The European Venues and Intermediaries Association [“EVIA”] & London Energy Brokers' Association [“LEBA”] welcomes the opportunity to provide these comments to the European Commission concerning the rules, organisation, and reporting of the European energy markets. We look forwards to further engagement on the specific topics taken forward.

In summary, we consider that any further expansion of the collaborative framework should avoid adding unnecessary layers to existing processes managed by each institution. Whilst the EU should seek to streamline, harmonise and above all to automate the current framework, this should be done by maintaining the current complementarity between the financial and energy legislative frameworks, as provided for by the C6 exemption in particular.

Each addresses distinct but interconnected aspects of the functioning of wholesale energy markets. While further alignment between the two frameworks is possible and advisable in certain areas, others require a more tailored approach due to the unique characteristics of the energy sector – such as ensuring security of supply, enabling system balancing, and providing effective hedging opportunities. Both frameworks can and should continue to evolve to facilitate coordination between financial and energy rules and regulators, while also simplifying EU rules and processes.

It is important to recall that financial and energy markets are monitored from different perspectives for different risks. By nature, financial markets focus on trading activities, while energy markets are centred around hedging, physical delivery, and operational needs. These sector-specific features justified the creation of REMIT—a tailor-made regulatory framework for wholesale energy markets that accounts for the unique characteristics and requirements of EU energy markets and their participants.

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

YES

At present, energy market trading data is primarily collected by ACER, yet remains fragmented across various authorities according to both whether it is subject to REMIT, EMIR and MiFIR; and whether National Competent Authorities also require direct reporting in addition to that sent to ACER’s ARIS system. The core issue would therefore be the difficulty in ensuring effective data-sharing between regulatory authorities and its impact on market surveillance and oversight.

Trading venues, OMPs and brokers have deployed for over two decades technical solutions to consolidate data across the various products and instruments in order to create a comprehensive view as a pre-trade and a post-trade consolidated tape. The most widespread of these is Trayport, but similar solutions are also available, and these tend to also feed into the principal Exchange Regulated Markets [ICE and EEX].

We suggest being caution against a unified reporting format for several reasons:

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- It's already there.
- Transitioning to another unified report could require significant investment, time and system overhauls at a point where Digital Regulatory Reporting, Common Domain Models and Cloud migration are already underway.
- Achieving a single report would require a long period of time and a major overhaul of multiple legislative acts, which would simply deter market participation
- Emerging global standards, namely ISO 20022, UPI, UTI, CDEs and LEIs, could likely be delayed and diverted by merging the identified data streams.

We recommend evolution rather than reinvention in order to maintain access to broader market data to facilitate market manipulation investigations and policy-driven assessments for improving data-sharing such as:

- Evaluation and harmonisation of existing reporting obligations where appropriate across EMIR, REMIT & MiFIR with a view towards creating data-lakes with "smart data" via a central data collection mechanism or interoperable framework for secure data-sharing between authorities.
- Systematic review to adopt global data protocols and to identify data gaps and barriers to effective market oversight

<u>Question 2: Reporting under MiFID/MiFIR/EMIR, on the one hand, and REMIT, on the other hand, can vary in terms of format and transmission protocols. In your view, which reporting standards and protocols should be used as reference (REMIT or MiFID/MiFIR/EMIR) if formats and reporting protocols were to be made uniform?</u>

Clearly, whilst MiFIR & EMIR are useful for financial markets; REMIT provides the detailed, energy-specific data widely understood in the energy sector, which applies to almost 20,000 market participants. Therefore, any mandated transition to a single report poses challenges most likely in excess of any potential benefits.

Since all relevant data is already reported, a strategy should be developed to label and automate it via Digital Regualtory Reporting using an opensource "Common Domain Model" in order to use it more effectively by sharing both within EU authorities, but also back to market participants, systemic supervisors, academics, and with third-country authorities. Therefore, such a central data-sharing framework would allow regulators to access existing datasets efficiently, providing a comprehensive market view. Most likely, this should be based on the ACER ARIS system as it has the most granular requirements.

ARIS uses open source standard schemas (XSD) that have undergone a greater degree of stakeholder consultation and tailoring than their financial equivalents.

REMIT II also tasks ACER to serve as a data and information "Reference Centre" of EU wholesale energy market data. This "CEREMP data" is broad, and covers both the trading activity on organised marketplaces (exchanges, brokers and capacity platforms) as well as bilaterally agreed contracts. In terms of timeframes and ways of settlement, the REMIT data encompasses a variety of contracts, from short-term physical markets (day-ahead, intraday, balancing) to long-term energy derivatives whether standardised or non-standard bilateral framework contracts (swing contracts, PPAs, LNG portfolio contracts).

The EU co-legislators have thus already envisaged a role for ACER in the creation of a public and common space for access to information on wholesale energy markets. We understand that significant REMIT data is intended to be made publicly available later this year. REMIT II also encompasses Hydrogen and Decarbonised Gas markets with the inclusion of hydrogen to the scope of wholesale energy products. We also understand that ACER has developed data sharing mechanisms, whether as consolidated data or as raw files.

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

YES

The focus should be on data quality and agility in order to provide information for analysis, rather than on further breadth of reporting.

A central data collection mechanism should be established either by expanding the ACER ARIS system or by separating it from any current domain in order to gather and collate data from REMIT, EMIR, and MiFIR. This would have to be owned and operated by the EU agencies and resolutely open source and non-commercial (in contrast to the current procedures with Consolidated Tape Providers). This would allow for current data reporting protocols not to be interrupted, whilst mindful of the impending application of new technologies like AI and digital ledgers.

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

YES

It is quite likely that any centralised data collection mechanism could improve and automate data sharing between authorities, therefore likely adding tools for market surveillance by both NCAs and as delegated back to organised marketplaces.

Any more comprehensive view should improve both trade reconstruction, the scaling of automated monitoring systems and the understanding of trading strategies and commercial rationale. Clearly, as applied via AI, this could become a powerful tool.

We note that recent policy decisions appear to have been widely contested on the basis of observable facts and traded data; most especially, the analysis by ESMA in May 2023 of gas derivatives was inaccurate due to erroneous and limited data.

Moreover, we understand that the EC lacked sufficient data access to determine the extent of the credit impact and the relative shift between front-month exchange-traded derivatives versus forwards on other broker OMPs and OTC markets over the 2021-2023 energy crisis until later corrected by ACER analysis.

<u>Question 5. In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated?</u> By a new type of entity in charge of consolidating data collected by trade repositories and RRMs

Either ACER ARIS or a new entity would be preferred. Its role should be to consolidate data from existing systems without adding new data collection requirements. It should be resourced to integrate with current frameworks and ensure data is complete, harmonised, and accessible to regulators, improving accuracy and compliance without disrupting existing processes.

A central data collection mechanism should be established either by expanding the ACER ARIS system or by separating it from any current domain in order to gather and collate data from REMIT, EMIR, and MiFIR. This would have to be owned and operated by the EU agencies and resolutely open source and non-commercial (in contrast to the current procedures with Consolidated Tape Providers). This would allow for current data reporting protocols not to be interrupted, whilst mindful of the impending application of new technologies like AI and digital ledgers.A centralized mechanism should be managed by an entity that leverages existing reporting systems (e.g., TRs, RRMs, ARMs, NCAs, trading venues, and investment firms) to minimize disruption and avoid duplicating reporting processes.

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

NO

REMIT and EMIR have established mandatory communication channels between financial and energy market regulators at the EU and national levels. So a central mechanism could be automated and empowered with AI in order to standardise and consolidate reports from market participants, enabling more efficient data-sharing between authorities.

Any such mechanism should not be privately operated, but could serve to simply harmonise, consolidate and improve access to existing data under REMIT, MiFIR, SFTR and EMIR without imposing additional reporting requirements on market participants.

This should seek to serve data back to the market participants for supervision, as well as to share with third-country NCAs under MOUs.

