ACER

European Union Agency for the Cooperation of Energy Regulators

Response to the European Commission's public consultation on commodity derivatives markets

23 April 2025

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1. Introduction

This document is the response of the EU Agency for the Cooperation of Energy Regulators (ACER) to the European Commission's public consultation on commodity derivatives markets. The response was submitted via the European Commission's online questionnaire system on 23 April 2025. It can be found on ACER's and the European Commission's website.

ACER's input to this consultation focuses on topics that impact or may impact ACER activities and competencies. Our response provides aggregated replies for identified macro areas of questions instead of responding to each individual question, as implementation of the revised MiFID (hereinafter 'MiFID II'), which is a financial regulation, does not fall in the realm of ACER.

In particular, the response takes into consideration a broader perspective, namely the complementarity between MiFID II and Regulation No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT). The latter provides a much-needed dedicated EU-wide framework to protect consumers and businesses from energy market manipulation and abuse. REMIT plays a crucial role in ensuring fairness, transparency, and integrity of the wholesale energy market.

Our detailed response to the Commission's consultation covers several different aspects relating to the functioning of commodity derivatives markets (under MiFID II), but also others relating to spot energy markets (under REMIT) and the interaction between the legal frameworks including:

- Data aspects:
  - ACER has served as a central hub for data collection in the energy sector since the introduction of REMIT. Under the new mandate provided by REMIT II, ACER will act as a data Reference Centre offering a public, common platform for access to wholesale energy market data.
  - To enhance data sharing across regulatory entities, ACER recommends exploring the implementation of ***European data spaces***, as set out in the European strategy for data and the European Data Governance Act. ACER is ready to take an active role in the development of such data spaces.
  - To streamline data collection and to facilitate further coordination between energy and financial regulators, ACER supports further harmonisation and standardisation of data formats, while respecting market-specific characteristics.
- Position limits, management and reporting:
  - The current "position limits" regime seems to have an appropriate product coverage by focusing on the key EU benchmarks and including a *de minimis* rule, but it has several relevant limitations (see section 3 below).
  - ACER recommends improvements in the calculation of positions by including positions on third-country venues, forwards and Over The Counter (OTC) trading. Spot trading should be excluded.
  - The specificities of wholesale energy products should also be incorporated in the design of position limits for commodity derivatives, such as the time and locational dimension.
  - The governance of position setting and monitoring calls for a stronger incorporation of the EU dimension.
- Supervisory cooperation
  - ACER advocates for further strengthening the cooperation between ACER and the European Securities and Market Authority (ESMA). This can be done by leveraging and institutionalising existing mechanisms in the areas of data sharing, centralisation of notifications to energy and financial regulators, consultation on position limits and circuit breakers, and coordination mechanisms and best practices exchange.

In summary, ACER believes it is essential to maintain the current complementarity between the financial and energy legislative frameworks, as each address distinct but interconnected aspects of the functioning of wholesale energy markets. While further alignment between the two frameworks is possible and advisable in certain areas, others require a more tailored approach due to the unique

characteristics of the energy sector – such as ensuring security of supply, enabling system balancing, and providing effective hedging opportunities. Both frameworks can and should continue to evolve to facilitate coordination between financial and energy regulators, while also simplifying EU rules for the benefit of citizens and businesses.

Put simply, 'evolve, don't reinvent'.

1.1. Link between MiFID II and REMIT

The European Commission's (Spring 2025) consultation on the review of the functioning of commodity derivatives markets and certain aspects relating to spot energy markets targets a broad array of topics relating both to financial and energy market functioning. Any future legislative revisions of MiFID II should thus be seen from a broader perspective as MiFID II is also complimented by other legislative acts.

Rationale for a dedicated framework for EU energy markets and the "REMIT carve out"

In particular, ACER believes that it is of importance to add some sector-specific context to the European Commission's consultation on commodity derivatives, with respect to the functioning of wholesale energy markets and the specifics of REMIT in relation to financial legislation and the so-called C6-carve out (or REMIT carve out[1]).

The EU co-legislators decision not to classify physical wholesale energy contracts as financial instruments under Directive 2004/39/EC (MiFID I) was based on several key factors related to the nature of energy markets, regulatory efficiency, and economic impact. One of the main reasons was the fundamental distinction between financial and energy markets, particularly in the drivers of trading activities (where financial markets focus on trading, energy markets revolve around hedging, physical delivery and operational needs).

Electricity, for example, requires real-time physical balancing. This makes trading of electricity products inherently different from trading financial instruments that can be settled over time. Additionally, many entities operating in wholesale energy markets have their core business activities also governed by other regulatory frameworks, such as security of supply, critical infrastructure protections, and transparency legislation, among others. These sector-specific regulations play a crucial role in shaping market behaviour and further justify the exclusion of physical energy contracts from MiFID II/MiFIR. Also, the International Organisation of Securities Commissions (IOSCO) acknowledge that physical commodity derivatives markets are unique.[2]

Due to these fundamental differences, a targeted framework to protect the integrity of the EU energy markets was introduced in legislation. REMIT came into force in 2011 to support open and fair competition in the European wholesale energy markets. The reasons and factors that prompted the C6 carve-out and introduction of REMIT are still relevant today, if not more so with the increased interconnection of the physical markets, both via cross sectoral and market coupling activities. ACER firmly believes that transactions relating to wholesale energy products should remain within the targeted scope of REMIT. Power and gas derivatives are an essential part of the wholesale energy markets and monitoring trading of such products in isolation to the physical elements would not be relevant. Additionally, one of the lessons learned from the 2022 energy crisis is that both physical and derivative activities must be jointly considered in order to have a clear view of the risks faced by market participants in energy generation, supply, and storage, and to carry out effective supervision of these activities

No double-reporting

It is also important to note that REMIT's application to wholesale energy products that are also financial instruments does not override Regulation (EU) 596/2014 on market abuse (MAR), Regulation (EU) No

[1] Pleas see: MiFID II Annex I Section C6 Financial instruments

[2] Principles for the Regulation and Supervision of Commodity Derivatives Markets, OICU-IOSCO, FR02, 2023

648/2012 (EMIR), Regulation No 600/2014 (MiFIR), Directive 2014/65/EU (MiFID), or EU competition law, when those rules are applicable.

In particular, REMIT includes a clause to avoid the risk of the so-called 'double-reporting' (i.e., that the same transaction is reported twice under two different legal frameworks), stating that when transactions have been reported in accordance with MiFIR or EMIR, the reporting obligation relating to those transactions is considered fulfilled also under REMIT. Information in relation to wholesale energy products which have been reported under MiFIR or EMIR should also be provided to ACER by e.g. trade repositories, national competent authorities (NCAs) or the European Securities and Markets Authority (ESMA).[3] In a similar way, ACER is also required to share information in relation to wholesale energy products which have been reported under REMIT. ACER currently has access to EMIR data provided by trade repositories via an ESMA hosted platform.

