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

A Eurelectric consultation response

April 2025

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:
- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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WG Financial Regulation & Market Integrity

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Commodity derivatives markets review

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KEY MESSAGES

- Eurelectric welcomes the opportunity to contribute to the review of the functioning of commodity derivatives markets. Electricity utilities rely on commodity derivative markets to manage risks stemming from the generation and supply of electricity. **Competitive and liquid commodity markets are therefore a key enabler for the energy transition, allowing utilities to offer tailored energy supply and financing solutions to actors across the electricity value chain while ensuring predictable energy prices**.

- **Electricity, and commodity markets more broadly, support key aims of European economic and climate policy by maintaining the security of energy supply at a cost in line with market fundamentals**. As Member States operate large shifts in their generation mix, commodity derivative markets are key in managing associated price volatility. Considering the scale of investments needed to decarbonise electricity supply and to electrify end-uses, a stable regulatory framework is important to maintain trust in EU energy markets.

- Against this backdrop, major market interventions or changes to conditions for utilities to operate in commodity markets would send the wrong signal. In particular, we strongly believe that the ancillary activity exemption (AAE) should be maintained. **The AAE is essential for electricity market functioning because it allows asset-backed utilities to perform portfolio optimisation without being subject to banking regulation**. Changing or even abolishing this exemption would cause high costs in setting up a licensed entity and trap vast amounts for mandatory margining and prudential capital requirements. It would therefore result in a massive misallocation of resources that utilities need to perform their core business of electricity generation and supply.

- Electricity utilities are subject to a comprehensive set of sector-specific and financial market legislation, requiring them to report all physical and financial transactions concluded in the EU via dedicated mechanisms. While access to data across physical and financial energy markets may be fragmented due to the incremental development of energy market legislation, it is important to note that market participants have invested large amounts to comply with reporting requirements under REMIT, EMIR and MiFID/R. **For this reason, we urge regulators to prioritise inter-agency cooperation and data-sharing rather than changing well-established reporting frameworks**.

- **While shared data access within the boundaries of each regulator's supervisory mandate can improve market oversight, this should be implemented 'behind the scenes' and preserve existing reporting interfaces**. The same applies to information collected regarding market participants' positions, which can be obtained by regulators while preserving the regulatory status quo.

- Finally, **we believe that interventions in price formation through position limits and circuit breakers should only be used as measures of last resort to curtail erratic market behaviour**. For electricity utilities, it is crucial that low position limits or long trading halts do not undermine their supply mandate. The rigid system of position limits that prevailed before the Capital Markets Recovery Package should not be reinstated, since it would complicate hedging and create unnecessary inefficiencies.

- **In general, the signalling effect of price interventions or market access restrictions on market participants' trading activity should not be underestimated**. As public support schemes for electricity generation are reduced, access to liquid forward markets becomes increasingly important. The existence of competitive energy markets should therefore not be jeopardised by the current review cycle.

1. Data aspects

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

Yes / No / Don’t know

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

- **Simplification agenda**: Eurelectric supports the European Commission’s agenda to simplify EU reporting rules and strengthen the competitiveness of the European economy. The European electricity industry is a key actor of the European Green Deal and should not be overburdened with reporting obligations. Double reporting of transactions or of related information (e.g., positions) should be consistently removed across the financial and physical commodity markets. Provisions are already in place in REMIT (Art. 8.3) and EMIR (Art. 81.3) to prevent double-reporting, and should be fully implemented also among EMIR, MiFID and MiFIR. In general, simplification efforts must not change market participants’ current reporting arrangements, which have involved significant investments in IT infrastructure.

- **Cost-benefit analysis of new reporting obligations**: we note that certain proposals in this consultation document would increase the reporting burden for electricity utilities. Reporting should only be implemented where it achieves substantial added value for the functioning of energy markets and should be removed where its added value has not been demonstrated. In addition, the implementation of recent reforms should not be the source of new reporting obligations. In this regard we would like to reiterate our concerns about the proposal for exposure reporting under the revised REMIT Art. 8(1), which should remain limited to total volume exposure based on actual trading activity, considering that the reporting of production and consumption forecast data does not add substantial information value and will therefore likely lead to burdensome additional gap analysis. Not least, this complex form of reporting is being introduced at a time when the Commission, through this consultation, is seeking feedback on how to rationalise and streamline reporting for MPs.

- **There is no transaction reporting gap**: utilities report all transactions in wholesale energy products (REMIT), in commodity derivatives traded OTC (EMIR), in venue-traded financial instruments (MiFIR and EMIR, plus MiFID if the related position reporting is considered) concluded in the EU. In addition, they are subject to ad-hoc data requests from authorities that do not have access to certain datasets. Eurelectric believes that better cooperation between NRAs, NCAs, ACER and ESMA could steeply reduce the need for such data requests.

- **Every reform involves transition costs**: we note that commodity market legislation has been subject to frequent reforms creating more reporting obligations. The current revision of the REMIT Implementing Regulation and EMIR Refit are examples of reforms that require costly and time-consuming changes to IT systems (new data fields, changes in reporting schemas). We are therefore wary of a proposal to fully harmonise reporting streams which correspond to very different underlying contracts (i.e. REMIT vs. the rest of reporting streams), which are different due to the nature of the underlying contracts. For example, bespoke physical electricity forward contracts have little in common with standardized products such as futures or swaps. Indeed, the purposes and structure of physical and financial energy transaction contracts are fundamentally different; this should be reflected in the reporting structures.

- **No changes to transaction reporting procedures**: the planned simplification should not lead to a full redesign of existing reporting channels via RRMs (REMIT), trade repositories (EMIR) and to NCAs (MiFID/R). We consider it hardly feasible to harmonise transaction reporting between REMIT and financial regulation due to the significant differences in the type of information reported. The reporting interface towards MPs must not be changed; instead, we encourage regulators to mutually share data they collect separately to create a common 'single dataset'.

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

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

- The reporting formats used for different reporting streams reflect the underlying market functioning. In the case of REMIT, reporting formats have been painstakingly finetuned via guidance documents (e.g., Transaction Reporting User Manual, Manual of Procedures) to reflect the physical fundamentals of electricity and gas markets.
- The sector-specific transparency framework for energy markets (REMIT) was recently revised, following which the review of implementing acts is still in progress. This revision will already lead to numerous changes for market participants, with more than 90 new data fields and new reporting items.

- In addition, the time required for such an undertaking should not be underestimated and would likely cause degraded data quality over years due to higher likelihood of reporting mistakes.

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

Yes / No / Don't know

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

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

N/A

If no, please explain your answer to question 3:

- As outlined above, data collection via RRMs and trade repositories follows well-established procedures and the logic of traded instruments. Moving away from these entities to collect data via a centralized mechanism would involve high one-off costs and further adjustment costs in relation to guidance and error management.
- However, in a second step, we see no inconvenient in sharing of information between existing data collection mechanisms or competent authorities in form of e.g., a "data lake" allowing joint access to information that is relevant to regulators' supervisory mandate.
- We are therefore in favor of a joint database with integrated information as long as this solution does not require changes to market participants' IT systems and internal proceedings. Finally, cybersecurity must be guaranteed to ensure the confidentiality of commercially sensitive information.

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

Yes / No / Don’t know

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

- The pooling of relevant data about energy markets between regulatory authorities can improve regulators’ understanding of market dynamics and links between physical and financial markets.
- A shared dataset would reduce the lag of inter-agency data requests, allowing for faster detection of risks and hence implementation of remedial actions before issues escalate. It would also improve trust and the quality of cooperation between ESMA and ACER.
- Improved inter-agency data sharing also indirectly benefits firms. Reduced fragmentation of oversight can improve the predictability of supervisory conduct and reduce the need for ad hoc data requests towards market participants. Indeed, since regulators will have access to all relevant information, they will not have to fill the gaps and ask for the same explanation multiple times.
- Nevertheless, we remind that each regulator is better placed to analyse markets within the remit of their oversight mandate. The understanding of energy markets involves knowledge of the industrial realities underlying energy products and their trading specifics.
- It is also of the utmost importance to preserve the principle of subsidiarity and sector specificity. Supervisory activity should be conducted by national regulators in accordance with the existing regulatory framework. To ensure all regulators benefit from the insights that specialised authorities possess about specific markets, cooperation between regulators should be pursued as a matter of priority.

If no, please explain your answer to question 4:

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

Please select as many answers as you like:

X By trade repositories

X By RRM

X By a new type of entity in charge of consolidating data collected by trade repositories and RRMs

X some other entity

Please specify to what other entity(ies) you refer in your answer to question 5:

- Eurelectric does not have a strong preference about the entity that should oversee the consolidation of information reported to RRMs and trade repositories.
- Our primary interest is that established data channels and reporting protocols are not disrupted by this operation. We therefore reiterate our strong preference for preserving the integrity of the current reporting interface between market participants and data collection entities. Consolidation of data should occur in a second step without affecting market participants' reporting procedures.
- While reliance on a new entity will ensure independence, the additional costs of setting up an additional body should be carefully assessed. Another possibility would be the creation of a task force composed of RRM and trade repository staff working together on the creation of the planned "data pool". This would prevent expertise on the respective data inputs from getting lost on the way towards consolidation.
- Eurelectric acknowledges that consolidation will increase costs for RRMs and trade repositories. As a general principle, any increase in reporting fees resulting from the consolidation exercise should be communicated transparently and be based on a full breakdown of cost components. RRM and trade repository discretion in setting the level of the fee premium should be minimized to preserve accountability.

