info@etr-advisory.com
www.energytradingregulation.com

What is new in the 14th edition of the REMIT Q+A?

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ACER issued the 14th version of the REMIT Questions and Answers document last Tuesday 16th February, just before the start of the 11th public workshop on REMIT.

The document contains some important answers, which has some important implications for market participants. In particular, the new answers on pages 46 – 49 of the document give rise to important implications on the respective liability of Organised Market Places (OMPs), Registered Reporting Mechanisms (RRMs) and market participants, when signing a data reporting agreement.

There are also a number of answers giving guidance around the issuer of "consumers" and other "caught" market participants and a delay announcement of the new Inside Information publication requirements.

This brief note will look at all of the new answers in the document, and provide a few of the author's thoughts in (*bracketed italics*). Nothing in the document should be taken as legal advice. Items to which the author wishes to bring to the particular attention of the reader will be marked in **bold**. The note will use summaries of both questions and answers in most cases, and group answers as per subject.

The Questions and Answers document itself can be downloaded from the following location:

https://www.acer-remit.eu/portal/document-download?documentId=2703

Market Participant Registration and "Final Customers"

May a market participant de-register from the CEREMP if no longer trading in the wholesale market? (II.4.44, page 27) – Yes, if all previously entered into contracts are delivered. It is necessary to contact the NRA to affect the removal.

What obligations does a market participant have under REMIT if the market participant owns or controls multiple sites as a single economic entity, each of which has a consumption capacity less than 600GWh, but which have a total technical capacity to consume more than 600GWh?? (II.4.45 page 27) – The answer differentiates between the market participant being in REMIT, as per the REMIT Act, and the contract being reportable (it is not, according to the answer). The answer reminds that only contracts for consumption are subject to the exclusion. Any contracts entered into on an OMP by the participant, or other wholesale activity, is reportable. There is also a reminder that all of the inside information and anti-manipulation rules still apply.

What contracts are "final customers" required to report? (III.3.32 page 61 and III.4.6 page 65) – If the contract is one to supply a single consumption unit of less than 600 GWh pa, it is not reportable. However if the final customer trades on an OMP, or trades gas and power derivatives, or engages in "sales" trades, they must be reported.

Do transportation contracts with a final customer below the threshold need to be reported? (III.3.33 page 61) – Yes, these are not one of the "on demand" types of contract.

Use of OMPs, RRMs and other routes to reporting

How can a single view of all data sent by different OMPs be achieved without reporting through a single RRM? (II.4.45, page 28) – This answer recommends that for on venue data, market participants utilise either the data reporting agreement provided by the OMP, or an RRM selected by the OMP. In this case though, the answer recommends that those who wish to see an aggregate view of all on venue data, ask a third party to collect it. Having all of the data in the one place, with appropriate linkages, can thus be put in one place

However the answer differentiates between such data collection from actually reporting to ACER, where it appears to recommend reporting through the OMP or RRM selected by the OMP.

***Does the "11(2)" (in the Implementing Act) requirement for market participants to "verify the completeness, accuracy and timeless of data which they submit via third parties" differ depending on the route chosen for reporting? (III.2.44 page 47)* – Yes. According to the detailed answer given there are three possibilities:**

1) **Signing the data reporting agreement that the OMP is required to offer, where the OMP itself is the RRM**

2) **Signing the data reporting agreement that the OMP is required to offer, where the OMP delegates the function of reporting to an RRM chosen by the OMP**

3) **Utilising a different RRM to the OMP or that chosen by the OMP (in number 2).**

The answer given by ACER states that those choosing one of the first two routes are "relieved from taking reasonable steps to verify the timeliness, completeness and accuracy of the data".

On the other hand, those taking the third route will still need to comply with the requirement. The answer goes on to state that in the third case, the RRM in question will need to be able to provide all of the correct IDs, including the contract ID, and may be discontinued if it fails to do so. However it does indicate that the OMP is responsible for ensuring that any data it provides either to the third party RRM or market participant is accurate.

