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ACER
European Union Agency for the Cooperation of Energy Regulators

Ljubljana, 25 September 2024

To whom it may concern

Subject: Open letter on the designation of representatives by non-EU market participants and on the new obligations of persons professionally arranging or executing transactions (PPAETs), according to the revised REMIT

Dear Sir/Madam,

Since the entry into force of the revised Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (revised REMIT)[1], ACER has received several questions from stakeholders.

On 16 April 2024, in its open letter 'on the implications of the revision of Regulation (EU) No 1227/2011 on REMIT data reporting aspects and notification obligations', ACER addressed, amongst other: (a) how third-country market participants shall notify information about their designated representative in the EU; (b) what novelties the revised REMIT introduces about the concept of PPAET; and (c) what new obligations are introduced for PPAETs/STORs[2] by Article 15(1)-(2) of the revised REMIT.

On 30 July 2024, in its open letter 'on the notifications of algorithmic trading and direct electronic access according to the revised Regulation (EU) No 1227/2011', ACER additionally addressed the topic of algorithmic trading and direct electronic access notifications.

Since then, ACER has received further questions from stakeholders seeking guidance about the above-mentioned topics. The purpose of this open letter is to provide additional clarifications to third-country market participants on the designation of representatives, and to the persons professionally arranging or executing transactions (PPAETs) on their obligations. The open letter aims at addressing the most frequent questions received so far on both topics.

This letter should be read in conjunction with the ACER's open letters from 16th April and 30th July.

[1] Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 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.

[2] STORs – Suspicious transaction or order reports

To whom is this letter addressed?

This open letter should be of interest to market participants established or resident in a third country and to PPAETs.

What is expected from third country market participants?

By 8 November 2024, market participants resident or established in a third country that enter into transactions which are required to be reported to ACER in accordance with Article 8(1) shall: (i) designate a representative in a Member State in which they are active; (ii) verify if they are already registered for REMIT purposes in that Member State; and (iii) if not already registered in the Member State where the representative is designated, register or change the registration to the Member State where they have designated their representative. This means that the registration and designation of a representative must be in the same Member State.

In that context, by 8 November 2024, market participants shall notify the name, email address, postal address, and telephone number of their designated representative to ACER and to the NRA of the Member State where that designated representative resides or is established.

ACER has explained in its open letter 'on the implications of the revision of Regulation (EU) No 1227/2011 on REMIT data reporting aspects and notification obligations' how the above obligations shall be fulfilled. In short, market participants shall fulfil their notification obligations via CEREMP. Please note that market participants registered in Italy, Romania and Slovenia will have to notify the NRA directly, and by doing so will be considered to have notified also ACER.

In Annex I of this open letter, ACER provides further guidance on the topic. ACER expects market participants resident or established in a third country that enter into transactions which are required to be reported to ACER in accordance with Article 8(1) to take note of this open letter and its **Annex I** and to comply with the new obligations stemming from the revised REMIT.

What is expected from PPAETs?

Under the revised REMIT, PPAETs have an obligation under Article 15 paragraphs 1 and 2 to notify ACER and the relevant national regulatory authorities about any potential breaches of Articles 3, 4 or 5 of REMIT.

The obligations for persons professionally arranging transactions (PPATs) under Article 15(1) became applicable on 7 May 2024[3]. However, as way of derogation from the general entry into force, the obligations for persons professionally executing transactions (PPETs) under Article 15(2) shall only start applying from 8 November 2024[4] onwards.

[3] The twentieth day following that of the publication of Regulation 2024/1106 in the Official Journal of the European Union.

[4] According to Article 3(2)(c) of Regulation 2024/1106.

In Annex II of this open letter, ACER provides further guidance on the new PPAET obligations. ACER expects market participants and PPAETs to take note of this open letter and its **Annex II** and to comply with the new obligations stemming from the revised REMIT.

What are the next steps?

By the end of 2024, ACER aims at revising the current 6th Edition of the ACER Guidance on the application of REMIT[5], providing a more comprehensive interpretation of the different elements incorporated in the REMIT revision.

In case of further questions on the new or revised obligations, ACER invites market participants and/or PPAETs to contact ACER through the REMIT query form.

Yours sincerely,

Bart Vereecke

Acting Head of the Market Information and Transparency Department

Antonio Santos

Acting Head of the Market Surveillance and Conduct Department

[5] Available here: https://www.acer.europa.eu/remit/about-remit/remit-guidance.

Annex I: Changes in the revised REMIT introducing a representative for non-EU market participants (Article 9 of REMIT)

This Annex provides practical information concerning the obligation to designate a representative for non-EU market participants. It also includes responses to the questions raised at the REMIT II implementation workshop organised in June 2024, as well as questions received by ACER. As such, the Annex cannot be considered as exhaustive, nor does it constitute new policy.

This information aims at enhancing the market participants' understanding of how to comply with the requirements.

