Contribution ID: 004bc24d-9029-4d53-8ad2-39697c35e3c6
Date: 23/04/2025 17:37:47

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

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* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish

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

*First name

Octav

* Surname

Baciu

* Email (this won't be published)

oba@iogp.org

* Organisation name

255 character(s) maximum

IOGP Europe

* 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.

3954187491-70

* Country of origin

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

- ○ Afghanistan
- ○ Åland Islands
- ○ Albania
- ○ Algeria
- ○ American Samoa
- ○ Andorra
- ○
- ○ Djibouti
- ○ Dominica
- ○ Dominican Republic
- ○ Ecuador
- ○ Egypt
- ○ El Salvador
- ○
- ○ Libya
- ○ Liechtenstein
- ○ Lithuania
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- ○ Madagascar
- ○
- ○ Saint Martin
- ○ Saint Pierre and Miquelon
- ○ Saint Vincent and the Grenadines
- ○ Samoa
- ○ San Marino
- ○ São Tomé and Príncipe
- ○

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Armenia
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Bermuda
Bhutan
Bolivia
Bonaire Saint Eustatius and Saba
Bosnia and Herzegovina
Botswana
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Brazil

Equatorial Guinea
Eritrea
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Eswatini
Ethiopia
Falkland Islands
Faroe Islands
Fiji
Finland
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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
- 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
- Kiribati
- Kosovo
- Kuwait
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam

- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

*Field of activity or sector (if applicable)

- [ ] Accounting
- [ ] Agricultural cooperative/agricultural commodity production
- [ ] Auditing
- [ ] Banking
- [ ] Benchmark/index administration
- [ ] Credit rating agencies
- [x] 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

*Is your entity active in spot/physical markets?

- Yes
- No
- 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**
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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 overt-the-counter (OTC) contracts to NCAs on a daily basis (MiFID Article 58(2)). All such position reporting requirements are further discussed under section 3.

MiFIR, in turn, provides that:

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

1.2 Commodity derivatives reporting and transparency under REMIT

Energy commodity spot and derivatives trading is also subject, under the current energy rulebook, to two main pieces of legislation relating to transparency and reporting: the 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 RRMs would be an alternative option. ESMA, ACER, NRAs, NCAs and, where relevant, the European Commission, would have equal access to such data. Access to such consolidated data by trading venues in the context of their position management controls mandate could also be explored – see section 2.3.

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

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

Questions related to section 1

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

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

Why do you believe they should not be streamlined and/or more harmonised?

5000 character(s) maximum

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

- Although we acknowledge the potential need for improved cross-surveillance between energy and financial regulators, we do not support the proposal for harmonized EMIR, REMIT, MiFIR and MiFID due to the following reasons:
• Different regulatory focus: While EMIR, REMIT, MiFIR, and MiFID may deal with similar transactions or orders, each regulation is tailored to specific sectors – energy versus financial markets – and their distinct needs. Harmonization could undermine the effectiveness of sector-specific rules, as we believe that no single reporting standard is inherently superior.
• Increased costs and administrative burden: Given that market participants have recently incurred significant costs and allocated resources to comply with the EMIR refit and will face similar expenses for changes in REMIT II data reporting, we stress that any harmonization would inevitably impose additional administrative burdens and substantial costs on market participants. This seems unnecessary, especially when regulatory data requirements are still evolving.We estimate that the costs for each individual market participant would range from €1 million to €5 million, depending on the Member State. Considering that market participants already report extensive data on trades, orders, positions, and exposures, it would be more efficient and cost-effective to act at the Authorities' level rather than at the 30,000 market participant level, which could cost between €30 billion and €150 billion, depending on the Member State.
- Alternative solution: A more practical approach to enhance regulatory oversight without imposing further burdens on market participants would be to introduce an automatic data-sharing process between the existing databases of Authorities. This approach, estimated to cost between €2 million and €10 million depending on the Member State, could be more cost-effective and quicker than creating a single harmonized data platform at the Authorities' level, which is estimated to cost between €10 million and €50 million depending on the Member States.

