REMIT fees: avoiding potential negative impact on wholesale energy markets

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ACER Regulation[1] introduces fees as an additional source of funding to cover the costs of REMIT related activities ("REMIT fees") performed by ACER. Article 32 defines the principles for setting the fees: "The 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". DG Energy and ACER have prepared a proposal for a fee structure (hereafter Proposal) that was presented during the stakeholder workshop on 15th July 2020[2].

We support that ACER shall be properly funded to perform its important activities. Nord Pool and other energy exchanges, members of Europex, have worked on a consultation response, which was also published as a position paper on Europex's website[3]. Energy exchanges share a position that there are several key principles that need to be reflected in the final fee structure to ensure a level-playing field and minimal effect on the transparency and liquidity of the market. This paper sums up the points that Nord Pool sees as the most important in ensuring the continued functioning of the internal energy market.

In addition to the principles below, we would also like to point out that RRMs will need sufficient implementation time to ensure the necessary legal, financial, and operational mechanisms and amend the relevant contractual obligations. This is especially relevant for the first year of implementation.

Transparent and clear fee calculation is needed per market participant

Charging the fees directly to Market Participants would be the most efficient approach with RRMs collecting the fee as intermediaries. RRMs can assist in collecting the fees to reduce the implementation and handling costs but should not have the responsibility for calculating or paying the fee themselves.

Charging the fees to RRMs, who are also NEMOs, may distort a level-playing field for NEMO competition. NEMOs may distribute the fees to market participants in different ways, depending on the size and the ability of a NEMO to absorb the fee or cross-subsidise it through other activities. In this respect, and considering the complexity of REMIT data, it is crucial that ACER performs fee calculation per each market participant.

[1] 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 (Text with EEA relevance): link

[2] Link to the consultation, open until 31st August 2020: link

[3] Link to the Europex position: https://www.europex.org/consultation-responses/europex-response-remit-fee-design/

In Nord Pool's view, the wording in the ACER Regulation does not provide a legal basis for imposing the full amount, due as REMIT fees, on the registered reporting mechanisms (RRMs). Recital (37) provides that ACER can request fees for "services provided to market participants or entities acting on their behalf enabling them to report data pursuant to Article 8 of Regulation (EU) No 1227/2011". This wording implies that RRMs can only be charged for the services provided to them (e.g. registration, supervision)[4]. ACER's costs relating to the use of data cannot be charged to RRMs.

Connected to the above argument, the fees will also place an undue administrative and financial burden on RRMs contrary to the provision in Article 32(2) of ACER Regulation, as RRMs will not benefit from the ACER services related to processing and analysing the data, while they will incur significant costs. RRMs will also carry a significant financial risk, as they will not be able to ensure that market participants who generated the trading data are still in a contractual relationship with the RRM, when the ACER fee is due.

Fees shall not penalise the transparency of trading

The Proposal specifies that part of the REMIT fee will be based on all records of transactions, including orders as well as lifecycle events. This puts a disproportionate burden on market participants trading at organised marketplaces (OMPs), characterised by higher transparency of trading, compared to OTC trading or bilateral contracts. Trading in continuous power market – single intraday coupling (SIDC, former XBID) – appears to be affected the most[5]. Due to the design of this market, orders and lifecycle events create liquidity and market depth that are necessary for the market functioning. Higher transparency also facilitates the work of ACER and, therefore, shall be encouraged. Europex put forward a proposal to exclude orders and lifecycle events from the fee calculation in order to establish a level-playing field between OTC and on-exchange trading.

Cost base covered by REMIT fees must be reduced

The cost base covered by REMIT fees needs to be reduced – fees shall be strictly limited to the legal scope[6] of Article 32(1)(b) of ACER Regulation and play only a complementary role in ACER's funding based on recital (37) in ACER Regulation.

We are concerned that increased costs of trading could make it unprofitable for small and medium market participants to trade in wholesale energy markets. If the costs of taking part in the wholesale market are comparable to profit margins, small and medium market participants are likely to switch to trading through a representing company – with a likely effect of fewer market participants, higher volumes netted within the company, and the overall reduction of traded volumes.

The parties, financing ACER, shall have a possibility to scrutinize the costs, which increases in importance with the total amount to be covered by fees. To our knowledge, there are currently no legal mechanisms to allow scrutiny by the entities paying the REMIT fees.

REMIT fees shall be proportionate to the trading activity to minimise market impact

The Proposal specifies that the records-based part of the fee may be designed in buckets, depending on the number

[4] This is similar to Article 72 in Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), which allows ESMA to charge supervisory fees to the trade repositories covering the expenditures for their registration and supervision. Article 72 further states that supervisory fees shall be proportionate to the turnover of the trade repository concerned.

[5] REMIT Quarterly Q4 2019, published by ACER, specifies that transactions on electricity continuous markets represent more than 65% of all records reported to ARIS in 2019.

[6] For example, activities related to "REMIT fees management" or cooperation with ESMA or NRAs do not appear as costs of "collecting, handling, processing and analysing of information reported [...] pursuant to Article 8 of REMIT".

of records of transactions per RRM per market-specific dataset per market participant. In our opinion, this means that market participants, especially large ones, receive an incentive to collect all trading on one OMP, damaging the competition between NEMOs in areas, where Multi-NEMO Arrangements are implemented. Another disadvantage of the proposed bucket system is a significant difference of fees per transaction depending on the yearly number of records. This difference can lead to a situation when it is no longer profitable for smaller market participants to trade on wholesale energy market on their own account. Forcing small market participants to start trading through a representative would decrease the competition in wholesale energy markets.

Trading activity shall be expressed in the turnover (number of transactions and/or volume traded). Orders and lifecycle events shall be excluded from the calculation of the fees as they are necessary for functioning liquid markets. Further, while the last edition of the TRUM[7], published on 30th June 2020, did recently introduce criteria for the harmonization of RRM reporting of lifecycle events, homogenisation efforts are still ongoing. RRMs continue to be in the process of making changes to their systems, so lifecycle events that are reported before the homogeneity is achieved may not represent a fair ground for charging the fees.

The Proposal specifies that the REMIT fees will be implemented already in 2021, based on trading activity in 2020. Based on our experience, increased costs of trading may affect the trading of market participants, potentially even forcing some of the participants out of the market. We believe that market participants shall have an opportunity to reconsider their trading strategies based on the model picked for REMIT fees. We argue for ex-post application of REMIT fees at regular quarterly or monthly instalments. If ex-post application is not possible, the fees can be applied ex-ante, but only based on trading activity emerging after the approval of the REMIT fee model.

[7] REMIT Transaction Reporting User Manual Version 4.0.