

Ljubljana, 16 April 2024

*To whom it may concern*

**Subject: Open letter on the implications of the revision of Regulation (EU) No 1227/2011 on REMIT data reporting aspects and notification obligations**

Dear Sir/Madam,

ACER has received several questions from stakeholders on how data should be reported and how notifications should be sent as of entry into force of the amended Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (amended REMIT)<sup>1</sup>. The purpose of this letter is to address the most frequent questions, received until the date of publication of this letter, and provide clarifications to the market participants on the new and revised obligations in light of the entry into force of the amended REMIT and ahead of publication of Guidance or Guidelines by ACER.

**To whom is this letter addressed?**

This open letter should be of interest to all stakeholders involved in REMIT data reporting or that have notification obligations under REMIT. This includes, for example, market participants, Registered Reporting Mechanisms (RRMs), Inside Information Platforms (IIPs), Organised Marketplaces (OMPs) and Persons Professionally Arranging or Executing Transactions (PPAETs).

**What is expected from the reporting parties?**

ACER expects reporting parties to take note of this letter and its Annex and to comply with the new and/or amended reporting and notification obligations stemming from the amended REMIT, as of its entry into force.

In case of further questions on the new or revised obligations, ACER expects market participants to reach out through the [REMIT query form](#).

**What are the next steps?**

ACER acknowledges that continuous dialogue is needed to fully address the changes stemming from the REMIT revision, and therefore intends to remain in contact with stakeholders through its various fora and stakeholder groups.

By the end of 2024, ACER aims at revising the existing ACER Guidance on the application of REMIT<sup>2</sup> to consider the changes stemming from the REMIT revision, the Hydrogen and Gas Markets

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<sup>1</sup> For the avoidance of any doubt, when ‘REMIT or ‘current REMIT’ is referenced in this letter, it refers to the Regulation (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency and when the ‘amended REMIT’ is referenced in this letter it refers to the Regulation amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union’s protection against market manipulation on the wholesale energy market

<sup>2</sup> Available here: <https://www.acer.europa.eu/remit/about-remit/remit-guidance>.

Decarbonisation Package<sup>3</sup> and the Electricity Market Design Reform<sup>4</sup>. In addition, ACER plans on starting the process for issuing guidelines and recommendations based on the new mandate in Article 16b of the amended REMIT. Guideline topics will be prioritised based on the entry into force timeline and their overall market relevance.

ACER also encourages the European Commission to launch, after the entry into force of the amended REMIT, the revision process of the Commission Implementing Regulation (EU) No 1348/2014 (REMIT Implementing Regulation), which will be crucial for the technical development of certain reporting obligations included in REMIT.

Yours sincerely,

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Department

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<sup>3</sup> The review and revision of the Gas Directive 2009/73/EC and Gas Regulation (EC) No 715/2009 is referred to as the Hydrogen and gas markets decarbonisation package.

<sup>4</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design.

## **Annex: Changes in the amended REMIT impacting data reporting**

The content of this annex is not exhaustive, and it does not constitute new policy. This annex provides an overview of some of the new or revised data reporting or notification obligations ACER wishes to address ahead of the entry into force of the amended REMIT. This overview aims at enhancing the market participants' understanding of how to comply with the requirements.

The Commission Implementing Regulation (EU) No 1348/2014 (REMIT Implementing Regulation) lays down the technical and detailed rules for the reporting of data to the Agency, implementing Article 8(2) and (6) of the current REMIT. It also establishes appropriate channels for data reporting including defining timing and regularity of data reports. The amended REMIT introduces several new or revised provisions which expands the scope of who should report and what should be reported to the Agency. ACER would like to acknowledge that once the amended REMIT has entered into force, the data reporting will continue based on the current REMIT Implementing Regulation.

Consequently, ACER understands that the reporting of certain contracts or information, not currently foreseen in the REMIT Implementing Regulation, needs to be incorporated before reporting of this data can commence. The revision of the REMIT Implementing Regulation is expected within 12 months from the entry into force of the amended REMIT, as per Article 8(1a) of the amended REMIT.

- **What has changed in the definition of organised marketplace?**

The current definition of 'organised marketplace' or 'OMP' can be found in Article 2(4) of the REMIT Implementing Regulation. The definition of OMP will change with the entry into force of the amended REMIT.

### **OLD**

*'organised market place' or 'organised market' means:*

*(a) a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract,*

*(b) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract.*

*These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council.*

### **NEW**

*'organised marketplace' or 'OMP' means an energy exchange, an energy broker, an energy capacity platform or any other system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a way that may result in a transaction.*

The new definition specifically mentions that energy capacity platforms are considered as OMPs, in addition to energy exchanges and energy brokers which were also mentioned in the old definition.

