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Berlin, 21. April 2026

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Discussion Paper

Simplification and burden reduction: Quick wins for EU Financial Regulation for energy trading companies

Inhalt

Introduction: context and objectives

Europe's energy markets need deep, liquid and resilient energy trading markets to secure affordable supply, manage price risks and finance the energy transition. Yet real-economy energy companies are confronted with growing layers of complex financial market regulation (MiFID/MiFIR, EMIR, SFTR and related regimes). Whereas many requirements are helpful for transparent, liquid and resilient financial markets, taken together, some of them create disproportionate administrative burdens.
This paper sets out **targeted amendments** which should be taken forward via a focused **legislative Omnibus proposal on EU financial market regulation**. These aim at a pragmatic optimisation and simplification of the existing framework (MiFID/MiFIR, EMIR, SFTR and related regimes) rather than a fundamental reform of financial market regulation. Such an approach would allow the EU to bundle a number of amendments into one legislative proposal with appropriate implementation effort for both companies and authorities while maintaining transparency, market resilience, sound risk management and effective supervisory oversight. Recent omnibus initiatives in other policy areas (e.g. the Energy Omnibus) show that targeted, cross cutting simplification packages can be an efficient way to deliver a substantial simplification and burden reduction.

The measures are organised under three political themes:

1. **Strengthening legal certainty and proportionate risk management** to create better conditions for hedging, investment and risk management in energy trading markets
2. **Cutting regulatory reporting burden** to avoid red tape and, hence, increase efficiency and lower compliance costs for the real economy
3. **Supporting EU wide- market integration and a more coherent legislative process** leading to a more integrated, competitive and resilient EU energy trading and financial markets

All proposed measures are low-complexity changes (targeted Level 1/Level 2 amendments) that build on existing infrastructures, require limited effort from companies and supervisors, and promise high benefits in terms of cost savings, simplification and further improved market functioning for energy trading.

Detailed list of simplification proposals

1 Legal certainty and proportionate risk management

1.1 Include vPPAs in EMIR hedging definition or exclude them from the definition of financial instruments

Problem: Under current interpretations **virtual Power Purchase Agreements (vPPAs)** - despite being structured to reduce price and volume risks for the renewable investor - may not qualify as risk-reducing for the energy firm offering this hedge instrument to the renewable investor to guarantee a stable margin. As vPPAs are often high in notional value and long-dated (10–15 years), they result in a disproportionate consumption of clearing threshold capacity[1] despite posing no systemic risk to financial markets.

Proposal:

- Clarify via targeted amendment to Article 10 of EMIR 3, that vPPAs when structured to mitigate price risk for counterparties with regards to renewable energy production as well as (OTC) derivative contracts concluded to offset risks resulting from such virtual PPAs should be both treated as commercial risk reduction instruments
- Clarify in MiFID/MiFIR that these contracts are **not** financial instruments. Then, they are also not relevant for EMIR clearing threshold calculations

Benefit: Such clarification will ensure EMIR 3 remains supportive of the EU's energy transition and climate finance objectives.

1.2 State-backed CfDs for renewable energy sources – exemption in MiFID

Background: Renewable price support schemes, which take form of 2-way financially settled contract for differences, fall under the definition of cash settled commodity derivatives under Section C (5) Annex I of MIFID II. They constitute derivative contracts under EMIR and are subject to all the relevant requirements, including transaction reporting requirements, portfolio reconciliation requirements, and timely confirmation requirements. These requirements are complex; full compliance requires dedicated IT infrastructure and specific expertise. A significant portion of developers of renewable energy projects do not routinely

[1] EMIR Study from Frontier Economics "REVIEW OF THE EMIR CLEARING THRESHOLD FOR COMMODITIES (CCT)" of 31 May 2022, Link

participate in the financial derivatives markets, and are therefore not equipped to comply with financial market regulations. The problem is further exacerbated by the fact that all direct price support schemes for renewable energy investments must take form of such two-way contracts for difference (see Article 19d of Regulation (EU) 2019/943). We believe that the fact that these contracts are classified as financial instruments is a technicality which was overlooked during the legislative process, for the following reasons:

