Response to ACER Public Consultation PC_2026_R_09

Guideline on REMIT transaction reporting — Annex: Reporting of energy derivative transactions under REMIT and EMIR (draft for consultation, DRAFT_Guideline_Annex_I_V3)

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Type of organisation	Market participant (association)
Country	Spain
Contact	[redacted]
Date	08/09/2026

Paragraph references (¶) are to the numbered paragraphs of the draft Annex published for consultation. Section references follow the structure of the consultation questionnaire.

About the respondent and summary

ACENEL represents 53 independent electricity retailers operating in the Spanish and Iberian markets. Our members supply electricity to final customers and, in order to manage the price risk inherent in that activity, hedge their supply portfolios with electricity derivatives — predominantly Iberian power futures traded on OMIP and EEX through executing brokers, complemented by bilateral instruments such as physically or financially settled PPAs and contracts for differences. Our members are, without exception, non-financial counterparties under EMIR and, in the vast majority of cases, below the clearing threshold. Most of them are not members of any trading venue.

This profile — a non-financial market participant, registered under REMIT for its physical supply activity, hedging through a broker without its own venue membership — is the single most common configuration in the European retail electricity sector. It is also, as set out below, the configuration that the draft Annex captures most decisively through ¶18 and illustrates least.

We welcome the draft. Three elements are particularly valuable and should be preserved in the final text: the exclusion of CCPs and clearing brokers from the notion of market participant (¶20); the attribution to the organised marketplace of the obligation to report orders to trade on behalf of all market participants active on it (¶37 and ¶47); and the exclusion of modifications of a financial open position from the reporting perimeter (¶11).

Our comments follow the structure of the questionnaire.

No.	Comment	Section	Priority
1	Scope of the Annex: MiFIR excluded in ¶2 but relied upon in ¶35-36	I	High
2	Cash-settled derivatives referencing a Union index: how the “delivery in the Union” condition is met	I	High
3	“Entity responsible for making the trading decision” (¶18): undefined concept with registration consequences	II	**Critical**
4	Order reporting by the OMP (¶37, ¶47): support, and request that the discharging effect be stated as a rule	II	**Critical**

No.	Comment	Section	Priority
5	Contradiction between ¶16 and footnote 3; unresolved reference to “Section X”	II	High
6	Exchange-traded derivatives and NFC-: mandatory delegation under Article 9(1a) EMIR does not apply	II	**Critical**
7	Evidencing the Article 8(7) exemption: UTI and field mapping	II	High
8	Allocation of responsibility where reporting is performed by a third party	II	High
9	Pass-through clients and the flag mechanism (¶22-23): extension beyond DEA	II	Medium-High
10	Beneficiary identification (¶26) in intermediation chains	II	Medium
11	Proportionality for hedging portfolios of retail suppliers	II	High
12	Boundary between energy derivatives and non-standard supply contracts	II	Medium-High
13	Section III: the most common energy-market scenario is missing	III	**Critical**
14	Inconsistencies in the reporting scenario tables (¶49)	III	Medium
15	Temporal application, coordination with PC_2026_R_07 and non-retroactivity	Other	Medium

Section I — Introduction and scope

Comment 1. Scope of the Annex with respect to MiFIR

Paragraphs concerned: ¶2, ¶35, ¶36.

¶2 limits the Annex to derivatives reported on the basis of Article 9 of EMIR. Yet ¶35 grounds the reporting exemption in Article 8(7) of the REMIT Implementing Regulation, which refers to both Article 9 EMIR and Article 26 MiFIR, and ¶36 lists approved reporting mechanisms and competent authorities under Article 26 MiFIR among the sources from which ACER will obtain transaction information.

The Annex thus relies on MiFIR as a basis for the exemption while declining to address how the exemption operates through that route. For a market participant trading through an investment firm, the Article 26 MiFIR transaction report is frequently the effective channel through which its trade reaches ACER, and it is left without guidance.

Proposal. Either (i) extend the analysis to Article 26 MiFIR, or (ii) state expressly in ¶2 that the MiFIR route will be addressed in a subsequent revision, indicating the expected timing. The current drafting reads as an unintended gap.

