European Venues and Intermediaries Association and London Energy Brokers Association ["EVIA & LEBA"] are pleased to have the opportunity to respond to ACER on matters related to Annex to the Guideline on REMIT transaction reporting (energy derivative transactions).

Please see our comments in line below. We note this response is in letter form only because the draft survey form was rendered inaccessible in the EU Portal here: https://ec.europa.eu/eusurvey/runner/5d87d522-a7c4-4874-9b35-353ff2ba0958?draftid=da60ac52-10e8-43ec-b47f-104378079ac0

Name and surname	[redacted]
Email address	[redacted]
Name of organisation (if applicable)	European Venues and Intermediaries Association and London Energy Brokers Association. ["EVIA & LEBA"]
Type of organisation (if applicable)	Organised marketplace (including association)
Country	EU-27
I have read and understood the Protection Notice	I confirm
Do you consent to the publication of the name of the organisation?	Yes
Do you consent to the publication of the provided answers?	Yes
Does your submission contain confidential information?	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?

i. General
   a. It is right that paragraph 3 draws attention to, "the principle that uniform rules should not create unnecessary costs or administrative burdens for market participants and should duly consider the reporting frameworks established under EU financial market legislation." However we consider that several of the measures set out, notably the duplication of reporting across multiple RRMs for exchange blocks together with the extraterritorial scope of application, and the absence of a commutable exemptive arrangement between each of REMIT and EMIR II and MiFID II to undermine this.
ii. MiFID II / MiFIR
   a. We consider that the exemptive scope of reporting between REMIT and EMIR should also be replicated between REMIT and transaction reporting under MiFID II. This would cater for certain aspects where financial market participants only come under MiFID reporting requirements.
iii. Meaning of Scope

a. Whilst paragraph 5 engages the notion of market participant to also encompass non-EU market participants, insofar as they enter into transactions on wholesale energy markets, we note that these actors cannot be required to comply where mutually reliance exists. This does not align with the
b. We would highlight the need for clarity for instance in respect of TTF physical and financial contracts listed on the CME in the United States, or for the requirement for third country situated trade counterparties to contract with an EU RRM. Mindful of the opposite approach under EMIR II, MiFID II and SFTR, we would suggest that reporting requirements do not apply to such overseas entities despite the broader reach of REMIT.

iv. Meaning of the term transaction
a. Noting paragraph 6 states that, "The term transaction includes any trade and order to trade, matched or unmatched…" We consider that this is both confusing and runs against the ordinary language meaning of the term. It remains evident that a great many Orders do not result in Transactions. We would advocate for pre-trade events to be clearly and adequately delineated from the point of trade and the post-trade lifecycle.

v. Simplification
a.

vi. Algorithmic Trading versus AI
a. Mindful of the emerging widespread discussion around AI in Financial Services, we would urge ACER and the Commission to reconsider the use of the term "Algorithmic" and indeed also "High Frequency" replace with the broader scope of argentic AI genesis or transmitted orders to trade or transactions.

vii. Algorithmic Trading verses MiFIR Art 26
a. We consider that these guidelines should contain a straightforward deferential approach where Algorithmic Reporting is made under MiFIR Article 26 transaction reporting. Hereby, firms must identify when a transaction has been executed via an algorithm and report specific information relating to the algorithm responsible for the investment decision and/or execution decision (this is often referred to as algorithmic trading reporting under RTS 22).
b. We also reiterate our previously unsuccessful consideration that OMPs should not be required to report Algo details at the pre-trade point of order reception not only because these are owned by the market participant and not static data; but because order proliferation creates a burden in direct conflict with the principle for simplicity and competitiveness. Rather a simple Boolean notification should suffice with direct mapping capability to any subsequent actual trade ("transaction").
c. We therefore also urge ACER and the Commission to exempt OMP order reporting for Algos which are subject to reporting under RTS 22

viii. MISP
a. We note that under the currently proposed set of EP-ECON amendments for the MISP. AM 646:
i. Requires the European Commission report to on the feasibility of establishing a single reporting mechanism for energy commodity derivatives and a unique identifier format for transactions reported under both MiFID and REMIT.
b. Should this EP-ECON drafted proposal become EU law than we would understand that all the REMIT Tables should need to become the common

standard, or merged into any such and in line with global ISO standards and formats.