- These contracts are settled on the basis of metered generation volumes. They are strictly tied to physical generation assets; the supply of these instruments (and hence their risk potential) is thus strictly limited by the amount of installed electricity generation capacity. Therefore, the overall profile of these contracts is much closer to that of the physical supply agreements, and financial supervisory requirements are ill-suited for mitigating the risks stemming from these contracts.
- Usual derivatives under MiFID/EMIR reallocate market risks between counterparties. State-backed CfDs do not transfer market risks, they neutralise it for the generator and therewith socialise the price to the public sector. Hence, they do not fit into EMIR´s systemic- risk logic.
- These contracts are instruments for implementation of public subsidy support schemes; they are not financial products tradable on the free market.
- Instances where public policy measures bear certain characteristics of financial instruments already exist, and MIFID II contains targeted exceptions for such measures. See, for example, the exemption for ancillary services agreements which are used by Transmission System Operators to keep in supply and demand of energy in balance (Article 7 (4) of Commission Delegated Regulation 2017/565).
- If state-backed CfDs are classified as financial instruments, they would be, among other duties, subject to EMIR transaction-reporting. In fact, these instruments are currently not reportable, since several mandatory reporting fields cannot be filled out (e.g. Master Agreement type [state-backed CfDs are not traded under Master Agreements] and version, counterparty LEI [most CfD counterparties have no LEI]. This example shows that these kind of contracts do not fit into the MiFID-EMIR regime.

Proposal: Targeted exemption in MIFID II, Annex I, section C for such contracts, from the definition of “financial instruments”

Benefit: Significantly reduce the administrative and compliance burden on energy firms for all sizes of market participants; enabling greater focus on renewable project development rather than navigating complex financial regulations for contracts that are fundamentally designed to implement public policy.

1.3 Clarification that consequential hedges (e.g. FX hedges arising from commodity derivatives) are risk-reducing under EMIR 3

Problem: Current EMIR 3 rules define hedging as transactions that reduce risks directly linked to a firm's or group's commercial activity. However, there is uncertainty if consequential exposures - such as FX risk that arises when hedging a commercial gas position with a gas-forward in a foreign currency - are explicitly included. This may create legal uncertainty for companies that use further derivatives (for example, FX forwards) to hedge new risks resulting directly from their original commercial hedge.

Proposal: Explicitly clarify, ideally through interpretative guidance or a targeted amendment to Level 2 of EMIR (e.g. Article 10 of CDR 149/2013), that subsequent hedges (such as FX derivatives) used to manage consequential exposures created by initial commercial hedging derivatives are also considered risk-reducing. This would ensure these risk management steps fall under the definition of commercial hedging.

Benefit: Legal certainty; alignment of regulatory treatment with the economic realities of commercial hedging.

1.4 Clarify group definition for hedging

Problem: The energy transition has driven cross-border joint ventures and shared-ownership models to finance and operate capital-intensive renewable projects. EMIR's current group concept does not fully reflect these modern arrangements as it is uncertain if minority stakes in Joint Venture (JVs) could qualify as "within the group" for hedging purposes pursuant to Article 10(3) EMIR and Article 10 of Delegated Regulation (EU) No 149/2013. Ambiguity exists on whether joint ventures or entities consolidated at equity under IFRS, or local GAAP (e.g. German HGB) are part of the "group."

Proposal:

- Clarify the scope of "group" to reflect current accounting and corporate structures in EMIR: Explicitly include 50:50 and minority stake joint ventures for renewable projects, which are consolidated at equity in accordance with IFRS/local GAAP or internationally recognised accounting standards as part of the 'group' for hedging purposes only in accordance with Art. 10 CDR 149/2013. Example for a wider definition in financial market regulation is the definition of a group in the Financial Conglomerates Directive (Article 2 (12) in combination with Article 2 (11) of Directive 2002/87/EC) which encompasses entities in which the parent or its subsidiaries hold a participation, including minority-held joint ventures (direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking is sufficient). This would ensure that all companies participating in the JVs (with 50:50 or minority stake) can hedge the commercial risks of the JVs.

