

Response to the CRE supplier hedging obligations consultation

Brussels, 30 September 2024

Energy Traders Europe thanks CRE for the opportunity to submit our comments to its consultation on possible hedging obligations for power and gas suppliers. We understand CRE's concerns about ensuring the resilience of energy supply to French consumers. If the CRE decides to go ahead with such obligations, we nonetheless stress that the proposed obligations' focus should exclusively lie in the retail market.

Market participants have a direct interest in hedging themselves to manage the price and volume risks they face, among others. Excessive prudential requirements should hence be avoided and should also not penalize the many who already act prudently. Our response further elaborates on the necessity to consider the specificities of power and gas trading when determining the scope of the measure.

Moreover, we ask CRE to consider the largely confidential nature of our members' hedging and risk strategies and restrict evaluations to the most generic information possible.

Recommendations

1. Clarify the scope of the obligation, distinguishing between traders and retail suppliers, and wholesale and retail markets.
2. Let hedging strategies be defined by market participants, including the choice of contracts and instruments.
3. Beware of double reporting, which may occur due to our member reporting obligations under national and EU law.
4. Clarify the leading authority for reporting between the CRE and the DGEC due to overlaps with supplier licensing requirements and hedging obligations.
5. Maintain confidentiality of commercial information to avoid market distortions.

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General remarks

We understand that CRE's current proposals to impose obligations to both electricity and natural gas suppliers in France stem from the implementation at the national level of the Directive (EU) 2024/1711, regarding the improvement of the Union's electricity market design (EMD) and amending Directive (EU) 2019/944, under which supplier hedging obligations are foreseen as optional possibilities for retail electricity suppliers, without any requirement for an extension to the natural gas sector (or an extension to the gas directive) at all. **Measures taken for the electricity sector do not necessarily achieve the same intended goals when applying them to the gas sector and may even entail unintended consequences as both energy vectors are quite different.**

We kindly reiterate our position related to Article 18a of the Electricity Market Design, whereby we welcomed the European Commission's proposal in terms of supplier risk management drawing a clear line between the suppliers' commitment towards end-consumers, and their hedging strategies. **However, we suggest avoiding singling out specific types of contracts, let alone making their conclusion mandatory, when seeking to incentivise hedging by retail suppliers. Retail suppliers should be left fully in charge of their hedging strategies, including the choice of contracts and instruments.** Mandating the use of specific type of contracts or instrument may make hedging more complex and costly, at the ultimate expense of the end-consumer. We recommend striking a balance between incentivizing best practices while avoiding unnecessary compliance costs, which may result in a less competitive market or suppliers simply moving away from fixed-price offers.

Moreover, as wholesale trading activities relate to transactions between experienced market participants rather than contractual relationships with end consumers, **we ask that energy trading firms be excluded from the scope of the proposed obligations.**

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Placing hedging obligations on traders would make little sense for the achievement of the objective pursued - protect end-consumers - while it would unnecessarily duplicate efforts from all parties, including the CRE. Wholesale energy markets are already much more highly regulated regarding risk management, notably under EMIR and REMIT.

At national level, the risk exposure of a supplier regarding its committed sales on the retail gas market is assessed by DGEC through the supply license application process and then yearly by the annual reporting requested by DGEC. **The leading competent authority should be clarified to avoid double reporting to both the CRE and DGEC.** Considering that the supplier risk exposure of companies is assessed via existing regulatory requests (e.g. DGEC) and financial robustness by credit rating agencies and analysts, all companies having a minimum external rating (e.g., Moody's, Standard & Poor's) should be out of the scope of this regulation.

Finally, hedging strategies are internal confidential information, which are highly sensitive commercially. Information about a company's risk management and hedging strategies that is publicly disclosed heightens the risk of market distortion. Hence, **we ask that CRE limits their evaluation to the information provided to them by suppliers, such as general information about their financial robustness, without seeking details of our members' hedging strategies.** CRE should prioritise one-to-one information requests in case they require more information or feedback from the companies in scope.

Detailed comments

1. Do you agree with the general principles set out by the CRE?

Considering the French definition of energy suppliers, as outlined in the pertinent footnote of pg. 12 of the consultation, it is not certain whether traders fall within the scope, especially when it comes to electricity suppliers. We understand CRE's concerns in terms of ensuring a resilient energy supply and protecting vulnerable consumers in France in the aftermath of the energy crisis. However, if targeted to traders, the obligations would be overly far-

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reaching. **In general, wholesale traders in the French market should be excluded from the scope of the proposed obligation.**

Wholesale markets are already much more highly regulated in regarding risk management, both through EU legislation (EMIR and REMIT), as well as via the monitoring of gas suppliers by DGEC. **The upcoming regulation must protect the specific features of energy markets and their participants. Therefore, we fundamentally question the imposition of additional prudential requirements. Only MiFID-licensed investment firms must fulfil such obligations from which, however, wholesale traders are exempt through the ancillary activity exemption. Such requirements would negatively impact liquidity and competition in the energy markets and ultimately result in higher prices for consumers.**

