

# ACER

# Transaction Reporting User Manual (TRUM)

## Annex IX – Guidance on the definition of Organised marketplaces

Version 1.0

17 December 2024

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## 1. Scope and purpose

Article 2(20) of Regulation (EU) 1227/2011 (REMIT), as revised by Regulation (EU) 2024/1106 (Regulation amending REMIT), introduces the definition of organised marketplace.

### Article 2(20) of Regulation (EU) 1227/2011 (REMIT)

*‘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.*

Annex IX to the Transaction Reporting User Manual (TRUM) represents ACER’s guidance on the organised marketplace definition. The considerations provided herein are based on the wording of REMIT and the Regulation amending REMIT, as well as interactions with various stakeholders such as market participants (MPs), registered reporting mechanisms (RRMs) and organised marketplaces (OMPs).

With this Annex, ACER aims to delineate the criteria and characteristics that define an organised marketplace, providing a comprehensive framework for understanding the scope of the definition as set in Article 2(20) of REMIT. This includes detailing the structural components, operational mechanisms, and the roles of various participants involved. By establishing this guidance, the document seeks to create a uniform understanding that can be used by market participants, regulators, and other stakeholders to identify and assess organised marketplaces.

## 2. Key criteria to qualify as an organised marketplace

Based on the definition in Article 2(20) REMIT, ACER considers that the following key criteria all have to be fulfilled to be considered an OMP:

### 1. Operating as a system or facility

A system or facility refers to a location/setting used to enable the multiple third-party buying or selling interests’ interaction, this can be an IT platform or tool, a broker<sup>1</sup> or even a physical location. The system or facility does not necessarily have to have been created for the purpose of being an organised marketplace, but if it functions as such (fulfils all the OMP criteria) it should be considered an organised marketplace.

A **system** is understood as a set of rules that governs how third-party trading interests interact. Such rules could be contractual agreements or standard procedures that shape and facilitate the trading of wholesale energy products (WEPs) and the interaction between market participants’ trading interests. The main criterion to determine whether it is a system is whether there are specific rules concerning the interaction between market participants to which the market participants must adhere to. General-purpose communication systems such as email, chat, whiteboards are out of scope, despite such systems allowing for the communication of trading interests, they are not governed by rules which facilitate an interaction of trading interests (see further elaboration under criteria 4).

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<sup>1</sup> The Agency considers a broker a natural or legal person that arranges transactions between a buyer and a seller for a commission. Broker platforms are mentioned as examples of OMPs, but this does not mean that all such platforms automatically have to be considered OMPs. This will only be the case if they fulfil all the OMP criteria.

The notion of **facility** refers to buildings, services, equipment, tools etc. that are provided for a particular purpose or function. In the context of organised marketplaces, the function would be to allow for the interaction of multiple third-party buying or selling interests. It is worth to mention that within financial regulation facility and system are somewhat interchangeable as e.g. a “multilateral trading facility’ or ‘MTF’ is defined as a “multilateral system”<sup>2</sup>. For this reason, ACER also consider the two terms as equivalent within the scope of REMIT, with the main criterion being whether there are specific rules for how trading interests can interact.

ACER also considers that the system or facility should have a **continuity aspect** to be regarded as an OMP. For example, the system or facility should be available for longer, predictable time periods, with a continuous or defined schedule of operation, so that the market participants can rely on its availability. If a platform is erected for a one-off business occasion this is not considered a system or facility under the OMP definition.

In line with the ACER Guidance on the notion of persons professionally arranging or executing transactions<sup>3</sup>, ACER understands that an organised marketplace also encompasses the **natural or legal person** that is responsible for the system or facility in question.

ACER also notes that there are no locational requirements on OMPs foreseen in REMIT, meaning that a system or facility can be established outside of the Union and still be recognised as an OMP under REMIT, if the OMP criteria are fulfilled (i.e. 3<sup>rd</sup> country OMPs).

