

Consultation response

Response to the European Commission's review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets

Brussels, 23 April 2025

1.1 Commodity derivatives reporting and transparency under the financial rulebook

Commodity derivatives trading is subject, under the current financial rulebook, to three main pieces of legislation relating to transparency and reporting: the <u>Markets in Financial Instruments Directive (Directive (EU) 2014/65, MiFID)</u>, the <u>Markets in Financial Instruments Regulation (Regulation (EU) 600/2014, MiFIR)</u> and the <u>European Infrastructure</u> <u>Market Regulation (Regulation (EU) 648/2012, EMIR)</u>.

While reporting to trade repositories under EMIR captures all commodity derivatives transactions involving at least one EU counterparty, reporting requirements under MiFID/MiFIR differ depending on the type of data, the addressee and whether the trade takes place on a trading venue or not. MiFIR also contains details on the conditions under which transaction-related data in financial instruments is to be transparently disseminated to the public.

MiFID provides that information on positions is to be reported daily to National Competent Authorities (NCAs) by trading venues as regards market participants active on their venue (MiFID Article 58(1)). Market participants are in turn required to report daily to the trading venue on their positions in derivative contracts traded on that venue (MiFID Article 58(3)). Lastly, investment firms are due to report positions in economically equivalent overt-the-counter (OTC) contracts to NCAs on a daily basis (MiFID Article 58(2)). All such position reporting requirements are further discussed under section 3.

MiFIR, in turn, provides that:

- all transactions in commodity derivatives taking place on a trading venue are to be reported by investment firms (or, if market participants are not investment firms, by the investment firm operating the venue on which the market participants executed the transaction) to NCAs pursuant to Article 26
- transactions in commodity derivatives carried out outside a trading venue are not subject to systematic transaction reporting to NCAs. However, investment firms are required to keep the relevant data relating to all orders and transactions in commodity derivatives which they have carried out at the disposal of the NCA for five years, pursuant to Article 25
- all transactions in commodity derivatives taking place on a regulated market are subject to publication of data on price, volume and time of transactions pursuant to Article 10 (post-trade transparency)
- regulated markets are required to disclose current bid and offer prices, as well as the depth of trading interests, relating to commodity derivatives traded on their venue (pre-trade transparency), pursuant to Article 8a(1)
- trading in commodity derivatives occurring on a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF) is not subject to pre- nor post-trade transparency, pursuant to Article 8a(2). It is worth reminding that all physically-settled wholesale energy contracts traded on an OTF are subject to the 'C6 carve-out' (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. They are commonly referred to as 'C6 carve-out instruments'), which scopes those contracts out of the financial rulebook
- as regards the interaction between the upcoming consolidated tape and commodity derivatives, the consolidated tape does not include pre- nor post-trade information on commodity derivatives

1.2 Commodity derivatives reporting and transparency under REMIT

Energy commodity spot and derivatives trading is also subject, under the current energy rulebook, to two main pieces of legislation relating to transparency and reporting: the <u>Wholesale Energy Market Integrity and Transparency</u> Regulation (Regulation (EU) 1227/2011, REMIT) and REMIT Implementing (Regulation (EU) 1348/2014).

The reporting framework under REMIT and its implementing Regulation currently provides that:

- any transactions related to wholesale energy products, including matched and unmatched orders to trade, that are placed on an organised marketplace (OMP) should be reported to ACER. These are currently reported to ACER on a daily basis, with a delay of one day
- in addition, any transactions related to wholesale energy products that are concluded outside of an OMP, i.e., OTC, are also reportable under REMIT. Those transactions are currently reported with up to one month delay from the date they were concluded
- the aforementioned data reporting also relates to trading from non-EU market participants, who engage in the trading of wholesale energy products, as defined in Article 2(4) of REMIT

The information that is reported to ACER is also shared with the NRAs. The REMIT Implementing Regulation is currently under revision.

REMIT also provides that reporting obligations under REMIT are considered fulfilled when the abovementioned transactions have been reported under financial legislation by market participants, third parties acting on behalf of a market participant, trade reporting systems, or OMPs, trade-matching systems or other persons professionally arranging or executing transactions.

Lastly, the revised REMIT establishes an obligation to set data sharing mechanisms between various regulators, including ACER, ESMA, Eurofisc, the European Commission, NRAs, NCAs national competition authorities and other relevant authorities in the Union. That information exchange framework aims to ensure that the information ACER receives through the reporting requirements under REMIT can be used for the tasks of the other regulators mentioned above.

1.3 Data sharing between energy and securities markets supervisors

The current regulatory set up leads to a multiplication of reporting channels, to which only the relevant regulators have systematic access. ACER and consequently the (energy) NRAs are the recipients of data relating to wholesale energy products, while ESMA and the NCAs receive the data reported under the financial rulebook. This means that, currently, data reported under REMIT do not necessarily make their way to financial regulators and vice versa. For instance, NCAs and ESMA do not have systematic access to data relating to 'C6 carve-out' products and other spot market products, which is reported to ACER. This creates a data gap that may affect ESMA's and NCAs' ability to understand and therefore adequately supervise the markets that fall under financial legislation. Moreover, diverging reporting standards between products subject to REMIT reporting and those reported under MiFIR/EMIR, despite sometimes being closely related (e.g., a futures contract traded on an exchange and subject to the financial rulebook reporting vs a physically-settled forward contract traded on an OTF reported under REMIT), add to further complexifying reporting procedures and the consolidation and analysis of data.

This section therefore seeks to identify areas where reporting should be streamlined and/or better harmonised, bearing in mind the Commission's burden reduction objective. It also seeks to explore whether the creation of a single reporting mechanism for spot and derivative energy products (i.e., not concerning other commodities nor EUAs) could improve the situation on access to relevant data for supervisors on both sides. In that regard, trade repositories, which already collect data on all derivatives transactions (whether OTC or venue-traded), and Registered Reporting Mechanisms (RRMs), which play a similar role under REMIT, could play the role of single access point for all reporting related to energy-related products, spot or derivatives. A third entity, consolidating the data from trade repositories and RRMs would be an alternative option. ESMA, ACER, NRAs, NCAs and, where relevant, the European Commission, would have equal access to such data. Access to such consolidated data by trading venues in the context of their position management controls mandate could also be explored – see section 2.3.

Lastly, this central data collection mechanism could also serve as a one-stop-shop for data reporting by market participants active on both types of markets, thus alleviating the reporting burden for energy traders (which often need to report under MiFID/MiFIR, EMIR and REMIT). This would also necessitate establishing common reporting standards

based on harmonised data formats and protocols between products across the spot/derivatives spectrum, which would eliminate unnecessary diverging reporting requirements and simplify the data landscape for reporting market participants and supervisors alike.

Questions related to section 1

Question 1. Do you believe that REMIT reporting, on the one hand, and MiFID /MiFIR/EMIR reporting, on the other hand, should be streamlined and/or more harmonised?

- Yes
- No
- Don't know / no opinion / not applicable

Could you point to specific reporting items that need to be streamlined /aligned, and how?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, there is potential to harmonise regulatory data streams sent by market participants to various authorities. Currently, energy market participants (EMPs) report extensive data on trades, orders, positions and exposures. However, no single supervisory authority has a complete view of the market. The study "Principles of Energy Market Regulation" by Frontier Economics and Luther Law ("the Frontier Economics study") (see Annex 1) highlighted fragmented data collection as a key challenge. This issue was evident in ESMA's 2023 TRV article on gas derivatives (ESMA50-165-2483, May 2023), which incorrectly concluded that there was a high concentration of positions in European gas derivatives, while a more complete dataset later showed the level of concentration was within normal ranges. The core issue does not seem to be a lack of reported data but rather the challenge of ensuring proper data-sharing between authorities. EMPs use technical solutions to consolidate data for trade surveillance, and regulators could leverage on similar solutions for a complete view of energy markets.

Accordingly, we support streamlining data streams post-reporting but urge caution regarding a single report for three reasons:

1) Loss of nuance: Merging datasets could obscure important nuances arising from the different objectives of each regime. For example, REMIT includes storage, transmission capacity rights and balancing market data unlike financial reporting. Conversely, attempting to create one report for all purposes and products risks over-complicating reporting, especially for smaller market participants, many of whom are not subject to financial regulations. Additionally, EMIR reporting aligns with global standards and changes could result in misalignment creating challenges, particularly for groups including non-EU EMPs.

2) Ongoing implementation efforts: EMPs have already made substantial investments in reporting systems, which already require an overhaul due to recent amendments to EMIR and REMIT. Furthermore, ESMA recently consulted upon the possible alignment of MiFIR Transaction Reporting, SFTR and EMIR Trade reporting. We estimate that transitioning to a single report could require investment of €30 to €150 bn which may be unnecessary at a stage where regulatory data requirements are not clearly defined.

3) Political feasibility: For true efficiency, both the energy and financial sectors would need to transition to a single report. This would require a comprehensive overhaul of multiple legislative acts in parallel. Without this, there is a significant risk of adding yet another layer of reporting requirements, further complicating compliance efforts rather than simplifying them. This would contradict the EU's overarching objective of reducing regulatory burdens and improving efficiency.

Accordingly, we recommend a stepwise approach. Rather than restructuring the entire reporting framework, priority should be given to improving data-sharing among regulatory authorities. Authorities should have access to a broader market view when necessary. This is particularly relevant in cases such as: (1) Market manipulation investigations, where a wider dataset may be required to assess a MP's trading strategies and commercial rationale, (2) Policy-driven assessments, such as ESMA and ACER's risk assessment of the Market Correction Mechanism, where cross-regulatory data was crucial.

Since all relevant data is already reported, the most logical step is to explore how it can be used more effectively. This requires a clear data strategy including 1) a pause on changes to existing regime requirements, 2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR, 3) a systematic review to identify where regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and 4) the development of a central data collection mechanism (or interoperable data-sharing framework) allowing authorities to access and exchange relevant information in a secure manner. This would enhance regulators' access to necessary data while avoiding reporting duplication and maintaining the regulatory nuances of the reporting regimes. For instance, ACER could access EMIR data, ESMA and NCAs non-financial instruments data. In addition, REMIT data could help ESMA and NCAs better understand non-EU trading activity. This approach, still requiring several years to accomplish, is more feasible than creating an entirely new single report. By integrating existing reports into a shared platform, authorities would gain a more comprehensive market view without imposing additional burdens on EMPs.

Only if this proves insufficient, should further harmonization be considered. Any move towards a single reporting framework should be pursued cautiously, involve extensive stakeholder consultation and ensure that it fully replaces current reporting obligations.

Question 2. Reporting under MiFID/MiFIR/EMIR, on the one hand, and REMIT, on the other hand, can vary in terms of format and transmission protocols.

In your view, which reporting standards and protocols should be used as reference (REMIT or MiFID/MiFIR/EMIR) if formats and reporting protocols were to be made uniform?

Please also provide, if possible, information on one-off costs and long-term savings from such harmonisation.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, we believe transitioning to a single uniform reporting format poses many challenges. Instead, we propose enhancing data-sharing between regulatory authorities to improve oversight without unnecessary burdens on Energy Market Participants. A central data collection mechanism (or interoperable data-sharing framework) would allow regulators to access existing datasets efficiently, ensuring a more comprehensive market perspective. Please see our answer to Question 1.

Secondly, it is important to recognize that no single reporting standard is inherently superior. While MiFIDII, MiFIR and EMIR may offer a more structured approach to financial market reporting, with broader regulatory scope, and alignment with global financial standards that facilitate cross-border reporting and harmonization, REMIT provides specific advantages for the energy sector. REMIT was designed with the unique characteristics of wholesale energy markets in mind, which operate differently from financial markets. For example, REMIT applies to a spot market that runs 24/7 and is highly liquid and deep. Integrating existing reporting systems can be very complex in this case, as has been evidenced when a comparable issue arose when Article 26 significantly increased reporting volumes for asset managers, placing substantial strain on Approved Reporting Mechanisms (ARMs). Furthermore, REMIT allows for detailed, energy-specific transaction reporting formats tailored to the operational realities of the sector. Additionally, its format and transmission protocol are well-established and widely understood by Energy Market Participants. (Currently REMIT applies to approximately 19,000 registered Energy Market Participants, with 11,000 actively reporting records related to the supply and transportation of electricity and natural gas in 2024 - ACER REMIT Quarterly Q4/2024).

Given these factors, rather than prioritizing one reporting standard over another, a more pragmatic approach would be to focus on enhancing data-sharing between regulatory authorities. Since all relevant data is already reported today, the most logical step is to set up a data strategy to explore how this existing data can be used more effectively. Please see our answer to Question 1.

Question 3. Do you believe that a centralised data collection mechanism for collecting data related to REMIT and MiFID/MiFIR/EMIR reporting would alleviate the current reporting burden on market participants?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain how could it be alleviated and what level of possible cost savings could result from such exercise (order of magnitude), distinguishing one-off costs and recurring compliance costs (for instance, per year).

Please also explain how you would structure such a possible centralised data collection mechanism (both in terms of data collection and dissemination/access) in a way that, on the one hand, would limit the costs of its set-up (i.e., using to the maximum the existing functionalities of trade repositories/RRMs) and, on the other hand, limit any possible one-off costs of adjustment for reporting entities?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see our answer to Question 1. We advocate for a stepwise approach, with the first step focusing on enabling regulatory authorities to obtain a more comprehensive view of the market. Since all relevant data is already being reported today, we believe the key issue lies in data access and comparability rather than

insufficient reporting.

Data access. To ensure authorities can access the data they need, the most effective solution would be to establish a central data collection mechanism, which sources data from existing data repositories, such as ARIS (for REMIT data), Trade Repositories (TRs) (for EMIR data) and Approved Reporting Mechanisms (ARMs) (for MiFIR data). This would allow all relevant authorities, including ACER, ESMA, NCAs and NRAs to retrieve the necessary data from a single source. In this initial phase the only one-off costs would be associated with setting up the additional interfaces. We estimate the investment cost to be ≤ 10 to ≤ 50 million depending on IT implementation country.

Data comparability. While mapping data across different regimes is not straightforward, reconciling existing reports is likely to be more feasible than developing a unified reporting structure that fully captures the nuances of each framework. Advanced technologies such as AI could further support meaningful data reconciliation.

Question 4. Do you believe that data sharing through the abovementioned centralised mechanism consolidating the data would improve supervision by NCAs, NRAs, ESMA and ACER?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain in which way it would improve supervision by NCAs, NRAs, ESMA and ACER:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Historically, REMIT and EMIR have included provisions establishing mandatory communication channels between financial and energy market regulators at both the EU and national levels. However, to ensure these arrangements are effectively utilized, we believe a central data collection mechanism consolidating the reports sent by market participants to data repositories is necessary. Such a mechanism would enable authorities to share data more efficiently. This, in turn, would strengthen both market surveillance and policy-making.

Market Surveillance: Systematic access to EMIR, MiFIR and MiFID II data would be beneficial for ACER, while NCAs could gain valuable insights from REMIT data, particularly regarding non-financial instruments, and non-EU trading activity not already covered by EMIR, MiFIR, or MiFID II. A more comprehensive market view would improve the understanding of market participants' trading strategies and commercial rationale.

Policy-Making: ESMA and ACER can benefit from a more comprehensive market view in order to help the policy debate. To illustrate, there are several reports that were based on data only reported to ESMA/ACER.

1. ACER's market monitoring reports on the forward market do not include EMIR data, meaning that it does not show a complete picture of the derivatives market.

2. During the energy crisis, there was no solid view on whether trading activity had shifted towards exchange-traded derivatives or the OTC market.

3. In May 2023, the ESMA TRV article on gas derivatives (ESMA50-165-2483) —while acknowledging

that only EMIR data was used— concluded that European gas derivatives markets had a high concentration of positions. However, exchange data including non-EU market participants' positions in non-EU clearing houses with non-EU-clearing members, showed that the concentration was rather within normal ranges. We believe that it would be beneficial for reports like these to be based on a broader dataset. This of course requires cooperation between the authorities. Two very good examples of such cooperation could already be observed during the assessments of the market correction mechanism as well as the Summer 2022 events.

A centralized data collection mechanism, while not altering existing reporting obligations, could play a crucial role in overcoming these data access challenges. By consolidating data flows into a single access point, regulators would be able to take a more holistic view of market dynamics and better identify potential cross-market risks. Importantly, this approach does not require merging distinct reporting regimes into a single standardized dataset but rather focuses on improving data accessibility and comparability across existing regulatory frameworks.

Question 5. In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated?

Please select as many answers as you like

- by trade repositories
- by RRM
- by a new type of entity in charge of consolidating data collected by trade repositories and RRMs
- some other entity

Please specify to what other entity(ies) you refer in your answer to question 5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, more generally, we believe that the purpose of the new mechanism is to consolidate data collected from existing reporting systems. It should neither introduce additional reporting requirements, nor duplicate existing reporting requirements. Instead, it should be integrated withing existing regulatory frameworks. It should ensure that submitted data is complete, harmonized, and readily accessible to regulators in a secure manner. Such an approach would enhance accuracy, timeliness, and compliance while minimizing disruption to the market and existing reporting structures.

Accordingly, if a centralized data collection mechanism is pursued, we believe it should be managed by an entity that maximizes the use of existing capabilities, while minimizing disruption to market participants' reporting processes. Current data repositories, such as TRs (for EMIR), RRMs (for REMIT) and ARMs (for MiFIR) are functional and have established frameworks with operational expertise. These systems should remain intact as they are efficient and well understood by market participants.

Given the existing infrastructure and expertise of ACER and ESMA, but also national regulators, leveraging these bodies may be more practical than creating a completely new entity. Inspiration could be drawn from the Transaction Reporting Exchange Mechanism (TREM) which organizes the exchange of transaction reports among NCAs. TREM serves as a useful example of how to exchange transaction reports among

National Competent Authorities (NCAs). TREM facilitates cross-border cooperation and data-sharing, enhancing market oversight without disrupting existing reporting processes.

Please explain your answer to question 5:

5000 character(s) maximum

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Question 6. Do you believe there is a better alternative to a central data collection mechanism for improving collection and sharing of data collected under REMIT and MiFID/MiFIR/EMIR?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Historically, REMIT and EMIR have included provisions establishing mandatory communication channels between financial and energy market regulators at both the EU and national levels. However, to ensure these arrangements are effectively utilized, we believe a central data collection mechanism consolidating the reports sent by market participants to various authorities is necessary. Such a mechanism would enable authorities to share data more efficiently. It would improve regulatory access to existing data under REMIT and MiFID/MiFIR/EMIR without imposing new reporting burdens on market participants (MPs), which could keep using well-established reporting systems. It would consolidate key reporting elements which are essential for cross-market surveillance and effective oversight. Allowing regulators to have a more holistic

view of both financial and physical energy markets enhances their ability to detect cross-market price manipulations, liquidity risks, and other forms of market abuse.

Question 7. In the event that the centralised reporting mechanism is deemed inappropriate, should an alternative approach be considered whereby NCAs have systematic access to the ACER central REMIT database, and vice-versa?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 7:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A decentralized approach to data-sharing, where each regulatory body has access to specific data relevant to its mandate, appears to be less efficient. It would require multiple tailored access points for different agencies, which could result in a fragmented and disjointed data-sharing process. Each regulator would struggle to obtain consistent and timely access to the data they need, increasing the chances of inconsistencies or gaps in the data interpretation.

Question 8. Do you believe that the rules on pre- and/or post-trade transparency (i.e., public dissemination of information on quotes and transactions) of commodity derivatives under MiFID/MiFIR should be amended, notably to include commodity derivatives traded on an MTF or an OTF

It is worth noting that making commodity derivatives subject to pre-trade transparency would imply that commodity derivatives would be included in the consolidated tape for OTC derivatives.