Comment 2. Cash-settled derivatives and the "delivery in the Union" condition

Paragraphs concerned: ¶9, ¶10 and the example at the end of section 1.2.

¶10 restricts the reporting perimeter to derivatives relating to the supply of electricity or natural gas **with delivery in the Union**, and the example illustrates the converse case of a derivative traded on a Union platform relating to gas delivered outside the Union.

The example resolves a case of physical delivery located outside the Union. It does not resolve the case that dominates the Iberian market: a **cash-settled derivative referencing the price index of a Union market**, in which no physical delivery occurs anywhere. A future on the Iberian day-ahead price does not give rise to delivery, inside or outside the Union. Two readings are possible:

- the condition is met by reference to the underlying of the index, which is electricity delivered in the Union, so the derivative is reportable; or
- the condition is not met because no delivery takes place, so it is not.

We understand the first reading to be correct and it is the one the industry applies. The text does not, however, impose it. Since the reportability of virtually all financially settled electricity derivatives in the Union depends on this point, the ambiguity is not minor.

Proposal. Add a second example to section 1.2 resolving expressly the case of a cash-settled derivative referencing a Union market index, confirming that the "delivery in the Union" condition is assessed by reference to the underlying of the index.

Section II — Reporting obligations under REMIT and EMIR

Comment 3. "Entity responsible for making the trading decision" (¶18) — critical

Paragraphs concerned: ¶18, ¶22, ¶23, ¶25, ¶26, ¶29.

¶18 introduces the criterion on which the whole Annex turns: where trading is conducted through another entity, the market participant is the entity responsible for making the trading decision. ¶18 further accepts that several entities may be market participants in the same transaction.

We welcome the change of approach. The previous membership-based test produced a result that was difficult to justify: the client of an exchange member fell outside the perimeter by virtue of its formal status, while an entity already registered for its physical activity fell inside for everything. The ¶18 criterion is substantive and, in principle, more coherent with the market-monitoring objective.

But the concept is undefined, and its consequences are registration consequences, not merely reporting ones. A market participant must register with its national regulatory authority. ¶18 potentially moves a very large population of entities into that obligation — including the great majority of our members — without offering any criterion for determining who "makes the trading decision". The text does not resolve the following cases:

1. **Shared decision.** The client sets the objective (volume, price range, tenor) and the broker decides timing, slicing and execution tactics. Who makes the trading decision? Both, under the final sentence of ¶18?
2. **Discretionary execution.** Best-execution or algorithmic orders where the client determines neither price nor timing.
3. **Advice.** The adviser recommends and the client instructs: the formal decision is the client's; the substantive one may not be.
4. **Discretionary portfolio management** by a third party, distinct from the case in ¶27.

¶18 must also be read against ¶26, which contemplates that the underlying client of an executing broker may **not** qualify as a market participant. The Annex does not indicate when one or the other outcome obtains, ¶18 being the only criterion available. A diligent reader cannot determine, with the text in hand, whether a retailer that instructs its broker which product to buy and at what price is or is not a market participant.

Proposal.

1. Define "responsible for making the trading decision", indicating which elements are determinative (choice of product? of price? of timing? bearing the economic risk?) and which are irrelevant.
2. Include **worked examples** for the four cases above.
3. Clarify the relationship between ¶18 and ¶26: in which circumstances is the client of an executing broker not a market participant?
4. Given the registration effect, provide an **adaptation period** — not less than six months from final publication — for entities that become market participants by application of ¶18 and were not so under the previous approach, and confirm that the qualification does not operate retroactively.

Comment 4. Order reporting by the OMP (¶37, ¶47) — critical

Paragraphs concerned: ¶37, ¶41, ¶47.

¶37 states that the obligation to report orders to trade under REMIT remains in scope and must be fulfilled by the OMP where trading occurs, on behalf of all market participants active on its platform. ¶47 restates this and adds that it fulfils the market participants' reporting obligations.