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 are not in favor of harmonization and believe that the optimal solution is an automatic data-sharing process between existing Authorities' databases, we emphasize that this approach would avoid adding further burdens on market participants. It would also achieve the goal of enhancing regulatory oversight more quickly—given that market participants already report extensive data on trades, orders, positions, and exposures—and with minimal cost investment. Additionally, we would like to highlight that the current transmission protocols are already well-established. Therefore, making them uniform is not a one-time cost-saving measure, but rather an ongoing expense that may not lead to long-term savings.

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 your answer to question 3:

5000 character(s) maximum

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

- Given the goal of reducing the burden on market participants and the fact that they already have well-established communication channels with Trade Repositories and RRMs, we do not believe that the proposal for a centralized data collection mechanism would effectively achieve this objective. See instead our answer to Question 2 regarding a data-sharing process between existing Authorities' databases.
- Shifting to a single reporting framework presents major challenges; improving data-sharing between regulatory authorities is a more practical and less disruptive alternative.
- Any joint database or shared access solution must not require changes to market participants’ existing IT systems or internal procedures. Robust cybersecurity measures are essential to safeguard confidential and commercially sensitive information.

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?

- (x) 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.

While centralized data collection may not reduce the existing reporting burden for market participants—who already provide extensive data on trades, orders, positions, and exposures — we believe it could still offer long-term benefits by enhancing supervisory capabilities for Authorities. However, this approach is neither the most cost-efficient (estimated at €10–50 million, depending on the Member State) nor the fastest option to implement when compared to establishing automated data-sharing processes between existing Authorities' databases (estimated costing €2–10 million). See also our answer to Question 2. In fact, integrating these existing databases under current Memoranda of Understanding (MoUs)—while accommodating the new reporting formats introduced by REMIT II — would give Authorities a comprehensive overview and improve market transparency. This would also avoid the lengthy implementation timelines and added burden of revising well-established reporting channels used by market participants.

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
- [x] 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.

If a new entity is created, its role should be limited to consolidate data from existing systems without adding new data collection requirements. It should be resourced to integrate with current frameworks and ensure

data is complete, harmonized, and accessible to regulators, improving accuracy and compliance without disrupting existing processes.

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?

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

Please describe this better alternative:

5000 character(s) maximum

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

- To enable Authorities to gain a comprehensive overview of both commodity derivatives and spot energy markets—while also reducing the reporting burden on market participants who already provide all necessary data on trades, orders, positions, and exposures—we recommend integrating existing Authorities’ databases through mutual direct access MoU. Establishing automated data-sharing mechanisms, using the reporting formats each Authority is already familiar with (and taking into account the new REMIT II reporting formats), would allow for faster implementation. This approach would also avoid additional strain on the long-standing reporting processes used by market participants, who have already undergone significant changes due to EMIR and REMIT revisions.
- At the same time, with minimal investment and without compromising the tailored regulatory approaches developed over the past decades, integrating a limited set of key data for cross-authority analysis could significantly enhance market transparency.

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?

- (x) 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.

- If the primary goal is to enhance market transparency and improve response times during crises by enabling financial and energy regulators to access their respective datasets, we believe a more cost-effective and faster solution exists than the one currently proposed. Since market participants already report comprehensive data on trades, orders, positions, and exposures—and given that key reference data between commodity derivatives and spot energy transactions (such as prices, quantities, and deliveries) are largely standardized—integrating existing Authorities’ databases appears more efficient than developing a

new central platform. Even discrepancies in identifiers (e.g., ACER vs LEI codes) could be addressed by incorporating them as static reference data.
- With limited investment, existing Authorities' databases could be interconnected, taking also into account the updated reporting formats introduced by REMIT II. Creating automatic data-sharing flows between current databases would minimize disruption to the well-established reporting processes used by over 30,000 market participants. This approach could build on existing Memoranda of Understanding (MoUs) between regulators, supported at the legislative level through provisions for mutual direct access, such as Article 10 of the REMIT Recast and Article 76a of EMIR.

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

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

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

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

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

We do not believe there is a need to increase pre- and/or post-trade transparency requirements for MTFs and OTFs, particularly when these platforms are operated by entities that are also REMIT organised market places "OMPs". In our view, the current level of publication by these platforms already provides an adequate balance between ensuring market transparency and protecting sensitive information that could potentially reveal the activities of individual market participants, especially in less liquid platforms. It is also not clear what purpose this would serve for transactions that are not sufficiently standardised and question what purpose this data would serve and how such data would be used.

