– Consultation Response –

European Commission's targeted consultation on commodity derivatives markets

Brussels, 23 April 2025 |Europex welcomes the opportunity to respond to the European Commission's consultation on review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets

Questions related to section 1

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?

No.

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

While considering the differences existing between financial instruments and spot energy products we reply "no", we partially agree with the principle of streamlining reporting. Futures exchanges and clearing houses deliver similar data to different authorities because of overlapping financial and energy reporting requirements, causing inefficiencies in the reporting of orders, transactions and positions and imposing a disproportionate burden on the industry. Inefficiencies in the arrangements for reporting of orders, transactions and positions in energy markets arise from the overlapping and duplicative EU regulatory frameworks for financial and energy regulation. Same applies for conflicting rules between REMIT and MAR on insider trading and market abuse.

Therefore, we support in principle the idea of streamlining supervisory reporting, without jeopardising efficient regulatory monitoring on energy derivatives markets so that supervisory authorities can obtain a complete view of markets and facilitate data-sharing among each other.

However, we call for a stepwise approach based on improving data sharing between authorities, followed by a comprehensive data analysis and strategy, based on an impact assessment and a cost benefit analysis. We consider this a necessary condition before introducing substantial changes in the reporting framework.

In addition, we encourage policymakers to clearly distinguish between EU rules for financial instruments and for spot energy products to reduce such overlap and streamline compliance for futures exchanges and clearing houses listing/clearing financial and spot energy products.

REMIT reporting should not be transferred to MiFID/R or EMIR set-up (or vice versa), nor should a new unified system be introduced, as this would increase complexity and costs compared to potential gains.

A comprehensive assessment should consider the following caveats:

- Identification of the types of data collected, from which institutions (ESMA, ACER, NRAs, NCAs, the EC) and the feasibility of sharing this data. Only if the analysis reveals that certain essential data for effective monitoring is not collected, alternative methods for both covering these gaps and streamlining could be then considered. The scope which the reported data serves and how this can best be optimised should also be considered, with the aim of improving reporting efficiency, data accessibility and regulatory oversight.
- Recognise differences between spot and derivatives markets, and the feasibility of tackling multiple legislative acts in parallel. While we agree with the need for authorities to obtain a complete market view, the specific regulatory nature of both frameworks should be maintained, incl. oversight by the relevant authorities.
- Any change of the current reporting framework should be based on existing reporting mechanisms and pursue enhancement of efficiencies (i.e., delete double reporting).
- Removing the requirement to report trades under EMIR, as it has been superseded by MiFIR transaction reporting requirements. The daily reporting of exposures under EMIR should continue as this includes relevant data regarding systemic risk, and the objective of EMIR. The widespread daily reporting of MiFIR order data should be standardised and RTS 22 (transaction reporting) and RTS 24 (order retention and now reporting) should be reviewed to remove duplication. These changes would reduce the reporting burden and ensure that data availability for EU supervisors is not compromised.
- Do not neglect the significant implementation costs (both one-off and recurring) that any amendment to reporting requirements bring. REMIT, MiFIR and EMIR have just been reviewed in 2024 and the subsequent implementation is ongoing. Before considering new reforms, there should be enough time for the new changes to first be fully put in place. Only in the medium-to-long-term, in case the updated reporting framework, once fully operational, was deemed insufficient, a reporting framework overhaul could be considered.

Finally, beyond reporting, we caution against other overlapping measures, leading to uncertainty about the authorities responsible for the oversight. A recent example of such duplication is the REMIT market manipulation and insider trading prohibitions being extended to financial instruments, which already fall under MAR.

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.

We believe a more pragmatic approach would be to focus on enhancing data-sharing between authorities as a primary action. Since all relevant (energy) data is already reported

today, the most logical step is to set up a data strategy to explore how this existing data can be collected and used most efficiently.

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?**

No.

Please explain your answer to question 3:

Rather than increasing the amount of data fields in each regulatory reporting framework, we believe that market transparency and supervision for energy spot and financial markets can be enhanced in a first step via direct cooperation between energy and financial regulators and the establishment of data exchange protocols between them. Therefore, we refer to our response to Question 1 in which we advocate for a stepwise approach, in which data sharing amongst authorities and a data strategy should be pursued as primary objectives in order to obtain a more comprehensive view of the market.

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

No.

Please explain your answer to question 4:

Rather than restructuring the entire framework, priority should be given to data-sharing among authorities. EMIR and REMIT have included provisions establishing communication channels between financial and energy market regulators at EU and national levels. To ensure these arrangements are effectively utilised, data sharing among authorities could support this objective. The creation of a centralised mechanism would be complex including significant implementation costs and possible organisational issues. Therefore, it should be assessed to what extent more effective supervision would require such a centralised mechanism.

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

5) **In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated?** *Please select as many answers as you like: by trade repositories; by RRM; by a new type of entity in charge of consolidating data collected by trade repositories and RRMs; some other entity.*

Some other entity.

Please explain your answer to question 5:

As previously explained, we do not support a centralised reporting mechanism.

Practically, if a centralised data collection mechanism was pursued, it would be most efficient to use existing infrastructure and leverage technical interfaces and the know-how and expertise of existing entities. This should go hand in hand with minimising disruption to reporting processes, and in any case avoid duplicating of reporting obligations. Ideally, the collecting body should have the facility to process both EMIR and MiFID/R data.

More concretely, an IT solution could foresee that data continue to be collected in their existing format, but with a new interface, capable of integrating a diverse array of data sources without the need of data migration and producing reports and visualizations at the desired output/format. Inspiration may be drawn by other regulatory frameworks, for instance, in the case of civil or commercial matters, the European Commission has recently introduced a decentralised IT system for the purposes of digital exchange of case-related data in the context of Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents (service of documents).

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

Yes.

Please describe this better alternative:

A better alternative to a central data collection mechanism could be found at energy and financial authorities' level via enhanced coordination, as mentioned in REMIT II. Harmonisation and data sharing between energy and financial authorities should be already feasible in the short-term and without significant costs by providing access to all relevant databases.

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

Yes.

Please explain your answer to question 7:

Europex fully supports enhancing the cooperation between energy and financial authorities, i.e., one of the main objectives of the revised REMIT. Allowing regulators to have a more holistic view of financial and physical energy markets when necessary should be a first step. As addressed in our answers under Questions 1 and 4, this is ideally facilitated in a structured manner in order to increase efficiency and avoid fragmentation. To this end, establishing a

systematic access to the authorities' databases could be an appropriate solution to ensure efficient sharing of relevant information without posing significant administrative costs.

However, due note should be taken of the need-to-know principle and the necessary resources for the interpretation of data which may not stem from the regulations enforced by the specific regulatory authority.

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.

No.

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

We would like to remark that the scope of the consolidated tape (CT) for derivatives only covers OTC contracts. Therefore, the applicability of transparency requirements on commodity derivatives contracts traded on MTFs and OTFs will have no impact on the eligibility of those trades to be reported in the CT, which will remain out of scope.

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)?

No.

Please explain your answer to question 9:

Establishing a consolidated tape for pre- and post-trade transparency data would not enhance the transparency and reporting framework of commodity derivatives markets whereas it would impose a significant administrative burden for trading venues, hence higher level of costs for market participants.

