

Targeted consultation on the review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets

Fields marked with * are mandatory.

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 \(Markets in Financial Instruments Directive\)](#) 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. 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](#), 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. 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 \(REMIT\)](#). 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 [DATE + PLACEHOLDER TO ALIGN WITH WORDING OF THE APAE].

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 will be open for a duration of 8 weeks, until 23 April 2025.

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.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-commodities@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [Investment services and regulated markets](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish

- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Alen

* Surname

Bosankic

* Email (this won't be published)

alen.bosankic@deutsche-boerse.com

* Organisation name

255 character(s) maximum

Deutsche Börse Group (DBG)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

20884001341-42

* Country of origin

Please add your country of origin, or that of your organisation.

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- Angola
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- Argentina
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- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
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- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
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- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
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- Guatemala
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- Malaysia
- Maldives
- Mali
- Malta
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- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
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- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand

British Indian
Ocean Territory

- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
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- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
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- Norfolk Island
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- Palau
- Palestine
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- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
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- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
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<input type="radio"/> Czechia	<input type="radio"/> Lebanon	<input type="radio"/> Saint Helena Ascension and Tristan da Cunha	<input type="radio"/> Zambia
<input type="radio"/> Democratic Republic of the Congo	<input type="radio"/> Lesotho	<input type="radio"/> Saint Kitts and Nevis	<input type="radio"/> Zimbabwe
<input type="radio"/> Denmark	<input type="radio"/> Liberia	<input type="radio"/> Saint Lucia	

* Field of activity or sector (if applicable)

- Accounting
- Agricultural cooperative/agricultural commodity production
- Auditing
- Banking
- Benchmark/index administration
- Credit rating agencies
- Energy utility (e.g. producer, supplier)
- Trading
- Insurance
- Market maker
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Financial Market infrastructure operation (e.g. exchanges trading commodity derivatives, CCPs, CSDs)
- Spot energy exchange operation
- Trade-matching system
- Brokering service provider
- Commodity
- Transmission System Operator
- Distribution System Operator
- Other
-

Not applicable

* Is your entity active in commodity derivatives trading?

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

Please specify under which status your entity is actively trading:

- under the ancillary activity exemption defined under Article 2(1), point j, of Directive (EU) 2014/65
- as an investment firm authorised under Directive (EU) 2014/65
- not applicable

What type of commodity derivatives does your entity actively trade?

- agricultural commodity derivatives
- gas derivatives
- electricity derivatives
- EU emission allowances (EUA) derivatives
- other
- not applicable

Please specify to what other agricultural commodity derivative(s) you refer:

dairy products, potatoes, grains (like wheat, corn, and soybeans), livestock

* Is your entity active in spot/physical markets?

- Yes
- No
- Not applicable

What type of commodity does your entity actively trade?

- agricultural commodity
- gas (including LNG)
- electricity
- hydrogen
- other
- not applicable

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

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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 over-the-counter (OTC) contracts to NCAs on a daily basis (MiFID Article 58(2)). All such position reporting requirements are further discussed under section 3.

MiFIR, in turn, provides that:

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

1.2 Commodity derivatives reporting and transparency under REMIT

Energy commodity spot and derivatives trading is also subject, under the current energy rulebook, to two main pieces of legislation relating to transparency and reporting: the [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

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

REMIT also provides that reporting obligations under REMIT are considered fulfilled when the abovementioned transactions have been reported under financial legislation by market participants, third parties acting on behalf of a

market participant, trade reporting systems, or OMPs, trade-matching systems or other persons professionally arranging or executing transactions.

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

1.3 Data sharing between energy and securities markets supervisors

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

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

Lastly, this central data collection mechanism could also serve as a one-stop-shop for data reporting by market participants active on both types of markets, thus alleviating the reporting burden for energy traders (which often need to report under MiFID/MiFIR, EMIR and REMIT). This would also necessitate establishing common reporting standards based on harmonised data formats and protocols between products across the spot/derivatives spectrum, which would eliminate unnecessary diverging reporting requirements and simplify the data landscape for reporting market participants and supervisors alike.

Questions related to section 1

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

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

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

5000 character(s) maximum

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

At the moment, commodity derivatives exchanges and clearinghouses are delivering partially overlapping data in the context of EMIR, MiFID II/MiFIR, MAR and REMIT to different authorities. In principle, we therefore agree with the idea of streamlining supervisory reporting requirements in a way in which practical efforts and costs to comply with reporting requirements are significantly reduced, without jeopardizing relevant insights for monitoring and supervising energy derivatives markets.

We believe that today, all relevant data on commodity derivatives trading is reported. We therefore ask for a stepwise approach which commences with improved data sharing between financial and energy supervisory authorities, followed by a comprehensive assessment, based on a cost-benefit analysis. We consider this an important condition since any amendment to reporting requirements brings about significant implementation costs.

Within a data strategy to be developed as outlined above, efficiency gains should be explored, also beyond a generic overhaul of the reporting requirements. These could include, for instance, the principle of reporting each data point once including all relevant information, or the reconsideration of transaction reporting for commodities under EMIR.

Further, we want to highlight that beyond reporting, other overlapping measures apply to energy markets already, a practice we caution against and would suggest to rethink. For example, MAR/REMIT overlapping market abuse frameworks, definitions of trading venue/OMP/RRM/PPAT under REMIT/MiFID or the definition of end position holder under REMIT/MiFID.

On a broader perspective, we want to note that changes to reporting requirements should not entail any expansion of access rights and that data sharing even between supervisors should be subject to a need-to-know principle. Data sharing between supervisors should only occur when all parties have the legal access to the relevant data, and the sharing is solely for supervisory purposes.