## 2. Includes multiple third-party buying or selling interests

The definition of an organised marketplace 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. This would mean that 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 are fulfilled.

ACER considers that, if there are multiple third-party buying interests on one side, it is possible that the single seller on the other side is also the operator of the system or facility where the trading is taking place, as there are no third-party specifications/requirements on the seller side (if the example would be multiple third-party sellers, it would be the single buyer that could also be the operator of the platform).

This could, for example, mean that an individual TSO platform (either for balancing purposes or for capacity allocation) could be considered an OMP, if the rest of the OMP criteria are fulfilled. Please see additional consideration under section 3.4.1.

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<sup>2</sup> Article 4(22) Directive 2014/65/EU (MIFID II)

<sup>3</sup> ACER Guidance on the application of REMIT 6.1 Edition available [here](#).

### 3. Covers trading in wholesale energy products

The definition of wholesale energy products can be found in Article 2(4) of REMIT.<sup>4</sup>

#### **Article 2(4) of Regulation No 1227/2011 (REMIT)**

**'wholesale energy products'** means the following contracts and derivatives, irrespective of where and how they are traded:

(a) contracts for the supply of electricity or natural gas, including LNG, where delivery is in the Union or contracts for the supply of electricity, which may result in delivery in the Union, as a result of single day-ahead and intraday coupling;

(b) derivatives relating to electricity or natural gas produced, traded or delivered in the Union, or derivatives relating to electricity, which may result in delivery in the Union, as a result of single day-ahead and intraday coupling;

(c) contracts relating to the transportation of electricity or natural gas in the Union;

(d) derivatives relating to the transportation of electricity or natural gas in the Union.

(e) contracts relating to the storage of electricity or natural gas in the Union;

(f) derivatives relating to the storage of electricity or natural gas in the Union

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) [600 GWh/year] shall be treated as wholesale energy products

### 4. The interactions have the potential to result in a transaction

The final criteria foresees that the interactions within the facility or system **'may result in a transaction'** for it to be considered an organised marketplace. Transactions can still be further negotiated, and modifications of transaction can be agreed, outside of the OMP.

The **'interaction'** part of this criteria is also important. ACER considers 'interaction' to mean the possibility of expressing interest to buy or sell, by;

- placing of orders that are visible to other market participants and executable,
- placing of orders for an auction, or
- aggressing of orders that have been placed by other market participants.

Common for the above-mentioned criteria for interaction is that there is an element of competition among the market participants within the system or facility (on the organised marketplace). It also requires that the system or facility contains rules that concern the matching, the arranging and/or the negotiations of trading interests (the marketplace is *organised*). General advertising and/or aggregation of trading interests alone do not fulfil this criterion. Despite displaying multiple third-party interests, a system which does not allow for its users to place orders, match, arrange and/or negotiate a transaction (i.e. there is no interaction of trading interests) does not constitute an organised marketplace.

<sup>4</sup> Please note that 'hydrogen' is also consider as a wholesale energy product based on Article 83 of Regulation (EU) 2024/1789 on the internal markets for renewable gas, natural gas and hydrogen

This thus excludes so-called ‘bulletin board’ type systems where the interface only aggregates and broadcasts buying or selling interests, and it does not allow for the communication or negotiation between the advertising parties in the system itself. The provision of a simple connectivity between the “bulletin board” and an exchange or broker would not bring the system into scope of the definition either, as long as it does not prescribe any rules for interaction of trading interests within the system. Please also refer to section 3.4.2 on “trade-matching systems”.

In line with the ACER Guidance on REMIT, simply providing the means by which market participants are able to communicate with each other is excluded from the concept of PPAT and thus, by extension, from the concept of OMP. Internet service providers, e-mail service providers, messaging providers or telecommunication providers are all therefore not considered as OMPs.

Finally, the term ‘**transaction**’ encompasses both orders to trade and trades, as further explained in Section 3.1 of the main text of TRUM.

