

Response to REMIT fee design & implementation consultation¹

HUPX Group (HUPX Ltd., CEEGEX Ltd. and HUDEX Ltd.) welcomes the opportunity to take part in the consultation process. As a member of Europex², HUPX Group generally agrees on most of the messages of the association's Consultation response and hereby highlights the most important factors for CEE region to be considered in order to maintain the level playing field in the EU regarding REMIT.

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

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.

In our view the total amount of 8.8 m EUR³ should be revised and reduced in line with ACER Regulation⁴. We agree, that as a matter of principle, ACER should be given the proper resources to carry out its multiple tasks, including all REMIT activities. To cover these costs ACER Regulation is clear that the Agency should be 'mainly financed' from the general EU budget, with fees playing a limited, complementary role. Besides, given that Market Participants and other stakeholders do not have access to review the actual costs occurring the majority of ACER's income coming from the general budget of the Union would provide more clarity and transparency to the stakeholders.

We believe that the amount to be covered should be clearly defined and calculated on a multiannual basis to provide transparency and predictability. Multiannual approach would help mitigate the risks associated with the uncertainty of an unpredictable annual fee. The process should define the overall amount to be covered by REMIT fees for several years in advance. This will in turn ensure that the estimations for each annual budget respect the overall budget established for the relevant multiannual period. Large, unpredictable changes in fees should be avoided during and between the multiannual periods.

Activities covered by REMIT fees should be strictly limited to the legal scope of the ACER Regulation⁵ and at the same time should be proportionate to the costs incurred. These tasks are:

¹ [Available on the COM's website.](#)

² Europex is the association of European energy exchanges, the [response is available on its website.](#)

³ [ACER's Draft Outline of the 2021 Work Program](#) envisages a budget for the Agency of EUR 91 million for the next seven years, i.e. EUR 13 million on average per year. The EUR 8.8 million as stated in the Consultation paper as an estimate for ACER Article 8 activities in 2021 would constitute 67.7% of this number.

⁴ Recital (37) of 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, i.e. ACER Regulation.

⁵ Article 32(1)(b) of ACER Regulation states that fees shall be due to ACER for "collecting, handling, processing and analyzing of information reported by Market Participants or by entities reporting on their behalf pursuant to Article 8 of REMIT".

- collection of records of wholesale energy market transactions, including spot and derivative orders, transactions, fundamental data and inside information;
- REMIT data analysis to ensure completeness, accuracy and timeliness of reporting of information;
- operational reliability and data protection of REMIT information reported;
- market surveillance of trading activity on wholesale energy markets.

Therefore the list of tasks proposed in the Consultation Paper should be narrowed and tasks like assisting NRAs in fulfilling their duties under REMIT and assisting ESMA under MAR, MiFID II / MiFIR, EMIR shall be excluded. Furthermore, REMIT infrastructure costs (i.e. fixed costs related to investments) should not be recovered by fees as a general principle.

As the cost of the risks and risk management are not in the scope to be covered by REMIT fees, addressing any deficits as compared to the defined needs should be the task of the European Commission or ACER. Any surplus that is generated by the fees beyond the defined needs should be carried over into the next budgeting phase and be taken into account when calculating the fee level of the next budgeting period. As for possible income deficits, there should be a clear top-up mechanism by the European Commission to cover a lower than expected fee income.

The creation of a dedicated Stakeholder Expert Group on REMIT fees should be considered and we propose that ACER publishes a detailed report on the realization of the budget and the obtained fee revenues in regular reports as the final framework shall be transparent, impartial and subject to adequate monitoring and oversight. This would help to involve stakeholders more directly and would allow them to provide feedback on the functioning of the REMIT fee system. In addition, the Stakeholder Expert Group could provide information on expected future market developments with a likely impact on fee revenues. Involving the most important stakeholders will ensure transparency and predictability of the process. In our view Market Participants should be able to understand and validate the overall amount to be covered by REMIT fees.

4.3 Who should pay the REMIT fees each year?

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?

The exact expressions for different stakeholders have to be properly defined. First of all, as it is frequently used in the present Consultation Paper, we would like to share our understanding of the term 'Registered Reporting Party' (RRP) for the purpose of REMIT fees as we are not aware of a legally established definition or a comprehensive list of RRP. In the spirit of the Consultation Paper and REMIT, we consider that RRP include all directly reporting Market Participants (MPs) and Registered Reporting Mechanisms (RRMs), the latter includes Organized Marketplaces (OMP), Trade Repositories (TR) and infrastructure operators for the reporting of fundamental data.