We supported during the EMD negotiation process prudent portfolio management and recommended tailoring supplier hedging obligations, if any, to the actual contractual commitments the suppliers have with their consumers. Hence, we welcome the direction of CRE's proposals for supplier hedging obligations that reflect the different types of offers and consider suppliers' financial robustness. We acknowledge the first principle of symmetry between coverage and supplier contract price commitments as a step in the right direction, which sheds light on potential under-covered commitments and protects consumers. We identify a **trade-off between a detailed and tailored evaluation of hedging strategies and the amount of information ultimately required by the Regulator**, as the latter risks burdening suppliers and traders, as well as the CRE itself, with additional reporting commitments, on top of their current ones under other pieces of EU Law, most notably REMIT and EMIR.

Providing a floor for volume coverage appears coherent. **We would nonetheless like additional details on how that minimum volume would be decided.** In a portfolio covering all customer segments, there is always a volume risk depending on weather, economic situation, industrial activities and other factors. **Too high of a minimum coverage rate might lead to over-coverage, which, in turn, would create**

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additional risks. Other consequences of an excessive coverage level would include price increases for end consumers and reduced competition in retail markets.

The obligations should not hinder the use of hedging instruments in managing risks. **Rather, we should incentivise further long-term hedging instruments, including Long-Term Transmission Rights, which can provide better coverage and keep costs down for consumers.** The proposal should also allow space for suppliers to develop innovative ways to manage risk more efficiently.

Regarding the second principle on supplier financial capacity surveillance, we understand the CRE's attention to commercial robustness. **The tests and differentiation between strong and limited robust suppliers need to be transparent and coherent.**

An annual evaluation may require substantial amounts of commercially sensitive information. Therefore, the CRE should consider other regulatory requirements that market participants respect and if the information requested may be found among other regulatory submissions. **For this, the CRE should prioritise credit ratings provided by credit rating agencies for impartial and objective financial assessments.**

The timing of tests and requests for information should also consider the deadlines for other regulatory requirements and significant market events (i.e. auctions), especially when switching to a new calendar year.

Regarding the third and last principle of establishing a risk management strategy within company governance, we encourage the sharing of best practices. However, to maintain confidentiality, CRE should stick to general information provided by suppliers in terms of their financial robustness and conduct bilateral meetings to enquire about further details, if need be.

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2. Do you identify other prudential tools that the CRE should mobilise to better respond to the specificities of the French market?

No further comment.

3. On the differentiation between the types of consumers, do you agree with the CRE analysis?

The focus of the analysis is on the retail market. Furthermore, wholesale markets are already much more highly regulated regarding risk management. We provide no further comment as traders do not deliver to end consumers. **We remind you that supplier hedging obligations are optional under the reviewed Electricity Market Design and focused on the power market. Therefore, we raise the question of the relevance of including natural gas suppliers in the obligation's scope as the Electricity Directive cannot serve as the legal basis for its inclusion.**

4. Do you agree with the definition of offers falling within the scope of control proposed by the CRE?

The offers to end consumers limit the scope of the obligations to the retail power market. The obligations must remain consistent with the mapping of consumers and not expand into pure trader hedging strategies on the electricity and gas wholesale markets.

5. Do you agree with the CRE's proposal, namely the establishment of a double control covering both an ex-post control and a forecast control of risk coverage obligations?

We identify a confidentiality risk, especially for ex-post control. In cases where a company already has a financial rating, we ask for their exemption from the provision of further information. If additional information is still required, we ask the CRE to conduct bilateral meetings on a case-by-case basis.

6. Does an annual control seem sufficient to you? Would a semestrial control to cover each season be more appropriate?

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Semestrial controls would add a significant burden to both companies and the CRE.

7. Do you share the CRE's analysis regarding the evaluation periods of hedging obligations?

The granularity proposed by the CRE for N-1 controls (monthly) looks relevant, as well as for N (quarterly) to N+3 (yearly) controls.

Moreover, we kindly remind you of the obligations' impact on and interaction with the forward market: there are long-term contractual transactions that go beyond France and are not necessarily bound to the energy markets. The obligations might reduce fixed-price offers, reduce liquidity and lead to the market exit of suppliers.

Cross-border trading of hedging products should not be impeded by regulatory burdens and rather incentivised to promote further flexibility and security of energy supply. We reiterate our position on the need for regulatory stability for strong and liquid forward markets to enable a secure, affordable and decarbonised supply of energy.

Additionally, transactions on the forward market do not necessarily end up with a physical delivery of the energy commodity. Hence, it is crucial to distinguish between traders and suppliers for the scope of the obligations and account for the different types of contracts and hedging tools used.

