

GUIDANCE NOTE 1/2015

The concept of PPATs (Persons professionally arranging transactions)

04-Mar-2015

Background information

This Guidance Note presents ACER and national regulatory authorities' interpretation regarding the concept of Persons professionally arranging transactions (PPATs) under Article 15 of REMIT regulation. This is a non-binding interpretation of the concept and is published in order to update the 3rd edition of the ACER Guidance on the application of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

Keyword(s): PPAT; Persons professionally arranging transactions; third party buying interest; third party selling interest; organised market place; multilateral system; routing of orders.

1) Introduction

Article 15 of Regulation 1227/2011 (REMIT)¹ defines two obligations for persons professionally arranging transactions (PPATs). According to it, any PPAT in wholesale energy products shall²:

- notify the national regulatory authority (NRA) without further delay, when it reasonably suspects that a transaction might breach Articles 3 or 5 of REMIT;
- establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5 of REMIT.

At the request of an NRA, the Agency (in line with Article 16 (1) of REMIT) promoted the development of this Guidance Note on the delimitation of the concept of PPATs. The Note is structured as follows:

- Section 2 analyses the existing notions related to the PPAT concept used and applied in REMIT.
- Section 3 identifies the elements that should be taken into consideration in the assessment of whether an entity falls under the definition of PPAT for the purpose of REMIT.
- Section 4 provides some examples of the application of the concept of PPATs.

2) The existing notions related to the PPAT concept in REMIT

Article 8 (4)(d) of REMIT provides an overview of the entities that could be considered as PPATs:

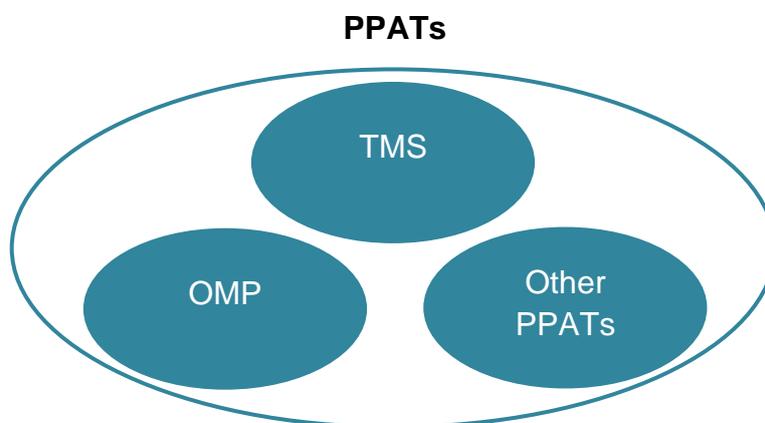
'4. For the purposes of paragraph 1, information shall be provided by: (...) (d) an organised market, a trade-matching system or other person professionally arranging transactions';

Therefore, it can be concluded that organised market places and trade-matching systems fall under the definition of PPATs. Furthermore, any other entities engaged in similar activities must be included in the concept (Figure 1).

¹ Regulation (EC) No 1227/2011 of the European Parliament and of the Council of 25 October 2011, on wholesale energy market integrity and transparency (OJ L236, 8.12.2011, p.1).

² One should distinguish the different obligations of PPATs: reporting obligations based on Article 8, notifications and establishment and maintenance of effective arrangements and procedures based on Article 15. The obligations of Article 8 of REMIT are of different nature and shall be assessed according to the specific rules. These obligations are not addressed as part of this Guidance Note.

Figure 1 – Relationship between the concepts of PPAT, organised market places (OMP) and trade-matching systems (TMS)



The concepts of 'organised market place' or 'organised market' are defined in Article 2(4) of REMIT Implementing Acts as follows:

- *'a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract,*
- *any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract.*
- *These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of Directive 2014/65/EU³;*

The Guidance on the application of REMIT⁴ provides considerations (Section 8.5.1.) related to the following entities:

- the concept of PPAT includes at least: *'trading venues like energy exchanges and brokers';*

³ 'trading venue' means a regulated market, an 'multilateral trading facility' (MTF) or an 'organised trading facility' (OTF). Article 4 (15) of MiFID describes MTF as multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract. OTF means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract.

⁴ 3rd Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.
http://www.acer.europa.eu/remi/Documents/REMIT%20ACER%20Guidance%203rd%20Edition_FINAL.pdf

- *under some circumstances it includes: ‘gas hubs⁵’ and*
- *‘TSOs or persons acting on their behalf⁶’.*

3) PPAT characteristics

The term ‘*person professionally arranging transactions*’ includes three different elements that should be assessed independently in order to determine whether an entity is a PPAT or not. For an entity to be considered a PPAT it has to fulfil the following three cumulative criteria:

- **person**: means either natural or legal person⁷;
- **professionally**: the literal analysis of the wording and the jurisprudence⁸ leads to the following interpretation: ‘engaged in a specified activity as part of one’s normal and regular paid occupation’;
- **arranging transactions** is an activity that aims to:
 - enable or assist third parties (buyer or seller) in a way that directly brings about a particular wholesale energy transaction(s) (i.e., has the direct effect that the transaction is concluded); or,
 - provide a facility that facilitates the entering into transactions by third parties (buyer or seller) with a view to transactions in wholesale energy products. Simply providing the means by which parties to a transaction (or possible transaction) are able to communicate with each other is excluded from the concept of PPATs⁹. If a person makes arrangements that go beyond providing the means of communication, and adds value to what is provided, it will lose the benefit of this exclusion and shall be recognised as a PPAT.