The responsibility for paying the fees and the mechanism for collecting the fees must be considered separately. Article 8 of REMIT made it clear that the ‘overall responsibility’ for reporting lies with Market Participants. Thus the most appropriate, proportionate and efficient approach is to levy the fees directly on Market Participants. We recommend that this is done via a transparent, clear and easy-to-understand formula enabling the fee calculation for each Market Participant. In case Market Participants cannot be obliged to pay the fees directly to ACER, then RRM can pay the fees directly to ACER based on the collected fees from Market Participants. It should be noted that regardless the stakeholders who pay REMIT fees, indirectly the fees will be paid by final energy consumers.

RRMs can assist in collecting the fees to reduce the implementation and handling costs. The fees must be designed in such a way that RRM can collect them based on invoicing data directly provided by ACER to RRM and due to the former fixed fees per RRM should be abolished. Article 8 of REMIT also states that RRM may act on behalf of the Market Participants to ensure timely and correct reporting.

The collection of REMIT fees should be the task of all RRM as excluding certain actors or certain types of contracts would be discriminatory. REMIT monitors both commodity trading activities⁶ and the transportation of those commodities⁷ conducted by Market Participants. Consequently, all Market Participants who enter into and report contracts should be paying the fees. As a response to DG ENER-ACER workshop⁸, we would like to reiterate the importance of including e.g. the 2.5 million records of fundamental data as well as supply transport contracts in the final fee design.

REMIT fee collection should not create extra competition and the nature of different types of RRM should be considered regarding reporting obligations and cross-subsidization. There are at least two types of RRM: those who decided to offer the respective services deliberately and those who are obliged to offer their services by law in accordance with REMIT Implementing Regulation⁹. Should the fees be directly imposed on RRM, structural and legal differences between the RRM will become evident and will lead to fundamental differences in the way that RRM compete with each other, as OMPs would be obliged to continue their reporting services while other RRM would have the option to discontinue their activity. This approach would be highly discriminatory and may eventually lead to a situation where the REMIT fees would be mainly if not exclusively borne by OMPs. While some RRM (e.g. TSOs) have an opportunity to cross-subsidize the REMIT fees (e.g. through grid tariffs), competitive RRM do not have such an opportunity and will have to pass on the fees to Market Participants and incur an economic loss through cross-subsidization. In addition, the fee-absorption capability may differ between competitive RRM. Since the REMIT reporting structure is fixed, competition in this area would imply that RRM who offer other services outside of reporting may choose to cross-subsidize the reporting service, especially if they can recover the costs for their other services elsewhere. Incentivizing a race to the bottom, i.e. creating a strong incentive

⁶ Supply Contracts reported through REMIT Table 1 and 2.

⁷ Transportation Contracts reported through REMIT Table 3 and 4.

⁸ Virtual stakeholder workshop on the ACER REMIT fee scheme held on 15th July 2020.

⁹ According to Article 6.1 of REMIT Implementing Regulation, Organized Marketplaces have to report the trading activity on their venues.

for cross-subsidization would clearly put an undue financial burden on RRM and the related companies while indirectly distorting their ability to compete on service quality, trading fee levels and product innovation. Charging the fees directly to Market Participants can help to avoid these problems.

4.4 How should REMIT fees be calculated?

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.

According to the DG ENER-ACER workshop the proposed fee design would highly discourage trading on regulated and transparent trading venues, i.e. the exchange-based trading. We agree with the principle that the REMIT fee-setting should be simple, easy to execute and transparent. The fee methodology should ensure that the fee level per Market Participant corresponds to actual trading activity. However organized trading venues differ substantially from other marketplaces or instruments to enter into wholesale energy transactions. Exchange-based trading is in line with EU objectives and has many advantage, like publishing market prices and volumes, ensuring anonymity among market participants, applying the most sophisticated market surveillance techniques and implementing the most refined market rules. This comes at a cost, which is usually considered a downside of OMP trading and puts them at a commercial disadvantage.

The final REMIT fee design must ensure that it does not add disproportionate cost to exchange-based trading as compared to trading OTC or bilaterally. Transparent trading via exchanges often implies the placing of multiple orders to match trades at the best available price, so the number of records are typically far higher on exchanges than via bilateral trading.

Including orders in the fee calculation discriminates against the most transparent markets and disincentives trading therein. This would place a disproportionate burden on small-scale transactions and would disincentives trading on the most transparent markets.¹⁰ Discouraging the placing of orders by addressing the same weight as trades in the final formula, would be contradictory to the promotion of market integrity and transparency. Order behavior and data have in the past proved indispensable to monitor and address abusive market behavior. Placing a fee on orders may also have unintended negative consequences for liquidity as it may affect the order depth of the market as well as the general price formation. This in turn may force Market Participants to enter into bilateral transactions. Another important aspect to consider is that the distribution of order records is non-uniform across the various markets based on their design and reporting schema defined in the REMIT Implementing Regulation. Fees shall apply only on unique record of trades as error in processing the reported data could be caused by the Market Participant, the RRM or even ACER.

