



Consultation paper on the planned

Commission Decision setting the fees due to the Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency

I. Background

1. Introduction

Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (“ACER Regulation”) introduces fees as an additional source of funding to cover the costs of REMIT¹ related activities (“REMIT fees”) performed by the European Union Agency for the Cooperation of Energy Regulators (“ACER”).

This public consultation is required under Article 32(2) of the ACER Regulation as part of the process that will lead to a Commission Decision on the level and structure of the REMIT fees to be collected by ACER.

The ideas presented in this consultation paper have been developed by DG Energy and ACER for the purpose of this public consultation. They are without prejudice to the decision of the Commission college on the planned Commission Decision.

2. Legislative background

In accordance with Article 32(1) of the ACER Regulation fees shall be due to ACER for:

- (a) requesting an exemption decision pursuant to Article 10 of this Regulation and for decisions on cross-border cost allocation provided by ACER pursuant to Article 12 of Regulation (EU) No 347/2013; and
- (b) collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of REMIT.

The new Article 32(1)(b) extends the fee provision to ACER activities in the context of REMIT. In this case, the fee is not for individual decisions, but rather to cover a whole

¹ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

range of tasks: collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of REMIT.

Pursuant to Article 32(2) of the ACER Regulation, the REMIT fees and the way in which they are to be paid, shall be set by the Commission after carrying out a public consultation and after consulting ACER's Administrative Board and the Board of Regulators. Therefore, the Commission launched this public consultation.

3. Tasks to be funded by REMIT fees

The activities of collecting, handling, processing and analysing information reported pursuant to Article 8 of REMIT represent a significant portion of ACER's current costs (mostly human resources, IT hardware, software and support services expenditure). The cost of these activities is estimated at € 8.8 million in 2021. This represents an average breakdown below € 600/year per registered market participant² (and below € 1,000/year per reporting³ market participant) in 2020.

The following groups of tasks currently assigned to ACER are related to the collection, handling, processing and analysis of information reported pursuant to Article 8 of REMIT:

- REMIT information management;
- REMIT market surveillance and conduct; and
- REMIT fees management.

REMIT information management

These activities aim at establishing and managing REMIT information as a key asset to support market monitoring and provide reliable information on wholesale energy markets for the promotion of market integrity and transparency⁴. The main activities are:

- Establishment and maintenance of a European register of market participants to facilitate reporting according to Article 8 of REMIT by uniquely identifying market participants;
- Registration and supervision of reporting parties to enable reporting according to Article 8 of REMIT;
- Drawing up and maintaining a public list of organised market places and of standard contracts traded at organised markets to facilitate reporting according to Article 8 of REMIT;
- Development and maintenance of the REMIT reporting rulebook to facilitate reporting according to Article 8 of REMIT;
- Consultation of relevant stakeholders as required pursuant to Article 8 of REMIT and the REMIT Implementing Regulation⁵ in case of material updates of the REMIT reporting rulebook;

² Based on the number of market participants registered in CEREMP in 2020 - more than 14,700.

³ Based on the number of market participants actively reporting records on wholesale energy contracts in 2020 - more than 9,600.

⁴ The Annex to this Consultation paper presents statistics on the activities performed under the REMIT information management.

- Collection of records of wholesale energy market transactions, including orders to trade, fundamental data, inside information, derivatives transactions, and emission allowances;
- Operation and enhancements of ACER's REMIT Information Systems (ARIS);
- Operational reliability and data protection of the REMIT information reported to the Agency;
- REMIT data analysis to ensure completeness, accuracy and timeliness of reporting of information according to Article 8 of REMIT;
- REMIT information services to internal and external users of REMIT information, including reporting parties (e.g. sample transaction data requests for market participants to enable them to verify completeness, accuracy and timeliness of data submission to ACER);
- Sharing of REMIT information between ACER and other authorities in order to avoid double reporting from market participants to these authorities in cases they have already reported the relevant information to the Agency;
- Making available the Agency's commercially non-sensitive trade database for scientific purposes and making available parts of the aggregated and commercially non-sensitive REMIT information in the interest of improving transparency of wholesale energy markets;
- Annual Report on the Agency activities under REMIT to assess the operation and transparency of different categories of market places and ways of trading and, if necessary, make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market;
- Cooperation with NRAs and, where necessary, their coordination to aim at ensuring the coordinated and consistent application of REMIT; and
- Facilitation of stakeholder involvement to ensure an ongoing dialogue with stakeholder on the REMIT data collection regime aiming at improvements at EU level.

