

Consultation document 03/2012
Possible contribution of GME to compliance with
articles 4 and 8 of Regulation (EU) No 1227/2011

I. Foreword

As is known, Regulation EU No 1227/2011 of the European Parliament and of the Council of 25 October 2011 *on wholesale energy market integrity and transparency* (hereafter “REMIT”) requires parties trading in wholesale energy markets (hereafter “market participants”) to report contracts concluded in both regulated and over-the-counter (OTC) markets.

In particular:

- article 4, para. 1 of REMIT provides that “*market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.*”
- Moreover, article 8, para. 1 of REMIT stipulates that “*market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.*”
- Finally, para. 5 of the same article establishes that “*market participants shall provide the Agency and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.*”

* * *

Following information to AEEG (Autorità per l'energia elettrica e il gas - the Italian Regulatory Authority for Electricity and Gas) and in the light of the recent ACER Discussion Paper concerning the disclosure of inside information through platforms, GME has prepared this consultation document on the matter. The consultation has the purpose of testing the interest of the parties covered by REMIT in:

1. having a centralised platform in Italy, organised and managed by GME, on which they may comply with their obligations pursuant to article 4 of REMIT (see below - para. II);
2. relying on GME to report data to ACER, as per article 8 of REMIT (see below - para. III)

Therefore, this document proposes procedures through which GME may contribute to and support market participants in complying with the above-mentioned reporting obligations.

Interested parties are invited to send in their comments on the operational procedures described in this document and, in particular, their answers to Questions from 1 to 12.

Comments must be sent to GME's Legal and Regulatory Office ("Unità Legale e Regolazione") in writing by 15 September at the latest (end date of the consultation) in one of the following ways:

by e-mail to: info@mercatoelettrico.org

by fax to: +39-06-80124524

by mail to: Gestore dei mercati energetici S.p.A.

Largo Giuseppe Tartini, 3/4

00198 - Roma

If you want us to keep all or part of your comments confidential, please specify which parts of your comments are to be kept confidential.

II. Obligation to publish inside information pursuant to article 4

Article 2, para. 2 of REMIT defines "inside information" as "*information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products*".¹

In its Guidance document published on 20 December 2011, ACER states that "*if market participants are required to make information publicly available through a Transmission System Operator (TSO) platform or a transparency platform of an energy exchange, in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes*

¹ The same article further clarifies that "*for the purposes of this definition, 'information' means: (a) information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations; (b) information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities; (c) information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market, in so far as this information is likely to have a significant effect on the prices of wholesale energy products; and (d) other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.*"

adopted pursuant to those Regulations, market participants with inside information to disclose should use such disclosure mechanisms currently specified by competent national regulatory authorities on the basis of the relevant Regulations, if not otherwise specified in relevant rules and regulations, or by the competent NRA. According to Article 4(4) of REMIT, such publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations, constitutes simultaneous, complete and effective public disclosure. Such platforms should also be used for the disclosure of further inside information. If such platforms do not yet exist, market participants may be allowed, at least for an interim period and unless otherwise specified, to publish inside information which they possess on their own website. However, where such disclosure mechanism is chosen, it is important that disclosure of inside information enhances the level of transparency across the EU and does not distort the dissemination of information. Information shall therefore be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, including the media. Therefore, inside information shall be disclosed by a market participant free of charge, in a non-discriminatory, user-friendly and quantifiable manner and, where appropriate, in a downloadable format that allows for quantitative analysis. The information should be published in the official language(s) of the relevant Member State and in English.”

With regard to the aforesaid disclosure obligation, GME might create a **centralised platform** in Italy, where all parties active in the national energy market might comply with their obligations under article 4 of REMIT. This proposal is practically based on five pillars:

- GME would take on the responsibility for creating, operating and maintaining the platform for disclosure of inside information, so as to minimise the costs of compliance falling on participants and to maximise the access of the national and EU market to said information;
- market participants would remain responsible for the truthfulness, accuracy and timeliness of disclosure of the information;
- GME would, where feasible, reuse the already existing data flows from market participants to GME, TSOs and AEEG, so as to minimise the operational burden on participants;
- GME would agree with AEEG on the principles and procedures to be adopted for the definition of:
 - a) criteria of admission of applicants to the **centralised platform**;
 - b) contents, procedures and deadlines for data reporting by participants (in accordance with Europe-wide principles established by the European Commission and ACER).
- GME would balance transparency requirements with the need for carefully managing competition aspects.

The following paragraphs describe the aspects referred to in subparas. a) and b) above, posing the corresponding questions.

Details may be covered by a further consultation, taking into account, among others, the findings from this consultation. The platform will be based on as flexible as possible principles and procedures, so as to accommodate further indications provided by the European Commission in the delegated acts referred to in REMIT.

a) Criteria of admission of applicants to the centralised platform

Participation in the platform should be open to all parties that are active in the Italian energy market, registered with AEEG under article 9 of REMIT, whether or not they are registered with markets and/or platforms organised by GME. However, the centralised publication of inside information on GME's platform might be optional - if market participants were allowed to publish such information on their websites - or mandatory - if market participants were not allowed to do so.

Parties wishing to participate in the platform should file a specific application.

To minimise procedural complexities associated with accreditation on the platform, all market participants already registered with AEEG might be automatically registered also on GME's platform.

Likewise, access to the platform would take place under the same procedures as those applicable on GME's External Data Platform (PDE), i.e. access via secure connection and identification via ID and password to be assigned by GME after receiving a digitally signed application from the applicant's legal representative. In this way, participants that are already authorised to operate on the PDE would be automatically authorised to operate also on the new platform.