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

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

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

5000 character(s) maximum

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

While we see a theoretical benefit in aligning standards and protocols, transitioning each reporting requirements into an aligned standard and protocol requires a specific and burdensome technical implementation, with possibly only minor savings. Therefore, a more pragmatic approach would be to focus on enhancing data-sharing between authorities as a primary action. Since all relevant data is already reported today, the most logical step is to set up a data strategy to explore how this existing data can be collected and used most efficiently.

Finally, we caution against too frequent changes of reporting formats and transmission protocols and also recommend considering using established industry standards, if and when available, in order to reduce the implementation burden associated with adapting to different standards. If any changes in reporting formats and/ or transmission protocols would be deemed necessary, we want to highlight that sufficient time to implement is a must (at least 18 months).

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

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

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

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

5000 character(s) maximum

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

As explained in our answer given to Question 1, we urge for a cautious and stepwise approach. In a potential future model data collection and sharing could allow for improved supervision, monitoring and streamlining for reporting entities active within commodity derivative markets. The eventual implementation of a more harmonized approach should follow the existing statutory principles of confidentiality, adhere to the need-to-know principle and usage for supervisory purposes only.

Importantly, consolidating data could alleviate recurring costs stemming from, for example, the maintenance of several technical interfaces by trading venues. In addition to the technical effort, savings could be found in the processes and monitoring procedures which have to be maintained for each reporting obligation separately. Eventually, one single data set could be sent by the market place or trading venue on behalf of its trading participant in a uniquely defined data format to one collecting entity.

Finally, we would like to note that every data sharing would only be possible for supervisory purposes only and that any alteration in the collection mechanism should not lead to an expansion of access rights.

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

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

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

5000 character(s) maximum

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

When required, authorities should have access to a broader holistic view on market dynamics. This is particularly relevant in cases such as policy-driven assessments regarding energy market developments or reports such as the ESMA and ACER's Market Correction Mechanism analysis, where cross-regulatory data was crucial. This, in turn, would strengthen both market supervision and decision-making.

Since all existing data is already available, and rather than restructuring the entire framework, priority should be given to data-sharing among supervisory authorities. EMIR and REMIT have included provisions establishing communication channels between financial and energy market regulators at EU and national levels. To ensure these arrangements are effectively utilized, a more streamlined or harmonized data collection could support this objective. In any case we refer to our answer in Question 1.

However, due note should be taken of the need-to-know principle and the necessary resources for the interpretation of data. As explained above, we see particular relevance for increased regulatory cooperation in light of specific policy-driven assessments regarding energy market developments or for supervisory purposes only. Whilst the aim should be to decrease data burdens for market participants while increasing supervisory efficiencies, unduly argued expansion of access rights should be avoided.

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

Please select as many answers as you like

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

Please explain your answer to question 5:

5000 character(s) maximum

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

Practically, if after a thorough analysis a centralized data collection mechanism should be pursued, it would be most efficient to use existing infrastructure and leverage technical interfaces and the know-how and expertise of existing entities. This should go hand in hand with minimizing disruption to reporting processes, and in any case avoid duplicating of reporting obligations.

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

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

Please explain your answer to question 6:

5000 character(s) maximum

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

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

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

Please explain your answer to question 7:

5000 character(s) maximum

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

Allowing regulators to have a more holistic view of financial and physical energy markets when required should be a first step. As addressed in our answers under Questions 1 and 4, this is ideally facilitated in a structured manner in order to increase efficiency and avoid fragmentation.

As explained in our answer to Question 4, we see particular relevance for increased regulatory cooperation in light of specific policy-driven assessments regarding energy market developments or for supervisory purposes. Whilst the aim should be to decrease excessive burden for market participants while increasing supervisory efficiencies, unduly argued expansion of access rights should be avoided.

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

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

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

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

5000 character(s) maximum

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

Regarding the scope of the consolidated tape, we want to refer to our answer given to Question 9.

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

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

Please explain your answer to question 9:

5000 character(s) maximum

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

There is no need to include pre- and / or post-trade data on exchange-traded commodity derivatives to the consolidated tape, as there is already sufficient transparency in this area, contrary to OTC derivatives. Further in comparison to OTC derivatives there is no fragmentation regarding exchange-traded commodity derivatives. This is because these contracts are venue-specific and cannot be traded on multiple trading venues.

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

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

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

Please explain what would be the added value of such reporting compared to existing reporting requirements under EMIR and under REMIT:

5000 character(s) maximum

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

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

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

Please explain your answer to question 11:

5000 character(s) maximum

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

ESMA might not have full access to transaction data from trading venues and from market participants reported to NCAs. As ESMA indicated in their recent TRV article on gas derivatives, the analysis of risks in natural gas derivatives markets was hampered by data fragmentation and the availability of data to ESMA and NCAs, particularly related to information being reported only to energy regulators or only to NCAs. Referring our answer to Question 1, we recommend tackling this within a stepwise approach, which commences with improved data sharing between authorities, followed by a comprehensive data strategy, based on a cost-benefit analysis and an assessment of potential efficiency gains.

2. Ancillary activity exemption

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

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

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

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

The qualification as investment firm under MiFID has broad implications, as it does not only imply the application of the MiFID organisational and operational requirements (and the associated supervisory role and sanctioning powers of NCAs), but also entails a qualification as financial counterparty under Regulation (EU) 648/2012 (EMIR), notably with the associated requirements in terms of exchange of bilateral margins when engaging in derivatives trading, and the application of the prudential regime under [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 related to section 2

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

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

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

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

Please explain your answer to question 12:

5000 character(s) maximum

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

The exemptions under Article 2(1) of MiFID II are crucial for energy market participants. These exemptions allow them to engage in non-hedging activities such as risk transformation, price discovery, and business diversification without needing authorisation as investment firms. This ensures liquidity and market efficiency, which are essential for the proper functioning of commodity and energy markets. The exemptions also support market participants in managing financial risks and contribute to the energy transition by allowing them to act as key counterparties in energy projects. Removing or narrowing these exemptions would hinder market liquidity, market participants' ability to manage risks, and Europe's competitive position globally.