This is, in our view, the most valuable contribution of the draft, and we ask that it be preserved. It resolves a situation of impossible compliance: a market participant

trading through a member does not materially place the order, does not control its slicing or sequence, and does not hold the data the reporting form requires — venue-assigned order identifier, receipt and modification timestamps, order status, priority. Reporting such orders by reconstruction would produce records that do not correspond to what occurred in the order book, degrading rather than improving the quality of the data ACER receives.

The approach is moreover grounded in Level 1: Article 8(1a) of REMIT, as amended by Regulation (EU) 2024/1106, requires organised marketplaces to make order-book data available to ACER, thereby fulfilling the market participants' obligations under Article 8(1). The Annex is therefore restating primary law, which makes it all the more important that it does so accurately.

Four drafting issues should be resolved before publication.

(a) Inconsistent legal basis. ¶37 cites Article 8(1) of the REMIT Implementing Regulation; ¶47 cites Article 8(1a) of REMIT. The same obligation is described with two different bases. The Level 1 basis (Article 8(1a) REMIT) should be cited consistently, with the Implementing Regulation cited for the technical specifications.

(b) Discharging effect stated only incidentally. ¶47 says the OMP's reporting fulfils the market participants' obligations, but does so within the description of a specific ETD scenario. The discharging effect should be stated as a general, standalone rule in section 2.3 or 2.4, in terms that do not depend on the illustrative scenario, and it should be confirmed that it **requires no bilateral delegation agreement, no RRM registration by the participant, and no additional declaration**. This is consistent with ACER's own Q&A III.2.26, which states that Article 8(1a) overrides the former Article 6(1) of Implementing Regulation 1348/2014 and leaves it to each OMP how to implement the obligation.

(c) Scope of application. ¶47 reasons on a regulated market. It should be confirmed that the rule applies to all categories of OMP under Article 2(20) REMIT — regulated markets, MTFs, OTFs, broker platforms and capacity platforms — given that ¶14 recalls that the OMP perimeter may be broader than that of trading venue.

(d) Back-to-back "mirror" transaction. ACER's previous guidance required a back-to-back transaction between the executing broker and its client to be reported where the beneficiary field was not populated. The draft is silent on this. It should confirm expressly whether that guidance is superseded, since its tacit survival would generate duplicates that ACER would then need to clean.

Comment 5. Contradiction between ¶16 and footnote 3

¶16 states that the notion of entering into transactions under REMIT does not cover actions related to option exercise, settlement or clearing. **Footnote 3**, attached to that very sentence, states instead that clearing a trade on an exchange and the trades resulting from an option exercise are considered reportable transactions under REMIT, referring the reader to "Section X" of the TRUM.

Both propositions cannot be simultaneously true as drafted. The footnote may intend to distinguish between the *market participant status* of the entity that clears (which it does not have) and the *reportability of the resulting transaction* (which exists, at the charge of another entity); but the text does not say so, and the reader is left with an apparent contradiction in the paragraph that defines the Annex's core concept.

In addition, the reference to "**Section X**" of the TRUM is an unfilled editing placeholder, as is the cover date "DD Month 2026".

Proposal. Redraft footnote 3 to distinguish expressly between market participant status and reportability of the transaction, and complete the cross-reference before publication.

Comment 6. Exchange-traded derivatives and NFC-: mandatory delegation does not apply — critical

Paragraphs concerned: ¶24, ¶30 and footnote 6, ¶34, ¶35.

Footnote 6 recalls that under Article 9(1a) of EMIR financial counterparties are solely responsible and legally liable for reporting, on behalf of both counterparties, the details of **OTC** derivative contracts concluded with a non-financial counterparty below the clearing threshold. ¶34 then identifies exchange-traded derivatives on regulated markets as the first category of derivatives reported under EMIR that may also fall within REMIT.

What the Annex does not say — and what, in our members' experience, is very widely misunderstood — is that **the mandatory-delegation regime of Article 9(1a) does not extend to exchange-traded derivatives.** For an ETD, the NFC- retains its own EMIR reporting obligation and discharges it either by reporting itself or by voluntarily and contractually delegating to its broker or clearing member. ¶24 compounds the risk by noting that executing brokers "may act as principal" on regulated markets: a retailer reading ¶24 and footnote 6 together will conclude that its broker, being a financial counterparty acting as principal, is legally liable for reporting the retailer's futures. For ETDs that conclusion is wrong.

