

Position Paper

ACER Guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services

Berlin, 7. May 2013

Introduction:

BDEW welcomes the opportunity to respond to ACER's consultation for the Guidelines for the registration of RRM and for the registration of RIS as well as for the Technical Standards for Trade Reporting. BDEW would like to highlight that in Germany alone there are over 800 registered balancing responsible parties, 700 balancing responsible network operators in gas and 800 balancing responsible network operators in electricity. These roughly 2000 market participants will have to register and their reported data will have to be processed subsequently. Many of these market participants, BDEW estimates around 300, are active outside the German market as well.

Main Points

BDEW would like to highlight some aspects which are crucial for answering this consultation of the Guidelines for the registration of RRM and for the registration of RIS. As stated before in order to avoid any unnecessary additional burden e.g. through non-harmonised reporting obligations (double or even multiple reporting obligations for similar data) - it is crucial to synchronize standards and requirements across the various relevant regulatory reporting requirements (REMIT, EMIR, etc). BDEW again demands that both authorities (ACER and ESMA) are obliged to further intensify cooperation and establish common views on reportable contents, reporting processes, formats and specific requirements. It is necessary to be transparent about the following steps regarding reporting processes and the definition for the scope of RRM and RISs. Therefore BDEW's assumption for answering this consultation is that RRM and RISs are defined as in the ACER consultation dating from June 2012 (Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of Regulation (EU) No 1227/2011). BDEW would like to recommend transferring the final definitions for RRM and RISs into the corresponding implementing act.

Article 8 (4 a) stipulates the possibility for the market participants to choose for reporting their transaction by services on behalf of 3rd parties and RRM established by market participants for the purpose of reporting their own transactions. The same possibility for choosing reporting mechanisms for transaction reporting is given by EMIR. This possibility should remain and be recognised for the implementation of RRM and RISs. Therefore BDEW would like to emphasize again that ACER must recognize an important distinction between RRM that want to establish reporting services on behalf of 3rd parties and RRM established by market participants for the sole purpose of reporting their own transactions (and possibly those of related group entities or counterparties) directly to ACER. It is BDEW's view that the requirements and obligations of non-third party RRM should be minimised and only focused on the issue of establishing and confirming compliance with ACER's electronic communication protocols.

Another important point is the question of liability for the RRM. The Guideline does not refer to the liability of RRM at all. Accordingly the same must apply for ACER. Therefore BDEW strongly recommends such provisions.

I. General questions

- 1. The registration process for both Registered Reporting Mechanisms and Regulated Information Services comprises two stages: Firstly, the Agency will review a written application, and if appropriate make a provisional registration (pre-registration of the applicant); secondly, the Agency will make a final registration subject to successful integration with the Agency's technology as described in the Agency's „*Technical Specifications for Registered Reporting Mechanisms and Regulated Information Services*” document. For reasons of operational reliability, the technical specifications document will be kept confidential and applicants will have to sign a non-disclosure agreement before receiving a copy of the technical specifications document. This is a best practice applied by national financial regulators under EU financial market rules which the Agency also intends to apply for REMIT purposes. Please indicate your views on the proposed approach for the registration process.**

Answer:

BDEW agrees with the proposed registration progress and welcomes the approach to use best practice applied by national financial regulators under EU financial market rules. However, the reporting requirements should not significantly add new processes and costs in particular to market participants for whom EU financial market rules currently do not apply. Additionally the reporting requirements should be synchronized under REMIT and EMIR.

- 2. According to the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER's consultants, it is currently considered that only Registered Reporting Mechanisms and Regulated Information Services with legal status in an EU Member State or an EEA country should be eligible to become a Registered Reporting Mechanism or Regulated Information Service. Please indicate your views on this suggestion.**

Answer:

BDEW agrees with the proposed suggestion but sees the need to further define the “legal status”. It must be clear that this should only apply for in Europe incorporated entities. It is crucial that the IT-Server for collecting these data reporting must be subject to the EU jurisdiction and the European data security requirements are fulfilled.

- 3. Do you have any general remarks on the draft RRM and or draft RIS Guidelines?**

Answer:

Please see the comments in the main points.

II. Questions concerning the draft RRM Guidelines

As stated in the main points BDEW would like to emphasize again that ACER must recognize an important distinction between RRM that want to establish reporting services on behalf of 3rd parties and RRM established by market participants for the sole purpose of reporting their own transactions (and possibly those of related group entities or counterparties) directly to ACER. Therefore it is BDEW's view that the requirements from the following question number 1, 2, 3 and 4 should only apply for third party RRM.

- 1. The aim of the Guidelines is to ensure operational reliability of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. Should Registered Reporting Mechanisms be required to have an ISO certification 2701 or similar to become a Registered Reporting Mechanisms as proposed in the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER's consultants?**

Answer:

At first BDEW would like to make the amendment that the referred ISO-certification should be Number 27001 (Information technology – Security techniques – Information security management systems – Requirements (ISO/IEC 27001:2005)).