Better protection from energy market abuse with REMIT II (2024)

The revised REMIT (hereinafter 'REMIT II', which took effect as of 7 May 2024) introduced new measures to better protect EU citizens and businesses from energy market abuse, for example by further aligning with MAR on certain aspects, such as the definition of market manipulation and inside information. REMIT II also expanded the scope of REMIT to cover new types of products, reflecting technological advancements as well as evolving energy market practices, such as algorithmic trading and direct electronic access. Additional operational and authorisation requirements on Registered Reporting Mechanisms (RRMs) and Inside Information Platforms (IIPs) were also introduced and foreseen to be further elaborated in a Delegated Act, including increased oversight by ACER of these entities. Upon adoption of the revised Regulation (EU) No 1348/2014 (REMIT Implementing Regulation), ACER will start collecting data on energy storage contracts, electricity balancing markets, and exposures. As of 1 January 2025, the collection of data for the delivery of the daily LNG price assessment and benchmark[4] is included in REMIT as well.

ACER's evolving role as a wholesale energy market data reference centre

REMIT II also tasks ACER to serve as a data and information "Reference Centre" of EU wholesale energy market data. The EU co-legislators have thus already envisaged a role for ACER in the creation of a public and common space for access to information on wholesale energy markets. This is currently under development. In a first step, significant REMIT data will be being made publicly available for the first time from May 2025.

In addition to the changes brought by REMIT II, the Hydrogen and Decarbonised Gas markets package brought further changes to REMIT with the inclusion of hydrogen to the scope of wholesale energy products, meaning hydrogen supply, transportation, storage and related derivative contracts are now part of REMIT.

[3] Article 6 of Regulation (EU) No 1348/2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency.

[4] As originally introduced by Council Regulation (EU) 2022/2576.

2. Data aspects

2.1. Data reporting and centralised data collection

The REMIT data collection of EU wholesale energy transaction data, including orders to trade, "fundamental data" (e.g., information related to the capacity and use of facilities for production, storage, consumption or transmission, such as outages of power stations), and inside information, is already centralised at ACER, with the exception of certain trades reported under financial legislation. As mentioned under 1.1., ACER has access to certain data reported under financial legislation. What ACER is currently missing is, for example, relevant transaction data falling within the scope of MiFID II.

Under REMIT, data reporting is streamlined. This is because over 19.000 reporting parties (market participants, organised marketplaces and inside information platforms) are obliged to report information to the Agency via about one hundred Registered Reporting Mechanisms (RRMs). ACER has developed key requirements that RRMs need to fulfil to ensure a harmonised reporting of REMIT data, as well as efficient, effective and secure reporting channels. The technical and organisational requirements on RRMs are currently being transposed and further elaborated into a Delegated Act, as introduced by REMIT II.

Since April 2016, ACER is collecting data, keeping it secure, using it for its surveillance and monitoring purposes (and since REMIT II, also investigations) and sharing it with energy national regulatory authorities (NRAs) and other relevant authorities. The data gaps identified from 10 years of operation were addressed in REMIT II. REMIT II and the ongoing REMIT Implementing Regulation revision will bring changes to the scope of data collected and the obligations of the reporting parties, however the centralised model will remain as it has proven successful.

Data is reported into ACER's REMIT Information System (ARIS), via standard schemas (XSD) that have undergone stakeholder consultation. ACER validates and stores the data in a main REMIT database. Before inserting data into the database, the data collection system performs integrity checks against important master data managed by ACER, such as the central European registry of energy market participants (CEREMP), list of delivery points or zones, list of organised marketplaces, and list of inside information platforms. Invalid data is rejected, and feedback is provided to reporting parties so that they can resubmit corrected data. ACER manages the data according to a REMIT information security policy and shares it with NRAs, relevant authorities, and academia via established mechanisms.[5]

ACER and NRAs collaborate further on ensuring data quality, mainly regarding completeness, consistency and compliance with the ACER's transaction reporting guidance. The guidance document is consulted with reporting parties and it is updated on a regular basis (at least once per year) in order to reflect the evolution of the markets.

2.2. Features of REMIT data

REMIT transaction data is a universe of centrally stored detailed information about EU wholesale electricity, natural gas, and hydrogen records of transactions, including orders to trade, related to supply, transportation and storage contracts, as well as derivatives of such contracts. Furthermore, transaction data is complemented by fundamental data related to the capacity and use of facilities for production, consumption and transmission of electricity and natural gas, as well as planned and unplanned unavailability of these facilities, inside information data, and information about registered market participants ("CEREMP data"), which is crucial to enable a comprehensive insight into the functioning of the EU wholesale energy markets.

As outlined in the Consultation document, the REMIT transaction data covers both the trading activity on organised marketplaces (such as exchanges, brokers and capacity platforms) and bilaterally agreed

[5] As defined in Article 10 and 12 of REMIT.

contracts. In terms of timeframes and ways of settlement, the REMIT data encompasses a variety of contracts, from short-term physical markets (day-ahead, intraday, balancing) to long-term energy derivatives like futures, forwards, options, non-standard bilateral framework contracts (swing contracts, PPAs, LNG portfolio contracts) and even contracts with energy-intensive retail consumers[6]. Regarding the geographical scope, REMIT data covers contracts (and derivatives of such contracts) relating to electricity, natural gas or hydrogen produced, traded, delivered, transported or stored in the EU, regardless of the location of the organised marketplace or the market participants' domicile.

In terms of data quality, the main change brought by REMIT II is the streamlined reporting of organised marketplace's trading data ("data related to the order book") which has already improved the level of data consistency and reliability, as well as alleviated the reporting burden on market participants. ACER can already confirm the increased level of data quality following the adoption of REMIT II and appreciates the continued efforts stakeholders make in providing fit-for-purpose data for market surveillance and monitoring.

This is particularly important given that an integrated and coherent energy market dataset - encompassing physical spot markets, energy derivative markets, and bilaterally concluded long-term framework contracts - is essential for effective market surveillance. Such a dataset enables the identification of price interdependencies, where spot prices influence the pricing of derivatives, and positions in derivatives markets, in turn, affect spot prices.

Additionally, in energy markets, long-term framework contracts are often indexed to spot or derivative benchmarks. For instance, REMIT data indicates that in 2024, over 75% of LNG spot transactions collected by ACER and approximately 30% of Power Purchase Agreements (PPAs) were indexed to gas and electricity benchmarks.

