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Position Paper

Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets

Contents

INTRODUCTION

Commodity derivatives are key instruments for market participants to hedge their exposures in the underlying commodity markets (energy, agricultural commodities, metals, etc.). Those markets are characterised by the participation of mainly non-financial entities. Such entities include physical commodity producers, utilities, large energy-intensive corporations, physical commodity traders, etc., that are directly dependent on those markets to mitigate the risks entailed by their commercial activity.

The proper functioning of commodity derivatives markets plays an important role for the stability and prosperity of the EU economy and, as regards energy derivatives markets, for the affordability of energy in the Union and the efficient functioning of the market. Markets for commodity derivatives in the EU are therefore subject to an extensive set of rules that cater for the specific nature and relevance of those instruments to the EU economy.

Akin to, but not strictly speaking considered to be commodities, emission allowances (EUAs) have been added to the financial rulebook upon the adoption of MiFID II (Markets in Financial Instruments Directive) (1) as from January 2018. Since then, the majority of provisions applicable to commodity derivatives also apply to EUAs and/or derivatives thereof. For the sake of conciseness, readers of this consultation paper should consider EUAs and EUA derivatives to be included when referring to commodity derivatives. Stakeholders are however invited to outline specificities for trading of emission allowances and derivatives thereof, where relevant, in their answers throughout the questionnaire.

Article 90(5) of MiFID, as amended in February 2024, requires the Commission, after consulting the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the Agency for the Cooperation of Energy Regulators (ACER), to present a report to the European Parliament and the Council with a comprehensive assessment of the markets for commodity derivatives, EUAs or derivatives on EUAs. The report shall assess, for each of the following elements, their contribution to the liquidity and proper functioning of European markets for commodity derivatives, EUAs or derivatives on EUAs:

a. the position limit and position management controls regimes relying on data provided by competent authorities to ESMA in accordance with Article 57(5) and (10) of MiFID
b. (b) the elements referred to in the second and third subparagraphs of Article 2(4) of MiFID and the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level pursuant to the Commission Delegated Regulation (EU) 2021/1833 (2), taking into account the ability to enter into transactions for effectively reducing risks directly relating to the commercial activity or treasury financing activity, the application of requirements from 26 June 2026 for investment firms specialised in commodity derivatives or EUAs or derivatives thereof as set out in Regulation (EU) 2019/2033 and requirements for financial counterparties as set out in Regulation (EU) 648/2012
c. (c) the key elements to obtain a harmonised data set for transactions by the commodity derivative market to a single collecting entity. The relevant information on transaction data to be made public and its most appropriate format

Energy derivatives, which may be either physically or financially settled, are considered wholesale energy products under the EU Regulation on wholesale energy market integrity and transparency.

REMIT establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets, whilst taking into account their specific characteristics. REMIT also provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators (ACER) in close collaboration with national regulatory authorities (NRAs). For such monitoring, REMIT ensures that ACER also receives structural data on capacity and use of facilities for production, storage, consumption or transmission of energy.

The recent energy crisis peaking in the summer 2022 and the extreme volatility observed in energy markets over that period have sparked a renewed debate on the proper functioning of those markets and on the appropriateness of the applicable rulebooks.

In March 2023, as part of its response to the crisis, the Commission proposed, a reform of the REMIT framework, which entered into force in May 2024 (the revised REMIT). The reform makes market monitoring of wholesale energy markets more effective, enhances their transparency, and strengthens investigatory and sanctioning powers by regulators against market abuse.

The above-mentioned crisis was also discussed in the recent report by Mario Draghi on The future of European competitiveness, published in September 2024. The report includes a significant number of recommendations linked to the functioning of energy spot and derivatives markets, as a means to ensure the European industry access to affordable energy and enhance its competitiveness (see section 6 for detail).

The outcome of this consultation serves several objectives

- Firstly, it will feed into the MiFID report exercise, with a view to making the EU commodity derivatives markets more efficient and resilient, ultimately delivering benefits to the real economy, and bearing in mind the Commission's general objective to reduce regulatory burden on EU firms
- Secondly, it will allow the Commission to collect evidence to feed into broader reflections on the wholesale energy and related financial markets that may inform future policy choices in this area
- Where appropriate, this may call for legislative amendments of the relevant legislation, including MiFID and REMIT
- The solutions under consideration may in some cases be specifically targeted at certain types of contracts or commodities. It could, for example, be possible to identify specific solutions as regards gas-related contracts (as opposed to other commodities)

This consultation is launched in conjunction with the Action Plan on Affordable Energy adopted by the Commission on 26 February 2025.

This consultation seeks stakeholders' feedback on a broad range of issues, including:

- data aspects relating to commodity derivatives
- the ancillary activity exemption (AAE)
- position management and position reporting
- position limits
- circuit breakers
- and other elements stemming from the Draghi report on EU competitiveness

WHO SHOULD RESPOND TO THIS CONSULTATION

This consultation is addressed to commodity market participants in the European Union, regardless of where such market participants are domiciled or where they have established their principal place of business, securities markets supervisors and commodity regulators. Commodity exchanges, clearing counterparties (CCPs) active in the clearing of commodity futures and commodity clearing houses are also invited to participate, as well as trade repositories and registered reporting mechanisms.

You are invited to reply by **9 April 2025** at the latest to the **online questionnaire** available on the following webpage:
https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-review-functioning-commodity-derivatives-markets-and-certain-aspects-relating_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire

Responses authorised for publication will be published on the following webpage:
https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-review-functioning-commodity-derivatives-markets-and-certain-aspects-relating_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-commodities@ec.europa.eu

TOPICS FOR CONSULTATION

1 DATA ASPECTS

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 Markets in Financial Instruments Directive (Directive (EU) 2014/65, MiFID), the Markets in Financial Instruments Regulation (Regulation (EU) 600/2014, MiFIR) and the European Infrastructure Market Regulation (Regulation (EU) 648/2012, EMIR).

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', 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 Wholesale Energy Market Integrity and Transparency 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.
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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 above-mentioned 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.

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:

(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

If so, could you point to specific reporting items that need to be streamlined/aligned, and how? In particular, please explain whether the provision under REMIT which aims at avoiding double reporting for transactions already reported under the financial framework effectively allows to prevent double reporting and, if not, why.

› *Answer: Although streamlining of regulatory efforts is in general welcomed, because reduction of reporting saves costs and helps lowering energy prices. If and how an actual benefit arises very much depends on the exact streamlining design. Any change in reporting infrastructure at the side of the market participant comes along with non-value creating investment in IT-infrastructure. In addition, every change in IT-infrastructure also requires time for design, implementation and testing. Availability of suitably skilled workforce also can be a limiting factor. Thus, we prefer streamlining on the back-end side of the reporting pipeline of the relevant authorities rather than the front-end side. In any case, before any adjustments on the reporting obligations for market participants is being considered, we very much see the need to conduct a gap analysis. Currently, we are not aware that there are data gaps.*

Under REMIT ACER receives up to 7,2 million records of transactions per day. This includes both the physical as well as the derivatives power and gas markets. This data collection covers all information needed by ESMA and the NCAs for the purpose of MiFID/MIFIR/EMIR regarding the power and gas market.

We also want to highlight the timing and current regulatory context:

MiFIR reporting updates are already underway, and REMIT II's revised implementing regulation is expected around May/June. Market participants and regulators will soon begin implementing changes under these frameworks. It is essential that, if streamlining or harmonisation is foreseen, a "freeze" or temporary pause for implementation for MiFIR and REMIT II is introduced. Specifically, implementation of not-yet-finalised changes (especially REMIT II) should be postponed until the outcome of the streamlining initiative is clear. This approach could mirror the omnibus proposal used for the Taxonomy regulation, preventing unnecessary double implementation efforts and reducing regulatory fatigue.

(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 oneoff costs and longterm savings from such harmonisation.

› Answer: *As mentioned above, we very much prefer to address the issues on the back-side of the reporting channel, i.e. allow the respective regulatory authorities to access the streams of reports already being submitted by market participants under the mentioned regimes. Market participants have established processes in place; any adjustment will lead to additional costs.*

(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

If so, how could it be alleviated and what level of possible cost savings could result from such exercise (order of magnitude), distinguishing oneoff costs and recurring compliance costs (for instance, per year)? How would you structure such a possible centralised data collection TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 9 / 29 mechanism (both in terms of data collection and dissemination/access) in a way that, on the one hand, would limit the costs of its setup (i.e., using to the maximum the existing functionalities of trade repositories/RRMs) and, on the other hand, limit any possible oneoff costs of adjustment for reporting entities?

› Answer: *While a green-field approach for a centralised data collection mechanism could make sense, we would like to point out that all market participants already have setup reporting infrastructure and thus a change in data collection would only cause new and massive investments into new infrastructure. The main cost in reporting infrastructure is capital expenditure not operational expenditure, as reporting is highly automated.*

(4) Do you believe that data sharing through the above mentioned centralised mechanism consolidating the data would improve supervision by NCAs, NRAs, ESMA and ACER? And if so – in which way?

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

Not applicable/No:

› Answer: *In general, we are supportive that relevant authorities are put in a position to get justified access to the relevant data, irrespective of the (front-end) reporting channel.*

In addition, granting all Regulators access to the already available data prevents market participants from excessive double reporting.

(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 the relevant items):
   a. by trade repositories?
   b. by RRMs?
   c. by a new type of entity in charge of consolidating data collected by trade repositories and RRMs?
   d. some other entity? Please specify.

   Please explain.

› Answer: *As we are in favor of keeping the status quo for the market-participant side of the reporting pipeline, data consolidation should happen behind the established reporting platform, e.g. RRMs. Thus data consolidation for ESMA/ACER/NCA/NRA should be done by a new type of entity.*

(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? If so, could you please describe it?

› Answer: *A large amount of data is already transmitted as part of the existing reporting obligations. We are in favor of this data also being exchanged between ESMA/ACER/NCA/NRA. The exchange of data should concern precisely relevant data; to this end, the authorities must identify which data is relevant and then set up processes for the exchange of this data. However, the exchange of data should be kept to a minimum.*

(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

› Answer: *The exchange of data is fundamentally provided for in Remit II Art. 10. The implementation of the data exchange is the responsibility of ESMA/ACER/NCA/NRA.*

(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

If not, why?
If so, under which conditions?
Would you see any added value in introducing similar rules in REMIT aiming at pre and/or posttrade transparency and, if yes, under which conditions?