Question 13. Under Article 2(1), point j of MiFID, an entity can provide investment services other than dealing on own account in commodity derivatives or emission allowances or derivatives thereof to its customers or suppliers of its main business without a MiFID authorisation, provided that the provision of such investment services is ancillary to its main activity.

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

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

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

5000 character(s) maximum

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

We perceive the exemption under Article 2(1)(j) to be appropriate and well-targeted. The exemption allows energy market participants to provide tailored hedging solutions, leveraging their market expertise.

Question 14. Do you currently benefit from the AAE?

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

Please explain your answer to question 14:

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

We perceive the implementation of the CMRP amendments to have been positive for energy market participants, mainly by reducing unnecessary administrative burdens without significantly altering regulatory oversight by NCAs. The review consisted of carefully calibrated tests to define ancillary activities, which entered into force in November 2021. It is essential to recognise the diversity of firms operating in the commodity markets, from large utilities to smaller commercial entities. Most of these firms are not authorised as investment firms and benefit from the AAE under MiFID II, which is a proportionate approach, given the unique nature and scale of activity of commodities firms.

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

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

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

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

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

Please explain your answer to question 18:

5000 character(s) maximum

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

We perceive the current AAE as effective for allowing energy market participants to support efficient, competitive energy markets without unduly falling under full MiFID II regulation. The criteria ensure only firms primarily engaged in investment services are regulated under MiFID II.

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

Please select as many answers as you like

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

Please explain your answer to question 19:

5000 character(s) maximum

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

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

	Yes	No	Don't know - No opinion - Not applicable
trading activity in derivatives traded on a trading venue?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
trading activity in physically-settled derivatives?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please explain your answer to question 1:

5000 character(s) maximum

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

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

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

Please explain your answer to question 21:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 22:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 23:

5000 character(s) maximum

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

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

Do you believe the *de minimis* test should continue to include, or instead exclude, all trading activity carried out for an entity’s own benefit (proprietary trading), so as to only rely on dealing activities for the benefit of a third party /client?

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

Please explain your answer to question 24:

5000 character(s) maximum

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

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

	Yes	No	Don't know - No opinion - Not applicable
abolishing the trading test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

abolishing the capital employed test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
through other types of amendments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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

5000 character(s) maximum

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

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

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

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

5000 character(s) maximum

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

Deutsche Börse Group believes that the application of prudential requirements as proposed in Q27 would have had no positive effects on market dynamics from the 2022 events. On the contrary, further prudential requirements could have led to less liquidity in the market, exacerbating the situation.

The high level of preparedness of commodity markets participants to meet short-term liquidity needs or requests for collateral has been confirmed in various reports issued by different EU and international authorities:

First, ESMA, in its report on the gas price surge in summer 2022, primarily concludes that despite the record prices caused by supply and demand fundamentals, markets functioned appropriately during August 2022. Likewise, the report shows that CCP margins rose and fell with prices and volatility in line with expectations, with the respective margin calls having been met on time. Second, the 2023 analysis of the financial stability dimensions of commodity markets of the Financial Stability Board determined that these markets demonstrated resilience. Finally, in its 2022 report to the European Commission, the European Banking Authority also observed that even at the peak of the energy crisis, there was no missed margin or collateral call by market participants.

The above conclusions prove that there is a well-functioning system in place whereby CCPs call for collateral arising from changes in prices and volatility, making sure they can handle extreme cases of stress. Under the EMIR framework, CCPs have in place accessible and transparent rules to ensure sound risk management. Moreover, as a result of the 2022 energy crisis and to ensure a higher level of preparedness, further measures have been agreed in the revision of the EMIR framework. Rather than mis-classifying energy market participants under financial services legislation, a more suitable regulatory response is the expansion of eligible collateral to cover initial and ongoing exposure of a CCP, to ease financial pressure following extraordinary market situations.

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

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

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

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

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

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

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

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

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

5000 character(s) maximum

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

Please explain your answer to question 28:

5000 character(s) maximum

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

We do not believe a review should lead to more entities being in scope of MiFID II and IFR/IFD. This is because the application of MiFID II and IFR/IFD to EMPs could have unintended consequences. EMPs carrying out trading activities as an ancillary activity to their main business are different from investment firms whose main activity is the provision of investment services to clients under a fiduciary duty. Please refer to our answers to questions 18, 19, 26 and 28. We do not believe a review should lead to more entities being in scope of MiFID II and IFR/IFD.

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

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

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

5000 character(s) maximum

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

The potential application of MiFID II/R and other pieces of regulation would act as a strong disincentive to those market participants that are today active in the market and benefit from the AAE. Restricting the AAE under MiFID II would have severe consequences for energy market participants in particular. In a likely scenario, some market participants would eventually decide to exit the market and rely on, instead, OTC transactions. This would exacerbate liquidity issues in transparent markets, as those participants often act as liquidity providers. Furthermore, an essential part of the trading activity would further move in the dark, defeating the objectives of MiFID II/R to increase overall transparency.