2.3. REMIT Data sharing

ACER has developed data sharing mechanisms and is effectively sharing REMIT data with relevant authorities, as well as making aggregated non-sensitive REMIT data available to academia and the general public.[7] Data sharing was already an element of REMIT I, whilst the list of relevant authorities was expanded in REMIT II. ACER is consistently improving and adapting its data sharing processes in collaboration with the relevant authorities.

In order for a relevant authority or other eligible entity to receive data, it first has to set up systems that are in line with operational reliability and security requirements (as stipulated in Article 12 of REMIT and further elaborated by ACER in the REMIT information security policy).

2.3.1. Energy National Regulatory Authorities (NRAs)

ACER offers 2 types of non-exclusive data sharing:

a) **Provision of raw data** in the format of REMIT XSD: In this regime, REMIT data is passed through to recipients in the same format as collected. ACER systems complement the information with validity assessments.

b) **Provision of an ACER-hosted business intelligence (BI) tool**: ACER has developed and is continuously improving a BI tool that enables analysis and efficient exploration of data, including visuals, alerting, dashboards, analysis sharing and even AI capabilities. The tool is connected to the central REMIT database.

[6] Under REMIT, contracts concluded with a final consumer with consumption capacity equal or higher than 600 GWh/y are included in the data reporting obligation.

[7] Data sharing with relevant authorities, academia and general public (via "Reference Centre") foreseen in Article 10 and 12 of REMIT

NRAs can select the preferred data sharing option based on their needs. While raw data ingestion requires advanced data management (the recipients need to host the data, develop knowledge and build BI solutions on top of it), the ACER-hosted BI solution offers quick onboarding times and leverage the ACER and NRA energy market analytics developed in the past 10 years.

ACER is offering the two options to all relevant authorities eligible to receive the data.

2.3.2. Financial National Competent Authorities (NCAs)

REMIT already foresees that competent financial authorities in the EU shall have access to the data ACER collects under REMIT. Such access is already implemented via agreements with the NRAs, who facilitate the sharing of data with NCAs. ACER is exploring the possibility for a more systematic access to the REMIT database by NCAs.

2.3.3. Relevant EU authorities

ACER also receives and processes data sharing requests from other relevant authorities eligible to receive REMIT data. ACER is exploring the possibility for a more systematic and continuous REMIT data sharing with relevant Directorate Generals (DGs) of the European Commission.

Other relevant authorities with whom ACER can share REMIT data are ESMA, Eurofisc, national competition authorities and other relevant authorities at EU level.

2.3.4. Academia

REMIT tasks ACER with making its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements and allows ACER to make parts of the information it possesses publicly available, in the interest of improving transparency, and if no market distortions are created nor commercially sensitive information revealed.

To date, ACER has collaborated with scientific institutions, primarily the Joint Research Centre (JRC). This cooperation has covered a range of topics, including the analysis of market dynamics, support in ensuring data quality, and the definition of thresholds for the publication of inside information.

2.3.5. Market monitoring and investigations

The centralised data collection under REMIT primarily supports ACER's pan European market surveillance activities. These activities have resulted in several referrals to NRAs and NCAs.[8] Over the past decade, NRAs have issued more than EUR 250 million in fines primarily in relation to market abuse under REMIT. Both ACER and NRAs use REMIT data in the investigations of potential market abuse.

2.3.6. Publicly available information

In line with REMIT II, ACER is currently developing a "Reference Centre" which will be publicly available and contain non-commercially sensitive information on EU wholesale energy market data that ACER collects under REMIT. In addition to the Reference Centre, ACER is also developing a publicly available electronic access point for inside information disclosed pursuant to REMIT. Both initiatives will contribute to greater transparency and insight into wholesale energy market data.

[8] REMIT data is also used in ACER's electricity, gas and LNG market monitoring publications. Aggregated, non-sensitive REMIT data resides in the all-ACER energy data space and complements market data collected based on other regulatory regimes (ACER Regulation, CACM regulation, Transparency regulations, Balancing network code, PCI etc..).

2.4. Final remarks: 'Evolve, don't reinvent'

ACER welcomes the findings of the Draghi report, and the European Commissions related initiatives in its 2025 work programme and related Omnibus packages focusing on simplification of EU rules for citizens and businesses. ACER believes that the access to high quality wholesale energy market data is crucial. All initiatives that facilitate access to data should be promoted.

Benefits of a coherent and centralised data collection mechanism

The REMIT data collection of EU-wide wholesale energy "transaction" data (including orders to trade), fundamental data (such as power station outages), and inside information is already centralised at ACER. ACER believes that the centralised REMIT data reporting and collection model works well and offers many benefits both for reporting parties and data users: it streamlines the reporting, offers a coherent EU energy market dataset, and provides information security standards.

Moreover, ACER not only acts as a centralised point for data collection but also uses the data for its surveillance and monitoring of EU energy markets activities. Since adoption of REMIT II (in 2024), REMIT data is also being used for ACER's new cross-border investigation mandates.

Sourcing data from a coherent single, EU energy market data set facilitates reliable monitoring by ACER and NRAs of the EU power and gas markets. It enables ACER and NRAs to efficiently identify discrepancies and potential market manipulation and detect cross-product and cross-market strategies. Ultimately, integrated surveillance across both physical and derivatives markets, in combination with information about the use of infrastructure (fundamental data), enables energy regulators to enforce market rules, detect violations, and maintain confidence in the market, making it essential for effective market oversight and regulatory compliance.

ACER urges caution in disrupting the current data reporting and collection system. ACER finds it sub-optimal to create a completely new data reporting structure and/or new data base, as such an approach would require significant financial investments and/or stranded costs (for all involved entities) in IT infrastructure, software development and testing, as well as requiring complex reconfigurations to ensure interoperability with other systems. From a business continuity perspective, transitioning to a new system could also introduce disruptions, data inconsistencies, and operational risks, ultimately jeopardising data quality and surveillance work for years to come. ACER also doubts redirecting reporting of wholesale energy products towards a different centralised mechanism would simplify reporting for reporting parties as e.g., fundamental electricity and gas data would still have to be reported under EU energy market rules, and emission allowances data under EU financial markets rules.

ACER fails to see how trade repositories and RRMs could constitute *a single* access point for data on all energy-related products, as they are multiple separate entities, each with distinct technical infrastructures and business operations with no inherent interoperability or linkage between them or the data they collect. Moreover, involving multiple entities would make it difficult to ensure consistency, coherence, and harmonisation, as well as to cross-check information of the two legs of the transaction and maintain other key data quality elements. Additionally, such a model may raise concerns related to competition.