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you think these rules should not be amended:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that the rules on pre- and/or post-trade transparency of commodity derivatives under MiFID II/MiFIR should be amended to include commodity derivatives traded on an MTF or an OTF. It should be noted that the recent review of MiFIDII/R concluded that the scope of the requirements should no longer

rely on the concept of "traded on a trading venue" due to the lack of fungibility of these contracts. Instead, transparency requirements should only apply to those derivatives that are sufficiently standardised for the data published in relation to them to be meaningful for market participants beyond the contracting parties. Other than exchange-traded derivatives, it was deemed that only derivatives that are subject to the clearing obligation under EMIR should be subject to transparency requirements, plus credit default swaps that reference global systemically important banks (G-SIBs), and only where these are centrally cleared.

It should be further noted that commodity derivatives admitted to trading on MTFs and OTFs are typically traded between professional entities that possess deep market insights regarding pricing and movements. Additionally, many such firms employ specialized analysis desks to support traders' decision-making. The benefit for retail investors, who we understand are supposed to be the main beneficiaries of increased preand post-trade transparency, is unclear.

Therefore, at this stage, we believe that the operational burden would likely outweigh the potential benefits.

Question 9. Do you believe that the consolidated tape should include pre- and /or post-trade data on exchange-traded commodity derivatives (i.e. commodity derivatives traded on regulated markets)?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are skeptical about including exchange-traded commodity derivatives (ETDs) in the consolidated tape:

- We believe the current focus in the MiFIR framework on certain predetermined OTC contracts is sensible. Unlike OTC derivatives, ETDs are traded on regulated markets, meaning pricing and trading volumes are already publicly available.
- Consolidated tapes have been the focus of the recent MiFIR Review, with a view to address fragmented trading in securities. With respect to ETD traded commodity derivatives, fragmentation is not as severe as in security markets hence the objective of consolidated tapes does not apply to ETD commodity derivatives markets.
- Additionally, the consolidated tape framework is still a work in progress with many unknowns regarding its implementation and benefits. A proportionate approach would be to first establish the consolidated tape for its intended scope before considering any expansion.

Question 10. The recent MiFIR review has extended reporting requirements for transactions in some OTC derivatives that are executed outside of a trading venue. This extension does not concern commodity derivatives.

Do you believe that transactions in OTC commodity derivatives that are executed outside of a trading venue should be subject to systematic reporting to NCAs under MiFIR?

Yes

- No
- Don't know / no opinion / not applicable

Please explain why you think these transactions should not be subject to systematic reporting to NCAs under MiFIR:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently, energy market participants report extensive data on trades, including OTC trades. Instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities. Please see our answer to Question 1. We propose a clear data strategy that includes 1) a pause on changes to existing reporting requirements, 2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR, 3) a systematic review to identify where regulatory authorities lack access to specific datasets and whether this hinders effective market oversight and 4) the development of a central data collection mechanism (or interoperale data-sharing framework) that allows regulatory authorities to access and exchange relevant information in a secure manner. This includes access for ESMA and NCAs to REMIT data including OTC trades.

This would enhance regulators' access to necessary data while avoiding duplication. By integrating existing reports into a shared platform, authorities would gain a more comprehensive market view without imposing additional burdens on MPs.

Question 11. Do you believe ESMA has sufficient access to transaction data from trading venues and from market participants reported to NCAs?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain what are the consequences of this situation and how you believe this should be tackled:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA may not have full access to transaction data from trading venues and from market participants reported to NCAs. This issue was evident in ESMA's TRV article on gas derivatives (ESMA50-165-2483, May 2023), which incorrectly concluded that there was a high concentration of positions in EU gas derivatives, while a more complete dataset later showed that the level of concentration was within normal ranges. We understand the main issue to be that the article was based on EMIR data which does not include data on non-EEA-entities trading on EU regulated markets whose clearing is done in a third country CCP are not covered, unless these entities clear their trades with an EU clearing member. Please see our answer to Question 1. We propose a clear data strategy that includes 1) a pause on any changes or additions to existing reporting regime requirements, 2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR, 3) a systematic review to identify whether regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and 4) the development of a central data collection mechanism (or interoperable data-sharing platform) that allows regulatory authorities to access and exchange relevant information in a secure manner. By bringing together data from both financial and physical energy markets, regulators would gain a more comprehensive view of the market.

2. Ancillary activity exemption

Commodity derivatives markets are characterised by the prominent participation of 'commercial entities' (i.e., entities whose main business does not involve engaging in the provision of financial services), who rely on derivative markets to hedge their positions in the underlying physical markets or, in some cases, take advantage of market moves to generate profit. Those non-financial entities represent around two-thirds of natural gas futures markets participants (see ESMA's preliminary data report on the introduction of the market correction mechanism), and around 60% on wheat futures markets (see the analysis of MIFID II position data on commodity derivatives: who are the market participants and what is their weight in the matif grain derivatives segment), in terms of positions in the respective markets. Some non-financial entities also act as market makers, and are also usually active on both physical/spot and derivatives markets.

The so-called Ancillary Activity Exemption (AAE) set out in Article 2(1), point (j), of MiFID currently exempts certain non-financial market participants that engage in commodity derivatives trading from obtaining a MiFID authorisation if this trading activity is done on own account and not linked to the execution of client orders, or if it provides investment services in commodity derivatives or emission allowances or derivatives thereof to customers or suppliers of their main business. Such exemption is also only granted provided that the activity is considered "ancillary" to their main business, individually and on an aggregate basis.

Three alternative tests allow to determine whether a firm's activity is ancillary to its main business:

- the *de minimis test*, for entities whose net outstanding notional exposure in commodity derivatives or emission allowances or derivatives thereof for cash settlement traded in the Union, excluding commodity derivatives or emission allowances or derivatives thereof traded on a trading venue, is below an annual threshold of EUR 3 billion
- the *trading test*, for entities whose size of activities relating to commodity derivatives accounts for 50% or less of the total size of the other trading activities of the group
- the *capital employed test*, for entities whose estimated capital employed for carrying out their activities relating to commodity derivatives accounts for not more than 50% of the capital employed at group level for carrying out the main business

The qualification as investment firm under MiFID has broad implications, as it does not only imply the application of the MiFID organisational and operational requirements (and the associated supervisory role and sanctioning powers of NCAs), but also entails a qualification as financial counterparty under Regulation (EU) 648/2012 (EMIR), notably with the associated requirements in terms of exchange of bilateral margins when engaging in derivatives trading, and the

application of the prudential regime under <u>Regulation (EU) 2019/2033 (Regulation on the prudential requirements</u> of <u>investment firms, IFR</u>) and <u>Directive (EU) 2019/2034 (Directive on the prudential requirements of investment firms, IFD</u>), including the associated capital and liquidity requirements. It is however noteworthy that a number of key requirements under the financial rulebook are applicable to all persons, regardless of whether they qualify as investment firms. This includes requirements relating to market abuse and position limits.

In 2021, the <u>Capital Markets Recovery Package (CMRP</u>) introduced a number of changes in order to reduce some of the administrative burdens that experienced investors face in their business-to-business relationships, and to provide opportunities to nascent commodities markets to further develop, deepen, and improve their liquidity. Regulation (EU) 2021/338 has simplified the test for the AAE, through the introduction of the abovementioned exposure-based *de minimis* threshold. The obligation for market participants to notify every year their fulfilment of the AAE criteria has also been removed, and replaced by a possibility for NCAs to require information on an ad-hoc basis.

Questions related to section 2

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

Question 12. The exception under Article 2(1), point (d), of MiFID sets out the conditions under which entities that deal on own account in financial instruments *other* than commodity derivatives are exempted from a MiFID license. In particular, this exemption does not require that this activity is ancillary to the entity's main business, unlike what is required for entities dealing on own account in commodity derivatives under point (j) of the same Article. However, the exemption under Article 2(1), point (d), is subject to different limitations.

Do you believe persons dealing on own account in commodity derivatives should be treated the same way, with a view to benefit from a MiFID exemption, as persons dealing on own account in other financial instruments, in particular in not requiring that trading activities are ancillary to a main business?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 12:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, while our answers to questions in Section 2 focus on energy market participants, we see no reason why our answers would differ in the context of other commodity markets.

Second, if energy market participants were required to solely rely on their own account exemption in Article 2 (1)(d), their ability to participate in energy markets would be severely constrained. This, in turn, would negatively impact the liquidity, competitiveness and efficiency of energy markets. The exemption in Article 2 (1)(d) does not permit market making or the provision of investment services to the customers or suppliers of an Energy Market Participants' main business, and it also restricts trading on trading venues when not undertaken for hedging purposes.

- Restricting trading on trading venues: Energy Market Participants need to manage the risks that are inherent to their commercial activities, e.g. the price risk related to the generation and sale of power. In addition, Energy Market Participants have a need to trade on the energy markets also for non-hedging purposes. Different markets are often correlated — whether through geography, commodities, or economic dynamics. Investing in market analysis, gaining hands-on experience, and building knowledge through active (non-hedging) participation provides deeper insight that ultimately strengthens hedging strategies. Even if a company doesn't have customers in every market or commodity, understanding those markets is essential for anticipating ripple effects in areas where customers are active. Moreover, being present and active in a market enhances visibility, which can lead to new customer relationships and expanding hedging opportunities. When markets recognize a company as engaged, they are more likely to initiate contact. Finally, in times of shifting liquidity or reduced hedging potential in primary markets, having access to a broader range of markets is crucial for diversification and risk management. (see section 2.1.2 of the Frontier Economics study). The AAE acknowledges that market participants have a need to trade commodities for non-hedging purposes. In addition, market participants need to trade both on trading venues and OTC for non-hedging purposes to effectively manage their market, credit and liquidity risk in accordance with their individual preferences (see section 2.2.1 of the Frontier Economics study). If Energy Market Participants were to rely only on the exemption in Art. 2(1)(d), it would mean that Energy Market Participants with a need to trade for non-hedging purposes on trading venues could only do so via investment firms; this intermediation would increase the costs. Because of this, relying only on the exemption in Art. 2(1)(d) could reduce the usage of cleared exchange trading, increasing counterparty credit risk and potentially impairing the price discovery function of trading venues.

- Restricting market making: Energy Market Participants are vital market makers in energy markets. Energy derivatives trading is seldom a core activity of banks. As such, relying on the banking sector to provide market-making services to trading venues could reduce market stability: Banks may choose (or be directed) to scale back, or cease, such activity for various reasons, as we have seen happen periodically over the past 15 years. On the contrary, Energy Market Participants have been consistently present in the market. If Energy Market Participants were no longer permitted to act as market makers, the consequence would be less liquid, competitive and efficient energy markets, higher prices for market participants when hedging their commercial risks and, ultimately, higher prices for end-consumers.

- Restricting provision of investment services: As we state in our answer to question 13, it is essential for Energy Market Participants to be able to provide integrated services to the customers or suppliers of their main business. Question 13. Under Article 2(1), point j of MiFID, an entity can provide investment services other than dealing on own account in commodity derivatives or emission allowances or derivatives thereof to its customers or suppliers of its main business without a MiFID authorisation, provided that the provision of such investment services is ancillary to its main activity.

Do you believe that this exemption as regards the provision of investment services to customers or suppliers is fit for purpose?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you believe that this exemption is fit for purpose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, we believe that this exemption is fit-for-purpose.

The exemption under Article 2(1)(j) is appropriately designed to reflect the commercial realities of Energy Market Participants and their counterparties. It is strictly limited to investment services related to commodity derivatives, emission allowances, and derivatives thereof, and only applies when such services are provided to entities that are already customers or suppliers of the EMP's main business.

This scope ensures that the exemption targets commercial relationships and not financial market activities directed at the general public. Specifically, it covers situations where for example counterparties are engaged in energy or emission allowance supply agreements with typically large industrial players in sectors like steel, chemicals, cement, automotive, and energy-intensive manufacturing.

These counterparties are naturally exposed to commodity and energy price risks due to their production processes. They require:

• Certainty over long-term supply of energy or emission allowances, crucial for production planning and investments;

• Certainty or visibility over future price exposures, essential for protecting margins in globally competitive markets.

Such certainty is typically only achievable through a combination of physical delivery and tailored hedging solutions provided by the EMP, leveraging their expertise and market access (see for more details, Frontier Economics study, page 54 "Energy market participants are in a prime position to facilitate hedging").

In this context, this exemption is beneficial not only from an EMP point of view, but also from a customer and supplier point of view and even from a societal point of view:

- Energy Market Participants who have an intimate understanding of the commodity markets are uniquely placed to provide integrated services to their customers or suppliers by selling energy and providing investment services, e.g. to make it possible for the customers and suppliers to manage the price risks relating to energy. The knowledge of the markets (acquired through the Energy Market Participants energy management, trading activity and analysis) enables to foresee market movements and hence adapt the counterparty's hedging needs in a dynamic manner,

- Energy Market Participants take a holistic view on their customers' and suppliers' energy consumption and risk management needs, and

- The exemption fosters competition to the benefit of customers and suppliers of Energy Market Participants who have a wider range of service providers to choose from and may reduce costs by buying energy and energy risk management services from one market participant which, in turn, could reduce energy prices and thereby the price of goods, which benefits end consumers and the general economy.

Question 14. Do you currently benefit from the AAE?

Yes

- No
- Don't know / no opinion / not applicable

Which part of the test is the most relevant for you/do you rely on?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Members of Energy Traders Europe that benefit from the Ancillary Activity Exemption (AAE) make use of all three available tests under MiFID II— the De Minimis, Capital Employed, and Trading tests—depending on their specific business profile and operations.

Considering the objectives of MiFID II — ensuring that only firms whose activities are comparable to those of investment firms are subject to authorisation — the current regime offers a flexible, proportionate, and workable solution for energy market participants and market participants from e.g. the manufacturing sector. It enables non-financial entities, whose core business is not the provision of investment services, to demonstrate to competent authorities that their financial trading activities are ancillary to their main commercial operations.

The Frontier Economics study confirms that the ability to choose among three alternative tests reflects the diversity of business models across energy and commodity markets. Some Energy Market Participants, especially those with large asset-heavy operations, naturally fit the Capital Employed test, while others may better demonstrate compliance through the de minimis or trading test. This flexibility ensures that the regime:

- Adapts to different company structures and sectoral needs,
- Avoids forcing market participants into rigid compliance mechanisms that do not reflect their real economic activity, and
- Prevents disproportionate regulatory burdens on firms that perform essential market functions but are not, by nature, financial institutions.

Moreover, the Frontier Economics study stresses that offering this range of tests helps maintain market liquidity, efficiency, and competition—all of which are vital to achieving the EU's energy transition goals and safeguarding industrial competitiveness. Fragmentation or narrowing of this framework would risk excluding important market participants or misclassifying them as financial entities, leading to unintended consequences such as reduced market participation, increased costs, and a competitive disadvantage for EU firms relative to global peers.

In conclusion, the combination of the three tests provides a balanced, pragmatic approach. It allows competent authorities to assess ancillary status in line with MiFID II's purpose while supporting diverse business models and safeguarding the proper functioning of European energy and commodity markets.

Question 14.1 Did the CMRP make it easier for you to benefit from the AAE?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 14.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For Energy Market Participants, the CMRP usefully identified and amended burdensome regulations that were not strictly necessary, thus removing red tape and simplifying the requirements for the Ancillary Activity Exemption (AAE). More particularly it deleted the so-called main business test, which was very complex to calculate, as energy market participants had to calculate against several market size thresholds for each commodity asset class, whereas the market sizes were hardly observable and fluctuated continuously. In addition, the CMRP deleted the requirement for a yearly notification of the use of the AAE.

While we do not believe that the CMRP made it easier for more firms to qualify for the AAE (in the sense that it did not expand the number of firms that could benefit), it effectively facilitated the circumstances under which Energy Market Participants could rely on the exemption. See also our answer to Question 15.

Question 15. More generally, how do you assess the impact of the CMRP amendments and their application by NCAs on your activity, if any?

Could you provide estimates of any cost savings and clarify their sources?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For energy market participants, the implementation of the CMRP amendments has primarily delivered positive effects by reducing unnecessary administrative burdens, though no significant changes in the approach of NCAs have been observed.

The most tangible impact of the CMRP has been the simplification of internal compliance processes for energy market participants, notably through:

1. Deletion of the Market Size Test: The Market Size Test, as set out in Article 2 of RTS 20, proved to be inefficient and burdensome for Energy Market Participants. It required general and open access to centralized dataset, which was neither readily available nor ever published. Consequently, Energy Market Participants performed the test on their own premises, which led to a lack of a level playing field: Different entities performed the test using inconsistent data, creating competitive disadvantages.

2. Introduction of the New De Minimis Test: The De Minimis Threshold Test, inspired by both the EMIR clearing threshold and the US Dodd-Frank De Minimis calculation, significantly simplified the process' complexity for non-financial firms. This test was designed to minimise compliance burdens for firms and introduce proportionality in their compliance requirements.

3. Deletion of the Yearly Notification Requirement: The yearly notification requirement for non-financial firms benefiting from the AAE was deleted, addressing a disproportionate compliance burden. This

requirement was particularly problematic because:

a. Lack of uniformity: EU Energy Market Participants faced 27 different notification formats – all in a different language -, making it cumbersome, expensive and inefficient.

b. Inconsistent application across member states: Different regulators had varying interpretations of the requirement, with some demanding notifications even from branches established in their jurisdiction, while others did not.

c. Unjustified regulatory asymmetry: This requirement applied only to firms benefiting from the AAE, whereas other firms exempted under different provisions of Art. 2(1) or Art. 3 of MiFID II were not subject to this notification.

By removing this notification obligation, the CMRP reduced unnecessary regulatory friction, which previously served as a barrier to efficient market participation. The Frontier Economics study (See Section 3.2.4) notes that unnecessary regulatory burdens, especially those unique to non-financial firms, discourage participation in energy markets, thus impairing liquidity and market efficiency. The removal of the notification requirement therefore directly supports the efficient functioning of commodity markets by reducing barriers to entry and operation for energy market participants.

Question 16. What impact do you believe the alleviations brought to the AAE by the CMRP had on the liquidity and depth of EU commodities markets, if any?

Could you provide any order of magnitude, for instance in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc.?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The CMRP amendments to the AAE were beneficial for energy market participants, as they introduced proportionality and reduced red tape. Amendments that remove entry barriers facilitate market access by more actors, hence increase the liquidity of the markets. It is, however, difficult to attribute any specific market developments to the revised AAE under the CMRP. This is because the implementation of the CMRP coincided with two significant market events that heavily influenced commodity markets: the post-COVID economic recovery and the onset of the energy crisis. Both events had a substantial impact on market structures, trading behavior, and liquidity.

Question 17. What is the most effective and efficient method to ensure that supervisors can monitor compliance with the requirements of the AAE?

In particular, do you believe the abolishment of systematic (annual) notification from beneficiaries of the AAE to NCAs should be maintained or should these notifications be re-introduced? Please explain. Could you quantify costs if they were to be reintroduced?

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a firm view of which method is most effective to ensure that supervisors can monitor compliance with the AAE requirements. Any discussion on the possible reintroduction of a notification requirement should carefully consider the experience with the previous notification requirement and draw the appropriate lessons learned while reducing unnecessary regulatory burdens and fostering the EU's competitiveness.

In practice, as highlighted in Question 15 above, the previous notification requirement created significant challenges, proved resource-intensive for market participants and generated administrative burdens that were disproportionate to any clear supervisory benefit.

Furthermore, the scope of the previous requirement created inconsistencies. Only market participants relying on the AAE were subject to this notification requirement, while other exempted activities under Art. 2 and 3 of MiFID II were not subject to similar requirements. This asymmetry raised questions about the coherence and fairness of the approach.