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

Please explain:

5000 character(s) maximum

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

3. Position management and position reporting

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

3.1 Position management

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

It notably allows trading venues:

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

3.2 Position reporting under MiFID

3.2.1 Reporting from market participants to trading venues

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

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

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

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

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

3.2.2 Reporting from market participants and trading venues to NCAs

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

3.3 Exposure reporting under REMIT

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

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

Questions related to section 3

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

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

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

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

Please explain your answer to question 31:

5000 character(s) maximum

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

Deutsche Börse Group sees the existing reporting architecture as well established, fit for purpose and believes it does not require any changes. Currently, many market participants rely on trading venues for position reporting purposes by providing draft reports, for example. Including clearing members would include an additional actor in the chain of information, potentially hampering data quality or communication lines.

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

Please select as many answers as you like

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

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

	Yes	No	Don't know - No opinion - Not applicable
C6-carve-out contracts	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the underlying spot market	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

Please specify what your preferred option would be:

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

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

5000 character(s) maximum

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

We refer to our response to Question 1 in which we advocate for a stepwise approach, in which data sharing amongst authorities should be pursued as primary objectives in order to obtain a more comprehensive view of the market. Any new reporting requirements should however be avoided.

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

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

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

5000 character(s) maximum

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

Please specify what your preferred option would be:

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

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

5000 character(s) maximum

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

We refer to our response to Question 1 in which we advocate for a stepwise approach, in which data sharing amongst authorities should be pursued as primary objectives in order to obtain a more comprehensive view of the market. Any new reporting requirements should however be avoided.

Please explain your answer to question 34:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 35:

5000 character(s) maximum

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

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

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

Please explain your answer to question 36:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 37:

5000 character(s) maximum

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

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

5000 character(s) maximum

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

No, the position reporting framework should not be amended in a direction where non-EU country firms report who is the end-client linked to the held position for the following reasonings:

- A non-EU country firm can be (i) a trading member of a trading venue, or (ii) a client of an EU firm which is a member of the trading venue. In both cases, the reporting of the data belongs to the end-client of that non-EU country firm. For the trading venue, this would be a difficult and cumbersome process as the trading venue does not have a direct access to this data and, would be dependent on the trading member in the middle.
- Moreover, we assume that the transmitted data would be primarily personal i.e., name, surname, date of birth etc. and it might not be appropriate, if not legally forbidden, to share personal data with another party. This is a very delicate topic. Also, private information shall not be stored by an entity except the investment firms for security concerns. Trading venues should not be the recipient of such sensitive data as the data is not related to trading.
- The trading venue must also ensure that the information provided by the trading participant is accurate, complete and submitted in time in order to allow the trading venue to fulfill its own reporting obligation towards its regulator. In those circumstances, the major problem for the trading venue is incomplete, incorrect and missing data by the relevant trading participants as the trading venue is both responsible for the reporting and unable to ensure the quality, accuracy and simply the provision of the necessary information.

Hence, changing the position reporting framework would not be proportionate for trading venues as the necessary data is not easily available to the trading venue and the trading venue would be dependent on its trading members. Also, past reporting experiences i.e., transaction reporting under MiFIR (Art. 26) showed that all our concerns (the bullet points above) occurred in the past.

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

In contrast, the laws governing the Henry Hub futures in the US have different position limits for physically settled and cash-settled derivatives. There is an initial 2000 contract limit for physically settled contracts, which can be combined with up to 8000 cash-settled contracts (2000 per exchange (cash-settled Henry Hub contracts are traded on three exchanges in the US) + 2000 in the OTC market). 2000 contracts at Henry Hub amounts to 25% of the deliverable supply at the Henry Hub. The differing limits for physically settled and cash-settled contracts are justified by the need to protect the physical delivery in the delivery month by avoiding that players take too large positions into the physical market. On the other hand, market participants that hold no physically settled contracts at all are allowed to increase their positions in cash-settled contracts. This is a specific rule for natural gas contracts called the “conditional spot month limit exemption” that increases the position limit for cash-settled contracts to 10 000 contracts.

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

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

Questions related to section 4

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

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

5000 character(s) maximum

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

Generally, and depending on the exact calibration of a position limits regulatory regime, position limits have the potential to put significant strain on the development of commodity derivative contracts, hampering the emergency and growth of markets that allow for hedging price risks stemming from e.g., long-term energy investments. We agree with the assessment of the Commission of this Targeted Consultation on Commodity Markets on page 18, which reads “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.”

As further elaborated in our answers to the following Questions, we believe the regime as currently calibrated is fit for purpose. Therefore, Deutsche Börse Group does not identify any rationale for additional reforms of the position limit regime, also with the aim to provide a stable and predictable regulatory environment.

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

5000 character(s) maximum

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

Position limits may ultimately restrict the flexibility of market participants to hedge their risks effectively. This brings the risk that market participants shift volumes away to less-transparent bilateral OTC markets, or opt for a less optimal hedging strategy compared to when no limits would be in place.

During the volatility in energy markets that stemmed from the COVID-19 pandemic in 2020, we saw a clear trend of energy firms who sought the security of on-exchange trading and clearing to mitigate potential losses and the risk of counterparty defaults. However, with the position limits regime still in place in its previous scope, several market participants – notably in illiquid markets – almost immediately came close to a position limit and were forced to seek alternatives. From this perspective, we believe the rescoping of the regime came right in time for the 2022 energy price crisis, in order to avoid this same harmful effect.

The same is true for the integration of renewables within the EU’s power markets. Existing long-term power markets accommodate the most cost-efficient deployment of renewable energy, by allowing trading up to 10 years in advance and the mitigation of risks within Power Purchase Agreements, for example. This can lead to the accumulation of especially large positions. It is exactly these hedging transactions in renewable investments that could potentially be blocked by position limits. In light of the goals of the Clean Industrial

Deal and Affordable Energy Action Plan, we caution against the (re-) introduction of regulatory measures which would hamper the most cost-efficient uptake and hedging of low-cost and clean electricity. This includes measures such as position limits, as well as a major roll-out of potentially damaging state-backed subsidies such as CfDs or undue interventions into the EU's energy market design.