Successful energy market data sharing and much more to come

ACER proposes leveraging and reinforcing what already exists at EU level to achieve a complete and coherent EU energy market data source. ACER considers that the main improvements could be pursued in data sharing mechanisms. In this regard, ACER suggests the European Commission to consider exploring the application of ***European data spaces*** as introduced by the European strategy for data and the European Data Governance Act. Common European data spaces function as a cross-sectoral instrument that regulate the reuse of public or protected data collected by both private and public entities. In particular, the Data Governance Act foresees the use of "data intermediaries" to organise the sharing or pooling of data within the Common European data space, and encourages the sharing of data for different purposes. This would allow for multiple individual databases to be connected and work together to provide complete and coherent data. ACER is in favour of this approach and believes the current REMIT data reporting and collection model is in line with the European data strategy and the European Data Governance Act. ACER would welcome the opportunity to take an

active role in the creation of a European data space and to build on experiences already acquired from many years of REMIT data collection and our more recent role acting as the Reference Centre on energy market data.

In this regard, ACER also highlights the misalignment of data sharing provisions within ESMA's and ACER's mandates in the relevant legislative frameworks. First, unlike in EMIR, the data sharing provisions of MiFID II, MiFIR and MAR do not mirror the data sharing provisions of REMIT. Second, whilst EMIR foresees that ACER can receive EMIR data, and REMIT foresees that ACER can use it, neither MiFID II, MiFIR nor MAR foresee that ESMA can use REMIT data. This means ACER can share REMIT data with ESMA, but ESMA has no mandate to collect and analyse REMIT data. ACER suggests that the Commission address this misalignment by making sure each Agency has the mandate to share, to receive, and to use data.

Harmonised formats/protocols as a catalyst for increased cooperation

ACER agrees with the observations in the Commission's consultation document that the current regulatory set up leads to data fragmentation in terms of interoperability of different data sets and supports further harmonisation in this regard. As REMIT, MiFIR and EMIR target different regulatory aspects, the reporting is customised to fulfil the needs of the different legislations. Due to this, data collected under financial frameworks may not always be easily integrated with the REMIT data and vice versa, e.g., transaction data on financial instruments that are wholesale energy products is reported under financial legislation (EMIR) and order data is collected, for the same products, under REMIT. Most of the times with no common data field that would allow for the reconciliation of data sets.[9]

In this context, ACER points out that one cannot claim that one current standard or protocol is better than the other, as they were created to fulfil different purposes. ACER does however support further standardisation and harmonisation, to the extent possible, of data formats and standards. ACER believes that further harmonisation can be achieved on various levels, either in the initial reporting phase (e.g., with the use of ISO standards) or later in the data sharing phase, or as suggested above, when the data is 'pooled' in a European data space. An increased harmonisation of data sets could also facilitate a more consolidated overview for both energy and financial regulators, thus facilitating further coordination.

As a prerequisite for any further harmonisation, ACER suggests that the European Commission ensure that the review cycles of the energy and financial secondary law legislative acts on transaction reporting are also aligned, otherwise any efforts of harmonisation may be undone by future changes.

The aggregation of information on positions and exposure reporting could also be explored, in order for regulators to create a complete picture of market participants' risk profiles across different asset classes and a more comprehensive risk assessment, identifying entities that may pose systemic risk to both financial and energy markets.

Information security aspects

Finally, ACER also believes that further alignment of information security provisions between REMIT and financial legislation would facilitate further data sharing between ACER, ESMA, NRAs and NCAs. ACER anticipates that such an alignment would enable ACER and ESMA to enhance the collaboration and data sharing, which would be preferred over imposing drastic changes to the current data reporting regimes established within both legislative frameworks.

[9] Matching transactions from REMIT with EMIR is made further challenging as the transactions are either reported on different levels (aggregated end of day position against clearing house vs all individual transactions by market participant) or have different unique transaction identifiers and field content to represent the same business event.

3. Position limits, position management and position reporting

Under MiFID II, position limits were designed to curb excessive speculation in commodity derivatives and to enhance market transparency. They were applied to critical or significant commodity derivatives[10] traded on EU trading venues and economically equivalent over-the-counter (EEOTC) contracts. NCAs were tasked with setting specific position limits based on guidelines from ESMA. Certain exemptions are applied for hedging activities by non-financial entities.

The key European benchmark for natural gas (TTF) is subject to position limits since July 2024. These limits apply to ICE Endex and EEX Dutch TTF[11], covering around 85% of TTF trading on trading venues.

The current position limits regime seems to have an appropriate product coverage by focusing on the key EU benchmarks and including a de minimis rule (contracts traded with a volume below 300K lots are out of the EU position limit regime). There are however important limitations to the current position limits regime:

- Incomplete reporting of relevant positions does not allow for a proper assessment of the real positions per time horizon;
- The regime does not appropriately take into consideration the specificities of wholesale energy products;
- The governance does not fully incorporate the EU dimension and may not be future proof.

These limitations hinder the ability of setting positions limits at adequate levels also potentially allowing market participants to circumvent these limits. As explained below in more detail, a more customised implementation of position limits for wholesale energy markets could help address these limitations.

3.1. Incomplete reporting

Currently, investment firms and trading venues must report daily positions in commodity derivatives. MiFID II position limits apply to commodity derivatives traded on:

- Regulated Markets (RMs) established in the EU;
- Multilateral Trading Facilities (MTFs) established in the EU;
- Organised Trading Facilities (OTFs) established in the EU;
- Economically Equivalent OTC (EEOTC) contracts - OTC contracts that have the same contractual specifications and terms as trading venues contracts.

For wholesale energy products trading, and with relevant potential impact on the gas markets (TTF), the current position reporting is unable to provide a comprehensive overview of the positions taken by market participants on third-country facilities and outside of trading venues for relevant time frames.
It has also been noted that in the position reporting under MiFID II, information on energy derivatives is not always complete in the sense that, in some cases, traceability of the final beneficiary of the transaction cannot be adequately performed.

[10] Critical or significant commodity derivatives are defined in Article 57(1) of MiFID II as commodity derivatives with a net open interest above 300,000 lots over a one-year period.

[11] On 21/12/2020 the electricity key European benchmark – DE Power – was also subject to position limits and followed that regime for some time.

Third-country trading venues

The current regime considers that contracts in commodity derivatives traded on a third-country facility, which is considered as a trading venue, should not be regarded as OTC and, hence, that the positions resulting from trading those contracts should not count towards the EU position limit regime.[12]

The process of equivalence assessment of third-country trading venues may, eventually, ensure parity of treatment in terms of subjecting trading in these venues and in EU venues but doesn't contribute to an aggregated overview of positions on EU wholesale energy products of critical relevance for the wholesale energy markets. De facto, if a third-country trading venue is recognised as equivalent by the European Commission, then commodity derivatives traded on that venue are not subject to EU position limits (as they are covered by the third country position limits).

