



## **GIE answer to EC's stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets**

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### **Introduction:**

Gas Infrastructure Europe (GIE) is an association representing the sole interest of the infrastructure industry in the natural gas business such as Transmission System Operators, Storage System Operators and LNG Terminal Operators. GIE has currently 70 members in 25 European countries. Regarding the above mentioned public consultation, GIE would like to provide the following answers:

### ***Question 1***

**1. What, if any, verification of their capacity to effectively interact with ACER for the purposes of data transfer should be required of**

**a. market participants reporting transactions or**

No Answer

**b. of third parties who report transactions on behalf of market participants?**

No Answer

**2. What, if any, additional steps do you consider the Commission should take to ensure an effective interaction between transaction reporting under financial regulation and under REMIT?**

GIE sees that manifold regulations on financial and energy markets are at risk to conflict with each other as their scope is unclear and too wide. That would trigger legal insecurity and double reporting obligations. As already recognized by ACER and the EC, double reporting should be avoided. Thus GIE believes that upcoming regulations need to have clearly defined scope that will not overlap, including with REMIT. Additionally the interpretations given by ACER and other bodies like ESMA should be harmonised to ensure that information which is deemed to be part of a transparency obligation under an equal regulation within the financial world does not have a broader scope in the energy world. Otherwise a market participant would need to submit information regarding an energy derivative under a financial regulation and additionally the missing information under REMIT.



**3. Do you agree that it is not appropriate to include a de minimis threshold for reporting standard transactions carried out using organised market places, brokers or trade matching facilities or which are cleared?**

In general a threshold seems useful to avoid unnecessary administrative burden, especially for small market participants. In case of standard transaction via the named facilities such burden might be less obvious. Anyhow as such reporting obligation carries a certain responsibility for the content, it is needed to constantly review the reported data. Accordingly the administrative burden and related responsibility is still on a high level, especially keeping in mind the structure of small market participants. Thus GIE suggests to set up a volume based threshold for the gas sector. Especially small scale CHP installations which have typically no market impact should be excluded from reporting obligations. Accordingly such volume threshold should be set in a manner that it only creates reporting obligations when such information has a material impact on the market. Otherwise it would be just spam-information. The level of the threshold may depend on the respective market.

**4. Do you agree that the definition of "standard commodity transactions" and the creation of a white list for fully reportable transactions, as set out in the consultant's report, represents a suitable approach?**

First of all it needs to be clear which contractual relations are covered by "standard commodity transaction". The latter is defined as "a contract admitted to trading at an organised market place or TSO auction platform or subject to a standard agreement". GIE believes this needs some clarification especially whether or not contractual relations, based on i.e. the standard terms and conditions of TSOs, as approved by NRAs, constitute a "standardized contract".

The different scope of information should not impact on the deadlines for submitting the information as market players are in any case responsible for the correctness of the submitted data and accordingly need time for a review process.

A white list will support legal certainty for market participants.

**5. In relation to transactions not covered by the "white list",**

**a. Do you agree that these transactions should be subject to reduced "short form" reporting requirements?**

Yes – but the content of the reporting information needs to be harmonised with other regulations to avoid being in the scope of different reporting obligations.

**b. Should these transactions be reported at a defined interval or only upon request of ACER?**

As mentioned in the stakeholder consultation paper of the Commission, ACER should focus its monitoring on those markets where the risk of market abuse is highest. This means in turn that for less risky markets reporting should be limited and should take place only upon request of ACER (such as in case of a specific investigation).



**c. Should the frequency of "short form" reporting be related to the size of the market participant or the overall frequency or volume of trading in which it is engaged?**

No Answer

**6. Do you agree that the definition of wholesale energy products extends to contracts relating to LNG and storage, including landing and storage capacity?**

GIE clearly objects the EC's proposal of extending the definition of wholesale energy products to LNG and storage contracts. As implied in the question the inclusion of LNG and storage contracts into the scope of transaction reporting would go beyond the regulation and the understanding of REMIT. We would like to highlight that the ACER's 2<sup>nd</sup> Guidance published on 28 September 2012 does not consider storage or LNG contracts as wholesale energy products. Moreover, the Guidance clearly states that storage and LNG operators are "market participants" if, and only if, they are active in the wholesale energy market i.e. by trading commodities, which typically would be the case for a vertically integrated company. Should this be the case, however, LNG and storage operators would be bound to reporting information only on the transactions done at wholesale markets pertaining to wholesale energy products (and not all LNG or storage contracts that an LNG and a storage operator may conclude).

The stakeholder consultation paper of EC mentions that "in cases where only LNG landing or storage capacity is traded, the value of that capacity itself derives from the value of gas delivered in the Union." GIE wants to clarify that prices for storage or LNG do not depend on commodity prices. Tariffs for LNG and storage facilities need to cover investment and operational costs and do not simply derive from commodity prices at a given point in time. Thus the Commission's conclusion is hard to understand from a business and commercial perspective. In case the Commission's understanding of "capacity is traded" relates to secondary capacity markets, it needs to be clarified that such trades take place within a customer/customer relation and are not to be reported by the operator as the latter is neither a party to such deals (except for transfer of capacity) neither knows their contractual details.

**In view of the above, GIE does not agree to extending the scope of the definition of wholesale energy products to contracts relating to LNG and storage.**

**7. Do you agree that generator connection agreements are normally a fundamental data item and not a contract relating to transmission?**

No answer.

**8. Do you agree that where one of the parties to a transaction organises the market place, that party should have sole responsibility for reporting the transaction?**

GIE disagrees with a sole reporting obligation for TSOs in case they operate the balancing markets as this activity is only based on the regulatory obligation to facilitate balancing but not on a commercial



or business activity of TSOs. In such a case, TSOs can't be held liable for these transactions, which are ultimately regulated.

**9. Do you agree that where neither party to a transaction organises the market place, that both parties should separately remain responsible for reporting the transaction?**

No answer.

**10. Do you agree that daily reporting of transaction is the most appropriate frequency to allow ACER to effectively monitor wholesale energy markets?**

Yes especially when it comes transactions on transmission capacity. Here intraday reporting will just increase the amount of data to be analysed whereas the "end of day" data summarize the activities of a market participant.

**11. Do you consider it would be possible for market participants to report their transactions on a daily basis?**

GIE is not in the position to answer on behalf of all market participants, but is confident that it will be possible for TSO, even if challenging. For TSO's a proper lead-time for implementation will be required as well as re-coverage of the associated costs.

**12. Do you agree that reporting of orders to trade (bids) should not be collected by ACER from market participants, other than organised market places, at least initially?**

No answer.

**13. For which stages in the lifecycle do you consider that it is necessary to collect transaction data?**

No answer.

**14. Do you agree that it is appropriate to develop a specific standard product taxonomy for reporting transaction data to ACER?**

No answer.

**15. Do you consider the items reportable under the draft electricity transparency rules envisaged by the Commission's consultation mentioned above sufficient for monitoring with regard to electricity fundamental data and which reporting channel(s) would you consider appropriate?**

No answer.

**16. What gaps do you consider to exist in relation to fundamental data related to gas, and can this be accessed without the creation of a framework for gas equivalent to that envisaged for electricity and which reporting channel(s) would you consider appropriate?**



No answer.