› Answer: *The differences between the equity and commodity markets are too great for a uniform framework for uniform regulation to be possible.*

(9) Do you believe that the consolidated tape should include pre and/or posttrade data on exchangetraded commodity derivatives (i.e. commodity derivatives traded on regulated markets)?

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

If so, under which conditions (latency, transmission protocols, precise scope of products, etc.)?

(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

› Answer: *These trades are already reported under EMIR and the authorities can exchange information in the event of suspicion. Double reporting should be avoided.*

If so, what would be the added value of such reporting compared to existing reporting requirements under EMIR and under REMIT? If not, why?

(11) Do you believe ESMA has sufficient access to transaction data from trading venues and from market participants reported to NCAs?
If not, please explain what are the consequences and how you believe this should be tackled.

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

› Answer: *As a market participant, we do not have full transparency into the exact scope of the data ESMA currently receives from NCAs. However, based on public reports and recent analyses, we have reasons to believe that ESMA's access to transaction data is incomplete and, in some cases, insufficient for it to perform its duties effectively. If this is the case, we suggest improving the exchange of data - so that a lack of data does not lead to incorrect conclusions.*

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, and around 60% on wheat futures markets, 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 Regulation (EU) 2019/2033 (Regulation on the prudential requirements of investment firms, IFR) and Directive (EU) 2019/2034 (Directive on the prudential requirements of investment firms, IFD), 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 Capital Markets Recovery Package (CMRP) 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:

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.

(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

If yes, what would be the associated risks and benefits, in your view, of treating traders in commodity derivatives the same way as traders in other financial instruments who benefit from the exemption under Article 2(1), point (d) of MiFID?

If no, please explain your answer to question 12:

› Answer: *Persons dealing on own account in commodity derivatives trade not only on regulated markets but also on MTFs and OTFs, so that they cannot benefit from the exemption under Article 2(1), point (d) of MIFID.*

Energy market participants dealing on own account in commodity derivatives should continue to benefit from the AAE set out in Article 2(1), point (j), of MiFID. The own account trading exemption set out in Article 2(1), point (d), of MiFID as it limits inappropriately the exemption scope:

The condition under item (i) of Article 2(1), point (d) would limit the MiFID exemption for non-financial energy market participants that are market makers in commodity markets. This stands in contrast to the AAE of Article 2(1) (j) which exempts market makers also. This additional limitation would not be fit for purpose considering the role played by certain non-financial entities as market makers in commodities markets. This would lead to much less liquid energy commodity markets.

The condition under item (ii) of Article 2(1), point (d), limits the scope of exempted trading activities to hedging transactions on Regulated Markets or MFTs. Non-financial energy market participants active on trading venues enter into hedging and non-hedging transactions, which would then not be exempted from a MiFID licensing requirement anymore. This would represent an important reduction of the exemption scope for these firms when compared to the current scope of the AAE. The AAE exempts any type of own account trading activities of non-financial energy market participants. Hence, this limitation would lead to less liquid energy commodity markets.

In providing your explanation, please also clarify whether:

- the condition under item (i) of Article 2(1), point (d), which limits the MiFID exemption for entities that are market makers, would be fit for purpose considering the role played by certain nonfinancial entities as market makers in commodities markets

- and the condition under item (ii) of the same provision, which limits the MiFID exemption in case a nonfinancial entity performs nonhedging trades while being a member of a trading venue, would be fitforpurpose as regards the activities of nonfinancial entities active in commodity derivatives trading

› Answer: *No. Persons dealing on own account in commodity derivatives trade not only on regulated markets but also on MTFs and OTFs, so that they cannot benefit from the exemption under Article 2(1), point (d) because of the condition under item (ii) of the same provision.*

(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, and why?

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

If yes, please explain why you believe that this exemption is fit for purpose:

› Answer: *Yes, because such provision of investment services other than dealing on own account in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of the main business of an entity should remain possible, especially because in the most cases such provision is ancillary to the main activity of the entity.*

This exemption is fit for purpose. It allows energy market participants to provide hedging services to the customers of the main business (e.g. industrial producers), which is important for the EU industry to efficiently mitigate their commodity price risks (see Frontier Report, section 2.1.2): hedging allows energy buyers to reduce their financial exposure in situations of volatile and increasing market prices near physical delivery. In practice, this can relate to industrial consumers such as those from the energy-intense aluminium or steel production that require a high degree of cost certainty for their commodity inputs (e.g., power or gas). Energy trading supports the buy side in securing the adequate level of supply volumes required ahead of the time the physical delivery. This provides energy buyers, such as companies from the chemical, aluminium or steel industry, with a long-term planning perspective for their own business activities (which in turn is beneficial to the wider economy by receiving goods ordered in time and at reasonable prices).

This exemption is supportive of the energy transition as the availability of market-based opportunities for reducing risks (such as renewable PPAs and futures contracts) in liquid wholesale markets becomes increasingly important to attract new investments and make them bankable. To facilitate such hedging deals, renewable investors need energy market participants on the other market side that are willing to offer hedging products and take risk into their portfolio ("warehousing") or externalise risks by aggregating and trading them on wholesale energy markets. Therefore, the provision of hedging instruments is important for renewable investors and guarantee stable long-term income and make renewables investments financeable (see Frontier Report, section 6.1)

Finally, the AAE conditions appropriately limit the exempted provision of investment services to the customers or suppliers of the main business and hence do not allow the provision to any kind of customers.

If not, how would you propose to amend this?

(14) Do you currently benefit from the AAE?
If so, which part of the test is the most relevant for you/do you rely on? Did the CMRP make it easier for you to benefit from the AAE?

Yes

No
Don’t know / no opinion / not applicable

› Answer: *BDEW can't benefit from the AAE because BDEW does not take part in trading itself. However, member companies benefit from all three parts of the test depending on the scope of their respective activities.*

If yes, which part of the test is the most relevant for you/do you rely on?

› Answer: *The Capital Employed Test set out in Article 2(4), 2nd paragraph, point (b) of MiFID II in conjunction with Article 3(1), point (c) and Article 5 of Commission Delegated Regulation (EU) 2021/1833 of 14 July 2021 (“CDR 2021/1833”).*

If no, please explain your answer to question 14

If yes) 14.1) Did the CMRP make it easier for you to benefit from the AAE?

Yes
No
Don’t know / no opinion / not applicable

If yes/no, please explain your answer to question 14.1

› Answer: *BDEW can't benefit from the AAE because BDEW does not take part in trading itself.*

(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?

› Answer: *BDEW does not assess the impact of CMRP itself.*

(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.?

› Answer: *The current regulatory MiFID framework for energy trading promotes stable, functioning and liquid energy trading markets. By fostering liquidity, facilitating effective price signals, and encouraging investments in renewables and LNG infrastructure, energy trading not only safeguards consumer welfare but also promotes a sustainable energy future for the European Union. Safeguarding this through appropriate and proportionate regulatory measures is key for preserving market liquidity, enhancing EU competitiveness, and maintaining a level playing field at the international level. This holds true in particular for the AAE, which exempts energy market participants from a MiFID investment firm license and the associated prudential capital requirements.*

The Frontier Economics Report "Principles of energy market Regulation – Securing efficient & resilient energy trading"(19 April 2024 - "Frontier Report") explains why the hedging and non-hedging activities of non-financial energy market participants, which are both exempted under the AAE, play a crucial role in achieving these aims:

- *In particular, European end-consumers benefit from energy trading through an affordable, secure and sustainable energy supply.*
- *Furthermore, energy trading allows market participants to manage risks from their core business of energy supply and offer competitive prices on a wholesale level.*
- *A case study about wholesale power price data for Germany and Italy between January 2019 and December 2022 shows that higher market liquidity results in more efficient and resilient power markets and higher consumers welfare.*

We refer to the detailed explanations of these and other benefits of energy trading in the Frontier Report, section 2, pages 44 et seq.)

In addition, the recent energy crisis, primarily driven by reduced Russian gas supplies and diminished power generation capacity, has underscored the essential role of energy trading in ensuring an affordable, secure, and sustainable energy supply across Europe:

- *Energy trading is crucial for the efficient allocation of resources, particularly during times of crisis.*
- *In the recent gas crisis, the absence of energy traders would have severely hindered the ability of producers and consumers to establish a fair value for gas. Our analysis shows that the aggregate actions of the energy traders have not fueled price overshoots but have helped*

dampen price moves. With their deep understanding of market dynamics, energy traders identify mispricing and position themselves to correct these inefficiencies.

- *Lacking the time and knowledge to gauge market conditions, stakeholders rely on energy traders to provide accurate price signals. Without traders facilitating this price discovery process, it would have taken much longer during the energy crisis for consumers and producers to adapt to changing market dynamics. This delay could have led to last-minute adjustments in supply and demand based on incorrect pricing signals, resulting in prices overshooting just before delivery and potentially causing blackouts.*
- *Moreover, energy traders and hedgers share a symbiotic relationship, also during the energy crisis. Energy traders provide essential price signals that producers and consumers need to make informed decisions. They willingly assume price and volume risks that hedgers prefer to avoid, ensuring risks are effectively managed.*
- *Additionally, energy traders provide liquidity, keeping bid and offer prices close together. This liquidity allows hedgers to hedge at prices near current market rates, enhancing market efficiency and stability.*

Ultimately, the presence of energy traders has been vital in navigating the challenges of the crisis, preventing greater instability in the energy market.

(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 reintroduced? Please explain. Could you quantify costs if they were to be reintroduced?