(*The implications of this answer are that market participants take on an additional liability if they choose not to use an OMPs data reporting agreement, whether direct or through their chosen RRMs. This will have important ramifications for any market participant that has already chosen the third route*).

May an OMP limit its liability under "11(2)" as part of a data reporting agreement (III.2.45 page 49) – No, if the market participant signs the data reporting agreement (i.e. numbers 1 or 2 in the previous answer) then the delegation of any such responsibilities in the contract are "illegal".

(This answer also has important ramifications in the event that a market participant has signed such an agreement. In effect the delegation of responsibility would appear to be null and void).

"A registered market participant would like to report its non-standard contracts. Does this entity need to register as an RRM and fulfil all criteria concerned in order to be able to report its contracts: (a) for itself and (b) eventually on behalf of its counterparties?" (III.2.37 page 44) – The question appears to ask if it is mandatory for anyone who wishes to directly or indirectly report non-standard contracts to become an RRM. However the answer given only considers the example of those who wish to self-report, in which case it gives some instruction.

Which reporting interfaces may a "self-reporting" market participant select? (III.2.38 page 44) – This has for now been restricted to Web GUI.

What is ACER's recommendation on whether to become a self-reporting RRM or to use an existing RRM? (III.2.39 page 45) – The answer recommends that market participants use third party RRM and reminds that becoming an RRM involves not only an upfront cost but an ongoing one to keep up with required changes.

What happens if an RRM cannot send data on time? (III.2.40 page 45) – The answer refers to the "ARIS Contingency Plan" which is to be used on such an occasion. However there is a reminder that **market participants are responsible for such data reporting and that any data reporting agreement should take the contingency plan into account.**

What happens if data is not matched between both sides of a report? (III.2.41 page 45) – If data does not match ACER may investigate via the RRM.

What is the reporting procedure in the event of force majeure being declared by the RRM or market participant? (III.4.42, page 46) – This is outlined in the ARIS Contingency Plan.

Is there a requirement to send data to third party RRMs in ACER XML? (III.4.43 page 46) – No, the format in which a market participant sends data to a third party RRM is agreed between the parties. There is a reminder that the third party is responsible for sending the data to ACER, with the "11(2)" requirement on the market participant to verify completeness, accuracy and timeliness. (See above).

Transportation and LNG contracts

Should gas storage nominations be reported as trades? (III.3.30 page 60) – No, storage contracts are not reportable. Gas storage data should be reported as fundamental data.

Are "cash outs" reportable? (III.3.31 page 61) – No, because there are part of balancing and therefore considered one of the four type of trade that are only reported "on demand", as per the Implementing Act Article 4(1).

Are contracts for the supply of LNG within the scope of REMIT (III.3.34 page 62) – Yes, these are to be reported if delivery is in the Union, "without doubt".

Inside Information Publication

What is the timeframe for complain with the requirement to publish inside information in the format outlined in the Manual of Procedures section 7.3.1 in a "web feed"? (III.7.5 page 68) – **This is now delayed to 1 January 2017.**

Who is responsible for breaches in the obligation to publish inside information in the event that the requirement is delegated to a third party service provider? (III.7.6 page 69 and III.7.8 page 70) – Delegation of responsibility occurs so long as the market participant has "taken reasonable steps to verify that the third party service provider is capable of disclosing inside information on the market participant's behalf in an effective and timely manner". However the answer goes on to state that market participants are responsible both for ensuring that the correct data is provided to inside information platforms, and that they must take reasonable steps to verify the completeness, accuracy and timeliness of the disclosure. Those utilising their own web sites are fully responsible for publication.

Does publishing inside information on the ENTSO-E transparency platform fulfil the REMIT publication requirements, given that it does not publish the identity of the market participant (III.7.7 page 69) – The detailed answer seems to imply that **as of 1 January 2017, if the market participant is not shown on this or any other platform, it is non-compliant.**

About ETR Advisory

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