1 Representative designation by non-EU market participants

A new legal obligation has been introduced in Article 9(1) of the revised REMIT:

> *By 8 November 2024, market participants established or resident in a third country that enter into transactions that are required to be reported to the Agency pursuant to Article 8(1):*
>
> *(a) shall designate a representative in a Member State in which the market participants are active on the wholesale energy markets and shall register with the national regulatory authority of that Member State. The representative shall be designated by a written mandate and shall be authorised to act on the market participants' behalf;*
>
> *(b) shall mandate their designated representative for the purpose of being addressed in addition to or on their behalf, by the national regulatory authorities or the Agency, on all issues necessary for the receipt of, compliance with and enforcement of decisions or requests for information issued in relation to this Regulation;*
>
> *(c) shall provide their designated representative with the necessary powers and means to guarantee their efficient and timely cooperation with the national regulatory authorities or the Agency and to comply with the decisions and requests for information of the national regulatory authorities or the Agency issued in relation to this Regulation, including providing access to the requested information; and*
>
> *(d) shall notify the name, email address, postal address and telephone number of their designated representative to the national regulatory authority of the Member State where that designated representative resides or is established and to the Agency.*[6]

Non-EU market participants will be able to fulfil the obligation in Article 9(1)(d) by updating their market participant registration details in the Centralised European Register of Energy

[6] Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market. Text with EEA relevance. (europa.eu)

Market Participants (CEREMP)[7]. CEREMP will be amended to collect information about the name, email address, postal address, telephone number and a written mandate of the designated representative. The amendments are expected to be available in CEREMP by early October and then market participants can provide the information in the system.

ACER has prepared the below guide and answers to questions it has received, regarding which Member State (MS) the representative should be designated in, and whether an existing presence in the EU of a non-EU market participant requires or not the designation of such a representative.

The following scenarios may apply:

1.1 The non-EU market participant does not have any presence in the EU

1.1.1 The non-EU market participant is active in one Member State only

The market participant is already registered with the National Regulatory Authority (NRA) in the MS where it is active. Since the market participant needs to be registered in the same MS as the one where it designates its representative, it should designate its representative in the MS where it is already registered and active. In case the market participant is not already registered with an NRA in a MS, that market participant needs to designate a representative in the MS where it is active and register with the NRA of that MS.

1.1.2 The non-EU market participant is active in two or more Member States

The market participant is already registered with an NRA in one MS where it is active. In order to comply with the obligation in the revised REMIT to designate a representative in a MS where it is active, it can either do so in the same MS where it is already registered or designate a representative in another MS where the market participant is active. In case of the latter, the market participant will need to move its registration to the NRA of the MS where it intends to designate the representative. In case the market participant is not already registered with an NRA in a MS where it is active, that market participant needs to designate a representative in any of the MS where it is active and register with the NRA of that same MS.

If the market participant needs to change registration to another MS where it is active it can use the CEREMP functionality "Change Member State"[8].

Once the market participant changes registration to another MS, the market participant will get a new ACER code and will need to report lifecycle events (novation) to already reported

[7] https://www.acer-remit.eu/portal/ceremp

[8] The functionality is not available for Italy, Romania and Slovenia MSs because the registration is done via other tools than CEREMP.

and outstanding trades and contracts.[9] Novation will also have to be reported by the counterparty.

2 Questions and answers regarding representative designation by non-EU market participants

The below section is based on questions ACER has received[10] to date and aims to help market participants in complying with Article 9 (1) of REMIT. ACER will continue to collect any questions on this topic it may receive and complement this letter at a later stage if needed.

2.1 Member State of the market participant registration and of the representative

2.1.1 As a third-country market participant, can you register one member state EU representative with another member states NRA? For example, member state A office registered with NRA of member state B or is it driven by the member state that gave the third country its ACER number?

