

EUROPEAN COMMISSION
DG Energy
Unit B2 – Wholesale markets; electricity & gas
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Kontakt	DW	Unser Zeichen	Ihr Zeichen	Datum
Dipl.-Volksw. Alexandra Gruber	211	AG/CF – 12/2020	DG Energy U B2	17.08.2020

**Consultation paper on the planned Commission Decision setting the fees due to ACER 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 (REMIT)
Comments by Oesterreichs Energie (Register ID number: 80966174852-38)**

Dear Madam,
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to comment on the public consultation on the planned Commission Decision setting the fees due to ACER for tasks under REMIT. Oesterreichs Energie represents more than 140 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

Generally, we would like to stress that ACER itself should dispose of sufficient resources to fulfil its tasks under the Regulation (EU) No 1227/2011 (REMIT). The introduction of fees was initially not intended, as recital 19, REMIT clearly states “reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants”. Furthermore, recital 28 touts: “The Agency should be provided with appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under this Regulation”. Even recital 37 of the Regulation (EU) 2019/942 emphasizes: „ACER should be properly resourced to carry out its tasks. ACER should be mainly financed from the general budget of the Union.” For these reasons we generally prefer to avoid the obligation to pay special fees due to ACER 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 (REMIT).

As ACER supports NRAs on REMIT breaches we propose – if necessary – using fines collected for REMIT infringements for (at least partially) covering the Agency's costs.

If it is actually inevitable to provide an adequate financial basis without fees for a limited time, we have to comment on the consultation questions as follows:

Question 1: 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.

We do not agree.

In the consultation paper we identified many activities which in our view **do not fall under the provisions of Article 32 (1) (b) and are therefore not deemed to represent the intention of the legislator**, which is expressed in recitals 19 and 28 of REMIT, recital 37 (cited above) and even paragraph 2 of Article 32 of the Regulation (EU) 2019/942:

“...The fees shall be proportionate to the costs of the **relevant** services as provided in a cost-effective way and shall be sufficient to cover those costs. Those fees shall be set at such a level as to ensure that they are non-discriminatory and that they **avoid placing an undue financial or administrative burden on market participants or entities acting on their behalf.**”

We would like to name the activities listed in the consultation but without being relevant for the collecting, handling, processing and analyzing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 (and thus to be financed from the general budget of the Union):

REMIT information management

- 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;

- 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);
- 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;

REMIT market surveillance and conduct

- 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;

REMIT fee management

- 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,...);
- Accounting and reporting on the implementation of the annual revenue.

We are of the opinion that only the remaining tasks are directly connected to the collecting, handling, processing and analyzing of information and only costs arising from these activities should be covered by REMIT fees.

Therefore, ACER shall draw up a draft estimate of the costs associated with the activities **clearly linked** to the collecting, handling, processing and analyzing of information reported under REMIT.

One activity of uttermost importance – not listed in the consultation – is the provision of access to ARIS to the market participants (or at least providing a copy of reports to the MPs).

There is still no possibility for market participants to check whether the reports from RRM to ACER on their behalf are correct. Only market participants are able to assess the completeness and accuracy of the information collected, handled, processed and analysed by ACER.

Question 2: 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?

If this is the most cost-effective solution overall (i.e. not only for ACER), we agree. We expect full transparency in the calculation of the fees.

Question 3: 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.

A mixed fee structure encompassing a fixed and a variable component might be the optimal solution. A higher fixed component will be burdensome for smaller market participants and vice versa. We are calling for keeping the overall costs low and being as transparent as possible.

Question 4: 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.

We have not found any explanation on how a potential over budgeting would be handled by the Agency.

Thank you for considering our comments. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,



Mag. Dr. Michael Strugl
President



Dr. Barbara Schmidt
Secretary General