As an aggravating element, commodity derivatives traded on third-country trading venues that don't meet the criteria considered for the equivalence assessment of third-country trading venues are not considered as OTC trades and thus are outside of the EU position limit regime. Currently, some of third-country trading venues trading TTF products are not included in ESMA's list of equivalent third-country trading venues.

The current situation creates a problem of consolidation of positions which can facilitate market participants circumvention of EU position limits by trading on third country trading venues, eventually contributing to distortions in competition between EU and third-country trading venues.

Economically Equivalent OTC contracts

The concept of economically equivalent OTC and its application has also proven complex in practice requiring consolidation of data that is owned by different entities[13], imposing on market participants the disclosure of sensitive information to trading venues[14], which might eventually lead to underreporting of OTC contracts for position limits setting.

The use of information on trading outside of trading venues (OTC) for the computation of the positions is very relevant, in particular for the markets where bilateral trading takes a relevant role. As such, this information needs to be computed in a complete way.

The exclusion of non-equivalent contracts in products that have a time delivery component hinders also the possibility to appropriately understand the overall volume of positions taken by market participants through products that may not be equivalent but that have a relevant time horizon overlap (this aspect is further explored in section 3.2. below).

One possible solution for the issue could be the removal of the concept of economically equivalent contracts so that all OTC contracts could be included in the computation. This would have the potential to provide more accurate positions than the current regime, in particular, if developed in a context that takes into consideration the time-horizon dimension of wholesale energy products explained in section 3.2.

[12] ESMA opinion on determining third-country trading venues for the purpose of position limits under MiFID II – 28 July 2020.

[13] According to MiFID II Article 58(3), market participants are required to report to the trading venue, at least on a daily basis, their positions held through contracts traded on that trading venue.

[14] According to MiFID II Article 57(8), point (c), in the context of their position management controls, venues are entitled to 'obtain information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts through members and participants'.

The use of REMIT to provide a complete reporting of exposures
According to the revised REMIT, market participants shall include information about their exposures, detailed by product, including the transactions that occur over the counter. The Commission shall adopt implementing acts specifying the further details of exposure reporting in 2025. This Implementing regulation has the potential to cover such reporting gaps as REMIT reporting does not have the scope limitations faced by the financial legislation and can be used by NCAs to take a more comprehensive overview of positions, depending on the frequency of reporting to be established.

Once the revised REMIT Implementing Regulation has been adopted and the extent of the exposure reporting regime is known, it can be further assessed how exposure and position reporting can complement each other. The expansion of data sharing to ESMA, and NCAs under REMIT on exposure reporting could facilitate the development of a more robust and tailor-made position limits regime for wholesale energy products.

3.2. Conceptual design specificities

The current conceptual design of position limits for commodity derivatives could be improved by taking into consideration the specificities of trading in wholesale energy products.

Wholesale energy products typically have time-horizon and locational dimensions that suggest a different conceptualisation on the way position limits are calculated and can be assessed.

The current design of the regime is focused either on single financial instruments (e.g. TTF month ahead products) or on aggregated financial instruments ignoring their time dimension (e.g. all other TTF products that are not month ahead). This may lead to situations where, for example, for TTF the largest position of a market participant for delivery in a specific month was not built through a month-ahead product, but rather through a seasonal, quarterly, or yearly product and as such that position will not be visible in the position limits for the monthly product being rather diluted in the residual aggregated category.

In a similar way, by not considering the transportation capacities between trading zones (in particular for electricity), the current position limits conceptual design may fail to provide fully accurate positions as it doesn't cover positions taken for delivery in other zones and the corresponding positions taken on cross-zonal capacity to transport the energy to these areas.

These limitations call for improvements on the conceptual design to take into consideration the specificities of trading in wholesale energy products.

Time-horizon dimension
In general, the calendar-based forward/futures curve used in electricity and natural gas products includes Month-ahead, Quarter-ahead, Season-ahead and Year-ahead, among other products.

In that context, if the objective of position limits is to curb excessive speculation in commodity derivatives and enhance market transparency, then the position limit regime should rather aim at getting a view on the actual positions that market participants take for specific time periods, regardless of the instrument used to build that position.

That calls for an aggregation of position limits at the level of time horizons (for example, months) and not at the level of financial instruments. Only that level of aggregation will allow a comprehensive overview of positions.

In the current setup of markets, position's aggregation should focus on the products with time horizons beyond spot, as contracts very close to delivery and encompassing physical delivery are mostly used for hedging. As such, spot contracts shouldn't be included in the position limit as they follow a specific regime, tailor made for the energy markets that ensures, not through quantitative limits but through

imbalance charges, the incentives for market participants to curb excessive speculation (this is further explained in section 3.4).

Locational dimension
In general, with a few exceptions, contracts for wholesale energy products (regardless of whether they are cash or physically settled) have a locational dimension and foresee a/some specific delivery point(s) or area(s). Transmission capacities are also wholesale energy products that allow the transfer of the commodity across delivery point(s) or area(s).

In that context, the position of a market participant in a specific area depends not only on the products traded for delivery in that area, but also on the products traded in other areas and for which the market participant also acquired (explicitly or implicitly) the transmission capacity. This is of relevance to the electricity and gas markets and impacts most significantly the most integrated areas.

As such, an accurate calculation of positions would require the incorporation of the locational dimension, in particular for the electricity, but also for the natural gas markets.

3.3. Possible governance challenges

3.3.1. Position setting

Currently, position limits for significant or critical commodity derivatives are set by NCAs, following principles set out in Delegated Regulation (EU) 2022/1302, and an opinion by ESMA. Position limits do not apply to contracts entered into for hedging purposes by non-financial entities (so-called 'hedging exemption'). The NCA of the country where the trading venue is located is responsible for setting position limits. If a contract is traded across multiple venues in different jurisdictions, the NCA of the Most Relevant Market (MRM) takes the lead. ESMA steps in if coordination is required or disputes arise.

Given the characteristics of wholesale energy products mentioned in section 3.2, in particular the EU dimension of critical commodity derivatives, EU level institutions (for example, ESMA) could have a stronger role on position limits setting. This would also avoid situations where the relocation of a trading venue (within the EU, but more importantly, from inside the EU to outside the EU) would impact the responsibility for setting position limits, ensuring a more harmonised regime across and avoiding transition issues. In addition, given the specificities of the energy sector and the knowledge required, ACER should be consulted in the process of setting positions limits to wholesale energy products.

