however be emphasised that registration does not provide any guarantee on the market participant's creditworthiness or trading behaviour".

However, in other parts of the CP there are some statements which could create the potential for confusion over whether this is a pure registration regime or an authorisation process. For example, section 4.1(b) of the CP states that:

"The NRA performs (at least high-level) checks on the application, depending on national rules".

We also note that section 4.1 of the CP provides that "... *as market participants will not be allowed to trade until they are registered, it is deemed essential that the registration process is completed in a timely manner...*" However, we think this statement goes beyond Article 9(4) of REMIT, which provides only that "*market participants shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency*". Accordingly, we consider that REMIT does not provide for any prohibition on market participants trading, provided they have submitted their registration form to the national regulatory authority. We ask ACER to clarify this point.

In addition, there seems to be an indication in the CP that organised markets and other market participants should not be able to deal with other market participants if that market participant is not registered (at section 5 of the CP). Again, we do not think that the text of REMIT would support this conclusion. We think it would be very useful for ACER to clarify this point as well.

Therefore, we suggest that ACER clarifies that the registration regime is purely a tool for monitoring participation in EU wholesale energy markets, and that the only requirement on market participants is to submit a registration form before entering into a transaction which is required to be reported to ACER, in accordance with Article 9(4) of REMIT, and to keep the information contained in that registration updated, in accordance with Article 9(5) of REMIT.

Unique identifier for market participants

Having considered the three options set out in the CP, we consider that Option C is the only one that will work in practical terms for the reasons set out in the CP.

Option A: the EIC is widely used and although we are unfamiliar with the issue of multiple EICs for individual entities (which is the issue with EANs); we consider that there are shortcomings with it. For example, under the current proposal it is not particularly clear in which jurisdiction one would have to apply to obtain the EICs. This needs further clarity and must be consistently applied.

Option B: we do not think there is an existing code that works e.g. EANs (GS1 scheme) will not be of any use as market participants are likely to have multiple EANs (GS1 scheme) as they will have a different EAN for each country in which they are active, and in any case the system for obtaining EANs would have to be very clear and consistent across countries in order to be suitable for these purposes. We also note that VAT numbers would not necessarily be an appropriate form of identification, as entities within the same VAT group will have the same number.

The members of the Commodities Working Group welcome the opportunity to respond to this Consultation Paper and trust that you have found our comments helpful. We would be pleased to discuss with you any questions or issues raised and look forward to developing an ongoing dialogue with ACER on these and other issues of importance to the wholesale gas and power markets.

Yours sincerely,

Vickie Alvo
Executive Director
GFMA

ATTACHMENT 1

29 March 2012

Mr. Alberto Pototschnig
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Mr. Elio Zammuto
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RE: GFMA comments on the Regulation on Energy Market Integrity and Transparency

Dear Mr. Pototschnig and Mr. Zammuto:

The members of the Commodities Working Group of the Global Financial Markets Association[1] (GFMA) welcome the opportunity to provide comments to the Office of Gas and Electricity Markets (Ofgem) and the Association for Co-operation of Energy Regulators (ACER) on the requirements under the Regulation on Energy Market Integrity and Transparency (REMIT) to publish inside information. Our members are keen to maintain an active dialogue with Ofgem and with ACER throughout the process of implementation of REMIT, and would therefore like to offer some constructive comments that we hope will serve as part of that ongoing dialogue.

Fulfilling the obligation under REMIT to publish inside information

Article 4 of the Regulation on Energy Market Integrity and Transparency (REMIT) requires all market participants to disclose publicly in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

We understand that some market participants are intending to meet this disclosure obligation using social media websites such as Facebook and Twitter.

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It is not clear that disclosure through Facebook or Twitter would be sufficient to meet the obligation under Article 4 REMIT. Article 4 provides that a market participant must "disclose publicly in an effective and timely manner". In addition, the first edition of ACER's Guidance on REMIT states (at section 2.3) that inside information should be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible. As a result, the market participant does not simply have to disclose the information somewhere which may potentially be publicly available: they would need to ensure that the method of disclosure is effective for the disclosure to be disseminated to as wide a public as possible.

