JEAG[1] comments – MEPs amendments to EMIR 3

8 September 2023

EMIR clearing threshold is key for competitive and well-functioning energy markets

Well-functioning energy markets are vital for customers throughout Europe. In 2021, electricity cross-border trade delivered an estimated EUR 34 billion[2] of benefits – increasing security of supply and enabling decarbonisation. Energy markets change rapidly – and it is of the utmost importance that companies can react in a timely fashion. This needs well-functioning, liquid markets and a well-designed regulatory regime. We are extremely concerned that **changes proposed by Members of the EU Parliament (MEPs) to the EMIR Clearing Threshold under Article 10 (EMIR CT) would have a series of unintended consequences** which would be negative for the liquidity and functioning of energy markets, the competitiveness of EU non-financial firms and ultimately customers.

- ***At a time when we are aiming at energy transition and trying to improve the way the European energy market works through the changes to the electricity market design, it is***

[1] JEAG – Joint Energy Associations Group, including BDEW, EFET, Eurelectric, Eurogas, IOGP, VKU

[2] Source: ACER's Final Assessment of the EU Wholesale Electricity Market Design, ACER, 2022, page 3, link

counterproductive to see proposals in the EU Parliament with regard to EMIR 3 which will impede the energy transition, increase cost and reduce liquidity – We need to learn the right lessons of the energy crisis and this is reflected in the EU Commission's proposal for an EMIR 3. This proposal will help energy market participants to maintain and develop liquid, competitive and well-functioning EU energy markets and to secure energy supply. Such energy markets are particular important for the energy transition; for example, they enable operators of a large-scale offshore wind park to hedge their (long term and non-standardised) market price risks with tailored OTC derivative transactions and therefore to ensure stable revenues in today's highly volatile energy markets. However, most of the EMIR Clearing Threshold changes proposed by MEPs, *inter alia* the deletion of the hedging exemptions, would increase costs by imposing upon non-financial firms a mandatory clearing and collateralization obligation under Article 10 of EMIR. This comes without a corresponding benefit to energy market participants and consumers, as these changes reduce incentives to hedge and to provide liquidity to markets to avoid these costs. Ultimately, this will have a detrimental impact on the energy transition as energy firms can make fewer investments into renewables as the mandatory margining and collateralisation requirements bind financial resources elsewhere.

- ***A centralized hedging by energy firms reduces risk, makes the energy system more secure and helps customers. It should not be discouraged*** – If energy suppliers cannot hedge their power and gas price risk on energy derivatives markets, inter alia, to guarantee an energy supply to end consumers at fixed prices, this will negatively impact households and industrial consumers. In the end, these customers will pay the substantial costs of energy firms' inability to hedge their price risks as they will face increased energy costs. This starkly illustrates why hedging is vital and why discouraging it can be damaging. Energy markets change fast, hedging helps manage those changes and it also leads to less overall volatility. It is clearly a risk reducing activity.

- ***Applying a global scope to the Clearing Threshold reduces the competitiveness of EU firms outside Europe and increases the cost of trading in Europe*** **–** MEPs proposals to include transactions undertaken by any part of a corporate group worldwide in the EMIR CT calculation seem to us to damage the competitiveness of European firms in the global marketplace. This, in turn, is detrimental to European growth. A more focused scope covering EU products, EU venues and EU entities would remove these downsides.

We urge the Members of the European Parliament to **reject amendments 26, 55, (partially) 56, 57, 248, 299, 300, 301 305, 306, 307 and 308** to revert to the EU Commission's proposal under consideration of a centralized hedging (see our wording proposal under "Key Recommendations").