The consequence for REMIT is direct. The exemption in ¶35 operates only where the transaction details **have in fact been reported** under Article 9 EMIR. A retailer that assumes its ETD futures are being reported by its broker under mandatory delegation, when no voluntary delegation is in place, is not exempt under REMIT: its trades are reported by nobody under either regime, and the retailer is in continuous breach without knowing it.

Proposal.

1. Add to section 2.2 or 2.3 an express statement that Article 9(1a) EMIR applies to OTC derivative contracts only, that for exchange-traded derivatives the non-financial counterparty retains its own reporting obligation, and that delegation of ETD reporting is voluntary and requires an agreement between the parties.

2. State expressly that the REMIT exemption in ¶35 is conditional on the EMIR report having been made, and that a market participant relying on the exemption should be able to evidence the delegation arrangement under which the report is made (see Comment 7).
3. Consider a short worked example: NFC- retailer, ETD future on a regulated market, executing broker acting as principal, no delegation agreement — who reports under EMIR, and what follows under REMIT.

Comment 7. Evidencing the Article 8(7) exemption

Paragraph concerned: ¶35.

¶35 deems REMIT obligations fulfilled where transaction details have already been reported under Article 9 EMIR or Article 26 MiFIR. The Annex explains **when** the exemption operates but not **how the market participant evidences that it has**.

In practice, a market participant relying on the exemption does not necessarily know the identifier under which its financial counterparty reported the trade, has no access to the content reported, and has no official mapping between EMIR fields and REMIT Table 1 fields. It therefore cannot demonstrate to its national regulatory authority that the exemption validly applied. The burden of proof falls on the party lacking the means to discharge it — and in Spain enforcement powers are exercised against the market participant, not against the trade repository or the intermediary that made the report.

Proposal.

1. Express recognition of the **UTI generated under EMIR** as a valid identifier for REMIT purposes, without the need to generate an additional one.
2. Publication of a **field-by-field mapping** between the EMIR data set and REMIT Table 1, identifying equivalent fields, REMIT fields not covered by EMIR, and fields whose semantics differ.
3. A **query mechanism** allowing a market participant to confirm with ACER whether a transaction identified by its UTI has in fact been received from the financial source.

Comment 8. Allocation of responsibility where reporting is performed by a third party

The Annex distributes the reporting obligation among market participant, exchange member, OMP, RRM and trade repository, but does not address the consequences of non-performance by the reporting party. The question gains relevance precisely because of the merit of ¶47: if the participant's compliance depends on the OMP reporting, the participant needs to know what happens if the OMP does not report, reports late or reports incorrectly.

A market participant cannot audit the material execution of a report by a third party. Holding it responsible for a process the rules themselves direct it not to perform does

not incentivise better compliance; it incentivises defensive duplication, with the corresponding deterioration in data quality.

Proposal. The Annex should provide that, where the obligated party has transmitted complete and timely data to the reporting party and has received the latter's acceptance, the obligated party's obligation is presumed fulfilled and responsibility for defects in the report lies with the reporting party, without prejudice to the obligated party's duty to remedy once aware of the defect. We also ask that the Annex recall the market participant's right, under the REMIT Implementing Regulation, to obtain from the OMP confirmation of what has been reported on its behalf, including ACER's validation results.

Comment 9. Pass-through clients and the flag mechanism (¶22-23)

¶22 and ¶23 develop, for direct electronic access chains, a mechanism of considerable utility: where there are several sub-clients, the market participant is the entity making the trading decision, while "pass-through" clients that make no decision are not market participants and need not register; the reporting entity must nonetheless flag the existence of sub-delegated clients.

This scheme elegantly resolves a situation that arises equally **outside DEA**, most notably in executing-broker chains and in the market representation and aggregation arrangements characteristic of the Iberian market, where a third party performs operational acts on behalf of a participant without taking title to the energy or making the economic decision.

Proposal.