Please explain your answer to question 5:

N/A

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

Yes / No / Don't know

If yes, please describe this better alternative:

- As outlined in our response to question 5, it is essential that the data collection interface towards market participants remains unchanged. While we support assigning the role of data consolidation stemming from REMIT, MiFID/R and EMIR reporting streams to one or more entities, this must not lead to a change in the collection of data.

- The consolidation of data collected by RRMs and trade repositories in a single dataset or “data pool” can be conducted by a task force composed of RRM and trade repository staff. This solution would ensure sufficient expertise in data related to financial and physical commodity markets and limit the costs of setting up a new entity.
- If the creation of a fully harmonized data set is too costly or complex in the short term, regulators should consider strengthening existing information sharing and rely on e.g., common application programming interfaces (APIs) that allow each authority to retrieve data from another’s system as far as it supports their oversight mandate.
- Incremental steps towards further harmonization of data streams can reduce one-off costs and risks of major IT failures. Such an approach would also improve mutual understanding of the differences and similarities of data streams and the degree of harmonization that is required. We therefore reiterate the importance of improving regulators‘ cooperation and information-sharing.

If no, please explain your answer to question 6:

N/A

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

Yes / No / Don’t know

Please explain your answer to question 7:

- Any solution to reduce the fragmentation of commodity market data should be assessed in relation to its costs and impacts on market participants’ reporting burden.
- Therefore, in the event that the creation of a joint database or “data pool” is deemed inappropriate, systematic and reciprocal access of ACER, ESMA, NRAs and NCAs to data collected under relevant legislation would be a cost-efficient alternative.
- While less seamless than other options, this solution has the benefit of avoiding large IT infrastructure costs for data collection entities. It is also foreseen under the revised REMIT Art. 10(1), which introduces information sharing mechanisms between relevant regulators.
- Different authorities would still be able to consult relevant data from either the physical or financial side of commodity markets as needed for the completion of their oversight mandate, thereby closing knowledge gaps and improving the quality of monitoring.

Question 8. Do you believe that the rules on pre- and/or post-trade transparency (i.e., public dissemination of information on quotes and transactions) of commodity derivatives under MiFID/MiFIR should be amended, notably to include commodity derivatives traded on an MTF or an OTF. It is worth noting that making commodity derivatives subject to pre-trade transparency would imply that commodity derivatives would be included in the consolidated tape for OTC derivatives. Please explain why you think these rules should not be amended:

- Many commodity derivative transactions are bespoke or illiquid. In this context, the **publication of detailed pre-trade transparency can expose market participants' hedging strategies.** Pre-trade information could be particularly sensitive for asset-backed utilities that conclude large bespoke hedging contracts and need to maintain confidentiality around their hedging strategy. Pre-trade transparency rules could therefore disincentivize trading on MTFs/OTFs, leading to an increase in bid-ask spreads. In any case, sufficient delays for publication and exemptions for large or illiquid contracts should be ensured.
- The introduction of post-trade transparency for standardised commodity derivatives is less problematic and can be beneficial because it would allow market participants to know transaction prices and volumes after execution, aiding them in assessing fair values. If it were introduced, post-trade transparency would require safeguards, such as publication delays, to protect information about market participants that conclude large trades.
- Any change in transparency requirements related to OTFs or MTFs should rely on existing reporting procedures and not create additional reporting burden for market participants. Trading venues should be exclusively responsible for the publication of any additional information, e.g., via trade reports or through integration in the consolidated tape.

If no ,please explain under which conditions should these rules be amended:

N/A

Question 8.1 Would you see any added value in introducing similar rules in REMIT aiming at pre- and/or post-trade transparency?

Yes / No / Don't know

Please explain under which conditions should similar rules be introduced in REMIT:

- Eurelectric cautions against the duplication of transparency rules for financial markets in physical energy markets. Any amendment to wholesale energy market transparency rules should be carefully considered, also in light of the recent REMIT review, during which such need was not identified.

- We are strongly opposed to any post-trade transparency for non-standard contracts, considering that such information includes commercially sensitive elements.
- In addition, we emphasise the risks of extending similar rules to trading in an environment of unit-based bidding, such as the Spanish wholesale electricity markets. Information on bids and offers submitted per physical unit is confidential, since the commercial strategy of companies can be deduced from it.

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

Yes / No / Don't know

Please explain under which conditions (latency, transmission protocols, precise scope of products, etc.) should the consolidated tape include pre- and /or post-trade data on exchange-traded commodity derivatives:

If no, please explain your answer to question 9:

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

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

Yes / No / Don't know

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

If no, please explain why you think these transactions should not be subject to systematic reporting to NCAs under MiFIR:

- Introducing OTC transaction reporting under MiFIR is not aligned with the objective to prevent double-reporting and to share data collected via different reporting streams.
- Unless a data gap is identified, this reporting should not be extended. OTC transactions are reported under REMIT and EMIR; any required data should be drawn from existing data channels, relying on data exchanges between relevant entities (RRMs, TRs, regulatory authorities) as suggested above.

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

Yes / No / Don't know

If yes, please explain your answer to question 11:

- In case ESMA considers its access to transaction data reported to NCAs insufficient, it should leverage the above-mentioned data sharing mechanism between regulatory authorities without changing the reporting interface for market participants.
- Indeed, all transaction data that is reported by market participants under MiFID/MiFIR can be shared between relevant authorities.

If no, please explain what are the consequences of this situation and how you believe this should be tackled:

2. Ancillary activity exemption

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

Do you believe persons dealing on own account in commodity derivatives should be treated the same way, with a view to benefit from a MiFID exemption, as persons dealing

on own account in other financial instruments, in particular in not requiring that trading activities are ancillary to a main business?

Yes / No / Don't know

If yes, 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? In providing your explanation, please also clarify whether:

- **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**

- **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**

If no, please explain your answer to question 12:

- **Eurelectric supports the current regime to exempt companies from the MiFID licensing regime when their commodity derivative trading activity is ancillary to their main business**. The Ancillary Activity Exemption set out in Art. 2(1)(j) meets the needs of asset-backed companies that engage in trading activities to hedge their main business. This regime supports the competitiveness of the European utility sector and allows electricity producers to focus their capital investments on the energy transition.
- **The regime described under Art. 2(1)(d) is not appropriate for electricity utilities** and would *de facto* result in a licensing obligation for large utilities engaging in market-making and active trading to support liquidity in power and gas markets. Several conditions under Art. 2(1)(d) are incompatible with the activities of electricity utilities. In particular:
  (a) **Market making in commodities can be crucial to ensure sufficient liquidity and market efficiency**. Depending on how broadly it is defined for the purposes of this exemption, the condition not to engage in market making risks being too restrictive for the electricity sector.
  (b) **The prohibition of speculative or non-hedging trades for non-financial entities active on a regulated market or MTF would strongly affect the liquidity and hedging potential of commodity markets**. Indeed, every

hedging operation requires the presence of a counterparty taking a financial risk. The presence of liquidity providers in commodity markets that are willing to offer hedging products and to take risk into their portfolio ("warehousing") or to externalise risks by aggregating and trading them on wholesale energy markets is therefore an enabling factor for the energy transition. It allows investors into low-carbon electricity generation to reduce risks through instruments such as low-carbon PPAs and futures in liquid wholesale markets.

The ability to hedge on financial markets becomes increasingly important to attract new investments and make them bankable as government support schemes for specific technologies are gradually phased out. This is already leading to, e.g., zero or negative bid tenders for offshore wind auctions in Germany and the Netherlands.

(c) On the other hand, **exemption (d) only permits trading on own account, and does not allow for the provision of other investment services**. Yet, most energy market participants provide investment services to their customers in the form of advice attached, e.g., to supply contracts where energy is purchased at different times.

- Considering the above, **the current Ancillary Activity Exemption (AAE) under Art. 2(1)(j) should be maintained instead of applying a "one-size-fits-all" model** which is likely to harm market liquidity and hence hedging opportunities for risks stemming from the energy sector.

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

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

Yes / No / Don't know

If yes, please explain why you believe that this exemption is fit for purpose:

- The exemption allowing commodity derivative market participants to provide investment services to customers or suppliers is fit for purpose. Offering investment services as an ancillary activity is a natural extension of how energy producers and traders support their supply chain. It is very common for energy supply companies to provide advice to their customers when concluding long-term supply contracts, for example through derivative-backed price guarantees.

- Without this exemption, many mid-size utilities and industrial energy buyers would struggle to access tailored hedging solutions to manage market volatility. This would force them to rely exclusively on banks, which are less directly involved in the production of energy.
- The recent energy market volatility has highlighted how important it is for energy firms to offer hedging solutions directly to their supply chain, reducing systemic risk and ensuring localized risk management rather than pushing all end-users toward financial intermediaries.
- Eurelectric does therefore not see a need to amend this exemption.

If no, please explain how you would propose to amend this:

Question 14. Do you currently benefit from the AAE?

Yes / No / Don't know

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

- Eurelectric represents large companies in the utility sector that rely on the Ancillary Activity Exemption to improve the efficiency of their main business through the purchase and sale of commodity derivatives.
- The AAE is essential for utilities' risk management and allows them to offer products and services enabling the energy transition.
- The different AAE tests respond to the needs of diverse market players and allow them to demonstrate that their trading remains ancillary to their energy sales and generation business.
  (a) The **trading test** is widely used among utilities. Considering the size of many EU utilities' physical energy trading, they can demonstrate that their trading in financial derivatives remains below 50% of their total trading activities.
  (b) The **capital-employed test** is equally well-suited to asset-heavy firms like electricity utilities. It allows them to prove that the capital employed for commodity derivative trading is smaller than the amount used for utilities' main business.
  (c) The **de minimis test** allows smaller actors, such as utilities or relatively small liquidity providers to benefit from the exemption.