Key Recommendations

EMIR clearing threshold (EMIR CT) for non-financial counterparties (NFCs)

- We strongly oppose and urge parliamentary colleagues to reject **any amendments which fundamentally change the EU Commission (EC) proposal for the EMIR Clearing Threshold regime under Article 10 (EMIR CT) for non-financial counterparties (NFCs).** Many of the Members of the EU Parliament **(**MEPs) amendments to the EC proposal would force NFCs with larger derivative exposures to meet mandatory clearing and collateralisation obligations. This would substantially increase costs and create a strong disincentive to hedge and trade. These companies mainly use OTC derivatives to mitigate risks arising from fluctuations in commodity prices, currencies and interest rates which are clearly not the activities these obligations were designed to target.
- We therefore support the EC proposal to **change the methodology for the calculation of the EMIR CT**. This proposal appropriately addresses the credit risks associated with OTC derivative contracts as it moves away from the current approach consisting of assessing whether a derivative is OTC or not, to considering **whether a derivative is cleared or not**.
- We also welcome the EC proposal **to count only OTC derivate transactions entered into by EU established counterparties** against the clearing threshold. This will aid the competitiveness of EU energy markets and participants and help the energy transition.
- We consider it extremely important that European NFCs are able to continue to centrally hedge risks relating to commercial and treasury financing activities on behalf of their entire group. We therefore urge the Members of the Parliament to **reinstate centralised risk management by NFCs**. This would be achieved by supporting AM 56 of the Huebner report and the intent of AM 298.

- We therefore **strongly oppose the following amendments**[3]:
  - AM 305, 306, 307 and 308 – as they **delete the hedging exemption** and **include all OTC Derivatives** (cleared and uncleared) in the EMIR CT calculation. The deletion of the hedging exemption contradicts the well-established regulatory principle that risk-mitigating derivatives are of strategic importance to the risk management activities of NFCs. The hedging exemption was established to enable, *inter alia,* energy market participants to execute transactions in energy derivatives to mitigate the commodity market price risk of their own commercial activities (e.g., power production) or those of their group entities. By mitigating market risks through stabilising cash flows and therefore enhancing the creditworthiness and long-term ratings of NFCs, hedging serves to reduce commercial risks and benefits energy consumers. For example, only a liquid OTC derivatives market will enable operators of a large-scale offshore wind park to hedge their (long term and non-standardised) market price risks with tailored OTC derivative transactions and therefore helps them to ensure stable revenues in today's highly volatile energy markets. An energy system with less or no hedging would clearly be riskier for all parties involved. For example, energy firms would not be able to supply their power to consumers at a fixed price but only at a variable spot price. It therefore seems counter-

[3] For more details, please see points 1 and 2 in the following section.

intuitive to suggest that risk-mitigating derivatives contribute to additional risks in the financial system.

- AM 55 and parts of 56 in MEP Hübner's draft report and AM 305 and 306 – because they require a **world-wide EMIR CT calculation**. NFCs would have to include in the clearing threshold calculations of OTC derivatives transactions that are entered into by non-EU entities of the NFC group, **even if there is no EU product, EU venue or EU entity involved**. The effect is to reduce the competitiveness of EU companies in the global marketplace and create incentives to reduce the volume of trade in the EU. The reduction in market liquidity reduces the opportunities for, *inter alia,* operators of renewable energy installation to effectively hedge their market prices risks.
- AM 248, 299, 300 and 301 – as they would introduce a way of calculating the **EMIR CT calculation** which could force companies to breach the threshold, and incur the additional costs, despite having exceeded it for a short time period (three highest month ends instead of the current 12-month end calculation).
- AM 26 and AM 57 of MEP Hübner's Draft Report – as they introduce an "**aggregate activity threshold" based on the overall aggregate position in OTC derivatives**. This goes against the EC proposal that only derivatives that are not centrally cleared should be counted towards the clearing threshold, as it would include all OTC derivatives (all cleared and uncleared OTC derivatives, including hedging transactions). If extended to NFCs, this would cause them – with their larger derivative exposures for the purpose of hedging – to breach any future EMIR CT and consequently negate the hedging exemption for NFCs.

We therefore **propose the following textual changes (red italic letters) to the wording of amendment 56 of MEP Hübner's Report in relation to Article 10(3) EMIR** to (a) maintain the calculation methodology proposed by the EU Commission (see strikethrough) and to (b) reinstate the possibility of centralised risk management (added wording at the end):

> 3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25 entered into by the non-financial counterparty ~~***or by other non-financial entities within the group to which the non-financial counterparty belongs***~~ which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty ***or of*** ~~***that***~~ ***the group to which the non-financial counterparty belongs***.

Margin transparency and predictability

We support MEP Hübner's draft report (AM 22, 165 and 166) and AM 469, 470 and 471 as they improve the transparency and predictability of margin requirements for NFCs.

