Public Consultation on Commission Decision setting the fees due to ACER for tasks under REMIT

CEER Response for the European Commission

31 August 2020

This is a response to the European Commission's Public Consultation on "Energy market regulation – fees to be paid to European agency ACER" – see https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12406-Commission-Decision-setting-the-fees-due-to-ACER-for-tasks-under-REMIT/public-consultation. According to the Commission, "The public consultation is part of the preparations for a Commission Decision setting the fees due to ACER for collecting, handling, processing and analysing of information reported under Article 8 of REMIT."

CEER Response

According to Art. 32.1 lit b) ACER Regulation ((EU) 2019/942) ACER is now entitled to also charge fees for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Art. 8 of the REMIT Regulation ((EU) 1227/2011). Before adopting a Commission decision setting the REMIT fees, the Commission and ACER are consulting publicly on the principles and the fee model.

CEER considers that the possibility to collect REMIT fees is an important element to ensure adequate financing of the REMIT activities that ACER is performing. Overall, an effective oversight will contribute to the integrity and transparency of wholesale energy markets in the EU, which in turn brings benefits to consumers. CEER would like to remind the EU institutions that the purpose of the REMIT fees is to ensure a solid funding of REMIT activities irrespective of other – equally important – tasks of ACER. Therefore, the additional revenue from REMIT fees must be seen as coming "on top of" normal revenues and must not lead to a reduction of the general subsidy from the EU budget to ACER's budget.

According to Art. 32.2 of the ACER Regulation, the "fees shall be proportionate to the costs of the relevant services as provided in a cost-effective way and shall be sufficient to cover those costs." Furthermore 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."

Given the multitude of requirements that the fee model must fulfil, the proposed "mixed model" with a two-part fee structure seems appropriate to balance transparency on the one side with fairness on the other. This is explained further below.

Before commenting on the fee model in more detail, CEER wants to state that it welcomes the way to determine the eligible costs via the Single Programming Document (SPD) containing the budget estimation for REMIT activities as this is subject to prior evaluation and ex-post reporting. It also ensures consistency with the general budget process.

Overall, it is important that the process is aimed at defining the amount to be covered by REMIT fees each year is as transparent as possible in order to make market participants (MPs) aware of the value of the services for which they will be indirectly charged. Furthermore it is paramount that the REMIT fee should only be used to cover the costs incurred in connection with the activities of collecting, handling, processing and analysing information reported pursuant to Article 8 of REMIT as defined by the ACER Regulation. In this respect, it is advisable that ACER publish an annual detailed report on the REMIT incurred costs to be covered by fees and the fee revenues with reference to the previous year.

CEER also agrees with the approach to charge ex-ante the Registered Reporting Mechanisms (RRMs) as the interface to MPs reporting on their behalf. This seems to be the most efficient way in administrative terms and thus limits the administrative burden of ACER and MPs. Since the fees will be charged ex-ante, it is important to define an adjustment mechanism to minimise potential surplus/deficit. CEER agrees with the proposed pro-rate reduction in case the sum of all fees should be higher than the total eligible costs.

CEER further agrees with the proposal to send out invoices in January of the year for which the fees are collected as this is timewise close to the SPD for this year which is adopted in December of the previous year. This allows a reliable forecast of the REMIT costs, thereby minimising the potential surplus/deficit.

Regarding the fee model as such, CEER would like to make several comments: As stated above, the two-part fee structure consisting of a “fixed” part – the enrolment fee – and a “variable” part – the records-based fee – is an appropriate way to balance the transparency of the model and ensure fairness to all RRMs/MPs. However, it needs to be carefully calibrated to avoid any undue financial burden on RRMs (and indirectly on MPs). Therefore, it should be designed in a non-distortive way, that is neutral vis-à-vis the market structure, bearing in mind that the two parts are intrinsically linked, i.e. changing one part inevitably requires adjusting the other part as well. This will overall enable the collection of fees that are sufficient to cover the REMIT costs as estimated in the ACER budget (see above).

The principle of proportionality relates to the level and allocation of the costs which needs to reflect the cost drivers which are as follows:

- The registration and ongoing supervision of reporting parties (RRMs);
- The number of MPs which RRMs report for;
- The number and versatility of records of transactions reported to ACER.

The first driver is captured with the enrolment fee covering the regulatory effort (1.) necessary for the assessment and examination of the application and (2.) necessary to ensure compliance with the technical and organisational requirements. It can be said that a fixed fee (€15,000 for the initial registration and annually) generally puts a relatively bigger burden on smaller RRMs. Thus the level of the fixed component is important.

The records-based fee captures the second and third cost drivers. It depends on (1.) the number of MPs which RRMs report for and (2.) the number of market-specific data sets reported per MP. Thus it can be said that the more records that are reported per trading channel the higher the total records-based fee is for the RRM. The fee related to the market specific data sets is grouped in seven “classes” (e.g. 1 – 1000 records; 1001 – 10,000 records; ….) and increases with the number of records reported in the relevant class.

The seven “fee classes” aim at reflecting the diversity of the market structure, i.e. for several MPs only a very small number of records is reported, whereas for some MPs a very high number of records is reported. The level of the fee for each class should reflect the costs for handling the number of records in the given class. The seven fee classes assume (implicitly) a step cost function. To ensure that the fee is non-discriminatory, the structure of the records-based fee classes should reflect properly the costs per class and more importantly the difference of costs between the classes (the next “step“) so as to be non-distortive, i.e. not discriminating any RRM in terms of size.

Thus the envisaged fee model can be deemed to ensure competitive neutrality insofar as the total fee (enrolment fee + records-based fee) is broadly in line with the underlying cost structure as described above. Furthermore, this model also fulfils the principle of proportionality by being sufficient to cover the total costs of the REMIT activities and not leading to market concentration.

In case the conditions outlined above are not met, further finetuning of the two-part fee model is needed. For example, in case the enrolment fee is deemed too high (for smaller RRMs), it could be reduced, which then requires an adjustment (increase) of the fees for the records-based class and/or an adjustment of the class structure to ensure that the total fee revenue is sufficient to cover all costs of the REMIT activities performed by ACER.

Finally, looking at the number of RRMs (> 110 in 2019) and actively reporting MPs (> 9,500 in 2019) as well as the overall number of records reported (> 1.2 billion in 2019) which have to cover €8.8 million REMIT expenditures estimated for 2021, CEER believes the impact on market liquidity is rather small (less than €20,000 p.a. for the majority of RRMs) and thus manageable for market participants.