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

Yes.

Over time, any decentralised approach to data-sharing would adopt data standards and automation such that it replicates a nodal version of the same thing.

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

<u>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.</u>

NO

Currently, commodity derivatives under MiFID/MiFIR already have a proportionate and tailored transparency regime, which has been subject to ongoing review since inception. This includes both pre- and post-trade transparency for MTFs and OTFs where appropriate according to the trading model and liquidity; it will likely soon also include a derivatives consolidated tape.

Currently, as we understand the approach, any consolidated tape for OTC derivatives would be a post-trade facility. However, it is perhaps important that the EC understands that currently, all trading interests in commodities are made visible to all market participants, both pre-trade and immediately post-trade by dint of their provision and aggregation on trading systems such as Trayport. There is consequently no new benefit in the costs proposed, especially if any CTP provider is a private and commercial entity, as currently proposed by ESMA. Given that exchange CLOBs are also pre-trade transparent, we understand that there is also no view from market users that any trading interests are insufficiently observable.

With regard to wholesale energy products ["WEPs"] it is important to also consider the extent of the order reporting regime under REMIT, which is more extensive than any financial regulations in the EU or overseas. The operational burden of these changes likely outweighs the potential benefits.

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

NO

Exchange-traded commodity derivatives [“ETDs”] traded on regulated markets, meaning pricing and trading volumes are publicly available shortly after trading in accordance with the MiFIR transparency framework. This has been subject to ongoing review since 2017 and does not need any more.

We note the ongoing confusion and insufficiency of the terminology defining the approaches discussed. The EC should be clear that commodity derivatives traded on MTFs and OTFs are not OTC instruments according to MiFID II, despite the EMIR definition classing them as "OTC Derivatives". Meanwhile, the main part of ETD commodity volumes are pre-arranged away from the orderbook for subsequent trade registration.

The EC should also be clear that the most transparent segment of the traded energy market is the standard REMIT WEPs traded under the C6 exemption in light of the pre-trade and post-trade aggregation and publication on trade-matching-systems, as well as the comprehensive order reporting requirements for both pre-trade and post-trade arrangements under REMIT.

The EC should be clear that the recent MiFIR review has also removed transparency requirements for transactions in most OTC derivatives that are either “on-the-run” very liquid tenors, or those executed outside of a trading venue.

Currently, commodity derivatives under MiFIR already have a proportionate and tailored transparency regime, which has been subject to ongoing review since inception. This includes both pre- and post-trade transparency for ETDs as well as derivatives traded on MTFs and OTFs where appropriate, according to the trading model and liquidity; it will likely soon also include a derivatives consolidated tape. There is consequently no new benefit in the costs proposed, especially if any CTP provider is a private and commercial entity, as currently proposed by ESMA. Given that exchange CLOBs are also pre-trade transparent, we understand that there is also no view from market users that any trading interests are insufficiently observable.

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

<u>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?</u>

NO

The EC should be clear that the recent MiFIR review has also removed transparency requirements for transactions in most OTC derivatives that are either “on-the-run” very liquid tenors, or those executed outside of a trading venue.

Organised Market Places ["OMPs"], MiFIR Trading Venues [MTFs, OTFs], as well as Energy Market Participants ["EMPs"] already report extensive data, including under MiFIR Article 26 (5) and for REMIT non-standard trades.

Instead of adding duplicative reporting requirements, we suppose a better adoption of DRR and Common Domain Models to facilitate data aggregation, modelling and enhanced data-sharing between regulatory authorities.

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

Yes.

We understand that ESMA has complete access to the MiFIR and EMIR reporting of financial instruments to NCAs. This evidently includes all trades executed on MTF and OTF trading venues as well as those registered onto Exchanges.

Given the ongoing MOU between ACER and ESMA, we understand that ESMA has complete access to the ARIS database for OMP transactions. i.e., those made under the C6 exemption.

We therefore also understand that ESMA's access to transaction data has improved since the issues highlighted in the May 2023 TRV article concerning natural gas derivatives, which led to an incorrect market concentration conclusion due to incomplete EMIR data. This was due to EMIR territoriality not including third-country market participants trading on EU trading venues.

If current data sharing is not sufficient, it may be that a central data collection mechanism for the integration of data from financial and physical energy markets would provide a suitably comprehensive view for EU supervisors.

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

<u>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</u>?

Yes

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

<u>In providing your explanation, please also clarify whether:</u>

- <u>the condition under item (i) of Article 2(1), point (d), which limits the MiFID exemption for entities that are market makers, would be fit for purpose considering the role played by certain non-financial entities as market makers in commodities markets</u>
- <u>the condition under item (ii) of the same provision, which limits the MiFID exemption in case a non-financial entity performs non-hedging trades while being a member of a trading venue, would be fit-for-purpose as regards the activities of non-financial entities active in commodity derivatives trading</u>

We note that the broad exemption available under Article 2(1), point (d) under MiFID prior to 2017 appeared to provide for a better architecture than subsequently. Not least because of the deployment of centralised trading entities by Non-Financial Companies and Corporates.

We also note that the concept of "market makers" is not formalised under MiFIR definitions, nor is it contractual across all trading venue rule books. Yet the term appears to be distinct from the concept of "liquidity providers" in the approach of the EC. Neither is fit for purpose under the market evolution since early MiFID.

We further note that the concept of being a "member of a trading venue" does not have a meaning nor application for any MTFs or OTFs and should be avoided. Rather, the term "market participant," which is defined in legislation, should be standard and uniform.

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

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

YES

The exemption serves both NFC_Plus and NFC_Minus thereby enabling EMPs, OMPs and their counterparties direct market access. This approach facilitates broad market participation and depth. The three tests offer a proportionate and observably successful approach, which has ensured fair and effective market function over a heterogeneous period of significant market volatility typologies.

The exemption under Article 2(1)(j) is well-suited to the needs of energy market participants (EMPs), aligning with the commercial realities they face. It is specifically limited to investment services related to commodity derivatives, emission allowances, and related derivatives, but only when provided to entities already engaged as customers or suppliers of the EMP's main business. This ensures the exemption applies to industrial and commercial relationships (e.g., large players in sectors like steel, chemicals, cement, automotive) rather than broader financial market activities.

Risk Management for Industrial Counterparties: EMPs' counterparties are exposed to commodity and energy price risks due to their production processes. These entities need certainty regarding long-term energy supply and price exposure, essential for planning and protecting margins in competitive markets. This certainty is often achieved through physical delivery and tailored hedging services, which EMPs are well-positioned to provide.

EMPs, with their in-depth understanding of the energy market, can offer integrated services that combine energy supply and investment services, helping customers and suppliers manage their energy price risks. They can dynamically adjust hedging strategies based on market conditions, benefiting both parties.

<u>Question 14. Do you currently benefit from the AAE?</u>

N/A

The three tests offer a balanced, flexible approach that aligns with MiFID II, ensuring efficient functioning of energy and commodity markets while supporting diverse business models.

Tailored for Different Models: The tests accommodate various business structures, preventing rigid compliance and excessive regulatory burdens.

Market Efficiency: The tests help maintain market liquidity and competition, supporting the EU's energy transition and industrial competitiveness.

Global Competitiveness: Narrowing the framework could exclude key participants, reduce market activity, and disadvantage EU firms.

<u>Question 14.1 Did the CMRP make it easier for you to benefit from the AAE?</u>

While the CMRP didn't expand the number of firms eligible for the AAE, it made it easier for EMPs to rely on the exemption by reducing complexity and regulatory burdens. CMRP and Ancillary Activity Exemption (AAE): The CMRP removed unnecessary regulations, simplifying the AAE requirements. This included deleting the complex "main business test" that required calculating market size thresholds for each commodity asset class, which were hard to observe and constantly fluctuated. The CMRP also eliminated the need for yearly notifications to use the AAE.