Uncollateralised commercial bank guarantees as eligible collateral

We support MEP Hübner`s draft report (AM 22, 165 and 166) and AM 481 and 482 as they recognise the use of uncollateralised commercial bank guarantees. We oppose the prohibition of uncollateralised commercial bank guarantees in AM 478, 479 and 480.

Reporting and exemption from reporting of intragroup transactions

We support MEP Hübner`s draft report (AM 50 and 51) and AM 221, 222, 293, 294 and 295 as they reintroduce the intra-group transaction (IGT) reporting exemption. We object to AM 223 as it extends the removal of IGT exemption to existing transactions.

We oppose the AM 49 in MEP Hübner's draft report as it brings all subsidiaries of EU firms across the world in-scope for EU transaction reporting.

Complete assessment and recommendations with regard to all MEP amendments relevant for NFCs (draft report of MEP Hübner (1-196) and MEP amendments (197-538))

1. Calculation of EMIR clearing threshold (EMIR CT) for non-financial counterparties (NFCs) and hedging exemption

Oppose the deletion of the hedging exemption and the inclusion of all OTC derivatives in the clearing threshold calculation: AM 305, 306, 307 and 308

Energy market participants are predominately active on (physical and derivatives) exchanges and bilateral OTC energy markets to cover their needs for physical commodity supply and demand and to execute transactions in commodity derivatives to mitigate the commodity market risk of their own commercial activities or those of their group entities (hedging). To ensure that energy firms can pursue such hedging activity, a "**hedging exemption**" is set out in Article 10 (3) EMIR. This exemption guarantees that non-financial counterparties (NFCs), i.e., energy firms, can freely manage the risks created by their energy production and distribution activity and, consequently, contribute to the robustness of EU's energy markets, without being subject to mandatory clearing and margining obligation under EMIR.

Also, the availability of market-based opportunities for reducing commercial risks, such as OTC derivative trading, becomes increasingly important to make new renewable investments financeable. For example, operators of a large-scale offshore wind park will only invest in the construction and operation if they can ensure stable revenues in today's highly volatile energy markets. Therefore, they need to be able to reduce their (long term and non-standardised) market price risks with OTC derivative transactions. Furthermore, this will have a detrimental impact on the energy transition as energy firms can make fewer investments into renewables as the mandatory margining and collateralisation requirements bind financial resources elsewhere.

Hence, that clearing and margining obligation shall only be triggered if energy market participants take positions in non-hedging, non-centrally cleared OTC derivatives which exceeds the clearing threshold(s) (which is defined for commodities at a gross notional value of €4bn).

Consequently, we urge to maintain this hedging exemption.

We support the EC proposal (also supported by ESMA) to change the methodology for the calculation of the clearing threshold. This proposal moves away from the current approach consisting of assessing whether a derivative is OTC or not, to considering whether a derivative is cleared or not. Consequently, **only uncleared OTC derivatives shall be included in the calculation of the clearing thresholds**. This change in approach correctly addresses the credit risks associated with OTC derivative contracts. Considering the purpose of EMIR, which is to reduce systemic credit risk in the financial system by central clearing, it appears logical to exclude those instruments which do not pose such a risk because they are centrally cleared already.

- We strongly oppose AM 305, 306, 307 and 308 as they delete the hedging exemption and include all OTC derivatives (cleared and uncleared) in the EMIR CT calculation.

Support centralized risk management enabling efficient hedging by NFCs: AM 298 and aspects of MEP Hübner draft report (AM 56)

The current EMIR legislation explicitly allows for a centralised trading / market facing entity to hedge not only its own commercial risks, but also those of its wider energy group. This **centralised hedging approach** is aligned with the organisation of energy groups and is supported by the applicable regulatory framework, i.e., by the wording of the level 1 text of Art 10(3) EMIR as well as of the level 2 text of Art. 10 Commission Delegated Act (EU) 149/2013 and of the ESMA Q&As on the implementation of EMIR (OTC Answers 3 and 10).