8. Do you share the CRE's analysis regarding the sizing of minimum coverage obligations?

We understand that following the energy crisis the CRE wishes to prevent high-risk behaviours. Nonetheless, this should be done without penalising companies who are already acting prudently. **The level set should be one easily satisfied by a prudent supplier, as a too-high level would result in further price rises for end consumers and**

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reduced competition in retail markets. The proposal should also allow suppliers to seek innovative ways to manage risk more efficiently.

We identify a risk of over-coverage due to over-estimation of future off-take because of clients being over-optimistic, lower-than-expected economic activities, and inaccurate weather/winter forecasts. Hence the 97% minimum coverage obligation ends up increasing unnecessary costs for suppliers and may be counterproductive in case of over-estimation – such as “stop and go” or “hedging reversal” effects – or changes in margin calls conditions.

9. By relying on quantitative analyses supported as far as possible, do you share the consideration of the risk of attrition as proposed by the CRE?

We ask for the quantitative analyses to be fully transparent.

10. Do you share the CRE’s analysis of the necessary prerequisites for each means of coverage explained?

We acknowledge the very detailed analysis of the different means of coverage and what the CRE wishes to monitor (volumes, counterparty reliability). However, we request additional clarity regarding the documents required by the CRE when distinguishing among three types of cases in the wholesale market, especially in terms of information a supplier would request from a counterparty and if that would differ much from internal counterparty checks. **The structure and content of the chapter linked to these questions demonstrate once again the focus on power and underlines the question of how the natural gas suppliers would relevantly be included within the regulation’s scope.** There is no clear information on how equity natural gas from producers should be accounted for. A similar product to a Power Purchasing Agreement (PPA) does not exist in the gas market. A significant amount of information asked in the consultation is highly confidential and can potentially distort the market in case of inside data leakage.

11. Do you think it is relevant to adapt the obligation levels to cover the risks inherent to each hedging product?

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We think it is relevant, provided there is a better understanding of different products by CRE and proportionally matches the obligations to the risks. However, requiring additional detailed information may prove burdensome. The CRE should check if the requested materials are already available elsewhere and avoid double reporting. See also our response to question 10.

We also reiterate the **risk of regulatory overburdening and overlap between the obligations and European regulations** like REMIT and EMIR – which can lead to redundant, inconsistent and unaligned reporting flows triggering additional and unnecessary validation procedures.

12. Do you consider it useful to provide for the possibility of applying a gradual reduction rate, rather than rejecting coverage offering an unsatisfactory degree of reliability?

We would appreciate clarification on how the discount rate will apply in case of unsatisfactory reliability of the hedge, as well as on the methodology for its calculation.

We also seek to understand the consequences of rejecting coverage. If trading activities are to be halted, then a gradual reduction rate would serve as a signal and could be improved. We ask CRE to **ensure that the reduction rate is not disproportionate and too costly**. Ultimately, we seek to understand what the comparable financial costs would be and if a revision of the hedging strategy and coverage would lead to no extra costs through an adaptation period.

Lastly, the proposal should **avoid penalising companies who are already acting prudently**. Otherwise, it would lead to further increases in prices for end consumers and reduced competition in supply.

13. Do you identify other types of products likely to fulfil the coverage obligation?

No comment.

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14. What financial indicators are regularly monitored within your company to assess the ability to withstand the hazards of your business?

No comment.

15. Do the accounting and financial elements that would be collected by the CRE allow you to correctly assess the financial capacity of the company to withstand uncertainties?

No comment.

16. Does the list of risks specific to the supply activity proposed by the CRE seem exhaustive to you?

The risks list seems to cover much ground. We highlight the obligations' impact on and interaction with the forward market: there are long-term contractual transactions that go beyond France and are not necessarily bound to the electricity energy market. The obligations might reduce fixed-price offers, reduce liquidity and lead to the withdrawal of suppliers.

The proposal should avoid restricting the types of hedging instruments used by suppliers. We reiterate the need for additional Long-Term Transmission Rights on forward markets for better cross-zonal trading and risk management. We also advise the CRE to leave space for developing innovative ways for suppliers to manage their risk efficiently.

We reiterate that the impact of the obligation includes reduced fixed-price offers and reduced liquidity, leading to the withdrawal of suppliers.

17. Do you share the organizational measures (human resources management and governance) proposed by the CRE? Do you agree with the general principles set out by the CRE?

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We caution against the regulatory burden on suppliers on account of their additional reporting obligations, notably under EMIR and REMIT, which risks leading to redundant, inconsistent and unaligned reporting flows triggering additional and unnecessary validation procedures. We support **the sharing of best practices while leaving the specific design of governance to each supplier**. We advise prioritising bilateral meetings between companies and CRE in case of needed insights on risk management strategies, to ensure confidentiality. If our members' strategies become public information, there is a risk of market distortion.

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