1. State the ¶22-23 mechanism as a **general rule applicable to any intermediation chain**, not only DEA, and relocate it to section 2.1 accordingly.
2. Specify how the flag works: the Table 1 field in which it is recorded, admissible values and, above all, **where the reporting entity obtains the information** about the existence of sub-clients, which by definition it does not hold.
3. Clarify whether "pass-through" status exempts from registration automatically or requires a communication to the national regulatory authority.

Comment 10. Beneficiary identification in intermediation chains (¶26)

¶26 requires the executing broker to identify the underlying client as beneficiary in Data Field (10), even where that client is not a market participant. The obligation is reasonable, but in multi-link chains the executing broker **does not know the ultimate beneficiary**; it knows its immediate client.

Proposal. Clarify whether Field (10) should record the immediate client or the ultimate beneficiary and, in the latter case, establish the corresponding duty of intermediate links to pass that information upstream, without which the ¶26 obligation cannot be performed.

Comment 11. Proportionality for hedging portfolios of retail suppliers

Paragraphs concerned: section 1.2 (scope); Article 5 of the REMIT Implementing Regulation.

Article 5 of the REMIT Implementing Regulation introduces de minimis thresholds in the physical domain — among others, transactions relating to the physical delivery of electricity produced by units of 10 MW or less, or of natural gas from facilities of 20 MW or less, outside organised marketplaces — which are reportable only upon reasoned request by ACER. No equivalent provision exists for derivatives, and the Annex does not address whether or how Article 5 interacts with derivatives whose underlying would itself fall below those thresholds.

A medium-sized independent retailer holds a derivatives portfolio whose sole purpose is to hedge the price risk of the supply contracted with final customers. That portfolio is structurally one-directional and predictable, determined by the contracted demand curve; it has no capacity to influence price formation in the derivatives market; and it generates a compliance cost per transaction that is, in relative terms, orders of magnitude higher than that of a large operator.

Union financial law already recognises the specificity of this activity through the ancillary-activity exemption in MiFID II and the differentiated treatment of non-financial entities hedging risks arising from their commercial activity. The absence of any comparable consideration in the Annex introduces an unjustified discontinuity between the financial and energy regimes for exactly the same portfolio.

Proposal.

1. Incorporate a **proportionality criterion** for derivatives portfolios held solely to hedge supply to final customers, in line with the treatment Union financial law affords to non-financial entities.
2. At a minimum, **articulate the relationship between the REMIT and MiFID II concepts of hedging**, so that a portfolio qualified as hedging for financial purposes receives the same treatment for REMIT derivative-reporting purposes.
3. Clarify whether the Article 5 thresholds apply where the underlying of the derivative is the output of an installation that would itself fall below those thresholds.

Comment 12. Boundary between energy derivatives and non-standard supply contracts

The REMIT Implementing Regulation introduces new definitions of transaction, lifecycle event, standard and non-standard contract. The Annex delimits the perimeter of energy derivatives but not the boundary with non-standard supply contracts, which is where our members' practical uncertainty is concentrated.

The instruments that generate systematic doubt among Spanish retailers are:

- **Financially settled PPAs**, and physical PPAs with a financial component (contract-for-differences structures on an index).
- **Contracts for differences** linked to regulated remuneration or bilateral hedges.
- **Shape or profile swaps**, exchanging an hourly profile for a block.
- **Indexed hedges** whose price is determinable only at the close of the delivery period.

For each, the qualification determines radically different consequences: reporting under EMIR with REMIT exemption, or reporting under REMIT as a non-standard contract through Table 2 plus Table 1 executions, now within ten working days. A wrong qualification produces, depending on the direction of the error, either continuous non-compliance under REMIT or improper reporting to a trade repository.

ACER has previously cautioned that indiscriminate submission of transactions to a trade repository — including spot and physical forwards not captured by EMIR — does not satisfy REMIT unless the repository is registered as an RRM and has been instructed to report to ACER. That caution, formulated in general terms, does not resolve the cases above.

Proposal. Add to the Annex a **decision tree and a set of qualified examples** for the four instrument types above, indicating in each case the applicable regime, the reporting table, the obligated party and the deadline. ACENEL offers to contribute concrete Iberian-market casuistry should ACER find it useful.