Such centralised hedging ensures efficiency as it would otherwise, force every single entity of an energy group to provide for its own hedges, which would lead to a highly inefficient and cost-intensive multiplication of risk management functions and activities across the corporate group. This does not align with the purpose of EMIR, which is to centralise and efficiently mitigate risk. It is therefore crucial to guarantee that also in the future one or several central group entities should be able to continue to centrally hedge the risks relating to the commercial and treasury financing activities (in particular commodity, foreign exchange (FX) and interest rate (IR)) of their entire corporate group.

- We therefore support the objective of AM 298 and the MEP Hübner Draft report (AM 56) insofar as they allow for centralized risk management.

Oppose worldwide threshold calculation by NFCs with adverse impact on EU firms' competitiveness: AM 305, 306 and aspects of MEP Hübner's draft report (AM 55 and 56)

We also believe that NFCs, as proposed by the EC, should only be required to **include in the clearing threshold calculations uncleared OTC derivatives that are entered into by EU entities of the NFC group**. The calculation methodology should not apply to all trading activities around the globe, as it unnecessarily results in all worldwide activities counting against the EMIR clearing threshold, **even if there is no EU product, EU venue or EU entity involved**. Further, it may effectively lead to a 'double-regulation' of globally active companies, which not only have to count OTC derivatives towards the EMIR CT but also have to comply with local 'EMIR-like' requirements in the respective jurisdiction they are active in (and where such regulation exist, for example, in the U.S. with the Dodd-Frank Act). Independent studies from Luther Law Firm (link) and Frontier Economics (link) show that a world-wide calculation puts European firms at a competitive disadvantage, has a negative impact on the energy transition and ultimately increases the cost of energy supply for end consumers.

- We are very concerned with AM 55 and 56 in MEP Hübner's draft report, as well as with AM 305 and 306, because they require NFCs to include in the clearing threshold calculations of OTC derivatives positions also such transactions that are entered into by non-EU entities of the NFC group.

2. Calculation of clearing thresholds for Non-Financial Counterparties and (small) Financial Counterparties

Oppose unfavourable change of threshold calculation methodology: AM 248, 299, 300 and 301

We are concerned that the clearing threshold calculation methodology for (small) financial counterparties in Article 4a and for NFCs in Article 10 is amended to **replace the EMIR CT calculation of the '*aggregate month-end average position for the previous 12 months*' with the calculation of the '*average of the three highest month-end averages positions over the previous 12 months*'**. We call to retain the change previously introduced by the Regulation (EU) 2019/834 to the way the clearing thresholds are calculated. The EU co-legislators decided that an NFC and a small FC become subject to the clearing obligation if its aggregate month-end average position for the previous 12 months exceeds the clearing threshold, instead of the rolling average position over 30 working days exceeding the thresholds (the latter was the case under the former EMIR I rules). This change was introduced to avoid that unpredictable price volatility on commodity markets over a relative short time period, respectively, during few days/weeks/months causes NFCs to breach the EMIR CT, even if this would not be the case during a time period of 12 months. It seems unnecessary, from a financial stability perspective, and disproportionate, from an implementation and cost perspective, to force NFCs to mandatorily clear and/or collateralise their OTC derivatives only because of a short-term breach of the EMIR CTs. Furthermore, there are no apparent reasons which would justify a policy change in this matter.

- We therefore oppose AM 248, 299, 300 and 301 as they introduce a problematic EMIR CT calculation of the '*average of the three highest month-end averages positions over the previous 12 months*'.

Oppose new aggregated activity clearing threshold that includes both cleared and uncleared OTC derivatives: AM 26 and 57

With regards to the **calculation of the clearing threshold for small financial counterparties under Art. 4a**, we do not support introducing an **"*aggregate activity threshold*" based on overall aggregate OTC derivatives position**. Such a new, additional clearing threshold would include all OTC derivatives (all cleared and uncleared OTC derivatives, including hedging transactions). It appears unnecessary, from a financial stability perspective, to include OTC derivatives that are (voluntarily) cleared, when assessing whether a counterparty should formally be subject to the clearing obligation. The proposed "*activity threshold*" would appear to go against ESMA's recommendation that only OTC derivatives that are not centrally cleared should be counted towards the clearing threshold. This would also add an element of complexity, and an extra compliance burden (relating to having to implement and run additional calculations) for small financial counterparties. The same reasoning applies if this amendment were to be extended to cover NFCs. In addition, it potentially can lead to a substantially reduced use and benefit of the hedging exemption for NFCs, including energy firms. In particular, if an overall threshold for all aggregated OTC derivatives positions held by an NFC (or even by its wider group) were to be introduced because this would mean that

even OTC derivatives transactions entered into for hedging purposes would count against this additional threshold. Avoiding the breach of the clearing threshold would force energy companies to reduce their hedging volume which leads to more volatile prices for end consumers.