› Answer: *No, the notifications should not be reintroduced. Respective to EMIR a notification of not using the exemption anymore could be of interest. If at all, only single notification to inform NCAs about use of AAE as this would help NCAs to understand which firms are active on commodity derivatives markets.*

The procedure needs to be simple and effective to avoid unnecessary red tape:

- *Possibility of central notification by one group firm on behalf of all firms belonging to the same corporate group*
- *Simple electronic online notification should be enabled*
- *Single (not annually) notification and re-notification in case of status change*
- *Submit (detailed) calculations only on request of National Competent Authorities*

(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

› Answer: *The existing AAE criteria are sufficient to identify corresponding activities, so there is no need to make any adjustments here.*

If yes, please explain.

› Answer: *The 3 alternative tests (de-minimis text, trading test, capital employed test) all appropriate and proportionate tests to identify when a trading activity in the commodity derivatives markets is ancillary to the main commercial business of energy market participants. The calculations under these tests are clear and relatively simple to calculate. The levels of thresholds of these tests are appropriate to identify such energy market participants which should be become subject to MiFID II and IFR / IFD regulations for investment firms.*

If no, please explain what alternative ways to assess whether the trading activity/investment services provision of a firm is ancillary to its main activity you would propose. To the extent feasible, please describe a possible impact on the type and number of entities in scope of the AAE under your alternative approach

(19) In which of the following aspects – if any – does the current scope of the AAE raise issues? (please select the relevant items, if any):

a. 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)?
b. fair competition between market participants?
c. impact on energy prices?
d. liquidity of the commodities derivatives market?
e. safeguarding prudential and resilience aspects of firms benefitting from the AAE?

f. ability to monitor and identify future risks to financial stability (e.g., related to interconnectedness and contagion)?

Please explain.

› Answer: *In none of the mentioned aspects does the scope of the AAE raise issues, since the AAE as currently implemented facilitates a liquid, efficient and transparent commodity derivatives market, enables adequate supervision of firms, safeguards prudential and resilience aspects of firms benefitting from the AAE and enables the monitoring and identifying future risks to financial stability.*

To the contrary, the AAE avoids that such issues would arise for the following reasons:

a. The current financial and energy regulations provide for comprehensive reporting, market transparency and market integrity regime as well as for the supervision and enforcement by authorities of the firms' compliance with it. Non-financial energy market participants active on energy commodity and energy commodity derivatives markets are subject to a comprehensive rule book under REMIT, MAR, EMIR and MiFID II. In addition, these existing instruments are well suited to maintain orderly functioning markets and address regulatory concerns articulated in the energy crisis. This relates in particular to the regulation of trading activities at exchanges by position limits and accountability levels, dynamic circuit breakers, regulation of algorithmic trading as well as central clearing of exchange traded energy derivatives.

b. It is key that the competitiveness of the EU's wholesale energy market vis-a-vis other liquid commodity trading markets in 3rd country jurisdictions is guaranteed. The current regulatory framework for energy commodity trading in the EU is based on the G20 commitments and compared to other key jurisdictions for commodity trading (such as the US, UK and Singapore) it currently maintains a level playing field for EU energy market participants. European regulation for energy trading shall continue to be aligned with principles acknowledged on a global level and maintain this international level playing field. An investment firm status for energy market participants in Europe has no comparison in other leading global markets and therefore would put EU firms at a competitive disadvantage. Applying an investment firm status would not only impose disproportionate prudential requirements. (see Frontier Report, section 3.2.2) It would also negate that the business model and trading activities of energy market participants are materially different to those of banks and other credit institutions and a full-fledged financial market regulation as under investment firm status is therefore disproportionate for the energy market (see Frontier Report, box on pages 107-108). The primary purpose of trading for energy market participants is to mitigate their own commercial risks from energy generation and consumption. This holds true in particular for managing risks associated with physical assets through hedging and own-account trading. In contrast to companies from the financial sector, energy market participants do not use end-customer money (savings, pension funds, etc.) for their trading purposes which would require investor and customer protection. Finally,

the default of a (major) energy market participant trading on energy derivatives markets would neither pose a security of energy supply nor a systemic risk to the wider economy or the wider financial markets.

c. *The current regulatory framework, including the AAE, fosters liquid and functioning physical and financial energy commodity markets. This enables the formation of an accurate and reliable price formation and fundamental price signals and hence create trust in the wholesale energy markets. This essential role of energy trading ensures an affordable energy supply across Europe. Our analysis shows that the aggregate actions of the energy traders during the energy crisis have not fueled price overshoots but have helped dampen price moves. With their deep understanding of market dynamics, energy traders identify mispricing and position themselves to correct these inefficiencies.*

d. *The AAE ensures that energy market participants can contribute to liquid, competitive and efficient energy markets. From an economic perspective, the liquidity of a market, which coincides with the level of trading by non-financial market participants, impacts the overall market efficiency, ensuring a competitive environment and level-playing field with orderly formed prices are available to market participants in a transparent and non-discriminatory manner.*

e. *There are no apparent concerns with regard to capitalization or liquidity of energy market participants justifying the imposition of mandatory prudential and liquidity regulation under the IFR / IFD. Energy market participants have a sound centralised and comprehensive risk management in place on both their physical and financial activities on wholesale energy markets (see Frontier Report, section. In particular, energy market participants have further expanded during the energy crisis their (cash liquidity) risk management strategies and tools beyond previous industry standards. This includes inter alia liquidity forecasting, real time reporting, central steering and cash secured through bank loans and capital market bonds. Therefore, they were able to match the frequent and higher margin calls at exchanges. A survey proves that energy market participants hold a liquidity surplus, which implies that these firms hold sufficient cash reserves.*

f. *As explained under a., energy market participants are subject to a wide set of regulations, in particular various comprehensive reporting obligations under MiFID / MiFIR, REMIT and EMIR. In addition, based on (new) provisions in these and other regulations the competent authorities shall exchange the received data between themselves. Therefore, the authorities have access to a comprehensive data set, which enables them to analyze questions of financial stability. Even if these reporting requirements support this and other key objectives of financial market regulation for energy trading, we believe they could be made more efficient (see our response to questions under Chapter 1 "Data Aspects").*

(20) Do you believe the de minimis test should be broadened by counting the following towards the EUR 3 billion threshold (please select the relevant items, if any):

a. trading activity in derivatives traded on a trading venue?

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

b. trading activity in physically-settled derivatives?

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

If so, should the threshold be adapted and how?

If yes/no, please explain how the threshold should be adapted:

If no, please explain your answer to question 20:

› Answer: *The trading activity in financially and physically derivatives traded on a trading venue should not be accountable towards the de-minimis threshold, because:*

- *This would make this test substantially more complex and hence contradict the intended simplicity of this test, i.e., to consider only OTC derivatives, The Capital Markets Recovery Package introduced this test and the overall aim was to remove unnecessary red tape and reduce regulatory complexity (see Directive (EU) 2021/338, Recital 1 and 2). Also, the Clean Industrial Deal aims at the simplification of regulation.*
- *The inclusion of exchange traded derivatives is not justified for the purpose of this simplified test as these derivatives are centrally cleared and margined and hence trading on exchanges raises no systemic credit risk concerns.*
- *Other jurisdictions with liquid energy commodity markets, such as the U.S., have comparable tests whether a non-financial firm is treated like a financial counterparty under financial*

regulation and these do not consider exchange traded derivatives as well (see Swap Dealer Test under U.S. Dodd-Frank-Act

- *The 3bn threshold would be far too low and hence this change would bring potentially most non-financial firms, which are trading on exchanges, into the scope of the investment firm regime under IFR / IFD*
- *The trading activity in physically settled OTC derivatives should not be accountable towards the de-minimis threshold, because:*
- *Bilateral transactions in can be physically settled OTC derivatives are not financial instruments (see MiFID II, Annex I, Section C, point 7) and such transactions entered into for commercial purposes (e.g., delivery or supply of energy) are not in scope of the MiFID II regime. The same applies for must be physically settled derivatives in gas and power entered over into OTF broker platforms (see MiFID II, Annex I, Section C, point 7)*
- *Other jurisdictions with liquid energy commodity markets, such as the U.S., have comparable tests whether a non-financial firm is treated like a financial counterparty under financial regulation, which do not consider physically settled derivatives as well (see Swap Dealer Test under U.S. Dodd-Frank-Act*
- *The 3bn threshold would be far too low as this change would lead to a consideration of non-financial commercial transaction which are not commodity derivates. Furthermore, change could bring various non-financial firms from the real economy sector (e.g. energy intensive industry sectors like chemistry, steel and aluminium smelters) into the scope of the investment firm regime, because their commercial gas and power supply and delivery contracts could count against the thresholds, if they are not a hedging transaction. Also, the energy supplier could be drawn into the investment firm regime if their supply contracts are not a hedging transaction for them. These outcomes would contradict the intention of the MiFID II regulation to focus on financial activities and not to cover commercial activities of the real economy. Altogether this would lead to higher energy prices.*

(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 fitforpurpose?
Please explain.

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

If yes/no/don't know, please explain your answer to question 21:

› Answer: *The limitation of commodity derivatives "traded in the Union" is appropriate because:*

- *This criterion is meant to limit the application of MiFID II when there is a connection to the EU. Hence, this AAE test is limited to non-financial firms established in the EU, which enter into financially settled OTC derivatives with EU and non-EU counterparties.*

(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 TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 13 / 29 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?
If so, how should the threshold be adapted?

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

If yes, please explain how the threshold should be adapted:

[…]

If no, please explain your answer to question 22:

› Answer: *The de minimis test threshold under MiFID should not be calculated on a gross basis, because:*

- *This would make this AAE exemption substantially more complex to calculate for firms. Under the Commission Delegated Regulation (EU) 2021/1833 the De-Minimis Test and the Capital Employed Test AAE tests are both subject to the same calculation methods with regard to netting of exposures. The net outstanding notional values under the de-minimis 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.*
- *To oblige firms to run different calculations would contradict the intended simplicity of this test. The Capital Markets Recovery Package introduced this methodology, and the overall aim was to remove unnecessary red tape and reduce regulatory complexity (see Directive (EU)*

2021/338, Recital 1 and 2). Also, the Clean Industrial Deal aims at the simplification of regulation.

- *The comparison with 3rd country rules is misleading. For example, under the Swap Dealer Test of the U.S. Dodd-Frank Act only dealing activities are considered and hence the own account trading activities are not relevant.*

(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)? If so, why, and how should the individual thresholds be adapted?