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

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

Please explain your answer to question 40:

5000 character(s) maximum

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

Whereas MiFID's main aim is to safeguard market integrity, the ability of position limits to support this objective has been subject to extensive discussions among regulators, policymakers and industry practitioners in recent years. For example, ESMA in their final report from April 2020, noted in section 3.2 that rather than being the main objective, preventing market abuse is only an indirect potential consequence of the position limits regime.

Further, it should not be forgotten that non-critical or significant commodity derivatives are and remained subject to position reporting and recently enforced position management controls, and other MiFID and MAR obligations such as transparency and transaction reporting. Therefore, any concerns about high market concentration can be detected by ESMA and NCAs, irrespective of position limits.

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

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

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

5000 character(s) maximum

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

We agree with the assessment of the Commission of this Targeted Consultation on Commodity Markets on page 18, which reads “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.” Since the CMRP, the refocus of the position limits regime has removed a key obstacle for the growth of nascent and less liquid contracts and effectively addressed the unintended consequences of the regime on these contracts. Critically, this has allowed market participants to hedge their exposure in the most efficient way possible during the subsequent energy crisis.

Important to note is that all contracts remained subject to the position reporting regime under MiFID II Article 58, the pre-existing position monitoring and position management controls as well as the market oversight practices of the exchanges’ market supervision and market surveillance departments that apply the principles laid down in REMIT and MAR. Thus, in our opinion, removing position limits from certain contracts did not pose a risk to the transparency or reliability of the respective markets. On the contrary, by attracting more volumes onto exchanges, the more focused regime has contributed to a more transparent and safe trading environment.

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

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

Please explain your answer to question 42:

5000 character(s) maximum

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

We concur with the ESMA final report on position limits and position management of April 2020 which argues for a targeted application of the position limit regime, i.e., by applying limits to well-developed ‘critical and significant’ contracts where price formation takes place and that have a role in the pricing of the underlying commodity. We do not believe that since the implementation of the CMRP, the definition of such has changed.

In this context, it should be noted that attractive commodity markets also support the EU competitiveness objectives. Rather than artificially seeking a scope increase, policy markets should ensure that the EU regime is proportionate and effective.

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



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

Please explain your answer to question 43:

5000 character(s) maximum

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

In order to support orderly pricing and settlement, it is sufficient to consider mature contracts which serve as a benchmark in their respective markets and are relevant for the price information for the underlying commodity. This is exactly the scope that has been implemented through the CMRP.

In addition, ensuring orderly pricing and orderly settlement is one of the key tasks of an exchange and has been achieved already by a broad range of measures to avoid that any factors which might impact the price formation process are prevented.

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

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

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

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

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

Please explain your answers to question 44:

5000 character(s) maximum

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

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

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

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

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

5000 character(s) maximum

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

As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is fit for purpose. The current scope ensures that position limits can play a valuable role, i.e. for contracts where price formation takes place and that have a role in the pricing of the underlying commodity and other related commodity derivatives, regardless on whether it is financially or physically settled. Therefore, EEX Group does not identify any rationale for additional reforms of the position limit regime, also with the aim to provide a stable and predictable regulatory environment.

Generally however, we agree with the rationale that position limits may have most merit on those highly mature benchmark contracts which have as an additional characteristic that they are physically-settled. Whilst we see no direct link between a large position and market manipulation, nevertheless, if limiting market power would be the objective of the position limit regime, then it is advisable to set limits only in physically-delivered contracts.

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

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

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

- Yes
- No

- Don't know / no opinion / not applicable

Please explain your answer to question 46:

5000 character(s) maximum

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

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

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

Please explain your answer to question 47:

5000 character(s) maximum

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

We generally support the methodology including the factors for NCAs to take into account.

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

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

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

Please explain your answer to question 48:

5000 character(s) maximum

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

First, we believe that any need for differentiation is already efficiently achieved through the exemptions regime.

Second, the policy objective of position limits, or the financial services regulatory framework in general, to preserve orderly markets are independent of the type of traders active in those markets.

By maintaining a single framework for position limits, regulators uphold both fairness and the broader goal of financial stability. We question which specific risk the Draghi report would seek to eliminate by introducing stricter limits as no concrete example of any abuse has been provided.

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

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

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

5000 character(s) maximum

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

Deutsche Börse Group believes the position limits exemptions, both the hedging and liquidity provision exemption, are fit-for-purpose, not hampering the functioning, liquidity and competitiveness of critical /significant energy derivatives contracts.

What changes to such exemptions would you propose?

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

5000 character(s) maximum

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

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

- Yes

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

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

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

Please explain your answer to question 51:

5000 character(s) maximum

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

As the first line of oversight, trading venues are well positioned to assess exemption requests in the context of prevailing market conditions, liquidity needs, and the potential for market abuse. Their proximity to real-time market activity allows for more informed and responsive decision-making. Empowering trading venues in this way would also align the EU position limits regime with international best practices. Ultimately, however, exemptions from position limits should be granted by the authority that sets the limit, i.e. if the power to set position limits is shifted to trading venues, then trading venues should also be the ones granting exemptions.

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

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

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

Please explain 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.

5000 character(s) maximum

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

As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is fit for purpose. Should the European Commission nonetheless see the need to review the position limits regime, then we welcome an alignment with other jurisdictions to learn from potential best practices.