¹⁰ According to the Consultation Paper, the concept of records of transactions includes both orders and trades. It is important to make an explicit distinction between orders and trades when referring to transactions for the sake of clarity and legal certainty.

The number of transactions (excluding orders and lifecycle events) should be the main fee component, but the traded volume should also be considered. The number of transactions directly reflects the extent of trading activities of a Market Participant in all market formats (exchange, OTC, bilateral) in a neutral manner and should thus be the main basis for the fee calculation. In addition, the significance of a market can be defined by the volumes traded, which is why we believe this component represents an additional important cost-driver and should be included in the formula. This component could also contribute to a level playing field between exchange trading (continuous trading, auction trading) and OTC or bilateral trading.

A clear distinction between standardized and non-standardized contracts is needed to reflect the actual workload of ACER when collecting, handling, processing and analyzing the reported data. What is important to highlight in this context is that a single standard transaction causes a different marginal workload for ACER than a non-standard one. This fact is also addressed in the REMIT Implementing Regulation which asks for standard and non-standard contracts to be distinguished in order to ensure efficient reporting and targeted monitoring. The variable fee for standardized contracts should be considerably lower than the fee charged for non-standardized contracts in order to reflect the real cost incurred by each kind of contract. This is also important to ensure that the fee design does not discourage trading on transparent, efficient and secure regulated trading venues.

Fixed annual RRM enrolment fee should be abolished or should be at least significantly lower to be non-discriminatory against smaller RRMs who report relatively fewer trades.¹¹ While the Commission and ACER propose that a yearly flat enrolment fee would reflect the costs generated for ACER associated with the administration of RRMs, this approach fails to take into account the variation in RRM status and related activity level. Additional obligations falling on RRMs related to fee collection could plausibly lead to a number of RRMs ceasing its activity. Any fixed component of the fee would certainly benefit larger RRMs and risks imposing a disproportionate cost burden on smaller and mid-size RRMs.

The fees charged should reflect the level of activity of Market Participants to avoid discrimination and to minimize market impact. Applying a fee that is proportionate to trading activities per Market Participant (i.e. volume-based) implicitly takes into account the number of Market Participants as a cost-driver. The fee should not penalize Market Participants reporting through several RRMs. Additionally, it should not penalize Market Participants active in multiple bidding zones for electricity or market areas for natural gas. Charging the fees directly per Market Participant also means that Market Participants that enter the market or discontinue their market activity during a financial year can be reflected in the fee calculation.

A clear and simple formula is needed, and the calculation should be done by ACER for each Market Participant per RRM. Should the latter not be possible, at least the metrics and the data for the calculation must be provided by ACER to all fee-collecting entities.

¹¹ For example, an RRM that reports 50 records on behalf of a single Market Participant pays EUR 305 per record while an RRM that reports 50 million records on behalf of single Market Participant pays EUR 0.00046 per record.

4.5 When and how should the REMIT fees be paid?

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.

Market Participants should be invoiced based on their actual trading activity. Predictability and consistency of the fees are vital for Market Participants and contribute towards preserving high levels of liquidity. Market Participants should be able to anticipate the fee based on their actual trading behavior. To this end, the debit notes should be issued by ACER via RRM's to Market Participants based on their actual trading activity, using a transparent calculation formula. Since the Agency is in possession of the necessary data to make the appropriate calculations, it is logical for ACER to determine the fee per Market Participant and communicate that to both the relevant RRM's and the Market Participant itself.

Regarding the invoice timing and frequency for the variable component of the fee, we propose that the fee collection is done in regular instalments, either on quarterly or monthly basis. Each instalment should be based on the actual number of transactions and volume traded during the closed invoicing period, as per ACER data. With an appropriate financial enforcement mechanism, RRM's can then collect the fees from Market Participants on behalf of ACER and forward them to the Agency on this basis and frequency. In preparation, ACER must issue the debit notes for Market Participants according to the agreed timing and frequency with at least a three month payment deadline.

Sufficient implementation time is important as some of the fees of many RRM's are subject to national regulatory approval processes. We would therefore like to suggest the inclusion of a transition period before the actual implementation of the REMIT fees. We propose calendar year 2021 as a transition period as it will be the first calendar year for REMIT fees.