The old definition also specifically mentioned persons professionally arranging transactions (PPATs) and trading venues as defined in Article 4 of Directive 2014/65/EU. These entities are still to be considered as OMPs when they fall under the generic description of ‘other system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a way that may result in a transaction’ in the new definition.

ACER also notes that the new definition states that an OMP can be a system or facility in which multiple third-party buying *or* selling interests in wholesale energy products interact in a way that may result in a transaction. ACER understands this as also systems or facilities where one seller interacts with many buyers or one buyer interacts with many sellers could be organised marketplaces, if the rest of the OMP criteria is fulfilled.

ACER acknowledges that further guidance is needed on the scope of the new definition of OMP. ACER expects that the revision of the REMIT Implementing Regulation will also be of importance to further define the new obligations on OMPs, which will also be relevant for interpreting the scope of the definition.

However, Article 3(2) of the REMIT Implementing Regulation requires the Agency to draw up and publish a list of OMPs and for OMPs to submit identifying reference data for each wholesale energy product they admit to trading. After the entry into force of the amended REMIT, ACER encourages entities now falling under the new OMP definition to notify themselves to the Agency via the form for the List of OMPs and submit the identifying reference data.

ACER does not expect ‘new OMPs’ (i.e. OMPs which only fulfil the OMP definition of the amended REMIT but did not fulfill the OMP definition of the REMIT Implementing Regulation) to commence reporting data not yet foreseen in the REMIT Implementing Regulation until the REMIT Implementing Regulation has been revised.

‘Old OMPs’ (i.e. OMPs which did fulfill the OMP definition of the REMIT Implementing Regulation) would be expected to report data relating to the order book(s) on the basis of current reporting standards detailed in the REMIT Implementing Regulation (see the question below).

Once additional guidance has been published or once the REMIT Implementing Regulation has been revised, ACER expects further updates to the list of OMPs.

Access to the OMP registration form can be found [here](#).

- **When will organised marketplaces start reporting data relating to the order books and what data is expected to be reported?**

The obligation for OMPs to report data relating to the order books has been introduced in Article 8(1a) of the amended REMIT.

*For the purpose of reporting records of transactions in the wholesale energy market, including orders to trade, entered, concluded or executed at organised marketplaces, those OMPs, or third parties on their behalf, shall:*

- (a) make available to the Agency data relating to the order book, in accordance with the specifications set out in the Implementing Regulation (EU) No 1348/2014, thereby fulfilling on behalf of market participants their obligations pursuant to paragraph 1 of this Article; or,*
- (b) upon the Agency's request, give the Agency access without delay to the order book so that the Agency is able to monitor trading on the wholesale energy market.*

*By ... [12 months from the date of entry into force of this amending Regulation], the Commission shall adopt implementing acts specifying the further details regarding the operation of this paragraph, including the specific arrangements for ensuring effective data reporting.*

*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).*

According to point (a), as of the entry into force of the amended REMIT, OMPs shall report to the Agency the data relating to the order book(s) for all market participants trading on the OMP, thereby fulfilling the market participants reporting obligations. Market participants are therefore not expected to keep reporting this data themselves, they would however still have to report data for the trading activity that takes place outside of an OMP, such as bilateral trading.

Further details on order book reporting are to be introduced through implementing acts. Nevertheless, upon the entry into force of the amended REMIT, ACER expects OMPs to start reporting data relating to the order book(s) for all the market participants trading on the OMP, on the basis of current reporting standards detailed in the REMIT Implementing Regulation. Order book reporting should be done following the Transaction Reporting User Manual (TRUM) and the Manual of Procedures<sup>5</sup>. In particular, it is expected that orders and trades constituting an order book are reported to ACER via Table 1, as per the Annex of the REMIT Implementing Regulation.

According to point (b), as of the entry into force of the amended REMIT, the Agency can, where necessary and proportionate, request OMPs to provide access to the order books. This would, for example, entail access to systems, applications and tools offered by OMPs to market participants enabling them to enter into transactions, including placing orders to trade. This also includes to provide the Agency ad-hoc access to details on orders and trades stored in the OMPs systems during a specified time period, for market monitoring and data quality purposes. This provision is also expected to be further detailed through implementing acts.

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<sup>5</sup> REMIT portal, <https://www.acer.europa.eu/remit-documents/remit-reporting-guidance>

Regarding order book data that may already have been reported under Regulation (EU) No 648/2012 (EMIR) or Regulation (EU) No 600/2014 (MiFIR) and thus is not required to be reported under REMIT<sup>6</sup>, ACER is of the understanding that OMPs are not required to remove this data before fulfilling their reporting requirement under the amended REMIT. ACER considers such a removal to be an unnecessary burden for the OMPs. Additionally, providing data relating to the order book(s) under the amended REMIT, including transactions already reported under financial regulations, will enable ACER and NRAs efficient market monitoring. This will minimise ad-hoc data requests by ACER and NRAs, including for national data collection.