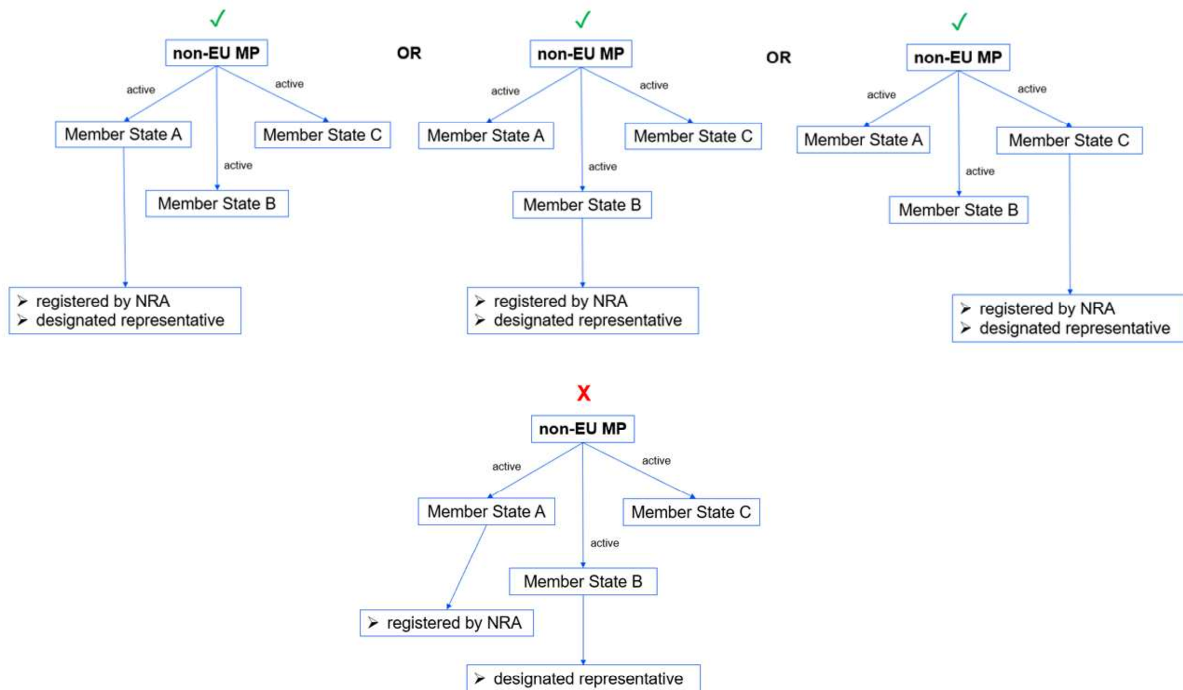
According to Article 9 (1) (a), by 8 November 2024, "*market participants established or resident in a third country that enter into transactions that are required to be reported to the Agency pursuant to Article 8(1): shall designate a representative in a Member State in which the market participants are active on the wholesale energy markets, and shall register with the national regulatory authority of that Member State*."

This means that a market participant established or resident in a third country ("non-EU market participant") that is under the obligation to designate a representative can choose where to designate a representative among the Member States where it is active. Once the representative is designated in a Member State, the market participant needs to register with the national regulatory authority of that Member State, as shown in Figure 1.

[9] Please consult TRUM Annex VII on how to report novation. It is available from https://www.acer.europa.eu/remit-documents/remit-reporting-guidance.

[10] The questions contained in this document are genuine stakeholder questions raised with ACER. The review of the questions carried out by ACER has been strictly focused on their anonymization with the aim of eliminating references made to company names, products or any other items that could be clearly linking to the sender of the question. ACER does not bear any responsibility concerning the grammar, spelling and notion of the questions included in this document.

Figure 1: Scenarios of MPs registration and their representatives in MSs



By way of example, if a non-EU market participant is active in Member States A, B and C and is already registered in Member State A under REMIT, that market participant has the option to either designate its representative in Member State A or designate its representative in any of the other Member States where it is active, i.e., Member State B or Member State C. If the market participant decides to designate a representative in either Member State B or Member State C, it would have to de-register from Member State A and re-register with either Member State B (if it decided to designate the representative in B) or Member State C (if it decided to designate the representative in C).

2.1.2 For company A with the seat outside of the EU and with registration with German NRA for REMIT, is it possible to have designated representative with the seat for example in Slovenia or Hungary or it must be with seat in Germany where company A is registered for REMIT?

Please see response to Question 2.1.1 above. In principle, a non-EU market participant is free to designate a representative in any Member State where it is active. I.e. in the example provided in the Question, if the non-EU market participant is active in Germany, Slovenia and Hungary, it can choose any of those three countries. However, if it chooses to designate a representative in Slovenia, it will then need to move its registration to the Slovenian national regulatory authority, too.

2.1.3 If the legal entity is outside the EU but registered in Hungary because it is active only at the borders (with delivery in the EU), should it have a representative?

Yes, such a company should have a representative in the EU. If the legal entity from a non-EU Member State trades wholesale energy products defined in REMIT it is a market participant that has to register in the EU Member State in which they are active. Then it also has to designate a representative.[11]

2.1.4 Article 9 - If the non-EU market participant is registered with an NRA (e.g., Germany BnetzA) is it acceptable to appoint a Designated Representative in Germany on this basis- or must we ensure the market participant is also active in power/gas products in Germany?

The fact that registration of that non-EU market participant is in Germany under REMIT means that the non-EU market participant must have been active in Germany (and maybe in other Member States). As long as the non-EU market participant is still active in Germany, it can designate its representative in Germany if it so wishes. But it can also choose to designate its representative in any of the other Member states where it is active. For more details, please see response to Question 2.1.1 above. If the non-EU market participant is registered in Germany but not active there, it should change the registration to where it is active (provided that it still falls under REMIT jurisdiction).