Question 18. In general, do you believe that the existing AAE criteria are fit for purpose and allow to adequately identify when a trading activity in the commodity derivatives markets is ancillary to another activity (i.e., allows to bring the right type of entities into the MiFID regulatory perimeter)?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current AAE criteria are not only fit-for-purpose but are essential in ensuring that energy market participants can effectively contribute to the efficiency and competitiveness of the energy markets without being subjected to the full scope of MiFID II rules. This exemption is crucial for maintaining the efficiency and resilience of EU energy markets.

The AAE framework employs objective tests that accurately reflect the different nature of energy market participants' activities:

• De Minimis Test: Appropriately exempts energy market participants whose in-scope trading activities are insignificant from a systemic risk perspective.

• Capital Employed Test: Aligns with energy market participants owning substantial real-economy assets, such as wind farms and power plants, by considering the capital invested in physical infrastructure relative to trading activities.

• Trading Test: Addresses energy market participants with limited physical assets, ensuring that their trading activities are evaluated in the context of their overall business operations.

These tests collectively ensure that only entities whose primary business involves providing investment services or investment activities on a professional basis are brought within the MiFID II regulatory perimeter.

Changes to the AAE could undermine EU global competitiveness, disrupt energy transition efforts under the

Green Deal and REPowerEU plan, and jeopardize the goals of the Clean Industrial Deal and Affordable Energy Action Plan. Please also refer to our answer to Question 29.

Question 19. In which of the following aspects – if any – does the current scope of the AAE raise issues?

Please select as many answers as you like

- adequate conduct supervision of firms active in commodity derivatives markets and enforcement of the financial rulebook (e.g., for the purpose of monitoring market abuse)
- fair competition between market participants
- impact on energy prices
- liquidity of the commodities derivatives market
- safeguarding prudential and resilience aspects of firms benefitting from the AAE
- ability to monitor and identify future risks to financial stability (e.g., related to interconnectedness and contagion)

Please explain your answer to question 19:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that the current scope of the AAE raises issues in any of the areas listed. As noted by the Frontier Economics study: "The current AAE under MiFID II is an important regulatory instrument to deliver liquid, competitive, and efficient energy markets that are essential for an affordable, secure, and sustainable energy supply. The current scope is appropriately calibrated to ensure proper market functioning and efficient risk management by market participants. It should therefore be kept in place."

Please find below a detailed assessment of each aspect:

Adequate conduct supervision and enforcement of the financial rulebook: The AAE is irrelevant to the authorities' supervision of the market conduct of firms active in commodity derivatives markets. EMPs benefiting from the AAE are fully subject to the market abuse frameworks under MAR and REMIT. All transactions in wholesale energy markets - irrespective of the firm having an AAE or not, the venue of trading (trading venue or OTC) or the settlement method - fall under market abuse supervision. This creates a 3-layer surveillance framework with market participants and trading venues being obliged to proactively detect and notify any market abuse and regulators through their monitoring and control activities. Together with trading rules set out in MiFIDII and MiFIR, and clearing rules laid down in EMIR, these market abuse frameworks provide for comprehensive reporting, market transparency and the supervision and enforcement by authorities.

Fair competition between market participants: Fair competition requires that activities that create the same risks – in particular for end users - should be governed by the same rules, with a view to ensuring adequate regulation, supervision and maintaining a level playing field (i.e. allowing all stakeholders to have equal

access to hiring and retaining talent, to be subject to similar costs, to have access to similar investment financing possibilities, etc.) (from Final Report to the EU COM by the Expert Group on Regulatory Obstacles to Financial Innovation). Energy market participants pursue a different activity from investment firms and present a different risk profile, mainly due to the fact that none of their activities (power generation and own account trading) relies on client deposits. It should also be noted that the main risks posed by banks (and addressed through banking regulation - including prudential requirements) are the ones to financial stability and misconduct towards clients. The potential risks posed by energy market participants concern the security of supply of energy in the EU. The AAE preserves fair competition by ensuring that real-economy players whose primary business is physical production or consumption of commodities are not treated the same as financial market intermediaries.

Impact on energy prices: The AAE plays a crucial role in supporting efficient risk management by energy producers and suppliers, which ultimately benefits consumers. Forcing these firms into a full MiFID license regime would impose significant compliance costs unrelated to their actual risk profile or market role. These costs would likely flow through the value chain, increasing the cost of hedging for EU's industry and potentially impacting energy prices and the prices of goods produced in the EU. This directly jeopardises the objective of the Clean Industrial Deal on access to affordable energy.

Liquidity of the commodity derivatives market: By creating a regulatory framework for energy trading, through strict quantitative tests, the AAE supports market liquidity by enabling physical energy market players to participate in derivatives markets. Their presence adds depth and diversity to markets, improving price discovery and stability. As the Frontier Economics study highlights, efficient energy markets require broad participation, including from real-economy actors whose trading is ancillary to their physical business.

Safeguarding prudential and resilience aspects of firms benefiting from the AAE: EMPs operating physical assets under prudential and resilience constraints from national permitting, licensing and shipping laws. Applying MiFID prudential requirements, designed for financial intermediaries, would be inappropriate and disconnected from the real risks these firms face. Their participation in derivatives markets is limited, targeted, and aligned with their core operations—not a source of systemic financial risk.

Ability to monitor and identify future risks to financial stability: Energy market participants are subject to a wide set of regulations, in particular various comprehensive reporting obligations under MiFID II, MiFIR, REMIT and EMIR. To ensure authorities use this data more effectively please see our recommendations in our answer to Q1. Having a more comprehensive view on the market will allow them to efficiently analyze questions of financial stability.

Question 20. Do you believe the *de minimis* test should be broadened by counting the following towards the EUR 3 billion threshold?

	Yes	No	Don't know - No opinion - Not applicable
trading activity in derivatives traded on a trading venue?	O	۲	0
trading activity in physically-settled derivatives?	0	۲	0

Please explain your answer to question 1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The de minimis test was adopted in the CMRP as a means to simplify the complex AAE threshold calculation methodologies by removing unnecessary red tape and introducing carefully calibrated measures. It was inspired by 1) the de minimis swap dealer test under Dodd-Frank in the US which excludes exchange-traded derivatives and physically settled OTC derivatives from its scope, and 2) the commodity clearing threshold calculation under EMIR which market participants were already carrying out to establish their counterparty status under EMIR.

For the purpose of our answer to this question, we understand the reference to "trading activity in physicallysettled derivatives" to cover financial instruments as defined in Section C(6), (7) and (10) in the Annex to MiFID II.

We believe that the de minimis test should continue to apply only to cash-settled commodity derivatives, emission allowances and derivatives thereof which are not traded on a trading venue because

• excluding exchange-traded derivatives aligns with the G20 Pittsburgh Summit commitments which emphasize increased transparency, systemic risk reduction, and strengthened exchange-based trading of standardized derivatives. The exclusion of exchange-traded derivatives from the de minimis test is consistent with these objectives, ensuring that firms are not discouraged from using regulated trading venues. It also aligns with the intent of Dodd-Frank, which — similar to MiFID II and EMIR — seeks to promote exchange trading and hence clearing while maintaining oversight of systemic risk in derivative markets, and

• excluding physically-settled derivatives equally aligns with the de minimis swap dealer test under Dodd Frank which only counts swaps, defined as cash settled instruments. It prevents firms engaged in commercial energy transactions from being unnecessarily classified as investment firms. Including physically settled derivatives in the calculation could incorrectly classify firms engaged in real-economy activities as investment firms. This would unnecessarily increase compliance costs for energy-intensive industries like chemicals, steel, and aluminum producers, leading to higher energy prices (and thus higher prices of goods) and reducing the competitiveness of EU.

We believe that expanding the scope of the de minimis test to include exchange-traded derivatives and physically settled derivatives would:

- Contradict existing EU regulatory principles aimed at simplification and efficiency,

- Disrupt energy markets, increasing compliance costs for firms engaged in commercial transactions and currently relying on the De Minimis test (Please see our answer to Question 26), and

- Undermine the competitive position of EU firms relative to jurisdictions like the U.S., where similar financial regulations do not count these transactions.

It is noteworthy that, unlike the EU regime, the US approach includes activities only when they pose a risk to financial stability or investor protection. By contrast, the EU regime starts from the assumption that all trading in financial instruments should be captured, and then carves out specific activities through exemptions. We generally favour the former approach.

Question 21. The *de minimis* test threshold is based on exposure in commodity derivatives 'traded in the Union'. Is this criterion on the location of trades fit-for-purpose?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, the limitation of the AAE test more generally and the De Minimis Test in particular, to commodity derivatives traded in the EU is appropriate. This is because including non-EU trades would lead to the extraterritorial application of MiFID II, causing double and conflicting regulatory obligations with other jurisdictions. Including trading activity outside the EU in the test would be inappropriate, as non-EU trading activity falls under the jurisdiction of other regulators. For example, in third countries such as the US, the UK or Switzerland, national regulators already oversee trading activity in those jurisdictions by EU firms.

Question 22. Currently, the *de minimis* test threshold under MiFID is calculated on a net basis (i.e., by averaging the aggregated month-end net outstanding notional values for the previous 12 months resulting from all contracts). However, other jurisdictions use a gross trading activity threshold instead.

Do you believe that it would be more appropriate for the *de minimis* test threshold under MiFID to be calculated on a gross basis, so as to measure absolute trading activity?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 22:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The de minimis test threshold under MiFID should not be calculated on a gross basis for the following reasons:

- Contradiction with Regulatory Simplicity: Currently, the net outstanding notional values under the deminimis test shall be determined pursuant to the netting methodology for the Capital Employed Test. This avoids that concerned non-financial firms have to run different calculations for the same purpose. Requiring firms to perform different calculations would contradict the intended simplicity of the de minimis test. The CMRP introduced this methodology with the aim of reducing unnecessary red tape and regulatory complexity (see Directive (EU) 2021/338, Recital 1 and 2). Additionally, the Clean Industrial Deal emphasizes the need for regulatory simplification.

- Aligned with the objective: The De Minimis Test assesses whether a company is not posing systemic risk. To avoid overstating risk positions must be netted, as stipulated by Regulation 2021/1833.

- Misleading Comparison to Third-Country Rules: The comparison to third-country rules, such as the U. S. Swap Dealer Test under the Dodd-Frank Act, in this case is misleading. The U.S. Swap Dealer Test only considers dealing activities and hence the own account trading activities are not relevant.

Question 23. Currently, MiFID contains a single *de minimis* test threshold for all types of commodities derivatives.

Do you believe the *de minimis* test threshold should differ depending on the type of commodity derivative market considered (e.g., energy derivatives vs agricultural derivatives)?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A more granular approach would significantly increase the complexity of this test, as firms would need to calculate against multiple thresholds simultaneously. Additionally, this approach raises complex legal questions regarding the regulatory consequences of breaching a threshold in one or more commodity asset classes while remaining below it in others. For example, should a firm be classified as an investment firm only for the commodity asset classes where a breach occurred, or for all commodity asset classes?

As noted in the previous responses, a more granular approach contradicts the intended simplicity of the test. The CMRP introduced this methodology to eliminate unnecessary red tape and reduce regulatory complexity (see Directive (EU) 2021/338, Recital 1 and 2). Similarly, the Clean Industrial Deal promotes regulatory simplification.

Question 24. Currently the *de minimis* test threshold under MiFID is calculated including trading in commodity derivatives for an entity's own account. However, other jurisdictions exclude those transactions, and focus on dealing for the benefit of a third-party.

Do you believe the *de minimis* test should continue to include, or instead exclude, all trading activity carried out for an entity's own benefit (proprietary

trading), so as to only rely on dealing activities for the benefit of a third party /client?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why and how the threshold should be adapted:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that the De Minimis Test is appropriate in its current form. The test is based on the full range of activities exempted under Article 2(1)(j), which includes both own-account trading and the provision of investment services to customers of the main business. In this context, it is only logical to consider both activities within the scope of the De Minimis Test.

As we explained in our response to Question 20, the EU and US regimes are based on different philosophies. The US approach includes activities only when they pose a risk to financial stability or investor protection. By contrast, the EU regime assumes that all trading in financial instruments should be captured and then carves out specific activities through exemptions. Given this EU approach to exemptions, we consider the current design of the De Minimis Test — reflecting the activities exempted under Article 2(1)(j), including own-account dealing - to be appropriate.

Question 25. Considering the introduction of the *de minimis*test following the CMRP, and with a view to further simplifying the AAE, do you believe that the AAE could be made less complex by:

	Yes	No	Don't know - No opinion - Not applicable
abolishing the trading test	0	۲	0
abolishing the capital employed test	0	۲	0

۲

Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The three AAE tests are essential for maintaining the EU's global competitiveness. They ensure that regulation focuses on market participants whose core business is investment services, rather than companies engaged in substantial real-economy activities. As highlighted by the Frontier Economics study, no major jurisdiction (US, UK, Singapore) applies financial regulation to physical market participants solely for ancillary trading activities. Narrowing the AAE would impose burdens not faced by global competitors, undermining Europe's industry and complicating efforts to secure affordable, stable, and sustainable energy supplies.

If you think **abolishing the trading test** would not make the AAE less complex, do you believe this test continues to be adequately calibrated?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you think the **trading test** continues to be adequately calibrated?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The three AAE tests are essential for maintaining the EU's global competitiveness. They ensure that regulation focuses on market participants whose core business is investment services, rather than companies engaged in substantial real-economy activities. As highlighted by the Frontier Economics study, no major jurisdiction (US, UK, Singapore) applies financial regulation to physical market participants solely for ancillary trading activities. Narrowing the AAE would impose burdens not faced by global competitors, undermining Europe's industry and complicating efforts to secure affordable, stable, and sustainable energy supplies.

Energy markets rely on a diverse range of participants, and no single profile fits all. In this context, the Trading Test plays a crucial role. It recognises that many important market participants, like energy retailers or flexibility service providers, rely on lean business models without owning physical assets but still require access to derivatives markets. Without the Trading Test, these companies risk being misclassified as investment firms, facing disproportionate regulatory burdens.

Essentially, the Trading Test ensures proportionality by focusing on the extent and purpose of trading, rather than simply asset ownership. This ensures that regulation remains targeted at firms whose primary activity is the provision of investment services, rather than at real-economy actors who engage in markets for genuine commercial purposes. Removing the Trading Test would risk significant market distortions.

The Frontier Economics study reinforces this point, showing that misclassifying such companies as investment firms would not only impose disproportionate regulatory burdens but also harm European industry by increasing costs and reducing access to essential risk management tools. Operating in

competitive global markets, many energy and industrial firms work on tight margins. Subjecting them to full MiFID II requirements would weaken both Europe's industrial competitiveness and energy market resilience.

For example, in terms of the capital requirements, the Frontier Economics study notes that firms subject to investment firm status would face substantial additional capital burdens — mean capital requirements of over €3 billion (in average) and additional capital required of €910 million (in average) per survey participant. These funds would have been "trapped" under IFR/IFD and unavailable for investments in critical areas such as energy transition. Moreover, if energy market participants would have been subject to investment firm status, liquidity requirements under EMIR would have placed additional liquidity burdens on energy market participants, with OTC collateralization requirements reaching €180m even under normal market conditions.

In conclusion, the Trading Test is vital to keep the AAE framework balanced, proportionate, and reflective of the realities of today's energy markets. It ensures fair treatment of diverse business models, supports market liquidity and depth, and safeguards Europe's competitiveness and energy transition objectives. Removing the Trading Test would risk regulatory overreach, diminish market participation, and weaken the resilience of European energy markets at a critical time. We therefore strongly recommend that the EU retain the Trading Test as an essential safeguard within the AAE framework.

If you think **abolishing the capital employed test** would not make the AAE less complex, do you believe this test continued to be adequately calibrated?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you think the **capital employed test** continues to be adequately calibrated?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The three AAE tests are essential for maintaining the EU's global competitiveness. They ensure that regulation focuses on market participants whose core business is investment services, rather than companies engaged in substantial real-economy activities. As highlighted by the Frontier Economics study, no major jurisdiction (US, UK, Singapore) applies financial regulation to physical market participants solely for ancillary trading activities. Narrowing the AAE would impose burdens not faced by global competitors, undermining Europe's industry and complicating efforts to secure affordable, stable, and sustainable energy supplies.

The Capital Employed Test recognises that many energy market participants operate capital-intensive businesses, such as developing and operating wind farms, solar parks, power plants, and gas infrastructure. These activities clearly constitute their main business, and the test serves as a straightforward quantitative and qualitative proxy, as called for by regulators, to demonstrate the ancillary nature of their derivatives trading. By comparing trading activity to capital invested in physical assets, the test ensures that real-economy firms are not mistakenly classified as investment firms simply because they use derivatives for hedging and non-hedging purposes.

Many energy producers have already embedded this test into their IT and compliance systems, producing reliable calculations. Removing or amending the test would create unnecessary additional compliance costs.

The Frontier Economics study reinforces this point, showing that misclassifying such companies as investment firms would not only impose disproportionate regulatory burdens but also harm European industry by increasing costs and reducing access to essential risk management tools. Operating in competitive global markets, many energy and industrial firms work on tight margins. Subjecting them to full MiFID II requirements would weaken both Europe's industrial competitiveness and energy market resilience.

For example, in terms of the capital requirements, the Frontier Economics study notes that firms subject to investment firm status would face substantial additional capital burdens — mean capital requirements of over €3 billion (in average) and additional capital required of €910 million (in average) per survey participant. These funds would have been "trapped" under IFR/IFD and unavailable for investments in critical areas such as energy transition. Moreover, if energy market participants would have been subject to investment firm status, liquidity requirements under EMIR would have placed additional liquidity burdens on energy market participants, amounting to up to €180 million per firm even under normal market conditions.

In conclusion, the Capital Employed Test is vital for maintaining a proportionate regulatory framework. It ensures that MiFIDII captures only those firms primarily engaged in investment services, while allowing energy and industrial companies to continue legitimate ancillary trading. Removing or narrowing the test would risk sweeping real-economy players into financial regulation, undermining competitiveness and distorting the market.

Question 26. If your entity currently benefits from the AAE, and should your entity not be in a position to benefit from the AAE following a review of the criteria, could you please provide an assessment of the impact of being qualified as investment firm on your operations, and on your ability to maintain active participation in commodity derivatives markets?

If possible, please include a quantitative assessment of the costs incurred by such a qualification and all its implications.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If Energy Traders Europe's member firms were to lose their status under the AAE and be reclassified as investment firms under MiFID II, the operational and financial impacts would be substantial, and it would have far-reaching consequences for EU competitiveness and the energy transition. Below we list the three main reasons as outlined in the Frontier Economics Study, Section 3.2.2.:

1. Material prudential capital and liquidity requirements: A six-month survey held among European energy market participants, shows that the investment firm status would require energy market participants who participated in the survey to hold minimum prudential capital between \leq 1.15bn to \leq 8.55bn, with a mean of over \leq 3 billion. In addition, the investment firm status under MiFID would imply that energy market participants gain status as financial counterparty under EMIR. This triggers mandatory margin requirements for over-the-counter (OTC) trades, amounting to up to \leq 180 million per firm even under normal market conditions.

The prudential capital and the initial and variation margin payments would be 'trapped' and unavailable for long-term capital-intense activities such as gas fired power plants and renewable investments (e.g., offshore wind park) with a lifetime of 20 years or more. Energy market participants would require additional capital resources to continue business activities as usual, or those activities would need to be curtailed. In the

energy crisis, this would have put additional strain on the cash position of traders who are already subject to high collateral requirements for exchange trading.