For example, if information is made available on a publicly available website, but is difficult to locate or can only be accessed by paying a subscription fee, this would appear not to be disclosing "publicly in an effective … manner". Similarly, if information is made available on publicly available websites, but market participants would actively need to search a large number of websites regularly throughout the course of each day, this may also not constitute disclosing "publicly in an effective and timely manner".

While both Facebook and Twitter are open to any person who wishes to access them, and neither charges any fee for access, there are other restrictions on access to Facebook and Twitter. For example, many employers block access to these sites to their employees because of security concerns regarding the site (for example, the risk of using the site to make communications from the trading floor which cannot be monitored by the firm's systems) or because access to the site is inconsistent with the firm's IT policies. Even if a firm unblocks access to Facebook or Twitter, it is not possible to unblock access solely for the purposes of receiving updates on inside information disclosures from other market participants: once the site is unblocked, employees will be able to access it freely, potentially leading to breaches of firms' security policies.

We are concerned that where a firm seeks to disclose inside information only on social media sites such as Facebook or Twitter this will not enhance the level of transparency on wholesale energy markets across the European Union, and may distort the dissemination of information (as the information will be available to some market participants but not to all).

There may also be security concerns for the firm using Facebook or Twitter to disclose this information. For example:

- Facebook and Twitter have been the target of a number of hacking attempts. This may cause concerns if the site has to be temporarily shut down, or if a market participant finds that their account has been hacked.

- The character restriction on messages posted on Twitter may mean that the information being disclosed is abbreviated or otherwise amended to fit within the character limit. This could lead to dissemination of false or misleading information, in breach of Article 5 of REMIT.

In addition, if the firm is not certain that the information has been made public, it would still be prohibited from trading in possession of the information.

We note that ACER has issued guidance, in its Guidance on REMIT issued on 20 December 2011, indicating that it would consider that a firm had disclosed inside information effectively where it made the information available through a Transmission System Operator or a transparency platform of an energy exchange or, if such platforms do not yet exist, through the

firm's own website (provided that the information was disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, including the media).

In the interests of promoting an enhanced level of transparency across the European Union, we would welcome further guidance from ACER on this issue reiterating the need to ensure that inside information is disclosed in a matter ensuring that it is capable of being disseminated to as wide a public as possible, and indicating examples of methods of disclosing inside information which would or would not meet the requirements of Article 4 REMIT in the opinion of ACER.

Market participants in the securities markets may fulfil the equivalent disclosure requirement under the Market Abuse Directive by disclosing through a regulatory information service such as RNS in the UK (http://www.londonstockexchange.com/products-and-services/rns/rns.htm). Once information has been announced to RNS, RNS ensures that the information is distributed immediately to market professional terminals, databases and financial websites across the world. The UK Financial Services Authority has published a set of criteria that regulatory information services such as RNS must meet in order to be used for the purposes of this disclosure requirement and maintains a list of services that meet those criteria, and other EU financial services regulators have taken a similar approach. We would welcome guidance from ACER confirming that market participants may use the same information services to make their disclosures under REMIT as those which they currently use to make their disclosures under the Market Abuse Directive.

We also note the comment in ACER's Guidance that where a firm cannot make disclosure through a Transmission System Operator or the transparency platform of an energy exchange because such platforms do not yet exist, firms may make disclosure through their own website, provided that the information is disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible. For the reasons set out above (including the need for market participants to search and constantly monitor a large number of websites in order to find disclosures) we are concerned that there is a risk that it may not be possible for firms to disclose "publicly in an effective and timely manner" through their own website. A possible solution to this may be for ACER to host a public disclosure page, where market participants can make their disclosures. This would create a single reference point for wholesale energy market participants (removing the need to monitor multiple different websites), and would also ensure that the information becomes available to all market participants (as they will all be able to access it).

We would welcome the opportunity to discuss this further.

Yours sincerely,

Vickie Alvo
Executive Director
GFMA