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

<u>Could you provide estimates of any cost savings and clarify their sources?</u>

As market operators across all EU energy market segments, we could observe that the CMRP delivered much sought-after simplification and removed certain operational burdens and audit-related stress across the NFC market participants.

This included deleting the complex "main business test" that required calculating market size thresholds for each commodity asset class, which were hard to observe and constantly fluctuated. The CMRP also eliminated the "market size test", together with the need for yearly notifications to use the AAE. The replacement "de-minimis test" resulted in a simpler approach, but did not alter the number and behaviour of the cohort of NFC market participants trading on either OMPs, nor MiFIR Trading venues.

We would refer to the Frontier Luther Report for details and evidence: "Principles of Energy Market Regulation" [RPT-Frontier Luther- Principles of Energy Market Regulation - 08 03 2024]

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

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

As market operators across all EU energy market segments, we could observe that the CMRP delivered much sought-after simplification and removed certain operational burdens and audit-related stress across the NFC market participants.

Any market impacts could not be segregated from the market volatility, together with Brexit impacts as occurring across the reference period.

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

<u>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?</u>

No comment.

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

The current Ancillary Activity Exemption (AAE) criteria are crucial for allowing energy market participants (EMPs, OMPs) to directly access energy markets. Therefore, this exemption helps maintain the fair and effective organisation of EU energy markets as well as establishing and maintaining their resilience in times of stress.

It is not clear to us that this approach is any improvement over that applying under MiFID I, however.

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

The current scope of the Ancillary Activity Exemption (AAE) under MiFIR remains essential to maintain the fair and effective organisation of EU energy markets.

It therefore contributes to better outcomes for all six of the market facets listed in question 19: conduct supervision and enforcement; fair competition; beneficial impact on energy prices; aiding liquidity of commodity derivatives market; sufficient prudential and resilience aspects; and achieving ongoing financial stability

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

No

The de-minimis test should continue to apply only to cash-settled commodity derivatives, emission allowances, and derivatives not traded on a trading venue.

Expanding the scope of the de-minimis test to include exchange-traded and physically settled derivatives would reverse and contradict EU regulatory principles of simplification and efficiency. It would likely both increase compliance costs for firms relying on the de minimis test and provide a disincentive to trade in the EU. The approach across most third countries only includes activities where they pose a risk to financial stability or investor protection.

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

Yes

Any inclusion of non-EU trades would lead to the extraterritorial application of MiFIDII & MiFIR which would not align with either EMIR, nor the respective overseas domestic framework.

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

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

No

The de minimis test threshold under MiFID II should not be calculated on a gross basis.

This would be in contradiction with both regulatory simplicity and the CRR/ CRD (Basle III) approach. As well as an international standard approach, the netting of positions prevents overstating risk and incorrectly implying under-capitalisation or excessive collateralisation or margining.

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

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

No

A more granular approach to the de minimis test would significantly increase its complexity, to no observable benefit.

It would also lead to firms or affiliated groups breaching a threshold in one commodity asset class while remaining below it in others.

Such an approach contradicts the intended simplification and streamlining outcomes of both the CMRP and CMU (SIU together with the Clean Industrial Deal).

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

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

No

The De Minimis Test is deemed appropriate in its current form as it includes both own-account trading and the provision of investment services to customers, aligning with the exemptions under Article 2(1)(j).

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

If No to trading test, the following question appears: if you think abolishing the trading test would not make the AAE less complex, do you believe this test continues to be adequately calibrated? YES

No

Removing the Trading Test would reduce market depth, liquidity, and resilience, countering the EU's goals for well-functioning commodity markets.

The Capital Employed Test is vital as it recognises that many NFCs or EMPs operate capital-intensive businesses and ensures that real-economy firms using derivatives for legitimate purposes are not excluded, misclassified or forced to use intermediaries; thereby hedging effectively and avoiding unnecessary compliance costs.

If No to the capital employed test. the following question appears: 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

The Frontier Economics study highlights that misclassifying such companies would impose disproportionate regulatory burdens, increase costs, and reduce access to essential risk management tools, weakening Europe's industrial competitiveness and energy market resilience. Firms subject to investment firm status would face substantial additional capital and liquidity burdens, diverting funds from critical investments.

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

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

No comment as Trading Venues and Broker OMPs.

However, it would appear to be very difficult to organise fair and effective markets should the majority of market participants be required to be reclassified as investment firms under MiFID II, MiFIR and EMIR due to the business and transactional costs that would be imposed.

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

<u>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?</u>

<u>Please substantiate your answer with quantitative elements, to the extent possible.</u>

The application of IFR/IFD prudential requirements would not have mitigated the "liquidity squeeze" experienced by energy market participants (EMPs) during the 2022 energy crisis. Instead, these requirements could have worsened the cash liquidity situation and had detrimental market effects. The liquidity squeeze was caused by erratic prices and a lack of collateral transformation services, stemming from physical factors like reduced Russian gas supplies, war, and decreased power generation capacity.

The Frontier Economics study indicates that reclassifying EMPs as investment firms would not address these issues but would add liquidity burdens, potentially leading to market exits and reduced hedging activity. The EBA did not find extending regulatory liquidity requirements to commodity firms beneficial.

EMPs managed the shocks without major defaults, and the Financial Stability Board reported no major disruptions to market functioning. Some Member States provided liquidity support as guarantors of last resort, but there was no general public intervention.

Lessons learned include:

- EMIR 3.0: Enhances communication and transparency in margin calls, improving EMPs' resilience.
- Uncollateralised Bank Guarantees: Introduces flexibility in clearing, mitigating cash shortfalls.
- Manual on Liquidity Risk Management: Provides a framework for managing cash liquidity risks, widely implemented by the energy industry.

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

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

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

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

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.

Please explain your answer to question 28:

No

No

No

We would support the current framework or a return to the approach under MiFID I.

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

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

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

We would presume a likely asymmetric approach.

Corporate NFCs and EMPs would not be created by these rules, but they could be removed from the cohort of active market participants if subjected to higher costs and capital requirements.

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

<u>Please explain:</u>

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

<u>3. Position management and position reporting</u>

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

<u>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?</u>

No

We query the approach of the Commission, where it assumes and generally considers that commodity instruments traded on EU trading venues are uniformly derivatives which conform to the futures model of contracts traded and subsequently cleared on a vertically integrated CCP. Where the Commission seeks to address such contracts, it needs to specify the application to cleared futures contracts, rather than to MiFID instruments, derivatives and trading on MiFIR trading venues more generally. For the avoidance of doubt, whilst our members operate a panoply of MTFs and OTFs, in addition to REMIT OMPs and indeed other commodity trading facilities around the world, including SEFs (US) and RMOs (Singapore); in no cases do they admit cleared futures for trading amidst the swaps and forwards made available for trading.

Therefore, with no concept of “clearing members” the question appears to be inappropriate to the broader set of MiFIR trading venues. Shifting responsibility to clearing members. Even if only for cleared futures contracts, it offers no clear benefits. It also suggests that a vertically integrated trading model with no “Open Access” is appropriate, which goes against the broader approach of competition and removing barriers as set out not only under CMU, but also previously under Art. 35 MiFIR.

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

Only where specified as Critical.

The existing powers of EU trading venues to obtain information on positions of market participants trading on their venues are fit for purpose and do not require changes. For operators of MTFs and OTFs we see little or no benefits in receiving information concerning third-party trading by market participants where the commodity instruments are either not CCP cleared, cleared by the third-party CCP with no links to the trading venue; but nevertheless remain entirely fungible.

We view the approach to position reporting as both potentially anti-competitive as well as duplicative under any ecosystem with a plurality of venues or post-trading FMIs. We made these comments to the FCA consultation in 2024, upon which the FCA altered the UK approach to the specification of critical contracts, such that they only existed in reference to that venue where they were made available for trading.