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

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 (selected)
- Don’t know / no opinion / not applicable

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

5000 character(s) maximum

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

OTC commodity derivatives executed outside of a trading venue should not be subject to systematic reporting under MiFIR, as this would conflict with the fundamental principle of avoiding double reporting. In fact, OTC transactions are already reported under REMIT and/or EMIR. Any required data should be extracted from existing databases at Authorities level, leveraging on mutual direct access MoU.

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

- Yes (selected)
- 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.

If ESMA identifies the need for access to additional transaction data from trading venues and market participants—as reported to NCAs—such access could be facilitated through appropriate data-sharing mechanisms between existing Authorities' databases. In any case, if a reassessment of the respective roles of ESMA and NCAs is considered during the revision of financial regulations, it is crucial to ensure that information flows between national and European financial regulators are properly coordinated. This would help avoid double reporting, reduce the administrative burden on market participants, and support effective financial market supervision.

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.

In our view, the exemptions provided under Articles 2(1)(d) and 2(1)(j) serve distinct but equally important purposes for Commodity Market Participants (CMPs) and other industries. CMPs need access to interest rate and currency markets for treasury functions, as well as to commodity derivatives markets to support their commercial activities. These exemptions enable CMPs to manage risks and engage in trading for purposes beyond hedging —such as price discovery, client support in risk management, and proprietary trading— without requiring MiFID II authorisation. This approach appropriately reflects the specific characteristics of commodity markets and recognizes the essential role played by market makers. The restrictions in Article 2(1)(d) on market making activities and conducting non-hedging activities on a trading venue would mean that using this exemption rather than the current commodity derivative exemption in Article 2(1)(j) would amount to a significant reduction in the type of activity an EU market participant could conduct without needing to become an authorised investment firm. The costs associated with this would likely lead to several EU commodity firms ceasing market making or on-venue trading activity, with a reduction in liquidity and an increase in hedging costs being two of the most likely results, driving up costs for consumers. Please also see our answer to Question 13.

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?

- (x) 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 believe this exemption is essential and fit for-purpose and therefore should be kept. It is specifically designed to allow Commodity Market Participants (CMPs) to offer investment services related to commodity derivatives and emission allowances to their customers or suppliers—not to the general public. These counterparties, typically industries or large energy consumers, are directly exposed to commodity price fluctuations due to the nature of their operations. Given their significant exposure to volatile commodity prices, they require two essential elements: (i) long-term supply security for energy or environmental allowances, and (ii) price certainty for effective planning and risk management.
- These needs are best addressed through a combination of physical delivery and cash-settled hedging solutions provided by CMPs to their commercial partners. The exemption enables CMPs to deliver integrated services that support price risk management and promote long-term price stability. Leveraging their deep market expertise, CMPs play a key role in helping their customers and suppliers effectively hedge their exposures.
- In summary, this exemption is essential for allowing CMPs (oil and gas companies) to efficiently offer hedging solutions that help manage price volatility, ensure long-term supply security, and support energy affordability, and protect the competitiveness of industries by stabilizing costs for those directly affected by commodity price fluctuations.

Question 14. Do you currently benefit from the AAE?

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

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

5000 character(s) maximum

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

We believe the current MiFID II regulatory framework provides a flexible approach for Commodity Market Participants (CMPs). It allows non-financial entities—whose core business is not the provision of investment services—to demonstrate that their activities in financial instruments are ancillary and meet the conditions for exemption. The available alternative tests offer an efficient and objective means of assessing whether trading activities are secondary to the main business, providing reasonable solutions for different kind of business models.

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

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

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.

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.

We do not have a position on which specific method is most effective or efficient for enabling supervisors to monitor compliance with the Ancillary Activity Exemption (AAE) requirements. However, if notification should be reintroduced, we believe it should follow a standardized format across all National Competent Authorities (NCAs), ensuring that regulators receive consistent and meaningful information in a uniform manner to minimize the burden on market participants.

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)?

- (x) 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 believe the current Ancillary Activity Exemption (AAE) criteria effectively demonstrate that Commodity Market Participants' (CMPs) activities in financial instruments are ancillary to their main business. The tests are well-suited to their purpose, ensuring that MiFID investment firm licenses apply only to entities whose primary business involves providing investment services to third parties and/or conducting investment activities on a professional basis.
- CMPs do not engage with the general public; their market activities are focused on buying and selling wholesale commodities to meet their clients/consumers’ supply needs. The purpose of the AAE test is to assess whether a CMPs trading in commodity derivatives, emission allowances, and related derivatives is ancillary to the main business of their group, and therefore falls outside the scope of MiFID investment firm authorization.