3.3.2. Position monitoring and reporting

Currently, and in accordance with Article 57(8) of MiFID II, exchanges and other trading venues offering trading in commodity derivatives play a key role in the monitoring of open interest positions of persons trading on their venue. In this context, trading venues can request information from market participants on positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts.

Allowing trading venues to collect such information may raise concerns from a competition perspective. Therefore, monitoring and reporting at trading venue level should not include positions taken outside of that venue. Instead, it should be limited to positions in financial instruments offered by the specific trading venue.

Monitoring positions built across different trading venues, through OTC contracts or across products with partially overlapping time horizons (see section 3.2), requires a more holistic approach that cannot be managed at the individual trading venue level.

Therefore, the governance of position monitoring could benefit from a revision entailing the possibility to have two different levels:

- A trading venue dimension
- A holistic EU dimension

This model is also common in other jurisdictions (for example the United States).

The trading venue dimension
Trading venue monitoring could be focused on the positions held per instrument at that specific trading venue, in order to avoid excessive concentration of speculative positions by one market participant in a single venue.

The EU holistic dimension
EU level monitoring (for example, by ESMA in consultation with ACER) and reporting could be focused on the aggregated positions per time horizon, respecting the time horizon and locational elements of wholesale energy products mentioned in section 3.2 and based on a complete data set as mentioned in section 3.1.

3.3.3. Position transparency

The publicly available Commitment of Traders (CoT) reports plays an important role in providing transparency to the market on positions. These reports could provide additional transparency if they would take into consideration the time-horizon dimensions.

3.4. Other considerations

Trading on spot wholesale energy products, i.e., on contracts for the purchase or sale of wholesale energy products, under which delivery is scheduled to occur within two days or another standard settlement period, should be excluded from the position limit regime for the following reasons:

- **Existing safeguards against speculation:** Spot energy markets already incorporate mechanisms, such as imbalance settlement systems, that naturally curb excessive position taking through imbalance charges. While position limits impose direct quantity restrictions on market participants in specific segments, the imbalance settlement system in electricity and gas markets penalises participants whose positions exceed their actual supply or demand. These imbalance charges serve as an effective deterrent against excessive speculative positions, making additional position limits unnecessary.
- **Essential for system balancing:** These products play a crucial role in maintaining the balance of electricity and natural gas systems. Imposing quantity limitations could jeopardize security of supply or intensify price volatility, potentially leading to extreme price fluctuations—particularly in balancing and redispatching markets.
- **Essential for the integration of renewable energies**: Any quantity limit imposed can also affect the integration of renewable energies and the energy transition if it somehow incentivises curtailment to reduce volumes in the market.
- **Unique market structure:** Unlike many wholesale energy derivatives, spot energy products are traded sequentially, preventing market participants from instantly accumulating equivalent positions across different products, as would be possible with derivative contracts. For example, the day-ahead market operates on a daily cycle, meaning traders cannot simultaneously build a position for an entire month in one day. Instead, such positions can only be accumulated gradually over time.
- **Unique market design:** Spot contracts are traded on coupled markets, between trading zones (not necessarily corresponding to countries). It is impossible to trace the locational origin of trades that happen cross-border on certain types of markets, which are optimised at EU level (i.e. flow-based market coupling).

4. Circuit breakers

4.1. On wholesale energy products that are financial instruments

Currently, circuit breakers are more common on gas trading. Around 85% of TTF trading happens in regulated markets involving financial instruments and is covered by circuit breakers, under MIFID II. Circuit breakers are much less common in electricity markets.

Regarding the design of circuit breakers to wholesale energy products that are financial instruments, ACER should be consulted in the process.

4.2. On wholesale energy products that are not financial instruments

In its 2022 Final Assessment of the EU Wholesale Electricity Market Design, ACER recommended to consider a 'temporary relief valve' inspired by measures prevalent in certain electricity markets outside of the EU. This mechanism falls in the realm of temporary suspension of trading mechanisms, such as circuit breakers.

A 'relief valve' constitutes an ex-ante temporary price limitation mechanism, triggered under clearly specified conditions (e.g. unusually high electricity price rises in a short period of time, or cumulative prices reaching high value). The effect is to pause a return to full price formation for a specified period of time, capping prices at a pre-defined ceiling. The measure would need to ensure that sufficient revenue is earned by generators and could require a compensation mechanism for those generators with sourcing costs above the limitation ceiling.

A 'relief valve' mechanism could prove a significant intervention in price formation. As such, it carries risks. However, this risk is partly mitigated by the advantage of giving regulatory stability provided the measure is implemented well in advance of the triggering events and provided its defining characteristics are clear and transparent. Should such a measure be deemed desirable, it would benefit from being coordinated at EU level, drawing on lessons from the jurisdictions where it has been implemented.

ACER therefore advocates that any measure aiming at establishing a temporary suspension of trading mechanisms would have to be introduced long in advance of making any use of it. When introduced, it cannot be activated longer than strictly necessary, in order to preserve proper pricing signals to the fullest extent possible, so that market participants face incentives to mitigate price spikes. Moreover, such implementation should be preceded with an impact assessment.

Given the specificities of electricity markets, if to be introduced, circuit breakers in the spot markets should follow a sector specific tailor-made regime rather than the general MIFID II regime that may not have the level of flexibility necessary to incorporate these nuances.

5. Elements covered by the Draghi report on EU competitiveness

5.1. Obligation to trade in the EU

In REMIT, the geographical place of trading is of less importance, as the definition of wholesale energy product relates to certain contracts and derivatives, irrespective of where and how they are traded[15]. For electricity, natural gas or hydrogen derivative contracts, REMIT establishes that they must relate to electricity, hydrogen or natural gas *transported, stored, produced*, *traded* or *delivered/may be delivered*[16] in the EU.

For example, if an energy derivative relating to natural gas which is delivered in the EU is traded in the US by two US market participants, such a derivative would fall within the scope of REMIT. The transaction would be reportable and the market participants engaging in the transaction would be required to register with an NRA in an EU Member State, regardless of where they are located. REMIT II already introduced the obligation for non-EU market participants to have representatives established in the EU to facilitate communication with and oversight of such market participants. In a similar way, non-EU venues where trading of wholesale energy products occur would be considered as organised marketplaces and thus in scope of REMIT. In this regard, ACER does not believe additional obligations or restriction on place of trading are warranted.

ACER supports greater transparency on non-EU trading venues under financial regulation, for example in regard to the overview of positions and reporting obligations as mentioned under Section 3.

5.2. Market Correction Mechanism

The Draghi report recommends implementing dynamic price caps (i.e., setting price limits to the bids accepted for trading in organised trading markets) to address situations of extreme energy price levels. The report particularly promotes implementing such limits in situations where EU energy spot or derivatives prices significantly diverge from global energy prices.

