**TARGETED CONSULTATION DOCUMENT**

**ASSESSING THE ADEQUACY OF MACROPRUDENTIAL POLICIES FOR NON-BANK FINANCIAL INTERMEDIATION (NBFI)**

**3. OVERVIEW OF EXISTING MACROPRUDENTIAL TOOLS AND SUPERVISORY ARCHITECTURE IN EU LEGISLATION**

**Commodities markets**

***Question 39.*** *How would you assess the level of preparedness of commodity derivatives market participants in terms of meeting short-term liquidity needs or requests for collateral to meet margins? Please rank from 1 to 5 (lowest to highest) the level of preparedness for the following participants by sector: insurance companies, UCITS funds, AIFs, commercial undertakings, investment firms, pension funds.*

The high level of preparedness of commodity markets participants to meet short-term liquidity needs or requests for collateral has been confirmed in various reports issued by different EU and international authorities:

* First, ESMA, in its [report](https://www.esma.europa.eu/sites/default/files/2023-10/ESMA50-524821-2963_TRV_Article_the_August_2022_surge_in_the_price_of_natural_gas_futures.pdf) on the gas price surge in summer 2022, primarily concludes that despite the record prices caused by supply and demand fundamentals, markets functioned appropriately during August 2022. Likewise, the report shows that CCP margins rose and fell with prices and volatility in line with expectations, with the respective margin calls having been met on time.
* The 2023 [analysis](https://www.fsb.org/wp-content/uploads/P200223-2.pdf) of the financial stability dimensions of commodity markets of the Financial Stability Board determined that these markets demonstrated resilience during the disruptions caused by the COVID-19 pandemic and the turbulence in February/March 2022, which followed Russia's invasion of Ukraine.
* In its 2022 [report](https://www.eba.europa.eu/sites/default/files/document_library/About%20Us/Missions%20and%20tasks/Correspondence%20with%20EU%20institutions/2022/1039915/EBA%20response%20to%20EC%20request%20on%20energy%20markets.pdf) to the European Commission, the European Banking Authority also observed that even at the peak of the energy crisis, there was no missed margin or collateral call by market participants.

Building on the ESMA report, it was also demonstrated that during the energy crisis, market participants leveraged their existing comprehensive risk management capabilities which, as mentioned above, allowed them to meet the materially increased margin and collateral requirements. These capabilities include, among others, liquidity forecasting and pricing, real-time reporting, stress-test scenarios or increased lead-times for medium-term cash liquidity.

The above conclusions prove that there is a well-functioning system in place whereby CCPs call for collateral arising from changes in prices and volatility, making sure they can handle extreme cases of stress. Under the EMIR framework, CCPs have in place have accessible and transparent rules to ensure sound risk management. Moreover, as a result of the 2022 energy crisis and to ensure a higher level of preparedness, further measures have been agreed at the EU level and will be soon enter into application through the revision of the EMIR framework. Article 38, for instance, requires CCPs to provide its clearing members with comprehensive information on the initial margin models it uses, along with a simulation tool to determine the amount of additional initial margin it may potentially require. In terms of liquidity,

All in all, we agree with the above-mentioned reports that commodity derivatives markets and their participants have shown robustness in the face of such events, ensuring that the broader financial system remained unaffected. From this perspective we see no need to extend financial markets liquidity and prudential requirements to commodity market participants.

We rank this level of preparedness as 5/5. *Rank from 1 to 5 (lowest to highest) the level of preparedness*

***Question 40.*** *In light of the potential risk of contagion from spot markets or off-exchange energy trading to futures markets, do you think that spot market participants should also meet a more comprehensive set of trading rules for market participation and risk management? Please elaborate on your response.*

Spot markets and derivative markets are fundamentally different markets. While spot markets serve primarily immediate asset transactions, derivative markets provide tools for managing price risk and hedge against spot price fluctuations. It is therefore only logical that spot markets and derivatives markets have their own specific regulatory framework. In the case for power, for example, the spot market legislative framework includes the Regulation on Energy Market Integrity and Transparency (REMIT), the Electricity Directive & Regulation, the Capacity Allocation and Congestion Management Network Code and many other legislative acts. Furthermore, the energy sector has their own responsible authorities for the oversight of the sector. At EU level, the ACER Regulation outlines the mandate of ACER. At national level, there are national regulators that operate under the national regulatory frameworks.