The approach cited, which is embedded in Art 57 par 8 (b) of MiFID, is only appropriate for a subset of the market, which concerns those non-fungible cleared derivatives offered under closed access restrictions by a vertically integrated exchange CCP. To this end, the implementation of Art 57 should need to be given further formal guidance as to the limits and the extent of its applicability as a harmonisation tool for NCAs who oversee the wider set of Swaps and Forwards on MTFs and OTFs.

Please see: [LEBA-EVIA Response to FCA; CP23-27; on reforming the commodity derivatives regulatory framework; 16Feb2024.pdf]

Answer: resorting to the single data collection mechanism as referred to in section 1

It follows that any reporting to trading venues implies both a monopoly verticalized provider with closed access; and a confused understanding of the role of a trading venue as set against that of a post-trade financial market infrastructure (CCPs, CSDs).

Rather, market participants in the scope of the regulation should provide information about their entity and group risks directly to a dedicated reporting facility. This information can consequently and appropriately consider netting sets, collateral and intra-group operations.

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

1. C6-carve-out contracts: Yes
2. the underlying spot market: Yes

EVIA_LEBA response takes the same approach to both C6-carve-out contracts & the underlying spot market. It would also not differ depending on the type of underlying commodity.

Please specify what your preferred option would be:

Answer: 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:

Whilst energy market participants already report extensive data on trades, orders, positions and exposures; these should not be routed through trading venues for completion and duplication concerns.

Where no single supervisory authority has a complete view of the energy market, so data sharing and data standards should be tasked to solve these issues. The application of ISO standards, together with agile data via Digital reporting and semantic labelling via the Common Domain Model, can solve for the cited issues in a straightforward and future-proof manner. These approaches would encompass the adoption of digital ledgers. Therefore, instead of imposing a new duplicative reporting requirement, we recommend improving the data-sharing capabilities between regulatory authorities.

This approach would also be appropriate for position information.

Please see our answer to Question 1.

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

Yes.

Clearly, the issue under consideration here is that many EU market participants may not be EU-domiciled natural persons. The Commission should therefore clearly set out that the limits of its reporting scope would not be extra-territorial. Rather, this clear and concise limitation would incentivise global cooperation, standard setting and data sharing.

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

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

No.

The approach to economically equivalent OTC contracts under Article 58(2) of MiFID is neither simple nor helpful. The UK has already made a similar conclusion.

Rather than consider its extension beyond investment firms only, the Commission should consider removing the entire approach and replacing it with properly granular data using digital reporting and applying a semantic labelling architecture.

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

No.

The approach to economically equivalent OTC contracts under Article 58(2) of MiFID is neither simple nor helpful. The UK has already made a similar conclusion.

Rather than consider its extension beyond investment firms only, the Commission should consider removing the entire approach and replacing it with properly granular data using digital reporting and applying a semantic labelling architecture.

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

<u>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?</u>

Yes.

Clearly, the approach is problematic across many topics.

For MTFs, OTFs and OMPs who do not trade cleared futures, the current approach is especially inapplicable and requires waivers from NCAs. The Commission could helpfully both revise the approach and narrow the scope to CCP cleared futures only.

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?

No. This approach would be extra-territorial and therefore both overly complicated and duplicative. We would also query how such an approach could be enforced. Rather, the Commission should maintain a clear territorial boundary within the scope of the EU and seek mutual recognition and data sharing with third countries.

4. Position limits

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

In the opinion of trading venue operators for MTFs and OTFs, the impact of position limits on the liquidity of commodity derivatives has been zero or negligible, especially when considering the regime after the 2020 CMRP Review. This is in part due to the high levels set for the limits, but more-so because most trading counterparties apply the hedge flag due to the nature of their activities.

The further reason for the irrelevance has been that much of the fundamental commercial business substantially occurs as physical forward contracts under REMIT and are therefore neither transacting on MiFIR trading venues, nor as OTC contracts. Evidently, the ACER monitoring data, together with the LEBA monthly data publications and the Trayport quarterly publications, set out clearly the relative extent of these volumes.

This has been in contrast to the impact of the AAE thresholds, which have materially changed counterparty corporate structures as well as onward trading behaviour. Generally, here to the detriment of overall markets, as trading in forward energy terms and the application of appropriately tailored hedges has been penalised by the legislation. It is very evident from the ACER and ESMA data, that since MiFIDII and especially in the period since the Capital Market Recovery Package in 2020, trading in EU energy commodities has crowded into the front month of the benchmark futures and way from regional and forward term markets which would better hedge the underlying balance sheet exposures.

That said, it is more important to note that any position limits regime is highly inappropriate for MTF and OTF MiFIR trading venues where the instruments are not CCP cleared futures contracts, but rather trade as swaps or physical forwards. For these, the trading venue knows the daily volumes in each instrument, but does not know the group risks and netting sets of the market counterparties, which are not reported to them under articles 57 (8) and 58 (2) of MiFID II.

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

No comment as trading venue operators.

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

Evidently, the primary reason for the absence of mapping between position limits and the absence of market abuse, together with the maintenance of orderly trading, is that OTF and MTF operators would naturally only operate safe, effective and fair markets, whatever the instance of position limits. Both REMIT and MAR already provide comprehensive frameworks for this purpose.

Further, there are only a small number of financially settled power markets operated in the EU, with no financially settled gas markets. To date, those financially settled power markets have not needed to rely on position limits to remain safe and orderly. The MiFID II position limits regime adds one tool to prevent a single type of market abuse of "market cornering."

It is perhaps important to state that because broker-operated MTF and OTF markets, together with broker-operated OMP markets, are open access and fungible, so "market cornering" is negated. Where delivery squeezes into futures contracts or closed access vertical siloes are not mandated, the market competition and openness removes those specific risks. The fact that most energy markets are traded as physically delivered forwards, with delivery on an ongoing daily basis, also negates the concept of cornering as the Commission would understand it from US futures in agricultural products.

Further, it remains evident that the effective prevention of market abuse requires the competent monitoring of trading activity under rulebooks. This is a fundamental part of the broker-operated MTF and OTF markets and closely supervised by NCAs as such.

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

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

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

Under the MiFID II Commodity Markets Regulatory Package (CMRP), the scope of commodity contracts subject to position limits was reduced to focus primarily on agricultural commodity derivatives and critical or significant commodity derivatives. Those critical or significant commodity derivatives are defined as those with a net open interest above 300,000 lots over a one-year period.

Whilst this reduction was aimed to ensure that position limits are applied to contracts that have a substantial impact on the market, thereby supporting orderly pricing and preventing market abuse; the CMRP was solely couched in terms of cleared futures despite not being formally constrained to these under the scope of Article 57. They are therefore assumed not to apply to contracts traded on MTFs and OTFs unless the concept of "OTC Contracts" would be deemed to take the EMIR definition of "OTC Derivative" as opposed to the MiFIR definition of "OTC Contract". We assume the latter, although MiFID II and CMRP remain opaque on the application, and therefore, contracts traded on MTFs and OTFs cannot be "OTC" by definition under Perimeter guidance.

In theory, therefore, the disapplication set out above could indeed have had a positive impact on market participants' ability to access hedging tools in smaller, less liquid markets such as the forward power markets arranged on OTFs in particular. In practice, other signals such as price volatility and credit availability have masked any impact we can discern, especially since the main part of those physical forward markets occur under REMIT and therefore neither on MiFIR trading venue, nor as OTC.

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

No.

It follows from our comments in reply to question 41 above that the definition, whilst workable, remains open to further specification and improvement. Given that other major jurisdictions around the globe, such as the UK, have similarly concluded that only significant or critical contracts should be subject to position limits, we would advocate a further and more concise delimitation of whether a contract is a 'significant or critical'.

This should be trading venue specific as finally adopted by the FCA in the UK in order to enable competition and alternatives to closed vertical siloes to operate where appropriate or demanded by market participants. For instance, the U.S. Commodity Futures Trading Commission (CFTC) imposes federal position limits on "referenced contracts".