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

Please select as many answers as you like

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

Please explain your answer to question 19:

5000 character(s) maximum

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

We do not believe that the current scope of the AAE raises issues in any of the above areas.

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?	○	○	○
trading activity in physically-settled derivatives?	○	○	○

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

- (•) Yes
- ( )

No

Don’t know / no opinion / not applicable

Please explain your answer to question 21:

5000 character(s) maximum

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

Yes. We believe the AAE is fit for purpose and should remain unchanged.

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 (selected)

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.

No. We believe the AAE is fit for purpose and should remain unchanged.

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.

No. We believe the AAE is fit for purpose and should remain unchanged.

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.

No. We believe the AAE is fit for purpose and should remain unchanged.

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	○	◉	○
abolishing the capital employed test	○	◉	○
through other types of amendments	○	○	○

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

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

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

5000 character(s) maximum

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

We consider the trading test to be fit-for-purpose and appropriately calibrated, as it compares a CMP's non-hedging trading activities against the total trading activities of the group to which it belongs to as a proxy for the main business of that group.

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

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

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

5000 character(s) maximum

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

We believe the capital employed test is fit-for-purpose, as it compares a CMP’s non-hedging trading activities to the total capital employed by the group to which it belongs as a proxy for the main business of that group.

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.

As several IOGP members are exempted entities, we are not in a position to quantify the costs or impacts associated with being classified as an investment firm.

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.

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

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.

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).

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

3.2.2 Reporting from market participants and trading venues to NCAs

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

3.3 Exposure reporting under REMIT

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

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

Questions related to section 3

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

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

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

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

Please explain your answer to question 31:

5000 character(s) maximum

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

- MiFID Article 58(3) requires that members or participants of regulated markets and MTFs, as well as clients of OTFs, report their own position details—relating to contracts traded on those venues—to the investment firm or market operator at least daily.
- We do not believe any changes to this provision are necessary. However, allowing clearing members to handle the reporting could help reduce the burden on individual market participants and improve the accuracy and completeness of the data. This approach mirrors the U.S. Ownership and Control Report (OCR) framework, where clearing members are responsible for reporting. Implementing a similar model under MiFID would streamline the reporting process, making it more efficient and reliable for all parties involved. However, transferring responsibility to clearing members is only practical for cleared contracts, which isn't always applicable to MTFs and OTFs.
- If any changes are to be introduced, the U.S. Ownership and Control Reporting (OCR) framework—where clearing members are responsible for position reporting—could serve as a useful reference. This model is designed to ease the reporting burden on individual market participants while enhancing data accuracy and completeness. Under the OCR system, clearing members submit detailed reports via a central portal, including information on traders, accounts, and positions.
- Adopting a similar approach under MiFID would streamline the reporting process, making it more efficient and reliable for all stakeholders. It would also bring the EU's framework closer in line with the U.S. model, improving the overall effectiveness of position limit reporting.

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 derivates markets as regards their positions in:

	Yes	No	Don't know - No opinion - Not applicable
C6-carve-out contracts	(•)	( )	( )
the underlying spot market	(•)	( )	( )

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.

We would not object to data sharing between Authorities concerning market participants active in derivatives markets—specifically regarding their positions in C6-carve-out contracts and the related spot market—provided it is achieved through integration of existing Authorities' databases and does not impose any additional reporting obligations on market participants.

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.

In our view, given that market participants already report extensively on data related to trades, orders, positions, and exposures, the most effective way to further enhance market transparency—without imposing additional burdens—is to integrate existing databases at the level of competent Authorities, leveraging on mutual direct access MoU. This approach would enable faster implementation, require significantly lower investment compared to changes involving all 30,000 market participants (estimated at €30–150 billion, depending on the Member State), and avoid disrupting established reporting processes. It would also prevent further strain on market participants who have already adapted to substantial changes under recent EMIR and REMIT reporting updates.

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.