Hence, exchange-traded energy derivatives (ETDs) should remain excluded from the scope of consolidated tape as ETDs are not a fragmented market and feature completely transparent pre- and post-trade, unlike OTC derivatives. This means pre- and post-trade data related to a specific contract is already consolidated in the trading venue that originated the contract.

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?

No opinion.

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

Yes.

If yes, please explain your answer to question 11:

We believe that ESMA might not have full access to transaction data from trading venues and from market participants reported to NCAs. This issue was evident in ESMA's TRV article on gas derivatives which concluded that there was a high concentration of position in European gas derivatives, while a more complete dataset later showed that the level of concentration was within normal ranges. As ESMA indicated, the analysis of risks in natural gas derivatives markets was hampered by data fragmentation and the availability of data to ESMA and NCAs, particularly related to information being reported only to energy regulators or only to NCAs. Referencing our response to Question 1, we recommend tackling this within a stepwise approach which commences with improved data sharing between authorities, followed by a comprehensive data strategy, based on a cost-benefit analysis and an assessment of potential efficiency gains.

Questions related to section 2

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?

No.

Please explain your answer to question 12:

The exemptions under Article 2(1) of MiFID II introduce essential proportionality into the regulatory framework, ensuring that only entities whose primary business is the provision of investment services—and who owe a fiduciary duty—are subject to authorisation requirements. Each exemption within Article 2(1) is designed to address a specific scenario and does not overlap with others. It is therefore critical to maintain both the exemptions in Article 2(1)(d) and Article 2(1)(j), as they serve the distinct needs of energy market participants (EMPs) and a broad range of other industrial actors. These include energy-

intensive industries, technology companies, agricultural and soft-commodity producers, and manufacturers that source commodities for production, such as those in the automotive, aerospace, steel and cement sectors.

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

Yes.

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

The exemption under Article 2(1)(j) is appropriately designed to reflect the commercial realities of market participants and their counterparties. It is narrowly scoped, applying only to investment services related to commodity derivatives, emission allowances, and related derivatives—and only when such services are provided to entities that are already customers or suppliers of the EMP's core business.

These counterparties are inherently exposed to commodity and energy price risks due to the nature of their production processes. As such, they require: (i) certainty over long-term energy supply or environmental benefits, which is critical for production planning and investment decisions; and (ii) predictability or visibility over future price exposures, which is essential for margin protection in globally competitive markets.

This level of certainty can only be achieved through a combination of physical delivery and bespoke hedging solutions, delivered by market participants who possess the necessary expertise and access to energy markets.

14) Do you currently benefit from the AAE?

Not applicable.

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?

In general, for market participants, the implementation of the CMRP amendments has delivered positive effects by reducing unnecessary administrative burdens.

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.?

We kindly refer to our response to the previous 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?

Any discussion on the potential reintroduction of a notification requirement should carefully reflect on the experience with the previous regime, drawing appropriate lessons while avoiding unnecessary regulatory burdens and supporting the EU's competitiveness objectives.

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

Yes.

Please explain your answer to question 18:

The AAE framework is fit for purpose, employing objective tests that accurately reflect the different nature of market participants' activities:

- De Minimis Test: Appropriately exempts market participants whose in-scope trading activities are limited in scale.
- Capital Employed Test: Recognises the position of MPs with significant real-economy assets, e.g., wind farms and power plants, by taking into account the capital invested in physical infrastructure relative to trading activities.
- Trading Test: Captures MPs with limited physical assets, ensuring that their trading activities are evaluated in the broader context of their overall business operations.

Together, these tests ensure that only entities whose primary business is the provision of investment services or activities on a professional basis fall within the scope of MiFID II.

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:

None. Europex does not believe the current scope of the AAE raises issues in any of the identified areas above.

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

Trading activity in derivatives traded on a trading venue? No
Trading activity in physically-settled derivatives? No

Please explain your answer to question 20:

- Excluding exchange-traded derivatives aligns with the G20 Pittsburgh Summit commitments, which emphasise increased market transparency, reduced systemic risks and the promotion of exchange-based trading for standardised derivatives. Removing exchange-traded derivatives from the scope of the De Minimis test supports these goals by ensuring firms are not discouraged from using regulated trading venues. This approach is also consistent with the intent of the Dodd-Frank Act, which—like MiFID II and EMIR—seeks to encourage exchange trading while preserving effective oversight of systemic risk in derivative markets.
- Similarly, the exclusion of physically settled derivatives provides a clearer distinction between commercial energy transactions and cash-settled financial instruments. It prevents companies engaged in legitimate commercial activities from being unnecessarily classified as investment firms. Imposing such a classification would increase compliance burdens on energy-intensive industries—such as chemicals, steel, and aluminium production—resulting in higher energy costs and undermining the global competitiveness of EU manufacturing sectors.

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.

Please explain your answer to question 21:

Limiting the AAE framework—and the De Minimis test in particular—to commodity derivatives traded within the EU is appropriate. Including non-EU trading activity would result in the extraterritorial application of MiFID II, potentially leading to overlapping or conflicting regulatory obligations with other jurisdictions. Such an approach would be inappropriate, as trading activity outside the EU rightly falls under the oversight of non-EU regulators.

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?

No.

If no, please explain your answer to question 22:

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

1. Inconsistency with Regulatory Simplification: Requiring firms to perform calculations on both a gross and net basis would undermine the intended simplicity of the De Minimis test. The Capital Markets Recovery Package (CMRP) introduced this test specifically to reduce unnecessary red tape and regulatory complexity (see Directive (EU) 2021/338, Recitals 1 and 2). Moreover, the EU's Clean Industrial Deal reinforces the need for regulatory streamlining to support industrial competitiveness.
2. Misleading Comparisons to Third-Country Frameworks: Drawing parallels with third-country rules—such as the U.S. Swap Dealer De Minimis Test under the Dodd-Frank Act—is not appropriate in this context. The U.S. test is structured as a turnover-based threshold that captures the scale of "dealing activities" over a specific period. It is rooted in a different regulatory framework and serves a distinct purpose, reflecting the particular policy objectives of U.S. regulators.

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)?

No.

Please explain your answer to question 23:

As noted in our answers to the previous questions, introducing a more granular approach would undermine the intended simplicity of the test. The CMRP specifically adopted this methodology to eliminate unnecessary red tape and reduce regulatory complexity (see Directive (EU) 2021/338, Recitals 1 and 2). Likewise, the recently adopted Clean Industrial Deal reinforces the importance of regulatory simplification to support industrial competitiveness and investment.

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.

Please explain why and how the threshold should be adapted:

We believe that the de minimis test is appropriate in its current form.

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:

Abolishing the trading test: No
Abolishing the capital employed test: No
Through other types of amds: No

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

Yes.

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

The Trading Test is a crucial component of the AAE framework, as it acknowledges that not all market participants operate large physical assets or capital-intensive infrastructure. Many market participants—such as energy retailers, aggregators and service providers—play a vital role in energy markets while relying on leaner, service-oriented business models. For example, balancing renewable generation or providing flexibility services often requires participation in derivative markets, even if the firm does not own the underlying assets. Without the Trading Test, these firms risk being wrongly classified as financial investment firms, thereby subjecting them to complex, costly and unnecessary regulatory requirements that serve no proportional purpose.