- A similar change should be implemented into the MiFID directive, allowing market-facing entities of energy groups (and the other partners of the JVs) to offer hedge services to its JV projects, even if they are consolidated 'at-equity' only. These hedging activities are often considered as the provision of financial service to the JV projects. Consequently, market-facing entities cannot make use of the so-called MiFID group privilege, as this relates to fully consolidated group entities only. Moreover, the use of the ancillary-activities exemption (AAE) is often excluded because of the lack of a main (non-financial) business to this entity.

Benefit: Such clarification will ensure regulation remains supportive of the EU's energy transition and aligns with modern corporate structures and financing models; in addition, it allows effective risk management for JVs by all companies participating in the JVs.

1.5 Simplify EMIR clearing threshold calculation

Problem: EMIR clearing threshold calculations inappropriately limit the headroom for NFCs, especially because of:

a) Netting rules: Currently, the calculation of gross notional exposure for OTC-derivatives under EMIR largely ignores portfolio-wide netting effects, only allowing contracts with the same type, underlying, and maturity to be offset. This narrow approach greatly overstates the actual credit risk a counterparty presents because, in insolvency scenarios, all outstanding contracts between counterparties - across different underlyings and maturities - would typically be netted under master agreements. Thus, the existing rules do not accurately reflect the real, lower credit exposure that would exist in practice and, hence, is not in line with general accepted risk management practices.

b) Applicable reference period: Currently, threshold calculation is based on the total outstanding exposure of all contracts, not just those concluded within a given reference period. This approach disproportionately penalizes long-term contracts like vPPAs, which consume large portions of the available threshold for their entire lifetime (if not recognised as hedges), rather than reflecting actual trading activity. As a result, firms face unnecessarily restricted capacity for new trades, making the system less reflective of current market participation

Proposal:

a) Widening the application of netting in threshold calculation: Clarify the calculation methodology to allow for netting comparable to the netting of exposures for the calculation of the Ancillary Activity Exemption under the Commission Delegated Regulation (EU) 2017/592 (change in Level 2 and ESMA FAQ)

b) Amending the calculation methodology regarding the reference period: The calculation of the gross notional value (GNV) should be based on concluded contracts during a 12 month reference period (like under the U.S. Dodd-Frank Act for the Swap

Deal Test) instead of the entire outstanding exposure from existing contracts held at specific points in time (change in EMIR 3 Level 1)

Benefit: Easier, more accurate threshold monitoring, reduced complexity.

1.6 Algorithmic trading – Clarification of proportionate supervisory expectations for non-financial firms

Background

Commission Delegated Regulation 2017/589 (commonly known as "RTS6") lays down extensive organizational requirements applicable to investment firms engaged in algorithmic trading. While RTS6 is drafted for "investment firms", in practice it is in some jurisdictions sometimes interpreted as a compliance reference point beyond its intended scope, including for MiFID II-exempt firms when they use algorithmic trading in energy markets (including trading linked to physical REMIT products).

RTS6 can be a solid compliance benchmark. However, the different risk profile and business model of MiFID II-exempt energy trading firms means that RTS6 requirements should not be assumed to apply on a one-to-one basis, nor should any justified, proportionate deviation automatically be seen as a lack of adequate systems and controls under Article 17 of MiFID II. The objective is not to reduce oversight of algorithms, but to ensure that governance and control requirements remain proportionate and fit-for-purpose for energy market participants, including in relation to physical REMIT products. Requiring full RTS6 compliance in all cases could disproportionately burden exempt firms and, in practice, discourage the responsible use of trading algorithms.

Proposal: Clarify that for MiFID-exempt non-financial firms using algo trading tools should be applied in a proportionate manner reflecting the nature, scale and complexity of their activities, while maintaining high standards of risk control and market integrity

Benefit: Improved legal certainty and more consistent supervisory expectations across jurisdictions, without weakening core control standards for algo trading.