2.2 *Nature and role of the designated representative*

2.2.1 Is the EU-representative for non-EU companies expected to be a natural or legal person?

Such representative can be either a natural or a legal person.

2.2.2 Does the designated representative have to be a branch, subsidiary, or in some other legal relation with our non-EU based company?

No, the designated representative does not have to be a branch or subsidiary (see also response to Question 2.3.1).

2.2.3 Does the designated representative have to be active in wholesale energy markets (to have EIC code, ACER code, etc.)?

No.

2.2.4 For non-EU based company, does such representative have to be physically based in EU countries? Or if anyone who sits outside of EU has both caps in EU registered company as well, would it be accepted?

The representative needs to be designated in an EU Member State where the non-EU market participant is active and needs to be established or resident in the EU.

[11] For more information on wholesale energy products and registration of market participants please consult ACER Guidance on REMIT.

2.2.5 Regarding the EU representation for market participants who are registered in 3rd party countries - are we envisaging that this can be fulfilled by agencies, and will there be a clear process to be followed in making this registration?

If what is meant by "agencies" is third party companies (e.g., consultancies, law firms etc), then yes, such entities can be designated as representatives as far as these entities are established in the EU. A proper contractual arrangement has to be in place as further described in 2.3.1. The registration of the designated representatives is done by the market participant (by so called *market participant – user* in CEREMP).

2.3 Contractual and procedural aspects of designating a representative

2.3.1 Non-EU firm designating a representative. Do you have expectations as to how the designation letter/ agreement should look? If so, can you provide a template?

REMIT does not provide any details as regards the contractual arrangement between the non-EU market participant and its representative. What is important is that the relevant contractual arrangement reflects and corresponds to the obligations set out in Article 9 of the revised REMIT, pursuant to which the market participant shall:

- designate a representative in a MS in which market participants are active on the wholesale energy market, and register with the NRA of the MS (only with one);
- mandate their designated representative for the purpose of being addressed in addition to or on their behalf, by the NRA or ACER, on all issues necessary for the receipt of, compliance with and enforcement of decisions or requests for information issued;
- provide their designated representative with the necessary powers and means to guarantee their efficient and timely cooperation with the NRA or ACER and to comply with the decisions and requests for information of the NRA or ACER issued (including providing access to the requested information);
- notify the name, email address, postal address and telephone number of their designated representative to the NRA of the MS that designated representative resides or is established and to ACER.

2.3.2 I am acting as Representative for a market participant. This market participant is already registered with CRE (French NRA). I would like to register as such with CRE and ACER, in accordance with the obligations arising from the REMIT reform (Article 9). Could you tell me how to go about this?

It will be the market participant (so called *market participant – user* in CEREMP) that will register the representative in CEREMP.

2.4 Special cases and non-EU Registered Reporting Mechanisms (RRMs)

2.4.1 If we have several non-EU market participants under one parent entity, is it sufficient that just one of these non-EU market participants are active in power/gas markets in which we choose to designate a representative? Or do we need to assess on an entity-by-entity basis?

The designation of a representative has to be assessed for each non-EU market participant separately. This is because for the purpose of determining whether a subsidiary is established in the EU, the trading activities of other subsidiaries are not taken into account. To give an example with two possible scenarios:

Parent P has three subsidiaries A, B and C (all of them established outside of the EU).

- If A and B trade wholesale energy products (are active) in the same Member State, e.g. France, they both need to designate a representative in France. They can choose the same representative to represent both of them. If C is not active in France nor any other EU Member State, it does not need to designate a representative (nor register with a National Regulatory Authority).

- If A and B are active in France and C is active in Spain, A and B need to designate a representative in France (see first example) and C needs to designate a representative in Spain.

2.4.2 If an EU based company (A) has a daughter company - not a branch - (B) in a non-EU country with trading activity, is B required to designate a representative or will declaration to A`s NRA be sufficient to comply this obligation?

Company B's activity is independent of A's (see also response to Question 2.4.1 above). This means that if B is trading REMIT-related products, it needs to designate a representative (and register) in the EU as it would not be considered as established in the EU, for the mere fact that its parent entity is established in the EU). B can of course appoint A as its representative if it so wishes. If B is not trading REMIT-related products, there is no need to designate a representative (nor to register in the EU).

If A is trading REMIT-related products, it needs to register, but does not need to designate a representative, as it is established in the EU. If A is not trading REMIT-related products, it does not have to register.

2.4.3 We are a non-EU company active in the physical and financial energy markets outside the EU. We are looking to expand our operation to Europe. We intend to do physical cross-border flows mostly on the explicit non-coupled borders. We will not own any assets.

2.4.3.1 Do we still need to have a representative in each country we will be trading on (buy and sell) even if we do not own any generation assets?

If a company enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets in the Union, Art. 9 of REMIT applies. One representative within the EU is enough to comply with Art. 9 of the revised REMIT.