In the EU, limits are also venue-specific; physically-settled ICE Endex and EEX TTF natural gas contracts are currently subject to position limits, with EEX THE contracts in the process of being brought into scope. However, it may not be appropriate that these limits also apply to the entire forward curve.

In general, we would question the necessity of imposing position limits on contracts that are not nearing delivery, or where delivery is not concentrated into a single event, as is the case with Gas and Power beyond the "Day Ahead" contract. We would ask that the Commission provide evidence of any disruptive delivery “squeezes” before maintaining even the current approach. Overall, it is important that EU maintains a well-calibrated and evidence-led position limits regime, which is solely focused on significant or critical contracts, in order to retain the competitiveness of EU markets compared to global trading venues.

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

No.

From the evidence of ongoing market supervision across the EU MTFs, OTFs, OMPs and bilateral markets, we do not see any evidence where traders use their positions in commodity derivatives with a view to unfairly influence prices or secure the price at an artificial level. Rather, as is clear from the record of MAR and REMIT cases, most market manipulation concerns “banging the close”

REMIT and MAR are comprehensive market abuse frameworks that ensure effective prevention of market abuse, as they require monitoring trading activity, not just position size. In addition, they impose several layers of surveillance (regulators, trading venues and market participants) to ensure market integrity is integrated at every level.

<u>Question 44. Contracts with the same underlying and same characteristics subject to position limits are sometimes traded on several trading venues. Do you believe that the level of the position limit for those contracts should be set at European level (e.g., by ESMA), as opposed to the NCA responsible for the supervision of the main trading venue for that contract?</u>

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

No.

No.

It follows from our answers above that position limits have a much more limited use and role than currently afforded under MiFID II and MiFIR. This concerns delivery squeezes for physical commodities with specific and complete locational delivery. It is apparent that this appears to be different to the scope of EU energy markets, especially brokered physical forwards and swaps.

Consequently, position limits should be deferred to the competency of the trading venue and only applied where appropriate. In this manner, neither the NCAs, nor ESMA should be appointed with the responsibility at level 1, rather, solely for oversight and harmonisation.

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

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

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

No.

It follows from our answers above that position limits have a much more limited use and role than currently afforded under MiFID II and MiFIR. This concerns delivery squeezes for physical commodities with specific and complete locational delivery. It is apparent that this appears to be different to the scope of EU energy markets, especially brokered physical forwards and swaps.

Consequently, position limits should be deferred to the competency of the trading venue and only applied where appropriate. In this manner, neither the NCAs, nor ESMA should be appointed with the responsibility at level 1, rather, solely for oversight and harmonisation.

Since the objective is to prevent market abuse and ensure orderly price settlement, we do not see the need to apply position limits to cash-settled commodity derivatives where there are no physically-settled versions.

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

No.

The question does not beg a Yes or No answer.

Since the objective is to prevent market abuse and ensure orderly price settlement, we do not see the need to apply position limits to cash-settled commodity derivatives where there are no physically-settled versions.

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

Yes.

Generally acceptable in terms of process, but the timing of reviews and application could be better flagged and formalised.

We would welcome stakeholder consultation on possible changes to the process.

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

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

No.

We cannot conceive of any use for such a complicated addition to reporting and controls. Indeed, the hedge exemption already provides a necessary differentiation, allowing market participants with physical needs to exceed position limits in alignment with their commercial needs.

Other than this distinction, we do not see which other motivational distinction should be made to determine how large someone's position can be.

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

Yes.

We think this question is self-evident. Energy market participants need to hedge the production and consumption of physical gas and power assets, which are crucial for ensuring energy security. Therefore, they must be able to rely on the hedge exemption, as their need to hedge or proxy hedge in liquid product pools is essential. Depending on the size of the company, this need may exceed position limits.

<u>What changes to such exemptions would you propose?</u>

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

We would not propose any changes following the CRMP. All markets should be treated the same.

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

Don't know / no opinion / not applicable

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

No.

As operators of MiFIR MTFs and OTFs, and contrary to the approach around position limits, we understand that our members are not in any position to grant hedging or liquidity provision exemptions from position limits to market participants. Operators of MiFIR MTFs and OTFs treat all market participants the same.

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

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

No.

As operators of MiFIR MTFs and OTFs, and contrary to the approach around position limits, we understand that our members are not in any position to grant hedging or liquidity provision exemptions from position limits to market participants. Operators of MiFIR MTFs and OTFs treat all market participants the same.

Question 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?

b) should be in charge of setting position limits for non-spot month versions of contracts subject to position limits, thereby applying regulator-set position limits only to spot month contracts, as seen in other jurisdictions?

c) should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?

Yes.

Yes.

Yes.

It follows from our answers above that position limits have a much more limited use and role than currently afforded under MiFID II and MiFIR. This concerns delivery squeezes for physical commodities with specific and complete locational delivery. It is apparent that this appears to be different to the scope of EU energy markets, especially brokered physical forwards and swaps.

Consequently, position limits should be deferred to the competency of the trading venue and only applied where appropriate. In this manner, neither the NCAs, nor ESMA should be appointed with the responsibility at level 1, rather, solely for oversight and harmonisation.

Since the objective is to prevent market abuse and ensure orderly price settlement, we do not see the need to apply position limits to cash-settled commodity derivatives where there are no physically-settled versions.

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

Yes.

Those non EU-country market participants have to respect the position reporting and limit regime within the EU to the same extent as their equivalent firms in the EU.

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

No.

We do not believe that the position limits regime should also apply to C6 carve-out products because these contracts or instruments must be physically settled and are not financial instruments:

1. The concept of positions at the trading venue level simply does not exist. Positions only exist on balance sheets, whether those of market participants, their client chains, or as representations in post-trading financial market infrastructures such as CCPs, TRs and CSDs. In post GFC legislation, the concept of trading venue has been poorly blurred into exchange vertical siloes which link the matching and execution services to post trading settlement and novation. The concept of OTC markets is further blurred between the EMIR definition and the operation of MiFIR multilateral trading facilities known as MTFs and OTFs, which do not embed post-trade infrastructures by do have rulebooks. Such trading venues will be aware when a market participant buys a contract but will not know if that contract is either subsequently reassigned or sold – either within the group, on another trading venue or directly to another counterparty ["OTC"]. This contrasts with exchanges and clearing houses, which can monitor open net positions by dint of strict Intellectual Property provisions and access restrictions.
2. The concept of positions is almost impossible to define in physical energy markets. For example, how can a producer of gas provide an indication of its position when it is extracting the gas from underground? The same problem also exists for generators of electricity. Similarly, how could any counterparty to a "swing contract" express its position when the contract provides for multiple, interlinked options to take/provide a supply of energy? It is wholly impractical to require every market participant in the physical energy market to provide a breakdown of all this information to every C6 trading venue on which

it participates. The additional risk (particularly to confidentiality), expense and uncertainty in application of the rules would make the proposal unworkable.