Question 14.1 If yes, did the CMRP make it easier for you to benefit from the AAE?

Yes / No / Don't know

If yes, please explain your answer to question 14.1:

- The so-called MiFID Quick Fix, or Capital Markets Recovery Package, improved the functioning of the AAE by simplifying ancillarity tests and by removing burdensome notification requirements.
- It removed the market size test, which was impractical and required energy market participants to calculate the size of their trading activity against several market size thresholds for each commodity class, despite the practical difficulty of assessing market size for different derivative contracts.
- The introduction of the de minimis test made compliance with the AAE easier, especially for small and medium-size firms with a more limited physical asset base, operating in commodity markets and supporting their liquidity. As set out in Recital 10 of Delegated Regulation 2021/1833 establishing when an activity is ancillary to the main business, the three tests cater for the different underlying economic realities of various groups and constitute equally suitable, alternative and independent methods to determine whether the trading activity is ancillary. The rationale of introducing the de minimis test was to simplify the assessment by permitting companies to make a calculation similar to the one for the EMIR Clearing threshold.
- In addition, the deletion of the yearly notification requirement helped reduce the administrative burden for market participants, while still allowing for appropriate supervision through ad-hoc requests from NCAs. Under the previous regime, utilities had to notify the AAE every year. This process involved the preparation of documentation and legal review, causing unnecessary burden. For utilities active in several countries, the process also involved multiple notification processes.
- The notification requirement thus imposed unnecessary red tape on companies and did not guarantee compliance with the AAE. To confirm the company is entitled to the exemption, companies remain subject to an obligation to provide, upon request from the competent authority, information about the basis on which they have assessed that their activity is ancillary to the main business. We also note that other exemptions granted under MiFID Art. 2 and 3 do not involve a notification requirement. It therefore would not seem consistent to request it for the ancillary activity exemption.

If no, please explain your answer to question 14:

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

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

- The MiFID Quick Fix reduced compliance costs for utilities through the deletion of a yearly notification obligation and the introduction of a de minimis test. This freed up resources which can be reallocated to utilities' main business.
- The change in AAE compliance tests also improved legal certainty for companies, allowing them to plan their trading business in advance while avoiding that the outcome of the test depends on market sizes that are difficult to assess.

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

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

- The MiFID Quick Fix lowered market entry barriers, allowing more market participants to enter financial markets and to contribute to market liquidity. This boost to liquidity makes it easier for market participants to find adequately priced products that fit their needs.
- The Frontier Economics report on "Principles of Energy Market Regulation" (Frontier Economics, 2025, p.49, Link) illustrates how liquid financial markets with high churn rates reduce bid-ask spreads by comparing German and Italian forward markets from 2019 through to 2022.

Question 17. What is the most effective and efficient method to ensure that supervisors can monitor compliance with the requirements of the AAE? In particular, do you believe the abolishment of systematic (annual) notification from beneficiaries of the AAE to NCAs should be maintained or should these notifications be re-introduced? Please explain. Could you quantify costs if they were to be reintroduced?

- As outlined above, we believe that the deletion of the notification requirement during the MiFID quick fix reform significantly reduced utilities' compliance burden. The notification requirement should not be reinstated, since ad hoc requests allow for more targeted supervision while avoiding a lengthy "tick-the-box" exercise.

- Considering the current competitiveness agenda of the European Commission, we also believe that diverting skilled resources from productive tasks to a compliance exercise would not be consistent.
- Finally, we encourage authorities to rely on existing data streams to the extent possible before making ad hoc requests to utilities. For example, transaction data can be used to detect unusually large trading volumes compared to a firm's commercial footprint.

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

Yes / No / Don't know

If yes, please explain your answer to question 18:

- The current AAE framework allows energy market players to measure their trading activity through three alternative methodologies, so that each market participant may choose the most fitting for the nature of its business.
- As outlined above, we believe that the three different tests suit the needs of different types of energy market participants while ensuring that their commodity derivatives trading remains ancillary to their core business.
- The current AAE tests ensure that only entities whose primary business is the provision of investment services on a professional basis are brought within the MiFID II regulatory perimeter: thus, we consider its current structure being fit for purpose.

(a) The **trading test** is widely used among utilities. Considering the size of many EU utilities' physical energy trading, they can demonstrate that their trading in financial derivatives remains below 50% of their total trading activities.

(b) The **capital-employed** test is equally well-suited to asset-heavy firms like electricity utilities. It allows them to prove that the capital employed for commodity derivative trading is smaller than the amount used for utilities' main business.

(c) The **de minimis test** allows smaller actors, such as utilities or relatively small liquidity providers to benefit from the exemption.

If no, please explain what alternative ways to assess whether the trading activity /investment services provision of a firm is ancillary to its main activity you would propose. To the extent feasible, please describe a possible impact on the type and number of entities in scope of the AAE under your alternative approach.

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

Please select as many answers as you like

X adequate conduct supervision of firms active in commodity derivatives markets and enforcement of the financial rulebook (e.g., for the purpose of monitoring market abuse)

X fair competition between market participants

X impact on energy prices

X liquidity of the commodities derivatives market

X safeguarding prudential and resilience aspects of firms benefitting from the AAE

X ability to monitor and identify future risks to financial stability (e.g., related to interconnectedness and contagion)

[None]

Please explain your answer to question 19:

- Eurelectric has not identified a regulatory gap in AAE application requirements in the case of energy market participants.
- The AAE has an overall positive impact on energy market functioning, supporting the diversity of derivative market participants and improving market efficiency:

(a) **Market supervision**: the trading activity of energy market participants is fully supervised as regards financial transactions (EMIR, MiFID/R, MAR) and physical trading (REMIT). We do not see a shortage in market supervision and point to the high amount of market conduct cases under REMIT.

(b) **Fair competition:** the AAE allows a wide diversity of energy market participants to conduct trading activities on financial derivative markets without having to rely on financial intermediaries. Without the exemption, utilities would withdraw from derivative markets, degrading forward market liquidity in a context where their development is part of a strategic objective to incentivize market-based hedging.

(c) **Energy prices**: the AAE has not contributed to price volatility, instead stabilizing prices through broad participation in commodity markets allowing generators and their clients to hedge against price volatility.

(d) **Market liquidity**: as outlined above, market liquidity is boosted by the AAE, allowing diverse market participants to trade on financial markets. Abolishing the AAE would lead to declining market depth and higher price volatility.

(e) **Prudent and resilient behaviour**: energy utilities have established risk management procedures both for exchange- and OTC-based trading, including margining, bilateral credit limits and liquidity buffers.
(f) **Systemic risk**: energy market participants do not use client deposits to conduct trading. In addition, their trading activity is mainly aimed at hedging their own commercial risks, in contrast to financial institutions, whose trading strategies are aimed at benefitting from risk-taking. Finally, the commodity derivatives market accounts for a small fraction of the total outstanding notional value in derivatives (approx. 1% according to ESMA's 2021 Annual Statistical Report). Utilities' risk-taking in OTC markets is adequately captured by EMIR reports, whereas CCPs have an oversight of utility risk-taking in relation to exchange-based trading.

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

	Yes	No	Don't know
trading activity in derivatives traded on a trading venue?		X	
trading activity in physically-settled derivatives?		X	

If yes, should the threshold be adapted?

Yes / No / Don't know

Please explain how the threshold should be adapted:

If no, please explain your answer to question 20:

- **Exchange-traded derivatives**: the de minimis test replicates the EMIR clearing threshold calculation to capture systemic risk from OTC derivative trading. Exchange-traded derivatives are subject to mandatory clearing and collateral rules which prevent excessive credit risk. Reliance on the EMIR test has helped simplify the assessment for firms, removing market entry barriers and improving liquidity.
- **Physically settled derivatives**: the inclusion of physically settled derivatives would abolish the separation of financial and physical markets. Physical energy markets are subject to comprehensive regulation under sector-specific legislation, such as REMIT, and by energy regulators. Companies' core business transactions should not be conflated with their ancillary trading.

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

Yes / No / Don't know

Please explain your answer to question 21:

- We consider the current criterion—counting only transactions in commodity de-rivatives "traded in the Union"—to be fit-for-purpose and appropriate. Limiting the de minimis test to EU-traded contracts aligns with MiFID's regulatory jurisdiction and ensures that the AAE threshold focuses on activity affecting EU markets. This approach avoids penalizing EU firms for global trades that are already subject to other regulatory regimes.

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

Do you believe that it would be more appropriate for the *de minimis* test threshold under MiFID to be calculated on a gross basis, so as to measure absolute trading activity?
Yes / No / Don't know

If yes, please explain how the threshold should be adapted:

If no, please explain your answer to question 22:

- The calculation of net trading positions in the de minimis ancillarity test measures the net exposure of a company averaged month-end over 12 months. This metric is more relevant from a risk perspective than gross trading activity, which measures turnover.
- It is standard practice for utilities to adjust their hedging positions for a given physical exposure over time, as information about supply and demand becomes more granular. Rolling portfolio optimization increases the gross trading activity of a company without changing their net exposure. Firms should not be penalized for prudent risk management practices.
- For example, a utility hedging 100 MW of generation capacity 12 months-ahead with rolling contracts has a gross trading activity covering 1.200 MW, whereas its net exposure remains at 100 MW throughout the entire time window.

- In addition, the net threshold stands in reasonable proportion to the total of commodity derivative market activity in the EU, which amounted to EUR 3.300 bn. In 2022, meaning a monthly average of EUR 275 bn. The threshold corresponds to a value slightly above 1% of the total market.