In general, we support effective regulatory oversight through enhanced cooperation among Authorities. Access to relevant information—whether by ESMA, ACER, NCAs, or NRAs—should be facilitated without imposing any additional or burdensome reporting requirements on market participants.

Please specify what your preferred option would be:

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

- don’t know / no opinion / not applicable

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

5000 character(s) maximum

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

- In our view, since market participants already report comprehensive data on trades, orders, positions, and exposures, the most effective way to further improve market transparency—without adding new burdens—is to integrate existing databases at the level of regulatory Authorities, leveraging on mutual direct access MoU. This approach would enable faster implementation, require minimal investment compared to a market-wide overhaul affecting approximately 30,000 participants (estimated at €30–150 billion depending on the Member State), and avoid placing additional strain on long-established reporting channels. It would also spare market participants from further burdens, particularly in light of the extensive updates already implemented under EMIR and REMIT in recent years.

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
- (selected) 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.

We propose that the obligation to report positions in economically equivalent OTC contracts should not be extended to all market participants. We consider the current scope of the aforementioned obligation to be adequate.

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

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:

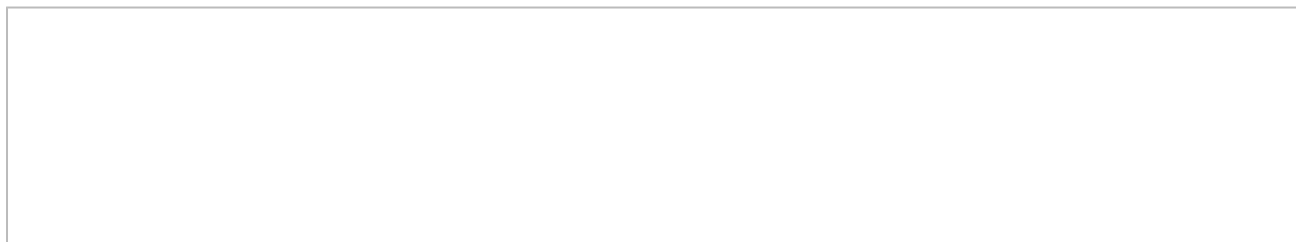
5000 character(s) maximum

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.



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.

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 are generally effective for commercial (non-financial) entities aiming to hedge their risks. However, in the EU, the process of obtaining a hedging exemption from National Competent Authorities (NCAs) differs from the approach used by exchanges in other jurisdictions. This process can at times be overly time-consuming, making it difficult to respond swiftly to risk management needs. Allowing exchanges to grant hedging exemptions— as is the practice in jurisdictions such as the US and the UK — could help address this issue.

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.

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.

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?

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

Please explain your answer to question 42:

5000 character(s) maximum

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

The existing criterion for identifying "significant or critical" contracts appears appropriate, as it aligns with the approach taken in other major jurisdictions, such as the United States. In the US, the Commodity Futures Trading Commission (CFTC) imposes position limits on a specific set of contracts, which is similar to the EU's practice, although the methodology and timeframes used to select those contracts differ.

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

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?

- (x) 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?

- (x) 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.

- Given the complexity of monitoring positions across multiple trading venues, it is difficult for individual exchanges to effectively enforce position limits on their own. In the United States, the Commodity Futures Trading Commission (CFTC) plays a central role in regulating and overseeing position limits to prevent market manipulation. This centralized model promotes consistency and helps close potential regulatory gaps.
- Similarly, in the European context, the European Securities and Markets Authority (ESMA) could be well-positioned to take on a comparable role. With its mandate to promote orderly markets and safeguard financial stability, ESMA could establish a harmonized framework for position limits across the EU. Centralizing this responsibility at the European level would help ensure consistent supervision, ease the burden on National Competent Authorities (NCAs), and improve enforcement across all trading venues within the Union.

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?

- (x)

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.

Yes, position limits in the EU should encompass physically settled futures contracts. These contracts are particularly significant and prone to manipulation due to their requirement for actual delivery of the underlying asset. This physical delivery can enable market participants to affect prices and engage in manipulative behaviors. By concentrating on physically settled contracts, regulators can more effectively oversee and regulate activities that directly influence the supply and demand of the underlying asset, thereby ensuring market integrity and stability.

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?

- [x] 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.