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

If yes, please explain why it should differ, and how should the individual thresholds be adapted:

[…]

If no, please explain your answer to question 23:

› Answer: *No, that would make the test more complicated. This more granular approach would make this text substantially more complex as firms would have to calculate against different thresholds at the same time. In addition, this approach raises complex legal questions about what would be the regulatory consequences of breaching a threshold in one or more commodity asset classes but not in the others, e.g., should the concerned firm be treated as a financial counterparty (investment firm) with regard only to the commodity asset classes in which a threshold breach occurred or for all commodity asset classes. This contradicts the intended simplicity of this test. The Capital Markets Recovery Package introduced this test and the overall aim was to remove unnecessary red tape and reduce regulatory complexity (see Directive (EU) 2021/338, Recital 1 and 2). Also, the Clean Industrial Deal aims at the simplification of regulation.*

(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 thirdparty. 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?
If so, why and how should the threshold be adapted?

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

If yes, please explain why and how the threshold should be adapted:

[…]

If no, please explain your answer to question 24:

› Answer: *The de minimis test should exclude all trading activity carried out for an entity's own benefit.*

The current AAE regime is sufficient as it enables energy market participants to create liquid, competitive and efficient wholesale energy trading markets. Such energy markets secure an affordable, secure and sustainable energy supply for European industrial and private end-consumers.

Furthermore, the practice under EU MiFID II and third country regimes like the Swap Dealer Test under the U.S. Swap Dealer Test shows that the differentiation between trading on own account versus dealing activities for the benefit of a 3rd party is challenging.

(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:

a. abolishing the trading test? If not, do you believe this test continues to be adequately calibrated? If not, how should it be adjusted?

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

b. abolishing the capital employed test? If not, do you believe this test continued to be adequately calibrated? If not, how should it be adjusted?

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

c. through other types of amendments? If so, how?

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

Please explain your answer to question 25:

› Answer: *Firms are using the trading test and capital employed test and therefore these tests should not be abolished and not be changed. The de minimis test is also used and therefore it should be regarded as equivalent here.*

If no, 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

If yes, please explain why you think the trading test continues to be adequately calibrated?

› Answer: *Firms are using the trading test and capital employed test and therefore these tests should not be abolished and not be changed. The capital employed test can be typically used by asset-back trading firms which are part of a wider corporate group active in the exploration, production, transport, distribution and/or supply of energy. The trading test can be typically used by corporates which are pre-dominantly entering into risk reducing hedging transactions.*

If no, if you think the trading test if not adequately calibrated anymore, please explain how it should be adjusted:

› Answer: *Not applicable.*

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

› Answer: *The capital employed test is a "relative test" – it measures the capital employed (risk taken) of the covered activities in relation to the overall capital available. As long as the risk taken is less than 50% of the overall capital available it is by definition an ancillary activity. Thus the test "calibrates" itself. In absolute terms, a larger firm is allowed to take more risks as it has more capital to cover these risks.*

Please explain how the AAE could be made less complex through other types of amendments:

› Answer: *No amendments of the AAE are necessary.*

(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.

› Answer: *Market participants that cannot make use of the AAE require a banking license and thus significantly more equity and liquidity for clearing processes. Higher hedging costs are incurred due to capital requirements, which leads to higher product costs. In addition, personnel costs increase due to the expansion of departments for the new requirements (reporting, risk). IT costs will rise in any case. Some may even have to consider their profitability and restructure their business accordingly.*

A tightening of the AAE would negatively impact the EMPs ability to maintain active participation in commodity derivatives markets as EMPs would tend to avoid this an investment firm status because of its material adverse impacts.

Based on the high regulatory and capital requirements for investment firms, active participation in commodity derivatives markets most probably needs to stop.

An independent survey of the Frontier Report ("the survey", see Frontier Report, section 3.2.2) assessed the financial and legal impact of an investment firm status under MiFID II on energy market participants (EMPs). The main outcomes are:

- *Applying investment firm regulation would require EMPs to meet minimum prudential capital and liquidity requirements. The survey concluded that the EMPs who participated in the survey must hold prudential capital between EUR 1.15bn to 8.55bn.*
- *The investment firm status under MiFID would imply that EMPs gain status as financial counterparty under EMIR. This triggers mandatory margin requirements for OTC trades when trading with other financial counterparties or NFC+. Therefore, an investment firm status under MiFID would result in additional collateralisation requirements for individual market participants of mean EUR 181m for IM and EUR -155m for VM (net margin inflow for VM) for OTC trading under EMIR. In the case of one survey participant, IM requirements reach up to EUR 1bn For the market as a whole, additional cash requirement could therefore follow from this EMIR knock-on effect.*
- *The prudential capital and the initial and variation margin payments would be 'trapped' and unavailable for longterm 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*
- *There are further numerous organisational and legal consequences of an investment firm status under MiFID. This includes in particular comprehensive licensing requirements, organisational requirements, conduct of business rules, reporting obligations and IT upgrades. Therefore, an investment firm status would require EMPs to reconsider their whole (group) structure*

and have to comply with all those rules, with the sole purpose of complying with investment firm regulation. This would cause important implementation and ongoing compliance costs.

Before this backdrop, there is the possibility that EMPs would seek to avoid an authorisation obligation entirely by reducing or ceasing all activities that do not benefit from a MiFID AAE exemption. Therefore, a tightened AAE would negatively impact the EMPs ability to maintain active participation in commodity derivatives markets.

(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.

› Answer: *We do not believe that the application of IFR/IFD would have been able to avoid the liquidity squeeze. The capital requirement under IFR/IFD would have captured essential amounts of cash which during the crisis would not have been available for covering high trading margins. In fact, this would have most likely led to reduced liquidity in the market, which would have increased the risk of a liquidity squeeze.*

During the energy crisis in Europe the gas and power prices and volatility increased and, therefore, the liquidity requirements to address the consequential more frequent and higher margin calls. Supply shocks for gas and power, in combination with a high concentration of gas supply, were the root cause for these price and volatility spikes and consequently for the liquidity squeeze during the energy crisis. Any kind of IFR/IFD prudential requirements would not have helped to address these root causes and would not be a suitable instrument to mitigate the impacts of any (future) energy crisis.

As explained in the Frontier Report the 2022 energy crisis provided a successful stress test for the proper function and resilience of energy markets. Market participants quickly identified and undertook adequate remedial actions to manage the increased cash liquidity risk and hence were able to mitigate respectively to fulfill the sharp increase in collateral requirements ("margin calls") at energy exchanges (see Frontier Report, section 3.1.2):

- *Energy market participants quickly deployed emergency measures in response to the energy crisis, in particular higher netting effects through consolidation at fewer CCPs, reduced or closed positions on exchanges and move positions to OTC markets.*

- *In addition to these emergency measures, energy market participants have further expanded their (cash liquidity) risk management strategies and tools beyond previous industry standards. This includes inter alia liquidity forecasting, real time reporting, central steering and cash secured through bank loans and capital market bonds.*
- *Therefore, energy market participants were able to meet the margin calls at exchanges.*

The application of IFR/IFD prudential rules would not have helped to avoid the liquidity squeeze. On the contrary, the Frontier Report (see section 3.2) shows that an investment firm status would limit market resilience and it would have rather worsened the energy crisis and liquidity squeeze:

- *The survey findings about the financial impact of an investment firm status on energy market participants demonstrate that an investment firm status would result in material and disproportionate capital requirements.*
- *Under EMIR an investment firm status would imply that energy market participants gain status as "Financial Counterparty" under EMIR resulting in additional cash burden under mandatory OTC collateralisation for derivatives.*
- *The Frontier Report therefore concludes that larger energy traders would have either faced an even more severe liquidity burden from these two requirements or would have exited the market, further reducing liquidity in the energy wholesale market which was already low during the energy crisis (for exactly this reason). This could have further deteriorated the quality of the price signal and made it more difficult to find counterparties for risk management (e.g., hedging assets or retail customer contracts). In particular, it would imply that EMPs would no longer be in a position to trade-off their market, cash liquidity and credits risks according to their individual needs and preference, which was a key mitigating measure during the energy crisis.*
- *IFR liquidity requirements would not have secured additional cash liquidity as the survey participants all held substantially higher liquid assets than liquidity requirements under IFR rules. The IFR do not assess the cash needs for each energy market participant in the ordinary course of business (e.g., for margining of cleared transactions), but what cash would be needed for a potential orderly wind-down scenario.*

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

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

If so, what IFR/IFD requirements should apply to firms in that newly created category (e.g. capital, liquidity, reporting, oversight, etc) and why? If possible, TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 14 / 29 please estimate the cost of compliance with this sui generis category within IFR/IFD, as detailed by you above?

› Answer: *No, none of the IFR/IFD requirements should apply to energy market participants.*

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

If so, please estimate, if possible, the cost of compliance with the sole MiFID provisions under this scenario

3. do you consider that all or only some MiFID requirements should apply? If the latter, which requirements should be retained (e.g. ‘fit-and-proper’ assessment)? If possible, please estimate the costs of compliance with those requirements of MiFID.

Yes

No

Don’t know / no opinion / not applicable

Please explain your answer to question 28:

› Answer: *Article 90 (5) of MiFID requests 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 on (energy) commodity derivative traders. As explained in response to other questions, an investment firms status for energy markets participants active on energy and energy derivatives markets is not supported as it is for the reasons explained disproportionate and counterproductive.*

Also, the impact of an investment firm status under MiFID II and IFR / IFD can only be assessed once the scope of the exemption is clear. Furthermore, it needs to be taken into account that the EU Commission currently reviews the regime for specialized commodity derivatives traders under IFR / IFD and will potentially table a report together with a legislative proposal. The consequences of any potential future investment firm status for energy market participants can only be assessed under any reviewed IFR/IFD regime once it is adopted by the EU co-legislators.

(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.).