- We therefore oppose AM 26 and AM 57 of MEP Hübner's Draft Report as they introduce an additional "*aggregate activity threshold*" based on overall aggregate position in OTC derivatives.

3. Margin transparency and predictability

Support for improved margin practices through increased transparency: MEP Hübner's draft report (AM 22, 165 and 166) and AM 469, 470 and 471

We welcome the EC proposal that the **clearing members (clearing banks) shall inform their clients (including energy market participants) in a clear and transparent manner** of the way the margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements they may be subject to under different (stress) scenarios. As such we very much support amendments ensuring that CCPs provide clearing members with the information they need to provide transparency to clients. This ensures that energy market participants, who are at the end of the information chain, are put in a better position to predict and prepare themselves for collateral requests.

- We therefore support MEP Hübner's draft report (AM 22, 165 and 166) and AM 469, 470 and 471 as they improve the transparency and predictability of margin requirements.

4. Uncollateralised commercial bank guarantees as eligible collateral

Support recognition of uncollateralised commercial bank guarantees: MEP Hübner's draft report (AM 22, 165 and 166) and AM 481 and 482

Oppose prohibition of uncollateralised commercial bank guarantees: AM 478, 479 and 480

We support the EC proposal that public bank guarantees, commercial bank guarantees or public guarantees are considered eligible as highly liquid collateral under certain conditions. The **recognition of uncollateralised commercial bank guarantees** will facilitate and encourage central clearing of derivatives by energy market participants. These entities usually have constrained access to sufficient amounts of highly liquid assets (cash), which can lead to substantial liquidity stress of those firms in times of very volatile energy markets, due to the considerable positions these firms take in commodity derivatives to hedge their production. Enabling energy market participants, acting as indirect or direct clearing members, to post non-cash collateral to cover at least an appropriate portion of the margin requirements will provide relief from that liquidity stress, without jeopardising financial stability.

We consider that all energy market participants, i.e., NFCs and financial counterparties, shall be able to post uncollateralised commercial bank guarantees as they have the same need to access eligible collateral. Furthermore, they access CCPs either directly as clearing members or through a general clearing member. To avoid an unjustified differentiation between these two models, the acceptance by CCPs of public guarantees, public bank guarantees, and

uncollateralised commercial bank guarantees shall be permitted for both clearing models (direct and indirect clearing).

- We therefore support MEP Hübner's draft report (AM 170 and 172) and AM 481 and 482. We oppose AM 478, 479 and 480 as they limit the use of bank guarantees as eligible collateral by energy market participants.

5. Reporting and exemption from reporting of intragroup transactions

Support exemption from the reporting obligations for intragroup transactions (IGT): MEP Hübner's draft report (AM 50 and 51) and AM 221, 222, 293, 294 and 295

Oppose removal of such exemption: AM 223

We support amendments which **maintain the exemption from the reporting obligations of intragroup transactions** (IGTs). In practice, energy market participants make wide use of the possibilities available in EMIR to simplify their derivatives reporting obligations. Reintroducing IGT reporting would result in a need for market participants, which are NFCs, to reinvest in costly reporting infrastructure, which is becoming even more complex with the introduction of the changes to the reporting rules as of 29th April 2024 (CDR (EU) 2022/1855). In addition, the deletion of the IGT reporting exemption contradicts the purpose of the previous reform of EMIR (Refit) which introduced this reporting exemption to lower operational efforts.

- We therefore support the MEP Hübner's draft report (AM 50 and 51) and AM 221, 222, 293, 294 and 295 as they reintroduce the IGT reporting exemption. We object to AM 223 as it extends the removal of IGT exemption to existing transactions.

