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ACER public consultation: Annex to the Guideline on REMIT transaction reporting (energy derivative transactions)

Fields marked with * are mandatory.

Introduction

Scope of the Annex on the reporting of energy derivative transaction

To complement the new Guideline on REMIT transaction reporting, ACER has developed a dedicated Annex on the reporting of energy derivative transactions.

The Annex:

- Clarifies the scope of reporting under REMIT and Regulation (EU) 648/2012 on over-the-counter (OTC) derivatives, central counterparties and trade repositories ('EMIR').
- Explains how REMIT reporting exemptions apply for derivatives that are already reported under EMIR.

You can download the draft Annex on reporting of energy derivative transactions under REMIT and EMIR here:

DRAFT_Guideline_Annex_I_V3_for_consultation.docx

Objective of the consultation

ACER is seeking stakeholder input to ensure the Annex is clear, practical and supports consistent data reporting across the EU.
In this process, ACER will also cooperate and consult with the European Securities and Markets Authority (ESMA).

The survey is structured in dedicated sections following the chapters of the proposed annex. Respondents are invited to submit their feedback on each section via the open questions below and/or by uploading documents with revision proposals in the dedicated section at the end of the survey.

Contact and deadline

The contact point for this consultation is: REMIT.Consultations@acer.europa.eu

All respondents are invited to submit their comments by 11 September 2026, 17:00 (CET)

Respondent's data

* **Name and surname**

This information will not be published

[redacted]

* **Email address**

This information will not be published

[redacted]

Name of organisation (if applicable)

[redacted]

Type of organisation (if applicable)

Multiple values are accepted

- [x] Market participant (including association)
- [ ] Organised marketplace (including association)
- [ ] Inside information platform (including association)
- [ ] Transmission system operator (including association)
- [ ] National regulatory authority
- [ ] Academia/research institution
- [ ] Other (please specify)

* **Country**

- ( ) EU-27 (please specify)
- (•) Other (please specify)

* **Please specify**

United Kingdom

Data protection, confidentiality and publication of results

Data protection

ACER will process personal data of the respondents in accordance with Regulation (EU) 2018/1725, taking into account that this processing is necessary for performing ACER's consultation tasks.

More information on data protection is available in ACER's data protection notice and on ACER's website.

ACER will not publish personal data.

* I have read and understood the Data Protection Notice on External Webinars / Online Events and Data Protection Notice on Interactions with Stakeholders.

I confirm

Confidentiality and publication

Following this consultation, ACER will make public:

- the number of responses received
- company names, unless they should be considered as confidential
- all non-confidential responses
- ACER's evaluation of responses.In the evaluation, ACER may link responses to specific respondents or group of respondents.

You may request that the name of your company or any information provided in your response is treated as confidential. To this aim, you need to explicitly indicate below whether your response contains confidential information.

* Do you consent to the publication of the name of the organisation?

- ○ Yes
- ◉ No

* Do you consent to the publication of the provided answers?

Please, note that your answer, without your name and organization, may be shared with the EU institutions and national authorities.

- ◉ Yes
- ○ No

* Does your submission contain confidential information?

Please note that submissions containing confidential information will not be published.

- ○ Yes
- ◉ No

Section I: Introduction and scope

This section covers the following topics:

- Purpose of the Annex
- REMIT scope, definitions, terminology

Do you have any comments on the guidance provided in this chapter?

Section II: Reporting obligations under REMIT and EMIR

This section covers the following topics:

- Counterparties vs market participants
- Energy derivatives reportable under EMIR
- Energy derivatives reportable under EMIR and REMIT
- Energy derivatives reportable only under REMIT

Do you have any comments on the guidance provided in this chapter?

Dear Madam/ Sir
Thank you for the useful draft Guidance and public consultation, permitting firms to provide feedback.

On this point below of the Acer Draft Guideline 2.2 to C7 of Annex 1 of Mifid II (specifically highlighted yellow), Can I please highlight that I do not believe this accurately reflects the legislation.
C7 reference in 2.2 below is found here: ANNEX I | European Securities and Markets Authority

Acer's Draft Guidelines currently states:

2.2. Energy derivatives reportable under EMIR

7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

This means that wholesale energy products that are (i) mandatorily physically settled and (ii) traded on an OTF are subject to a carve-out from MiFID and are not considered financial instruments (and consequently also not considered reportable derivatives under EMIR). They are commonly referred to as 'C6 carve-out instruments'. All other physically settled commodity derivatives traded on venues (point 6) or off-venues (point 7) are in scope of EMIR. For additional guidance on the application of these provisions, please refer to ESMAs Guidelines on the application of C6 and C7 of Annex 1 of MiFID II. Regulation - 1287/2006 - EN - EUR-Lex

My perspective
The Acer guidance states that " All other physically settled commodity derivatives traded on venues (point 6) or off-venues (point 7) are in scope of EMIR"
However to my mind this is not the case. Per C7, only Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial

instruments; are in scope.
Derivatives referenced in C7 will only be considered eligible financial instruments where they “have the characteristics of other derivative financial instruments” and meet the conditions stipulated by Article 38(Article 4(1)(2) of Directive 2004/39/EC)Characteristics of other derivative financial instruments

1. For the purposes of Section C(7) of Annex I to Directive 2004/39/EC, a contract which is not a spot contract within the meaning of paragraph 2 of this Article and which is not covered by paragraph 4 shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if it satisfies the following conditions:
(a) it meets one of the following sets of criteria:
(i) it is traded on a third country trading facility that performs a similar function to a regulated market or an MTF;
(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF or such a third country trading facility;
(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;
(c) it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

For the purposes of EMIR, a derivative or derivative contract is defined as "a financial instrument as set out in points (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC as implemented by Articles 38 and 39 of Regulation (EC) No 1287/2006" (MiFID).
It follows that for an instrument to be caught by EMIR it must be a "financial instrument" as defined in MiFID. I am not aware of any EMIR guidance which determines the “Financial Instruments “ presented in Section C7 of Annex I to Directive 2004/39/EC in a different way for Emir

On this basis, we do not consider the draft guidance to be accurate in stating,“All other physically settled commodity derivatives traded on venues (point 6) or off-venues (point 7) are in scope of EMIR.
To my mind, all other physically settled commodity derivatives traded ..off-venues (point 7) are only in scope where they “have the characteristics of other derivative financial instruments” meeting the conditions stipulated per Article 38 (Article 4(1)(2) of Directive 2004/39/EC

I would be happy to hear your perspective if this still differs.
Warm regards,

[redacted]

Section III: Reporting derivative transactions under EMIR / REMIT

This chapter illustrates ACER’s understanding of EMIR and REMIT reporting obligations in an ETD trading scenario.

Do you have any comments on the guidance provided in this chapter?

Other comments and file upload

Are there any other proposals you would like to share with ACER? (e.g. topics that should be covered, amendments etc.)

You can upload your proposals in Word or PDF here.

Please ensure that all your proposed amendments are in one document, clearly identifying each section affected. Track changed versions of the document are also welcome.

Maximum file size is 1 MB. If your file is larger, please use the functional mailbox: REMIT.Consultations@acer.europa.eu

Thank you for your contribution.

Contact

Contact Form