ix. Formulaic Prices
   a. Whilst properly a matter for the second round of REMIT Reporting and TRUM consultations, we understand that ACER further considers that trades whose price is calculated by reference to a formula may also be concluded on an OMP as well as bilateral. That is, that they become Standard Trades under Table 1 in addition to Table 2.
   b. Such trades may commonly be options strike prices or "Trade at Settlement" ["TAS"] which are concluded on exchange Regulated Markets. We note that there may also be possibilities that such trades are either arranged with Order dissemination or actually concluded on broker OMPs. Therefore there may need to be the capacity in Table 1 and / or requisite reporting guidance which we understand is currently reserved for Table 2.

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?

<u>Counterparties vs market participants</u>

i. **Over-the-counter (OTC) derivative**
   a. We note that this is a difficult definition under EU Financial Regulations because the EMIR definition of "OTC derivative" has a different locus pt the MiFID II and MiFIR definitions of an "OTC Transaction". Specifically trades on MTFs and OTFs fall differently between these two regulations, a matter that could pose complications under the forthcoming merged reporting regime.
   b. As set out, REMIT takes a third approach; wherein OTC refers instead to a purely bilateral transaction that is carried out outside an OMP.
   c. It may be helpful for the guidance to clearly map the REMIT application of the term to the "Standard" and "Non Standard" instrument delineation and therefore to the reporting Schemas for Table 1 and Table 2.

ii. **Exchange members**
   a. We still query why the REMIT terminology for firms providing Direct Electronic Access has migrated from "DMAP" under REMIT I to "DMA" also under REMIT I, but now to "DEA" under REMIT II. Mindful that both DEA and "Sponsored Access" are prescribed terms under EU financial regulations, we would advocate that the term "DMA" is retained for all REMIT references in order to make it clear to which rules the term is being applied.

iii. ***Entering into transactions***
   a. As above we note the difficulties in the natural language contradiction of entering into a transaction simply by placing an order to trade, but where a

transaction is not entered into. This remains illogical and tautological and we would prefer Orders and Transactions to each be treated according to their natural language meanings. However, if that is to remain the case, this should be made specifically clear in paragraph 16.

b. This approach also means that several entities to be considered OMPs in the same transaction. This being the case, it needs to be made as clear as the multiple MP reference is under paragraph 18.
c. This is particularly relevant in the case of making arrangements and bringing-about trades in exchange "blocks" or where legs of package or spread trades are concluded on different OMPs, notably on Exchange Regulated Markets. Paragraph 18 could clarify that even where such a trade is concluded on an Exchange Regulated Market, but arranged outside the exchange order book, then two or more RRMs shall be required to report the transaction.

iv. **CCPs and clearing brokers**
   a. We agree with the guidance

v. **DEA providers and their clients**
   a. We agree with the guidance that the 'pass-through' clients (not taking any trading decisions) will not be considered as market participants and will not need to register as such.
   b. However, we note that most DEA providers who are financial firms still remain opposed to providing any identification of the 'pass-through' clients to the OMP. We understand to be against the intent of REMIT II and therefore this could be clearly set out in paragraph 23.

vi. **Executing brokers and their clients**
   a. Where member brokers act as "executing brokers" for exchange transactions they do act as 'principal' for a brief period of time before giving up the transaction for clearing. However they are typically not are not considered as a counterparty to the transaction for the purposes of EMIR because they are not considered to undertake any market risk.
   b. It may be helpful here to set out a similar approach to that in section 1.2 paragraphs 9, 10, 11 where such an entity has no obligation to report this derivative contract to ACER although such contracts still fall under the general scope of REMIT and therefore other REMIT obligations (e.g. the publication of inside information) remain applicable.
   c. Giving the fact that certain wholesale energy market transactions can take place on third country Exchange Regulated Markets, it may be helpful to add a further paragraph under section 2.1.3 to clarify the reporting scope in these situations. Specifically what are the obligations for a US entity acting as an executing broker in the United States on the CME TTF contracts, both physical and financially settled. We would not consider any such activity entirely outside the EU to have REMIT obligations.