Oppose bringing non-EU firms into scope of EMIR reporting: MEP Hübner's draft report (AM 49)

We are very concerned with AM 49 of MEP Hübner's draft report suggestion that, where an EU firm is the ultimate parent company, **all subsidiaries of the EU firm across the world would be brought in-scope for EU reporting**, even if there is no EU product, EU venue or EU entity involved. This would represent a significant volume of additional reportable activity, with no clear nexus to the EU, and would create significant additional costs without obvious benefit. It could also result in duplicative but also non-consistent reporting requirements under two (or more) different regimes. In many cases, the non-EU entities will already be reporting trades to trade repositories in other jurisdictions, such as in the UK, US, Canada, Japan, Singapore, Australia and Hong Kong. Consequently, this acts against global initiatives to standardise reporting, which are being implemented in the EU as the EMIR Reporting Refit. Such initiative will put European non-financial groups at a competitive disadvantage as they will face double reporting obligations and associated costs which might only be increased by non- EU regulators taking a similar stance.

- We therefore oppose the AM 49 in MEP Hübner's draft report as it brings all subsidiaries of the EU firm across the world in-scope for EU transaction reporting.

Oppose additional preconditions for NFC reporting exemption: AM 296

- We also oppose AM 296 which reintroduces equivalence as precondition for NFCs- to be exempted from reporting requirements on transactions with third country entities.

6. NFCs as direct clearing members

Support participation of NFCs as direct clearing members: MEP Hübner's draft report (AM 163 and 164) and AM 465 and 468

Oppose additional participation requirements for NFCs: AM 467

We welcome the EC proposal that NFCs can continue to act as direct clearing members. The robustness and resilience of the central clearing structure are guaranteed where they meet the required participation criteria as proposed, in particular if they are able to fulfil the margin requirements and default fund contributions, and only keep accounts at the CCP for assets and positions held for their own account. The robustness and resilience of the central clearing structure are guaranteed by the current rules under EMIR which impose margining and funding requirements equally to all clearing members (regardless of whether they are a clearing bank or an energy market participant). The market stress events of 2022 caused by the energy crisis confirm this to be the case. There were no defaults during this period of unprecedented energy market volatility and energy price increases, including on Nasdaq Commodities, whose (direct) clearing membership includes (non-financial) energy market participants. Although the increased volatility and prices have led to substantially increased margin calls, no market failures triggered by these increased margin requirements have been observed as the energy market participants were able to match these margin calls.

NFCs financially capable of becoming clearing members must not be disadvantaged by disproportionate requirements, in excess of those imposed on financial counterparties. Failure to ensure a level playing field could easily lead to an uncompetitive clearing landscape, hence increasing clearing costs for all users of CCPs. Such increase directly contradicts the principles of EMIR, raises energy costs for end users and would ultimately act as another barrier to entry for investment into the EU energy markets. Furthermore, expanding CCP membership may assist CCPs to diversify the risks across a larger membership pool.

- We therefore support MEP Hübner's draft report (AM 163 and 164) and AM 465 and 468 as they confirm the EC proposal and the additional definition of participation requirements through an ESMA RTS seems appropriate. We oppose AM 467 as the participation requirements should be the same for financial counterparties and NFCs.

7. Definition of intragroup transactions for the purpose of exemptions from clearing and margining

Oppose the reintroduction of Article 13 equivalence decision as pre-condition to the availability of the exemptions: AM 199, 200 and 246

Oppose measure to reduce scope of the exempted intragroup transactions: AM 201 and 247

We support the EC's proposal to amend the **definition of intragroup transactions through a new Article 3 EMIR**. This substantially facilitates the legitimate exemption for financial counterparties and NFCs above the EMIR clearing threshold from the clearing (Article 4 (2) EMIR) and margining obligation (Article 11(5) EMIR) where one counterparty is in a third country. For this purpose, it replaces the need for an equivalence decision by a blacklist of jurisdictions for which an exemption cannot be granted. This amendment will provide certainty to the market, reduce market fragmentation and have a positive impact on how the EU is perceived in terms of market openness and attractiveness.

- We therefore oppose AM 199, 200 and 246 as they keep the Article 13 EMIR equivalence decision as pre-condition to availability of these exemptions. We also object to AM 201 and 247 that extends the list of non-cooperative tax jurisdictions to those on the grey list.