Considering all of the above, it can be anticipated that a broad-brush application of financial services legislation to energy spot markets participants would lead to unnecessary, duplicative and potentially harmful requirements. Such measures could overlap with existing regulations, creating operational inefficiencies and increased compliance costs without delivering additional benefits. A recent example of such duplication is the REMIT market manipulation and insider trading prohibitions being extended to financial instruments, which already fall under the Market Abuse Regulation. The overlap leads to considerable uncertainty about the provisions being applicable, as well as about the authorities responsible for the respective oversight. Similarly, both MiFIDII and REMIT include rules on algo trading that are largely overlapping and create duplicative notification requirements.

Of course, this does not mean that spot market regulation could not learn and include best practices from the financial services framework. One area is for example the definition of an organised marketplace in REMIT, which could take inspiration from ESMA’s opinion on the trading venue perimeter. Also, the MiFIDII definition of algo trading should be equally used for algo requirements in REMIT. Furthermore, spot markets may take inspiration from the robust arrangements of MiFID trading venues. Finally, given the natural interconnections between energy spot and financial markets, we believe enhanced cooperation and coordination between regulators will improve market transparency and supervision. We would encourage policymakers to have in place more efficient systems for data exchange between European and national authorities that receive so there is greater visibility on the markets’ dynamics needed for supervision as well as further policymaking.

One actual event of “contagion” we have identified is the implementation of certain legislative measures adopted during market stress situations that have negatively impacted the functioning of financial markets. The gas storage filling targets adopted in 2022 under the Gas Storage Regulation Gas Storage Regulation is a clear example of this type of risks. In question 41 we address this issue in more detail.

***Question 41.*** *How can it be ensured that the functioning of underlying spot energy markets and off-exchange energy trading activity does not lead to the transmission of risks to financial markets?*

As mentioned in our responses above, spot markets are fundamentally distinct from financial markets. Regulatory actions should focus on supporting commodity market participants in the spot markets to effectively use financial markets for risk management, hedging, and investment in the energy transition.

The implementation of certain legislative measures adopted in the context of the 2022 energy crisis have negatively impacted the functioning of spot markets and have transmitted risks to financial markets. An example of this is the agreed gas storage filling targets under the Gas Storage Regulation in summer of 2022, which caused great uncertainty in European energy markets due to unconventional trading strategies applied in spot markets and a lack of transparency on when and how the stored gas would be released. Market participants in the financial markets, who were expecting downward pressure on the forward price curve, had to experience serious episodes of stress and change their trading behaviour. Europex therefore strongly recommends authorities to develop principles for market participants pursuing storage filling obligations in order to prevent distortions stemming from regulatory intervention in the spot market.

**4.2 Other NBFIs and markets**

***Question 51.*** *What role do concentrated intraday positions have in triggering high volatility and heightening risks of liquidity dry-ups? Please justify your response and suggest how the regulatory framework and the functioning of these markets could be further improved?*

Fundamental gaps exist in the completeness of the data used by European supervisors for analysis of globally traded financial markets in Europe, resulting in important aspects of such analysis to be incorrect. Specifically, data on market concentration in EU gas derivatives markets taken from an [ESMA report](https://www.esma.europa.eu/sites/default/files/2023-05/ESMA50-165-2483_TRV-EU_natural_gas_derivatives_markets.pdf) is referenced in the Draghi report on ‘the future of European competitiveness’.

Europex members have assessed the data used for the ESMA analysis and conclude that it is incomplete. Because the analysis is based on incomplete data[[1]](#footnote-2), important aspects of the analysis and related policy recommendations are unfounded. Analysis by exchanges shows that the ESMA data does not include a significant proportion of non-EU liquidity. When that non-EU liquidity is added, it is clear that the markets concerned are competitive, diverse and not at all concentrated.