3. Electricity is difficult to store and impossible to store at a meaningful scale, which makes it almost impossible for one party to take a dominant position, particularly when the generation and supply of electricity is tightly controlled by network operators.
4. C6 contracts typically cascade and overlap, so identifying a position in a single contract and calculating a position limit is extremely difficult. For example, a calendar year contract for the supply of gas or electricity will overlap with all other tenors that are contained within the year, including seasons, quarters, months, balance-of-month and specific days/other periods. When added to the complexity surrounding swing contracts, options and generation, the calculation of a position in a particular contract/tenor becomes almost impossible.
5. C6 contracts are physically delivered at a pre-defined time and date, which means that:
    - if you have a net long position in any hour coming up to the moment of delivery, you have to sell, transport out, store or consume that energy; otherwise, you will be subject to significant imbalance charges from the grid operator; and
    - If you have a net short position in any hour coming up to the moment of delivery, you have to buy, transport in, extract from the store or produce that energy; otherwise, you will be subject to significant imbalance charges from the grid operator.
6. Imposing position limits on participants in the physical market could have significant detrimental effects on the generation and supply of energy. For example, if the operator of a gas-fuelled power station is prevented from buying gas, it will be unable to operate the power station and unable to generate electricity.
7. The storage and transmission of gas and electricity are limited by the capacity of storage facilities and transmission networks, which creates barriers to building up a dominant position. The ability for energy to be transported across borders (including the supply of LNG) also creates barriers to a participant taking a dominant position in a specific geographic area.
8. The majority of C6 transactions, by definition, are categorised as hedge trades and would be excluded from any position limit architecture in any event. The concept of the "futurization" of commodity markets fails to foster the goals of enabling tailored hedging to balance sheet risks, encouraging and optimising the use of longer-dated forward-market hedges to mitigate spot volatility and roll-over costs.
9. Many trades in C6 transactions are undertaken by non-EU market counterparties who would not fall under the EU statute. EU-based market counterparties would be incentivised to trade in third countries.
10. Position limits in derivatives exist to prevent delivery squeezes. For C6 instruments such delivery month squeezes cannot happen because there is no singular contract expiry.

11. Commitment of Trader “CoT” reports were a MiFID2 concept that sought to mimic certain CEA provisions in the US, but which never made sense nor offered any information value. Operators of MTF and OTFs could not know the positions of their market counterparties or other market participants. Since the advent of MiFID2 trading venues across both the UK and EU have not been asked to publish CoT reports by their NCAs for these very evident reasons.
12. A degree of self-regulation is already in place in bilateral markets including counterparty credit restrictions which enable participants to manage risk and control counterparty credit exposure. The bilateral market is already effectively able to manage risks around supply, price and demand.

We cannot see any benefits from applying position limits to C6 carve-out products. Conversely, the complexity, cost and disruption it would create in physical markets regulating the supply of energy across Europe would, in our view, be catastrophic.

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

No.

These should be considered by the trading venues and only when appropriate to do so.

<u>5. Circuit breakers</u>

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

Concisely, like the MCM Gas Price Cap, IVMs were a creation whose efficacy was never tested, nor proven. In that they only applied to commodity derivatives on exchange and not to the physical forward market, any test or real-life application would likely have proven immaterial since the physical markets would have carried on in the usual manner. That said, we found little to disagree with in ESMA’s findings (Final Report on the implementation and functioning of the Intraday Volatility Management Mechanism, ESMA70-156-6509, June 2023) to the effect that the implemented IVMs generally seem adequately calibrated to manage price volatility.

Clearly, the application of circuit breakers is inappropriate for the majority of energy forward instruments which trade episodically, usually in large blocks based upon contingent packages, and in overlapping products, terms and contract shapes. Would the Commission suppose that many different venues, each trading the same fungible instruments, in parallel or sequentially, each cease and restart at different times, after different delays and at different prices?

We underline once again that the European energy market is far more diverse and heterogeneous than the front-month contract on the principal futures exchanges, yet in most cases, the approach of the Commission and the agencies is to consider only the very narrowest of use-cases.

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

No.

Recalling previous answers, the approach from the Commission appears to consider front-month CCP cleared futures contracts to be the only relevant instruments available for trading European power and gas. A great many other commodity derivatives are available, together with even more physical forward contracts (c. 1000). All these instruments act in concert and are contingent on each other to form a traded complex. Trading also occurs in contingent spreads and packages.

For these reasons, we find that an external application of individual circuit breakers offers no benefits to the market. Rather, trading venues themselves should develop and implement the tools best suited to maintain orderly trading.

Please explain your answer to question 58:

A certain degree of volatility is inherent in power and gas markets, and static circuit breakers do not account for changing market conditions. By adjusting to market conditions, dynamic circuit breakers allow for necessary price fluctuations while still preventing excessive volatility. Rather than preventing instability, a static circuit breaker may exacerbate volatility when trading resumes. The risk here lies in the loss of confidence in the respective markets and market participants withdrawing permanently in favour of bilateral OTC trading which offers the certainty of risk transfer when required.

Therefore, we concur with the ACER's opinion that any measure aimed at establishing a temporary suspension of trading mechanisms would have to be introduced long before it can be used. When introduced, it cannot be activated longer than strictly necessary, in order to preserve proper pricing signals to the fullest extent possible, so that market participants face incentives to mitigate price spikes. Moreover, such implementation should be preceded by an impact assessment.

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

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

The effect of halting trading in one instrument admitted to a singular exchange would be to port trading to either that same instrument admitted to another trading venue, or to transfer it to a highly correlated but different instrument (product or delivery period) on that same singular exchange. We struggle to find any benefits in these actions, but hedging would likely be disrupted with concomitant effects on corporate balance sheets, auditing and reporting.

As per prior answers, we struggle to find any observable benefits from the imposition of static price bands. Such static circuit breakers carry the risk of unnecessarily halting trading, even when price adjustments are a natural and proportionate response to new market realities. This has been a clear real-time example in recent weeks. Such rigidities offer no benefits and may delay the market's ability to reach equilibrium, exacerbating uncertainty rather than mitigating it.

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

We would not be in favour of trading halts as they carry significant risks for underlying physical markets, especially where any halt is lengthy. Extended interruptions can severely affect spread contracts, collateral and margins, together with closing windows and fixing prices.

We refer to the comments in answer to questions 58 and 59, but would they were still be imposed, then we would suppose that not more than a minute of any trading halt could be feasible.

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

We consider that the same approach should apply to all instruments as a matter of both common sense as well as adherence to the simplification agenda inherent in EU CMU/ SIU.

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

Yes.

We would note to the Commission that MTFs and OTFs offering energy derivatives, forwards and swaps, together with OMPS offering energy forwards, do not organise their trading calendar into either "Spot Month" nor "Front Month". We would urge the Commission to consider European energy markets according to the standard market terms and delivery shapes. Moreover, the term "Spot" as deployed in this consultation appears misleading and at odds with standard market terms. We presume the commission intends the term "spot" in the context of question 60, and perhaps others, to mean inter alia "forward," otherwise the divergence to futures pricing would be nonsensical. Even this interpretation is puzzling, and perhaps the Commission could provide clarity going forward.

In any case, it still follows from prior answers that we caution against severe risks in the application of static breakers to any type of energy contract. Of course, the implications will be even more severe if there are delivery obligations, and a company may not be able to unwind a position and receive penalties for non-delivery.

Any considerations for static breakers should be ceased.

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

No.

We refer to prior comments that the Commission approach to considering and describing energy markets admitted to either Regulated Markets ["Exchanges"]; MiFIR trading Venues ["MTFs, OTFs"]; REMIT WEPs; OTC; and on third country venues, is unclear and highly misleading as a recurring theme throughout the consultation.

To be clear, were the implementation of static price bands to act as a disincentive to exchange trading the propensity to move liquidity elsewhere would be likely. However whether that would be to their MiFIR venues, to REMIT WEPs or overseas would be a difficult prediction. What is simply apparent, is that the option to move to OTC bilateral trading of financial contracts is far more unlikely or vanishing.

What is further self-evident is that any move to MiFIR venues, to REMIT WEPs or to overseas trading venues would entail no risk that we could discern, nor written into the EU legislative and mutual recognition approach. Yet the structure of the question falsely supposes risk to be inherent which queries the Commission's base assumptions which appear to tend against plurality, resilience and choice.

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

Yes.

Where circuit breakers are implemented directly by trading venues, they tend to function adequately by dint of constant reappraisal and tuning. However, trading venues would, and should, only implement any circuit breakers where appropriate, and this could only be the case for very liquid contracts traded on an order book. We note that the majority of traded volume, even on front-month RM Exchange contracts, is consequent to pre-arranged block registration and is not subject to circuit breakers.