8. Risk mitigation techniques for uncleared trades

Oppose measures to impose mandatory margining (collateralization) on all NFCs: AM 310

We oppose AM 310 which introduces risk mitigation techniques for NFCs "*equivalent to those of a CCP*" which would include mandatory margining (collateralization) to mitigate credit risks. This is not possible and not proportionate for NFCs as it would introduce a mandatory margin/collateralization requirement for all NFCs even if those NFCs would stay below the EMIT CT. Furthermore, this will have a detrimental impact on the energy transition as energy firms can make fewer investments into renewables as the mandatory margining and collateralisation requirements bind financial resources elsewhere.

- We oppose AM 310 as it would introduce a mandatory margin/collateralization requirement for all NFCs.

9. NFC+ implementation period and ring-fencing of bilateral collateralisation requirement

Support extension of the NFCs bilateral margin implementation period to 6 months: AM 313

Oppose deletion of NFCs bilateral margin implementation period: AM 311, 312, 316 and 317

Support ring-fencing of bilateral collateralisation requirement: MEP Hübner's draft report (AM 58 and 59)

We support the EC proposal to grant to NFCs which exceed for the first time a clearing threshold (so-called "NFC+") a 4 months phase-in of their mark-to-market and bilateral margining obligations. This helps NFC+ with the orderly implementation of the complex NFC+ status after they exceeded the clearing threshold(s).

- We support AM 313 that extends the implementation period to 6 months given the complexity of setting up margin arrangements (mark-to-market). We oppose AM 311, 312, 316 and 317 which delete the implementation period.

We support MEP Hübner's draft report (AM 58 and 59) which provides that the bilateral collateralisation requirements for NFCs+ shall apply only with respect to OTC derivative contracts in the asset class or asset classes for which the clearing threshold has been exceeded. This is aligned with the same "*asset class approach*" taken with regards to the clearing obligation.

- We support MEP Hübner's draft report (AM 58 and 59).

10. Transitional provisions for NFCs+

Oppose transitional provision forcing firms to maintain NFC+ status: MEP Hübner's draft report (AM 194)

The existing Article 10 (2) provides that NFCs exceeding a clearing threshold (so-called NFC+) "*shall remain subject to that obligation and shall continue clearing until that non-financial counterparty demonstrates to the relevant competent authority that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold.*" We are of the opinion that the repetition of this measure in the transitional provision of Art. Article 89 (10) does not provide any benefit. On the contrary, we believe that it would not be appropriate to force firms to maintain an NFC+ status where they can demonstrate that they will stay below the clearing threshold for the next months because of the change of the threshold calculation method to "*cleared vs. non-cleared*".

- We therefore oppose MEP Hübner's draft report (AM 194).

11. Information sharing between ACER and ESMA

Oppose duplicative information sharing obligation: AM 528

We welcome reenforced cooperation and information sharing between energy and financial market regulations to make the market supervision more efficient. The EC has tabled appropriate proposals to amend the Regulation on Wholesale Energy Market Integrity and Transparency – REMIT (Proposal for a Regulation to improve the Union's protection against market manipulation in the wholesale energy market; link) to achieve that goal. Therefore, it is not necessary to repeat this in EMIR and the AM 528 is consequently duplicative, i.e., that ACER shall transmit information to ESMA.

- We therefore oppose AM 528 as it introduces a duplicative requirement.

12. ESMA Report on NFCs activity

Oppose duplicative ESMA reporting obligation: AM 528

The EC proposal provides in the new Article 10 (5) EMIR that the competent NCAs shall report to ESMA at least once a year on the activity in OTC derivatives of the non-financial counterparties, as well as that of the group they belong to. It further stipulates that at least every 2 years, ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.

To support this, the EC has proposed a new Article 10 (2a) EMIR that NCAs shall establish cooperation procedures to ensure the effective calculation of the positions of NFCs and to evaluate and assess the level of exposure in OTC derivative contracts of NFCs at the group level. Consequently, AM 533 only introduces a repetitive obligation into Article 85 EMIR with regard to NFCs for ESMA to issue an annual report on the overall activity in derivative transactions of EU NFCs.

- We therefore oppose AM 533 as it introduces a duplicative requirement.