Question 53. Do you believe that trading venues:

	Yes	No	Don't know - No opinion - Not applicable
a) should be given more responsibility in setting position limits in general, for those contracts that are by law subject to position limits (i.e., commodity derivative contracts that qualify as significant and critical or are not agricultural derivative contracts), instead of competent authorities?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

5000 character(s) maximum

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

If the position limits regime were to be reviewed, then we would support giving more responsibility to trading venues in the setting of position limits for those contracts in scope. Trading venues are inherently most close to the markets and would be able to set limits based on their extensive experience of the underlying market dynamics and market participants. In addition, exchanges would likely be able to adjust limits more rapidly in response to changing market dynamics.

As stated under the Questions above however, we believe the current regime and notably its scope is fit for purpose. Hard position limits should be applicable only to significant or critical contracts, whereas exchanges' existing position management controls ('soft' limits) and further surveillance powers prove sufficient to ensure fair market functioning in any other contract.

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

5000 character(s) maximum

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

The power to set mandatory position limits should rest with one entity/authority to ensure a consistent methodology and certainty for market participants.

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

5000 character(s) maximum

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

Importantly, it should be noted that trading venues already have the rulebooks in place to monitor and potentially act upon the implications of positions in order to fulfil their obligation to ensure orderly trading and settlement. This includes the setting and enforcing of limits, should this be deemed necessary. We believe this is sufficient and that an obligation to impose position limits upon all contracts would again hamper liquidity and put undue burden on trading venues.

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

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

Please explain your answer to question 54:

5000 character(s) maximum

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

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

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

Please explain your answer to question 1:

5000 character(s) maximum

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

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

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

Please explain your answer to question 56:

5000 character(s) maximum

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

In light of regulatory certainty, we support the current set-up of responsibilities where the setting, monitoring and enforcing of position limits lies with the NCA. Should the NCA however see the need for a more holistic view on the relevant energy markets, then the sharing of data and dialogue should be facilitated between the NCA and relevant energy regulatory authority, in line with our response to Question 1.

5. Circuit breakers

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

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

In December 2022, as part of the emergency measures taken to address the energy crisis, an intra-day volatility management mechanism (IVM) was introduced in the Union framework. [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 related to section 5

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

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

5000 character(s) maximum

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

Before the energy price crisis, since the go-live of MiFID II in 2018, exchanges established circuit breaker functionalities which were further finetuned during the energy crisis, by taking into account the increased uncertainty of supply and demand price fundamentals. In addition, the IVM functionalities were integrated within those existing tools. As demonstrated in the European Commission report on the Council Regulation (EU) 2022/2576, IVMs were adequately implemented by derivatives exchanges.

Our assessment is that the existing calibration successfully diminishes the likelihood and extent of short-term price spikes or aberrant market moves. The mechanism prevents large price swings regardless of the direction in which the market is moving. These may result for example from erroneous orders. It allows the market operations department as well as market participants to assess the situation calmly during a hectic market phase. As suggested by ESMA in its report dated 22 September 2022, we believe it is important that the intention of the trading halt mechanism is to “provide more time to market participants to process the flow of information during extreme market stress scenarios”. This is the purpose of circuit breakers and should not be mixed up with the political desire to reduce market volatility stretched out over a one or multiple days or even reduce price levels.

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

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

What would be the associated advantages and disadvantages?

5000 character(s) maximum

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

A certain degree of volatility is inherent to power and gas markets. This is because power and gas cannot easily be stored, and demand and supply need to be balanced at all times. In addition, demand is highly weather dependent and does not easily react to prices, at least not in the short-term. The energy transition is set to increase the volatility of the market to a certain extent, with intermittent renewable generation becoming a larger part of the energy mix. Energy related derivatives will be affected to a greater extent by fluctuations in power prices, both within shorter or longer time periods, and seasonally. Hence, a permanent requirement for trading venues to implement static circuit breakers would unduly constrain these developments and potentially even counter the overarching goal of improving the flexibility and local signals of the EU's electricity system.

In addition, energy derivatives are generally less liquid than cash equity instruments. There are fewer market makers and a smaller number of active market participants, which plays an important role when valuing static versus dynamic circuit-breakers.

Because of these reasons, we believe that static circuit breakers are less suitable to distinguish disorderly market conditions from volatility induced by market fundamentals. Dynamic circuit breakers provide greater room to handle volatility that arises due to changes in the underlying. As the liquidity profile, quotation level and volatility profile diverge widely across energy contracts as well as market places, calibration of the parameter should ultimately be at the discretion of the respective exchange.

Please explain your answer to question 58:

5000 character(s) maximum

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

We are of the view that the volatility safeguards that exchanges have in place have been working as intended and hence we do not see a need for a new type of trading halt mechanism on top of the established mechanisms. As noted above, the market should be able to function as normal and a circuit breaker should only be triggered in rare circumstances, such as where significant price sensitive information becomes available and allows the market to pause and process. As suggested by ESMA in its report dated 22 September 2022, we believe it is important that the intention of the trading halt mechanism is to "provide more time to market participants to process the flow of information during extreme market stress scenarios".

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

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

5000 character(s) maximum

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

Please refer to our response to Question 58, in which we explain that we do not support the broad introduction of static price bands and reiterate that any trading halt should only occur for a limited period of time and in exceptional circumstances. In case a static circuit breaker was hit, as supply and demand fundamentals of the underlying commodity would continue to change regardless of markets being suspended or not, market participants will try to hedge their positions OTC with no reference prices to base their transactions on. Furthermore, we would like to stress that the 2022 price peaks were due to the immediate supply crisis resulting from the Russian invasion of Ukraine. Even if circuit breakers would have paused or temporarily halted trading activity, it would have most probably exacerbated the volatility once the market reopened.

Question 59.1 If you favour trading halts, what duration do you recommend for an appropriate trading halt that is long enough for market participants to assess the situation and their position in the derivatives market and for the market to ‘cool off’?