BDEW generally agrees with the proposed requirement to have this ISO certification or similar to become a RRM (although it should be considered where the same requirements would be needed for RRM established by market participants for the sole purpose of reporting their own transactions). Accordingly the same IT-requirements must apply for ACER.

- 2. The draft RRM Guidelines currently foresee a simplified registration procedure for trade repositories registered according to EMIR. Do you agree with this approach?**

Answer:

BDEW agrees with the approach to foresee a simplified registration procedure for trade repositories registered according to EMIR. As stated before, BDEW would like to refer to the need of further alignment of reporting under REMIT and EMIR and further coordination of ESMA and ACER.

However, the guideline does not clearly specify how such a simplified registration procedure could look like. Under the assumption of completely aligned data reporting obligations one could imagine EMIR-licensed trade repositories only registering with ACER as RRM. The licensing requirements are quite detailed that BDEW would welcome ACER and ESMA exchanging information among themselves for the purposes of cross-registration.

In case data reporting requirements cannot be aligned completely, it would be enough if the trade repository proves its technical ability to provide REMIT-data in the ACER-format. Everything else like data security etc. is checked when registering with ESMA.

3. Please express your views on the RRM criteria proposed.

Answer:

From BDEW's point of view the RRM criteria does not reflect the criteria from the proposed ISO standard. If the ISO standard is applied, the RRM criteria must be updated in case the ISO standard is changing.

For pt 4.6. it remains unclear how a RRM can fulfil these general obligations. E.g. how should a RRM ensure that no unauthorised surveillance has taken place?

Please note that the term "unauthorised surveillance" is undefined and might be used differently in the EU Member States.

4. Should Registered Reporting Mechanisms, for reasons of operational reliability, be required to support their annual reports, upon request and with at least 12 months' notice, by a recognised external auditor's report which confirms that the Registered Reporting Mechanism met all the criteria in the preceding 12 months?

Answer:

BDEW agrees with the proposed approach. However it remains unclear what happens if the RRM doesn't fulfil the criteria anymore. Which possibilities do users of the RRM have, if the RRM loses its status or has to adjust its procedures? This should be clarified. Furthermore, technical specifications and requirements need to be clearly defined so that operational reliability is provided at any time.

However as stated before, the required ISO-certification and the additional annual report should not apply for RRM established by market participants for the sole purpose of reporting their own transactions. The request of providing an additional report would cause unnecessary financial and administrative burden to the concerned parties.

III. Questions concerning the draft RIS Guidelines

1. Do you agree with the three different types of Regulated Information Services proposed and the distinction made concerning their reporting of information?

Answer:

BDEW generally agrees on the need to centralize the publication of inside and transparency information at national, regional and European level in order to guarantee the widest possible availability of information to market participants.

As written in the ACER recommendation No 10 dated October 23rd 2012: Regulated information should be reported to the Agency through registered Regulated Information Services (RIS).

Inside information should be reported through the service providers disclosing inside information on behalf of market participants or collecting the data through web feeds from company websites, when defined.

Transparency information should be reported according to applicable standards through the existing sources or sources currently being developed for the publication or reporting of such information, i.e. through ENTSO-E, ENTSO-G, or through the TSOs, SSOs or LSOs or RIS already reporting inside information directly if the information is otherwise not available, unless the sensitivity of the individual data requires direct reporting by the market participant to the competent NRA(s) and/or the Agency.

Therefore BDEW sees no need to report directly fundamental data or inside information additionally to ACER, when such information is already published on publicly available websites.

- 2. Do you agree that ENTSO-E and –G transparency platforms should play a crucial role in the reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including network codes and guidelines, and be treated differently than other information sources?**

Answer:

BDEW agrees that ENTSO-E and – G transparency platforms should play an important role in the reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including network codes and guidelines. Despite this fact the ENTSO-E and –G transparency platforms should not be treated differently than other platforms. It is necessary to define standards which apply to all platforms where a lot of data is reported.

- 3. Do you agree that it should be sufficient that inside information platforms make their information available to the Agency through web-feeds?**

Answer:

BDEW agrees that inside information platforms make their information available to the Agency through web-feeds. The use of web-feeds to report inside information to the Agency can contribute to reducing costs. It must be assured that this way of communication should only be used for the defined purpose and not for any additional data transmission.

- 4. Do you agree that the technical specifications document should be the same for Regulated Information Services reporting individual and non-aggregated information than for Registered Reporting Mechanisms reporting confidential trade data due to the same sensitivity of the information?**

Answer:

This question is difficult to answer. It seems to be difficult to clarify the specifications for these two very different mechanisms in just one document especially as data reported by

RRMs will be treated confidentially while RIS provide data through web feeds. Else there is no need to discuss a version of RIS with simplified requirements as a RIS has to publish its data and it is part of a RIS's functions to serve the public by taking care of public access to this data.

There is an urgent need for market participants to have the chance to organize their transaction reporting by themselves for reasons of safety, cost-control and the possibility to take into account special organisational and IT-situations within the companies concerned.

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