REMIT market surveillance and conduct

Market surveillance and conduct activities comprise the further handling, processing and analysing of the information reported to ACER and processed by the REMIT information management. The main activities included in this task are:

- Market surveillance of trading activity in wholesale energy markets;
- Case cooperation with national regulatory authorities for energy (NRAs) on market abuse assessments including providing guidance;
- Support NRAs on REMIT breach assessments;
- Case cooperation with ESMA⁶, competent national financial market authorities and with supervisory authorities, international organisations and the administrations of third countries; and

⁵ Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

⁶ European Securities and Markets Authority.

- Development and enhancement of applied surveillance and conduct business intelligence tools to effectively and efficiently analyse REMIT data.

REMIT fee management

The introduction of the REMIT fee regime requires the implementation of a structure to manage the fees to be collected. The main activities included in this task are:

- Yearly calibration of the REMIT fee model based on previous calendar year reporting;
- Management of the REMIT fees budget process;
- Issuance of debit notes;
- Collection of revenue, follow up on payment delays (calculation of interest on possible late payments, legal support for enforcement,...); and
- Accounting and reporting on the implementation of the annual revenue.

II. Outline of the planned fee scheme with indicative questions to stakeholders

4. Principles for REMIT fee setting

4.1. General principles

The legislator introduced in paragraph 2 of Article 32 of the ACER Regulation general principles for the REMIT fee scheme. In particular, it established that fees should:

- Be proportionate to the costs of the relevant services as provided in a cost-effective way;
- Be non-discriminatory; and
- Avoid placing an undue financial or administrative burden on market participants or entities acting on their behalf.

The relevant costs are those incurred by ACER for the tasks outlined in section 3.

By establishing a non-discriminatory principle for the implementation of REMIT fees, Regulation (EU) 2019/942 introduces an element of universality but also of differentiation based on objective criteria for setting the fees.

The principle of setting a REMIT fee regime that does not place an undue financial or administrative burden on market participants or entities acting on their behalf, acknowledges the fact that the model to calculate REMIT fees, as well as its collection, should be simple, easy to execute and transparent. In particular, the REMIT fee design should avoid impacting the liquidity in wholesale energy markets. Moreover, the model used to calculate REMIT fees should ideally encourage data quality and reporting efficiency.

4.2. How to define the overall amount to be covered by REMIT fees each year?

The definition of the overall amount to be covered by REMIT fees each year should be based on ACER's annual establishment of the budget according to Article 33 of the ACER Regulation. Each year, ACER's Director shall draw up a draft estimate of the costs associated with the activities of collecting, handling, processing and analysing

information reported under REMIT and the program of work anticipated for the following financial year. The provisional draft estimate shall be based on the objectives and expected results of ACER's Programming Document that the Director shall submit to the Administrative Board. It shall take into account the financial resources that are necessary to achieve those objectives and expected results.

After the scrutiny of the estimated costs associated with the activities of collecting, handling, processing and analysing information reported under REMIT by the Commission, European Parliament and Council in the context of the yearly budget process and the Commission Opinion on ACER's Programming Document, and the final adoption of the general budget of the Union, ACER's budget shall be adopted by the Administrative Board with the (eventually) necessary adjustments and the overall amount to be covered by REMIT fees will be established.

Questions for consultation: *Do you agree with the methodology proposed for defining the overall amount to be covered by REMIT fees each year? If not, what alternative methodology would you propose? Please provide explanations.*

4.3. Who should pay REMIT fees?

As the REMIT fees are due for collecting, handling, processing, and analysing information reported by market participants or entities acting on their behalf enabling them to report data pursuant to Article 8 of REMIT in an efficient, effective and safe manner, there are, in abstract, two potential candidates for being the addressees of the fees: market participants or entities acting on their behalf as registered reporting parties.

Whilst market participants are registered with national regulatory authorities (NRAs) according to Article 9 of REMIT, the Agency registers reporting parties, i.e. market participants or entities reporting on their behalf, fulfilling the technical and organisational requirements for reporting data to ensure efficient, effective and safe exchange and handling of information for the purpose of reporting information according to Article 8 of REMIT.