Overall, the methodology and the levels of position limits set by National Competent Authorities (NCAs) for relevant contracts are deemed appropriate. However, there is scope for enhancing the underlying processes. Aligning the approach more closely with the methodology applied in the United States could offer significant benefits, by promoting greater consistency and effectiveness in the application of position limits and ensuring comprehensive monitoring and control of all relevant contracts.

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

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?

- [x] 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.

The existing hedging exemption from position limits under MiFID is well-suited to its purpose. It plays a vital role in enabling CMPs to manage their risk exposures efficiently and effectively.

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?

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

Please explain your answer to question 50:

5000 character(s) maximum

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

We believe that National Competent Authorities (NCAs) are overseeing position limits and the related hedging exemptions.

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?

- (selected) 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.

- Experience from other jurisdictions, such as the US and the UK, suggests that managing position limits at the exchange level—combined with the ability to grant hedge exemptions—can be an effective alternative. Trading venues have in-depth knowledge of market participants and maintain close oversight of their activities, allowing them to respond quickly and adaptively with targeted measures.

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.

We recommend increased flexibility within the EU. In contrast, the US, through the CFTC and exchanges, offers various exemptions beyond hedging, including spread transactions, financial distress, and disaggregation of owned entities—options not currently available in the EU. The EU’s stringent group-level aggregation rules fail to account for operational realities, particularly when parent companies have limited control over subsidiaries’ positions.

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 contacts), instead of competent authorities?	(●)	( )	( )

b) should be in charge of setting position limits for non-spot month versions of contracts subject to position limits, thereby applying regulator-set position limits only to spot month contracts, as seen in other jurisdictions?	◉	○	○
c) should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?	◉	○	○

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

5000 character(s) maximum

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

Exchanges represent a viable alternative for setting position limits, as they have in-depth expertise and a strong understanding of the markets in which they operate. With direct access to real-time data and close proximity to market participants, they are in the right position to establish and manage position limits which effectively mitigate risks and ensure stability on the market.

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.

Exchanges represent a viable alternative for setting position limits, as they have in-depth expertise and a strong understanding of the markets in which they operate. With direct access to real-time data and close proximity to market participants, they are in the right position to establish and manage position limits which effectively mitigate risks and ensure stability on the market.

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.

Exchanges represent a viable alternative for setting position limits, as they have in-depth expertise and a strong understanding of the markets in which they operate. With direct access to real-time data and close proximity to market participants, they are in the right position to establish and manage position limits which effectively mitigate risks and ensure stability on the market.

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
- **(selected)** 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.

- No, we firmly believe that the position limits regime should not be applied to "C6 carveout" products, nor more generally implemented for spot commodity products falling under REMIT. These are for example transactions with physical delivery, which serve to secure actual energy supplies and should not be subject to any limits.
- The consequential re-classifications of the C.6 contract products could trigger burdensome and costly requirements for non-financial firms under financial regulation, such as licensing, capital, and margining /collateralization requirements. Indeed, such a reclassification is likely to force a number of firms to curtail or stop their EU trading activity, or, where possible, to trade directly on bilateral OTC markets or via other international markets to avoid these requirements. The consequential fall in liquidity in physical and financial markets would significantly increase the costs of risk management for the real economy and severely hamper the ability to hedge the commercial risks efficiently. The ultimate net result would be higher end-consumer gas and power prices.

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

- Yes
- **(selected)** 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.

We do not believe that position limit regime should be implemented for wholesale energy products falling under REMIT, therefore we don’t see the need of the proposed cooperation.

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.

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.

We suggest leaving this to the discretion of the trading platforms.

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.

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.

We don't believe trading venues should be permanently required to implement static circuit breakers. However, if required, these should be defined in the less impacting way as possible.

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.

As short as possible, too long suspensions for example make it impossible to react to price volatility on markets that benchmark to leading markets.

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.

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?

- (x) 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.

Too slow adjustment of prices after suspension may result in financial losses in the event of increased volatility, especially when there are problems with determining the reference price on the local market (a rare case, but possible).

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.

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

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

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
- (selected) No
- Don’t know / no opinion / not applicable

Please explain your answer to question 64:

5000 character(s) maximum

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

- We strongly oppose an obligation on firms trading European products to be located in the EU.
- Non-EU market participants, particularly in gas and LNG markets, are critical to the EU’s security of supply.