2. Organisational restructuring: Business models of energy market participants are different to those targeted under the investment firm regulation, such as banks. As there are further numerous organisational and legal consequences of an investment firm status under MiFID (comprehensive licensing requirements, organisational requirements, conduct of business rules, reporting obligations and IT upgrades) energy market participants will have to materially restructure their whole group structure for their ancillary trading activity. This would cause important implementation and ongoing compliance costs.

3. Market liquidity drain: Before this backdrop, there is the possibility that energy market participants would seek to avoid an authorisation obligation by reducing or ceasing all activities that do not benefit from a MiFID AAE exemption. Therefore, a tightened AAE would negatively impact the energy market participants ability to maintain active participation in commodity derivatives markets. This in turn could reduce liquidity, hindering the ability of market participants to effectively hedge against price risks, further weakening market stability.

In summary, the potential loss of AAE status and subsequent reclassification as investment firms under MiFID II would impose significant financial and operational challenges on our association's member firms. Instead of channeling resources towards the development of renewable energy assets, enhancing energy efficiency and autonomy, or supporting decarbonization strategies, firms would be forced to divert significant financial regulation compliance requirements. This would inevitably undermine efforts to fulfill the EU's climate and energy goals under the Green Deal and REPowerEU plan. When compared to the EC's key review criteria for the commodity derivatives regulation, the investment firm status would result in less liquid and less efficient energy markets, with reduced hedging opportunities for energy market participants and contradict EU policy goals with a detrimental impact on the energy transition and a lower ability to withstand external shocks.

Question 27. To what extent do you believe the application of IFR/IFD prudential requirements, including those resulting from relevant Level 2 measures, as well as dedicated prudential supervision on all energy commodity derivatives traders, would have avoided or at least partially avoided the liquidity squeeze that such market participants suffered from during the 2022 energy crisis?

To what extent would it have limited the need for public intervention providing some of them with the necessary liquidity to meet requirements on margin calls?

Please substantiate your answer with quantitative elements, to the extent possible.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that the application of IFR/IFD prudential requirements, including those resulting from relevant Level 2 measures, would have effectively avoided or even partially mitigated the "liquidity squeeze" that energy market participants suffered during the 2022 energy crisis. On the contrary, implementing these requirements would have potentially worsened the cash liquidity situation for these firms and had several detrimental effects on the broader market. We underline that "liquidity squeeze" is only a term used in the market to designate a situation where, due to (i) erratic prices and (ii) the lack of collateral transformation services made available by their clearing members, energy market participants were faced with unpredictable and unprecedented margin calls for their exchange trading activities. We remind that the root cause for the price volatility resided in the massive drop in Russian pipeline gas supplies to Europe, a war raging outside its borders and a significant reduction in available power generation capacity in the EU (due to warm summer, unavailability of the nuclear fleet, low hydropower reservoir levels) – all of which are physical factors. See Frontier Economics Study Section 3.1.1.

The root cause of the "liquidity squeeze" was hence not a lack of prudential capital but was due to exceptional circumstances hitting energy market participants, which are by nature asset rich and cash poor. The Frontier Economics study highlights that forcing energy market participants into investment firm status through narrowing or abandoning the AAE would not have addressed these underlying issues. Instead, it would have added additional liquidity burdens that would have further strained the firms' ability to meet margin calls, potentially leading to market exits or reduced hedging activity, thereby further reducing market liquidity. It is noteworthy that in its response to the European Commission on margins and excessive volatility in energy derivative markets (September 2022), the EBA did not conclude that it would be beneficial to extend existing regulatory liquidity requirements to commodity firms.

All energy market participants have absorbed and managed these shocks, without any notable default situation disrupting the energy markets. In its 2023 report on "Financial stability aspects of commodities markets", The Financial Stability Board (FSB) concludes that "the commodities ecosystem as a whole was largely able to absorb the shock. There were no major disruptions to market functioning – with the exception of the London Metal Exchange nickel market – and there was a limited impact on the rest of the financial system". In order to stabilise the markets and allow confidence (and liquidity) to return, certain Member States have offered energy market participants a protective umbrella, as guarantors of the last resort. There has been no general "public intervention" and the majority of energy market participants didn't have recourse to public liquidity support to cover their margin calls. If liquidity support schemes were used, they were triggered by a different set of events, such as high concentration risks towards suppliers of Russian gas.

Lessons have been learned from this unprecedented situation to prevent its recurrence:

- EMIR 3.0 addresses the unpredictability and lack of transparency in margin calls faced by energy market participants, which were key drivers of the liquidity squeeze. The new rules prioritise enhanced and more granular communication among all stakeholders in the clearing chain, strengthening the preparedness and resilience of energy market participants under stressed market conditions.

- EMIR 3.0 also establishes the foundation for the use of uncollateralised bank guarantees in clearing. This introduces greater flexibility for market participants and helps mitigate the risk of cash shortfalls during periods of market stress.

- The Manual on Liquidity Risk Management, (Energy Traders Europe, 6 December 2024, link: https://cms.energytraderseurope.org/storage/uploads/media/energy-traders-europe-manual-on-liquidity-risk-management.pdf), adopted by the energy industry, aligns with best practices in risk management. It offers a clear and actionable framework for managing cash liquidity risks arising from margin requirements in the energy sector.

Question 28. If a review of the AAE were to lead to more entities being in scope of MiFID (and also thereby in scope of IFR/IFD):

Question 28.1 Do you believe that the current categorisation in IFR/IFD (i.e., three categories of investment firms) should apply to those entities? Should instead a *sui generis* category be created for those entities newly covered by prudential requirements?

- Yes
- No
- Don't know / no opinion / not applicable

Question 28.2 Do you see merit in a decoupling, such that it triggers the application of MIFID (including its relevant provisions on supervision), without bringing those firms directly in scope of IFR/IFD (i.e. prudential regulation)?

- Yes
- No
- Don't know / no opinion / not applicable

Question 28.3 Do you consider that all or only some MiFID requirements should apply?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain which requirements should be retained (e.g. 'fit-and-proper' assessment)?

If possible, please estimate the costs of compliance with those requirements of MiFID.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answers to questions 18, 19, 26 and 28.1. We do not believe a review should lead to more entities being in scope of MiFID II and IFR/IFD.

We believe that these considerations need to be made in light of the principle of proportionality. It is unclear at this stage what regulatory goals would be pursued by applying MiFID II requirements to energy market participants, considering in particular that energy market participants do not provide investment services to clients under a fiduciary duty and do not hold any client money or securities, and whether application of MiFID II would be proportionate and fit-for-purpose. (See also our answer to Question 28.1)

Article 90(5) of MiFID II requires that the MiFID II review must be performed in a holistic manner, in particular it shall take into account the impact under IFR/ IFD and EMIR and further related regulation on (energy) commodity derivative traders. As explained in response to other questions, applying investment firm status on energy markets participants active on energy and energy derivatives markets is not supported as it is for the reasons explained disproportionate and counterproductive.

Please explain your answer to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Because of the way in which question 28 has been structured on the EUSurvey website, our answer below will cover both question 28.1 and 28.2.

We do not believe a review should lead to more entities being in scope of MiFID II and IFR/IFD. In addition, we believe that neither the current categorisation in IFR/IFD nor a sui generis category should apply to entities in scope of MiFID II and we do not see any merit in decoupling MiFID II and IFR/IFD, in the hypothetical scenario where more entities in scope of MiFID II. Please also refer to our answers to questions 18, 19 and 26.

This is because the application of MiFID II and IFR/IFD to energy market participants (EMPs) could have unintended consequences. The Frontier Economics study shows that subjecting EMPs to these regulatory regimes could severely restrict their ability to access markets, manage risks effectively, and maintain liquidity in times of crisis. The additional capital and liquidity burdens, particularly under IFR and EMIR (because an investment firm is a "financial counterparty" under EMIR), as well as compliance with other regulations triggered by investment firm status (such as stricter anti-money laundering rules, recovery and resolution of credit institutions and investment firms (BRRD) and digital operational resilience act (DORA)), would add significant operational and financial costs that could harm the competitiveness of EMPs and the broader European energy market.

Focusing on the implications of being subject to IFR: As noted in the recitals of the regulation, the IFR regime is tailor-made to address a specific set of identified risks incurred by investment firms, both for their clients and for the broader market. This regime cannot simply be transposed to other types of market participants without careful consideration of the distinct risks involved. It is particularly ill-suited for EMPs as evidenced by the Frontier Economics study (see section 3.2.2 (Investment firm status is disproportionate to the business model of market participants)). EMPs are fundamentally different from investment firms: many are actively engaged in activities relating to physical assets such as production, transportation, storage and supply chain management, which require bespoke risk management strategies. EMPs already maintain robust risk management frameworks, specifically designed for the unique challenges of commodity markets, including price volatility, supply chain disruptions, and geopolitical risks. Moreover, their operations and assets are already subject to oversight by National Regulatory Authorities (NRAs) under REMIT, with support from ACER at the EU level. A key factor limiting systemic financial risk in energy markets is the existence of physical assets that ensure continuity in the production and sale of these commodities. Additionally, the liquidity needs of EMPs differ markedly from those of financial institutions:

EMPs do not fund their activities through deposits repayable on demand.

• They neither participate in interbank markets, nor have access to central bank liquidity facilities.

• They neither provide loans to consumers nor take deposits and therefore are not exposed to the risk of sudden, large cash outflows under stressed conditions.

• Instead, they typically benefit from stable and diversified financing sources, including relationships with a broad range of credit institutions and access to capital markets.

At the same time, the prudential liquidity requirements of IFR/IFD are designed for orderly wind-down scenarios of banks and investment firms managing customers' savings, deposits or investments, not for managing the cash liquidity challenges of volatile margin calls in the ordinary course of business. In contrast real-economy firms own assets that would be liquidated in case of an insolvency. If EMPs were subject to MiFID II and IFR/IFD, they would have to meet the liquidity requirements of IFR/IFD and respond to margin calls, and would therefore face further liquidity strains during crises.

In conclusion, the extension of MiFID II and IFR/IFD requirements to a wider range of EMPs is not aligned with the specific needs and risks inherent to EMPs. Rather than improving market stability or liquidity, it is likely to exacerbate financial burdens, reduce the ability of EMPs to trade for hedging and non-hedging purposes, and undermine the competitiveness of European markets, especially at a time when the focus should be on supporting the energy transition and ensuring affordable energy prices. Because of increased mandatory clearing and margining, it would also reduce the ability of EMPs to effectively manage their market, liquidity and credit risks (see Frontier Economics study Section 2.2.1).

Question 29. Assuming a review of the AAE that would tighten the access to the exemption, what would you expect to see in terms of effects on trading and liquidity?

What about the opposite scenario (meaning a widening of the exemption)?

Please explain, providing if possible quantitative analysis (in terms of impact on open interest, volumes, number and diversity of participants, bid/ask spreads.):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Restricting the AAE would have far-reaching consequences for energy market participants, significantly affecting their ability to engage in commodity derivatives markets. Energy market participants are vital to market liquidity. If tighter access to the AAE reclassifies them as investment firms, they would face substantial financial and regulatory burdens. The Frontier Economics study highlights how additional obligations — ranging from capital and liquidity requirements to collateralization burdens and extensive compliance costs — would likely lead many energy market participants to scale back or exit trading, harming market efficiency and energy price stability in the EU.

One immediate impact would be the need for energy market participants to comply with capital and liquidity requirements under CRR/IFR and CRD/IFD. The Frontier Economics study estimates affected energy market participants affected would need to hold between €1.15 billion and €8.55 billion in prudential capital. As investment firms, energy market participants would also become financial counterparties under EMIR, triggering mandatory margin requirements for OTC trades, up to €180 million per firm even under normal market conditions. This trapped capital could no longer support long-term energy investments. Energy market participants fund large infrastructure projects like gas-fired power plants and offshore wind farms, requiring capital commitments over decades. Forcing energy market participants into investment firm status would divert these resources, undermining energy transition efforts and market stability.

Additionally, energy market participants would face major compliance costs: licensing, reporting, duplicative

IT requirements, and structural overhauls. The complexity of meeting investment firm regulations (see our answer to Q28) would compel many energy market participants to reconsider their market participation, with some exiting entirely. Reduced energy market participants' participation would undermine market liquidity, which would in turn harm price formation, raise volatility, and potentially increase reliance on non-EU markets for hedging. More concretely, currently, non-financial entities represent approximately two-thirds of participants in the natural gas futures market. If these firms exit due to increased financial and regulatory costs, the number of available counterparties will decline, reducing market depth and impairing efficient price discovery. The effects would be particularly severe in smaller, less liquid markets, such as regional gas and electricity hubs, where a decline in trading activity would make price fluctuations even more pronounced. The 2022 energy crisis demonstrated how fragile energy markets can become when liquidity dries up. Price shocks were amplified, leading to severe disruptions in energy markets. If fewer firms gualify for the exemption, similar liquidity shortages could arise in future crises, making energy markets more vulnerable to external shocks. The Frontier Economics study found that subjecting energy market participants to investment firm status would force them to bear an excessive liquidity burden from mandatory collateralization requirements or drive them out of the market entirely. Either outcome would weaken market liquidity and increase volatility, particularly during times of crisis. It stresses that the costs of weakened market liquidity will trickle down to businesses and consumers, contrary to the goals of the Affordable Energy Action Plan.

Historical data from Germany and Italy (2019-2022) further confirms the value of liquidity. According to the study, higher liquidity leads to more efficient and resilient power markets. Germany's more liquid wholesale market enabled smoother trading and greater resilience during the crisis, compared to Italy. This illustrates how broad AAE access enhances stability and supports lower energy costs for end consumers.

Maintaining - or even expanding - the AAE would strengthen market resilience. Allowing more firms to qualify would preserve liquidity and support competitive price formation. Continued energy market participant engagement would tighten the spread of bid-ask, reduce transaction costs, and ensure a more efficient risk management environment. A robust commodity derivatives market also facilitates private investment in renewables. Retaining the AAE enables energy market participants to hedge effectively without excessive capital burdens, supporting long-term energy security and the green transition.

Question 30. What do you believe would be the expected effect(s) of a reviewed AAE on commodities prices (e.g., energy, agricultural commodities), depending on the changes implemented (tightening or loosening of the AAE)?

Please explain:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Based on the answer to question 29, the expected effects of a reviewed AAE on commodities prices, such as energy and agricultural commodities, would depend on the changes implemented. However, if the AAE is tightened, it will lead to a significant decline in liquidity, price increases, thinning of the market, and less competition. Additionally, it will result in an unlevel playing field for EU market participants and increased volatility. Conversely, loosening the AAE will mitigate these effects and strengthen market resilience.

3. Position management and position reporting

Position management and position reporting are two key features of the MiFID framework that allow trading venues to maintain orderly trading, and NCAs to monitor market trends and prevent potential market manipulation. They are also instrumental in the enforcement of position limits, for those contracts that are subject to them.

3.1 Position management

Article 57(8) of MiFID requires that exchanges and other trading venues trading in commodity derivatives have arrangements in place to monitor the open interest positions of persons trading on their venue.

It notably allows trading venues:

- to request information from market participants on positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts
- to request a person to terminate or reduce positions, or to take direct action in case the person does not comply with said request
- to request a person to provide liquidity back into the market to mitigate the impact of a large or dominant position

3.2 Position reporting under MiFID

3.2.1 Reporting from market participants to trading venues

Position management controls are complemented by position reporting requirements included in Article 58(3) of MiFID which aim, among others, at providing trading venues with the necessary information to implement their position management mandate. Market participants are thereby required to submit to the trading venues they are trading on the details of their positions held in the contracts traded on that venue.

However, currently trading venues do not have access to a full set of information on the positions that their market participants build in OTC derivative instruments related to the same market/underlying. Notably, they do not get information on positions in OTC or C6 carve-out contracts that are connected to the venue-traded contract considered, despite the fact that market participants can build significant positions through OTC transactions. Currently, positions in the OTC derivatives are obtained on an ad hoc basis^[1]. However, the recent events that occurred at the London Metal Exchange (LME) suggest that positions obtained through OTC contracts can have a significant and direct impact on orderly trading on trading venues and on the functioning of markets in general.

Trading venues also do not receive any position reporting from market participants on positions in the same contract opened through trading on a different venue (in situations where the same contract is traded on different venues, as is the case for Dutch Title Transfer Facility (TTF) gas futures). This can notably cause difficulties in enforcing position limits, as positions in the same and economically equivalent OTC contracts are to be aggregated regardless of where the positions have been built (all venues + economically equivalent OTC contracts), to effectively assess whether an entity breaches the position limit or not.

This section therefore explores whether it is necessary, for the effective enforcement of position management controls by trading venues, that operators of such venues gather comprehensive and more systematic data on positions of market participants, beyond those traded on their venue, including those traded OTC. Potential solutions could be specific to certain types of contracts or commodities (e.g., gas).

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¹ According to MiFID Article 57(8), point (c), in the context of their position management controls, venues are entitled to '*obtain information*, *including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts through members and participants'. Moreover, according to MiFID Article 58(3), market participants are required to report to the trading venue, at least on a daily basis, their positions held through contracts traded on that trading venue.*

3.2.2 Reporting from market participants and trading venues to NCAs

Similarly, securities markets supervisors do not receive exhaustive information over all positions of market participants. Currently, pursuant to Articles 58(1) and (2) of MiFID, securities markets supervisors only gather information on venue-traded instruments (via the trading venues) and in economically equivalent OTC contracts (via investment firms directly). Currently, position reporting to NCAs does not comprise positions in the spot underlying market, nor positions in physically-settled wholesale energy contracts contracts traded on an OTF (i.e., C6 carve-out products).

3.3 Exposure reporting under REMIT

The revised REMIT introduced for the first time an obligation for market participants to report their exposures, detailed by product, including the transactions that occur OTC.

The Commission is currently in the process of detailing such reporting obligations in the REMIT Implementing Regulation.

Questions related to section 3

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

Question 31. Currently, under MiFID, reporting from market participants to trading venues on the positions held in instruments traded on those venues is performed by market participants themselves.

Do you believe that this reporting could be carried out by clearing members, as it is the case in other jurisdictions, so as to reduce the burden on individual market participants and to enhance accuracy and completeness of reporting?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe the existing position reporting arrangements at EU trading venues are fit for purpose and do not require changes.

Many of Energy Traders Europe's members are non-investment firms. When they are direct members of a trading venue, the venue provides draft reports, allowing market participants to add relevant details (e.g., end clients, hedge/spec classification). For firms using Direct Electronic Access (DEA), the DEA provider reports the positions on their behalf, classifying them as client positions. These arrangements are crucial for reducing administrative burdens, as trading venues and DEA providers inherently have visibility over market participants' positions.

Shifting responsibility to clearing members would only be feasible for cleared contracts—which is not always the case for MTFs and OTFs—and even in this case offers no clear benefits.

Question 32. In which of the following cases should venues trading in commodity derivatives receive the full set of information on positions of market participants trading on their venues?

Please select as many answers as you like

- positions held in critical or significant contracts based on the same underlying and sharing the same characteristics, traded on other trading venues
- OTC contracts that relate to the same underlying
- related C6-carve-out contracts
- positions in the underlying spot market

Please explain how the information can be collected by trading venues and reported in the most cost-efficient way:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please note that the first option was selected to provide an explanation. We do not agree with this option.

We believe the existing powers of EU trading venues to obtain information on positions of market participants trading on their venues are fit for purpose and do not require changes. To our understanding, already today trading venues have the authority to request detailed information about the market participant's s entire position in case the market participant's position exceeds the trading venue's accountability levels or in case there is a suspicion of market abuse. This approach, which is embedded in Art 57 par 8 (b) of MiFID II, enables effective oversight without imposing excessive burdens on market participants. On the contrary, introducing systematic reporting of additional contracts raises concerns, as trading venues are commercially driven enterprises and providing information about contracts concluded outside of the trading venue is commercially sensitive information. Continuous monitoring of activities across all trading venues should remain the responsibility of an impartial regulator, who does not act as a market participant or trading venue.