***Question 66.*** *What are the benefits and costs of gradually giving ESAs greater intervention powers to be triggered by systemic events, such as the possibility to introduce EU-wide trade halts or direct power to collect data from regulated entities?*

Europex warns against providing ESAs greater intervention powers that risk distorting the price formation process. Given the dynamic nature of the commodity markets, broad or premature interventions can disrupt market functioning. For example, if trade halts delay the price discovery process for too long, market participants withdraw their orders leading to greater volatility when trading resumes. The suggested interventions may erode trust in European market mechanisms to the point that market participants may consider non-EU commodity markets as a more reliable proxy.

Volatility safeguards that exchanges have in place have been working as intended. An example of this is the circuit breaker mechanism, which take the liquidity, the nature of the market model and the type of users into account for the market it applies to. This is in line with ESMA report which notes that the trading halt is calibrated “in light of the specificities and liquidity profiles of different types of energy markets”. Parameters should therefore be calibrated to take the specificities of the market structure at the trading venue into account.

Besides, during the energy crisis energy exchanges made several adjustments to the calibration of existing circuit breakers including for example to make them of longer duration to allow market participants additional time to pause and process in case of major price movements. ESMA confirmed in its report on the implementation of the intraday volatility management mechanism that it considers current volatility management mechanisms sufficient to deal with excessive volatility ESMA also stated in the report that ensuring the appropriate implementation of circuit breakers under MiFID II would be preferable to having parallel requirements on circuit breakers and intraday volatility management mechanisms.

**6. SUPERVISORY COORDINATION AND CONSISTENCY AT EU LEVEL**

**Integrated supervision for commodities markets**

***Question 67.*** *What are the benefits and costs of a more integrated system of supervision for commodities markets where the financial markets supervisor bears responsibility for both the financial and physical infrastructure of the commodity futures exchange, including the system of rules and contractual terms of the exchange that regulate both futures and (cash/physical) forward contracts?*

Europex members are not aware of problems in the existing supervisory structure that would be resolved by an integrated supervisory system for commodities markets. As highlighted in our response to Q39, commodity market participants are subject to different legislative frameworks, which provide robust oversight without necessitating additional consolidation. The same is true for the supervisory structure. Introducing further layers of supervision risks duplicating existing measures and creating unnecessary burdens for market participants, potentially destabilizing the delicate balance required for efficient commodity market operations.

Instead of integrating the supervisory system, we consider a more beneficial approach would be to improve the coordination between existing agencies to strengthen their cooperation and utilize the extensive data already reported under EMIR, MiFID II and REMIT. This data provides valuable insights that can be leveraged to enhance regulatory oversight. Additionally, the LNG reporting requirements introduced during the energy crisis, along with the expanded powers granted to ACER under REMIT II, offer further tools to monitor and regulate the energy market effectively. Combining these efforts would ensure a more data-driven, efficient, and responsive regulatory framework for energy markets.

To inform the policy debate on the state of European energy markets, further improve the collaboration between European financial and energy supervisors and contribute to closing existing gaps in data available to them, Europex recommends mandating ESMA and ACER publish an annual report monitoring the state of European energy markets. The joint report should be data driven and based on the shared use of data available to European supervisors under MiFID, EMIR and REMIT reporting frameworks. Individual publications and analyses by ESMA and ACER on European energy markets could be replaced by the joint report where appropriate, and if not, should be consistent with the approach and methodology used in the joint report.

1. More specifically, ESMA indicates in the report that non-EEA entities trading on EU regulated markets, whose clearing is done in a third country CCP are not covered, unless these entities clear their trades with an EU clearing member. ESMA also points out that its analysis does not include those energy derivatives traded on organised trading facilities with physical settlement are not considered financial instruments and are not subject to EMIR requirements. [↑](#footnote-ref-2)