⁵ ‘Concerning gas hubs, the Agency considers that normally the TSO operates the gas hub, but it might be the case that gas hubs operate separately from the TSO. At gas hubs transfer of title (ownership) takes places, which can be considered a transaction. Thus the person owning the gas hub can be considered as a person professionally arranging transactions according to Article 15 of REMIT. It should be noted that the depth of data available to hubs varies on a hub-by-hub basis. Certain hubs will be unable to conduct surveillance (for example, a hub receiving highly aggregated data without price details), with market monitoring being conducted elsewhere (e.g. at an Exchange).’

⁶ ‘TSOs may have to be regarded as being persons professionally arranging transactions insofar as they are arranging balancing markets’.

⁷ Definition of person is set up in Article 2(8) of REMIT.

⁸ Case C-49/07 (Motosykletistiki Omospondia Ellados NPID (MOTOE)), Case C-60/90 (Polysar), Case C-270/03 (Commission v Italian Republic).

⁹ For instance, persons such as Internet service providers, e-mail service providers, messaging providers or telecommunication providers are excluded from the concept of PPATs.

Further considerations for the definition of PPAT concept:

- The main characteristic of a PPAT is its intermediary role, i.e. arranging transactions in wholesale energy products. Its legal form, ownership, the type of market it operates, the type of the wholesale energy contract, the number of parties it represents and whether it acts as a principle or as an agent are not relevant in order to determine whether an entity is a PPAT.
- REMIT places different obligations on PPATs and market participants. Therefore, it is necessary to establish whether that person is acting as a PPAT or as a market participant, in the particular case. Whereas a market participant enters into transactions involving a wholesale energy product, a PPAT arranges the transaction on the wholesale energy product. Nevertheless, the same entity may well qualify as a PPAT in one transaction and a market participant in another transaction. Also, there are situations where a person is both a market participant and a PPAT in the same transaction.
- The arranging activity can comprise the whole trade lifecycle or be restricted to one or more parts of it.
- Some transactions may involve the participation of several PPATs and others may not involve the participation of any PPAT.

4) Some examples of the application of the concept of PPAT

Some entities were assessed against the above mentioned characteristics in order to identify whether they fulfil the criteria to be classified as PPATs.

The table below should be considered as an example for the application of the PPAT concept. Therefore it doesn't include a comprehensive assessment of all entities that may or may not be PPATs. The assessment of the existence of the 3 cumulative criteria, as described in Section 3 above, has always to be done on a case per case basis.

Figure 2 – Analysis of selected entities vis-à-vis the PPAT characteristics

Type	Characteristics			Brief description of transactions' arrangement
	Person	Professionally	Arranging transactions	
Energy Exchanges	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by introducing buyer/seller; or • Providing a facility that facilitates the entering into transactions by third parties – Allows placement of orders, matches orders and executes transactions.
Broker platforms/ Brokers	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by introducing buyer/seller; or • Providing a facility that facilitates the entering into transactions by third parties – Allows placement of orders, matches orders and executes transactions.
Cross border capacity exchanges/ platforms	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by introducing buyer/seller; or • Providing a facility that facilitates the entering into transactions by third parties – Allows placement of orders, matches orders and executes transactions.
Secondary capacity allocation platforms	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by introducing buyer/seller; or • Providing a facility that facilitates the entering into transactions by third parties – Allows placement of orders, matches orders and executes transactions.
TSOs ¹⁰ organising gas trades, energy balancing, capacity trading	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by introducing buyer/seller; or • Providing a facility that facilitates the entering into transactions by third parties – Allows placement of orders, matches orders and executes transactions.
Sleeves (arranging)	✓	✓	✓	<ul style="list-style-type: none"> • Bringing about transactions by offering a service to act as an intermediary to sell to or purchase commodities, on behalf of other market participants, that do not have an agreement to trade with each other.
Sleeves (not arranging)	✓	✓	✗	<ul style="list-style-type: none"> • Entering into transactions to allow the sale or purchase of commodities between other market participants that do not have an agreement to trade, without trading on behalf of those market participants.
Communication facilities	✓	✓	✗	<ul style="list-style-type: none"> • It only provides a generic facility not specifically designed for the entering into transactions by third parties.

¹⁰ Or persons acting on their behalf.