In essence, the Trading Test ensures that regulation is based on the extent and purpose of a company's trading activities, rather than solely on the size of its physical assets. This is vital for maintaining proportionality, ensuring that regulation targets firms whose primary business is providing investment services, rather than real economy players using markets to manage commercial risks. Removing the Trading Test would introduce significant distortions, forcing firms whose trading is ancillary to their core activities into full investment firm regulation. Such a shift would not improve market integrity but instead would lead to inefficiencies as well as higher compliance costs and discourage participation in commodity markets.

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.

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

The Capital Employed Test is a key component of the Ancillary Activity Exemption (AAE), ensuring that the regulatory perimeter remains focused on firms whose primary business is providing investment services, rather than those involved in substantial real-economy activities. This test recognises that many market participants operate capital-intensive businesses, such as the development, construction and operation of energy generation assets—including wind farms, solar parks, power plants and gas infrastructure—that require significant physical investments.

Crucially, the Capital Employed Test is a "relative test", meaning that it assesses the capital employed (or risk taken) in relation to the firm's overall available capital. As long as the risk taken is less than 50% of the firm's total capital, it is considered an ancillary activity. This self-calibrating nature of the test allows larger firms, which have more capital to cover risks, to take on a greater level of risk compared to smaller firms, without diverging from the intended proportionality.

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.

Not applicable.

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.

We do not believe that applying IFR/IFD prudential requirements, including those stemming from relevant Level 2 measures, would have effectively helped market participants during the 2022 energy crisis. On the contrary, the capital requirement under IFR/IFD would have captured essential amounts of cash which during the crisis would not have been available for

covering high trading margins. In fact, this would have most likely led to reduced liquidity in the market, thereby increasing the risk of a liquidity squeeze.

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

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):

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?

No.

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)?

No.

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

No.

Please explain which requirements should be retained (e.g. 'fit-and-proper' assessment)? If possible, please estimate the costs of compliance with those requirements of MiFID.

We kindly refer to our answers to Questions 18, 19, 26 and 28. We do not believe a review should lead to more entities being in scope of MiFID II and IFR/IFD.

Please explain your answer to question 28:

We believe that neither the current categorisation under the IFR/IFD framework nor the creation of a sui generis category is appropriate for entities within the scope of MiFID II, even in a hypothetical scenario where more entities fall under its scope. Moreover, since we do not support a review that would result in an expansion of MiFID II's scope—as further explained below—we see no merit in decoupling MiFID II from the IFR/IFD framework.

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.):

Restricting the Ancillary Activity Exemption (AAE) under MiFID II would have significant consequences for energy market participants, severely impacting their ability to participate in commodity derivatives markets. MPs play a vital role in maintaining market liquidity, and if required to register as investment firms, they would face substantial financial and regulatory burdens. A study conducted by Frontier Economics and commissioned by Energy Traders Europe underscores how these additional obligations—ranging from capital requirements to collateralisation demands and extensive compliance costs—would likely compel many MPs to reduce or cease their trading activities. This would have widespread negative implications for market efficiency and energy price stability.

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:

We kindly refer to our answer to the previous question.

Questions related to section 3

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.

Please explain your answer to question 31:

In practice, the obligation to report positions falls on clearing and non-clearing members of trading venues and rarely on non-member participants.

We think that the regime could be simplified by only placing the requirement on clearing members of trading venues, as these are typically financial institutions with the infrastructure to support compliance. Non-clearing member and non-member participants typically have less advanced systems, significantly increasing the compliance burden for these firms.

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.

No Response.

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:

C6-carve-out contracts: Yes.
The underlying spot market: Yes.

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.*

As regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1.

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

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

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?

No.

Please explain your answer to question 34:

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

Nonetheless, energy markets supervision should not be involved in a day-to-day management of MiFID reporting. Bearing in mind that exposures reporting was introduced by REMIT II and has not been implemented yet, there is no indication that current regulatory regime would be insufficient. If there is no such clear evidence, the current regime should be left unchanged for legal certainty and predictability and in order to limit the compliance burden.

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)?

Not applicable.

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

Yes.

Please explain your answer to question 36:

We do not see the need for any changes in the current definition.

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?

No.

Please explain your answer to question 37:

We kindly refer to our following answer.

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?

As elaborated under Question 11, this issue was evident is ESMA's TRV article on gas derivatives which concluded that there was a high concentration of position in European gas derivatives, while a more complete dataset later showed that the level of concentration was

within normal ranges. As ESMA indicated, the analysis of risks in natural gas derivatives markets was hampered by data fragmentation and the availability of data to ESMA and NCAs, particularly related to information being reported only to energy regulators or only to NCAs. This included a lack of visibility on non-EU-country firms in some cases.

Whilst it has proven difficult at times to apply EU regulation outside of its jurisdiction, in addition, trading venues often depend on the willingness or capability from market participants to report on the end-client – which again also varies across the different financial reporting streams. At this point see any issues in terms of proper enforcement of position management control mandates by trading venues.

Nonetheless, as mentioned under Question 1, we recommend including this data aspect within the stepwise approach which commences with improved data sharing between authorities, followed by a comprehensive data strategy, based on a cost-benefit analysis and an assessment of potential efficiency gains.

Questions related to section 4

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

Fundamental gaps exist in the completeness of the data used by European supervisors for analysing globally traded financial markets in the EU, resulting in important aspects of such analysis to be incorrect. This issue is particularly relevant in the case of energy derivatives markets. For example, an ESMA report referenced in the Draghi report wrongly concludes that EU gas derivatives markets are highly concentrated. The Draghi report subsequently justifies various policy measures, including the revisions to the position limits regime, by pointing to the supposed issue of concentration.
Europex members have assessed the data used for the ESMA analysis and conclude that is based on incomplete data and, therefore, important aspects of the analysis and related policy recommendations in the Draghi report are unfounded. The analysis shows that the ESMA data does not include a significant proportion of non-EU liquidity, and when that non-EU liquidity is added, it is clear that the markets concerned are competitive, diverse and not at all concentrated.

Generally, and depending on the exact calibration of a position limits regulatory regime, position limits have the potential to put significant strain on the development of commodity derivative contracts, hampering the emergency and growth of markets that allow for hedging price risks stemming from e.g., long-term energy investments.

The EU MiFID II position limit regime as it was in place prior to the CMRP was globally unprecedented since it applied to all commodity derivatives traded on a trading venue and the related economically equivalent OTC contracts irrespective of the size of open interest and regardless the underlying instrument. Whilst the regime mostly did not hamper the liquidity of mature benchmark contracts, it introduced severe adverse effects on the development of new and nascent markets. Market participants have been discouraged from

trading on regulated markets, limiting the execution of trades, which could have a negative impact on the orderly functioning and general transparency of the market.

In the process leading up the changes implemented by the CMRP, between 2019 and 2021, European policymakers gathered significant evidence and feedback on the implications of the MiFID position limits regime on the development of liquidity in European commodity derivative markets.[1] Following this, ESMA proposed in its final report of 19 November 2021 changes to the RTS 21 on position limits and the Commission adopted the respective CDR (EU) 2022/1302, which entered into force in August 2022. Therefore, a more targeted regime was proposed and implemented in order to prevent the unintended negative consequences position limits have on the liquidity of commodity derivative contracts.