vii. **Investment firms and their clients**
   a. Whilst we broadly agree with the comment in paragraph 29 such that, "the status of the investment firm as a REMIT market participant depends on the specific trading arrangement"; we underscore that most investment firms have a great number of branches and subsidiaries who act in different capacities, with varying permission and of course in different locations. For instance most EVIA/LEBA member firms are Groups which have a many investment firm entities which undertake arrangements. We would urge ACER to reconsider chapter 2.1.4 in order to focus the outcome on the identity and the capacity of

the IF entity taking the trading decision, their location, and their activities. IT may be helpful possibly to provide use-case examples.

viii. **Energy derivatives reportable under EMIR**
   a. In respect of EU EMIR, Paragraph 30 properly notes that, "When a non-EU entity enters into a derivatives contract with an EU financial counterparty or EU non-financial counterparty, only the EU counterparty needs to report the transaction." Considering the EU non-financial counterparty, it may be helpful for ACER to set out whether it therefore becomes a Market Participant under REMIT and undertakes any REMIT Reporting obligations. We recall again the situation with CME listed TTF ETDs in a Third Country.
   b. We agree with Article 32 concerning 'C6 carve-out instruments', but consider it could be expanded and more clearly written to consider where REMIT reporting obligations accrue and how those may apply to counterparties in Third Countries.

ix. **Energy derivatives reportable under EMIR and REMIT**
   a. In paragraph 35 We suppose that the terms "traded at" should be expanded to include the pre-trade scope of including orders under REMIT II
   b. In paragraph 35, last bullet, we suppose the intent is the EMIR II Noun, "Regulated Markets" as MTFs and OTFs are indeed themselves regulated markets under MiFID II and MiFIR.
   c. We agree with paragraphs 35-40.
   d. Paragraph 37 considers obligations applying to the, "OMP where the trading occurs". Given the wider scope of OMP perimeter under REMIT II and as set out above that several OMPs may be involved in a transaction, we would urge ACER to elaborate here as to the intended meaning of an "OMP where the trading occurs" as opposed to an "OMP where the arranging occurs," and where packages and spreads create multiple "OMPs where the trading occurs" and the expected treatment of the package leg components.
   e. We note the "typo" in paragraph 38: ["Se-up"]
   f. We consider that the exemptive relationship between REMIT and EMIR should be mutual and equivalent. Paragraph 38 sets out why this is not the case and applies a subordination to REMIT. We think this is a poor outcome and commend ACER and the European Commision to correct this and then make clear under section 2.3.

x. **Energy derivatives reportable only under REMIT**
   a. We agree with paragraphs 39-42.
   b. These are important and may usefully be specifically cross-referenced in earlier sections

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

xi. Under paragraph 43, it may be helpful to delineate "EU ETD" scenarios from third country ETD scenarios.
xii. We agree with paragraphs 44-46.

xiii. Under paragraph 47, we think that this is misleading. The OMP where the trade, or legs to a package, is concluded would commonly be different to the OMP where the trade is arranged. It would be the latter OMP who reports the orders, whereas paragraph 47 asserts that it would be the former one and does not consider the scenario.

xiv. Moreover, in relation to paragraphs 45, 46, &47, there is no consideration where the Investment Firm A also operates an OMP, likely together with a MiFIR regulated trading venue. ACER could helpfully set out here when an "Order" is deemed to form by dint of being firm and multilateral and therefore creates a "Pre-trade OMP" as to where shopping around occurs by the Investment Firm A such as with indications or "axes".

xv. We agree with paragraph 48

xvi. Likely the TRUM example reference in Paragraph 50 may change.

EVIA
Warnford Court
29 Throgmorton Street
London, EC2N 2AT
evia@evia.org.uk
www.evia.org.uk
+44 (0)207 947 4900

LEBA
Warnford Court
29 Throgmorton Street
London, EC2N 2AT
leba@leba.org.uk
www.leba.org.uk
+44 (0)207 947 4900