Their exclusion would reduce the overall availability of physical energy sources, weaken competitive pricing, and jeopardize the reliability of energy flows into the EU. Additionally, many non-EU firms are deeply integrated into regional European power markets. In the Nordic region, for example, third-country players contribute essential flexibility—especially important as the share of renewables grows. Forcing these firms to establish staffed and equipped EU offices would place them in an unmanageable situation, ultimately threatening the functionality of interlinked markets and the stability of cross-border supply chains. The same is true for firms in the UK and Switzerland.
- Non-EU firms are active not only in physical delivery but also in derivatives markets, where they play a key role in facilitating risk management. Excluding them will diminish market liquidity, resulting in higher bid-offer spreads, higher transaction costs, and less reliable price discovery. Most critically, it makes markets more prone to sudden price swings, as they lose the deep shock-absorbing capacity that comes with broad participation. In stress scenarios, concentrating trading activity within the EU could amplify systemic risk, as the ability to diversify or offset shocks across markets would be curtailed. Thus, access to a broad range of market participants is essential for EU firms to hedge their energy price exposures effectively.

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.

- See answer to question 64. Imposing an obligation to trade in the EU would reduce the number of market participants, thereby diminishing market liquidity. As liquidity dries up, bid-offer spreads widen, transaction costs increase, and fair pricing becomes more difficult to achieve. This reduced market depth would also make energy markets more vulnerable to abrupt price movements and shocks, weakening the overall financial stability of the system. In stress scenarios, concentrating all market risk within the EU would amplify systemic vulnerabilities rather than contain them.
- The EU energy system does not operate in isolation. Supply chains, trading activity, and risk mitigation mechanisms are global by nature. Rather than restricting participation, policy should focus on promoting competition, deepening market liquidity, and ensuring access for a broad range of market participants. This is the only way to secure a resilient, affordable, and competitive energy system for the EU.

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

5000 character(s) maximum

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

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.

- IOGP Europe believes that free and transparent price formation for competing energies based on demand and supply fundamentals best ensures cost-efficient, secure supplies to consumers.
- Capping wholesale gas prices by public authorities' intervention creates a serious risk to market-based

price formation and might limit the functioning of the EU gas market and allocation of gas to where it is most needed. Indeed, assessments of the stability of fiscal frameworks are a key element when investment decisions are taken.
- By way of example, gas price limitations can result in LNG cargoes not being attracted to Europe anymore and can also impact the carefully calibrated risk and reward balances under existing (long-term) contracts concluded between producers, suppliers, transportation and storage operators, and consumers along the value chain with complex legal and commercial consequences.
- These contractual chains are the backbone of secure supplies to Europe's consumers. In the longer term, price caps disincentivize investments.

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.

- See answer to question 66. Price divergences between EU prices and international prices are rooted in fundamental characteristics of the EU versus international market. The EU does not possess significant fossil fuels reserves, unlike some of its global competitors. In case of a shock of supply, high prices are essential to attract physical commodities to EU and support securities of supply.
- Cost efficiency and secure supplies to consumers are best served by: 1) an efficiently functioning, interconnected and liquid energy market with free and transparent price formation for competing energies from diverse domestic and global supplies, 2) demand-side solutions, 3) a stable legislative framework.

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

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

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

5000 character(s) maximum

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

- MCM or other dynamic caps negatively impacts both the attractiveness of EU commodity derivatives markets and their structural stability, fundamentally compromising them.
- Regarding the attractiveness of EU commodity derivatives markets: The MCM imposes a rigid and unilateral price cap on EU exchanges, creating a two-tiered market structure. While the cap applies to exchanges within the EU, it does not apply to OTC markets or trading venues outside the Union. Hence, closer to the cap level, trading activity is expected to move from the EU exchanges to OTC markets and trading venues outside the EU, such as ICE Futures Europe and CME. This relocation of activity 1) reduces the competitive edge of EU trading venues; 2) complicates access to reliable benchmark pricing within the EU and 3) weakens the EU's position as a global hub for commodity risk management. Such developments diminish the EU's attractiveness to professional market participants — including commercial firms, liquidity providers, and non-EU actors — who increasingly see EU markets as unpredictable and vulnerable to political interference. The perception of regulatory arbitrariness introduced by the MCM damages confidence and deters long-term market engagement.
- Regarding the stability of EU commodity derivatives markets, the ESMA assessment of the MCM clearly outlines that the MCM 1) distorts price formation in periods of stress; 2) reduces liquidity, especially near the cap levels; 3) increases basis risk due to divergence between capped and uncapped markets, and 4) creates margining and collateral uncertainty for Central Clearing Counterparties (CCPs). These factors weaken the resilience of the EU's energy trading ecosystem. As closer to the cap level liquidity thins and price signals deteriorate, volatility can become more abrupt and less absorbable, threatening both orderly trading and financial stability. If confidence in EU markets erodes further, central clearing volumes may fall, reducing the risk-mitigating function of clearinghouses and increasing counterparty exposures across the system.
- In short, the MCM injects systemic uncertainty into core elements of commodity derivatives markets — pricing, hedging, clearing, and risk management. It replaces market-based discipline with regulatory volatility, harming both short-term functioning and long-term investment confidence.