- **How will storage contracts for gas and electricity be reported?**

As of the entry into force of the amended REMIT, storage contracts and related derivatives will be considered wholesale energy products. However, details for the reporting of storage contracts and related derivatives on a regular basis are currently not included in the REMIT Implementing Regulation, these details must thus be included in the yet to be amended REMIT Implementing Regulation as explained in the introduction to this Annex.

The reporting of storage as fundamental data on the basis of Article 9 of the REMIT Implementing Regulation will continue until the REMIT Implementing Regulation has been revised.

- **How will contracts for balancing markets be reported?**

As per recital 12 of the amended REMIT, it is expected that balancing market data will be reported through OMPs reporting details of the order books. However, details for the reporting of balancing market data on a regular basis are currently not included in the REMIT Implementing Regulation, these details must thus be included in the yet to be amended REMIT Implementing Regulation as explained in the introduction to this Annex.

The possible ad-hoc reporting of contracts for balancing services on the basis of Article 4 of the REMIT Implementing Regulation will continue until the REMIT Implementing Regulation has been revised.

- **How will exposures as per the revised Article 8(1) be reported?**

Details for the reporting of exposures are currently not included in the REMIT Implementing Regulation, these details must thus be included in the yet to be amended REMIT Implementing Regulation as explained in the introduction to this Annex.

- **How will Single Day-Ahead and Intraday Coupling (SDAC and SIDC) be reported?**

As of entry into force of the amended REMIT, *contracts and related derivatives for the supply of electricity which may result in delivery in the Union, as a result of single day-ahead and intraday coupling*, will be considered as wholesale energy products.

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<sup>6</sup> In accordance with Article 8(3) REMIT

ACER expects all market participants, including third country market participants trading on SIDC or SDAC to register following Article 9 of REMIT and report their trading activities on these markets. ACER expects these contracts to be reported on the basis of current reporting standards in line with the REMIT Implementing Regulation and in compliance with the order book reporting requirement explained above.

- **How should market participants notify that they are using algorithmic trading?**

Market participants that engage in algorithmic trading shall notify both the NRA in the Member State where they are registered as well as the Agency. Market participants will need to provide the notification as of entry into force of the amended REMIT.

Once the amended REMIT has been published in the Official Journal of the European Union, ACER will enable market participants to provide this notification through CEREMP<sup>7</sup>, thereby notifying both the relevant NRA and the Agency.

Please note that market participants registered in Italy, Romania and Slovenia will have to notify the relevant NRA directly, and by doing so they will be considered to have notified also the Agency.

Information on how to access the CEREMP register can be found in the ACER REMIT portal [here](#)<sup>8</sup>.

- **How should market participants notify that they are providing direct electronic access?**

Market participants that provide direct electronic access to an OMP shall notify both the NRA in the Member State where they are registered as well as the Agency. Market participants will need to provide the notification as of entry into force of the amended REMIT.

Once the amended REMIT has been published in the Official Journal of the European Union, ACER will enable market participants to provide this notification through CEREMP, thereby notifying both the relevant NRA and the Agency.

Please note that market participants registered in Italy, Romania and Slovenia will have to notify the relevant NRA directly, and by doing so they will be considered to have notified also the Agency.

Information on how to access the CEREMP register can be found in the ACER REMIT portal [here](#).

- **How should market participants resident or established in a third country provide information about their designated representative in the EU?**

By 6 months after entry into force of the amended REMIT, market participants resident or established in a third country that enter into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall designate a representative in a Member State in which they are active and register in that Member State. This means the registration and designation must

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<sup>7</sup> Centralised European Register of Energy Market Participants (CEREMP)

<sup>8</sup> <https://www.acer-remit.eu/portal/ceremp>



be in the same Member State, however, ACER considers it sufficient to be registered and have a designated representative in one Member State only for the whole of the European Union.

By 6 months after entry into force of the amended REMIT, the market participant shall also notify the name, email address, postal address, and telephone number of their designated representative to the Agency and to the NRA of the Member State where that designated representative resides or is established.

Before the entry into force of this obligation, ACER will enable market participants to provide this notification through CEREMP, thereby notifying both the relevant NRA and the Agency.

Please note that market participants registered in Italy, Romania and Slovenia will have to notify the NRA directly, and by doing so they will be considered to have notified also the Agency.

Information on how to access the CEREMP register can be found in the ACER REMIT portal [here](#).