In that context, the report mentions the price developments of summer 2022, when EU natural gas prices sharply diverged from global gas prices. Those events ultimately led to the implementation of the Market Correction Mechanism (MCM) by the end of 2022.

ACER and ESMA published in early 2023 reports assessing the impact of the gas MCM. Their findings indicated that the two triggering conditions: a) TTF month-ahead prices exceeding EUR 180/MWh, and b) TTF month-ahead prices exceeding the global LNG price by more than EUR 35/MWh were very difficult to activate. This was especially true for the second condition, as LNG infrastructure congestion had already started to ease by the time the MCM was introduced. Consequently, the MCM had a limited practical impact. ACER and ESMA concluded that: *"Neither identified significant impacts (positive or negative) that could be unequivocally and directly attributed to the adoption of the MCM."*

Beyond the specific gas MCM experience, the effectiveness and potential risks of any dynamic price cap depend on their activation conditions. A comparable mechanism with lower activation thresholds could be more easily activated, and may thus have a stronger impact on gas markets.

While price caps may seem appealing as a way to prevent excessive price increases, they often prove ineffective in practice, as prices are ultimately determined by market fundamentals. Imposing a full price cap on EU imports could jeopardise security of supply if volumes are diverted to higher-priced markets

[15] Article 2(4) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency

[16] "may be delivered" refers to the supply of electricity which may result in delivery in the Union as a result of single day-ahead and intraday coupling

elsewhere. Additionally, enforcing such caps would be challenging, as depending on their design, there may be ways to circumvented them. According to ACER, these measures also introduce additional risks:

- Limiting the ability of market participants to effectively manage their risks – market participants may need to adjust their price and supply risk models, creating uncertainty.
- Shift to less transparent markets – traders may relocate activity from EU energy exchanges to over-the-counter (OTC) markets or to other organised marketplaces within or outside the EU, reducing transparency and proper surveillance.
- Security of supply concerns – price limits could make EU markets less attractive to global LNG suppliers, potentially jeopardizing energy security.
- Barriers to market-based energy flows – intervention in price formation could hinder cross-border energy trade, making the internal energy market less integrated and efficient.
- Increased trading costs – Higher margin requirements may be imposed on traders due to adjustments in credit margin models and default management procedures of central clearing counterparties (CCPs).

In conclusion, while ACER considers that the structural evolution of the EU gas market - including reduced consumption and expanded LNG import infrastructure - has significantly lowered the likelihood of EU gas hub prices diverging from global prices and hence the activation of MCM-like measures, ACER still identifies several potential risks associated with dynamic price caps. Those risks can compromise risk management, market liquidity, and energy security and hence advocates against implementing such measures.

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

This section includes the aggregated reply to three subtopics of the public consultation: organisational requirements at trading venues and at market participant level, and other relevant rules governing market integrity and transparency.

ACER believes that the extension of MiFID II organisational requirements (e.g., capital requirements) to market participants in spot energy markets could constitute a significant barrier to entry. Given the distinct nature of these markets, ACER does not see the need for additional regulatory requirements on energy market participants. Should such measures be considered, a thorough impact assessment should be conducted to evaluate potential market distortions, and de minimis thresholds should be introduced to prevent undue burden on smaller market participants.

For example, capital requirements similar to those imposed on investment firms could disproportionately impact smaller trading entities or energy-intensive industries that engage in hedging. This could ultimately reduce market liquidity and efficiency. In the worst-case scenario - such as during the 2022 energy crisis - it might even increase these entities' exposure to price risk if they choose to withdraw from derivatives markets, with negative consequences for their economic activity and competitiveness.

Regarding the organisational requirements on trading venues, European Energy Regulators[17] already evaluated the organisation and the regulatory oversight of energy exchanges (i.e. the supervision of energy exchanges and the monitoring of trading activities of market participants by the competent authorities) in 2011 and made recommendations on the supervision, governance and role of market

[17] CEER/ERGEG final advice on the regulatory oversight of energy exchanges. A CEER Conclusions Paper from 10 October 2011.

surveillance departments of energy spot exchanges. In its annual activity reports under REMIT[18], ACER complemented this advice and recommended the following to the Commission as regards minimum requirements for organised marketplaces:

- Supervision and Governance: Minimum standards for a supervisory framework for energy spot exchanges should be set and harmonised at European level and each energy spot exchange should be subject to appropriate and effective exchange supervision by a competent exchange supervisory authority to increase market integrity.
- Market Surveillance: Each energy exchange should have a clear framework for conducting market surveillance, compliance and enforcement activities and there should be oversight of these activities by an exchange supervisory authority.

In the meantime, Commission Regulation (EU) 2015/1222 established a guideline on capacity allocation and congestion management[19] stipulating rules on the designation, monitoring, enforcement and exchange of information for an efficient supervision of nominated electricity market operator (NEMO) activities by NRAs. This guideline should be taken into consideration when developing complementary operational requirements for spot markets.

ACER believes that if additional requirements (e.g., pre & post-trade transparency, circuit breakers & trading controls, algorithmic & high-frequency trading (HFT) rules, position limits, governance & operational resilience) were incorporated into REMIT, they could enhance the professional standards of spot trading, potentially reducing the need for additional regulatory obligations on market participants, which ACER would support. For example, standardised risk management framework, stricter algorithmic trading oversight or enhanced transparency measures in order executions could foster a more robust and self-regulated trading environment. However, ACER believes that such requirements need to be introduced in a tailor-made way in order to take into consideration the specificities of electricity and natural gas markets and the definition of organised marketplace under REMIT that encompasses a greater variety of entities.

ACER emphasizes that, due to the physical characteristics of energy markets, certain trading behaviours that may appear unusual in financial markets are, in fact, common—and even expected—in energy spot markets. Unlike financial markets, which prioritize returns, energy markets are primarily supply-driven, with a strong focus on liquidity and the ability to meet physical delivery obligations. For instance, gas-fired power generators often procure a significant portion of their gas needs from spot markets, aligning purchases with the supply required to fulfil their day-ahead power generation commitments. Similarly, an unexpected outage at a power plant may necessitate the rapid procurement of large volumes of energy on the spot market.

Furthermore, the unique coupling of energy supply and transmission in electricity spot markets makes energy a fundamentally different type of commodity. As such, imposing additional organizational requirements on market participants or trading platforms will not alter these core market dynamics.