2.4.3.2 What are the qualifications for the representatives in each country? Do they have to be citizens of the country? Do they have to still be living in those countries?

The representative needs to be designated in an EU Member State where the non-EU market participant is active and needs to be established or resident in the EU.

2.4.4 What is a way forward for non-EU RRMs? To open an EU-branch, or appoint (non-affiliated) a designated representative? Are both options available? In that case, could reporting be continued by the RRM or it has to be conducted by a designated representative?

The question of designation of a representative is not relevant for non-EU RRMs. This is because according to Article 9a (1) (a) of REMIT, "*The Agency shall authorise parties as RRM where: the RRM is established in the Union*". This means that any non-EU company that want to be authorized as RRM by ACER under REMIT, needs to be established in the EU. The mere appointment of a representative in the EU will not "qualify" the non-EU RRM as established in the EU.

Moreover, "establishment" in the EU means that a non-EU RRM would need to perform at least some of the reporting activities in the EU.

Annex II: Obligations of PPAETs according to the revised REMIT

This Annex provides practical information concerning the obligations of PPAETs under the revised REMIT. It aims at enhancing the understanding of PPAETs on how to comply with the new requirements.

1 The concept of 'PPAET'

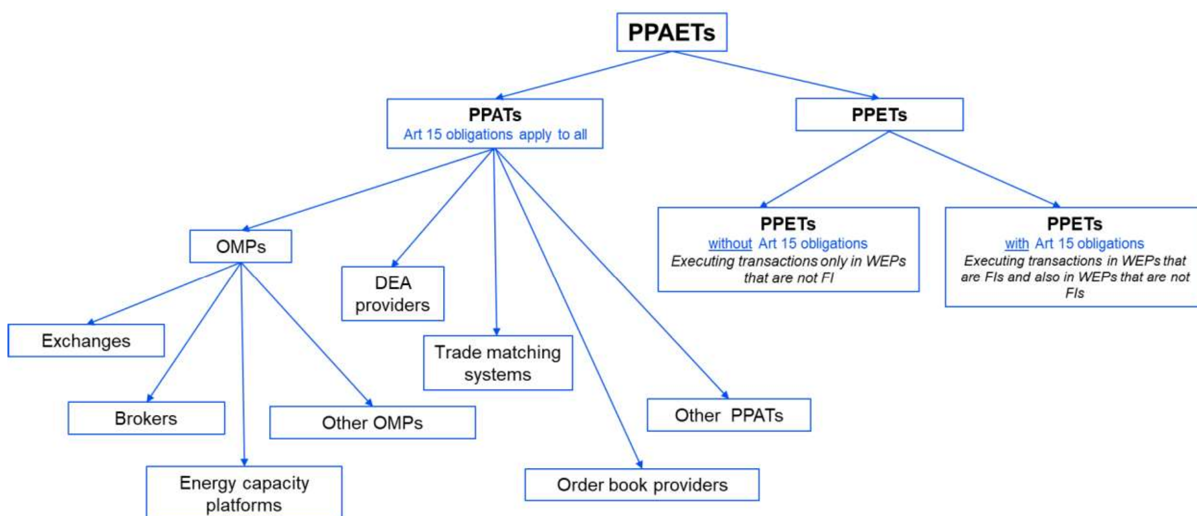
The revised REMIT defines the concept of 'person professionally arranging or executing transactions' (**PPAET**) under Article 2(8a) as follows:

> *"(…) a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products."*

In addition to the definition of PPAET under Article 2(8a) of REMIT, other references related to the PPAET concept are included in Recitals (12) and (18) of Regulation 2024/1106, Article 8(4) of REMIT, and Article 2(4) of the Commission Implementing Regulation (EU) No.1348/2014.

Figure 1 presents a grouping of all the references to the concept of PPAET under the revised REMIT and the following subsections provide further details on the different groups and entities.

Figure 1: Illustrated overview of entities referenced as PPAETs under REMIT[12]



[12] According to Articles 15; 2(20); 2(8a); 8(3); and 8(4)(d) of REMIT, and Recitals (12) and (18) of Regulation (EU) 2024/1106.

1.1 The concept of 'PPAT'

Article 2(8a) of REMIT defines the concept of 'person professionally arranging transactions' (PPAT), which is embedded in the broader concept of 'PPAET', as *"(…) a person professionally engaged in the reception and transmission of orders (…) in wholesale energy products"*.

In addition to the definition in Article 2(8a), the concept of PPAT is also mentioned in Article 8(4)(d) of REMIT (now embedded in the broader PPAET concept[13]) and Recital 18 of Regulation 2024/1106. PPATs that are expressly referred to in REMIT can be aggregated in the following categories:

- Organised Market Places (OMPs);
- Trade Matching Systems;
- Order Book Providers;
- Direct Electronic Access Providers (DEAs); and
- Other PPATs.

