Comment on II.2 Who shall report?

We would like to note that the definition of the function of "a system or facility" is not fully aligned between REMIT and MiFID II. MiFID II recognizes the role of an operator of a multilateral system that brings together third party buying and selling interests, thereby reflecting an intermediary role between both sides of the transaction.

To ensure clarity in designating entities as OMPs and to align with MiFID II, ENTSOG recommends including the intermediary role in the criteria for OMP designation.

It should be explicitly clarified in “Chapter 2.2.1.2 Organised Marketplaces” (especially in paragraph (162)) in the Reporting Guideline that a TSO that does not itself conduct auctions/other allocation procedures and does not mediate transactions between network users is not classified as an OMP.

Under the scope of Article 3(b) of the recast REMIT Implementing Regulation, we would like to highlight that, in the context of gas transportation, primary and secondary capacity transactions are not arranged by TSOs. Capacity allocation takes place through dedicated capacity booking platforms (e.g. PRISMA, RBP and GSA). A TSO does not arrange transactions between network users, why a TSO cannot be considered as organised marketplaces within the meaning of REMIT. When providing transmission capacity, TSOs act within their regulated role of operating and maintaining the network, and do not arrange or execute transactions in a manner comparable to market intermediaries. Capacity allocation by TSOs is primarily linked to system operation (e.g. capacity maximisation or overnomination) and not to trading activities. Such activities are carried out within a regulated framework, with tariffs set or approved by NRAs, limiting price dynamics and the potential for market-driven interactions. In this context, TSOs do not perform an intermediary function between market participants and do not facilitate the interaction of multiple buying and selling interests as envisaged under the OMP concept. More generally, we ENTSOG consider that OMP status should be assessed on the basis of the specific activities performed by an entity and, in particular, whether that entity plays a role in organising or arranging transactions. Any assessment should therefore be conducted on a case-by-case basis.

Refering to paragraph (178) in the Reporting Guideline we recommend aligning the text with Article 8(5) of Implementing Regulation (EU) 2026/256, which provides that: “In order for the OMPs to fulfil their reporting obligation, market participants shall provide to the OMP where the trading occurs information not already available to the OMP.”

The paragraphs (185) and (186) in the Reporting Guideline contains regulations regarding primary capacity allocation. The Reporting Guideline does not clearly identify the responsible market role for reporting primary OTC transactions or lifecycle events concluded on an OMP as well as outside an OMP. Furthermore, the Reporting Guideline does not clearly identify the responsible market role for reporting the corresponding lifecycle events to these transactions. Therefore, the Reporting Guideline should state clearly, which market role is responsible for reporting these transactions and which market roles are justified for reporting of these transactions to ACER.

Pursuant to Article 8 of Regulation (EU) No 1227/2011, market participants were required to provide ACER with records of wholesale energy market transactions. With regards to the transportation transactions, Implementing Regulation (EU) No 1348/2014 provided explicit legal certainty though Recital 4, which explicitly clarified that details of transportation contracts acquired through primary capacity allocation of a TSO were to be reported exclusively by the respective TSO. While Article 8(1) of the recast REMIT IR assigns OMPs responsibility for reporting transactions concluded on their platforms, reporting of the lifecycle events to corresponding transactions, occurring outside an OMP, shall fall under market participant reporting obligations. As TSOs and Network Users fall under the definition of a market participant under Regulation (EU) No 1227/2011, the legal text may imply reporting obligations for the considered transactions and their details for both respective TSOs and Network Users. Consequently, such an interpretation may lead to multiple reporting channels for the same data. If the responsible reporting party is not specified, both parties could be required to report OTC primary transactions and OTC

lifecycle events. This would lead to duplicate reporting of the same contracts and/or lifecycle events by TSOs and network users and increased operational complexity and a risk of inconsistencies in reported data. Where both counterparties report the same contract, discrepancies between submissions may arise, creating uncertainty as to which data set should be used for validation and reconciliation. This may affect the accuracy and completeness of data reported to the Agency under Article 11 of Regulation (EU) No 1348/2014. In addition, multiple reporting channels for identical transactions would reduce the efficiency of the reporting framework by increasing the volume of duplicate records and the associated validation and reconciliation efforts for both market participants and ACER. Furthermore, the Table 4 reporting scheme in Annex I of the REMIT Implementing Regulation (EU) No 1348/2014 was designed specifically for reporting by TSOs and is therefore not suitable for application by network users. Reporting by both TSOs and network users would not support the objective of effective and streamlined reporting arrangements under Article 8 of Regulation (EU) No 1227/2011, as amended by Regulation (EU) 2024/1106. Furthermore, pursuant to Article 8(3) of the recast REMIT Implementing Regulation, at the request of a market participant, the OMP shall make available the relevant reported data of that market participant. In this context, we note that the responsible market participant is not explicitly defined, which may create uncertainty in cases where multiple entities are involved in the reporting chain.

The same considerations apply to section 2.1.6.5 on trade reporting for OTC primary transactions. Clarification of the responsible reporting entity would support consistent implementation.

Paragraph (191) states: “To avoid double reporting, ACER will accept one single transaction report for secondary capacity allocations between market participants. Considering the unique role of TSOs in the process of capacity allocation, this report can also be provided by the TSO reporting on behalf of both market participants (given that the TSO is also an RRM).” The paragraph is migrated from FAQ 4.2.24. ENTSOG would like to note that secondary capacity allocations between market participants occurring OTC are outside the scope of TSOs’ activities and that TSOs are therefore not the relevant market participants for reporting such transactions when acting as RRMs. Therefore, these transactions should not be part of reporting by TSOs.

We note that the responsible market participant for reporting lifecycle events is not clearly defined, particularly where such events occur outside OMPs. As both TSOs and network users qualify as market participants, this may create ambiguity and lead to duplicate reporting and inconsistencies, as outlined above. Clarification of the responsible reporting entity would support consistent implementation and avoid duplication and additional complexity.