

Olje- og energidepartementet

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Høring av Kommisjonsforordning nr. 1348/2014 om datarapportering iht artikkel 8(2) og 8(6) i Europaparlaments- og rådsforordning nr. 1227/2011, samt Kommisjonsforordning nr. 543/2013 om rapportering og offentliggjøring av data i elektrisitetsmarkedene

Det vises til høringsnotat "Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014" on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency" fra 19. mars 2015.

Energi Norge er en interesse- og arbeidsgiverorganisasjon for norsk kraftnæring, som er tilknyttet NHO. Vi representerer ca. 280 bedrifter som produserer, transporterer og selger strøm og varme. Energi Norge representerer gjennom sine medlemsbedrifter nesten all norsk kraftproduksjon, 95 % av kraftkundene og over 90 % av nettkundene.

Kommentarene skrives på engelsk for å gjøre bruk i europeisk sammenheng enklere.

Main message

The binding implementing regulation on data reporting No 1348/2014 and the binding fundamental data transparency guideline 543/2013 are important implementing laws for the Regulation on Energy Markets Integrity and Transparency (REMIT) No 1227/2011. As such, they will be part of the REMIT implementation, once REMIT is implemented in Norway.

The main challenge is the data reporting regulation 134/2014, since it establishes new obligations for Norwegian market parties. Detailed comments can be found below.

The fundamental data transparency guideline is already partly implemented through reporting rules at Nord Pool Spot and Nasdaq – changes for Norwegian market parties will be only minor. Care should be taken that existing reporting channels can be used and that market participants are informed in time about changes in format and publication form.

Concerning data reporting No 1348/2014

REMIT requires market parties to report contracts and orders either directly, or via the exchange or other third parties to ACER. This obligation is new for Norwegian market parties and its implementation into Norwegian laws requires therefore consideration of the following points:

1. Do not implement the REMIT contract reporting obligation before the EMIR contract reporting obligation

The Norwegian forward power market is predominantly a **financial power market**. The most important hedging tool is the system price contract traded at Nasdaq OMX commodities and on organized markets and that contract is a financial contract. That means that market parties have **their primary reporting obligation under EMIR**, the European Market Infrastructure Regulation that controls the trade with financial instruments together with MiFID and MAD. Market parties are obliged to report all financial contracts, including financial power contracts, under EMIR. To reduce double reporting obligations for market parties concerning financial power contracts, ACER recognizes the primacy of EMIR in article 6.5. of the implementing regulation, which states that reporting the contract under EMIR also fulfills the reporting obligation of REMIT. REMIT reporting is therefore only a secondary obligation for financial contracts and concerns just orders for financial products.

In EU member countries that potential conflict was solved since the EMIR reporting obligation came into force before the REMIT reporting obligation. ACER will have access to data for financial power contracts at the relevant trade repositories, only all orders and the physical contracts will be reported to ACER.

In Norway it is of primary importance that the sequence of EMIR first, REMIT after is not changed for the following reasons:

If EMIR is implemented first, the market party will start reporting all financial contracts under EMIR. Once the REMIT reporting obligation is implemented, the market party will add the reporting of physical contracts to ACER and the reporting of orders. That sequence would be the ideal solution.

If the REMIT reporting obligation is implemented before EMIR comes into force, the market party has two bad choices:

If it starts to report financial contracts under REMIT, the company will have to switch to EMIR reporting once EMIR is implemented in Norway, since that is the primary obligation. Switching from one reporting system to another is very costly, since the systems are not comparable: they use different reporting formats, different reporting fields, different reporting channels and different reporting standards.

In addition, there will be no advice and experience available for the company from NVE, other national energy regulators or from European counterparties, since European market parties report their financial power contracts under EMIR not under REMIT.

For the same reason, data quality, essential for market surveillance, will not be improved. One leg of the contract might be reported under EMIR to a trade repository, the other one under REMIT to ACER. Under EMIR the data comparison between different trade repositories is not working yet, it will be even worse, once ACER with different fields for the same contracts enters into the picture.

The second alternative the company has is to implement EMIR reporting for the financial power contracts before EMIR comes formally into force in Norway.

The advantage of that strategy for the company would be avoided cost of switching from REMIT reporting to EMIR reporting once EMIR is implemented in Norway.

The disadvantage would be, that the company has to implement EMIR reporting without the advice from our financial authority Finanstilsyn, since EMIR is not formally implemented yet, leading to uncertainty, mistakes and bad data quality that could be avoided.