In addition, please note that the UK Financial Conduct Authority (FCA) considered these competition law concerns and complexities in its report on its MiFID-like regime. In section 7.19 (PS25/1: Reforming the commodity derivatives regulatory framework, FCA, first published: 05/02/2025), the FCA noted: "We therefore consider that trading venues should determine whether and when it may require position data in

related overseas commodity derivative contracts. Positions in related overseas contracts will follow the same approach as information in trades in the underlying commodity of the critical contract." As of July 2026, UK trading venues may require reporting of OTC positions that are related to the same underlying commodity. However, such reporting might not be necessary for all types of energy firms.

Please specify what your preferred option would be:

- imposing additional reporting requirements on market participants (to trading venues)
- achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs)
- $^{\odot}$ resorting to the single data collection mechanism as referred to in section 1
- don't know / no opinion / not applicable

Please clarify how your favourite option could be achieved and, if possible, please estimate the cost of additional data collection/reporting, to the extent relevant, for reporting entities.

Please identify whether this could lead to any double reporting under the (revised) REMIT (and as will be further detailed in the revised REMIT Implementing Regulation)?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned earlier, trading venues already have the authority to request additional information on positions in cases of significant holdings or suspected market abuse. This approach enables effective oversight without imposing excessive burdens on market participants Furthermore, this would eliminate the risk of overlapping reporting obligations with REMIT, which is establishing exposure reporting for all types of contracts, including OTC.

Question 33. With a view to enhancing the supervision of commodity derivatives markets, do you believe that both energy (where relevant) and securities markets supervisors (ACER, NRAs, ESMA, NCAs, collectively competent authorities) should have access to information on market participants active in derivates markets as regards their positions in:

Yes	No	Don't know - No opinion - Not applicable

C6-carve-out contracts	۲	\odot	\odot
the underlying spot market	۲	O	0

Please explain whether your reply differs depending on the type of underlying commodity considered:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our reply does not differ depending on the type of underlying commodity.

Please specify what your preferred option would be:

- imposing additional reporting requirements on market participants (to competent authorities)
- through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting)
- as regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1
- don't know / no opinion / not applicable

Please explain how the information can be collected by competent authorities and reported in the most cost-efficient way:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently, energy market participants already report extensive data on trades, orders, positions and exposures. However, no single supervisory authority has a complete view of the energy market. This also concerns position information. Instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities. Please see our answer to Question 1. We propose a clear data strategy that includes1) a pause on any changes or additions to existing reporting regime requirements, 2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR, 3) a systematic review to identify whether regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and 4) the development of a central data collection mechanism (or interoperable data-sharing platform) that allows regulatory authorities to access and exchange relevant information in a secure manner. This includes access for energy and securities markets supervisors (ESMA, NRAs, ACER, NCAs) to positions on C6 carve-out products and positions in the underlying spot market. Most efficient would be for this central data collection mechanism to source data from existing data repositories such as ARIS (for REMIT data), Trade Repositories (TRs) (for EMIR data) and Approved Reporting Mechanisms (ARMs) (for MiFIR data).

Question 34. With a view to enhancing the supervision of wholesale energy markets, do you believe that energy markets supervisors (ACER, NRAs) should have access to information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFID?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain whether your reply differs depending on the type of underlying commodity considered:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our reply does not differ depending on the type of underlying commodity.

Please specify what your preferred option would be:

- imposing additional reporting requirements on market participants (to trading venues)
- achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs)
- by resorting to the single data collection mechanism as referred to in section 1
- don't know / no opinion / not applicable

Please explain how the information can be collected by ACER/NRAs and reported in the most cost-efficient way:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently, energy market participants already report extensive data on trades, orders, positions and exposures. However, no single supervisory authority has a complete view of the energy market. This also concerns position information. Instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities. Please see our answer to Question 1. We propose a clear data strategy that includes:

1) a pause on any changes or additions to existing reporting regime requirements,

2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR,

3) a systematic review to identify whether regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and

4) the development of a central data collection mechanism (or interoperable data-sharing platform) that allows regulatory authorities to access and exchange relevant information in a secure manner. This includes access for energy markets supervisors (ACER, NRAs) to information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFIDII. Most efficient would be for this central data collection mechanism to source data from existing data repositories such as ARIS (for REMIT data), Trade Repositories (TRs) (for EMIR data) and Approved Reporting Mechanisms (ARMs) (for MiFIR data). Such a mechanism should be managed by an entity that maximizes the use of existing capabilities, while minimizing disruption to market participants' reporting processes. Given the existing infrastructure and expertise of ACER and ESMA, but also national regulators, leveraging these bodies may be more practical than creating a completely new entity.

Please explain your answer to question 34:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently, energy market participants already report extensive data on trades, orders, positions and exposures. However, no single supervisory authority has a complete view of the energy market. This also concerns position information. Instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities. Please see our answer to Question 1. We propose a clear data strategy that includes

1) a pause on any changes or additions to existing reporting regime requirements,

2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR,

3) a systematic review to identify whether regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and

4) the development of a central data collection mechanism (or interoperable data-sharing platform) that allows regulatory authorities to access and exchange relevant information in a secure manner. This includes access for energy markets supervisors (ACER, NRAs) to information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFIDII. Most efficient would be for this central data collection mechanism to source data from existing data repositories such as ARIS (for REMIT data), Trade Repositories (TRs) (for EMIR data) and Approved Reporting Mechanisms (ARMs) (for MiFIR data). Such a mechanism should be managed by an entity that maximizes the use of existing capabilities, while minimizing disruption to market participants' reporting processes. Given the existing infrastructure and expertise of ACER and ESMA, but also national regulators, leveraging these bodies may be more practical than creating a completely new entity.

Question 35. The reporting of positions in economically equivalent OTC contracts under Article 58(2) of MiFID applies to investment firms only.

Do you believe this requirement should be extended to all persons (like the position limit regime)?

- Yes
- No

Don't know / no opinion / not applicable

Please explain your answer to question 35:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently, energy market participants already report extensive data on trades, orders, positions and exposures. However, no single supervisory authority has a complete view of the energy market. This also concerns OTC position information. Instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities. Please see our answer to Question 1. We propose a clear data strategy that includes 1) a pause on any changes or additions to existing reporting regime requirements, 2) a thorough evaluation of existing reporting obligations under EMIR, REMIT, MiFID II and MiFIR, 3) a systematic review to identify whether regulatory authorities lack access to specific datasets and whether this hinders effective market oversight) and 4) the development of a central data collection mechanism (or interoperable data-sharing platform) that allows regulatory authorities to access and exchange relevant information in a secure manner. Most efficient would be for this central data collection mechanism to source data from existing data repositories such as ARIS (for REMIT data), Trade Repositories (TRs) (for EMIR data) and Approved Reporting Mechanisms (ARMs) (for MiFIR data). Such a mechanism should be managed by an entity that maximizes the use of existing capabilities, while minimizing disruption to market participants' reporting processes. Given the existing infrastructure and expertise of ACER and ESMA, but also national regulators, leveraging these bodies may be more practical than creating a completely new entity.

Question 36. In your view, is the current definition of 'economically equivalent OTC derivatives' under MiFID fit for purpose?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 36:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, the current definition is generally appropriate, as it only considers contracts economically equivalent if they are traded interchangeably. This approach is logical, as variations in parameters reflect specific, deliberate differences in trading objectives.

A second argument for maintaining the current definition is that the latter is in line with the US definition of Economically Equivalent Swaps. Such swaps are defined as having "identical material" contractual specifications, terms, and conditions as a Referenced Contract, ensuring consistency across regulatory regimes.

Finally, from a practical perspective, altering the definition could have significant consequences for market participants, trading venues, and National Competent Authorities (NCAs). Such a change would likely require substantial IT investments across the industry, creating unnecessary complexity and financial burdens.

Question 37. MiFID requires that position reporting specifies the end-client associated to the positions reported. However, the legal construction of the current position reporting framework entails that, for positions held by third-country firms, such third-country firms are to be considered the end-client. This prevents the disaggregation of positions held by those third-country firms, and therefore the identification of the end-clients related to those positions.

Does the lack of visibility by NCAs and/or by trading venues of the positions held by the beneficial owner (end client) when that position is acquired via a third-country firm raise issues in terms of proper enforcement of position limits and, in the case of trading venues, of their position management mandate?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 37:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that NCAs and trading venues should have visibility on the positions held by the beneficial owner, also when that position is acquired via a third country firm. How to obtain this visibility is a discussion our member firms would like to be part of.

Should the position reporting framework be amended to specify that non EU-country firms also have to report who is the end-client linked to the position they hold in venue-traded commodity derivatives and/or economically equivalent OTC derivatives?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes. It should be clarified that the ultimate beneficiary must be reported, regardless of whether it is located inside or outside the EU.

4. Position limits

Article 57 of MiFID contains a number of rules that constrain the size of a net position which a person can hold at all times in certain commodity derivatives contracts. Position limits in MiFID do not apply to EUAs nor to derivatives on EUAs.

As the initially introduced position limit regime under MiFID had proved to be overly restrictive, negatively affecting the development of in particular new commodity derivatives markets, notably energy derivatives, the CMRP adopted in 2021 introduced significant alleviations to that regime. In particular, it reduced the scope of contracts subject to position limits only to agricultural commodity derivatives and to significant or critical commodity derivatives. Contracts are considered significant or critical when the size of their open interest is at a minimum 300,000 lots on average over one year.

Position limits for each of those contracts are set by NCAs, following principles set out in <u>MiFID Level 2 legislation</u> (<u>Delegated Regulation (EU) 2022/1302</u>), and following an opinion by ESMA. Positions in venue-traded and in economically equivalent OTC contracts are aggregated.

Position limits do not apply to contracts entered into for hedging purposes by non-financial entities (so-called 'hedging exemption'). The CMRP extended the hedging exemption to positions taken by financial entities that are part of a predominantly commercial (i.e., non-financial) group, where the positions taken by those financial entities seek to reduce risks linked to the operations of commercial activities of the non-financial entity in the group. The CMRP also extended the exemption on position limits resulting from transactions entered into to fulfil obligations to provide liquidity on a trading venue (the 'liquidity provision exemption'). Those two extensions were introduced with a view to further support the deepening of commodity – notably energy – derivatives markets in the Union.

Persons holding qualifying positions that wish to benefit from one of the abovementioned exemptions need to submit a formal request to the NCA that sets the position relevant for the considered commodity derivative contract.

The position limits regime also only applies to contracts that fall within the realm of the financial rulebook, and therefore excludes 'C6 carve-out' products.

This should be assessed against the background that, in other jurisdictions, trading venues play an overall greater role in the tailoring, application and monitoring of position limits. For instance, for those contracts not subject to federal position limits set by the <u>Commodities and Futures Trading Commission (CFTC</u>), trading venues are free to set the position limits they see fit. Similarly, exchanges play a greater role in granting hedging and other exemptions to market participants, applying the conditions set out in the CFTC order.

4.1 Particular case of natural gas derivatives

In the Union, TTF natural gas futures are currently the only listed non-agricultural futures contract subject to position limits. The TTF contract currently has a position limit of 25 050 960 MWh for the spot month and 153 017 049 MWh for other months (see ESMA's opinion of 1 July 2024 on position limits on ICE Endex Dutch TTF and EEX gas contracts). The position limits are expressed in MWh as the contracts available for trading, and covered by these limits, have different lot sizes (see ESMA's opinion of 20 December 2022 on position limits on ICE Endex Dutch TTF gas contracts). The position limits apply irrespective of whether the contract is held to delivery or offset or settled prior to delivery. The position limit for TTF futures corresponds to 15% of the deliverable supply of natural gas to the Netherlands for the spot month, and 12.5% for other months.

In contrast, the laws governing the Henry Hub futures in the US have different position limits for physically settled and cash-settled derivatives. There is an initial 2000 contract limit for physically settled contracts, which can be combined with up to 8000 cash-settled contracts (2000 per exchange (cash-settled Henry Hub contracts are traded on three exchanges in the US) + 2000 in the OTC market). 2000 contracts at Henry Hub amounts to 25% of the deliverable

supply at the Henry Hub. The differing limits for physically settled and cash-settled contracts are justified by the need to protect the physical delivery in the delivery month by avoiding that players take too large positions into the physical market. On the other hand, market participants that hold no physically settled contracts at all are allowed to increase their positions in cash-settled contracts. This is a specific rule for natural gas contracts called the "conditional spot month limit exemption" that increases the position limit for cash-settled contracts to 10 000 contracts.

Currently, there are no position limits in REMIT. However, as mentioned above, the position limit framework as set out in MiFID currently applies to TTF natural gas futures, as for the moment this is the only derivative contract that falls into the category of "significant" or "critical" commodity derivative.

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

Questions related to section 4

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

Question 38. What is your general assessment of the impact of position limits on the liquidity of commodity derivatives contract that are subject to them?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, we would like to distinguish between the position limits regime before its review as part of the Capital Market Recovery Package in 2020 and the position limits regime after this review.

The Position Limits Regime Before the 2020 CMRP Review

While the regime worked reasonably well for highly developed contracts characterized by substantial open interest and many active trading firms, it faced several challenges and negative impacts on the development of new and nascent commodity derivative markets. Specifically, the position limits regime led to stagnation and sometimes even decline of some of the EU's power and gas markets. This was primarily due to the de minimis limit of 2,500 lots being too restrictive and the rules lacking flexibility for National Competent Authorities (NCAs) to rapidly review position limits in the case of fast-growing markets. Furthermore, the lack of an exemption for liquidity providers, led to one of the two market makers in the Nordic price area differential (EPAD) contracts ceasing its activities upon the introduction of position limits.

The Position Limits Regime After the 2020 CMRP Review

We believe the shift towards position limits on a more limited set of significant or critical (benchmark) commodity derivative contracts, and stricter exchange position management controls has been a very positive development. This change made the regime more proportionate and efficient, allowing new and nascent contracts to develop while giving more responsibilities to exchanges who are ultimately best positioned to determine the position limit (or rather 'accountability level') and the approach to a potential breach of such a limit.

We therefore do not recommend another review of the position limits regime. However, should legislators nevertheless choose to revisit it, we believe that shifting greater responsibility to the exchanges — allowing them to set both hard and soft position limits (accountability levels), as is being pursued by the UK FCA —

would be the most sensible approach. We would appreciate if the industry were consulted upon any concrete proposals, should a review deemed necessary.

Question 39. What is your general assessment of the impact of position limits on the ability of commercial (non-financial) entities to hedge themselves?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to Question 38. The initial position limits regime led to stagnation and sometimes even decline in some of the EU's gas and power derivative markets. This was particularly the case for less liquid contracts, making it more difficult for commercial entities to hedge their positions in these markets. Fortunately, the review under the Capital Markets Recovery Package (CMRP) addressed this issue, allowing commercial entities to hedge locally during the crisis. Given the significant price spreads between European gas hubs during the crisis, this implied a substantial relief to commercial entities.

Beyond its impact on market liquidity, the position limits regime also imposed an administrative burden, particularly when hedging exemptions were required for all commodity derivative contracts. Following the CMRP review, which restricted position limits to only significant or critical contracts, this administrative burden was significantly reduced.

Question 40. Do you believe that position limits under MiFID, as amended by the CMRP, have achieved their purpose of preventing market abuse and maintaining orderly trading?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 40:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Prevention of market abuse

REMIT and MAR already provide comprehensive frameworks for this purpose. The MiFIDII position limits regime adds one tool to prevent one type of market abuse, i.e. market cornering, but operates separately from REMIT and MAR. We consider the EU position limits distinct from the position management controls on trading venues which act as soft position limits and are embedded in the broader market surveillance activities of the exchange. Secondly, effective prevention of market abuse requires monitoring trading activity, not just position size. Moreover, positions do not necessarily indicate market abuse. How the position is used is crucial.

Ensuring orderly pricing and settlement

Similarly, the position limits regime likely also had a limited contribution to ensuring orderly pricing and settlement. Its focus on position size rather than trading activity means it does not effectively address manipulative behaviors affecting market prices and settlement processes. Orderly pricing and settlement are primarily influenced by trading activities, order handling, and the robustness of the underlying reference

prices or indices. Exchange measures, including compliance, supervision, and surveillance, are aimed at ensuring that pricing and settlement processes are fair and manipulation-free. We are uncertain that the position limits regime has significantly improved these processes. Rather, it may have negatively impacted transparency and orderly trading by limiting market participation, at least before the review under the CRMP.

Finally, we would like to note that liquidity is crucial for enabling orderly trading and preventing market abuse. Hence the review of the position limits regime under the CRMP has served well, allowing nascent markets to grow thereby reducing their external influence and supporting reliable prices.

Question 41. In your view, what was the impact of the reforms introduced by the CMRP (reduction of the scope of contracts subject to position limits, broadening of the hedging exemption to some financial entities, introduction of the liquidity provision exemption) on the liquidity and reliability of EU energy derivatives markets?

Please include any quantified impact in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc.

In particular, do you believe that the extra flexibility introduced had an impact on market participants' ability to access hedging tools in smaller, less liquid markets (e.g., local electricity or gas hubs):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answers to question 38, 39 and 40. Indeed, the change allowed new and nascent markets to grow and become more liquid. The growth of different markets ensures competitiveness and the ability to hedge as closely as possible to the exposures market participants have due to their portfolio in terms of location, delivery period, etc. At the same time, a lot of potential unnecessary administrative burden was removed from market participants. For example, having a small position could have necessitated requesting a hedge exemption. This situation led market participants to avoid certain instruments or only build up positions to the extent possible without requesting a hedge exemption.

Finally, the centralization of information about position limits on ESMA's website has been very useful for tracking any changes to the limits. Proactive communication about upcoming position limits would also be highly valuable.

Question 42. Do you believe that the current criterion to determine whether a contract is a 'significant or critical contract' is fit for purpose, and why?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 42:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current approach appears fit for purpose, as other major jurisdictions around the globe, such as the UK, have similarly concluded that only significant or critical contracts should be subject to position limits.

For instance, the U.S. Commodity Futures Trading Commission (CFTC) imposes federal position limits on "referenced contracts". This category includes any Core Referenced Futures Contract as well as futures, and options on futures that are directly or indirectly linked to the price of a Core Referenced Futures Contract, or to the price of the same underlying commodity, for delivery at the same location. Economically equivalent swaps are included in the scope of referenced contracts. The U.S. approach can be seen as a different method of identifying a set of 'significant' or 'critical' contracts for the federal position limit regime.

In practice, federal position limits in the U.S. apply to Henry Hub related Natural Gas contracts and swaps economically equivalent to any of the referenced contracts. In the EU, physically-settled ICE Endex and EEX TTF natural gas contracts are currently subject to position limits, with EEX THE contracts in the process of being brought into scope. These limits apply to the entire forward curve. In addition, we note that ICE Endex and EEX have expiry limits for the TTF natural gas contracts applicable during the final five days prior to expiry.

While the identification of in-scope contracts appears broadly comparable between the EU and the U.S., certain other aspects of the EU's position limits regime may result in a somewhat more stringent framework. As noted in the consultation, the TTF spot month limit in the EU reflects 15% of deliverable supply, whereas the Henry Hub spot month position limit reflects 25%. Additionally, U.S. regulators do not impose limits beyond the final five trading days prior to expiry. This distinction is critical, as many of the issues with the pre-2020 position limits regime stemmed from the "other months" position limits. Given that the purpose of position limits is to prevent market cornering and to ensure orderly price formation at expiry, one may reasonably question the necessity of imposing position limits on contracts that are not nearing delivery. Finally, the process for obtaining a hedging exemption is significantly more flexible in the U.S., where exchanges administer exemptions for both exchange-set and federal position limits.