Therefore, Europex believes that the recent comprehensive analysis from the industry and EU policymakers on the position limits regime still holds, and past regulatory barriers were addressed by the MiFID "Quick-Fix". Therefore, we do not recommend amending the current position limit regime again, as it is working as intended.

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

Inappropriately designed and calibrated position limits may ultimately restrict the flexibility of market participants to hedge their risks effectively. This brings the risk that market participants shift volumes away to less-transparent bilateral OTC markets, or opt for a less optimal hedging strategy compared to when no limits would be in place. Therefore, a hedging exemption is an essential aspect of any position limits regime.

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.

Please explain your answer to question 40:

Whereas the MiFID main aim is to safeguard market integrity, the ability of position limits to support this objective has been subject to extensive discussions among regulators, policymakers and industry practitioners in recent years. Detection and prevention of market abuse is primarily based on the monitoring of trading behaviour, whereas positions alone do not provide this information. Monitoring position size reflects the ambition to limit market power, rather than to limit market abuse. As reflected in the application of the hedging exemption, for example, there is no direct link between a large position and market abuse. Moreover, ESMA in their final report from April 2020, noted in section 3.2 that rather than being the main objective, preventing market abuse is only an indirect potential consequence of the position limits regime. In the same section, ESMA stated that "the extent to which position limits contribute to preventing market abuse appears less apparent".

[1] We kindly refer, for example, to the Europex responses to ESMA's 2019 call for evidence (link), ESMA's 2020 consultation paper (link) and the European Commission's consultation of 2020 (link).

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

For this purpose, the recently enforced Position Management Controls regime provides a more appropriate and useful tool in the total toolset of exchanges' market surveillance departments. This includes accountability levels which trigger an information request from the exchange to better understand the reason and intention of a position built and the potential risks attached to it.

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):

We agree with the assessment of the Commission of this Targeted Consultation on Commodity Markets on page 18, which says "As the initially introduced position limit regime under MiFID had proved to be overly restrictive, negatively affecting the development of in particular new commodity derivatives markets, notably energy derivatives, the CMRP adopted in 2021 introduced significant alleviations to that regime." Since the CMRP, the refocus of the position limits regime has removed a key obstacle for the growth of nascent and less liquid contracts and effectively addressed the unintended consequences the regime put on these contracts. Critically, this has allowed market participants to hedge their exposure in the most efficient way possible during the subsequent energy crisis.

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

Therefore, Europex does not identify any clear rationale for additional reforms of the position limit regime, also with the aim to provide a stable and predictable regulatory environment.

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

Yes.

Please explain your answer to question 42:

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

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

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?

No.

Please explain your answer to question 43:

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

In addition, ensuring orderly pricing and settlement is one of the key tasks of an exchange and has been already achieved via a broad range of measures that avoid any factors which might impact the price formation process. All commodity derivative contracts are subject to the position reporting regime under MiFID II (Article 58), the pre-existing position monitoring and position management controls as well as the market oversight practices of the exchanges' market supervision and market surveillance departments applying the principles laid down in REMIT and MAR.

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?

No.

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

No.

Please explain your answers to question 44:

Provided an efficient cooperation between NCAs can be set up, we do not see merit in changing the current approach. We believe the current approach following the review in 2020 remains the most pragmatic one.

As a principle, the level of position limits should be set by the authority that is closer to the market. There is a risk that if ESMA were to set the limit, it would be less flexible and take longer to adapt to changes in the underlying market, which could exacerbate volatility or a stressed market.

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

Yes.

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

As explained in our answers to the previous questions, we believe the current position limits regime is fit for purpose. The current scope ensures that position limits can be of valuable role for contracts that have a role in the pricing of the underlying commodity and other related commodity derivatives, regardless on whether it is financially or physically settled. Therefore, we do not identify a need for additional reforms of the position limit regime, also with the aim to provide a stable and predictable regulatory environment.

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

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?

No.

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

No.

Please explain your answer to question 46:

For sake of regulatory clarity and predictability, Europex supports retaining the current position limits regime with regard to physical and gas settled contracts.

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

Yes.

Please explain your answer to question 47:

We believe the current position limits regime is fit for purpose and do not find the NCAs methodologies to set the level of the limits to be inadequate.

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?

No.

Please explain your answer to question 48:

First, as we previously outlined, the Draghi report incorrectly assumes that European gas markets are highly concentrated and policy intervention is therefore justified. Our analysis shows that the ESMA data referenced in the Draghi report does not include a significant proportion of non-EU liquidity. When that non-EU liquidity is added, it is clear that the markets concerned are competitive, diverse and not at all concentrated.

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

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

markets. Introducing different levels of limits depending on types of traders would introduce another layer of complexity that we believe is not supported by any additional benefits. We question which specific risk the Draghi report would seek to eliminate by introducing stricter limits. No evidence of market abuse was provided and as we pointed out in our response to Question 41, position management is much more impactful to prevent market abuse than position limits.

Finally, a position acquired by a market participants in a commodity derivatives contract does not impact market dynamics any differently depending on the type of trader. Additionally, differentiating position limits based on trader classification would be unduly highly complex to implement and monitor. By maintaining a single framework for position limits, regulators uphold both fairness and the broader goal of financial stability.

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

Yes.

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

Europex believes the position limits exemptions, both the hedging and liquidity provision exemption, are fit-for-purpose, not hampering the functioning, liquidity and competitiveness of critical/significant energy derivatives contracts. In particular, the hedging exemption allows market participants to use regulated venues to effectively manage their trading risk. Moreover, the liquidity provision exemption allows exchanges to incentivise trading on new/illiquid contracts by relying on a few financial entities, rather than a (more costly) panel of liquidity providers.

Finally, as these exemptions apply to both financial and non-financial entities, they ensure a level playing field among all market participants.

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

Yes.

Please explain your answer to question 50:

Competent supervisors have the necessary means to effectively monitoring the hedging exemption, especially thanks to the coordination with the exchanges which have in place well-refined internal position management systems to understand whether market participants have genuine hedging purposes.

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

Yes.

Please explain your answer to question 51:

Ultimately, exemptions from position limits should be granted by the authority that sets the limit. At the same time, if the power to set position limits would grant a greater role to trading venues, then trading venues should also play a role in granting exemptions.

52) Some jurisdictions allow supervisors and/or trading venues to grant ad hoc exemptions outside of the legally enumerated cases for exemptions for some contracts, if they perceive that the request is legitimate. Do you believe the EU should also introduce such a flexibility for supervisors and/or trading venues?

Yes.

If yes, 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.

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

In this context, Europex could see a value in a a more dynamic approach than currently in place - which would see a greater role for trading venues to be part of setting fixed position limits and granting exemptions to trading venues having an increased responsibility for setting controls and granting exemptions to ensure orderly trading, settlement and delivery, subject to oversight by the NCA. Trading venues are best placed to conduct these tasks and have operated sophisticated position management regimes since before the entry into force of MiFID II.

53) Do you believe that trading venues:

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? Yes

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? No

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?* No

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

As stated under the questions above, we do not see a need to any change in the current position limit regime. Notably, we believe the current regime and its scope are fit for purpose. Hard position limits should be applicable only to significant or critical contracts, whereas exchanges' existing position management controls ('soft' limits) and further surveillance powers have proven sufficient to ensure fair market functioning in any other contract.