QUESTION 1. Do you deem it useful to rely on a centralised platform for compliance with obligations pursuant to article 8 of REMIT? Why?

QUESTION 2. If your answer to the previous question is yes, do you think that GME is suitable for playing such role? Why?

QUESTION 3. Do you think that the publication of inside information on GME's platform should be optional, leaving participants free to publish such information on their websites? Or do you think that such publication should be mandatory and regulated by AEEG, in order to maximise the centralisation and transparency of such information?

QUESTION 4. Do you think that the proposed solutions are adequate to minimise the procedures of authorisation to operate on the platform?

b) Contents, procedures and deadlines for data reporting by participants

Article 4 of REMIT already provides for a subset of the relevant data, which may be updated/extended by the European Commission in the delegated acts referred to in article 6 of REMIT.

However, market participants might publish on the platform any type of information that they regard as necessary, in the standard formats established by the Regulation. Indeed, article 3, para. 1 d) of REMIT

stipulates that that the inside information to be disclosed under article 4 also includes “*other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.*”

With a view to avoiding duplication of reporting obligations and changes to existing and well-proven operational procedures, market participants might comply with their obligation to disclose inside information by using the data already present on other platforms, whether public (e.g. preliminary information published by Terna on GME’s website) or with restricted access pursuant to regulatory provisions (e.g. available capacities that participants report to Terna and that Terna transmits to GME under AEEG’s Decision ARG/elt 115/08), and authorising the automatic transfer to and publication of such information on GME’s centralised platform. For this purpose, the owners of the information and the operators of the platforms involved might grant an explicit authorization to GME and/or AEEG might issue explicit provisions on the matter. The need would also arise to assess the processes associated with the transfer of the data, in order to ensure its timeliness.

QUESTION 5. Are there any data falling under the reporting obligation of article 4 of REMIT that – under already existing operational, commercial or regulatory procedures – you already disclose externally, both on public and on restricted-access platforms? If your answer is yes, which platforms and through which channels?

QUESTION 6. Do you deem it useful to allow market participants to fulfill their obligation of publishing inside information already resident on other public platforms (e.g. preliminary information published by Terna on GME’s website) or restricted-access platforms pursuant to regulatory provisions (e.g. available capacities that participants report to Terna and that Terna transmits to GME under AEEG’s Decision ARG/elt 115/08), by authorising the automatic transfer of such information from said platforms to GME’s platform and its publication thereon?

QUESTION 7. If your answer is yes, which are the pre-requisites to guarantee the full operational and regulatory effectiveness of such approach?

Identity and format of the data

The contents and formats of the data to be reported may be detailed at a later stage, based on the indications contained in the European Commission’s delegated acts pursuant to article 6.1 of REMIT.

Procedure for transmission of the data

Participants would have to transfer the data to GME in compliance with the requirements of REMIT and with any other requirements established in the delegated acts of the European Commission. Considering these requirements, the technical solutions for data transmission might be similar to those already used on the different platforms that GME manages: use of xml files, uploading of files through web forms or web services, data protection via personal digital certificates, i.e. solutions largely adopted in the market and

minimising the administrative burden associated with data transmission on participants that are already registered with GME.

QUESTION 8. Do you think that the technical solutions proposed for data transmission on GME's platform are adequate? If your answer is no, why and which solutions do you propose?

III. Obligation of reporting the information referred to in article 8 to ACER

REMIT explicitly provides that market participants may report the data on their transactions to ACER through the energy exchanges where they operate. In particular, article 8.3 of REMIT explicitly states that *“for the purposes of paragraph 1, information shall be provided by: (a) the market participant; (b) a third party acting on behalf of the market participant; (c) a trade reporting system; (d) an organised market, a trade-matching system or other person professionally arranging transactions; (e) a trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories; or (f) a competent authority which has received that information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received that information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.”*

In view of the above, GME might – on behalf of market participants – report to ACER the data on the bids/offers submitted and transactions carried out in its markets and on its platforms. To this end, pending the technical clarifications to be given by the European Commission on the nature and formats of the data to be reported, market participants should issue a declaration authorising GME to report the data recorded in GME's markets and platforms to ACER.

As participants currently transmit to GME - via the PDE - data on their forward electricity contracts under article 8 of “TIMM”, GME might report also these data to ACER. Nevertheless, a comparison should be made to check whether the contents, formats and deadlines for data reporting under TIMM correspond to those required under REMIT. Finally, the same approach might be applied also to gas contracts, which do not currently fall under the scope of TIMM.

Article 8.5 requires market participants to transmit to ACER also structural data on available capacity - falling under the wider scope of ACER's “Regulated Information”². These data might be collected by GME if the proposal mentioned in para. II were implemented. Consequently, GME might comply with the obligation of reporting the above data to ACER without any additional complexities.

QUESTION 9. If you deem it useful that GME transmits - on your behalf - the data on transactions made on GME's markets to ACER, which constraints and which guarantees do you consider as necessary?

² In this connection, see ACER's consultation document PC_2012_R_10 of 21 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”*.

QUESTION 10. If your answer is yes, do you deem it appropriate to extend the data reporting approach adopted on the PDE (as per TIMM) to GAS contracts? If yes, which constraints and which guarantees do you consider as necessary?

QUESTION 11. Do you deem it useful that GME transmits to ACER the data on transactions made off the markets that it manages? If yes, which constraints and which guarantees do you consider as necessary, also in view of the required procedures for standardization of such transactions?

QUESTION 12. If GME manages a platform for reporting inside information as described in para. II, do you deem it useful that GME - on your behalf and via the same platform - transmits to ACER the data concerning available capacities on the different energy infrastructures?