Aside from those entities already explicitly cited in REMIT, for an entity to be classified as a PPAT, it must fulfil the following three cumulative criteria:

- Be a 'person': defined as either a natural or legal person[14] according to Article 2(8a) of REMIT.
- Acting 'professionally': the literal analysis of the wording and the case law leads to the following interpretation: "engaged in a specified activity as part of one's normal and regular paid occupation"; and
- 'Arranging transactions': are activities, including the reception and transmission of orders, that aim to enable or assist third parties (third-party buying or selling) in a way that directly or indirectly brings about a particular wholesale energy transaction (i.e. has the effect that the transaction is concluded). This may entail, among others, providing a facility in which third-party buying or selling interests in wholesale energy products are able to interact in a way that results in a transaction. Simply providing the means by which parties to a transaction (or a possible transaction) are able to communicate with each other is excluded from the concept of PPAT[15]. If a person makes arrangements that go beyond providing the means of communication, and adds

[13] Before the REMIT revision Organised Markets and Trade Matching Systems were already included in the concept of PPATs.

[14] This includes also natural or legal persons that are responsible for an entity or a system that arranges transactions.

[15] For instance, persons such as Internet service providers, e-mail service providers, messaging providers or telecommunication providers are excluded from the concept of PPAT.

value to what is provided, it will no longer be excluded and shall be recognised as a PPAT.

The fulfilment of the cumulative criteria shall be assessed on a case-by-case basis.

The main characteristic of a PPAT is its professional intermediary role, e.g. the reception and transmission of orders in wholesale energy products.

The following elements should also be taken into consideration when evaluating whether a person is professionally arranging transactions:

- The arranging activity can comprise the whole trade lifecycle or be restricted to one or more parts of it.
- The number of PPATs involved in a transaction is irrelevant to determine whether an entity is a PPAT. If a PPAT is involved, there can be one or several PPATs involved for a transaction to be concluded.
- The PPAT’s legal form, ownership, the type of market it operates, the type of the wholesale energy product, the number of parties it represents and if it enters or not directly into transactions are not relevant elements to determine whether an entity is a PPAT.

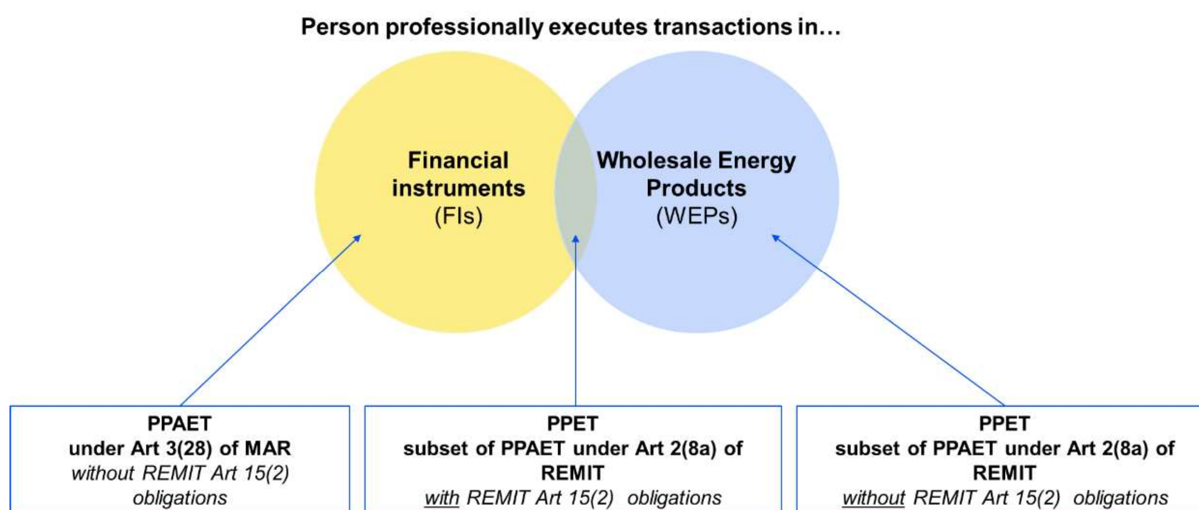
1.2 The concept of ‘PPET’

Article 2(8a) of REMIT defines the concept of ‘person professionally executing transactions’ (PPET), which is embedded in the broader concept of PPAET, as *“(…) a person professionally engaged in (…) the execution of transactions in wholesale energy products”*.

ACER understands that ‘execution’ should include trading on own account as well as execution of orders on behalf of a third party, either directly or in accordance with a discretionary mandate given by the third party.

It should be noted that not all PPETs have obligations under Article 15 of REMIT. Article 15(2) of REMIT only includes obligations on PPETs under Article 16 of MAR who also execute transactions in wholesale energy products that are not financial instruments. If a PPET executes transactions only involving wholesale energy products that are not financial instruments (and is therefore not executing any transactions that fall under MAR’s scope), it will not be subject to the obligations stemming from Article 15(2) of REMIT. Figure 2 illustrates which PPETs have obligations under Article 15 of REMIT.