Clearly, for less liquid contracts, including all those admitted and traded on MiFIR trading venues, any dynamic circuit breakers would be highly inappropriate for the reasons previously set out.

We therefore urge the Commission to be commensurate and proportionate in the consideration of whether trading rules are beneficial. The simplest way to achieve this is via full derogation to the trading venues. We believe this concurs with ESMA's findings in its Report on the intra-day volatility management mechanisms (ESMA70-156-6509, June 2023).

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

No.

It follows from our prior comments on efficacy, as well as the evident threats to the security of supply, that forcing energy exchanges trading in spot energy products or C6 carve-out products to implement mechanisms similar to circuit breakers would not offer any net benefits.

As in the prior comments, trading controls, including circuit-breakers, should be delegated to the level of the trading venue and supervised accordingly. In this case, energy exchanges are already well equipped with volatility safeguards. Such tools were developed and iterated over many years.

<u>6. Elements covered by the Draghi report</u>

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

No.

We query any logic and scope for the implementation of an obligation on firms trading European wholesale energy products to be located in the EU. Energy markets and their participants are clearly global, and the EU is not a self-sufficient energy island. Even it if it were, energy markets require fallbacks, redundancies, contingencies and overcapacity. With increasing reliance on renewable sources, greater overcapacity will be needed to meet the minimum security of supply requirements.

Draghi is greatly mistaken. Non-EU firms are active not only in physical delivery but also in derivatives markets, where they play a key role in facilitating risk management. Excluding them will diminish market liquidity, resulting in higher bid-ask spreads, higher transaction costs, and less reliable price discovery. Moreover, isolation would make markets riskier and more prone to sudden price swings, as they lose the deep shock-absorbing capacity that comes with broad participation. In stress scenarios, concentrating trading activity within the

EU could amplify systemic risk, as the ability to diversify or offset shocks across markets would be curtailed.

A similar proposal for a strict location policy, under REMIT, was rejected in 2024 by the Parliament and the Council. Instead, the revised version of REMIT requires non-EU firms to not only register with the national regulatory authority in a Member State where it is active, but also to have a designated representative in that country. Under EMIR3 criteria, to determine which derivatives contracts should fall in the scope of the clearing obligation, so that no commodity derivatives contracts are in the scope of the clearing obligation, much less the scope of the derivatives trading obligation.

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

Please refer to our answer to Question 64. Imposing any locational obligation to trade in the EU would reduce the number of market participants, thereby diminishing market utility, resilience, access and price-signalling.

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

Please refer to our answers to Questions 64 and 65.

Any such locational policy damages the EU's security of energy supply, its competitiveness, and the direct objectives of both the "Third Energy Package" together with those under "Energy Union" and the "SIU" compasses. Regarding liquidity needed for the effective functioning of European energy markets, we would suppose that it would be very likely to result in trading activity in European energy markets shifting to foreign jurisdictions.

6.2. The Market Correction Mechanism and other dynamic caps

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

No.

We note that the MCM is no longer a tool to limit the episodes of excessive prices in the EU. Moreover, the MCM was never activated, nor tested, so any opinions remain conjecture.

Our conjecture would suppose that the MCM would have been completely ineffectual because energy is a global market, and the tool itself is only effectively applied to the single CLOB on ICE Endex. The remainder of the EU and global markets would have simply caried on, including the ICE and EEX direct participants who could resort to the contingency arrangements on those self-same facilities.

In short, supposing the MCM constrained EU energy prices to some 10% or 20% under the prevailing global prices, who does the Commission suppose would have been fulfilling the role of the seller within the EU for the Rest of the World to purchase?

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

<u>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:</u>

No.

We have no confidence that, in seeking to control prices, the EU Commission could also control supply and demand quantities. This has no basis in history, nor in economic theory and more closely resembles the Heisenberg Uncertainty Principle.. It was not a useful tool, but simply engendered fear and a loss of confidence in EU markets.

In organising global liquidity on trading systems, our membership would be intrigued to offer fungible divergences between EU prices and international prices on the basis of the same location and capacity. However, we severely doubt that they could ever be warranted. Rather, price signalling is a tool that should be welcomed across the global supply chains and interconnectors for LNG and power.

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

Yes.

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

The ESMA assessment of the MCM clearly outlined that the MCM distorted price formation in periods of stress and reduced liquidity, especially closer to cap levels. It also entreated divergence between capped and uncapped markets; as well as imposing margining and collateral uncertainty such that it could likely materially weaken the resilience of the EU's energy trading ecosystem.

The MCM threshold level itself may have the equivalent effect of a large option barrier or expiry such that the level acts as a magnet or a “gamma peak” with the effect of holding prices at or close to the elevated level for a prolonged period of time.

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

The impact of a triggering of the MCM is unclear, however one aspect which is evident is that trading would continue on the contingent facilities at ICE and EEX as well as elsewhere in the physical spot and forward market. One might assume less liquidity and elevated volatility.

We note that both ESMA and the ECB have reported on the MCM.

- The ESMA assessment of the MCM clearly outlines that the MCM distorts price formation in periods of stress and reduces liquidity. ESMA also cited increased basis risk due to divergence between capped and uncapped markets, and risks for CCP clearing, margining and collateral uncertainty. Factors which together would weaken the resilience of the EU's energy trading ecosystem.
- The ECB has expressed concerns that the design of the previously implemented MCM jeopardised financial stability in the euro area (ECB Opinion CON/2022/44)

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

No.

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

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

Please explain why, making if possible specific references to those organisational requirements, which are currently foreseen under MiFID and should in a similar way apply to market participants in spot energy markets?

Where possible, could you please estimate expected costs to your entity, and potentially other entities that would have to comply with those new requirements, distinguishing one-off costs and recurring compliance costs (for instance, per year):

Yes.

We understand that the Commission herein takes a very wide interpretation of the term “Spot Markets”, somewhat different to the natural language or supervisory application. Concisely, whereas the term “Spot Markets,” not usually used in commodities markets and rarely in energy markets, would normally refer to settlement under two days of trading or other market convention for prompt settlement; in this case we consider the commission to be referring to markets for forward physical delivery of any term, but which are excluded from MiFID II perimeter scope. The main segments of the energy market trading that would be covered by this interpretation would encompass the intraday balancing markets, which occurs via NEMOs, Day Ahead Markets, and Forward Markets.

Of these, the power markets operated by NEMOs are separate from those operated by EVIA/ LEBA member firms for the evident reasons that 15, 30 and 60 minute immediate auction windows are very specific to the Energy Balancing Grid Operator and the Transmission System Operators. In particular, according to CACM, each market operator has to undergo a licensing process to become a so-called Nominated Electricity Market Operator (NEMO), which includes tailor-made organisational requirements and close supervision by ACER and national regulators. Besides that, various national requirements exist for spot energy exchanges similar to the ones in MiFIDII Art. 53.

We would defer to the Committee of the NEMOs and the association of TSOs for detailed comments, but it is apparent that these markets have tailored rules and sanctions developed over half a century. These energy spot exchanges impose their own licensing and conduct-of-business requirements, which market participants must adhere to.

The framework applicable to spot markets already includes a range of organisational and conduct requirements for market participants: At the European level, market participants are bound by spot market regulation such as the balancing network code, the capacity allocation and congestion management network code and of course REMIT. NRAs process applications for various licenses, which include conduct and organisational obligations. Beyond licensing, several market codes and rules govern how market participants operate in the market, for example, how bids and offers are submitted, how records are kept, and how conflicts of interest are managed.

Markets operated by EVIA/ LEBA member firms include the Day Ahead Markets, and Forward Markets for European Gas and Power across those EU member states and beyond, which permit an open market. This clearly excludes certain CEE3 and SEE4 member states who, in the view of the Association, do not conform to the initial two articles of the Lisbon treaty.