It is vital that the EU maintains a well-calibrated position limits regime focused on significant or critical contracts. Otherwise, it risks undermining the competitiveness of EU markets and driving liquidity to more flexible global trading venues.

Question 43. In your view, under the current position limit regime, could there still be scope for traders of some commodity contracts (spot or derivative) to use their positions in commodity derivatives with a view to unfairly influence

prices or secure the price at an artificial level?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 43:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to question 40. The main regulatory frameworks for the prevention of market abuse in energy markets are REMIT, MAR and the BMR. The MiFID II position limits regime only adds one tool to prevent one type of market abuse, i.e., market cornering. REMIT and MAR are comprehensive market abuse frameworks that ensure effective prevention of market abuse, as they require monitoring trading activity, not just position size. In addition, they impose several layers of surveillance (regulators, trading venues and market participants) to ensure market integrity is integrated at every level. BMR ensures the accuracy and integrity of benchmark indices. In other words, while the position limits regime still leaves some risks, these should in principle be mitigated by the existing comprehensive market abuse frameworks REMIT, MAR and BMR.

Question 44. Contracts with the same underlying and same characteristics subject to position limits are sometimes traded on several trading venues.

Do you believe that the level of the position limit for those contracts should be set at European level (e.g., by ESMA), as opposed to the NCA responsible for the supervision of the main trading venue for that contract?

- Yes
- No
- Don't know / no opinion / not applicable

Do you believe ESMA should be in charge of monitoring and enforcing the position limits for those contracts?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answers to question 44:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The discussion on the treatment of such contracts has a long history, and we believe the current approach following the position limits review in 2020 is the most pragmatic one. This approach balances two principles: ensuring an equal level playing field between trading venues and enabling less liquid markets to develop. The current regime first considers the maturity of a contract. If a contract is deemed critical or significant, it should be subject to position limits. Only in a second step does the regime consider whether there is another contract with the same underlying and same characteristics that is also deemed critical. In this case, a joint position limit is applied. (E.g. The position limits on ICE TTF contracts are also valid for EEX TTF contracts.) We believe this approach is not only theoretically sound but also the most practical way forward, given the current set-up of NCAs for position limits reporting and monitoring.

Regarding the question of who should set the limit, we do not see a need to establish position limits at the EU level for contracts that share the same underlying and characteristics. The current approach, with the National Competent Authorities (NCAs) jointly determining the position limits, has proven effective. Moreover, assigning this task to ESMA would be impractical, as it (currently) lacks access to the necessary data. That being said, we appreciate ESMA's website as a central source of information on position limits applicable to European commodity derivative contracts. Proactive communication regarding upcoming position limits would also be highly valuable.

Question 45. Some jurisdictions only apply position limits to physically-settled futures. Once captured by the position limits, cash-settled versions of those contracts however also count towards the position limits. This means that futures that are not physically-settled (e.g., futures on power) cannot be captured by the position limit regime in those jurisdictions.

Do you believe that position limits in the EU should only apply to futures contracts that are physically-settled?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain what would be the benefits or risks linked to the implementation of such an approach in the EU?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a strong opinion on this matter, as the current regime does not present any significant challenges in this regard. However, should the regime be reviewed, we believe it would make more sense to apply position limits only to physically-settled futures and, if applicable, their cash-settled equivalents. Since the objective is to prevent market abuse and ensure orderly price settlement, we do not see the need to apply position limits to cash-settled commodity derivatives where there are no physically-settled versions. Additionally, aligning with global standards is another important factor to consider.

Question 46. Do you perceive an advantage or disadvantage of having separate position limits for physically and cash settled futures contracts for natural gas contracts, as is the case for Henry Hub futures in the US?

- Yes
- No
- Don't know / no opinion / not applicable

Do you perceive an advantage or disadvantage of having separate position limits for physically and cash settled futures contracts for other contracts?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 46:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a strong opinion on this matter, as the current regime does not present any significant challenges in this regard. However, should the regime be reviewed one argument that suggests having joint position limits is the strong interlinkage, especially in the energy sphere.

Question 47. Do you believe that the methodology and the level of the limits set by NCAs, for contracts subject to position limits, is adequate?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 47:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We generally support the methodology including the factors for NCAs to take into account. However, there is potential to improve the processes. E.g. There was very little time for market participants to anticipate the new TTF limit applicable to both EEX and ICE contracts, as the date of application was shortly after its publication. At the time of writing, it is also unclear when the new position limits on EEX THE contracts will become applicable. Regarding more concrete proposals on possible changes to the process, we would appreciate stakeholder consultation.

Question 48. The Draghi report refers to the possibility to set stricter position limits, including by differentiating them by types of traders.

Do you believe that position limits should be differentiated, depending on the type of traders/trading activity involved?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 48:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, it is important to note that the hedge exemption already provides a necessary differentiation, allowing market participants with physical needs to exceed position limits in alignment with their commercial needs. Other than this distinction, we do not see which other distinction should be made to determine how large someone's position can be. While we understand that there might be different interests and trading motivations, we see a further differentiation of market participants as problematic for two reasons. First such a distinction might hamper market liquidity, depending on the limits attached to different categories of players. And second, it overcomplicates the regime, as market participants might fulfill different roles within their corporate structures. Please refer to our answer to question 41. The current hedging exemption reveals that making a clear distinction between hedging and speculation already poses challenges for companies. Introducing further distinctions would increase compliance risks, and to mitigate these risks, trading activity could be reduced (as happened in the context of the hedging exemption), leading to less liquid markets with robust price signals.

Question 49. Do you believe that the current exemptions from position limits as set out in MiFID, notably the hedging exemption, are fit-for-purpose?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you believe the current exemptions from position limits are fit-for-purpose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly support the hedging exemption. Energy market participants, especially those in the real economy, have physical obligations to meet. Energy market participants need to hedge the production and consumption of physical gas and power assets which are crucial to energy security of supply. For this reason, they must be able to rely on the hedge exemption, as their need to hedge or proxy hedge in liquid product pools is essential and may exceed position limits depending on the size of the company. The

exemption rightly provides necessary flexibility, allowing participants with physical needs to exceed position limits when justified.

That said, we would welcome greater harmonisation in the application process with NCAs, as well as more consistency in the flagging process across exchanges.

What changes to such exemptions would you propose?

Are there certain markets where such exemption from position limits are more /less justified and is there merit to differentiate between types of commodity markets?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly support the hedging exemption. Energy market participants, especially those in the real economy, have physical obligations to meet. Energy market participants need to hedge the production and consumption of physical gas and power assets which are crucial to energy security of supply. For this reason, they must be able to rely on the hedge exemption, as their need to hedge or proxy hedge in liquid product pools is essential and may exceed position limits depending on the size of the company. The exemption rightly provides necessary flexibility, allowing participants with physical needs to exceed position limits when justified.

That said, we would welcome greater harmonisation in the application process with NCAs, as well as more consistency in the flagging process across exchanges.

Question 50. Do you believe that the hedging exemption is sufficiently monitored by the competent supervisors?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 50:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, we believe NCAs are monitoring the position limits and associated hedging exemptions closely. Experiences at the beginning of the position limit regime showed that members were approached when breaching a limit and suspectedly not having a hedging exemption in place. Additionally, when applying for a hedge exemption, a substantial set of further information must be provided to the respective NCA.

Question 51. Do you believe that trading venues should play a greater role in granting hedging or liquidity provision exemptions from position limits to

market participants?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 51:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe the current approach to granting exemptions is fit for purpose. As long as NCAs are responsible for monitoring and supervising hard position limits there is no need for trading venues to play a greater role in granting hedging or liquidity provision exemptions.

Question 52. Some jurisdictions allow supervisors and/or trading venues to grant ad hoc exemptions outside of the legally enumerated cases for exemptions for some contracts, if they perceive that the request is legitimate.

Do you believe the EU should also introduce such a flexibility for supervisors and/or trading venues?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why you think the EU should not introduce such a flexibility?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We refer to our answer to Question 38. We generally do not recommend another review of the position limits regime. However, should the position limits regime nevertheless be reviewed, then we welcome that the European Commission considers the position limits regime in other jurisdictions.

Question 53. Do you believe that trading venues:

Don't know -

	Yes	No	No opinion - Not applicable
a) should be given more responsibility in setting position limits in general, for those contracts that are by law subject to position limits (i.e., commodity derivative contracts that qualify as significant and critical or are not agricultural derivative contacts), instead of competent authorities?	0	۲	0
b) should be in charge of setting position limits for non-spot month versions of contracts subject to position limits, thereby applying regulator-set position limits only to spot month contracts, as seen in other jurisdictions?	0	۲	0
c) should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?	0	۲	0

Please explain the potential advantages or disadvantages of option a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not recommend a review of the position limits regime. (Please see also our answer to question 38.) However, if the position limits regime were reviewed then we recommend considering passing on this responsibility to the trading venues. The most important advantage of this option is that trading venues are intimately familiar with their markets, have better visibility on market activity and can adapt limits at their discretion when necessary. By setting limits exclusively for significant and critical contracts, the risk of arbitrary limit settings is mitigated. Another argument is flexibility. Exchanges can adjust the limits much more rapidly in response to changing market conditions. Of course, in such a case, trading venues need to have the necessary discretion to act flexibly.

Please explain the potential advantages or disadvantages of option b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not recommend a review of the position limits regime. (Please see also our answer to question 38.) However, if the position limits regime were reviewed then we recommend considering passing on this responsibility to the trading venues. The experience with its own markets helps the trading venues to set limits and adapt them flexibly whenever necessary. This would allow for the necessary flexibility in case market interests are shifting from one market to the other in a fast manner. We would however disagree with reintroducing limits for all products, as they hamper liquidity especially in new and nascent markets, and lead to more administrative burden for exchanges and market participants. Also rather "arbitrary" limit setting might be a risk on the downside.

Please explain the potential advantages or disadvantages of option c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not recommend a review of the position limits regime. (Please see also our answer to question 38.) However, if the position limits regime were reviewed, also here the experience with its own markets helps the trading venues to set limits and adapt them flexibly whenever necessary. This would apply especially for nascent contracts growing or in case market interests are shifting from one market to the other in a fast manner. Of course, in this case trading venues need to have the necessary discretion to act flexibly. On the disadvantage side limits for all products might again hamper the liquidity and lead to more administrative burden for exchanges and market participants by setting/monitoring the limits as well as when it comes to a hedge exemption. Also rather "arbitrary" limit setting might be a risk on the downside which might need to be mitigated by clear boundaries on the flexibility given by the NCAs.

Question 54. Do you believe that the current regulatory set-up sufficiently allows to enforce position limits on non EU-country market participants?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 54:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Energy Traders Europe's non-EU market participants, which are mainly non-financial counterparties acting on own account, have to respect the position reporting and limit regime within the EU to the same extent as their equivalent firms in the EU. Hence, we fail to see a difference of treatment with a respective risk of less oversight or enforcement. However, as mentioned in our response to Q37, we do believe that also outside of the EU the ultimate beneficiary needs to be reported.

Question 55. Do you believe that the position limits regime should also apply to 'C6 carve-out' products?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see the need to impose a position limits regime on C6 carve-out products. As noted in our response to Question 40, these contracts must be physically settled and do not involve financial participation. The majority of firms engaging in C6 carve-out contracts do so exclusively to fulfill their physical needs, and they typically do not participate in any other financial instruments. Moreover, physically settled markets, in general, tend to be less liquid, with trading occurring in bespoke products specifically designed to align with physical requirements. Implementing position limits would add an unnecessary layer of bureaucracy, likely impeding the liquidity of these markets. While some may argue that the market risk is

the same, whether the trading takes place on an exchange, through brokers, or over the counter (OTC), we maintain that the specific characteristics of C6 carve-out markets—namely their bespoke nature and the fact that they serve to meet physical needs—make position limits unnecessary and counterproductive.

Additionally, in order to monitor the limits, firms would need to begin position reporting. As outlined in our answers on position reporting, extending the position reporting and limit regime to include C6 carve-out products would be excessively burdensome. Please note transactions in these contracts are reported under REMIT.

We would like to use the opportunity to stress once more the reasons for maintaining the REMIT C.6 Carve-Out:

- This REMIT C.6 Carve-Out was created, because with the adoption of the MiFID II in 2014 formerly bilateral OTC broker platforms, which market participants used for entering into physical settled transactions, were re-classified as regulated trading venues, i.e., Organised Trading Facilities (OTF). As under MiFID II all contracts concluded over such platforms are in principle defined as financial instruments, the EU colegislators decided that "must be physically settled" transactions entered into at brokers' OTFs venues are not to be qualified as financial instruments (so-called REMIT C.6 Carve-Out) to maintain their status as non-financial instruments. Also, generally under MIFID II physically (can be) settled bilateral OTC transactions are not financial instruments (commodity derivatives) since the existence of MiFID. The reason for this approach is that such bilateral OTC contracts are entered into by energy market participants (producers and consumers) for commercial purposes, i.e., they use these contracts to manage their commodity price risks. They enter into contracts bilaterally OTC or via the C.6 OTF venues for example for the purpose of supply of power and gas to industrial consumers or for the procurement of fuels for their power plants (gas, coal, oil, etc.). Hence, these contracts serve real economy purposes.

- The further reason for this decision is that under REMIT the physical gas and power markets are sufficiently regulated in terms of market integrity and transparency.

- Finally, the consequential re-classifications of the C.6 contract products could trigger burdensome and costly requirements for non-financial firms under financial regulation, such as licensing, capital, and margining/collateralization requirements. Indeed, such a reclassification is likely to force a number of firms to curtail or stop their EU trading activity, or, where possible, to trade directly on bilateral OTC markets or via other international markets to avoid these requirements. The consequential fall in liquidity in physical and financial markets would significantly increase the costs of risk management for the real economy and severe hamper the ability to hedge the commercial risks efficiently. The ultimate net result would be higher end consumer gas and power prices.

Question 56. Do you believe that energy and financial regulators should cooperate in the process of setting position limits for wholesale energy products?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 56:

Whereas we disagree with a position limit setting for C6-carve-out products as explained above, we still see potential for better cooperation between energy and financial regulators in other areas than position limits. Please see our answer to Question 76.1.

5. Circuit breakers

Circuit breakers aim to avoid excessive volatility, maintain orderly trading and ensure a sound price discovery mechanism. The Union's regulatory framework (Article 48 of MiFID) requires that trading venues have arrangements in place that allow them to temporarily halt or constrain derivatives trading. Those "circuit breakers" can take the form of either price collars, which are a mechanism to reject orders outside certain price bands, or temporary trading halts. The MiFID circuit breakers apply to the trading of any financial instrument, including energy derivatives.

Circuit breakers can be defined as specific instruments on futures markets which restrict the maximum price fluctuation of a commodity in a given amount of time. A price limit is enacted when the price of a futures contract moves a certain predefined amount (expressed in absolute or relative terms) above or below the reference price. Dynamic circuit breakers are based on a dynamic reference price which evolves very frequently (e.g., less than a second) during the trading day, and are especially useful in avoiding erroneous orders from affecting price formation. Static circuit breakers are circuit breakers using a static reference price, intended as a price that is updated less often compared to the dynamic one but at least on a daily basis. When the futures price moves beyond the upper price limit, the market is "limit up" and market participants can only trade at the limit price or below. When the price moves below the lower price limit, the market is "limit down" and market participants can only trade at the limit price or above.

In December 2022, as part of the emergency measures taken to address the energy crisis, an intra-day volatility management mechanism (IVM) was introduced in the Union framework. <u>Council Regulation (EU) 2022/257</u>6, which applied until 31 December 2024, required that trading venues ensure that the intra-day price volatility management mechanism prevents excessive movements of prices within a trading day for energy-related commodity derivatives, without preventing the formation of reliable end-of-day closing prices. The setting of the exact parameters (breadth of the price bands, frequency at which price boundaries are renewed, etc.) of the IVMs are left to trading venues, taking due account of the liquidity and volatility profiles and other specificities of the considered energy-related commodity derivatives. Trading venues have been given the option to either implement new circuit breakers, or integrate IVMs in existing circuit breakers.

The MiFID/MiFIR review concluded in 2023 further strengthened the EU framework applicable to circuit breakers, notably by requiring that ESMA further details the principles underpinning the setting up of those circuit breakers, and by specifying that those circuit breakers should also apply in emergency situations – as opposed to only in cases of significant price movements. New transparency requirements have also been inserted. Those rules ensure that trading venues maintain discretion on the design of the circuit breakers, which are expected to be tailored to the specificities of the instruments considered and their liquidity profile. Those provisions apply across asset classes, and do not concern commodity derivatives markets only. ESMA is expected to submit regulatory technical standards (RTSs) to the Commission on this matter by 29 March 2025, further specifying the technical requirements for those circuit breakers (e. g., use of static and/or dynamic circuit breakers, transparency requirements, etc.).

Trading venues in other jurisdictions have introduced circuit breakers on energy markets that are akin to more static circuit breakers (rolling 60-minute lookback window), while circuit breakers for certain agricultural commodities take the shape of price limits set for the entire trading day. Those circuit breakers in those same jurisdictions, however, generally do not seem to apply to spot month contracts, in order not to affect orderly price discovery.

Questions related to section 5

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

Question 57. What is your assessment of the effectiveness of IVMs and of their enforcement by NCAs (or the adaptation of existing circuit breakers following the adoption of Council Regulation (EU) 2022/2576) in avoiding excessive price volatility of energy-related derivatives during a trading day?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, we concur with ESMA's findings (Final Report on the implementation and functioning of the Intraday Volatility Management Mechanism, ESMA70-156-6509, June 2023) that the implemented IVMs generally seem adequately calibrated to manage price volatility. The report acknowledges that the introduction of IVMs has led to positive developments in the management of intra-day volatility, particularly by prompting trading venues to review and enhance their existing mechanisms. Furthermore, we would like to stress that the 2022 price peaks were due to the immediate supply deficit resulting from the Russian invasion of Ukraine. Even if circuit breakers would have paused or temporarily halted trading activity, it would have most probably exacerbated the volatility once the market reopened. It must be noted that if not applied well, circuit breakers can remove liquidity, throttle price discovery, and freeze markets. They are no tools for mitigating volatility caused by fundamental factors, but for managing short-term price spikes or aberrant market moves.

Question 58. Do you believe trading venues should be permanently required to implement static circuit breakers to further restrain excessive daily volatility for commodity derivatives specifically, as a complement to circuit breakers already implemented?

- Yes
- No
- Don't know / no opinion / not applicable

What would be the associated advantages and disadvantages?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, we understand static circuit breakers are circuit breakers using static reference prices such as opening price, closing price or intraday auction price. It is important to clarify as definitions differ across jurisdictions.

There are no advantages to implementing static circuit breakers for energy markets, either temporarily or permanently. While circuit breakers can serve as a tool to prevent excessive volatility, the use of a static circuit breaker, which implies rigid price limits, presents several risks and inefficiencies similar as the ones outlined in ACER and ESMA's assessments of the EU market correction mechanism. Instead, a dynamic

circuit breaker, which adapts to market conditions and is currently used by energy exchanges, is a far more effective solution. We explain:

A certain degree of volatility is inherent to power and gas markets. This is because power and gas cannot easily be stored, and demand and supply need to be balanced at all times. In addition, demand is highly weather dependent and does not easily react to prices, at least not in the short term. At the same time also the supply side is becoming increasingly more volatile. This is because of intermittent renewable generation becoming a larger part of the energy mix and sources of gas supply becoming increasingly subject to geopolitics.

