ACER

European Union Agency for the Cooperation
of Energy Regulators

Ljubljana, 30 July 2024

To whom it may concern

Subject: **Open letter on the notifications of algorithmic trading and direct electronic access according to the revised Regulation (EU) No 1227/2011**

Dear Sir/Madam,

ACER addressed in its Open letter on the implications of the revision of Regulation (EU) No 1227/2011 on REMIT data reporting aspects and notification obligations of 16 April 2024 how market participants shall notify (a) that they are using algorithmic trading and (b) that they are providing direct electronic access.

Since the publication of the Open letter, ACER has received questions from stakeholders seeking information about the scope of algorithmic trading and direct electronic access notifications.

The purpose of this letter is to provide clarifications to market participants on the new obligations. This letter should be read in conjunction with the ACER's Open letter of 16 April.

ACER will publish another Open letter in respect to obligations defined in Article 9 (1), i.e. the notification of a designated representative by non-EU market participants and Article 15.

To whom is this letter addressed?

This open letter should be of interest to market participants that engage in algorithmic trading, and/or provide direct electronic access (DEA) to an organised marketplace (OMP).

The text of letter represents ACER's view and aims to help market participant comply with obligations according to the revised REMIT.

What is expected from market participants?

Market participants that engage in algorithmic trading shall notify both the National Regulatory Authority (NRA) in the Member State where they are registered as well as ACER. This obligation entered into force on 7 May 2024.

Market participants that provide direct electronic access to an OMP shall notify both the National Regulatory Authority (NRA) in the Member State where they are registered as well as ACER. This obligation entered into force on 7 May 2024.

ACER 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 abovementioned obligations shall be fulfilled. In short, market participants can fulfil their notification obligations via ACER`s CEREMP tool. Market participants registered in Italy, Romania and Slovenia need to notify the NRA directly, and by doing so they will be considered to have also notified ACER.

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ACER expects market participants to take note of this letter and its Annex and to comply with the new obligations stemming from the revised REMIT.

In case of further questions on obligations stemming from REMIT, market participants can contact ACER through the REMIT query form.

What are the next steps?

By the end of 2024, ACER aims to revise the existing ACER Guidance on the application of REMIT[1] in light of the changes stemming from the revised REMIT[2].

Yours sincerely,

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Martin Godfried

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

[2] 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.

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Annex: Changes in the revised REMIT introducing notifications of algorithmic trading and direct electronic access

This Annex provides an overview of examples and ACER's view as to whether Market Participants fall within the scope of the new notification obligations as regards algorithmic trading (Article 5a of revised REMIT).

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

The content of this Annex should not be seen as exhaustive.

1. Algorithmic trading

For the purpose of the revised REMIT, algorithmic trading means trading, including high-frequency trading, in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organized market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.

A legal obligation has been introduced in Article 5a (2) of the revised REMIT:

> *"A market participant that engages in algorithmic trading in a Member State shall notify that engagement to the national regulatory authority of the Member State where it is registered pursuant to Article 9(1) and to the Agency."[3]*

The obligation for notification of algorithmic trading activity entered into force on 7 May 2024.[4]

In the following section ACER provides its views as to whether the non-exhaustive list of situations below fall within the scope of the new notification obligation as regards algorithmic trading (Article 5a of revised REMIT).

In making the categorisation as to what is in scope and what is not in scope, ACER focused, in line with the definition in the revised REMIT, that an algorithm is not dependent (or if so only to the limited extent) on any human intervention and as such can automatically set the

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[3] 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. Text with EEA relevance. (europa.eu)

[4] The technical ability to do the notifications is available in CEREMP as of 18 April 2024.

parameters of orders based on historical and/or real-time data, initiate orders and execute transactions.

In-scope of notification:

- *Internal (market participant's) algorithms*

  In-house built, tested on an OMP, and deployed tool where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention.

- *External (OMPs') "execution algorithms" without human intervention*

  Trading functionalities with automated management of orders. E.g. orders that are executed through functionalities which additionally to routing orders to OMPs offer automated managing of the order (e.g. automatically redirecting unexecuted portions of such orders to other venues or slicing orders prior to execution). Such functionalities differ from automated order routing systems, as the latter merely determine the OMP (or OMPs) to which the order has to be sent without changing any parameter of the order (i.e. the order is unmodified in its components, including its size). On the contrary, algorithmic trading encompasses both the automatic generation of orders and the optimisation of order-execution processes (e.g. slicing of orders) by automated mean.[5]

- *Stand-alone vendor algorithms by third parties*

  All types of algorithms independent of their complexity (e.g. PowerBot).

Out of-scope of notification:

- *External order types offered as standard functionalities by exchanges/OMPs*

  They are a standard way to interact with the market and are made available on a wide range of exchanges and execution platforms that do not contain further own dynamics apart from predefined parameters (e.g. Iceberg orders where the portion of orders is pre-defined and the slice doesn't react or change when market conditions change, stop-limit orders, delayed orders).

- *Systems used for the confirmation of orders or post-trade processing executed transactions*

  These are not directly related to placing orders/executing transactions.

- *Signal generators*

  Signal generators do not act in the market. It will still be a human trader who will have to check the information provided by the signal generator and, if the suggestion provided is agreeable, either place a manual trade or set up an algo to trade.

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[5] ESMA_QA_1490 (europa.eu)

• *Systems for pure order routing*

Systems which do not process any external parameters or market variables when forwarding orders in an automated way.

2. Direct Electronic Access

For the purpose of the revised REMIT, direct electronic access (DEA) means an arrangement whereby a member, participant or client of an organised marketplace allows another person to use its trading code so the person can electronically transmit orders to trade relating to a wholesale energy product directly to the organised marketplace, including arrangements which involve the use by a person of the information technology infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access).

A legal obligation has been introduced in Article 5a (3) of the revised REMIT:

> *"A market participant that provides direct electronic access to an OMP shall notify the national regulatory authority of the Member State where the market participant is registered pursuant to Article 9(1) and the Agency accordingly."[6]*

The notification obligation on market participants that provide direct electronic access to an OMP entered into force on 7 May 2024.[7]

In ACER's view, the notification shall be provided by the DEA provider (namely the "market participant that provides DEA" as the legal text sets out) and not by the DEA client. Since the client does not provide DEA to an OMP, no notification is expected from the client. The definitions of a provider and client are detailed in the Transaction Reporting User Manual (TRUM)[8] and the FAQs on transaction reporting document (question 2.3.9)[9].

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[6] 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. Text with EEA relevance. (europa.eu)

[7] The technical ability to do the notifications is available in CEREMP as of 18 April 2024.

[8] https://www.acer.europa.eu/remit-documents/remit-reporting-guidance

[9] https://www.acer.europa.eu/sites/default/files/REMIT/REMIT%20Reporting%20Guidance/FAQs%20on%20Transaction%20Reporting/FAQ-on-transaction-reporting.pdf

ACER considers provisions of Article 20(1) and (2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 applicable in respect of notifications according to Article 5a(3) of the revised REMIT. [10]

Lastly, ACER considers that market participants automatically submitting orders to an OMP via Software as a Service (SaaS) should not be considered as providing DEA to that OMP, given that in such scenario, there is no other person involved apart from the market participant that submits its orders via SaaS. As per the definition in the revised REMIT, DEA access to an OMP requires that *"[…] a member, participant or client of an organised marketplace allows **another** person to use its trading code so the person can electronically transmit orders to trade relating to a wholesale energy product directly to the organised marketplace*, […]".

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[10] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Electronically signed on 30/07/2024 08:22 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121