› Answer: *The consequences of these and other consequential regulatory requirements might be higher (market price) risks, higher hedging costs, constrained investment capital and poor market price signals which will significantly undermine investment, production and consumption decisions and, ultimately, reduce the security of supply and increase energy prices for consumers at a time when the market needs support.*

Tightening the access to the exemption would mean that less companies will be able to trade commodity derivatives, because of high regulatory and capital requirements for these firms which would fall out of scope. Any tightening of the AAE potentially means that energy market participants could become subject to a MiFID II authorization requirement and consequently as an investment firm subject to IFR / IFD rules. As explained in the Frontier Report (section 3.2.2 and 3.2.4), an investment firm status will have material adverse impact on the prices, trading and liquidity with regard to the energy markets, inter alia:

- *Lower market liquidity and less efficient market outcomes with higher and more volatile prices.*
- *Deteriorated price signal leading to inefficient resource allocation, including new investments*

- *Less product offering for EU consumers.*
- *This all triggers the risk that energy markets participants and real economy cannot adequately hedge their commercial risks (e.g., for energy market participants the physical assets, for real economy (energy intensive industry) the energy needs).*
- *Reduced competition between remaining energy market participants*
- *Lower resilience of energy market participants to withstand and mitigate external shocks. In particular an investment firm status hinders trading off market vs. cash liquidity vs. credit risk (which has been a core mitigating measure in energy crisis)*
- *Increase barriers to entry*

Widening the access to the exemption would mean that the companies which currently use AAE and actively trade in the market will not necessarily trade more volume as most of them already trade the required hedging volumes.

(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.

› *Answer: The consequences of these and other consequential regulatory requirements might be higher (market price) risks, higher hedging costs, constrained investment capital and poor market price signals which will significantly undermine investment, production and consumption decisions and, ultimately, reduce the security of supply and increase energy prices for consumers at a time when the market needs support.*

Tightening the access to the exemption would mean that less companies will be able to trade commodity derivatives, because of high regulatory and capital requirements for these firms which would fall out of scope. Any tightening of the AAE potentially means that energy market participants could become subject to a MiFID II authorization requirement and consequently as an investment firm subject to IFR / IFD rules. As explained in the Frontier Report (section 3.2.2 and 3.2.4), an investment firm status will have material adverse impact on the prices, trading and liquidity with regard to the energy markets, inter alia:

- *Lower market liquidity and less efficient market outcomes with higher and more volatile prices.*
- *Deteriorated price signal leading to inefficient resource allocation, including new investments*
- *Less product offering for EU consumers.*

- *This all triggers the risk that energy markets participants and real economy cannot adequately hedge their commercial risks (e.g., for energy market participants the physical assets, for real economy (energy intensive industry) the energy needs).*
- *Reduced competition between remaining energy market participants*
- *Lower resilience of energy market participants to withstand and mitigate external shocks. In particular an investment firm status hinders trading off market vs. cash liquidity vs. credit risk (which has been a core mitigating measure in energy crisis)*
- *Increase barriers to entry*

Widening the access to the exemption would mean that the companies which currently use AAE and actively trade in the market will not necessarily trade more volume as most of them already trade the required hedging volumes.

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 (8). 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).

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:

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.

(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?
If so, how should it be structured?

› Answer: *As most market participants have delegated MiFID reporting to the exchanges, a change does not appear to make sense. The existing reporting architecture is from the perspective of venues well established and does not require any changes.*

(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 the relevant items, if any):

- 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

› Answer*: In none. All relevant data is already reported under EMIR and REMIT. Positions under REMIT can be calculated on the basis of the available transaction data.*

If you replied yes to any item, please explain how the information can be collected by trading venues and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to trading venues), or
b. achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs), or
c. resorting to the single data collection mechanism as referred to in 1.

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)?

In case you deem that resorting to a single data collection mechanism would be desirable, please specify what types of safeguards should be put in place to maintain confidentiality on sensitive information from potential competitors.

(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 (please select the relevant items, if any):

- C6 carveout contracts
- the underlying spot market

› Answer: *Yes. All authorities, both in the energy and financial sectors, should have access to information on market participants active in derivates markets as regards their positions. We suggest that our suggestion from the first chapter in particular be taken into account on this topic. From the perspective of the market participants and in the interests of a favourable energy supply, no additional reporting obligations should be established, as these require additional investment on the*

market side. In our perspective, the data exchange between the regulating authorities could be modified and streamlined for this purpose.

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

No difference for commodities considered. Both are covered by the data exchange of the authorities in accordance with REMIT II.

If you responded yes to either of the above, please explain how the information can be collected by competent authorities and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to competent authorities), or
b. if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting), or
c. as regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1.

› Answer: *Regulatory authorities could pool existing data and gain access to certain predefined data sets for specific regulatory competences.*

(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?

› Answer: *If regulatory authorities have a legitimate interest in accessing certain data, this should be granted to them in any case. This is particularly important for market integrity. Under EMIR e.g. they have access to all information collected from ACER and ESMA.*

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

› Answer: *No, market integrity should be guaranteed in all cases by regulatory authorities.*

If you responded yes to the above, please explain how the information can be collected by ACER/NRAs and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to ACER/NRAs), or
b. if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., MiFID reporting), or
c. by granting NRAs/ACER access to the single data collection mechanism as referred to in section 1.

(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)? Please explain.

› Answer: *No, the transaction data has already been reported under EMIR or REMIT and presumably via the future REMIT II exposure reporting. ESMA can collect that data from ACER. Double reporting should be avoided. We suggest that regulatory authorities pool data so that certain data sets can be used by all regulatory authorities for certain regulatory tasks.*

(36) In your view, is the current definition of 'economically equivalent OTC derivatives' under MiFID fit for purpose? If not, what changes would you propose?

Yes

No

Don't know / no opinion / not applicable

(37) MiFID requires that position reporting specifies the endclient associated to the positions reported. However, the legal construction of the current position reporting framework entails that, for positions held by non EUcountry firms, such non EUcountry firms are to be considered the endclient. This prevents the disaggregation of positions held by those non EUcountry firms, and therefore the identification of the endclients 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 non EUcountry firm raise TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects

relating to spot energy markets Page 18 / 29 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

› Answer: *Third countries should also have to provide information. This is important for a level playing field and market integrity.*

If so, 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?

› Answer: *Yes, they should report the same data sets. The access to the information should not depend on the type of firm active on commodity and commodity derivatives markets in the EU. There should be a level playing field and no informatory gaps with regard to the information about trading activities needed for supervision by NCAs or for position management by trading venues.*

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 MiFID Level 2 legislation (Delegated Regulation (EU) 2022/1302), 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 Commodities and Futures Trading Commission (CFTC), 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 TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 19 / 29 the spot month and 153 017 049 MWh for other months. (9) The position limits are expressed in MWh as the contracts available for trading, and covered by these limits, have different lot sizes. (10) 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 (11) + 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.

Questions:

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.

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

› Answer: *The current position limit regime works well because it enables liquid and properly functioning markets, while preventing market abuse (see Frontier Report, section 3.3.1).*

Introducing stricter limits, i.e. limits that are set too low or re-introducing limits for all contracts would reduce the liquidity of the markets and consequently prevent market participants from managing their own risk or offering risk management services to their clients. Position limits can restrict liquidity in commodity derivatives markets, particularly for contracts subject to them. By capping the amount a participant can hold, position limits may discourage larger players from fully engaging in the market, leading to thinner order books and wider bid-ask spreads. This is particularly relevant for energy derivatives, where deep and liquid markets are crucial for price discovery and risk management. Also, it appears that in the past, when still applicable to all commodity derivative contracts, hard position limits have hindered the development of new and nascent trading products.

(39) What is your general assessment of the impact of position limits on the ability of commercial (nonfinancial) entities to hedge themselves?

› Answer: *In general, the current position limit regime works well as it fosters the development of liquid traded markets and hence enables efficient risk management of commercial (non-financial) market participants. Stricter position limits can hinder the ability of commercial entities to hedge efficiently, especially if limits are set too low or re-introduced for all contracts.*

The current hedging exemption from position limits works well and we support that it is retained in its current form with the current definition of hedging. We do have any concerns against the application of the hedging exemptions by NCAs. Changing the hedging exemption, i.e., making it more narrow, may deter commercial entities from fully utilizing exchange traded derivatives for risk management.

(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? Please explain.

› Answer: *Yes.*

Position limits are an existing instrument meant to support orderly price formation and prevent from market distortion. Following the amendments introduced by the CMRP, these regulatory aims have been achieved (see Frontier Report, section 3.3.1). The position limit regime comes on top of the established market oversight regimes for financial instruments under MAR and energy wholesale products under REMIT. With that, the focus of the position limit regime introduced by the CMRP on critical commodity contracts is consistent with the overall regulatory architecture.

(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).

› Answer: *The CMRP reforms, particularly the narrowing of the scope of the position limit regime to significant or critical commodity derivatives have been positive for market liquidity and stability. Open interest and trading volumes in key energy derivatives have seen increases, with more market participants engaging. The liquidity provision exemption has improved market depth and tightened bid-ask spread.*

(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? If not, how should it be reviewed? In particular, do you believe that this definition should vary depending on the underlying commodity?

› Answer: *Yes.*

We believe that the current criterion works well and is fit for the purpose of the position limit regime to support orderly price formation and prevent from market distortion. This approach supports the development of liquid and function energy derivatives markets. At the same time avoids creating unnecessary red tape as it focusses the position limits regime on benchmark contracts relevant to the price formation in gas and power markets.

(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? If so, please indicate which types of commodity derivatives are particularly exposed to such risks, and whether any changes to the current position limits regime could address these situations. Please also indicate whether such changes could also affect the orderly price formation process for said contracts.

› Answer: *No. We do not see scope for traders to unfairly influence prices under the current position limit regime. The existing framework aggregates positions across venue-traded and OTC contracts, ensuring that no single market participant can dominate the market. Additionally, market surveillance by regulatory authorities and exchanges is robust, further preventing any attempts at price manipulation. The combination of position limits and reporting, regulatory oversight, and market transparency ensures that prices reflect fundamental supply and demand dynamics rather than artificial influences.*

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

Please explain.