Question 23. Currently, MiFID contains a single *de minimis* test threshold for all types of commodities derivatives. Do you believe the *de minimis* test threshold should differ depending on the type of commodity derivative market considered (e.g., energy derivatives vs agricultural derivatives)?

Yes / No / Don't know

If yes, please explain why it should differ, and how should the individual thresholds be adapted:

If no, please explain your answer to question 23:

- For simplicity reasons, we support keeping a uniform threshold for different energy commodity derivatives. We do not have an opinion regarding agricultural or metal derivatives.
- A more granular approach to energy derivative thresholds would make the de minimis test more complex, requiring a calculation against different thresholds. This would also raise legal questions about the consequences of breaching the threshold in one commodity asset class.

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

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

Yes / No / Don't know

If yes, please explain why and how the threshold should be adapted:

- The current de minimis test is properly calibrated, including both trading activities on behalf of clients and own account trading, which covers the main part of utilities' trading activity to optimize physical assets.

If no, please explain your answer to question 24:

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

	Yes	No	Don't know
abolishing the trading test		X	
abolishing the capital employed		X	
through other types of amendments		X	

If no, please explain your answer to question 25:

- As outlined above, we believe that the different AAE tests meet the needs of different energy market participants, ensuring that different business models qualify for the exemption. This diversity of uses is reflected in Recital 10 of Delegated Regulation 2021/1833.
- As stated in Recital 10 of Delegated Regulation 2021/1833, the capital employed test is provided to take into account the economic reality of heterogeneous groups that need to undertake the assessment of whether their trading is ancillary to their main business, including groups that undertake significant capital investments relative to their size, for example in the creation of infrastructure, transportation and production facilities, as well as investments which cannot be easily hedged in financial markets.

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

Yes / No / Don't know

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

- Eurelectric has not observed any evidence that the trading test would not be adequately calibrated.
- As stated in Recital 7 of delegated regulation 2021/1833, a rational risk-averse entity, such as a producer, processor or consumer of commodities or emission allowances, is deemed to hedge the volume of the commercial activity of its main business with an equivalent volume of commodity derivatives, emission allowances or derivatives thereof. Therefore, the total volume of its trading activity in commodity derivatives, emission allowances or derivatives thereof measured in the gross notional value of the underlying is an appropriate proxy for the size of the main business of the group.
- The trading test ensures that firms which are not active in physical commodity markets do not benefit from the AAE status, as stated in Recital 7: "*Since groups, whose main business activities are not related to commodities or emission allowances, would not use commodity or emission allowances derivatives as a risk-reducing tool, their trading in commodity derivatives, emission allowances or derivatives thereof should not qualify as hedging.*"

If you think the <u>trading test</u> is not adequately calibrated anymore, please explain how it should be adjusted:

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

Yes / No / Don't know

Please explain why you think the <u>capital employed test</u> continues to be adequately calibrated?

- As explained in Recital 10 of Delegated Regulation 2021/1833, the capital employed test continues to be adequately calibrated as it takes into account the reality of companies that "*undertake significant capital investments, relative to their size, in the creation of infrastructure, transportation facilities and production facilities, as well as investments which cannot be easily hedged in financial markets.*"
- This test is therefore particularly adapted to the activities of electricity utilities, which need to make large infrastructure investments to increase the supply of electricity and to refurbish existing assets.

If you think the capital employed test if not adequately calibrated anymore, please explain how it should be adjusted?

Please explain how the AAE could be made less complex through other types of amendments:

N/A

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

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

- Requiring electricity utilities to seek a license as financial undertakings will have strong impacts on their internal compliance processes and on their ability to finance the energy transition. This would put EU electricity producers at a competitive disadvantage with third-country firms both for projects in the EU and overseas.
- The main legal obligations stemming from the MiFID licensing regime would be (a) prudential requirements under the IFR/IFD regime, (b) margining obligations under EMIR, and (c) organizational requirements under MiFID resulting from the application for licensed status.
- This would force the costly restructuring of energy businesses. Energy companies would need to revamp their IT systems and operational frameworks to comply with the new requirements, deviating skilled workforce from productive tasks. For example, utilities would need to separate trading from commercial operations and to restructure contracts.
- Furthermore, companies would reduce their volume of energy trading: higher collateral requirements would lead to a decrease in the volume of energy trading, which in turn would hamper liquid and well-functioning energy markets. It would also mean that fewer PPAs would be offered to the market, and that risk management would become more costly.

Finally, more capital would be tied up due to the IFR/IFD regime, reducing available funds and forcing utilities to reduce investments in e.g., renewable energy projects.

Question 27. To what extent do you believe the application of IFR/IFD prudential requirements, including those resulting from relevant Level 2 measures, as well as dedicated prudential supervision on all energy commodity derivatives traders, would have avoided or at least partially avoided the liquidity squeeze that such market participants suffered from during the 2022 energy crisis? To what extent would it have limited the need for public intervention providing some of them with the necessary liquidity to meet requirements on margin calls?

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

- Eurelectric believes that the application of IFR/IFD prudential requirements would not have avoided the fallout of the 2022 supply shock on energy utilities.
- As noted in the Frontier Economics report establishing "Principles of Energy Market Regulation" (Frontier Economics, 2025, Link, p.108), investment firm status would not improve market resilience in crisis situations.
- First, it would not affect the physical availability of energy, which was the root cause of the 2022 crisis. Second, it would trap a substantial part of firms' capital, reducing financial headroom in situations of high volatility. Yet, energy companies need to undertake significant capital investments for both existing and new assets to guarantee the security of supply.
- In addition to this, the margining regime under EMIR would increase utilities' liquidity constraints, creating a strong incentive not to hedge their price risk. Margins spiraled during the crisis, creating strong liquidity risks for healthy energy utilities, and even for highly capitalised banks.
- Besides, the objective of prudential requirements is to reduce systemic risk and to increase resilience in periods of economic stress. However, energy market participants trading in energy derivatives do not pose systemic risk to the wider economy and possess a large capital stock of assets for the production and distribution of electricity that can continue to be operated in case of default.
- Therefore, we believe that the IFR/IFD regime would degrade energy markets and reduce available hedging opportunities, eventually causing an increase in energy prices.

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 categorization in IFR/IFD (i.e., three categories of investment firms) should apply to those entities? Should instead a *sui generis* category be created for those entities newly covered by prudential requirements?

Yes / No / Don't know

Please explain what IFR/IFD requirements should apply to firms in that newly created category (e.g. capital, liquidity, reporting, oversight, etc) and why?

If possible, please estimate the cost of compliance with this *sui generis* category within IFR/IFD, as detailed by you above.

- Eurelectric firmly opposes including real economy firms such as energy companies into a new prudential category under IFR/IFD.
- Banks and utilities are fundamentally different. Banks are regulated to protect savers in bankruptcy, ensuring depositors' funds are safeguarded. In contrast, energy companies hold real assets (e.g., power plants, infrastructure, inventories) and use derivatives solely to hedge commercial risks. Imposing banking-style capital and liquidity requirements would tie up cash critical for margin calls, worsen liquidity in crises, and divert funds from investments needed for the Energy Transition and the Green Deal.
- Mandatory margining and bilateral collateral arrangements would impose heavy burdens, further restricting our ability to manage liquidity, credit, and market risk dynamically. Such measures would force us into a rigid framework that leaves little room for flexibility in an emergency, potentially worsening the crisis instead of mitigating it.
- The current exemptions already provide effective differentiation between banks and real economy firms, allowing us to hedge and manage risks without being forced into a capital intensive regime designed for financial institutions. Mandatory margining and excessive reporting would restrict our operations and undermine market liquidity.

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

Yes / No / Don't know

If possible, please estimate the cost of compliance with the sole MiFID provisions under this scenario.

- Obligations derived from the MiFID licensed regime are extremely burdensome for real-economy companies undertaking commodity derivative trading as an ancillary activity. Many MiFID requirements have been developed to ensure client protection of investment firms, whereas utilities trade among professionals.
- Subjecting the utility sector to the requirements of financial regulation would send a damaging message to investors and negatively affect the energy transition.
- Considering the EU's competitiveness agenda, policymakers should avoid measures that will increase costs for key actors of the energy transition and make risk management in the energy sector more expensive.

Question 28.3 Do you consider that all or only some MiFID requirements should apply?
Yes / No / Don't know

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.

If no, please explain your answer to question 28:

- We do not believe that requirements from the MiFID regime fit the needs of utilities' business activity.
- Due to their physical activity and energy supply mission, utilities have stringent risk management processes in place, which were further reinforced following the energy crisis. For example, asset-backed companies operating in EU commodity derivatives markets apply comprehensive checks for traders.
- Moreover, using MiFID rules to "tame" real economy firms is an ill stated concept. It appears driven by political considerations that blur the lines between politics and sound regulation, thereby undermining the credibility of financial oversight. Additional MiFID obligations—such as those for anti money laundering, complex position reporting, and MiFIR reporting—would require significant extra personnel and systems. Currently, we face minimal reporting burdens and are largely out of scope for these requirements. Further, there remain unknown factors (for example, those related to DORA) that add to the uncertainty of imposing such rules.

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.):

- Restricting the AAE (e.g., lowering the de minimis threshold or removing key tests) would force more firms into MiFID regulation, raising costs and reducing participation. Expected effects include:

(a) Fewer active participants – Smaller firms may exit rather than comply with Mi-FID.
(b) Lower open interest and volumes – If non-financial firms hold 60% of positions, a 10% reduction could cut open interest by ~6%, weakening price dis-covery.
(c) Wider bid-ask spreads – Fewer liquidity providers mean higher trading costs and greater price volatility.
(d) Market concentration risk – If only banks and funds remain, stress periods could see increased volatility.