Relying on fixed price thresholds, static circuit breakers do not account for changing market conditions. Market volatility is not constant. Price movements that may seem extreme under normal circumstances could be entirely justified during times of crisis or structural shifts in supply and demand. By failing to adapt, a static circuit breaker risks unnecessarily halting trading, even when price adjustments are a natural response to new market realities. This rigidity can delay the market's ability to reach equilibrium, exacerbating uncertainty rather than mitigating it.

Market participants, including energy producers, utilities, and traders, rely on liquid markets to hedge risks and manage their positions. A static circuit breaker that frequently halts trading can deter participation, reducing market liquidity at critical moments. This can lead to a situation where price movements become even more erratic once the market reopens, as traders rush to adjust positions. Instead of preventing instability, a static circuit breaker may exacerbate volatility when trading resumes. This may ultimately lead to a loss of confidence in the respective markets and market participants withdrawing permanently.

By adjusting to market conditions, dynamic circuit breakers allow for necessary price fluctuations while still preventing excessive volatility. This approach ensures greater flexibility to respond to market fundamentals and avoids artificial price distortions.

Please explain your answer to question 58:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are skeptical about the requirement for trading venues to implement static circuit breakers, temporarily or permanently. While circuit breakers can serve as a tool to prevent excessive volatility, the use of a static circuit breaker, which implies rigid price limits, presents several risks and inefficiencies similar as the ones outlined in ACER and ESMA's assessments of the EU market correction mechanism. Instead, a dynamic circuit breaker, which adapts to market conditions and is currently used by energy exchanges, is a far more effective solution. We explain:

A certain degree of volatility is inherent to power and gas markets. This is because power and gas cannot easily be stored, and demand and supply need to be balanced at all times. In addition, demand is highly weather dependent and does not easily react to prices, at least not in the short term. At the same time also the supply side is becoming increasingly more volatile. This is because of intermittent renewable generation becoming a larger part of the energy mix and sources of gas supply becoming increasingly subject to geopolitics.

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By adjusting to market conditions, dynamic circuit breakers allow for necessary price fluctuations while still preventing excessive volatility. This approach ensures greater flexibility to respond to market fundamentals and avoids artificial price distortions.

To the question whether IVMs similar to those provided for by Council Regulation (EU) 2022/2576 should be introduced and applied on a permanent basis, we tend to disagree as MiFIDII regulates circuit breakers and does so effectively. Article 48 describes in detail the obligation on trading venues to manage price volatility and is supposed to be further elaborated upon in the upcoming RTS 7 on circuit breakers. Please note that in its report on IVMs (ESMA70-156-6509 - Final report on the implementation and functioning of the Intra-day Volatility Management Mechanism, June 2023) also ESMA notes that current IVMs function adequately and that there is no need for duplicative requirements to the MiFIDII regime. Quoting ESMA's report: "ESMA considers that the already existing circuit breakers under MiFID II could deliver on the objective to limit excessive intra-day price volatility without introducing a second layer of circuit breakers via IVMs." (page 3).

Question 59. What should be the effect of hitting those static price bands (should this trigger for instance trading halts or order rejection mechanisms)?

In your view, what are the pros and cons of each mechanism?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response to Question 58. By failing to adapt to changing market conditions, a static circuit breaker risks unnecessarily halting trading, even when price adjustments are a natural response to new market realities. This rigidity can delay the market's ability to reach equilibrium, exacerbating uncertainty rather than mitigating it.

Market participants, including energy producers, utilities, and traders, rely on liquid markets to hedge risks and manage their positions. A static circuit breaker that frequently halts trading can deter participation, reducing market liquidity at critical moments. This can lead to a situation where price movements become even more erratic once the market reopens, as traders rush to adjust positions. Instead of preventing instability, a static circuit breaker may exacerbate volatility when trading resumes. This may ultimately lead to a loss of confidence in the respective markets and market participants withdrawing permanently. Question 59.1 If you favour trading halts, what duration do you recommend for an appropriate trading halt that is long enough for market participants to assess the situation and their position in the derivatives market and for the

market to 'cool off'?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Besides ensuring that circuit breakers use dynamic reference prices, it is equally important that any trading halt does not exceed a few minutes. Prolonged halts would have the same negative consequences we described in our answer to Question 59.

The impact of extended halts is not limited to financial considerations. They also carry significant risks for physical markets if a break lasts too long. Extended interruptions can severely affect margins, closing prices, and interconnected contracts.

Spot Markets: In energy spot markets, trading halts are not a viable tool. Companies in these markets are subject to balancing obligations and regulatory requirements linked to security of supply. Halting trading in such short-term markets could immediately jeopardise physical system stability and supply security. Moreover, volatility in these markets often stems from sudden weather changes that directly impact renewable energy production, requiring prompt trading actions to maintain balance.

Futures Markets: Longer trading halts in futures markets risk driving activity towards OTC markets or related commodity products, as participants seek to manage their risks elsewhere. However, this shift reduces the effectiveness of risk management and could increase volatility in connected markets. Full-session halts further risk the absence of closing prices, which are critical for internal valuations and contractual indexation.

Finally, it is essential to remember the purpose of a trading halt: to provide a brief pause so all participants, including those trading manually, can reassess market conditions and their positions. We believe that a few minutes is sufficient to achieve this goal.

Question 59.2 Would your assessment differ according to the type of underlying commodity considered?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 59.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our position remains the same regardless of the underlying commodity. We do not believe static circuit breakers have a role in energy markets, and any trading halt should last only a few minutes. However, the impact of imperfect calibration may be more significant in highly liquid markets compared to illiquid markets, where a longer trading halt might go largely unnoticed.

Question 60. Do you see any risk in static circuit breakers applying to spot month contracts, considering possible implications on physical delivery, as well as possible valuation challenges and divergences between spot and futures prices?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 60:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see our answer to Question 58. We see severe risks of applying static breakers to any type of energy spot contract. Of course, the implications will be even more severe if there are delivery obligations and a company may not be able to unwind a position and receive penalties for non-delivery. This must be avoided at all times.

Question 61. Do you perceive that implementing static price bands would risk moving trading to OTC markets?

- Yes
- No
- Don't know / no opinion / not applicable

What would be possible mitigants to prevent such migration?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is indeed expected that price formation would move to physical contracts either traded on organised trading facilities (OTFs) or purely over-the-counter (OTC), at least, as long as credit lines still exist. The likelihood of this will increase the longer the halt takes.

Question 62. Do you believe the dynamic static breakers implemented by trading venues in general function adequately?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain the challenges and please indicate any potential improvements to their functioning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, as alluded to in our answer to Question 58, we generally believe that the circuit breakers implemented by trading venues function adequately. This is because they are dynamic and serve as an effective tool to prevent excessive volatility. We believe this concurs with ESMA's findings in its Report on the intra-day volatility management mechanisms (ESMA70-156-6509, June 2023). Quoting ESMA's report: "ESMA considers that the already existing circuit breakers under MiFID II could deliver on the objective to limit excessive intra-day price volatility without introducing a second layer of circuit breakers via IVMs." (page 3). Such tools were developed and reviewed over many years and are by now well understood by market participants.

Question 63. Do you believe energy exchanges trading in spot energy products or C6 carve-out products should also implement mechanisms similar to circuit breakers?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 63:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Spot markets have their own tools to manage volatility. As a trading halt would be too risky in spot markets, these markets typically have limits at the order level. Also please note that Art 10 of Regulation 943/2019 on the internal market for electricity which defines general principles for the establishment of these technical price limits, even determines that there shall be neither a maximum nor a minimum limit to the wholesale electricity price and that the establishment of technical price limits is only to ensure the proper match of supply and demand. It also highlights that those limits shall be sufficiently high so as not to unnecessarily restrict trade.

Generally, our position is that energy exchanges are already well equipped with volatility safeguards. Such tools were developed and adapted over many years and are by now well understood by market participants.

6. Elements covered by the Draghi report

This section proposes to explore the measures set out in the <u>Draghi report</u> which are not otherwise covered by the review items in the review clause under Article 90(5) of MiFID. This section focuses on energy commodities (thereby not concerning derivatives on other commodities, EUAs and derivatives on EUAs), so as to reflect the specific focus of the Draghi report.

6.1. Obligation to trade in the EU

The Draghi report calls for trading activities in energy derivatives to 'be undertaken by companies trading in the EU'. This recommendation can be understood as requiring that energy derivatives trading relevant to the EU/for EU delivery should occur in the EU only.

The report however also widens its recommendation to a fall-back scenario whereby "as a minimum, all market participants (irrespective of domicile) need to report their trades (and positions) to the regulators in the EU" (see page 30 of the report). The report does not clarify what instruments should be subject to such reporting. Questions relating to potential data gaps are addressed under section 1.

Questions related to section 6.1

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on whether natural gas or electricity is concerned.

Question 64. Do you believe a general obligation to trade in the EU should be introduced?

Yes

- No
- Don't know / no opinion / not applicable

Please explain your answer to question 64:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly oppose an obligation on firms trading European wholesale energy products to be located in the EU.

Non-EU market participants, particularly in gas and LNG markets, are critical to the EU's security of supply. Their exclusion would reduce the overall availability of physical energy sources, weaken competitive pricing, and jeopardize the reliability of energy flows into the EU. Additionally, many non-EU firms are deeply integrated into regional European power markets. In the Nordic region, for example, third-country players contribute essential flexibility—especially important as the share of renewables grows. Forcing these firms to establish staffed and equipped EU offices would place them in an unmanageable situation, ultimately threatening the functionality of interlinked markets and the stability of cross-border supply chains. The same is true for firms in the UK and Switzerland.

Non-EU firms are active not only in physical delivery but also in derivatives markets, where they play a key role in facilitating risk management. Excluding them will diminish market liquidity resulting in higher bid-ask spreads, higher transaction costs, and less reliable price discovery. Most critically, it makes markets more prone to sudden price swings, as they lose the deep shock-absorbing capacity that comes with broad participation. In stress scenarios, concentrating trading activity within the EU could amplify systemic risk, as the ability to diversify or offset shocks across markets would be curtailed. Thus, access to a broad range of market participants is essential for EU firms to hedge their energy price exposures effectively

A similar proposal for a strict location policy, under REMIT, was rejected in 2024 by the Parliament and the Council. Instead, the revised version of REMIT requires non-EU firms to not only register with the national

regulatory authority in a Member State where it is active, but to also have a designated representative in that country. All firms active on European energy markets need to report all trades and positions and ACER can request any market participant additional information necessary for fulfilling the Agency's obligations (Art 13b - Request for information).

Finally, should the trading obligation be meant as an obligation to trade products with an EU-based underlying on an EU trading venue, we equally warn against adverse market impacts. It has always been a fundamental criterion of the derivatives trading obligation that instruments in scope for that obligation must also be subject to the clearing obligation under EMIR, as specified in MiFIR Art. 28(2a). Clear criteria are set out in EMIR to determine which derivatives contracts should fall in scope of the clearing obligation. We are of the firm view that currently, no OTC commodity derivatives contracts meet the criteria for inclusion in the scope of the clearing obligation, much less the scope of the derivatives trading obligation.

Question 65. If such a general obligation were to be introduced, please set out any possible impact on EU market participants' ability to hedge, notably with non-EU counterparties:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to Question 64. Imposing an obligation to trade in the EU would reduce the number of market participants, thereby diminishing market liquidity. As liquidity dries up, bid-ask spreads widen, transaction costs increase, and fair pricing becomes more difficult to achieve. This reduced market depth would also make energy markets more vulnerable to abrupt price movements and shocks, weakening the overall financial stability of the system. In stress scenarios, concentrating all market risk within the EU would amplify systemic vulnerabilities rather than contain them.

The EU energy system does not operate in isolation. Supply chains, trading activity, and risk mitigation mechanisms are global by nature. Rather than restricting participation, policy should focus on promoting competition, deepening market liquidity, and ensuring access for a broad range of market participants. This is the only way to secure a resilient, affordable, and competitive energy system for the EU.

Question 66. If such an obligation were to be introduced, please set out any possible impact on market participants and the functioning, depth and liquidity of the markets concerned:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to Question 65. For existing energy market participants, it would require third country firms to move some of their operations, including relevant staff, from their third country home jurisdiction to an EU host jurisdiction, even though their physical assets contributing to Europe's security of supply are still located in the third country. Before doing so, market participants would have to undertake a significant due diligence assessment in order to understand the regulatory implications of establishing a trading entity in the EU. In addition, there would be substantial costs of setting up such an entity in terms of human and capital resources.

Similarly, potential new market entrants would face strong market barriers due to the associated investments

required to set up a trading entity in Europe. Therefore, such a location policy risks hampering the EU's security of energy supply, the competitiveness, the liquidity and the functioning of European energy markets and is likely to result in trading activity in European energy markets shifting to foreign jurisdictions. Please also see our answer to Question 64.

In terms of liquidity we believe that especially the EU's energy benchmark contracts will be affected most negatively.

6.2. The Market Correction Mechanism and other dynamic caps

The Market Correction Mechanism (MCM) was introduced by <u>Council Regulation (EU) 2022/2578</u> in the context of the 2022 energy crisis. It aimed at limiting excessive energy prices in contexts where TTF natural gas derivative prices (i) exceed EUR 180 per MWh, and (ii) exceed by more than EUR 35 a representative price for global LNG. Under those circumstances, the MCM required that regulated markets on which TTF futures are traded to reject orders that are above the specified limits. The MCM differs from traditional circuit breakers to the extent that the bidding limits are not set by reference to prices/bids observed on venue, but by reference to external prices (in the case of the MCM, by reference to a basket of prices reflecting global natural gas prices).

Following the adoption of the MCM, both ACER and ESMA have issued reports setting out the effects of the MCM:

- ESMA's preliminary data report on the introduction of the market correction mechanism 23 January 2023
- ESMA's effects assessment of the impact of the market correction mechanism on financial markets -<u>1 March 2023</u>
- ACER's preliminary data report on market correction mechanism 23 January 2023
- ACER's effects assessment report on market correction mechanism 1 March 2023

Those reports indicated that the MCM did not to have a discernible gas market impact, owing to gas prices being significantly below MCM trigger levels. Both agencies' reports however point to a number of risks, for instance in terms of a shift to less transparent and uncleared OTC trading, in terms of challenges linked to the adaptation of risk models and margin calls by Central Counterparties (CCPs), and in terms of potential hikes in margin calls, in terms of physical flow developments. Some stakeholders however claim that the MCM provided a helpful shield against extremely high prices.

As of 1 May 2023, the MCM applied to all gas virtual trading points. The MCM then expired on 31 January 2025.

The Draghi report suggests that dynamic caps, building on the experience of the MCM, are made a permanent feature of the EU rulebook on energy spot and derivatives trading (spot and derivatives), to ensure that derivatives prices do not significantly diverge from global energy prices, as has been seen during the 2022 energy crisis.

Questions related to section 6.2

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on whether natural gas or electricity is concerned.

Question 67. Do you believe that MCM is a useful tool to limit the episodes of excessive – and significantly diverging from global markets – prices in the EU?

Yes

Don't know / no opinion / not applicable

Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A price cap undermines the risk management function of European energy markets. When triggered, the price cap would artificially constrain the value of energy derivatives, decoupling them from the price of the underlying physical market where supply/demand dynamics may have shifted. This disconnection would impair the ability of market participants to effectively manage these underlying price risks. This will increase price volatility and will make the European energy markets less attractive and may reduce the number of market participants. This is the exact opposite of the policy desired, which is to avoid price divergencies.

Regulatory stability and predictability are central to market participants' behaviour on long-term energy markets. If market participants exit or market participation reduces due to the uncertainty introduced by a price cap, liquidity in the markets will diminish. This reduction in liquidity will result in wider bid-ask spreads. Further, to account for the greater risk associated with the increased volatility, margin requirements will increase. Ultimately, these cost increases will be borne by consumers.

In short, a price cap such as the MCM does not decrease the global market price of energy but may create upward price pressure and increased price volatility in Europe.

Cost efficiency and secure supplies to consumers are best served by: 1) an efficiently functioning, interconnected and liquid energy market with free and transparent price formation for competing energies from diverse domestic and global supplies, 2) demand-side solutions, 3) a stable legislative framework

Same conclusions were drawn by ESMA in its preliminary report (ESMA70-446-775, January 2023): "In ESMA's view, should the settlement price and the spread to the reference price increase, the more likely it appears that potential effects and risks materialise due to market participants adjusting their behaviour to avoid the activation of the MCM and/or to manage risks in case of an activation of the MCM. While this behaviour would appear rational on an individual basis, it could trigger significant and abrupt changes of the broader market environment, which could impact the orderly functioning of markets, and ultimately financial stability."

ECB notes as well in its opinion from 2 December 2022 (ECB Opinion CON/2022/44) that: "ECB considers that the current design of the proposed market correction mechanism may, in some circumstances, jeopardise financial stability in the euro area".

Question 68. Building on the experience of the MCM, do you think dynamic caps based on external prices (whether in the shape of the MCM or in another shape) would help avoid situations where EU energy spot or derivatives prices significantly diverge from global energy prices, and should therefore be codified in legislation?

- Yes
- No

If you think it is not a useful tool, please explain why, and specify, if relevant, to what extent you believe price divergences between EU prices and international prices can be warranted:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Price divergences between EU prices and international prices are rooted in fundamental characteristics of the EU versus international market. The EU does not possess significant fossil fuels reserves, unlike some of its global competitors. In case of a shock of supply, high prices are essential to attract physical commodities to EU and support security of supply.

Cost efficiency and secure supplies to consumers are best served by: 1) an efficiently functioning, interconnected and liquid energy market with free and transparent price formation for competing energies from diverse domestic and global supplies, 2) demand-side solutions, 3) a stable legislative framework.

Question 69. Do you believe that the MCM or other dynamic caps could have an impact on the attractiveness and/or stability of EU commodity derivatives markets?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain how the MCM or other dynamic caps could have an impact:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MCM or other dynamic caps fundamentally compromises both the attractiveness of EU commodity derivatives markets and their structural stability.

Regarding the attractiveness of EU commodity derivatives markets: The MCM imposes a rigid and unilateral price cap on EU exchanges, creating a two-tiered market structure. While the cap applies to exchanges within the EU, it does not apply to OTC markets or trading venues outside the Union. Hence, closer to the cap level, trading activity is expected to move from the EU exchanges to OTC markets and trading venues outside the EU, such as ICE Futures Europe and CME. This relocation of activity 1) reduces the competitive edge of EU trading venues; 2) complicates access to reliable benchmark pricing within the EU and 3) weakens the EU's position as a global hub for commodity risk management. Such developments diminish the EU's attractiveness to professional market participants — including commercial firms, liquidity providers, and non-EU actors — who increasingly see EU markets as unpredictable and vulnerable to political interference. The perception of regulatory arbitrariness introduced by the MCM damages confidence and deters long-term market engagement.

Regarding the stability of EU commodity derivatives markets, the ESMA assessment of the MCM clearly outlines that the MCM 1) distorts price formation in periods of stress; 2) reduces liquidity, especially near the cap levels; 3) increases basis risk due to divergence between capped and uncapped markets, and 4)

creates margining and collateral uncertainty for Central Clearing Counterparties (CCPs). These factors weaken the resilience of the EU's energy trading ecosystem. As closer to the cap level liquidity thins and price signals deteriorate, volatility can become more abrupt and less absorbable, threatening both orderly trading and financial stability. If confidence in EU markets erodes further, central clearing volumes may fall, reducing the risk-mitigating function of clearinghouses and increasing counterparty exposures across the system.