› Answer: *No. The level of position limits should be set by the authority that is closer to the market, i.e. under the current rules, the NCA where the larger volume is traded. NCAs have better proximity to local market dynamics. If ESMA were to set the limit, it would be less flexible and take longer to adapt to changes in the underlying market, which could exacerbate volatility or a stressed market. The current example of a contract spread across two trading venues is TTF and we believe the current position limit setting process by the NCA for this contract is working well.*

However, we would welcome that authorities consult the market participants before setting the position limits, in particular for those contracts. A good example is the administrative practice of BaFin to perform a public consultation before issuing the administrative decision on a position limit.

(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? No

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

› Answer: *We support retaining the current position limits regime with regards to physical and cash settled contracts, including the difference between the approach to set position limits for physically and financially settled contracts.*

(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? For other contracts? Please explain.

› Answer: *A standardised position limit for physically and cash settled futures contracts is not really practicable and not easy to monitor, as the specific limits are based on different logics. So it is not necessarily an advantage or disadvantage.*

(47) Do you believe that the methodology and the level of the limits set by NCAs, for contracts subject to position limits, is adequate? If not, please indicate which contracts are in your view not subject to adequate position limit levels.

› Answer: *Yes.*

We believe the current methodology is adequate and would caution against changes. ESMA and the European Commission have reviewed and legislated only recently the current position regime after stakeholder consultations and impact assessments and we do not see any new market developments or other reasons which would justify material amendments. In particular no evidence was provided that the current approach is prone to market manipulation or creates disorderly market conditions.

However, while the methodology set by NCAs generally aligns with market realities, it may not always account for rapid changes in liquidity and volatility. A more dynamic adjustment mechanism, potentially involving periodic reviews based on market conditions, would enhance the effectiveness of position limits.

(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? If so, how?

› Answer: *No.*

Introducing stricter limits, i.e. limits that are set too low or re-introducing limits for all contracts would reduce the liquidity of the markets and consequently prevent market participants from managing their own risk or offering risk management services to their clients. Position limits can restrict liquidity in commodity derivatives markets, particularly for contracts subject to them. By capping the amount a participant can hold, position limits may discourage larger players from fully engaging in the market, leading to thinner order books and wider bid-ask spreads. This is particularly relevant for energy derivatives, where deep and liquid markets are crucial for price discovery and risk management. Also, it appears that in the past, when still applicable to all commodity derivative contracts.

Furthermore, position limits should not be differentiated by trader type, as such an approach could introduce unnecessary complexity and create competitive imbalances without benefits. All market participants should be subject to the same limits to ensure fair market conditions and prevent regulatory arbitrage.

(49) Do you believe that the current exemptions from position limits as set out in MiFID, notably the hedging exemption, are fitforpurpose?

If so, explain why.

› Answer: *Yes.*

The hedge exemption allows commercial (non-financial) firms to hedge their commercial (price) risks. With the link to the underlying physical commercial activities a hedge exemption is based on economic reality and thus can easily be explained. Also, the level of detail to be provided to the authority and the response time is appropriate.

The exemption from position limits for mandatory liquidity provision enables market participants to provide liquidity to the markets, which leads to tighter bid/ask spreads and deeper markets and hence enabling efficient hedging alike.

If not, 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?

(50) Do you believe that the hedging exemption is sufficiently monitored by the competent supervisors?

If not, what is the most effective and efficient way for supervisors to monitor and ensure compliance with the hedging exemption?

› Answer: *Yes, the hedging exemption is sufficiently monitored by the competent supervisors. The existing framework ensures that entities utilizing the exemption are doing so for genuine hedging purposes, and regulatory authorities have adequate oversight mechanisms and powers in place.*

(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?

› Answer: *Yes.*

As explained in our answer to the other questions on the position limit regime, we believe that the current position regime works well and is appropriately calibrated and supervised. Therefore, exemptions from position limits should be granted by the authority that sets the position limits.

However, we see potential benefits in trading venues playing a more active role in granting and managing hedging or liquidity exemptions under proper oversight by NCAs. Allowing trading venues to have a greater role in granting hedging and liquidity provision exemptions would align with international practices (e.g., the UK or U.S. regimes). Venues have direct visibility into market practices and activity and could make appropriate and informed decisions regarding exemptions. However, trading venues should then also get the power to set the position limits (as in UK or US). Only then there is a consistent approach in setting the limit and granting hedge or liquidity provision exemptions.

(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?

› Answer: *Ad hoc exceptions are important in any case, especially in crisis situations, for example. Such exemptions should be subject to stringent review and granted only under exceptional circumstances.*

If so, please explain which specific cases could warrant an ad hoc exemption from position limits, and whether the power to grant an ad hoc exemption should be vested with an NCA or with ESMA. If not, why?

› Answer: *Responsibility for granting them should lie with the entity usually granting exemptions, i.e. under the current regime the NCAs or - if the power to set position limits is shifted to trading venues - then trading venues should also be the ones granting these exemptions.*

(53) Do you believe that trading venues (please select the relevant items, if any):

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?

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?
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?

Please explain the potential advantages or disadvantages linked to those options.

› Answer:

To Option a:
As explained in our answer to the other questions on the position limit regime, we believe that the current position regime works well and is appropriately calibrated, implemented and supervised. Therefore, we do not see a need for a shift of responsibilities from NCAs towards exchanges.

However, we see real benefits in trading venues playing a more active role in setting and managing position limits under the proper oversight by NCAs (and ESMA). Allowing trading venues to have a greater role in setting position limits would align with international practices (e.g., the UK or U.S. regimes). Venues have direct visibility into market practices and activity and could make appropriate and informed decisions regarding position limits. Trading venues are already and can be further empowered, in particular under the position management regime, to ensure orderly trading, settlement and delivery conditions, subject to oversight by NCAs (and ESMA). Also, this would create the much needed flexibility to react in a timely manner on changed market circumstances, in particular in time of (energy) market crisis to deal with increased volatility and less liquid markets.

However, trading venues should then also get the power to grant exemptions (as in UK or US). Only then there is a consistent approach in setting the limit and granting hedge or liquidity provision exemptions.

To option b:

If there is a change to the responsibilities for setting position limits, then we have a preference to the option under Question 53 a). See our response to Question 53 a).

If that option is not implemented, then we would support the option under Question 53 b) for the same reason.

To option c

If there is a change to the responsibilities for setting position limits, then we have a preference to the option under Question 53 a). See our response to Question 53 a).

If that option is not implemented, then we would support the option under Question 53 c) for the same reasons. In any case, it is already the exchange operator's practice to set their own position limits for contracts that are not subject to position limits by law.

(54) Do you believe that the current regulatory setup sufficiently allows to enforce position limits on non EUcountry market participants?
Please explain.

› Answer: *Dont know.*

We would see benefits that 3rd country firms comply with the same position limits rules and that this regime can be enforced on non EU-country market participants. This would create a level playing field for EU based firms and protect the orderly functioning of EU energy markets.

(55) Do you believe that the position limits regime should also apply to 'C6 carveout' products?
If so:
a. please explain why, including through references to any impact you would you expect on the underlying spot market, liquidity and energy prices

› Answer: Yes. *We have no fundamental concerns to apply the position limits regime apply to 'C6 carve-out' products traded on OTF venues. As explained, the current position limit regime does not raise concerns for the functioning and liquidity of trading at energy exchanges.*

However, an extension of the MiFID position limit regime to C6 carve-out products should not cause unintended adverse consequences. If the EU Commission proposes this extension to (must be physically settled) wholesale energy products traded on OTF venues, then this must be done in a tailor-made way to consider the specifics of this market. In particular this means that no position limits should be imposed on spot markets and that the REMIT C.6 Carve-Out should be maintained.

b. if a framework for position limits were also to be developed under REMIT, how should it be structured in order to ensure coherence with financial legislation and avoid duplication?

› Answer: *If the EU Commission proposes the extension of the position limit regime to (must be physically settled) wholesale energy products traded on OTF venue, then this must be done in a tailor-made way to consider the specifics of this market. In particular the following aspects should be taken into account:*

- *Position limit regime should apply only to (must be physically settled) wholesale energy products (forwards) traded on OTF venues (C.6 contracts). It should not apply to spot markets.*
- *These C.6 contracts should not re-classified as financial instruments under MiFID Annex I Section C (and thus not be included in the wider scope of MiFID and MiFIR) as this would substantially change the existing delineation between the regulation of physical and financial energy markets.*
- *C.6 contracts are physically delivered at a pre-defined time and date. Therefore, imposing position limits on participants in the physical market needs to avoid significant detrimental effects on the exploration/generation and supply of energy as well as on the commercial (price and volume) risk management of gas and power market participants. Consequently, the exemptions from position limits available under MIFID II should apply to trading in C.6 contracts as well.*
- *When setting the limits it must be considered that C.6 contracts are already subject to market abuse prohibitions and transaction reporting under REMIT II and that these have been sufficient to mitigate market abuse risk.*
- *The building up of a dominant position is "naturally" limited by certain contraints in the energy industry. For example, the storage and transmission of gas and electricity is limited by the capacity of storage facilities and transmission networks which creates barriers to building up a dominant a position. Electricity is difficult to store and impossible to store at meaningful scale which makes it almost impossible for one party to take a dominant position particularly when the generation and supply of electricity is tightly controlled by network operators.*
- *OTF venues do not embed post-trade infrastructures, such as central clearing. The concept of positions is challenging to define in physical energy markets and it will be very burdensome for market participants and OTF trading venues to implement and monitor. It would not only require market participants in the physical energy market to provide a breakdown of all their C.6 contract positions to every C6 OTF trading venue on which it participates, but also of their other positions in physical gas and power which they hold. The latter is difficult to assess in practice as it depends on inter alia intermittent renewable energy production and fluctuation in gas extraction or fast changing energy demands. The calculation and reporting of a net position in C.6 contracts must be adapted to the specifics of the trading in C.6 contracts over OT.*

c. do you believe position limits should be set at European level (e.g., ACER), or by NRAs?
By NRAs

› Answer: *As under the current position limit regime under MIFID II, it should be the NRAs setting the limits.*

d. in your view, should NRAs/ACER be empowered to grant ad hoc exemptions from such limits?