Since contract reporting has been introduced for market surveillance purposes, it is in addition important to point out that we have already have a well-functioning market surveillance

preventing market abuse on the financial (and physical) electricity markets. Choosing one or the other solution will have no influence on the functioning of the financial electricity markets, it will however make a difference in cost for the involved Norwegian market players.

For the above mentioned reasons it is absolutely essential that EMIR is implemented in Norway before the data reporting obligation of REMIT enters into force. We hope that OED recognizes the double obligation of both EMIR and REMIT that lies on power market participants and the potentially increased cost and chaos following a wrong-order implementation. We expect that OED coordinates its actions with Finansdepartementet.

2. Allow for a transition period before the REMIT reporting implementation is implemented

Market parties need at least a 6 month transition period before reporting obligations are implemented to change their IT systems and establish internal routines for the reporting. They also need the clear deadline given by the transition period: it is not possible to prepare for a law, which might come in one or three years, the deadline is needed to priorities human resources and budget resources for the implementation as opposed to other company needs.

Lack of a transition period leads to costly, inefficient solutions and bad data quality, considerably reducing the value of the data for the market surveillance purposes.

Ideally, the length of the transition period would be the same as given to our European counterparties (where the length depends on the market place where the contract is traded). In our view, the process should look the following way: clear information of market participants that OED has started the process of implementing REMIT into Norwegian law and how long that process will probably take. That should be followed by the publication of the law in Norwegian language, which is the start of the minimum 6 month transition period before the obligation proper comes into force. NVE would ideally accompany the market participants through the whole period by keeping them informed and answering their questions.

3. NVE should have the resources for the new obligations coming with REMIT

Amongst other new responsibilities following the implementation of REMIT, NVE will be the relevant authority for Norwegian market parties concerning the reporting of physical transactions, and regarding the reporting of orders. In addition, NVE has to set up a registration platform for the REMIT registration of market participants. To avoid a chaotic implementation, and to allow NVE to fulfill its responsibilities, REMIT requires considerable resources within NVE.

4. Comments on the details of the reporting and registration obligations

- a. It is necessary to pay special attention to inform the **energy intensive industry consumers** about REMIT implementation. Contrary to now, they will have reporting and registration obligations with the energy regulators. They will also have to inform their suppliers about their reporting obligation according to article 3.2. Currently consumers have usually not been in directly involved with NVE and might not be in contact with them, as opposed to power companies that are licensed with NVE. Therefore special attention to them is necessary to inform them about the new legislation. Depending on the status "konesjonskraft" contracts will have and on the content of the different contracts, also municipal authorities could be required to register.

- b. **Order reporting** will not pose a technical challenge for market parties since all organized markets are obliged to offer order-reporting solutions for the market parties. The regulator should in our view just keep an eye on the fees required for that service. While there is theoretically competition for that order reporting service from third parties, it is in practice only the market platform, which has the data and can provide the service efficiently – even market parties themselves do not usually keep their order data. Therefore, we would appreciate if there is an eye on the fees for order reporting and if the regulator requires transparency regarding the fees.
- c. There is also special attention necessary to **small producers** that might or might not be over the 10 MW threshold in article 4. Small producers might be currently over the 10 MW capacity threshold, but not be themselves active in the wholesale market and they might even have outsourced their balancing responsibility. For those small producers the reporting and registration obligation would be completely new, since they are currently not exposed to the registrations and obligations, which the wholesale market requires.

5. The MiFID II schedule also needs to be taken into consideration


In determining the timing for the phase-in in of the REMIT transaction reporting requirements and then the EMIR requirements, we would also request that consideration is given to the schedule for the phase-in of MIFID II requirements, which will require resources from energy trading companies in Norway. Although the technical requirements have not yet been finalized by ESMA, it is expected that the revised license exemption criteria will require many energy trading companies to first implement and then carry out ongoing calculations of capital employed for financial trading, and of traded market share. This will be required from January 2016 according to the current regulatory schedule.

In addition, depending on the shape of the final MIFID II requirements and their practical application, MIFID II may require some energy trading companies to apply for a MIFID license by January 2017. That would imply that all OTC derivative trades would have to be cleared or margined all OTC derivatives trades and that additional i post-trade risk management measures as required by EMIR need to be implemented (since EMIR refers to the MIFID definitions of financial instruments to determine their applicability).

In many cases, the technical and regulatory resource pool required for the implementation of REMIT transaction reporting requirements will be the same, or at least overlap with, that required for the EMIR and MIFID II implementations. Hence, it is important that the schedule for implementing first EMIR, and then the REMIT transaction reporting requirements in Norway, is also adapted to the MIFID II deadlines.

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