In short, the MCM injects systemic uncertainty into core elements of commodity derivatives markets — pricing, hedging, clearing, and risk management. It replaces market-based discipline with regulatory volatility, harming both short-term functioning and long-term investment confidence.

Question 70. What is your assessment of the impact of a triggering of the MCM on trading conditions and financial stability?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to Question 69. The ESMA assessment of the MCM clearly outlines that the MCM 1) distorts price formation in periods of stress; 2) reduces liquidity, especially near the cap levels; 3) increases basis risk due to divergence between capped and uncapped markets, and 4) creates margining and collateral uncertainty for Central Clearing Counterparties (CCPs), who has the obligation to value all positions on a basis that reflects the real value of the derivative. These factors weaken the resilience of the EU's energy trading ecosystem. As closer to the cap level liquidity thins and price signals deteriorate, volatility can become more abrupt and less absorbable, threatening both orderly trading and financial stability. If confidence in EU markets erodes further, central clearing volumes may fall, reducing the risk-mitigating function of clearinghouses and increasing counterparty exposures across the system.

In short, the MCM injects systemic uncertainty into core elements of commodity derivatives markets — pricing, hedging, clearing, and risk management. It replaces market-based discipline with regulatory volatility, harming both short-term functioning and long-term investment confidence.

The European Central Bank has expressed concerns that the design of the previously implemented MCM jeopardised financial stability in the euro area. In its own words (ECB Opinion CON/2022/44): "the ECB considers that the current design of the proposed market correction mechanism may, in some circumstances, jeopardise financial stability in the euro area. The mechanism's current design may increase volatility and related margin calls, challenge central counterparties' ability to manage financial risks, and may also incentivise migration from trading venues to the non-centrally cleared over-the-counter (OTC) market."

Question 71. Are you aware of any impact on margins (or other trading costs) of the mere existence of the MCM, notwithstanding the fact that the mechanism has never been triggered?

Yes

- No
- Don't know / no opinion / not applicable

Please explain your answer to question 71:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware of any impact on margins so far. However, we fully support ESMA's assessment of the MCM which identifies several reasons why the MCM could lead to higher margin requirements. For example, when the MCM price cap is reached, CCPs may no longer be able to rely on exchange prices to reflect the market-implied value of the affected contracts for margin calculations and default management. In such cases, if the CCP needs to resort to an alternative decoupled price source, it may apply an add-on to account for the reduced reliability of that source.

A second potential driver of higher margins, as noted by ESMA, is the possible loss of portfolio margining offsets if the activation of the MCM disrupts correlations between different contracts. The removal or reduction of offsets would increase collateral requirements, particularly for participants holding positions or hedges across different maturities or energy contracts.

A third factor could be heightened volatility in the run-up to the activation of the price cap. Finally, even if the relevant price levels for triggering the MCM have not yet been reached, CCPs may need to adjust their risk models pre-emptively to reflect potential risks. Should CCPs increase margins in response to these additional risks at elevated price levels, this could further exacerbate liquidity pressures that are already intensified by higher prices.

6.3. Application of organisational and operational requirements to the spot market

The 2022 gas market events showed the strong interconnectedness of spot/physical and futures markets in the energy realm – as is the case for other markets. The market for energy derivative contracts is subject to stringent MiFID rules. However, unlike other derivatives markets, the market for underlying spot energy products is subject to a less expansive rulebook, despite many similarities between markets for spot and future contracts. The Draghi report suggests that the alignment between the two sets of rulebooks governing the spot and derivatives markets would help prevent the contagion of systemic risks from spot to financial markets.

More concretely, the Draghi report mentions that some basic requirements of the MiFID 'trading rule book' could be extended to spot markets. This could in particular entail two types of measures:

- a. rules imposed on trading venues
- b. and rules imposed on market participants themselves

Spot energy exchanges and actors active on those exchanges are mainly governed by REMIT. Currently, REMIT does not provide for organisational and operational requirements on OMPs (akin to MiFID trading venues) and market participants similar to those included in MiFID. This consultation seeks to obtain information on whether the introduction of such requirements in the REMIT framework would be useful.

6.3.1. Organisational requirements at trading venue level

Article 53 of MiFID on access to regulated markets requires exchanges to establish, implement and maintain transparent and non-discriminatory rules, based on objective criteria, governing access to or membership of the
regulated market. In particular, such exchange rules should ensure that market participants trading on the venue satisfy certain organisational requirements and are competent traders. Those provisions are currently not part of the rulebook governing the functioning of spot energy trading venues.

Furthermore, regulated markets under MiFID are required to set up and implement rules on professional standards on the staff of the investment firms or credit institutions that are operating on the market, which includes checking that market participants, inter alia (Article 53(3)):

- are of sufficient good repute
- have a sufficient level of trading ability, competence and experience
- have, where applicable, adequate organisational arrangements
- have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions

6.3.2. Organisational requirements at market participant level

MiFID contains a number of safeguards, in the shape of organisational requirements, ensuring that investment firms actually manage their operations in a professional manner (namely, so-called 'fit-and-proper' requirement). They ensure that the firm has a proper understanding of the activities it engages in and the market it interacts with, and that this is reflected in the way the firm is managed. This includes, for instance:

- the obligation for investment firms to have a management body that oversees and is accountable for the implementation of the governance arrangements that ensure an effective and prudent management of the investment firm in a manner that promotes the integrity of the market and the interest of potential clients (Article 9 (3) of MiFID). This includes approving and overseeing the knowledge and expertise required by the personnel, and the procedures and arrangements for the provision of services and activities, taking due account of the nature of the firm's activities (Article 9(3), point a). The management body is also in charge of carrying out appropriate stress testing, if appropriate (Article 9(3), point b)
- competent authorities are required to refuse or withdraw authorisation from an investment firm whose
 management body is not of sufficient good repute, or does not possess sufficient knowledge, skills and
 experience, or if there are objective and demonstrable grounds for believing that the management body of the
 firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the
 interest of its clients and the integrity of the market (Article 9(4))
- investment firms should have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment (Article 16(5))

6.3.3. Other relevant rules governing market integrity and transparency

Beyond those organisational requirements, other aspects of the financial rulebook covering market transparency (e.g., pre- and post-trade transparency) and market integrity (circuit breakers, position management controls, emergency intervention powers by trading venues to ensure orderly trading) could potentially be of relevance to the operation of spot markets. Those items have been covered under the relevant sections above.

Questions related to section 6.3

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on whether natural gas or electricity is concerned.

Question 72. Do you believe that requirements similar to some/all organisational requirements imposed on MiFID firms as market participants should also be imposed on market participants in spot energy markets, without requalifying those entities as investment firms?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 72:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a principle, requirements imposed on market participants in financial markets should not automatically apply to the participation in spot energy markets. Spot markets and derivative markets are fundamentally different. While spot markets primarily facilitate immediate asset transactions with physical delivery, derivative markets are designed to manage price and volume risk on a long-term basis.

Given the distinct purposes pursued by participants in spot versus derivative markets, it is appropriate that each operates under a separate regulatory framework. The framework applicable to spot markets already includes a range of organizational and conduct requirements for market participants: At European level market participants are bound by spot market regulation such as the balancing network code, the capacity allocation and congestion management network code and of course REMIT. At the national level there are rules such as those governing balancing responsible parties, which set standards tailored to entities involved in the physical delivery of energy. NRAs process applications for various licenses which include conduct and organizational obligations. Beyond licensing, several market codes and rules govern how market participants operate in the market, for example, how bids and offers are submitted, how records are kept, and how conflicts of interest are managed. These external requirements are then reflected internally through desk-and function-level controls, procedures and guidelines which guide the day-to-day operations of market participants and ensure compliance. Finally, energy spot exchanges impose their own licensing and conduct-of-business requirements, which market participants must adhere to.

MiFID on the other hand was designed to bring efficiency to the European equity market through competition and to ensure that investor protection was consistently achieved across national boundaries. MiFID II introduced new requirements for non-equity products, acting as a single rulebook for all financial services. The reform enhances the supervision of reporting parties and data sharing between relevant authorities, increases market transparency and ensures more effective enforcement.

As a consequence, a broad expansion of MiFID II to capture energy spot markets would introduce requirements that are both overburdensome and duplicative, with a high risk of unintended consequences. In particular, the application of Article 9 (Management Body) and Article 16 (Organisational Requirements) would place disproportionate obligations on spot energy market participants. While we recognise the importance of these provisions in financial markets, many of their elements are already addressed by existing licensing requirements, and others are ill-suited to the specific characteristics of the energy and gas sectors. For instance, Article 16 assumes the presence of client-facing activities, which are absent in spot markets focused on immediate physical delivery. Moreover, market participants in these markets do not manufacture financial products, making the product governance provisions under Article 16 irrelevant in this context. Other MiFID II organisational requirements that aim at market integrity, are already integrated within REMIT, e.g. the obligations for companies that engage in algo trading. In sum, these requirements would not

be fit for purpose in this context.

That said, it may be sensible to explore the possible harmonisation of national rules, especially regarding minimum standards for market operators to provide market access such as reliability checks and professional qualifications for the traders and appropriate risk controls for the company, to ensure responsible and secure access to spot market operators.

Question 73. Do you believe that key rules similar to those applicable to MiFID trading venues should also apply to spot energy exchanges, and why?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 73:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In line with our response to Question 72, as a principle, requirements imposed on market participants in financial markets should not automatically apply to the participation in spot energy markets. Spot markets and derivative markets are fundamentally different. While spot markets primarily facilitate immediate asset transactions with physical delivery, derivative markets are designed to manage price and volume risk.

Given the distinct purposes pursued by participants in spot versus derivative markets, it is appropriate that each operates under a separate regulatory framework. The framework applicable to spot markets already includes a range of organisational and conduct requirements for trading venues: In the case for power, for example, the spot market legislative framework already includes REMIT, the Electricity Directive & Regulation, the Capacity Allocation and Congestion Management Network Code (CACM) and many other legislative acts. In particular, according to CACM, each market operator has to undergo a licensing process to become a so-called Nominated Electricity Market Operator (NEMO), which includes tailor-made organisational requirements and close supervision by ACER and national regulators. Besides that, various national requirements exist for spot energy exchanges similar to the ones in MiFIDII Art. 53.

Before applying similar requirements for MiFID trading venues to energy spot markets it would be useful to clarify how this might be achieved best in the context of existing standards and methodologies. We believe it might be more sensible to explore further harmonisation of national spot market access rules.

Question 74. Do you believe that the application of rules similar to the ones included in MiFID to spot energy market participants could have helped preventing at least some atypical trading behaviours (e.g., lack of forward hedging, trading on weekends) during the energy crisis, and limited repercussions on derivative markets?

No

Yes

Don't know / no opinion / not applicable

Please substantiate your answer to question 72:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not convinced that applying MiFID rules to spot energy market participants would have prevented atypical trading behaviours observed during the energy crisis. The only such behaviour our members are aware of relates to the unconventional trading patterns that emerged in response to mandatory gas storage filling targets, as highlighted by ACER in its European Gas Market Trends and Price Drivers – 2023 Market Monitoring Report (pp. 45 and 80). These distortive practices should fall within the scope of REMIT and, ideally, be prevented altogether by allowing the storage filling targets to lapse by end of 2025.

Historically, storage has been filled, when necessary, without the need for regulatory intervention, as summer-winter price spreads have provided sufficient incentive. However, during the energy crisis, mandated storage filling led to substantial costs and exposed the trade-off between energy security and affordability. Storage should not be filled "at any cost" - and it is best to focus on a range of security measures. Since crisis measures were originally introduced, the European gas market has evolved significantly: LNG import capacity has expanded, interconnection between Member States has improved and more renewable electricity has reduced reliance on gas fired power generation. In addition, the market now has extensive experience with demand-side response. The initial challenges of reshaping supply chains, developing new counterparties and rerouting gas flows have become part of the market's normal functioning. While the global gas market may remain temporarily tight, this is a challenge the market is capable of addressing. It should not be used to justify the continuation of emergency measures. The extension of the storage filling obligations does not resolve market tightness and may increase rather than reduce price volatility, especially if the obligation is not met in a conventional and market-friendly manner. Moreover, it should be noted that also the setting and adjustment of mandatory storage targets and trajectories including short notice changes through dynamic interventions - can be a driver of trading activity. Additionally, we are concerned about storage users that are not regular market participants but an agent for a competent authority and who will be compensated for out-of-the-money transactions through socialization of losses.

Finally, on a different note, with regard to trading over weekends, it is important to highlight a key feature of spot energy markets: balancing. Immediate responses to changes in weather forecasts, production availability, or consumption needs often require real-time action—even during weekends—and result in legitimate trading activity. While such behaviour may appear atypical from a financial market perspective, it is fundamental to the functioning of physical gas and power markets.

Question 75. The revised REMIT clarified that benchmarks used in wholesale energy products are captured by the market abuse-related provisions in that Regulation.

Do you believe that this is sufficient to ensure the integrity of such benchmarks, and avoid risks of manipulation?

- Yes
- 🔍 No

If you think this is not sufficient, please explain whether you would see merit in establishing rules similar to those imposed on benchmarks used in financial instruments and financial products under Regulation (EU) 2016 /1011, and why:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

REMIT market manipulation definition already includes transmitting false or misleading information or providing false or misleading input in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or engaging in any other behavior which leads to the manipulation of the calculation of a benchmark. This is sufficient.

No changes should be considered without a clear statement of the issue they are seeking to address and how the proposed changes could achieve this. In any event, no changes should be considered until the clarification in REMIT II has been given sufficient time for its impact to be assessed.

6.4. Enhanced supervisory cooperation in the energy area

The events of summer 2022 on energy spot and derivatives markets have shown the close interconnectedness of the two markets. This interlinkage is however not reflected in the fragmented supervision of these markets. Instead, supervision is split at national level between NRAs and NCAs (if not, in certain cases, regional authorities), as well as between ACER and ESMA at European level. The interlinkages between spot and derivatives markets suggest that more enforcement cooperation could be warranted.

The Draghi Report recommends to further integrate regulatory and supervision frameworks, notably through a deepening of the cooperation between ACER and ESMA building on exchanges of information. To achieve this, the report suggests the creation of a coordination body comprised of energy and derivative markets regulators at the European level (ACER and ESMA), which should coordinate the supervision of spot and derivatives markets. The supervisory college would remove possible overlap, duplication or potential conflicts of supervision between energy and financial regulators. The report also suggests that this college could help remove layers of intermediate supervision at the national and sometimes regional levels. This supervisory college would have both the investigative and policy powers necessary to prevent, detect and prosecute anticompetitive conduct, market abuse and other practices which disrupt orderly trading in energy (see page 30 of the report).

One of the main objectives of the revised REMIT is to enhance cooperation in the energy area, as recommended by the Draghi Report. As mentioned above, the revised REMIT includes numerous provisions that not only enhance cooperation and information exchanges between EU bodies and national regulators in the field of energy, financial and competition in the context of potential REMIT breaches, but also provide for the possibility of general information exchanges among the aforementioned authorities (see Article 10, paragraphs (1) and (2) of revised REMIT).

Questions related to section 6.4

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on whether natural gas or electricity is concerned.

Question 76. Do you agree that the current situation leads to a complex

supervisory scenario between various national and sometimes regional supervisors which may slow down reactions in times of crisis?

- Yes
- No
- Don't know / no opinion / not applicable

Please provide concrete examples in relation to your answer to question 76:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that the current regulatory landscape comprising multiple European and national supervisors leads to a complex supervisory scenario which may slow down reactions in times of crisis. However, referring to our answer to Question 76.1 we believe that the current situation may be solved by streamlining existing communication channels and enhancing cooperation between the currently involved authorities without the need to completely revolutionise processes and structures. As remarked in previous answers, especially under Section 1 of this consultation, market participants are required to submit extensive data on their trading activities. Yet, authorities do not seem to have a comprehensive overview of market activity, potentially limiting their capacity to make informed decisions quickly. Please see our answer to Question 1 for our suggestions to enhance data-sharing mechanisms at the regulatory level. In our answer to Question 76.1, we explain how a center for cooperation can make best use of this data. By improving how regulators access and share data, the regulatory system can become more effective and responsive to market developments, particularly during times of stress or crisis.

Question 76.1. Do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets?

- Yes
- No
- Don't know / no opinion / not applicable

If you deemed that a supervisory college structure would not improve cooperation between energy spot and derivative markets, please describe how the cooperation between energy and derivative markets regulators could be further enhanced.

In particular, please explain whether you believe that enhanced cooperation in the energy sector could be achieved by including in the financial legislation similar provisions with those included in the revised REMIT that

will allow for enhanced cooperation and information exchanges between regulators in the financial market and energy respectively in combination with the creation of a common database for financial and energy regulators:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that creating a supervisory college structure may not be necessary to improve cooperation between supervisors of energy spot and derivative markets. Rather than imposing a new supervisory layer risking overlap and confusion regarding competences, we suggest enhancing collaboration by building on the existing Memorandum of Understanding between ACER and ESMA and creating a type of "center for cooperation".

The first task for the center for cooperation could be the implementation of the data strategy referenced in our answer to Question 1. This would involve developing a central data collection mechanism (or interoperable data-sharing framework) that enables authorities to securely access and exchange relevant information. Such a solution would allow regulators to easily access necessary data from different frameworks (e.g., ACER, ESMA, NCAs) without duplicating reporting obligations.

In a second step, we propose that the center for cooperation conducts joint market studies using the shared database. These could include an annual overview of the functioning of energy markets, deep-dives into specific markets, practices or systemic risks, such as liquidity stress. Such joint analysis would contribute to a shared knowledge base strengthening overall cooperation.

Third, the center could play a key role in establishing crisis management protocols. This includes setting out pre-agreed procedures for coordinated action during market disruptions, major defaults or systemic risk events, defining responsibilities, information flows and potential joint measures.

Fourth, the center for cooperation could hold regular high-level strategic meetings to stay informed of each other's priorities. Should there be new regulatory proposals affecting both sectors, then the center for cooperation may conduct joint consultations as well as joint impact assessments as the one on the market correction mechanism.

Fifthly, the center for cooperation could also provide a platform to discuss major investigations, if needed.

We believe such a center for cooperation should include seconded representatives from each authority who would act as liaisons, bringing not only regulatory expertise but also institutional knowledge, enabling real-

time information exchange and operational alignment across sectors and jurisdictions.

There are already successful regional practices that can serve as inspiration. For example, cooperative structures exist among Nordic energy and financial regulators. Similarly, in Spain and Portugal, the MIBEL (Mercado Ibérico de Electricidade) framework facilitates close cooperation between energy and financial regulators—ERSE, CNMC, CMVM, and CNMV.

Question 77. The <u>Benchmark Regulation (Regulation (EU) 2016/1011</u>) sets the regulatory and supervisory regime for commodity benchmarks used in financial instruments or financial products. Those benchmarks usually at least partially refer to market dynamics in the underlying physical commodity market.

Do you believe that, when it comes to energy benchmarks, there is adequate cooperation between energy markets supervisors and securities markets supervisors?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 77:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While there is cooperation between energy market supervisors and securities market supervisors, as we remarked previously, we outline our ideas to enhance cooperation in our answer to Question 76.1.

Additional information



For other questions please contact

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About Energy Traders Europe

Energy Traders Europe is the voice of Europe's energy traders. We represent more than 170 member companies from across the continent, working to promote the role of energy traders in the European energy market.

We think that competitive, continent-wide energy markets help Europe's energy customers:

- They create more choice and greater competition;
- they improve security of supply; and
- they make it easier and cheaper to decarbonise.

Our mission is to make Europe's energy markets work even more effectively.

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