› Answer: *No.*

As under the current position limit regime under MIFID II, we see no need to empower NRAS (or exchanges) to grant ad hoc exemptions from limits. The current exemptions in place are sufficient.

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

› Answer: *Yes.*

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. Council Regulation (EU) 2022/2576, 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:

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.

(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 energyrelated derivatives during a trading day?

› Answer: ***Circuit breakers:*** *We support some level of limited, short pauses to trading (circuit breaks) to restore stability during times of 'unprecedented' volatility. They can be useful to prevent actions*

of unchecked algorithms, where their behaviour can 'spiral' into increasing excessive market volatility.

Pre-trade controls: *However, rather than a focus on circuit breakers, we would encourage further attention to be paid to pre-trade controls instead. In particular Market Participants and Exchanges should ensure that they not only have these controls in place, but that they are closely monitored and implemented. It is our experience that Exchanges do have these controls in place already, and when combined with appropriately implemented circuit breakers (see below) they can help to ensure orderly markets. The existing proliferation (and use) of pre-trade controls and circuit breakers also suggests that the need to mandate usage at EU level is not required if they are implemented correctly. This places the responsibility on market operators to effectively manage markets, with oversight by regulators. Whilst we cannot gauge usage by Market Participants, it is of equal importance that they have proper controls in place.*

To note: *There are unintended consequences to circuit breakers that should be noted. As the market approaches the circuit breaker threshold, price volatility tends to rise sharply. This is made worse by a 'magnet effect', where the very existence of a circuit breaker raises the likelihood of it being triggered: as prices near the threshold, traders accelerate buying to avoid being locked out during a trading halt. This 'magnet effect' pulls process towards the limit.*

(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?

What would be the associated advantages and disadvantages?

› Answer: *No.*

We do not see any advantages to static circuit breakers over the dynamic alternative.

The current ESMA standard, i.e. usage of Dynamic circuit breakers, is observed to work well in commodity markets. This is in part due to their use of short (i.e. intra-day) calibration periods. ICE for example has a calibration period of ~3 seconds. Static circuit breakers by contrast, and as observed in equity markets, use a D-1 settlement price, which is highly problematic. Any long calibration period acts effectively as a price cap, which in the commodity markets can prove catastrophic in volatile markets.

The introduction of permanent static controls will likely create additional issues, specifically:

1) Trading halt: *Static circuit breakers are more likely to cause a trading halt. This in turn forces market participants to hold positions for an extended period without the ability to rebalance in*

response to news in the market. This presents a high risk when fundamental uncertainty is high (i.e. illiquidity risk). It is therefore paramount that any circuit breakers have short intervention periods. Markets must be allowed to open within the same day, to ensure participants can trade positions, and the most effective breakers seen in the market at present intervene for only a few seconds (e.g. ICE). We would only be supportive of dynamic circuit breakers being put in place for a maximum of e.g. 10 minutes.

2) Price efficiency: *Circuit breakers (and static breakers in particular) sacrifice price efficiency by disrupting natural price discovery. The trade-off between perceived stability and the ability of market participants to reduce risks also extends to other interventions that ultimately restrict market liquidity (e.g. price limits, bans on short selling etc).*

3) Market efficiency: *There are instances where market volatility is required to rebalance prices, and take changes to market fundamentals into account. It is the case that prices do sometimes need to move significantly (e.g. a shock to supply or demand, as seen in the recent energy crisis). Circuit breakers risk disrupting these important market signals.*

If you replied yes, how should those static circuit breakers be calibrated? N.a.

› Answer: *In particular, should those static circuit breakers apply only to certain types of commodity derivative instruments, or differ depending on the type of commodity derivative considered? We do not support the requirement for trading venues to permanently implement static circuit breakers in the commodity market. In addition, the introduction of circuit breakers to a restricted list of commodity derivative instruments risks unintended consequences. This is of particular note given the high proportion of the energy market traded as a spread market. For example, the power market operates as a derivative of the fuel market – a power station produces power as a result of an e.g. gas and carbon leg input, and thereby producing a Clean Spark Spread (CSS) comprising of three legs.*

- ***Impact on spread positions:*** *If one commodity leg has a circuit breaker, and the other legs are not constrained, the legs of the spread position can move significantly against a market participant without allowing them the option to trade out of the position. The risks extend to an unsustainable increase in margin calls as a spread widens significantly, without the option to close-out a position.*

More specifically, should IVMs similar to those provided for by Council Regulation (EU) 2022/2576 be introduced and applied on a permanent basis?

› Answer: *No.*

Please explain.

› Answer: *See answer above. – IVMs should not be used by default as an alternative or supplement to proper pre-trade controls, or as a method for reducing volatility in otherwise liquid and orderly markets, even in instances of changes to market fundamentals.*

We do not support the requirement for trading venues to permanently implement static circuit breakers in the commodity market. In addition, the introduction of circuit breakers to a restricted list of commodity derivative instruments risks unintended consequences.

- ***Impact on spread positions:*** *If one commodity leg has a circuit breaker, and the other legs are not constrained, the legs of the spread position can move significantly against a market participant without allowing them the option to trade out of the position. The risks extend to an unsustainable increase in margin calls as a spread widens significantly, without the option to close-out a position.*

(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?

› Answer: *See answer to question 58; trading halts are a high risk intervention that should be used for as short a time as possible given the negative impacts to market liquidity, risk management and efficient price discovery.*

We do not see any advantages to static circuit breakers over the dynamic alternative.

The current ESMA standard, i.e. usage of Dynamic circuit breakers, is observed to work well in commodity markets. This is in part due to their use of short (i.e. intra-day) calibration periods. ICE for example has a calibration period of ~3 seconds. Static circuit breakers by contrast, and as observed in equity markets, use a D-1 settlement price, which is highly problematic. Any long calibration period acts effectively as a price cap, which in the commodity markets can prove catastrophic in volatile markets.

The introduction of permanent static controls will likely create additional issues, specifically:

1) Trading halt: *Static circuit breakers are more likely to cause a trading halt. This in turn forces market participants to hold positions for an extended period without the ability to rebalance in response to news in the market. This presents a high risk when fundamental uncertainty is high (i.e. illiquidity risk). It is therefore paramount that any circuit breakers are have short intervention periods. Markets must be allowed to open within the same day, to ensure participants can trade*

positions, and the most effective breakers seen in the market at present intervene for only a few seconds (e.g. ICE). We would not support circuit breaks of longer than a couple of hours; ideally less than 10 minutes

2) Price efficiency: *Circuit breakers (and static breakers in particular) sacrifice price efficiency by disrupting natural price discovery. The trade-off between perceived stability and the ability of market participants to reduce risks also extends to other interventions that ultimately restrict market liquidity (e.g. price limits, bans on short selling etc).*

3) Market efficiency: *There are instances where market volatility is required to rebalance prices, and take changes to market fundamentals into account. It is the case that prices do sometimes need to move significantly (e.g. a shock to supply or demand, as seen in the recent energy crisis). Circuit breakers risk disrupting these important market signals.*

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'?

› Answer: *The duration for a trading halt depends in part on the product and underlying market in question. In general a short trading halt (a few seconds) has been observed on e.g. ICE to be effective. We would not support a halt that extends to the end of the trading day. In addition the conditions of any trading halt should not be transparent, to avoid market participants 'gaming' the circuit breaker.*

To note: *There are unintended consequences to circuit breakers that should be noted. As the market approaches the circuit breaker threshold, price volatility tends to rise sharply. This is made worse by a 'magnet effect', where the very existence of a circuit breaker raises the likelihood of it being triggered: as prices near the threshold, traders accelerate buying to avoid being locked out during a trading halt. This 'magnet effect' pulls process towards the limit.*

Would your assessment differ according to the type of underlying commodity considered?
No

(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? Please explain.

› Answer: Yes. *There is significant risk in applying any circuit breaker (including static breakers) to spot month contracts. Any reduction in the time market participants have to close out of positions, as contracts move towards delivery, presents significant risks. This includes physical positions rolling over into delivery, reinforcing why circuit breakers that rely on trading halts must reopen within day to prevent this risk.*

The significant increase in renewables (and weather fluctuations) as a proportion of the generation stack has resulted in a greater need to rebalance the system. Any negative impacts on rebalancing, such as circuit breakers, will only have follow-on negative impacts on end consumers, in higher energy bills.

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

› Answer: *Yes.*

If so, what would be possible mitigants to prevent such migration?

› Answer: *Prevention would be via implementation of static circuit breakers consistently across all trading venues. This is not, for the reasons outlined above, a suitable or recommended implementation path.*

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

› Answer: *Yes, where those dynamic (not static) circuit breakers have short market pauses (i.e. for a few seconds and as observed on ICE and in Carbon markets – often referred to via a screen pop-up as volatility pause).*

If not, please explain the challenges and please indicate any potential improvements to their functioning.

(63) Do you believe energy exchanges trading in spot energy products or C6 carveout products should also implement mechanisms similar to circuit breakers?
If so, how should those be calibrated?

› Answer: *No. There is significant risk in applying any circuit breaker (including static breakers) to spot month contracts. Any reduction in the time market participants have to close out of positions, as contracts move towards delivery, presents significant risks. This includes physical positions rolling over into delivery, reinforcing why circuit breakers that rely on trading halts must reopen within day to prevent this risk.*

The significant increase in renewables (and weather fluctuations) as a proportion of the generation stack has resulted in a greater need to rebalance the system. Any negative impacts on rebalancing, such as circuit breakers, will only have follow-on negative impacts on end consumers, in higher energy bills.

6 ELEMENTS COVERED BY THE DRAGHI REPORT

This section proposes to explore the measures set out in the Draghi report (12) 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" (13). 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:

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.

(64) Do you believe a general obligation to trade in the EU should be introduced? If so, for which instruments should this obligation apply? Please explain.

Yes

No

Don’t know / no opinion / not applicable

If no, please explain your answer to question 64:

› Answer: *No, that would restrict companies' freedom of action and weaken competition.*

This proposal would circumvent the legal prerequisites specified in Article 28 of MiFIR to add OTC commodity derivatives contracts into the scope of the derivatives trading obligation. This would carry a high level of risk of adverse impacts to EU energy derivatives markets and their participants.