ACER also believes that the recent changes of the reporting structure introduced in REMIT II, requiring organised marketplaces to report details of their order books, will lead to the need for organised marketplaces to introduce rules or restrictions that will improve the operational compliance of market participants (e.g., require all market participants to register with an NRA and have the necessary registration code prior to engaging in trading as the organised marketplace will need the registration code in order to be able to fulfil its reporting obligation).

[18] See ACER's annual report on its activities under REMIT in 2012 from 7 November 2013, published under https://www.acer.europa.eu/remit-documents/remit-reports-and-recommendations.

[19] OJ L 197, 25.7.2015, p. 24.

On a final note, REMIT II introduced the notion that disseminating inaccurate information about benchmarks is recognised as potential market manipulation. The definition of market abuse in REMIT also cross-references to the definition in financial legislation. ACER understands that this reference has led to some uncertainty whether or not benchmarks for non-financial instruments are also covered by REMIT. ACER is of the opinion that benchmarks for non-financial instruments should also be covered and would support clarifications by the European Commission in this regard.

5.4. Enhanced supervisory cooperation in the energy area

Market manipulation and its effects can extend across borders, influence both electricity and gas markets, and impact financial and other commodity markets, including emission allowances. Regulatory oversight of potential market abuse in energy and financial product trading falls under two key EU regulatory frameworks: the EU Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) and the Market Abuse Regulation (MAR).

In this context, the Agency for the Cooperation of Energy Regulators (ACER) and the European Securities and Markets Authority (ESMA) have established a long-standing cooperative relationship, recognizing the interconnections between physically settled and financial energy products. Over the past decade, this collaboration has deepened through Memorandums of Understanding (MoUs), cross-participation in standing committees and working groups, and the creation of ACER/ESMA task forces.

The first MoU between the two organisations was signed in July 2013, leading to the establishment of the Energy Trading Enforcement Forum (ETEF). This forum brings together energy National Regulatory Authorities (NRAs), financial National Competent Authorities (NCAs), ESMA, and ACER to discuss market abuse regulations, share supervisory experiences, and ensure consistent enforcement across the EU.

Amid the 2022 energy crisis, ACER and ESMA intensified their cooperation by launching a joint Task Force to enhance oversight of energy markets. This initiative strengthened data exchange, knowledge sharing, and coordination among staff and national authorities. The objective was to support investigations and enforcement, ensuring the rigorous and harmonized application of regulations across jurisdictions. ACER also established bilateral cooperation with NCAs on topics related to market surveillance.

As part of this collaboration, in January 2023, ACER and ESMA published preliminary data reports on the implementation of the EU Regulation establishing a Market Correction Mechanism (MCM) to protect EU citizens and the economy from excessively high energy prices. On 1 March 2023, both organisations released their respective impact assessments of this mechanism.

On 6 March 2023, ACER and ESMA signed an updated MoU, further strengthening their partnership. This MoU introduced new cooperation areas under the MCM regulation and energy sector benchmarks, while also refining the role of the ACER-ESMA Task Force. Key areas covered in the MoU included:

- A coordinated and consistent approach to market abuse regulations under REMIT and MAR, reinforcing market integrity in energy and energy derivatives markets.
- Technical cooperation on data and market insights to improve understanding of energy and energy derivative markets.
- LNG price assessments and benchmarks managed by ACER, along with other energy-related benchmarks relevant to ESMA's and ACER's mandates.

The entry into force of REMIT II, in May 2024, reinforced the coordination mechanisms between ACER, ESMA but also between energy and financial regulators. Taking into account the cross-regulation needs, Article 16(1) REMIT defined that NRAs, NCAs, national competition authorities and national tax authorities "*shall establish appropriate forms of cooperation in order to ensure timely, effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, to judicial proceedings and to the enforcement of this Regulation and of the relevant financial and competition law*".

Based on this provision, the coordination of market abuse under REMIT and MAR was addressed by the joint ACER-ESMA task force, specifically for products falling under both REMIT and MAR. The principles of cooperation were discussed and agreed upon, resulting in a clear and practical framework for coordination. Since the entry into force of REMIT II, this framework has already been successfully applied several times in 2024 and 2025, enabling effective and efficient coordination without any issues. This governance structure, introduced with the entry into force of REMIT II, is very recent but has so far proven to be resilient.

At the beginning of 2025, the European Commission invited ACER and ESMA to join the Gas Market Task Force. This initiative aims at conducting a comprehensive review of the EU natural gas markets, ensuring their optimal functioning and addressing any commercial practices that could distort market-based pricing, also drawing lessons from the energy crisis.

Any future expansions that may lead to the further institutionalisation of the ACER/ESMA relationship should focus on areas that facilitate the fulfilment of each agency's mandate or increase efficiency for market participants. Examples of potential areas for enhanced collaboration, should the legislative framework be adapted, include:

- Data Sharing – Introducing specific data-sharing provisions and data interoperability requirements in MIFID II, MIFIR, and EMIR could enable greater cooperation between ACER and ESMA, enhancing their ability to fulfil their mandates.
- Centralisation of Notifications to Energy and Financial Regulators – Consolidating notifications related to obligations of Persons Professionally Arranging or Executing Transactions (PPAETs), algorithmic trading users, and direct electronic access providers could reduce regulatory burdens while promoting a more harmonized framework.
- Incorporation of wholesale energy specificities in position limit design – Consulting ACER in the establishment of position limits for wholesale energy products which are also financial instruments could help create a more tailored regulatory regime.
- Incorporation of wholesale energy specificities in circuit breakers design – Consulting ACER in the establishment of circuit breakers for wholesale energy products which are also financial instruments.
- Reinforcement of coordination mechanisms and best practice exchange – Setting up a dedicated working group co-chaired by ACER/ESMA institutionalising the Energy Trading Enforcement Forum as the primary platform for market abuse discussions among energy and financial regulators. The group could also facilitate joint guidance from ACER and ESMA on the coordination of market abuse provisions under REMIT and MAR. Other possibilities to explore could include having cross observer roles at the level of BOR/BoS and potentially replicating that model at the level of the relevant standing committees.

Any further expansion of the collaborative framework should avoid adding unnecessary layers to existing processes managed by each institution. It should respect current responsibilities and consider the capacity limitations that both organisations face.

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

Given that power and gas derivatives are an essential component of wholesale energy markets, monitoring trading in such products in isolation from the physical elements would be inadequate and could seriously compromise the effectiveness of market oversight. Both types of products contribute to price formation and must be considered together for accurate and meaningful monitoring.

Moreover, energy markets depend heavily on national specificities, including market rules, physical assets, and infrastructure. In this context, ACER and National Regulatory Authorities (NRAs) have developed extensive expertise in the functioning of national energy markets and the particularities of their participants. Therefore, ACER and NRAs should keep their central role in the monitoring of energy markets.