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

5000 character(s) maximum

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

- As already stated answering to question 69, MCM negatively impacts the attractiveness of EU commodity derivatives markets and their structural stability.
- Once closer to the cap level, trading activity is expected to move from the EU exchanges to OTC markets and trading venues outside the EU. This relocation of activity 1) reduces the competitive edge of EU trading venues; 2) complicates access to reliable benchmark pricing within the EU and 3) weakens the EU's position as a global hub for commodity risk management. Such developments diminish the EU's attractiveness to professional market participants — including commercial firms, liquidity providers, and non-EU actors — who increasingly see EU markets as unpredictable and vulnerable to political interference. The perception of regulatory arbitrariness introduced by the MCM damages confidence and deters long-term market engagement.
- Regarding the stability of EU commodity derivatives markets, the ESMA assessment of the MCM clearly outlines that the MCM 1) distorts price formation in periods of stress; 2) reduces liquidity, especially near the cap levels; 3) increases basis risk due to divergence between capped and uncapped markets, and 4) creates margining and collateral uncertainty for Central Clearing Counterparties (CCPs). These factors weaken the resilience of the EU's energy trading ecosystem. As closer to the cap level liquidity thins and

price signals deteriorate, volatility can become more abrupt and less absorbable, threatening both orderly trading and financial stability. If confidence in EU markets erodes further, central clearing volumes may fall, reducing the risk-mitigating function of clearinghouses and increasing counterparty exposures across the system.

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

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.

Although not explicitly outlined in REMIT organised market place's (OMPs') rulebooks, market participants operating in wholesale energy physical markets are already subject to organizational standards regarding competence, experience, and reputation, enforced through a layered physical energy licensing framework. While the licensing regimes vary across Member States, they serve as existing safeguards, and we therefore see no need to introduce additional requirements for these participants. Furthermore, it's important to note that many of MiFID's organizational provisions are designed to protect clients of investment firms. These protections are less relevant in spot energy markets, where participants are predominantly energy companies engaging in professional, business-to-business trading. MiFID itself applies reduced obligations to professional clients and even fewer to eligible counterparties.

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

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.

Spot energy markets serve a fundamental purpose: maintaining system balance. Rapid responses to shifts in weather forecasts, production availability, and consumption demands—often required even over weekends—can lead to legitimate trading behaviors that may appear unusual from a purely financial perspective. However, these actions are essential to the proper functioning of physical gas and power markets. Given their necessity, we do not believe there is any justification for restricting such practices.

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?

- (selected) 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.

From the perspective of the REMIT Regulation, benchmark manipulation reinforces the existing concept of information manipulation already established under REMIT I. In our view, any manipulative behavior involving the dissemination of false information is already addressed by the current framework. In fact, we consider the current definitions potentially too broad, as it is classified as manipulation even the dissemination of information that could be misleading, extending responsibility not only to the sender but also implicitly to the receiver, who is expected to have the professional expertise to interpret such information correctly.

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

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

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

More on this consultation (https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-review-functioning-commodity-derivatives-markets-and-certain-aspects-relating_en)

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

More on investment services and regulated markets (https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/securities-markets/investment-services-and-regulated-markets_en)

Specific privacy statement (https://finance.ec.europa.eu/document/download/80808b0f-93bd-4a5a-bfb8-3fcf47226e15_en?filename=2025-commodity-derivatives-markets-specific-privacy-statement_en.pdf)

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