Imposing such an obligation will lead to reduced competitiveness and efficiency in the trading of energy derivatives in the EU. It will limit access of EU market participants to a broader international market and cost-effective hedging opportunities as they could trade energy derivatives relevant to the EU/for EU delivery only on EU venues. However, some markets like TTF are used globally as a benchmark. By introducing an obligation to trade in the EU some market participants may chose using other liquid trading hubs in other jurisdictions. A diverse global marketplace allows for better price discovery, risk management, and liquidity.

(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 nonEU counterparties.

› Answer: *It is very probable that non-EU counterparties will stop trading in the EU and move to other market places which leads to less liquidity.*

Introducing an obligation to trade in the EU can restrict EU market participants' ability to utilize global markets (e.g. in the UK the ICE Futures Europe venue, in the U.S. the Henry Hub) for hedging purposes, impacting their cost-efficiency and risk diversification strategies. In addition, the ability to trade with non-EU counterparties often allows participants to benefit from varied pricing and market conditions, which can be critical to effective hedging.

(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.

› Answer: *It is very probable that non-EU counterparties will stop trading in the EU and move to other market places which leads to less liquidity.*

Enforcing trading within the EU could potentially impact market depth and liquidity adversely, as it may lead to fragmentation and reduced participation from non-EU entities. Constricted markets could lead to wider bid-ask spreads, higher trading costs, and reduced price competitiveness.

6.2 The Market Correction Mechanism and other dynamic caps

The Market Correction Mechanism (MCM) was introduced by Council Regulation (EU) 2022/2578 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 (14). 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:

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.

(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? Please explain.

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 67:

› Answer: *No, any intervention in pricing has a potentially negative impact.*

The MCM is not a useful tool to limit excessive and diverging prices in the EU as the mechanism fails to address the fundamental supply and demand dynamics driving energy prices. Instead, the MCM risks distorting European energy markets. The evidence from the previous implementation of the MCM suggests that it did not succeed in reducing price volatility or lowering gas prices. Instead, it created risks of market inefficiencies, potential supply shortages, and a loss of credibility for the European market as a global pricing reference.

(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?

If not, please explain why, and specify, if relevant, to what extent you believe price divergences between EU prices and international prices can be warranted.
If so, please explain to which products you believe such dynamic caps should apply (e.g., spot/derivative, OTC/venue-traded) and how such dynamic caps should be calibrated (e.g., reference price, frequence at which the boundaries are renewed, etc.). Please point to potential risks and opportunities.

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

If 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:

› Answer: *No, dynamic caps based on external prices would not be an effective solution and should not be codified in legislation. Such mechanisms introduce artificial price distortions that do not reflect actual supply and demand conditions, which can undermine the EU's ability to secure energy supply in a competitive global market. When price caps are triggered, they may reduce liquidity,*

increase price volatility, and make the EU market less attractive to international suppliers, potentially leading to supply shortages.

Price divergences between EU and global markets can occur naturally due to regional infrastructure constraints, regulatory differences, and unique supply-demand factors. These divergences are sometimes necessary to reflect local market conditions, incentivize investment in infrastructure, and ensure competitive pricing mechanisms. Instead of artificial caps, policies should focus on enhancing market integration, increasing energy supply security, and facilitating competition to reduce price disparities.

(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?
If so, please explain how.

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

If yes, please explain how the MCM or other dynamic caps could have an impact:

› Answer: *Yes, the MCM and other dynamic caps could negatively impact both the attractiveness and stability of EU commodity derivatives markets. Such interventions create regulatory uncertainty, discouraging market participation from investors, liquidity providers, and international energy suppliers. Reduced market liquidity leads to wider bid-ask spreads, higher transaction costs, and increased risk premiums, ultimately making energy trading more expensive and less efficient.*

In addition, the credibility and competitiveness of EU energy markets could be significantly undermined.

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

› Answer: *The triggering of the MCM could have severe consequences for trading conditions. It could lead to:*

1. *Increased Market Volatility: Instead of stabilizing prices, artificial caps introduce uncertainty, which can result in higher price swings as traders adjust to the imposed constraints.*

2. *Reduced Liquidity: Market participants may withdraw due to regulatory uncertainty and higher risk, leading to wider bid-ask spreads and making it more expensive to hedge risks.*
3. *Migration to OTC Markets: As regulated exchanges become constrained by artificial caps, trading activity may shift to unregulated and less transparent OTC markets, increasing systemic risk and reducing market oversight.*
4. *Supply Risks: A price cap may lead global LNG suppliers to redirect shipments to more competitive, unrestricted markets, jeopardizing Europe's energy security.*

The European Central Bank (ECB) and the European Securities and Markets Authority (ESMA) have already expressed concerns over the financial stability risks posed by the MCM, emphasizing the potential for margin calls and stress on central counterparties. The past experience with the MCM suggests that while it was not triggered during its initial implementation due to falling gas prices, similar conditions may not hold in future crises, meaning that its impact on financial stability remains a serious risk.

[(European Central Bank (ECB), 'Opinion of the European Central Bank of 2 December 2022 on a proposal for a Council regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices' (CON/2022/44).

ESMA, 'Effects Assessment of the impact of the market correction mechanism of financial markets', 1 March 2023.]

(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?
If so, please provide details on such impacts, ideally providing quantitative input.

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

If no, please explain your answer to question 71:

› Answer: *Margin impact typically is related to the price of energy in relation to the triggering conditions. As the MCM has never been triggered, one cannot quantify any potential margin effect from the MCM's mere existence.*

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: (i) rules imposed on trading venues, and (ii) 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, TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 27 / 29 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:

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.

(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, and why?

› Answer: *No, market participants in spot energy markets should not be treated like MIFID firms. The personnel costs will increase due to the expansion of departments for the new requirements (reporting, risk). IT costs will rise in any case.*

If so, could you please make specific references to those organisational requirements, which are currently foreseen under MiFID and should in a similar way apply to market participants in spot energy markets? Where possible, could you please estimate expected costs to your entity, and potentially other entities that would have to comply with those new requirements, distinguishing one-off costs and recurring compliance costs (for instance, per year).

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

› Answer: *No, they shouldn't. The key rules already exists for the spot venues like EPEX Spot.*

If so, could you please make specific reference to those? Where possible, could you please estimate a possible cost for spot energy trading venues that would have to comply with those new requirements.

(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? Please substantiate your response.

› Answer: *No, both energy spot and forward trading venues are adequately regulated. The high prices during the energy crisis, as a result of the russian war, were a clear sign of scarcity due to a physical shortage of gas. This can be proven, for example, by available data from gas trading or because cancelled quantities had to be procured again.*

(75) The revised REMIT clarified that benchmarks used in wholesale energy products are captured by the market abuserelated provisions in that Regulation. Do you believe that this is sufficient to ensure the integrity of such benchmarks, and avoid risks of manipulation? TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 28 / 29.

› Answer: *Yes, it is sufficient.*

If not, 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.

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.

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.

Questions:

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.

(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?

› Answer: *Yes.*

The current financial and energy regulations provide for a comprehensive reporting, market transparency and market integrity regime as well as for the supervision and enforcement by authorities

of the firms' compliance with it (see Frontier Report, section 4 and 5). However, the current supervision of energy and energy derivatives markets is complex as several national regulators (energy and financial market regulators) and European Authorities (ACER and ESMA) are competent to monitor and supervise these markets under various EU regulatory frameworks (in particular under MiFID II, MAR, EMIR, REMIT II). This holds true for in particular cross-border cases with regard to energy derivatives markets where both financial and energy market regulators are competent to enforce market abuse prohibitions.

From a regulatory transparency and data perspective, there is no fundamental gap, as data can be accessed from all the relevant stakeholders to fulfil their supervisory responsibilities. However, there is a timing issue associated with it, as data is not shared real time in a harmonised format, but may have to be reconciled afterwards. Preventing from market distortion in crisis scenarios requires quick and informed decision making based developments in the physical energy and energy derivatives markets, as the recent energy crisis has demonstrated.

Even if new provisions for an enhanced cooperation between energy and financial market regulators and EU authorities were introduced only recently, in particular under EMIR 3, MAR and REMIT II, this aspect should be developed further. A better cooperation, coordination and data exchange between regulators will improve market transparency and integrity and the supervision by competent authorities (see Frontier Report, section 4.2).

If so, can you point to any concrete examples? Furthermore:

a. If you replied no, please explain why you believe the current supervisory structure should not be challenged.
b. If you replied yes, do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets? Yes
c. If you deem that a supervisory college structure would improve cooperation between energy spot and derivative markets, please describe how this structure should look and what its main roles and responsibilities should be. In particular, please explain whether (15) Draghi Report, p. 30 (16) See Article 10, paragraphs (1) and (2) of revised REMIT. TARGETED CONSULTATION DOCUMENT – Review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets Page 29 / 29 you think that a supervisory college would make sense only for some contracts/products (e.g., products of Unionwide relevance) and, if so, which ones.

› Answer: *The future regime should enable a better cooperation, coordination and data exchange between the competent national financial and energy market regulators and EU Authorities. This can be done within the existing regulatory framework and structure. Therefore, the supervisory responsibilities to monitor and enforce the compliance with applicable regulations should continue to lie*

with the national competent regulators. There is no need for introducing an ultimate (new) supervisory authority at EU level with own roles and responsibilities for the energy sector. So far ACER has only limited supervisory competences (request for information and investigations) for certain cross-border cases if the competent national energy regulators do not object to this. This is not an approach with should be implemented more widely. It is more appropriate to strengthen the cooperation, coordination and data exchanges between the competent authorities on national and EU level within the existing regulatory and supervisory architecture. For this purpose, a (new) EU college could be established. This could take the form of an EU entity consisting of the representatives of competent EU Authorities (ACER and ESMA) and the representatives of competent national authorities.

d. If you deem 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?

(77) The Benchmark Regulation (Regulation (EU) 2016/1011) 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? If not, what would be the merits of enhancing supervisory cooperation in that area?

› Answer: *Yes.*