- Even a 20% drop in AAE participants could significantly reduce trading volumes, im-pacting market efficiency and hedging costs where semi-liquid and evolving markets are affected most.

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

- Restricting the AAE (e.g., lowering the de minimis threshold or removing key tests) would force more firms into MiFID regulation, raising costs and reducing participation. Expected effects include:

(e) Fewer active participants – Smaller firms may exit rather than comply with Mi-FID.
(f) Lower open interest and volumes – If non-financial firms hold 60% of positions, a 10% reduction could cut open interest by ~6%, weakening price dis-covery.
(g) Wider bid-ask spreads – Fewer liquidity providers mean higher trading costs and greater price volatility.
(h) Market concentration risk – If only banks and funds remain, stress periods could see increased volatility.

- Even a 20% drop in AAE participants could significantly reduce trading volumes, impacting market efficiency and hedging costs where semi-liquid and evolving markets are affected most.

- Energy markets are especially sensitive. Tightening the AAE could lead to even more pronounced volatility due to the heavy reliance on non-financial hedgers for liquidity. In contrast, loosening it would help stabilize prices by ensuring continued participation.

3. Position management and position reporting

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

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

Yes / No / Don't know

Please explain how this reporting should be structured?

- From a theoretical perspective, having clearing members responsible for position reporting would have the potential to reduce the burden on individual market participants and streamline the process, making it more efficient and reliable for all parties involved. However, the following considerations should not be overlooked.

a) First and foremost, the critical information to be provided for position reporting remains that relating to the hedging or non-hedging nature of the position, which – depending on the specific situation – may be known only to the non-investment firm, not necessarily to the clearing member. So, if this information were still required, in some cases the clearing member would have to ask the MPs for the split between risk-reducing and non risk-reducing positions, just as TVs do today.

b) Second, trading venues typically envisage a simplified reporting process for non-investment firms by providing them with a pre-populated draft report to be reviewed and possibly amended; such amendment generally only relates to the split between risk-reducing and non risk-reducing positions. Energy market participants have already implemented reporting processes and systems to comply with the MiFID position reporting requirements (and therefore have already incurred the associated costs), which typically rely on such drafts provided by TVs.

c) The clearing member typically has no visibility of the positions held on the MTF/OTF.

- Consequence: even if the responsibility for reporting positions were to be passed to clearing members, achieving a significant reduction in the reporting obligation burden for market participants may be challenging, as long as they remain required to provide information on the risk-reducing/non-risk-reducing nature of the positions held or they remain obliged to directly manage positions on MTFs/OTFs.
- Against this background, any further changes to the position reporting framework should be designed in such a way as to avoid creating additional burdens for market participants rather than real simplification.
- In light of the above, the European Commission may be willing to consider the possibility of no longer requiring information on the purpose of the positions. In this scenario, only when a market participant requests a hedging exemption, the latter could be asked to supplement the information provided by the clearer (given the critical role of the risk-reducing/non-risk-reducing information in the case of an exemption). As an alternative option, should a more advanced repository mechanism be developed, it would be possible to retrieve this information (as well as the entire data set on MPs' positions…) from EMIR transaction reporting. This may be an even more efficient solution.

If yes/no, please explain your answer to question 31:

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

Please select as many answers as you like

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

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

N/A

Please specify what your preferred option would be:

X imposing additional reporting requirements on market participants (to trading venues)

X achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs)

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

X don’t know / no opinion / not applicable

Please clarify how your favourite option could be achieved and, if possible, please estimate the cost of additional data collection/reporting, to the extent relevant, for reporting entities. Please identify whether this could lead to any double reporting under the (revised) REMIT (and as will be further detailed in the revised REMIT Implementing Regulation)?

N/A

In case you deem that resorting to a single data collection mechanism would be desirable, please specify what types of safeguards should be put in place to maintain confidentiality on sensitive information from potential competitors:

N/A

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

	Yes	No	Don’t know / No opinion / Not applicable
C6-carve-out contracts	X		
The underlying spot market	X		

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

- In line with our position on data sharing between supervisory authorities, Eurelectric supports cross-regulatory access to information about positions in all relevant energy markets (including derivatives, carve-outs, spot). We acknowledge that data is currently fragmented: under MiFID, NCAs/ESMA receive reports on exchange-traded and economically equivalent OTC positions but not on underlying spot or C6 carve-out forwards, while energy regulators under REMIT see physical and OTC energy trades but may miss positions on financial exchanges.
- As stated above, we believe that regulators should leverage existing data streams instead of creating new, duplicate reporting obligations. Market participants already report derivative trades under EMIR to trade repositories and energy transactions under REMIT to RRMs. Regulators can aggregate a firm's total commodity position and share the relevant information with each venue. Therefore, we urge regulators to use existing transaction data to establish market participants' positions instead of requiring additional reporting.
- In any case, cross-agency access to information about positions should not lead to an increase in reporting burden for market participants.

Please specify what your preferred option would be:

X imposing additional reporting requirements on market participants (to competent authorities)

X through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting)

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

X don't know / no opinion / not applicable

If yes, please explain how the information can be collected by competent authorities and reported in the most cost-efficient way:

- As stated above, cross-agency data access should leverage on existing reporting channels instead of creating additional, duplicate reporting obligations for market participants.

Question 34. With a view to enhancing the supervision of wholesale energy markets, do you believe that energy markets supervisors (ACER, NRAs) should have access to

information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFID?

Yes / No / Don't know

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

- Eurelectric supports cross-agency data access to overcome the fragmentation of energy market data. However, ACER and NRAs should leverage on existing reporting channels instead of creating additional, duplicate reporting obligations for market participants.

If yes, please specify what your preferred option would be:

X imposing additional reporting requirements on market participants (to trading venues)

X achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs)

X by resorting to the single data collection mechanism as referred to in section 1

X don't know / no opinion / not applicable

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

- As stated above, cross-agency data access should leverage on existing reporting channels instead of creating additional, duplicate reporting obligations for market participants.

Please explain your answer to question 34:

N/A

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

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

Yes / No / Don't know

Please explain your answer to question 35:

- Eurelectric does not support extending the reporting of economically equivalent OTC contracts to market participants that are not investment firms. An extension of this obligation would force electricity utilities into additional reporting, regardless of whether they have large financial exposures. This would result in significant compliance costs without meaningful oversight benefits.
- There are alternative ways to monitor aggregate positions without mandating new reports from all participants. Regulators can use EMIR trade repository data—where both counterparties report OTC trades—to calculate positions in EEOTC contracts. Similarly, REMIT data covers bilateral energy contracts equivalent to exchange trades. Instead of requiring a separate MiFID report from non-financial firms, regulators could cross-reference existing data. Large OTC deals typically involve a bank or clearing house that already reports, ensuring any excessive positions are captured. Moreover, even if an NFC breaches a position limit due to OTC trades, they remain legally accountable.

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

Yes / No / Don't know

If yes, please explain your answer to question 36:

- Eurelectric strongly rejects any change to the current MiFID definition of "economically equivalent OTC derivatives" (EEOTC). The existing definition—which requires that an OTC contract have nearly identical specifications (same underlying commodity, delivery point, quantity, etc.) to be considered equivalent to a listed contract—is clear, robust, and effective.

If no, please explain what changes you would propose:

Question 37. MiFID requires that position reporting specifies the end-client associated to the positions reported. However, the legal construction of the current position reporting framework entails that, for positions held by third-country firms, such third-country

firms are to be considered the end-client. This prevents the disaggregation of positions held by those third-country firms, and therefore the identification of the end-clients related to those positions.

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

Yes / No / Don't know

Please explain your answer to question 37:

N/A

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?

N/A

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?

- The effects of position limits mainly depend on their absolute level and the existence of a hedging exemption.
- Position limits being currently high and subject to a hedging exemption, their impact on market liquidity is small. However, the application of a strict position limit regime before the entry into force of the CMRP affected market depth and trading volumes, especially in less liquid energy contracts. Participants providing liquidity (e.g. market makers) often reduced their activity to avoid breaching limits, leading to wider bid-ask spreads and lower total market volumes.
- Electricity utilities trading in liquid forward markets benefit from deep markets to secure adequately priced hedging products. It is therefore in our sector's interest to preserve market liquidity and to limit interventions in price formation. Since position limits often have a negative impact on liquidity, they should be used only when absolutely necessary to mitigate a clear risk.

- In addition, the existence of a hedging exemption is crucial for electricity utilities, which need to be able to fulfil their contractual obligations under any circumstance, meaning that they have to meet the physical demand of small and large end-consumers. A hedging exemption is therefore indispensable for products with physical delivery, but also for financial derivatives that are used for hedging purposes.

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

- Position limits can impair the ability of non-financial entities to hedge their exposures by restricting the size of positions or by deterring counterparties.
- If a utility or producer has a large exposure (e.g. a power producer locking in forward electricity sales), a low position limit might prevent it from executing a full hedge on a single trading venue. Even if hedging exemptions are available, the process to obtain them can be burdensome or slow, and meanwhile the lack of willing counterparties (due to their own limits) can hinder effective hedging. For example, before recent reforms, a financial intermediary within a commercial group could not qualify for the hedging exemption and thus faced position caps when hedging the group's risk – this made genuine risk-reducing trades more difficult. Moreover, liquidity providers withdrew from illiquid contracts for fear of breaching limits, which in turn left commercial firms with fewer counterparties to take the other side of hedging trades.
- Efficient hedging is critical for energy firms, and position limits should not unintentionally block or complicate bona fide hedging. We believe the recent broadened hedging exemption (allowing certain financial affiliates of commercial firms and liquidity providers to be exempt) was a necessary improvement, as it helped ensure that genuine hedgers are not constrained by speculative position caps.