All EVIA/ LEBA member firms operating broker OMPs under REMIT conjointly operate EU authorised OTFs. This has been a harmonised supervisory requirement since the inception of REMIT by dint of the operation of the “C6 Exemption” such that any WEP needs to be offered under MiFIR before attaining any qualifying exemption. This embeds the evident consequence that all broker OMPs apply MiFIR Organisational, Monitoring, and Record Keeping requirements across the panoply of relevant RTS (from 06 to 43). Similarly, that set of OMPs not operated by Broker OTFs are those operated by Exchange RMs, and similarly, these apply their MiFID II and MiFIR systems and responsibilities similarly.

For the avoidance of doubt, in respect of the question which refers to “requirements which are currently foreseen under MiFID,” we would note that these have actually been in application since MiFID II. Considering whether the application of these rules would pose costs and barriers is far less relevant to the operation of the REMIT spot markets than the twelve issues set out in our answer to Question 55 concerning the rationale for the C6 exemption. These were further expanded upon in our response to the 2022 ESMA consultation on commodity derivatives markets [EVIA & LEBA Response to ESMA Consultation Paper; Technical Standards for Commodity Derivatives.pdf].

In short, whilst the MiFID II and MiFIR standards are well met across the scope of the Spot markets, the important outcome has been to retain the tailored approach and flexibility. Therefore, to the narrow sense of the question, any costs associated with bringing spot markets under the legal framework of MiFID II and MiFIR would be disproportionate.

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

No.

We concur with the view of ACER who consider that any extension of MiFID II organisational requirements (e.g., capital requirements) to market participants in spot energy markets could constitute a significant barrier to entry. Given the distinct nature of these markets, together with purposes pursued by participants in spot versus derivative markets, it is appropriate that each operates under a separate regulatory framework. ACER is correct in setting out that it does not see the need for additional regulatory requirements on energy market participants. Indeed, the definition of market abuse in REMIT also cross-references to the definition in financial legislation.

We agree with ACER that such ongoing requirements continue to need to be introduced in a tailor-made way in order to take into consideration the specificities of electricity and natural gas markets and the definition of organised marketplace under REMIT that encompasses a greater variety of entities. The unique coupling of energy supply and transmission in electricity spot markets makes energy a fundamentally different type of commodity to hard metals and bulk ores; soft agricultural foodstuffs and grains; as well as to traded liquids and distillates.

Whilst now dated the CEER/ERGEG final advice on the regulatory oversight of energy exchanges. A CEER Conclusions Paper from 10 October 2011* already evaluated the supervision of energy exchanges and the monitoring of trading activities of market participants by the competent authorities and made recommendations on the supervision, governance and role of market surveillance. Subsequently ACER has consolidated and formalised this advice**, such that NRAs have applied these supervisory standards on Supervision, Governance and Market Surveillance for well over a decade and since prior to MiFID II.

Of these, the power markets operated by NEMOs are separate from those operated by EVIA/ LEBA member firms for the evident reasons that 15, 30 and 60 minute immediate auction windows are very specific to the Energy Balancing Grid Operator and the Transmission System Operators. In particular, according to CACM, each market operator has to undergo a licensing process to become a so-called Nominated Electricity Market Operator (NEMO), which includes tailor-made organisational requirements and close supervision by ACER and national regulators. Besides that, various national requirements exist for spot energy exchanges similar to the ones in MiFID II Art. 53.

We would defer to the Committee of the NEMOs and the association of TSOs for detailed comments, but it is apparent that these markets have tailored rules and sanctions developed over half a century. These energy spot exchanges impose their own licensing and conduct-of-business requirements, which market participants must adhere to.

* https://www.ceer.eu/publication/ceer-final-advice-on-the-regulatory-oversight-of-energy-exchanges-a-ceer-conclusions-paper/

** https://www.acer.europa.eu/remit-documents/remit-reports-and-recommendations

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

No.

We are not aware of any particular "atypical trading behaviours" during the energy crisis other than a broad cessation due to the lack of available credit lines and the related increased collateral requirements and scarcity. None of these could have been either addressed nor mitigated by the application of rules similar to the ones included in MiFID.

Concerning trading over weekends, it is important to highlight a key feature of spot energy markets, and LEBA publishes a series of "Weekend Indices" every week. Immediate responses to changes in weather forecasts, production availability, or consumption needs often require real-time action—even during weekends—and result in legitimate trading activity. While such behaviour may appear atypical from a financial market perspective in normal times, these were abnormal times, and it is, anyway a fundamental to the functioning of physical gas and power markets.

Otherwise, the only abnormal behaviour that we could point to relates to the period following the immediate price spikes, in so far as unconventional trading patterns emerged in response to mandatory gas storage filling targets. These have been further described by ACER in its European Gas Market Trends and Price Drivers – 2023 Market Monitoring Report* (pp. 45 and 80). Such distortive practices should fall within the scope of REMIT and be prevented altogether by allowing the storage-filling targets to lapse by the end of 2025.

* https://acer.europa.eu/monitoring/MMR/gas_market_trends_2023

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

Yes.

We would flag to the Commission that under the recently revised Benchmark Regulation, the prior concerns regarding the clarity of the term "use of a benchmark" have not been addressed, and are slated for further guidelines by ESMA. The same challenge resides in the wholesale energy markets where the reference to "usage" is at best indistinct given that term is defined within the scope of "financial instruments". We would again urge the reliance on the bespoke and tailored approach that underpins REMIT.

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

6.4. Enhanced supervisory cooperation in the energy area

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

The current regulatory landscape across European and national authorities is fragmented, with each supervisor operating in its own domain. This could slow response times in crisis-situations unless work, already well underway, to coordinate regulators' ability to form any coherent EU-wide market assessment. We note that this has been well articulated in the Frontier Economics study.

While market participants already provide extensive data, it is often duplicated and dispersed across authorities, leading to inefficiencies and evident double-reporting. However, preferable to the overhauling of existing structures, the most effective short-term solution is to apply Digital Regulatory Reporting standards and semantic data labelling via a Common Domain Model, which would streamline communications and facilitate distributed data-sharing via ACER both among regulators and other relevant parties.

We refer to our answers to Questions 1, 2, 3 and 76 concerning centralised facilities and related processing enhancements to data-sharing mechanisms at the regulatory level.

<u>If Yes, Question 76.1. Do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets?</u>

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

<u>In particular, please explain whether you believe that enhanced cooperation in the energy sector could be achieved by including in the financial legislation similar provisions with those included in the revised REMIT that will allow for enhanced cooperation and information exchanges between regulators in the financial market and energy respectively in combination with the creation of a common database for financial and energy regulators:</u>

Yes.

Supervisory colleges are now a proven European tool and have improved cooperation between and with both member states and the EU agencies. These could complement the current MOU which exists to coordinate the supervision of energy spot and derivative markets between ACER and ESMA.

Such a college should build on the existing cooperation in order to build more effective data-sharing though the adoption of Digital Regulatory Reporting standards and semantic data labelling via a Common Domain Model, which would streamline communications and facilitate distributed data-sharing via ACER both among regulators and other relevant parties.

It remains important that the Commission does not simply add new supervisory layers and bureaucracy, but rather deploys targeted tools and technology to facilitate cross-sector, cross-border and third-country coordination and mutual recognition such that reporting is only ever made once by either participants or trading facilities under any EU or third-country regime.

Successful examples like the Nordic cooperation framework and the MIBEL model (involving ERSE, CNMC, CMVM, and CNMV) demonstrate that cross-sector and cross-border coordination is achievable without additional supervisory layers.

<u>Questions related to section 6.4</u>

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

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

Yes.

Although some cooperation exists between energy and securities market supervisors, further alignment is needed. Despite their interconnection, the two sectors often operate under separate frameworks, which can hinder comprehensive oversight. Recent changes to REMIT reflect efforts to improve collaboration.

Please see prior answers regarding the benefits of enhanced data sharing platforms and clearer conjoined digital reporting protocols.

Ends.