Therefore, the most cost-effective solution seems to be having ACER collecting REMIT fees directly from reporting parties registered with ACER. In addition, since ACER is only collecting REMIT information through registered reporting parties, ACER can de facto only provide data collection services to these entities.

Finally, the collection of REMIT fees by ACER directly from the more than 10,000 market participants does not seem to be a cost-effective solution and would significantly increase the implementation costs of the REMIT fee scheme. This would ultimately result in higher REMIT fees potentially disrespecting the principle of avoiding placing an undue financial or administrative burden.

Therefore, reporting parties registered with ACER according to Article 11(1) of the Commission (REMIT) Implementing Regulation (EU) No 1348/2014 should be the REMIT fee addressees.

Questions for consultation: *Do you agree that reporting parties registered with ACER should be charged with paying the fees? If not, from whom and how should the fees be collected?*

4.4.How should REMIT fees be calculated?

Taking into consideration the principle of proportionality to the costs, the Commission proposes that the fee structure should take into consideration two elements: the main cost drivers and the profile of these cost drivers.

The main cost drivers of the relevant services are: (1) the number of reporting parties registered with ACER according to Article 8 of REMIT and Article 11(1) of the REMIT Implementing Regulation which need to be assessed, registered and supervised with regard to their compliance with the technical and organisational requirements for reporting data to ACER; (2) the number of market participants these registered reporting parties report for; and (3) the number of records of transactions⁷ reported to ACER that need to be processed and analysed.

The main cost drivers are to be taken into consideration in order to ensure that the level of the collected REMIT fees may evolve in the same direction of the relevant costs with a view to ensure sustainable REMIT fees. For example, if the relevant costs are directly correlated with the number of registered reporting parties, number of market participants, and/or numbers of records of transactions then the REMIT fees should consider these cost drivers in its structure.

The profile of the main cost drivers is another element to be taken into consideration in the fee structure. This is the only way to ensure that not only costs and revenues evolve in the same direction but also proportionally.

Taking that into consideration, together with the principles set in the legislation for determining the REMIT fees, it is the Commission's understanding that the optimal solution for the REMIT fee structure will be a mixed fee structure encompassing a fixed and a variable component that takes into consideration the main cost drivers for the relevant activities.

Questions for consultation: *Do you agree that these are the key considerations for defining the methodology for calculating REMIT fees? Are there additional elements? How should the different cost drivers be weighted in the methodology? Do you have preferences or specific proposals as regards the methodology? Please provide explanations.*

4.5.When and how should the REMIT fees be paid?

Taking into consideration that all activities related to collecting, handling, processing, and analysing information reported pursuant to Article 8 of REMIT are continuous activities, the timely collection of the REMIT fees is vital to ensure the necessary cash inflows to cover ACER correspondent expenditure throughout the year.

⁷ Article 8 of REMIT covers data reporting of both data related to trading activities and fundamental data. However, as REMIT establishes a market monitoring regime to monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation, REMIT is primarily a transaction-reporting regime. Additional fundamental data is only collected to complement the collected records of transactions.

Therefore, ACER should be charging the REMIT fees before the services are provided in accordance with Article 71 of its Financial Regulation. The REMIT fees should be charged annually as a sort of enrolment or supervisory fee.

Debit notes should be issued in the first working days of January for the current financial year and will have a fixed settlement period of 30 days.

In case the amounts of the issued debit notes are not fully recovered by the deadline specified in the documents, ACER shall immediately launch the procedure for 'effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance' in accordance with Article 68 of ACER's Financial Regulation.