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

Yes / No / Don't know

Please explain your answer to question 40:

- Eurelectric supports the position limit regime introduced by the CMRP. Utilities have not observed any evidence that the introduction of this new regime has increased market manipulation.

- Position limits alone are not sufficient to prevent market abuse, as the size of positions usually reflect the size of market participants' economic activity.
- Other legislation is in place to protect market integrity and transparency in derivatives (MAR) and wholesale energy markets (REMIT), and has been revised during the last legislature.

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):

- The MiFID II position limit regime before the introduction of reforms with the CMRP was damaging for market liquidity. With low limits applied to illiquid markets, activity was further reduced, limiting the available offer of hedging products.
- In addition, the pre-CMRP regime required MPs to seek exemptions from competent authorities, a burdensome procedure which ended with the CMRP.
- The CMRP therefore significantly improved liquidity and reliability in EU energy derivatives markets. These reforms narrowed the scope of position limits to only "significant or critical" commodity contracts (largely excluding smaller and new contracts), broadened the hedging exemption to certain financial entities in predominantly commercial groups, and introduced a new liquidity provision exemption for market makers.
- The absolute level of position limits and the functioning of hedging exemptions under the CMRP have facilitated hedging in energy markets and stricken a better balance in preventing market abuse and ensuring liquidity than the previous regime. We therefore believe that the current regime should remain in place.

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

Yes / No / Don't know

Please explain your answer to question 42:

- Eurelectric supports maintaining the current criterion to determine ‘significant or critical contracts.’
- The current definition effectively distinguishes between contracts that warrant regulatory limits and those used for genuine hedging, without imposing extra compliance burdens on non-financial firms. We urge regulators to maintain the status quo, as it provides the necessary balance to protect market integrity while avoiding unnecessary complexity and ensuring a level playing field for all market participants.
- The existing definition is clear: only contracts with nearly identical specifications (same commodity, delivery point, quantity, etc.) are considered critical. This leaves little room for ambiguity and prevents traders from exploiting minor differences to evade limits. Changing the definition would introduce uncertainty and complicate compliance for market participants.

Please explain how the current criterion should be reviewed. In particular, do you believe that this definition should vary depending on the underlying commodity?

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

Yes / No / Don’t know

Please indicate which types of commodity derivatives are particularly exposed to such risks, and whether any changes to the current position limits regime could address these situations.

Please also indicate whether such changes could also affect the orderly price formation process for said contracts:

If no, please explain your answer to question 43:

- Eurelectric strongly believes that energy markets are appropriately regulated to prevent market manipulation and that distinct oversight regimes should be kept for physical and financial instruments.
- Comprehensive market integrity regimes exist for both physical energy markets (REMIT Regulation) and financial energy markets (Market Abuse Regulation), ensuring that the manipulation of prices is prosecuted.
- The REMIT Regulation was recently revised to adapt its rules to developing market conditions, introducing far-reaching and rather burdensome new monitoring rules. The number of pending REMIT cases (390 cases in Q4 2024, REMIT Quarterly), many of which are closed without a sanction, is also an indication that physical energy markets are closely watched.
- Similarly, financial markets benefit from venue-level management controls calibrated to each product's liquidity and risk profile. This venue-specific structure avoids unnecessary duplication and preserves market participants' ability to choose between centrally cleared exchanges and OTC markets for valid hedging and commercial reasons.

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

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

Yes / No / Don't know

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

Yes / No / Don't know

Please explain your answers to question 44:

- Eurelectric believes that position limits should be set by the regulatory authority having the best knowledge of the market under consideration. In accordance with the subsidiarity principle, the position limit should therefore be set by NCAs.
- While cross-venue position limits for contracts with the same characteristics could be considered, such measure would require centralized monitoring of positions in real-time and coordination tools to ensure compliance.
- Without a robust mechanism allowing ESMA and venues to aggregate positions in real time—and thereby preventing breaches arising from misalignment—any pan-European limit could be undermined by delayed or incomplete data sharing.

- The enforcement of EU-wide position limits also raises questions of jurisdiction and cooperation between ESMA and trading venues.
- Therefore, we believe that the current regime is preferable and ensures that position limits are suitable to the markets under supervision by each regulator.

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

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

Yes / No / Don't know

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

N/A

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

Yes / No / Don't know

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

Yes / No / Don't know

Please explain your answer to question 46:

N/A

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

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

If yes, please explain your answer to question 47:

N/A

If no, please indicate which contracts are in your view not subject to adequate position limit levels:

N/A

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

Do you believe that position limits should be differentiated, depending on the type of traders/trading activity involved?
Yes / No / Don't know / no opinion / not applicable

If yes, please explain how position limits should be differentiated:

If no, please explain your answer to question 48:

- Eurelectric urges caution in differentiating between types of traders when setting position limits. Every hedging operation requires risk-taking from one counterparty to the transaction. Therefore, electricity utilities rely on liquidity providers for their hedging. In case position limits discriminate between types of traders, EU commodity markets risk fragmentation and a decline in market liquidity, which would reduce opportunities for hedging.
- In addition, the existence of a hedging exemption already acts indirectly as a differentiator between speculators and hedgers. We believe that this regime is more effective than the introduction of additional complex administrative categories.

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

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

If yes, please explain why you believe the current exemptions from position limits are fit-for-purpose:

- Eurelectric believes that the current MiFID exemptions - especially the hedging exemption for non-financial entities and the liquidity provision exemption for market makers - are fundamentally sound and fit-for-purpose. These exemptions allow commercial firms to hedge and provide liquidity without being burdened by full MiFID regulation. The overall framework effectively distinguishes between trading that reduces risk (hedging and market-making) and purely speculative trading.
- For electricity utilities, the **hedging exemption** is essential, allowing them to hold large derivative positions that offset physical exposures (e.g., forward sales, fuel procurement hedges) without breaching position limits. The recent broadening to include certain financial entities in predominantly commercial groups has improved the applicability of the exemption.
- The **liquidity provision exemption** is a positive addition that lets market makers operate without being constrained by limits. This exemption is crucial because it encourages liquidity, leading to tighter bid/ask spreads and deeper markets. Without it, some liquidity providers might withdraw from less liquid contracts, negatively affecting market quality.

If no, what changes to such exemptions would you propose? Are there certain markets where such exemption from position limits are more /less justified and is there merit to differentiate between types of commodity markets?

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

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

If yes, please explain your answer to question 50:

N/A

If not, what is the most effective and efficient way for supervisors to monitor and ensure compliance with the hedging exemption?

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

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

Please explain your answer to question 51:

- We are not opposed to giving trading venues a greater role in granting hedging exemptions from position limits to market participants, as long as this does not impose additional compliance burdens.
- Delegating the granting of hedging or liquidity provision exemptions can speed up this process, since venues interact frequently with market participants and have detailed insights on both day-to-day trading patterns and positions of their members. A shift in competence from NCAs to trading venues would therefore likely speed up these proceedings.
- In addition, we note that in the US context, for example, the CFTC disposes of a review period during which it can object to hedging exemptions granted by trading venues, thereby ensuring appropriate supervision.

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

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

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

If yes, please explain which specific cases could warrant an ad hoc exemption from position limits, and whether the power to grant an ad hoc exemption should be vested with an NCA or with ESMA.

N/A

If no, please explain why you think the EU should not introduce such a flexibility?

N/A

Question 53. Do you believe that trading venues:

	Yes	No	Don't know
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?	X		
Should be in charge of setting position limits for nonspot month versions of contracts subject to position limits, thereby applying regulatorset position limits only to spot month contracts, as seen in other jurisdictions?	X		
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		X	

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

- The current position limit regime is well designed; Eurelectric consequently does not see a need for material changes. Nevertheless, in line with our response to question 51, we believe that the competence to set position limit could be delegated to trading venues. However, such change should not result in trading venues setting own position limits that are not prescribed by law.

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

- The current position limit regime is well designed ; Eurelectric consequently does not see a need for material changes. Nevertheless, in line with our response to question 51, we believe that the competence to set position limit could be delegated to trading venues.
- However, such change should not result in trading venues setting own position limits that are not prescribed by law.

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

- The current position limit regime is well calibrated and should not be subjected to material changes. We therefore oppose the possibility for trading venues to set additional position limits to the ones prescribed by law.

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

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

Please explain your answer to question 54:

N/A

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

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

If yes:

Question 55.1 Please explain why, including through references to any impact you expect on the underlying spot market, liquidity and energy prices:

- The “C6 carve-out” refers to certain energy contracts—physically settled OTC forwards traded on an OTF—that are exempt from MiFID II because they fall under REMIT instead.
- Eurelectric opposes extending MiFID-like position limits to C6 carve-out products, since market participants such as electricity utilities should not be constrained in satisfying any potential demand for physical energy delivery.
- These forwards are typically bespoke or less liquid contracts, closely tied to physical delivery obligations. Imposing limits could severely reduce liquidity since many participants use them to hedge physical exposures. Moreover, market abuse risks in these forwards—such as cornering the market—are already addressed under REMIT’s market abuse framework. Therefore, focusing on transparency and enforcement under REMIT is more appropriate than applying hard volume limits.