Figure 2: PPETs with Article 15(2) obligations



2 Notification obligations under Article 15

Articles 15(1) and 15(2) of REMIT introduce on PPATs and on the subset of PPETs identified in section 1.2 the obligation to notify potential breaches of Articles 3, 4 and 5 of REMIT to ACER and the relevant NRAs in a timely manner.

> PPATs under Article 15(1) and PPETs under Article 15(2)*"(…) who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, whether placed on or outside an OMP, could breach Article 3, 4 or 5 of this Regulation, shall notify the Agency and the relevant national regulatory authority 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."*

The obligation on PPAETs to notify potential breaches under Articles 15(1) and 15(2) of REMIT shall be fulfilled:

- when there is a reasonable suspicion; and
- 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).

Irrespective of Article 15 legal obligations, all persons should, as best practice, submit notifications of any potential breach of REMIT they become aware of.

2.1 Proportionality on the compliance with the notification obligation

PPAETs should conduct Article 15 of REMIT notifications in a reasonable and proportionate manner.

ACER expects PPATs to continue with their usual notification practices, extending them to:

- wholesale energy products that are financial instruments (reflecting the changes in Article 1(2) of REMIT), in case they arrange transactions on these products;
- the new products categorised as wholesale energy products (such as, contracts and derivatives relating to the storage of electricity or natural gas[16] in the Union; contracts and derivatives for the supply of electricity which may result in delivery in the Union as a result of single day-ahead and intraday coupling – reflecting the changes in Article 2(4)), in case they arrange transactions on these products;
- suspected breaches of the disclosure obligations included in Article 4 of REMIT.

Likewise, PPETs under Article 15(2) of REMIT must for the first time notify suspicious transaction or order reports (STORs) to ACER and NRAs on behaviours observed (i) in the course of their trading activities and (ii) in relation to information that is available to the PPET.

Given that PPETs under Article 15(2) already need to comply with obligations under Article 16(2) of MAR and the relevant associated technical standards to *"establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions (…)"* and notify of *"reasonable suspicions"* of *"insider dealing, market manipulation or attempted insider dealing or market manipulation"*, ACER understands that the relevant PPETs are already engaging in similar obligations than those prescribed under Article 15(2) of REMIT. Consequently, the relevant PPETs should extend these already existing arrangements, procedures and systems under MAR to potential breaches of Articles 3, 4, and 5 of REMIT, taking also into consideration the specific features of energy physical markets.

In addition to the already established processes and procedures under Article 16(2) of MAR, examples of arrangements, systems and procedures for PPETs under REMIT could include, but are not limited to:

- Adoption of internal procedures and educational courses for staff on REMIT compliance, including measures and systems to prevent and discover insider trading, market manipulation, and non-effective or non-timely disclosure of inside information;[17]

[16] Also to hydrogen, reflecting the recent changes in Regulation (EU) 2024/1789 (Article 83).

[17] Including non-disclosure, incomplete disclosure, erroneous disclosure and disclosure that is not according to REMIT or the ACER Guidance (See section 4 of the ACER Guidance on the application of REMIT: https://acer.europa.eu/sites/default/files/documents/en/remit/Documents/ACER_Guidance_on_REMIT_application_6th_Edition_Final.pdf).

- Procedures on how to conduct an effective assessment to determine a reasonable suspicion for potential breaches of Articles 3, 4, or 5 (the full decision-making process should be traceable and key decision points should be recorded; these provisions should cover also data storage);

- Internal handbooks and procedures on how to write adequate, complete and informative STORs; and

- Internal procedures on how to report a STOR via the Notification Platform to ACER and to the relevant NRAs.

From 2025 onwards, based on Article 15(5) of revised REMIT, ACER, in cooperation with NRAs, will issue and make public a report with aggregated information on the PPAET arrangements, systems and procedures and their effectiveness.