Nonetheless, if the position limits regime was reviewed, we would support giving more responsibility to trading venues in the setting of position limits for those contracts in scope as elaborated under Questions 51 and 52.

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

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

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

Importantly, it should be noted that trading venues already have the rulebooks in place to monitor and potentially act upon the implications of positions in order to fulfil their obligation to ensure orderly trading and settlement. Under the Position Management Control regime, the default situation for all futures contracts is that there is no pre-set limit on the size of position that may be held. Accountability levels instead trigger an information request from the trading venue who can take further necessary steps at its discretion. Exceptions to this general approach exist at the exchange's discretion and limits may be assigned to individual contracts.

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

Yes.

Please explain your answer to question 54:

The current regulatory set-up on position limits is fit for purpose regarding both EU market participants and non-EU ones. In particular, it is important to emphasise that the main European commodity derivatives markets have become global contracts, competing with non-EU indices. If the EU was to introduce additional regulatory supervision on non-EU market participants, this should significantly reduce the participation of non-EU market participants in EU derivatives markets, hence negatively impacting the competitiveness and liquidity of these contracts.

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

No.

Please explain your answer to question 55:

Europex continues to support the policy rationale for the exemption of physically settled gas and electricity contracts from the rules of EU financial regulation for the two following reasons.

First, due to their specific characteristics, carved-out energy commodity contracts are subject to REMIT, i.e., the energy-specific anti-market abuse framework. Their inclusion in the complex and far-reaching matrix of the requirements under MiFID/R, predominantly designed for investment firms and banks, could undermine their actual economic functions. In this context, it is important to note that they play an important role in the liberalisation and further integration of the EU Internal Energy Market, both regarding power and gas internal gas. Moreover, they constitute important instruments for achieving the EU climate targets while providing affordable energy to European industries and households.

Second, while there might be differences according to geography, market structures and specific asset classes, the overall trend of increased trading on regulated markets has not drastically reversed, even after the energy crisis. We therefore currently do not see evidence that the C(6) carve-out has led to a shift in volumes to Organised Trading Facilities (OTFs).

Furthermore, while OTFs may have their own regulatory regime at national level there is no evidence that position limits would lead to increased market security. The development of energy markets varies across the EU and, hence, any regulatory intervention at the EU level should be limited to common features and take into account regional and national differences. It is particularly noteworthy that energy and financial markets are separate in some EU countries and have sufficient distinctive characteristics to prevent easy transmission of market stresses.

The ultimate scope of the wholesale market products is the physical delivery of energy supply between those who generate it and those who buy it for (sale to) end-consumers. Such delivery implies actual energy being delivered through the power grid or natural gas being delivered through the pipelines constituting transmission and/or distribution systems.

There are different market participants, different instruments and separate regulatory regimes in both markets and as evidenced by the recent energy crises having little effect on the financial market in those countries (mostly through market valuation of shares of publicly traded energy market participants), no actual transmission mechanism. Given also lack of substantial evidence of correlation between market manipulation and holding significant position in wholesale energy products as well as recent changes brought about by REMIT II, it remains unclear what would be gained through the possible introduction of position limits to energy markets.

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

No.

Please explain your answer to question 56:

In line with the previous answers, physical and financial markets must be kept separated for the essence of their nature which leads necessarily to a distinction and separation. In this respect, it should be always born in mind that the ultimate scope of the wholesale market products is the final delivery of energy supply, hence position limits should not be applied to wholesale energy products.

Therefore, Europex recommends establishing a clear distinction between EU financial regulation and energy policy by refining the scope of REMIT to focus solely on wholesale energy products that are not classified as financial instruments under MiFID. There is a significant and undesirable overlap between EU financial regulations (such as MiFID, MAR, EMIR, etc.) and energy policy (particularly REMIT) in terms of regulation and oversight, which unnecessarily increases the regulatory burden on firms operating in European energy markets. Financial instruments based on gas and power are subject to both regulatory frameworks, leading to duplicative requirements and potentially conflicting prohibitions and obligations.

Moreover, while shared responsibilities for setting position limits between different types of supervisors may bring about serious adverse consequences, there is little (if anything) to be gained through it. For instance, energy market participants may be pushed out of REMIT organised marketplaces to OTC transactions, limiting access to transparent energy reference prices across the EU, restricting competition on the supply side even on the OTC part of the market (as traders would lose access to readily available volumes that they may offer to end consumers) and thus, further driving up energy prices.

Questions related to section 5

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?

As demonstrated in the European Commission report on the Council Regulation (EU) 2022/2576, IVMs were adequately implemented by derivatives exchanges into their existent circuit breaker mechanisms. This confirms our position that, even before the energy crisis, derivatives exchanges had set up circuit breaker functionalities which serve to diminish the likelihood and extend of short-term price spikes or aberrant market moves. Energy exchanges have in place sets of well-tested dynamic and configurable systems and controls which enable them to manage periods of increased price volatility and to ensure that new information and rapidly changing events can be expressed in the market demand and supply conditions in an orderly manner. These tools are effectively mitigating excessive volatility, with enhancements made to their calibration based on market consultation and the implementation of Council Regulation (EU) 2022/2576.

As suggested by ESMA in its report dated 22 September 2022, we believe it is important that the intention of the trading halt mechanism is to “provide more time to market

participants to process the flow of information during extreme market stress scenarios". This is the purpose of circuit breakers and should not be mixed up with the political desire to reduce market volatility stretched out over a one or multiple days or even reduce price levels.

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?

No.

What would be the associated advantages and disadvantages?

Europex strongly warns against interventions that risk distorting the price formation process. Regulated markets are in the best position to design and operate circuit breakers to appropriately calibrate trading halts on their markets to take into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and to avoid significant disruptions to the orderliness of trading. Moreover, Europex is not aware of inadequacies in the regulation and supervision of commodity derivatives markets or their functioning that would warrant the introduction of static circuit breakers. European supervisors, including ECB, ESMA and ACER, have consistently confirmed that the energy and environmental derivatives markets are operating soundly and efficiently.

As mentioned above, energy derivatives exchanges have dynamic and configurable systems and controls in place. There are two reasons for this:

1) A certain degree of volatility is inherent to power and gas markets. This is because power and gas cannot easily be stored, and demand and supply need to be balanced at all times. In addition, demand is highly weather dependent and does not easily react to prices, at least not in the short-term. The energy transition is set to increase the volatility of the market, with intermittent renewable generation becoming a larger part of the energy mix. This means that also supply will become increasingly more volatile and even more weather dependent.

2) Energy derivatives are generally less liquid than cash equity instruments. There are fewer market makers and a smaller number of active market participants, which make these markets generally more volatile.

Therefore, any regulatory intervention should be carefully designed to precisely addressed evidence-based issues and at the EU level – and only such that cannot be more effectively addressed at the national level. It should steer away from arbitrarily transplanting some elements of the legal regime adequate for other markets without clear, evidence-based indication that such intervention is necessary.

Because of these reasons, static circuit breakers are less suitable to distinguish disorderly market conditions from volatility induced by market fundamentals.

Please explain your answer to question 58:

Europex notes that the volatility safeguards that exchanges have in place have been working as intended and hence we do not see an immediate need for a new type of trading halt mechanism on top of the established mechanisms. It is noteworthy, however, that during the energy crisis in light of the increased uncertainty about supply and demand balances for power and gas, derivatives exchanges have introduced adjustments to the calibration of existing circuit breakers, also according to the IVM introduction.