## 3. Different types of organised marketplaces

This chapter includes examples of organised marketplaces and is not to be seen as an exhaustive list of all types of organised marketplaces.

### 3.1 Energy exchanges

Energy exchanges are considered organised marketplaces as explicitly referred to in Article 2(20) of REMIT, if they fulfil all the OMP criteria described in Chapter 2.

### 3.2 Energy brokers

Energy brokers are considered organised marketplaces as explicitly referred to in Article 2(20) of REMIT, if they fulfil all the OMP criteria described in Chapter 2.

The Agency considers an Energy broker a natural or legal person that arranges transactions between a buyer and a seller for a commission. Please see Section 3.1.5 of the TRUM for further information on the different broker types.

### 3.3 Energy capacity platforms

Energy capacity platforms are considered organised marketplaces as explicitly referred to in Article 2(20) of REMIT, if they fulfil all the OMP criteria described in Chapter 2.

ACER understands the Energy capacity platform perimeter as platforms that facilitate the allocation of transportation or storage contracts under the wholesale energy product definition. This includes trading of primary storage capacity, primary cross-border transportation or transmission capacity and potentially secondary storage capacity, secondary cross-border transportation or transmission capacity, if the allocation is facilitated by the Energy capacity platform.



ACER only consider platforms that offer the allocation of storage or transportation/transmission capacity as Energy capacity platforms – capacity of production<sup>5</sup> is not covered.

### **3.4 Other system or facilities in which multiple third-party buying or selling interests in wholesale energy products interact in a way that may result in a transaction**

The following subchapters aims at examining other systems or facilities which stakeholders have had specific questions on in relation to the concept of organised marketplace.

#### **3.4.1 “One to many” platforms**

In ACER’s understanding, some market participants may run auctions or trading sessions to buy/sell energy or capacity from/to other market participants. In consideration of the definition of organised marketplace, a system with one-to-many interaction may fall under the OMP definition. More specifically, platforms run by one market participant on one side (e.g. a TSO), with multiple third parties on the other side (buy and/or sell interests) would fall within the definition of an OMP, if all the other OMP criteria are fulfilled (see Chapter 2). This does not mean that all one-to-many platforms are automatically OMPs, a case-by-case assessment must be made depending on the functionality of the platform in question.

For example, platforms that only function as a communication or tendering tool between one market participant on one side and other market participants on the other side on a bilateral basis and where the platform is not used to announce publicly what the market participants are selling/buying would not be considered an OMP. E.g. if Market Participant A has created a platform to communicate and conclude transactions with Market Participants B, C, and D, there is no visibility on the orders placed or competition between market participants B, C, and D and thus such a platform would not be considered an OMP.

However, if Market Participant A is announcing its buy/sell interests in a way that makes it public to market participants B, C, and D simultaneously and they can each react (interact) to offers by market participant A by competing against each other (e.g. in an auction type setting or other price formation), then the market participant platform would be considered an OMP, unless this is a one-off event (see criterion 1 in Chapter 2).

Another example of one-to-many platforms that may be in scope of the OMP criteria is TSO platforms. Both for the purpose of balancing and for transportation capacity, TSOs run auctions, sometimes organised or hosted by exchanges or energy capacity platforms, but sometimes by the individual TSOs themselves. When the individual TSOs run auctions by themselves (or other allocation procedures) and these activities fulfil the OMP criteria in Chapter 2, they are to be considered as OMPs for the scope of these activities. These considerations are also valid for Storage System Operators, LNG System Operators, Hydrogen Network Operators and any other market participants operating in a similar fashion.

#### **3.4.2 Trade-matching systems (TMSs)**

Article 8(4)(d) of REMIT introduces the concept of trade-matching systems where a distinction is made between OMPs and trade-matching systems. ACER has further elaborated<sup>6</sup> that a trade matching system “provides a facility that facilitates the entering into transactions that allows matching of orders.”