Question 55.2 If a framework for position limits were also to be developed under REMIT, how should it be structured in order to ensure coherence with financial legislation and avoid duplication?

• We believe that position limits should not be applied to physical forwards under the REMIT carve-out.

Question 55.3 Do you believe position limits should be set at European level (e.g., ACER), or by NRAs?

X At European level
X By NRAs
X Don't know / no opinion / not applicable

Please explain your answer to question 55.3:

N/A

Question 55.4 In your view, should NRAs/ACER be empowered to grant ad hoc exemptions from such limits?

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

Please explain your answer to question 55.4:

N/A

If no to 55.1, please explain your answer to question 55.1:

• The "C6 carve-out" refers to certain energy contracts—physically settled OTC forwards traded on an OTF—that are exempt from MiFID II because they fall under REMIT instead. • Eurelectric opposes extending MiFID-like position limits to C6 carve-out products, since market participants such as electricity utilities should not be constrained in satisfying any potential demand for physical energy delivery. • These forwards are typically bespoke or less liquid contracts, closely tied to physical delivery obligations. Imposing limits could severely reduce liquidity since many participants use them to hedge physical exposures. Moreover, market abuse risks in these forwards—such as cornering the market—are

already addressed under REMIT's market abuse framework. Therefore, focusing on transparency and enforcement under REMIT is more appropriate than applying hard volume limits.

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

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

Please explain your answer to question 56:

- We believe that position limits should not be applied to physical forwards under the REMIT carve-out.

5. Circuit breakers

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?

- Eurelectric has not experienced difficulties due to the existence of intraday volatility mechanisms (IVMs) in electricity or gas markets.
- The use of IVMs should remain a last resort measure in case of extreme market volatility not reflecting supply and demand fundamentals.

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

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

What would be the associated advantages and disadvantages?

- Static circuit breakers could potentially distort market outcomes if not continuously calibrated to adapt to market dynamics.
- Eurelectric opposes the implementation of static circuit breakers if they cause market halts in situations where trading activity is required to preserve security of supply. Frequent or protracted trading halts would reduce trust in exchange-based trading and might force market participants

to rely more on bilateral OTC contracting, where price formation is less transparent.

If yes, how should those static circuit breakers be calibrated?

N/A

In particular, should those static circuit breakers apply only to certain types of commodity derivative instruments, or differ depending on the type of commodity derivative considered?

Please select as many answers as you like

X apply only to certain types of commodity derivative instruments

X differ depending on the type of commodity derivative considered

More specifically, should IVMs similar to those provided for by Council Regulation (EU) 2022/2576 be introduced and applied on a permanent basis?

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

Please explain your answer to question 58:

- IVMs should only be triggered if prices do not reflect robust information about supply and demand. They should be continuously adapted to market conditions.
  If permanent, IVMs should be limited to derivatives markets, since risks to the security of supply would be significant in the context of physical markets. Price volatility in physical energy markets can be significant due to the unpredictable nature of electricity supply. In the specific case of electricity markets, wholesale market prices need to appropriately represent situations of scarcity and over-supply.

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?

- Eurelectric recalls that price volatility in energy markets is the consequence of physical supply and demand dynamics, which should be fully reflected in market outcomes.
- Possible trading halt or order rejection mechanisms should not be used to prevent volatility, but to mitigate situations where uncertainty and possibly automated order placement causes vicious circles of price increases. In such situations, IVMs can re-establish transparent information flows and provide sufficient time for traders to reassure themselves about the market fundamentals. We believe circuit breakers should be dynamically adapted to market conditions.

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'?

- The duration of trading halts should be as short as possible and proportionate to the issue at stake. They should remain within a range of seconds to a couple of minutes.

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

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

Please explain your answer to question 59.2:

- Our assessment does not differ depending on the type of underlying commodity considered, in particular when it comes to energy commodities.

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

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

Please explain your answer to question 60:

- In the context of physical electricity markets, static circuit breakers risk distorting price formation and limiting market participants' ability to hedge their future production or consumption, increasing the cost of electricity procurement.

- Static circuit breakers can prevent utilities from fulfilling delivery obligations they have towards customers if they are unable to unwind positions.
- Any measure limiting trading in physical energy markets should be considered carefully to prevent negative impacts on the security of supply.

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

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

What would be possible mitigants to prevent such migration?

- Yes, if confidence in price formation at energy exchanges decreases and, in the worst case, if market participants are not able to close their positions and balance their portfolio adequately due to static price bands, they will be forced to shift their trading activity to OTC markets.

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

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

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

- The existence of Intraday Volatility Mechanisms in exchange trading environments has not impacted price formation or market liquidity to date. IVMs are only triggered in cases of extreme market stress; their use should remain a last resort option to break vicious circles of price increases.

If no, please explain your answer to question 62:

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

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

If yes, please explain how those should be calibrated:

If no, please explain your answer to question 63:

- In the context of physical electricity markets, static circuit breakers risk distorting price formation and limiting market participants' ability to hedge their future production or consumption, increasing the cost of electricity procurement.
- The Clean Energy Package (Electricity Regulation, EU 943/2019, Art.10) has introduced general principles for the establishment of technical price limits, indicating that "[t]here shall be neither a maximum nor a minimum limit to the wholesale electricity price" besides technical price limits, which "shall be sufficiently high so as not to unnecessarily restrict trade". Considering this provision and ongoing discussions about the implementation of technical price limits, we do not see the need to implement additional price-constraining mechanisms in the physical electricity markets.
- Any measure limiting trading in physical energy markets should be considered carefully to prevent negative impacts on the security of supply.

6. Elements covered by the Draghi report

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

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

If yes, please explain for which instruments this obligation should apply?

If no, please explain your answer to question 64:

- **Eurelectric does not support a general obligation to trade exclusively within the EU**. Such a blanket requirement would undermine market efficiency and liquidity, especially for globally traded commodities like natural gas. Without access to international markets for hedging and procurement, EU utilities will face difficulties in hedging risks with non-EU counterparties (e.g., major gas suppliers outside the EU).

- **If liquidity providers domiciled outside of the EU cannot access EU electricity markets anymore, the resulting fragmentation of liquidity will incentivize certain market participants to disengage** from the EU. With less active market participants, bid-ask spreads will increase, increasing total hedging costs.
- In particular when it comes to electricity markets, **the EU has close ties to certain non-EU countries such as Norway, which is part of the Single Market, but also the UK and Switzerland**. Links to other non-EU countries, such as the Western Balkans, are foreseen to grow stronger with progressing market integration. Any politically motivated restriction would jeopardise the functioning of cross-border trading, which is crucial for the optimization of a weather-dependent production portfolio in EU.

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:

- As outlined in our response to question 64, such obligation would incentivize non-EU counterparties to stop trading in the EU and to shift their positions to other trading hubs, lowering liquidity and hence the relevance of forward markets for EU market participants.
- At the same time, it would cut off access for EU counterparties to liquid trading hubs in third countries. These markets are important for MPs to hedge deals with non-EU counterparties.
- In general, this obligation will make hedging more expensive and hampering risk diversification strategies.

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:

- As outlined in our response to question 64 and 65, such obligation would incentivize non-EU counterparties to stop trading in the EU and to shift their positions to other trading hubs, lowering liquidity and hence the relevance of forward markets for EU market participants.
- At the same time, it would cut off access for EU counterparties to liquid trading hubs in third countries. These markets are important for MPs to hedge deals with non-EU counterparties.
- In general, this obligation will make hedging more expensive and hampering risk diversification strategies.

Question 67. Do you believe that MCM is a useful tool to limit the episodes of excessive – and significantly diverging from global markets – prices in the EU?
Yes / No / Don't know / no opinion / not applicable

Please explain your answer to question 67:

- Price interventions should be considered only as a last resort measure to address extreme energy market distortions. Instruments such as the MCM address symptoms (extreme prices) rather than root causes (supply shortages or imbalances).
- For natural gas, which has a global reference (LNG prices), a cap tied to those external prices might curb exorbitant spikes. For electricity, a similar mechanism is less straightforward – electricity prices are driven by regional fundamentals and lack a clear global benchmark, so applying an MCM-like tool to power would be problematic.
- The MCM did not have a substantial effect on prices or market liquidity in the EU gas market, since the likelihood for its activation was low. However, the introduction of such measures is a source of uncertainty for market participants, creating anticipations of future interventions. Interventionist signals can therefore have unintended effects, such as a reduction of market liquidity on EU exchanges.
- In summary, while the MCM may have acted as a psychological "backstop" for gas traders, its application under normal market circumstances or even its extension to different markets is not desirable and risks undermining market functioning.

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

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

If you think it is a useful tool, please explain to which products you believe such dynamic caps should apply (e.g., spot/derivative, OTC/venue-traded) and how such dynamic caps should be calibrated (e.g., reference price, frequence at which the boundaries are renewed, etc.).

Please point to potential risks and opportunities:

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:

- Eurelectric does not advocate for the permanent implementation of dynamic price caps in EU energy market legislation.
- As indicated above, regulatory interventions tend to distort market fundamentals and to have a negative effect on market efficiency. In the case of gas markets, recent price divergences between the EU and global prices have been caused by genuine supply scarcity in Europe. In this case, high prices, while painful, have served to attract imports and curb consumption. In the case of LNG, they have also acted as a crucial price signal driving investments in appropriate infrastructure and electricity supply.
- Price divergences to other geographies might also be warranted due to the specificities of supply contracts, including cost components such as logistics.
- A permanent dynamic cap in energy market legislation would create constant regulatory uncertainty that might deter trading activity in EU markets. Market participants may worry that normal price movements could be constrained by regulation, leading them to trade elsewhere or via OTC channels to avoid the cap's reach.
- That said, if any dynamic cap mechanism were ever codified, it should be limited to truly critical situations and well-defined scopes – for instance, only for front-month natural gas contracts in emergency conditions, with the cap linked to a transparent benchmark (e.g. a rolling average of global LNG prices) and recalibrated frequently to reflect market reality. Even under such a design, careful calibration is crucial: the price difference allowed (e.g. the EUR 35/MWh above global LNG as used in the MCM) must be large enough to avoid choking off supply.