Most importantly, we firmly believe that risk transfer mechanisms are most needed during periods of heightened uncertainty and volatility, as it is during such times that risks in the underlying commodity and financial markets are most acute. As a result, an exchange's purpose is fulfilled most meaningfully during such periods. This is why it should remain open and available to market participants during times of increased stress – which energy exchanges have done consistently. In general, the market should be able to function as normal and a circuit breaker should only be triggered in rare circumstances.

As suggested by ESMA in its report dated 22 September 2022, we believe it is important that the intention of the trading halt mechanism is to "provide more time to market participants to process the flow of information during extreme market stress scenarios". This is the purpose of circuit breakers and should not be mixed up with the political desire to reduce market volatility stretched out over a one or multiple days or even reduce price levels. If used for this purpose, the above-mentioned counterproductive effects will unfold.

Moreover, the implementation of Council Regulation (EU) 2022/2576 has been superseded by the MiFIR review that includes adjustments to circuit breaker arrangements. In this context, ESMA has been tasked to developed principles trading venues should meet when designing and operating circuit breakers.

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?

Please refer to our response to Question 58, in which we explain that we do not support the broad introduction of static price bands. In case a state circuit breaker was hit, as supply and demand fundamentals of the underlying commodity would continue to change regardless of markets being suspended or not, market participants will try to hedge their positions OTC with no reference prices to base their transactions on. On the central limit order book, price changes would just be delayed and potentially even amplified because of the increased uncertainty. If halted for a longer period of time, not having a reference price to base the transaction on could also become a substantial problem from a clearing perspective.

If there is no transparent price formation taking place on the exchange, the CCP will have to take other information into account, such as prices established on other venues, OTC prices and market call arounds (if available). Importantly, a potential undercollateralisation of positions could lead to increased system risk.

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'?

Any halt or constraint in energy markets should be short in duration in order to minimise the disruption to the market. The exchange aims for a window that would leave the market sufficient time to pause and process, without the absence of a price signal causing material market issues or forcing trading activity to alternative, less transparent and less liquid channels. If a new trading halt mechanism for example would trigger halts which would last longer than 5 to 10 minutes, it will become very difficult to restart the market. Trader's confidence in the market will have disappeared and a similar scenario as the halt of the LME nickel market in March 2022 may materialise again. During the latter event, the exchange could not reopen for several days and had to make numerous attempts to restart the market. As supply and demand fundamentals of the underlying commodity continue to change regardless of markets being suspended or not, market participants will try to hedge their positions OTC with no reference prices to base their transactions on. On the central limit order book, price changes would just be delayed and potentially even amplified because of the increased uncertainty. If halted for a longer period of time, not having a reference price to base the transaction on could also become a substantial problem from a clearing perspective.

If there is no transparent price formation taking place on the exchange, the CCP will have to take other information into account, such as prices established on other venues, OTC prices and market call arounds (if available). Importantly, a potential undercollateralisation of positions could lead to increased system risk.

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

No.

Please explain your answer to question 59.2:

We kindly refer to our response to Question 59.1.

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

Yes.

Please explain your answer to question 60:

We kindly refer to our responses to Questions 59 and 63.

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

Yes.

What would be possible mitigants to prevent such migration?

Please see our answer to Questions 58 and 59. We see severe risks of applying static breakers to any type of energy contract.

In case a state circuit breaker was hit, as supply and demand fundamentals of the underlying commodity would continue to change regardless of markets being suspended or not, market participants will try to hedge their positions OTC with no reference prices to base their transactions on. On the central limit order book, price changes would just be delayed and potentially even amplified because of the increased uncertainty. If halted for a longer period of time, not having a reference price to base the transaction on could also become a substantial problem from a clearing perspective.

If there is no transparent price formation taking place on the exchange, the CCP will have to take other information into account, such as prices established on other venues, OTC prices and market call arounds (if available). Importantly, a potential undercollateralisation of positions could lead to increased system risk.

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

Yes.

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

Trading venues have further finetuned their dynamic circuit breakers, especially during the energy crisis, by taking into account the increased uncertainty of the supply and demand price fundamentals of power and gas. To this end, in order to ensure a dynamic circuit breaker is well-calibrated, trading venues should retain a discretionary power in its design and calibration. The circuit breaker should take the liquidity, the nature of the market model and the type of users into account for the market it applies to. This is in line with ESMA report from September 2022 which notes that the trading halt is calibrated "in light of the specificities and liquidity profiles of different types of energy markets". For example, the German Power benchmark sees around 90 different maturities. These maturities all have different liquidity profiles, quotation levels and volatility profiles. These again vary across trading venues. Parameters should therefore be calibrated to take the specificities of the market structure at the trading venue into account.

63) Do you believe energy exchanges trading in spot energy products or C6 carve-out products should also implement mechanisms similar to circuit breakers? → input from Europex WG PM

No.

If no, Please explain your answer to question 63:

The application of mechanisms similar to circuit breakers on energy exchanges trading in spot energy products would be neither necessary nor useful. Since spot energy products refer to a physical commodity with delivery in the short-term, price moves reflect physical energy demand and supply fundamentals per country for the following hours. Indeed, spot prices are an essential signal to represent the scarcity of the electricity or gas resource within the system. Consequently, any cap or restriction on price formation mechanism would result in inefficient market functioning and would disrupt the reliability of the price signal with possible negative implications also on forward markets, since the indexes to price forward contracts are calculated on the basis of spot prices.

In addition, those mechanisms would shift the liquidity to OTC trading, reducing transparency of prices and endangering the procurement of energy commodities especially during crisis periods**.**

Concerning circuit breakers, ESMA states in its response[2] regarding the current level of margins and of excessive volatility in energy derivatives markets that "it is important to calibrate this measure in a way that ensures price discovery can still take place in order not to negatively affect the ability of all market participants to effectively manage their risks". ESMA highlights that there is still work to "calibrate this measure, in particular in light of the specificities and liquidity profiles of different types of energy markets".

This reservation is particularly relevant when considering a possible extension of circuit breakers to spot markets as several features of these markets differ considerably from financial markets:

- The day-ahead market and a relevant part of the intraday market are designed and regulated as sealed-bid auctions. The concept of interrupting trading for a limited period of time and resuming it thereafter does simply not work in such cases.
- In continuous intraday market the trading period, i.e., the period between the gate opening and the gate closing time, is much shorter than in derivatives markets. Moreover, the market time unit, i.e., the delivery period of the traded product, is substantially smaller.
- For all spot markets, it needs to be recalled that the respective products are all physically delivered, i.e., scheduled as committed electricity buy/sell contracts counted for each physical balance responsibility party. Furthermore, trading takes place closer to delivery

[2] https://www.esma.europa.eu/sites/default/files/library/esma24-436-1414_-_response_to_ec_commodity_markets.pdf

than in derivatives markets and is managed in real-time. For both reasons, trading on spot markets and has an immediate effect on security of supply.

As a consequence, we conclude that a higher level of volatility is an intrinsic feature of short-term markets with such high granularity products. They facilitate efficient dispatch of supply/demand as well as utilisation of cross-zonal capacity and address unexpected developments like forecast errors. The single market time units are more isolated in their price formation and price spikes have a smaller impact on traders concerning margin requirements, payment obligations, etc.