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<sup>5</sup> This does not exclude that generation capacity markets could fall under the generic umbrella of ‘other systems and facilities’ described under chapter 3.4

<sup>6</sup> See Section 8.2 of the ACER Guidance on REMIT and Q&As on REMIT n. III.3.15

and represents a third-party electronic matching system to match wholesale energy contract transactions, including the matching system for buy and sell orders to match transactions in a wholesale energy product. This includes e.g. third-party trade confirmation systems.

In ACER's view, an example of trade-matching system is currently represented by the coupling algorithms adopted by the Nominated Electricity Market Operators (NEMOs) and TSOs for implementation of the Day-ahead and Intraday coupling (respectively, SDAC and SIDC)<sup>7</sup>. Another example of trade-matching system is the EU balancing platforms in the electricity markets<sup>8</sup>.

ACER is of the understanding that both SDAC/SIDC and EU Balancing platforms are not to be considered as OMPs, however, they do fit the notion of trade-matching systems and, as such, fall under the definition of PPAT.

Although trade-matching systems are not to be considered as OMPs, they might possess information relevant for an effective market surveillance that the connected OMPs themselves do not have access to. In accordance with REMIT Article 8(3), the REMIT implementing acts may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

### 3.4.3 Technology providers facilitating trading in energy markets

Market participants may use various technologies and trading solutions to assist their trading in WEPIs. ACER understands that such platforms shall fall under the definition of organised marketplace if through the solution (i.e. the platform) multiple third-party buying or selling interests can interact in a way that may result in a transaction (see Chapter 2).

Platforms which only provide price information across markets, market analysis and insights or other information tools are not considered as OMPs. This could be tools for aggregation or replication of contracts offered on OMPs. Platforms which only allow the market participants to support their own order managing processes should also not be considered as OMPs. However, if such a system would include a matching function or in other ways allow for the interaction between MPs in the system, it could be considered a Trade-matching system or an OMP.

There are also technology providers assisting OMPs by providing trading software solutions for them. In these cases, it is important to consider the role of the technology provider operating the system and note the level of control or influence the OMP has over the functioning of the system. If the technology provider has embedded a number of rules that govern the interaction of trading interests in the system and does not allow the OMP to set its own rules, it could in fact be the technology provider who is operating the system and thus would be considered as the OMP.

Depending on the features of the system, a technology provider may be considered as a trade-matching system, as well as a person professionally arranging or executing transactions, and thus need to adhere to the rules and obligations for such.

An assessment of these type of systems should be done on a case-by-case basis, as their features and complexity vary greatly. Proportionality must be taken into account while ensuring a level playing field between all types of organised marketplaces without creating market barriers, while at the same time ensuring compliance with REMIT and requirements for a coherent data reporting regime serving market integrity, surveillance, and transparency requirements.

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<sup>7</sup> Article 7 of Commission Regulation (EU) 1222/2015 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

<sup>8</sup> Chapter 2 of Regulation Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

### 3.4.4 Direct Electronic Access (DEA) providers

As defined by Article 2(19) of REMIT “direct electronic access” means an arrangement whereby a member, participant or client of an organised marketplace allows another market participant to use its trading code so the market participant 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 market participant 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).

The above referred member, participant or client of an organised marketplace that allows another person to use its trading code is considered to be the DEA provider. The person that uses the trading code is considered to be the DEA client.

It is ACER’s understanding that based on the above definition of DEA and DEA provider, the DEA provider shall not be considered an organised marketplace as it only provides its trading code to its client to *access* an organised marketplace, but it does not operate a system or facility through which multiple third-party buying or selling interests in wholesale energy products can interact. Such interaction is happening on the organised marketplace the DEA provider is the member, participant or client of. Since DEA providers do not fall under the definition of OMP, they do not have an obligation to report transactions on behalf of their clients.

Direct electronic access providers are however still considered to be persons professionally arranging transactions and should adhere to the rules for such.<sup>9</sup>

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<sup>9</sup> For more information on PPAET obligations please see the ACER Guidance on the application of REMIT 6.1 Edition available [here](#).