2.2 Timeliness of the notifications

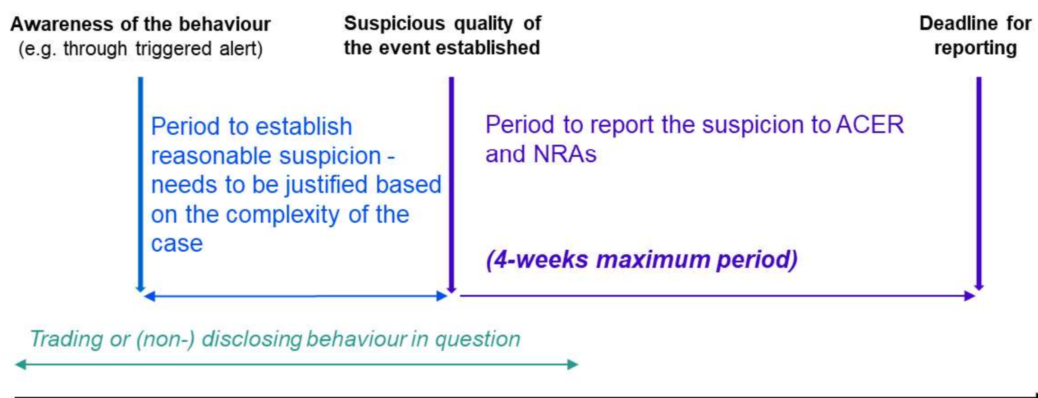
Article 15 of REMIT notifications should be submitted in a timely manner. The sooner ACER and the relevant NRA(s) are informed about the reasonable suspicion of the potential breach, the earlier they can collect relevant evidence. Hence, the timeliness of the notification after the occurrence of a suspicious event is of crucial importance when it comes to collecting evidence.

Once awareness is established, that a certain event is suspicious, PPAETs should within at most four weeks gather all the necessary information to produce a comprehensive notification.

ACER understands that the time between the moment the PPAET becomes aware of a behaviour and concludes it is suspicious to be notified may vary depending on the amount of information that needs to be analysed. This time can be short, for example in instances limited to a short time frame (i.e., events involving one trading session, or for events that can be sufficiently elucidated without having to request third party information). For more complex situations however, PPAETs should be in a position to explain and justify the timeline between the moment of becoming aware of a behaviour and the notification, according to the specific circumstances of the behaviour under assessment, if requested so by relevant NRA(s) or ACER[18]. Figure 3 provides an overview of the timeline from the awareness of the behaviour to the notification to the relevant authorities.

[18] As per the provisions included in Article 13(8) of REMIT.

Figure 3: Detection and notification timeline



Arrangements and procedures in place shall establish the internal processes on how to determine whether an event is suspicious, how to notify a potential breach to ACER and the relevant NRA(s) if there is a reasonable suspicion on breach(es) of Articles 3, 4 or 5 of REMIT, as well as how to guarantee the independence and preservation from conflict of interest of surveillance personnel.

ACER and NRAs expect PPAETs' notifications to be sufficiently substantiated and meaningful. PPAETs should produce a timely and quality STOR facilitating ACER and NRAs further review of the suspicious behaviour. ACER encourages PPAETs to also submit any relevant additional information which they may become aware of after they fulfil their notification obligations.

Finally, ACER expects alerts generated by systems to go through human screening, data quality control, and to be complemented with circumstantial information and confirmation before being submitted as STORs to ACER and the relevant NRA.

3 Means and recipients of the notifications

Articles 15(1) and 15(2) of REMIT require that PPAETs notify ACER and the relevant NRA(s). The relevant NRAs to be notified are:

- the one(s) from the Member State(s) of the delivery of the wholesale energy product(s); and

- the one(s) from the Member State(s) in which the Market Participant(s) involved in the potential breach has registered[19].

ACER has established on its website a secure 'Notification Platform' for the notification of, inter alia, STORs by PPAETs (available at: https://www.acer-remit.eu/np/home). The Notification Platform enables PPAETs to fulfil their notification obligations, allowing them to directly notify, simultaneously and in a standardised manner, one or several of the EU relevant NRAs, together with ACER. To ensure legal certainty, the notifying PPAET receives an immediate confirmation of its notification.

Any contact by PPAETs on suspicious behaviours with the competent NRA(s) through any other means than the ACER Notification Platform does not replace the submission of the STOR through ACER's notification platform.

4 Notifications of potential Article 4 breaches

Notifications about potential breaches of Article 4 of REMIT (obligation to publish inside information) have been explicitly added to the revised REMIT (Regulation 2024/1106) complementing the existing notification obligations for potential breaches of Articles 3 and 5. As such, ACER considers that Article 4 monitoring requires an active approach to detect possible breaches and cannot be performed as a mere side product of the monitoring obligations of Articles 3 and 5.

ACER acknowledges that monitoring obligations for potential breaches of Article 4 should be reasonable and proportionate, not going beyond the information available to the PPAET.

Regarding PPATs, ACER expects that they fulfil their obligations under Article 15(1) and (3) on the basis of information that is available to the PPAT and by focusing on those Inside Information Platforms, used by market participants whose orders or transactions the PPAT arranges, in particular if they are managed directly by the PPAT or by a legal person that is part of the PPAT's group.

Regarding PPETs, ACER understands that the provisions of Article 15(2) and (3) are not intended to put obligations on PPETs to actively monitor all the information disclosed by all market participants but instead focus on the information related to their own activities.

[19] This information is available in the European Register of Energy Market Participants, CEREMP - https://www.acer-remit.eu/portal/ceremp.

Electronically signed on 25/09/2024 12:40 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121