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

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

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

- Regulatory interventions such as dynamic price caps would have a negative impact on the attractiveness and stability of EU energy markets.
- The introduction of such caps signals that regulators may intervene directly in price formation. This can make EU markets less appealing for some participants, especially global commodities traders and financial investors, who might fear artificial constraints on trading. Following the announcement of the MCM, for example, at least one major exchange prepared a parallel, non-EU market for TTF gas contracts to allow trading free from the cap (ICE Announces Plans to Implement EU Market Correction Mechanism and

Related Price Cap on TTF Natural Gas, Link). This indicates that market actors were looking for alternatives outside the EU framework, which is a clear warning sign about reduced attractiveness.

- Liquid markets thrive on the confidence that prices reflect supply and demand. If dynamic caps are in place, participants may worry that during volatile periods the market will shut them out (by rejecting high-priced orders) or otherwise distort normal trading. Some traders may reduce their activities on EU venues or demand a higher risk premium for providing liquidity, knowing there's a policy-imposed ceiling. Over time, this could diminish the EU's role as a price-setting hub, as liquidity migrates to regions or instruments without such restrictions (including OTC markets).
- Reduced participation and liquidity on EU exchanges can increase day-to-day price volatility (a thinner market is more easily moved by large orders). A shift to OTC trading, as ESMA and ACER cautioned, means more transactions occur without central clearing or transparency, potentially increasing counterparty risk and making it harder for regulators to monitor market health.

If no, please explain your answer to question 69:

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

N/A

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

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

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

- Eurelectric has not observed an impact on margin requirements from the mere existence of the MCM. By the time the MCM Regulation was adopted, market dynamics had already lowered prices and with them margin requirements.

- Reports by regulators support this view – ESMA's analysis did not find noticeable changes in CCP risk management or margin demands that could be attributed to the introduction of the MCM (ESMA70-446-794 MCM Effects Assessement Report, Link, p.6). In other words, clearinghouses did not overtly hike initial margins just because the cap existed; margins responded more to market volatility and fundamentals than to the regulatory overlay.
- It's worth noting that there were concerns in late 2022 that the prospect of an MCM might prompt precautionary actions. Some clearing venues contemplated adjusting their risk models to prepare for a scenario where the reference price could be artificially constrained. In practice, any such adjustments were either minimal or short-lived. For example, ICE initially signalled it might raise margins or move certain gas contracts abroad due to the cap, but ultimately the MCM's design (with a high trigger and short duration) meant it posed little day-to-day interference.
- However, an extension of the MCM to other markets or a lower threshold would likely change traders' perception of risks, which could prompt lower liquidity and more volatile price formation. Increased volatility could in turn affect the level of margins.

If no, please explain your answer to question 71:

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

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

If yes, please explain why, making if possible specific references to those organizational 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):

If no, please explain your answer to question 72:

- Eurelectric believes that the differences between financial and energy spot markets justify different regulatory approaches to market participants.
- On electricity spot markets, supply contracts span over maximum 2 days. This time-limited financial exposure stands in contrast to financial markets, which involve longer maturity products. Spot exchange participants are also subject to imbalance settlement rules, requiring market participants to provide financial compensation for imbalances in their portfolio during a determined imbalance settlement period. The physical characteristics of spot electricity markets therefore provide a strong incentive for market participants to minimize risks in their portfolio optimization activities.
- In addition, spot electricity and gas trading occur mostly on regulated exchanges (Nomenclated Electricity Market Operators) with strict participation requirements, where market participants trade between professionals and on own account. A comprehensive framework is in place to ensure transparency and market integrity in physical energy markets (REMIT Regulation).
- For this reason, additional organizational requirements for electricity utilities should be treated with caution, since they will trigger reorganisations and additional compliance costs for utilities. In any case, such requirements should not go beyond a tailored subset of the rules applicable to the financial sector. While the obligation for all energy market participants to practice proper risk management is appealing, unintended effects on smaller market participants such as municipal utilities need to be considered.

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

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

Please explain why, making if possible specific reference to those? Where possible, could you please estimate a possible cost for spot energy trading venues that would have to comply with those new requirements.

- Eurelectric does not believe that an extension of the financial rulebook to spot energy exchanges is needed. Spot exchanges already have robust membership requirements and relevant operational safeguards in place to ensure orderly trading.

- For example, spot exchanges apply dynamic circuit breakers and have the power to impose position limits on products traded on their trading venues (e.g., for TTF natural gas derivative contracts).
- In addition, a sector-specific market integrity regime (REMIT Regulation) is in place to ensure proper market surveillance and transparency.

Please explain your answer to question 73:

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

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

Please substantiate your answer to question 74:

- We do not believe that rules similar to the ones included in MiFID would have drastically changed price formation during the energy crisis. Energy price volatility was caused by a supply shock, meaning that additional supply or a decrease in demand were the most effective solutions to restore normal price levels.
- As concerns the observation of atypical trading behaviour, we note that utilities need to be balanced every hour of the year, requiring trading on each day to hedge intermittent generation portfolios.
- While we agree that forward hedging is important for market functioning, we believe that financial regulation should not impose determined hedging strategies on utilities and that the commercial autonomy of these entities should be preserved. During the recent Electricity Market Design reform, a mandatory supplier hedging regime was considered by co-legislators and eventually rejected due to the price-driving dynamics of this measure. Indeed, mandatory hedging policies reduce market participants' ability to react to market price developments and to propose different supply contracts to their end-consumers. However, Art. 18a of the revised Electricity Directive (EU 2024/1711) empowers national regulatory authorities to carry out stress tests to ensure that suppliers have appropriate hedging strategies in place and that they take all reasonable steps to limit their risk of supply failure.

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

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

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

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

- Eurelectric believes that current REMIT provisions are sufficient to safeguard the integrity of energy benchmarks for now. Explicitly bringing wholesale energy benchmarks under REMIT's market abuse framework means that any attempt to manipulate those indices is clearly illegal and subject to regulatory enforcement, which is a strong deterrent.
- This means that any trader trying to inflate or deflate a commonly used gas price index or electricity reference price would violate REMIT, just as insider trading or manipulation of any other wholesale energy product would.
- This alignment should discourage would-be manipulators because the penalties (fines, bans, even criminal charges in some jurisdictions) are significant. In practice, many key energy benchmarks (such as exchange-settlement prices for power and gas or widely used indices like TTF hub prices) are based on actual transactions in fairly liquid markets, making them inherently harder to manipulate without detection. ACER and national regulators are monitoring trading data under REMIT, so anomalous trades that could skew a benchmark should be noticed.

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

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

If no, please explain your answer to question 76:

- The EU regulatory set-up for energy markets has grown incrementally through the progressive integration of national gas and electricity markets. The sector-specific transparency and market integrity regime has been cautiously calibrated to fit the particularities of physical energy markets, compared to financial market legislation. Eurelectric therefore believes that the current delineation of supervisory competences is justified by the specificities of energy and financial markets.

- Yet, we acknowledge that the coexistence of different supervisory authorities is complex and may cause fragmented oversight. It also increases the number of individual clarification requests that market participants are subject to from different regulatory authorities. We therefore support regulators' initiatives to improve data sharing and to receive access to a common pool of data, as outlined in Section 1.
- We also note that regulators are already working towards improving cooperation. The recent revision of the Market Abuse Regulation through the Listing Act has introduced the possibility for ESMA to set up collaboration platforms (see Regulation EU 2024/2809, Art. 25b). Similarly, the recently revised REMIT introduces mandatory information-sharing mechanisms between regulatory authorities (see revised Regulation EU 1227/2011, Art. 1(3) and 10(1)).
- Eurelectric supports these initiatives and does not oppose further cooperation between regulatory authorities, as long as the supervisory competence remains with the established authorities. Indeed, the principle of subsidiarity should continue to be upheld, meaning that enforcement should remain at national level. We therefore do not support the idea of a "super-regulator" overriding the decisions of national authorities.

If yes, please provide concrete examples in relation to your answer to question 76:

Question 76.1. Do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets?

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

If you deem that a supervisory college structure would improve cooperation between energy spot and derivative markets, please describe how this structure should look and what its main roles and responsibilities should be.

In particular, please explain whether you think that a supervisory college would make sense only for some contracts/products (e.g., products of Union-wide relevance) and, if so, which ones:

- As stated above, mechanisms for inter-agency cooperation have been introduced in recent reforms of relevant market abuse legislation. We support these initiatives and warn against creating another layer of supervisory cooperation without a clear explanation of its added value.

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.

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:

- As stated above, mechanisms to improve the cooperation between energy and financial regulators have been introduced in recent reforms of market abuse legislation. We support these initiatives and encourage regulatory authorities to improve their data sharing agreements while minimizing the creation of additional administrative layers.

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

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

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

Please explain your answer to question 77:

Utilities have not found any indications that the current supervisory setup under the Benchmark Regulation would not be working. We defer to energy and securities markets regulators for a more comprehensive appreciation.

Please explain what would be the merits of enhancing supervisory cooperation in that area:

N/A

Additional information

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

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

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