5000 character(s) maximum

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

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

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

Please explain your answer to question 59.2:

5000 character(s) maximum

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

A certain degree of volatility is inherent to power and gas markets. This is because power and gas cannot easily be stored, and demand and supply need to be balanced at all times. In addition, demand is highly weather dependent and does not easily react to prices, at least not in the short-term. The energy transition is set to increase the volatility of the market to a certain extent, with intermittent renewable generation becoming a larger part of the energy mix. Energy related derivatives will be affected to a greater extent by

fluctuations in power prices, both within shorter or longer time periods, and seasonally. As the liquidity profile, quotation level and volatility profile diverge widely across energy contracts as well as market places, calibration of the parameter should ultimately be at the discretion of the respective exchange.

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

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

Please explain your answer to question 60:

5000 character(s) maximum

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

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

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

What would be possible mitigants to prevent such migration?

5000 character(s) maximum

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

As explained in our response to the previous questions, in case a state circuit breaker was hit, as supply and demand fundamentals of the underlying commodity would continue to change regardless of markets being suspended or not, market participants will try to hedge their positions OTC with no reference prices to base their transactions on. Mitigation of this risks is foremost achieved by leaving sufficient discretion to the exchange on the calibration of parameters as well as the determination of what kind of circuit breaker is most suitable for the underlying market.

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

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

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

5000 character(s) maximum

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

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

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

Please explain your answer to question 63:

5000 character(s) maximum

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

We believe the measures currently in place on spot markets to manage extreme cases of market stress are sufficient and the copying of a circuit breaker onto spot markets inappropriate. Spot exchanges have implemented bespoke measures following both their market expertise as well as bespoke regulatory framework such as, for example, a price deviation control mechanism for gas spot markets at EEX. Given their nature and role of spot markets in balancing the energy system in near real-time, any interruption of price formation and physical delivery should be avoided. Spot markets continuously innovate in order to facilitate the implementation of the energy transition, such as trading closer to delivery and in shorter periods.

6. Elements covered by the Draghi report

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

6.1. Obligation to trade in the EU

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

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

Questions related to section 6.1

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

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

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

Please explain your answer to question 64:

5000 character(s) maximum

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

Commodity derivative markets, are inherently global markets. Wholesale energy markets are inherently global markets. A measure such as an obligation to trade in the EU would damage the competitiveness of European markets, and likely prompt third country market participants to move to unrestrained markets located outside of the EU. This may result in significantly reduced liquidity in the main European energy derivatives markets. When firms are unable to adequately hedge their exposure, it can have significant negative consequences for energy firms, making it more difficult for them to operate, invest and compete in the energy market.

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

5000 character(s) maximum

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

Imposing an obligation to trade in the EU would reduce the number of market participants, thereby diminishing market liquidity, increasing the cost of hedging and disrupting the ability of energy companies to manage their price risks effectively. Specifically, such a limitation would make it more difficult for EU market participants to find suitable hedging partners, especially for large or complex transactions. In addition, the reduced market depth would also make energy markets more vulnerable to abrupt price movements and shocks, weakening the overall stability of the system. In addition, the reduced market depth would also make energy markets more vulnerable to abrupt price movements and shocks, weakening the overall stability of the system. This would not only undermine the global competitiveness of European markets, it also threatens to disrupt energy transition efforts under the Green Deal, and jeopardize the goals of the Clean Industrial Deal and Affordable Energy Action Plan.

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

5000 character(s) maximum

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

Please refer to our answer to Question 64 and 65. A measure such as an obligation to trade in the EU would damage the competitiveness of European commodity markets, and likely prompt third country market participants to move to unrestrained markets located outside of the EU. Reduced liquidity may negatively impact the functioning of European commodity markets as a whole and the ability to trade on wholesale markets and to hedge against future fluctuations.

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:

- [ESMA's preliminary data report on the introduction of the market correction mechanism - 23 January 2023](#)
- [ESMA's effects assessment of the impact of the market correction mechanism on financial markets - 1 March 2023](#)
- [ACER's preliminary data report on market correction mechanism - 23 January 2023](#)
- [ACER's effects assessment report on market correction mechanism - 1 March 2023](#)

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

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

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

Questions related to section 6.2

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

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

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

Please explain your answer to question 67:

5000 character(s) maximum

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

Ultimately, a price cap such as implemented through the Market Correction Mechanism undermines the risk management function of European energy markets without structurally limiting price volatility or increases. When triggered, a tool such as the MCM would artificially constrain the value of energy derivatives, decoupling them from the price of the underlying physical market where supply/demand dynamics may have shifted. This would rather increase price volatility and make the European energy markets less attractive and may reduce the number of market participants.

In order to achieve the goal spelled out in the Clean Industrial Deal of achieving an affordable energy supply and competitive European market, we recommend to focus on improving the physical realities of the energy system first. This includes, i.a., investments in grids and infrastructure, supporting flexibility and increasing the roll out of renewable energy. Well-functioning and liquid European energy markets can contribute to these goals by providing short-term and long-term investment signals. Direct price intervention would negate this positive role of Europe's internal energy market and deter innovation (in renewables or flexibility, for example) from happening in a cost-effective way.

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

- Yes
- No

- Don't know / no opinion / not applicable

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

5000 character(s) maximum

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

Fundamentally, any artificial price intervention would not prevent episodes of high prices, when those were motivated by a fundamental mismatch between supply and demand of specific commodities. Price divergences between EU and international prices are rooted in fundamental characteristics of the energy market. As also confirmed in the recent Clean Industrial Deal, for example, "Europe's dependence on imported fossil fuels is the main cause of higher, and more volatile, energy prices. [...] The current geopolitical and market uncertainty drive up investment costs which are passed on to consumers." As detailed in the answers to the below questions, rather than curtailing commodity prices, (dynamic) price caps rather hamper security of supply and even increase volatility and systemic uncertainty.