Questions for consultation: *Do you agree with the proposed way when and how REMIT fees should be charged? If not, what process would you propose? Please provide explanations.*

Contact

Responsible service: DG Energy, Unit B2 – Wholesale markets; electricity & gas

Email: EU-ACER-REMIT-Fees@ec.europa.eu

Annex

Background information on REMIT data reporting

Figure 1:

Number of registered market participants (MPs) versus number of MPs actively reporting records of transactions

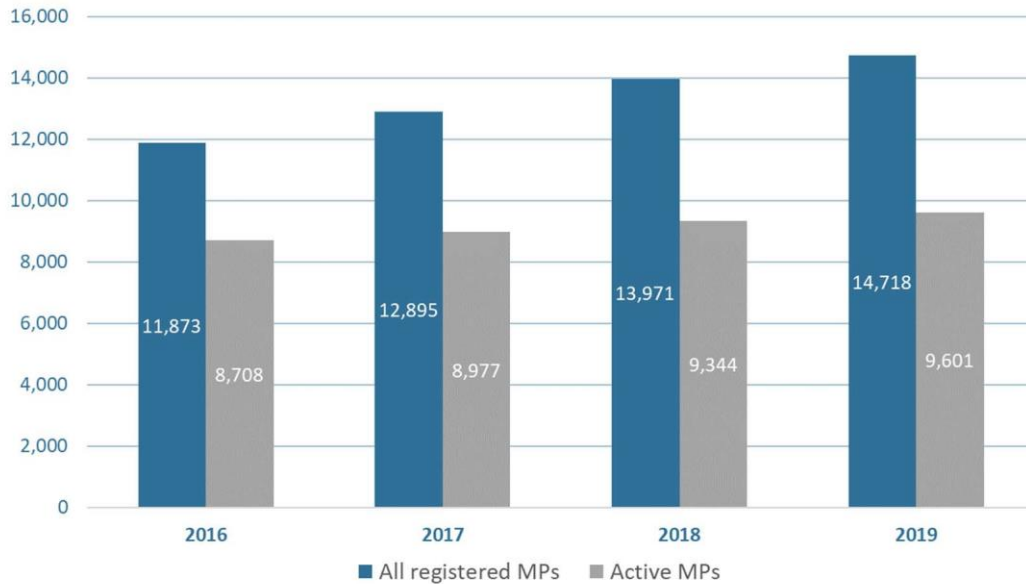


Figure 2:

Number of registered reporting mechanisms (“RRMs”) versus number actively reporting RRM

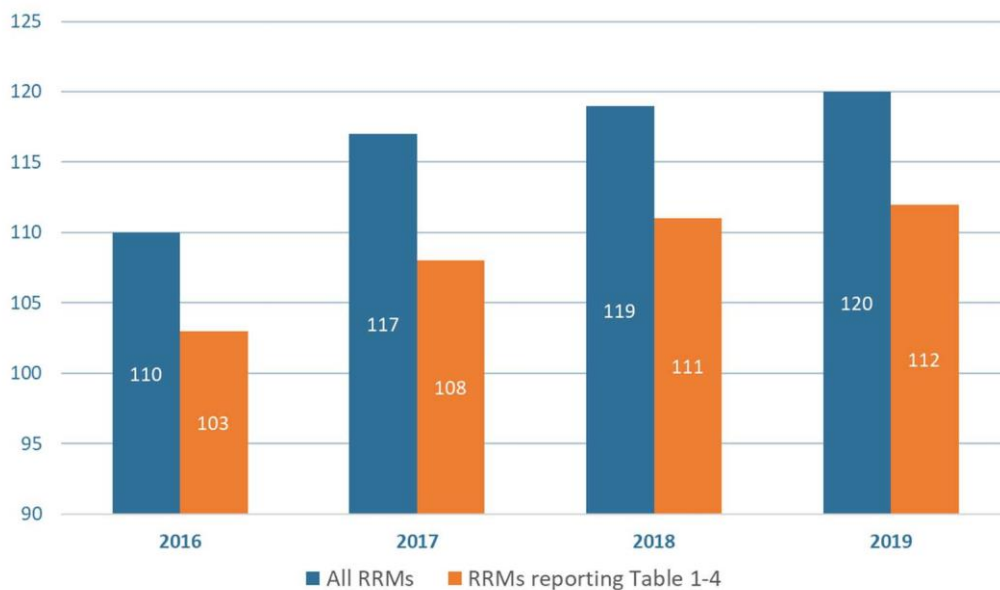


Figure 3:

Number of records reported to ACER on an annual basis



Figure 4:

Distribution of MPs according to reported no. of records for 2019

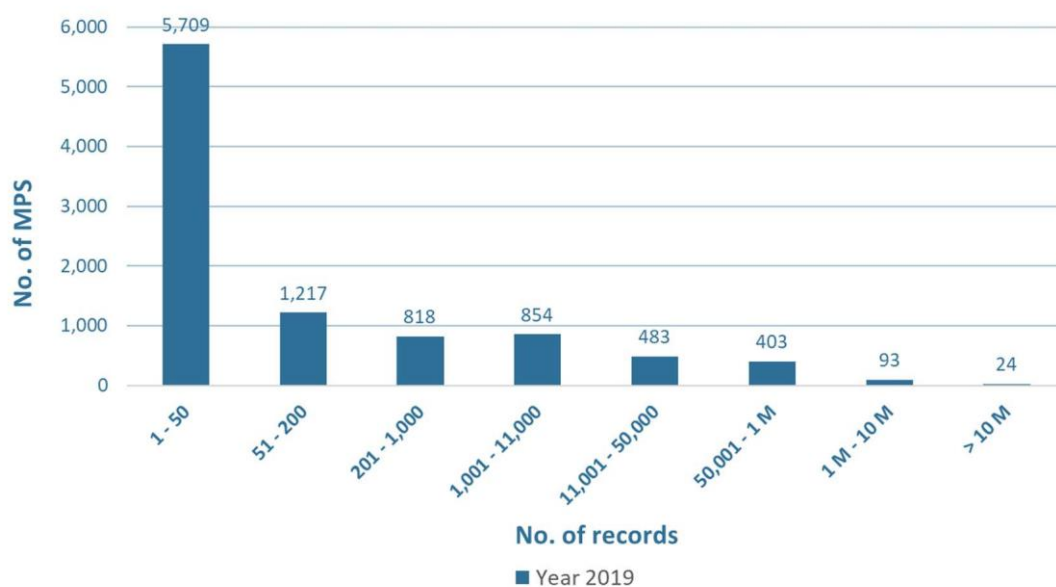


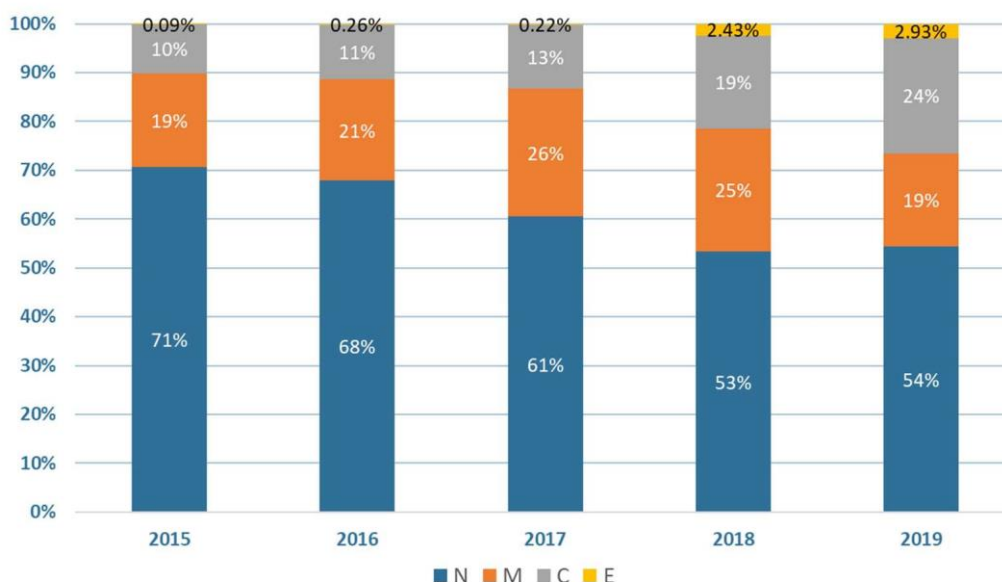
Figure 5:

Breakdown of records of transactions, including orders to trade



Figure 6:

Breakdown of lifecycle events (N-New⁸, M-Modify⁹, C-Cancel¹⁰, E-Error¹¹)



⁸ When the report contains a contract or an order to trade for the first time, it is identified as 'new'.

⁹ When the transaction report contains a modification of details of a previous report, it is identified as 'modify'.

¹⁰ When the report contains a cancellation of a wrongly submitted report, it is identified as 'error'.

¹¹ When the report contains a termination of an existing contract or order to trade, it is identified as 'cancel'.