Section III — Reporting derivative transactions under EMIR / REMIT

Comment 13. The most common energy-market scenario is missing — critical

Paragraphs concerned: ¶45 to ¶49.

The only scenario developed is that of an investment firm acting as executing broker for its client and giving up the trade to a clearing member. The two reporting variants in ¶49 turn on whether the investment firm acts on its own account or on the client's account.

Not developed is the scenario of a non-financial market participant which, being neither an exchange member nor an investment firm, makes its own trading decisions and trades through a member. This is the standard configuration of retail suppliers, aggregators and non-financial market operators across the Iberian market, and it is precisely the configuration that ¶18 brings within the market participant

definition. That the Annex defines a criterion capturing this population and then does not illustrate how its transactions are reported is the draft's most significant gap.

Proposal. Add a third scenario to section 3, with its own field table, in which the client (i) is not an exchange member, (ii) is not an investment firm, (iii) is a market participant by application of ¶18, and (iv) trades through an executing broker. The scenario should specify who appears in Fields (1), (9), (10) and (12), who reports the order and who reports the trade under each regime, and — following Comment 6 — how the answer changes depending on whether a voluntary EMIR delegation agreement is in place. ACENEL offers to contribute the concrete casuistry of the Iberian market.

Comment 14. Inconsistencies in the tables under ¶49

Two points of detail on the ¶49 tables that should be corrected before publication:

1. In the first table — investment firm acting **on its own account** — Field (12), trading capacity, is exemplified with the value "A" (agent). The combination is contradictory on its face: if the firm acts on its own account, "P" would be expected. We understand the intended meaning to be that the firm acts in its own name but for the economic account of a beneficiary; if so, the scenario heading should reflect it, since "acts on its own account" suggests the opposite.
2. In the same table, Field (11) is described as "Type of code used in field 9 and field 10", but Field (9) does not appear in the scenario. The description should be limited to Field (10), or Field (9) should be included with a blank value.

Other comments

Comment 15. Temporal application and coordination with PC_2026_R_07

Market participants in Spain are currently facing three simultaneous timelines: the reporting deadlines of the REMIT Implementing Regulation, applicable since 29 April 2026; the transitional regime of its Article 16, maintaining the current formats and technical specifications until October 2027; and the publication of the new Guideline on REMIT transaction reporting (PC_2026_R_07, consulted 16 April – 12 June 2026) and of this Annex, both expected in the last quarter of 2026.

It is particularly problematic that the new deadlines are already in force while the delimitation of what is reportable — and, with ¶18, the very identification of who is obligated — remains under consultation. We also note that the main Guideline was consulted and closed **before** the Annex was published, so that stakeholders had no opportunity to comment on the interplay between the two documents, notably on whether the ¶18 criterion and the ¶22-23 pass-through mechanism belong in the main Guideline as general rules rather than in a derivatives-specific Annex.

Proposal.

1. A minimum period of six months between final publication of the Annex and its applicability, consistently with Comment 3.
2. Publication of a **consolidated timeline** of reporting obligations by data type and regime, with the applicability date of each.
3. Express confirmation of **non-retroactivity**: transactions concluded and registration qualifications made before final publication will not be requalified or subject to retroactive reporting.
4. Confirmation that the final Guideline and Annex will be published together, with the general concepts (market participant status through intermediaries, pass-through clients) placed in the Guideline and cross-referenced from the Annex, and that stakeholders will be given sight of the consolidated text before it becomes applicable.
5. Completion of the cover date ("DD Month 2026") and of the "Section X" cross-reference in footnote 3.

Closing remarks

Comments 3, 4, 6 and 13 are the priorities and are interrelated: ¶18 defines a new and far-reaching criterion; ¶47 offers the operational solution that makes it workable for orders; Comment 6 identifies the point at which the EMIR side of the exemption silently fails for the population ¶18 captures; and section 3 does not illustrate the combined result for the most numerous population of energy market participants. Resolving them requires no legislative change and does not diminish ACER's monitoring capacity; on the contrary, it improves data quality by eliminating reconstructed reports and duplicates.

ACENEL remains at ACER's disposal to elaborate on any of the points above or to contribute casuistry from the Iberian market.