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

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

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

5000 character(s) maximum

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

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

5000 character(s) maximum

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

A (dynamic) price cap presents significant threats to Europe's financial stability. These conclusions were also drawn by ESMA in its preliminary report from January 2023: "In ESMA's view, should the settlement price and the spread to the reference price increase, the more likely it appears that potential effects and risks materialise due to market participants adjusting their behaviour to avoid the activation of the MCM and/or to manage risks in case of an activation of the MCM. While this behaviour would appear rational on an

individual basis, it could trigger significant and abrupt changes of the broader market environment, which could impact the orderly functioning of markets, and ultimately financial stability.” ECB notes as well in its opinion from 2 December 2022 (ECB Opinion CON/2022/44) that: “ECB considers that the current design of the proposed market correction mechanism may, in some circumstances, jeopardise financial stability in the euro area”.

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

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

Please explain your answer to question 71:

5000 character(s) maximum

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

During the energy crisis, the financial stability risks associated with the MCM and the market destabilising consequences of increased margin requirements, as outlined above, fortunately did not materialise, mainly because gas prices dropped well below the activation conditions of this mechanism before it became active in February 2023. This decrease in gas prices, coupled with reduced market volatility, instead allowed central counterparties (CCPs) to lower margin requirements.

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

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

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

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

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

6.3.1. Organisational requirements at trading venue level

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

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

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

6.3.2. Organisational requirements at market participant level

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

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

6.3.3. Other relevant rules governing market integrity and transparency

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

Questions related to section 6.3

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

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

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

Please explain your answer to question 72:

5000 character(s) maximum

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

It is critical to understand that spot markets and derivative markets serve different purposes. While spot markets serve primarily immediate asset transactions, derivative markets provide tools for managing price risk and hedging against future spot price fluctuations. This leads to differences in the timing of transactions (immediate/prompt vs. future delivery), pricing mechanisms (current market vs. future expectations), etc. It is therefore only logical that spot markets and derivatives markets as well as their market participants have their own specific regulatory framework. It can be anticipated that a broad-brush application of financial services legislation to energy spot markets participants would lead to unnecessary, duplicative and potentially harmful requirements.

Furthermore, such an extension is not in line with the simplification principle stated in the context of the Competitiveness Compass and Omnibus Communications. It is also a declared goal of the Action Plan on Affordable Energy (APAE) to remove barriers for participation in physical power markets. For instance, energy communities shall be strengthened to allow local communities, citizens and companies to produce, sell and consume their renewable energy; PPAs shall be offered to industrial consumers and companies; barriers for demand response and storage shall be removed; smaller entities shall be encouraged to contribute to grid flexibility by shifting their energy use to times of low demand, reducing costs and improving system stability; etc. We fear that extending organisational requirements foreseen under financial market regulation will result in additional obstacles for especially those parties that are addressed in the APAE.

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

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

Please explain your answer to question 73:

5000 character(s) maximum

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

In line with our answer to Question 72, whilst spot markets can take inspiration from the robust arrangements of MiFID on a case-by-case basis and to the extent this fits to the respective markets, a broad-brush application of financial services legislation would not be appropriate. A lack of tailored approach could lead to unnecessary, duplicative and potentially harmful requirements.

From our experience, these bespoke regulatory environments – also differentiating the nature of gas and power physical spot markets – are relevant and necessary to ensure an orderly functioning.

Nonetheless, this does not mean that there are no best practices with the financial regulatory framework to be shared with the spot markets. We believe minimum risk management requirements for power spot clearing and settlement would create a clear and stable regulatory framework for the safe and transparent operations of power spot markets. Minimum risk management requirements should avoid adverse incentives for competing CCPs undermining the protection of both market participants and end consumers (“race to the bottom”) and in order to ensure effective risk mitigation for market coupling transactions between different CCPs.

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

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

Please substantiate your answer to question 72:

5000 character(s) maximum

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

Among the factors of spot energy markets there, there are several elements which drive behavior and that have driven market behavior in 2022. This includes, for example, security of supply considerations as well as regulatory driven demand stemming from storage filling obligations. Immediate reactions to changes in weather forecasts, production availabilities, artificial demand driven by regulation could drive trading behaviors that are the core of functioning of gas and power physical markets.

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

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

- Yes
- No

- Don't know / no opinion / not applicable

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

5000 character(s) maximum

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

6.4. Enhanced supervisory cooperation in the energy area

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

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

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

Questions related to section 6.4

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

Question 76. Do you agree that the current situation leads to a complex supervisory scenario between various national and sometimes regional supervisors which may slow down reactions in times of crisis?

-

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

Please explain your answer to question 76:

5000 character(s) maximum

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

Given the natural interconnections between energy spot and financial markets, we believe enhanced cooperation and coordination between regulators will improve market transparency and supervision. Nonetheless, we do not see any evidence of how the current set up would have delayed any reaction in times of crisis. Speedy reaction time in case of crisis is key. We believe that it would not serve the interest of the EU a situation, for example, where multiple authorities would need to be consulted before taking any appropriate measures.

Question 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?

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

Please explain your answer to question 77:

5000 character(s) maximum

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

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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[Consultation document \(https://finance.ec.europa.eu/document/download/1f0a18f3-b3dd-4a0f-9ddd-4838645d3a86_en?filename=2025-commodity-derivatives-markets-consultation-document_en.pdf\)](https://finance.ec.europa.eu/document/download/1f0a18f3-b3dd-4a0f-9ddd-4838645d3a86_en?filename=2025-commodity-derivatives-markets-consultation-document_en.pdf)

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