Finally, other mechanisms are already in place to handle extreme price spikes caused by fundamental supply/demand shocks in spot electricity markets such as the application of technical price limits that, according to the HMMCP methodologies both for day-ahead and intraday approved by ACER, are not set as emergency measures and/or price caps. These existing instruments in short-term markets are considered sufficient as they do not aim at restricting the possibility of trading in the first place.

Taking into the consideration the above mentioned – especially stressing the negative impact on security of supply which any interference with the short-term products trading, like the temporary suspension of trading, would entail – we firmly advocate against the introduction of circuit breakers in spot energy products since neither workable nor needed.

Questions related to section 6.1

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

No.

Please explain your answer to question 64:

The introduction of a mandatory trading obligation within the EU would undermine the objectives of the Competitiveness Compass and the Clean Industrial Deal, which together aim to boost EU industry competitiveness by enhancing energy affordability and strengthening Europe's security of supply. Third-country firms are vital for maintaining liquidity in Europe's key energy derivatives markets. Requiring these firms to relocate within the EU would create a significant trade barrier, severely reducing liquidity and eroding the efficiency of European energy markets. Consequently, wider bid-ask spreads may increase trading costs and market participants would face greater challenges in managing risks associated with price volatility. Furthermore, this requirement could deter non-EU energy suppliers, who may struggle with the obligation to trade within the EU and navigate European markets, ultimately discouraging energy exports based on European price benchmarks.

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:

As outlined in the previous question, the reduced liquidity in European energy markets, resulting from a decline in non-EU market participants, would notably diminish the ability of

European firms to hedge effectively against fluctuations in energy prices. Specifically, such a limitation would make it more difficult for EU market participants to find suitable hedging partners, especially for large or complex transactions. In addition, the reduced market depth would also make energy markets more vulnerable to abrupt price movements and shocks, weakening the overall stability of the system.

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:

We kindly refer to our response to Question 64.

Questions related to section 6.2

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?

No.

Please explain your answer to question 67:

A price cap undermines the risk management function of European energy markets. When triggered, a price cap such as the one implemented through the MCM would artificially constrain the value of energy derivatives, decoupling them from the price of the underlying physical market where supply/demand dynamics may have shifted. This disconnection would impair the ability of market participants to effectively manage these underlying price risks. This will increase price volatility and will make the European energy markets less attractive and may reduce the number of market participants.

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

In short, Europex firmly believes:

1) that a price cap, such as MCM, does not decrease the global market price of energy, but may create upward price pressure and increased price volatility in Europe.
2) The goal of market prices is to reflect the effective conditions of the relevant market. Capping or limiting the price formation would only lad to inefficient prices and, therefore, to inefficient markets.

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?

No.

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

Price divergences between EU and international prices are rooted in fundamental characteristics of the energy market.

Fundamentally, any artificial price intervention would not prevent episodes of high prices, when those were motivated by a fundamental mismatch between supply and demand of specific commodities. Price divergences between EU prices and international prices are rooted in fundamental characteristics of the EU versus international market. As a matter of fact, in case of a shock of supply, high prices are essential to attract physical commodities to EU and support securities of supply.

As also confirmed in the recent Clean Industrial Deal, for example, "Europe's dependence on imported fossil fuels is the main cause of higher, and more volatile, energy prices. […] The current geopolitical and market uncertainty drive up investment costs which are passed on to consumers." As detailed in the answers to the below questions, rather than curtailing commodity prices, (dynamic) price caps rather hamper security of supply and even increase volatility and systemic uncertainty.

In the meantime, the EU may consider other policy measures aimed at reducing the effect high energy prices have on competitiveness of its economy. This includes, i.a., investments in grids and infrastructure, supporting flexibility and increasing the roll out of renewable energy. Well-functioning and liquid European energy markets can contribute to these goals by proving short-term and long-term investment signals.

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.

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

If prices cannot race up to their effective level to express the "willingness to pay" of the demand, EU markets will not be able to attract physical commodities coming from outside of Europe which could be directed to other global markets, thus disrupting EU security of supply.

With specific focus on the natural gas market, it must be considered its global nature, with gas moving across borders between producers and consumers worldwide. Europe is fortunate that, with the international rise of the TTF gas market, global producers accept the onshore

European price of gas in euros as a credible reference price. This strategic marketplace plays a crucial role in sourcing gas to Europe, managing gas portfolios, and ensuring the efficient allocation of supply. However, implementing an artificial price cap would not address the underlying changes in global gas valuations driven by evolving supply and demand dynamics. Instead, it would likely harm the trust into TTF and prompt the global gas community to shift towards other, unrestrained and therefore more representative reference prices, which are primarily located outside of the EU.

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

As previously indicated, if prices cannot match the price of the demand, EU markets will not be able to attract physical commodities coming from outside Europe which could be directed to other global markets, thus disrupting EU energy supply.

Overall, we strongly recall that MCM has presented significant threats to Europe's financial stability. The European Central Bank (ECB), likewise the ESMA and ACER reports, have expressed concerns that the design of the previously implemented MCM jeopardised financial stability in the euro area. The design of this price cap mechanism could increase volatility and trigger higher margin calls, placing undue strain on central counterparties' ability to manage financial risks. This may also incentivise market participants to migrate from regulated trading venues to non-centrally cleared OTC markets. ESMA also foresees that when prices would approach the artificial limit, a swift and significant shift of trading would move outside the EU.

During the energy crisis, these financial stability risks associated with the MCM and the market destabilising consequences of increased margin requirements, as outlined above, fortunately did not materialise, mainly because gas prices dropped well below the activation conditions of this mechanism before it became active in February 2023. This decrease in gas prices, coupled with reduced market volatility, instead allowed central counterparties (CCPs) to lower margin requirements. However, we may not be so fortunate next time. Further, research by European regulators and the academic community has demonstrated that the MCM did not succeed in reducing volatility or lowering gas prices. However, the serious risks associated with such price control mechanisms were widely recognised and remained relevant until the recent discontinuation of the MCM in January.

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.

Please provide details on such impacts, ideally providing quantitative input:

During the energy crisis, these financial stability risks associated with the MCM and the market destabilising consequences of increased margin requirements, as outlined above, fortunately did not materialise, mainly because gas prices dropped well below the activation conditions of this mechanism before it became active in February 2023.

When the market price would come closer to the triggering price of a (dynamic) price cap, in absence of the exchange's price reflecting the actual price, CCP valuation of positions is likely to take place in the OTC bilateral market. Once a cap is in place, liquidity will begin to shift away from the exchange to the OTC bilateral market as participants will not want to manage price exposures across a dislocated market.

In case of the MCM, the fair valuation of the TTF front month will occur in the OTC bilateral market and hence will drive valuation in the margining process. To reflect inefficiency in the clearing mechanism, margins will increase significantly.

Questions related to section 6.3

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?

No.