- **When will the authorization process for IIPs/RRMs start and can existing IIPs/RRMs continue to operate until then?**

Articles 4a and 9a of the amended REMIT foresee new delegated acts. The new obligations on IIPs and RRM s stipulated in Articles 4a and 9a respectively will not enter into force until these new delegated acts have been adopted, in accordance with Article 22 of the amended REMIT. The authorization processes for IIPs and RRM s will therefore not start until the new delegated acts have been adopted.

IIPs currently registered by the Agency and included in the Agency's list of IIPs will be allowed to continue operating until the Agency adopts a decision regarding their authorization.

RRMs currently registered by the Agency and included in the Agency's list of RRM s will be allowed to continue operating until the Agency adopts a decision on their authorization.

Until the new delegated acts have been adopted, ACER will refer to its existing guidance, e.g. on the use of back-up solutions for the disclosure of inside information.<sup>9</sup>

- **What novelties does the amended REMIT introduce about the concept of PPA(E)T?**

The concept of persons professionally arranging or executing transactions (PPAETs) is currently not defined in neither REMIT nor the REMIT Implementing Regulation. The amended REMIT introduces for the first time such a definition under Article 2(8a), as well as new obligations for PPAETs under Article 15. Recitals 12 and 18 of the amended REMIT also make reference to the concept of PPAETs, with the underlying objectives to improve the Agency's market monitoring and data collection regimes and to make them more complete, as well as to enhance the possibility of enforcement of market abuse breaches.

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<sup>9</sup> [Questions and Answers on REMIT 29<sup>th</sup> Edition](#), Q&A III.7.22



**OLD**

*No definition.*

**NEW**

*‘Person professionally arranging or executing transactions’ means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products.’*

Chapter 8 of the 6<sup>th</sup> Edition of the ACER Guidance on the application of REMIT currently provides explanations and examples of the delimitation of the concept of PPAT, as well as guidance on the application of the obligations on PPATs. This section of the Guidance will be updated in the course of 2024 to consider the new changes stemming from the amended REMIT.

- **What new obligations does Article 15(1)-(2) of the amended REMIT introduce for PPAETs/STORs?**

As of the entry into force of the amended REMIT, PPAETs will have an obligation under Article 15 paragraphs 1 and 2 to notify ACER and the relevant NRAs (NRA of the Member State in which the market participant involved in the potential breach is registered,<sup>10</sup> and the NRA of the Member State where the wholesale energy product is to be delivered) about any potential breaches of Articles 3, 4 or 5 of REMIT.

Article 15 paragraphs 1 and 2 of the amended REMIT specify that the PPAETs must reasonably suspect that there is a potential breach of Articles 3, 4 or 5 of REMIT, and that such notifications must be carried out without further delay and in any event no later than four weeks from the day on which that person becomes aware of the suspicious event. ACER will update the 6<sup>th</sup> Edition of the ACER Guidance on the Application of REMIT to provide additional clarity on this new obligation.

Article 15(2) imposes obligations on any PPETs under Article 16 of Regulation (EU) No 596/2014 (MAR) who also executes transactions in wholesale energy products that are not financial instruments. To this end, and by analogy to ESMA’s interpretation of the definition of ‘persons professionally arranging or executing transactions’ laid down in point 28 of Article 3(1) of MAR<sup>11</sup>, in the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial or energy European legislation, ACER considers that the obligations stipulated under Article 15(2) apply broadly. The 6<sup>th</sup> Edition of the ACER Guidance on the application of REMIT will be updated in the course of 2024 to reflect the new obligations related to PPETs in the amended REMIT.

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<sup>10</sup> Information on the registration of market participants can be found in the European Register of market participants made publicly available here: <https://www.acer-remit.eu/portal/european-register>.

<sup>11</sup> ESMA, Questions and Answers On the Market Abuse Regulation (MAR), Version 17, Last updated on 31 December 2023, A6.1, page 23: [https://www.esma.europa.eu/sites/default/files/library/esma70-145-111\\_qa\\_on\\_mar.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf)

ACER acknowledges that monitoring obligations by PPAETs pursuant to Article 15 paragraphs 1 and 2 should be reasonable and proportionate and not go beyond publicly available information and the data available to the PPAET.

The amended REMIT envisages that obligations for PPATs in Article 15 (1) shall apply upon the entry into force of the amended REMIT. Notably, on the 20th day following the publication in the Official Journal of the European Union. However, obligations for PPETs under Article 15 (2) shall apply from six months upon the entry into force of the amended REMIT Regulation.

ACER's Notification Platform is already available to facilitate notification to ACER and the relevant NRAs: <https://www.acer-remit.eu/np/str>. In the course of the year 2024, it will be subject to minor updates to reflect the amended REMIT terminology (e.g. concepts of PPAETs and STORs) and its increasing scope (e.g. storage contracts, hydrogen). This platform should be used for the simultaneous notification of ACER and the relevant NRAs under Article 15 of REMIT.