Please explain your answer to question 72:

Europex recommends establishing a clear distinction between EU financial and energy regulation. There is a significant and undesirable overlap between EU financial regulations (such as MiFID, MAR, EMIR, etc.) and the energy counterpart (particularly REMIT) in terms of data-reporting and oversight, which unnecessarily increases the regulatory burden on firms operating in European energy markets and introduces duplicative and potentially conflicting prohibitions and requirements.
As a principle, requirements imposed on market participants in financial markets should not automatically apply to the participation in spot energy markets. Spot and derivative markets serve fundamentally different purposes and therefore do not share the same characteristics. While spot markets serve primarily immediate asset transactions and rely on physical delivery, derivative markets provide tools for managing price risk and hedge against spot price fluctuations. Therefore, considering the distinct purposes pursued by market participants in spot and derivatives markets respectively, it should be considered appropriate that these markets have their own regulatory framework.

Considering the above, it can be anticipated that a broad-brush application of financial services legislation to energy spot markets participants would lead to unnecessary, duplicative and potentially harmful requirements. Such measures could overlap with existing regulations, creating operational inefficiencies and increased compliance costs without delivering additional benefits. It is worth mentioning that organisational requirements and other obligations already exist for market participants in spot markets. At European level, these are, both implicitly and explicitly, imposed by REMIT. At national level, the rules for balancing responsible parties and similar requirements introduce standards that are tailor-made for entities engaged in the physical delivery of power – an approach which we consider

more suitable. Against this background, we conclude that also an extension of only specific requirements imposed on investment firm to energy market participants is not indicated.

Furthermore, such an extension is not in line with the simplification principle stated in the context of the Competitiveness Compass and Omnibus Communications. It is also a declared goal of the Action Plan for Affordable Energy (APAE) to remove barriers for participation in physical power markets. For instance, energy communities shall be strengthened to allow local communities, citizens and companies to produce, sell and consume their renewable energy; PPAs shall be offered to industrial consumers and companies; barriers for demand response and storage shall be removed; smaller entities shall be encouraged to contribute to grid flexibility by shifting their energy use to times of low demand, reducing costs and improving system stability; etc. We fear that extending organisational requirements foreseen under financial market regulation will result in additional obstacles for especially those parties that are addressed in the APAE. Instead of becoming active members of wholesale power markets and prosumers, these additional requirements might rather deter them from such step. Markt access barriers would impact the competitive structure of the spot markets as in practice, only large and structured market participants would be able to fulfil MiFID requirements. A less diverse market could result in a consequent increase of energy prices with negative implications for European consumers which would eventually bear the increase in costs.

Finally, European energy legislation is dedicated to eliminating obstacles that impede access to spot markets. The goal is to make these markets more accessible to small producers and communities, thereby encouraging them to become active participants in the energy market, both as consumers and producers (prosumers). It is essential to consider these pieces of legislation when making decisions about further regulation of spot markets: Art. 3, pars. d and e and Art. 8 par. 3 of the revised Electricity Regulation; Art. 2 (definition of “active customer”) and Art. 15 par. 1. This approach ensures that the regulatory framework does not become a bureaucratic burden for these smaller participants, complicating their market access.

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

No.

Please explain your answer to question 73:

As mentioned in our responses above, spot markets are fundamentally distinct from financial markets. In the case for power, for example, the spot market legislative framework already includes REMIT, the Electricity Directive & Regulation, the Capacity Allocation and Congestion Management Network Code (CACM) and many other legislative acts. In particular, according to CACM, each market operator has to undergo a licensing process to become a so-called Nominated Electricity Market Operator (NEMO), which includes tailor-made organisational requirements and close supervision by ACER and national regulators. Besides that, various national requirements exist for spot energy exchanges.

In addition, European energy legislation aims to remove barriers that prevent access to spot markets. The objective is to make these markets more available to small producers and communities, encouraging them to actively engage in the energy market as both consumers and producers (prosumers). This strategy ensures that the regulatory framework does not become an administrative burden for these smaller participants, complicating their access to the spot markets.

Furthermore, the energy sector has its own responsible authorities for the oversight of the sector. At EU level, the ACER Regulation outlines the mandate of ACER. At national level, there are national regulators that operate under the national regulatory frameworks. In addition, national competition authorities have also a mandate to supervise energy markets in several Member States.

Therefore, we do not identify an added value of extending rules applicable to MiFID trading venue since more targeted rules are already in place.

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

No.

Please substantiate your answer to question 74:

Among the supply/demand fundamentals driving prices in spot energy markets, several elements have driven the market behaviour occurred in 2022. For gas markets, this includes, for example, a supply shock and, as a consequence, a regulatory driven demand stemming from storage filling obligations and a lower participation in forward gas markets which – if higher – would have helped market participants in hedging their positions. For power markets, the crisis was almost exclusively due to a supply shock with the price level representing the scarcity of the electricity resource.

Moreover, trading in any spot markets on weekends serves the purpose of balancing short-term fluctuations in the national energy consumption and generation and it is usually preferable to even those fluctuations on spot markets before entering into balancing markets.

Finally, we do not see that the extension of MiFID rules to spot markets could have limited any negative spill-over effect on derivatives markets. Nonetheless, we do have observed negative impacts from derivative markets on spot activities. For example, the costs associated with financial market regulation (e.g., margin calls) have triggered unwanted effects. Again, we find no evidence that a simple extension of MiFID rules to spot markets would have made any positive impact in this context.

75) The revised REMIT clarified that benchmarks used in wholesale energy products are captured by the market abuse-related provisions in that Regulation. Do you believe that this is sufficient to ensure the integrity of such benchmarks, and avoid risks of manipulation?

Yes.

Questions related to section 6.4

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?

No.

Please explain your answer to question 76:

Europex is not aware of problems in the existing supervisory structure that would be resolved by the creation of a single supervisor of commodity and financial markets. Moreover, as opposed to for example European cash equity markets, derivatives markets in the EU do not suffer from fragmentation. The EU's internal market is a core strength for derivatives exchanges operating in the EU, as it allows a single exchange to operate under one license in a single Member States to service the whole of the EU, and access global financial markets.

Therefore, we warn against introducing a complex supervisory structure that would split responsibilities among different supervisors and bodies. The introduction of a supervisory college could result in supervisory fragmentation and inconsistent enforcement. The existing more unified and cohesive supervisory framework would ensure consistent oversight across all aspects of the exchange, thereby enhancing market stability, clarity and integrity across jurisdictions. Given the natural interconnections between energy spot and financial markets, we believe enhanced cooperation and coordination between regulators will improve market transparency and supervision. Nonetheless, we do not see any evidence of how the current set up would have delayed any reaction in times of crisis.

Energy markets are subject to different legislative frameworks, which provide robust oversight. The same is true for the supervisory structure. Introducing further layers of supervision risks duplicating existing measures and creating unnecessary burdens for market participants, potentially destabilising the delicate balance required for efficient commodity market operations. In addition, local supervision assures compliance with specificities in the context of a certain EU regulatory framework and the ability to analyse in depth different market conditions.

For example, we would like to support the idea of improving the information towards the policy debate on the state of European energy markets, by enhancing the collaboration and coordination between European financial and energy supervisors in order to possibly fill existing gaps in data available to them. In this respect, we propose a possible coordinated annual report by ESMA and ACER on the state of European energy markets. This coordinated

report should be data driven and based on a common methodology to share the use of data available to European supervisors under MiFID, EMIR and REMIT reporting frameworks.

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.

Please explain your answer to question 77:

Europex is not aware of problems in the existing supervisory structure, especially regarding commodity benchmarks.

About

Europex is a not-for-profit association of European energy exchanges with 37 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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