2 Cutting regulatory reporting burden

2.1 Extend the single-side reporting for non-financial counterparties (NFCs) under EMIR and SFTR

Problem: Non-financial counterparties (NFCs) face complex EMIR and SFTR reporting duties, even where they delegate reporting, as they often remain responsible for data quality and reconciliations. Under SFTR, mandatory delegated reporting currently benefits only SMEs; other NFCs face heavy reporting burdens. In addition, the current definition in EMIR Article

9(1a) as well as SFTR Article 4(3) is too narrow and does not reflect market practice where agent lenders, tri-party agents, brokers, clearing members and CCPs already handle the data.

Proposal: Ensure that NFCs benefit from **mandatory delegated (or single-sided) reporting** for all kind of transactions. **Full reporting responsibility and liability** should be assigned to the "Other counterparty"/ "Entity responsible for reporting" (or counterparty required to report data pursuant to EMIR/ SFTR in case of single sided reporting). Explicitly include agent lenders, tri-party agents, brokers, clearing members and CCPs as potential "reporting entities" (in EMIR under Art.9 (1a) and in SFTR in Art. 4(3)).

Benefit: Clear responsibility, reduced reconciliation burden, improved data quality.

2.2 Streamline intragroup exemption reporting

Problem: Intragroup reporting exemptions require extensive documentation for each entity pair and each regulator, creating significant administrative costs for low-risk intragroup flows.

Proposal: Introduce a **statutory exemption** from intragroup reporting in Level 1 Text of EMIR 3 for NFCs (analogously to REMIT) - potentially combined with a simple one-off central notification (e.g. at ESMA or trade repository). As a fallback option, a **single central authorisation** by the national "home" regulator or ESMA could be introduced, instead of multiple approvals by NCAs.

Benefit: Major reduction in compliance burden and alignment with more efficient international practice. This would also have the benefit of "clearing up" transaction reporting data for the regulatory authorities, allowing them to focus on market-facing derivative contracts.

2.3 Revoke the reporting on clearing at third-country CCPs for NFCs under Art. 7d EMIR

Problem: The new reporting obligation under Art.7d EMIR on clearing at recognised third-country CCPs creates significant operational burden for NFCs, as Art.7d also applies to clients of clearing firms active on third country CCPs recognized under EMIR. However, in reality regulatory interest is often limited to specific sensitive asset classes (subject to the clearing obligation of the active account regime which is not the case for energy/commodity derivatives).

Proposal: Delete the requirement for NFCs, or at minimum allow **full delegation** of this reporting to clearing banks or CCPs.

Benefit: Burden reduction on clearing clients without loss of relevant supervisory information

2.4 Limit NFC reporting to loan data only under SFTR and use third-party valuations more broadly

Problem: Collateral reporting under SFTR causes numerous daily updates and high daily reporting costs for NFCs. In addition, NFCs must use the value they use for collateral management and exposure management purposes (internal valuations made for the purpose of firm wide risk management) except for cleared SFTs (when information related to valuations sourced from the CCP should be used for SFTR reporting), even if third parties (agent lenders, tri-party agents, brokers, clearing members) have better data.
Proposal: Limit NFC reporting to **loan data only**; no collateral data requirements. If collateral reporting under SFTR for NFCs remains applicable, allow NFCs to use **third-party valuations** more widely for SFTR reporting where such intermediaries are involved.
Benefit: Significant reduction in reporting volume and operational complexity

2.5 Limit error corrections to live transactions

Problem: NFCs must correct past errors even for matured or terminated transactions, offering little supervisory value.
Proposal: Limit the obligation to **live transactions only**
Benefit: Focuses effort on currently relevant data.

2.6 Reduce static data across frameworks

Problem: EMIR, SFTR, MiFID/MiFIR and other regimes repeatedly ask for static data (e.g. counterparty and product details) that are already embedded in identifiers used anyways for the reporting of transactions (e.g., LEI, UPI, ISIN, CFI-Code, MIC-Code).
Proposal: Reduce static fields and rely systematically on all the existing identifiers where possible.
Benefit: Lower reporting data fields, fewer errors, better data consistency.

2.7 Remove hedge/spec flag for Exchange Traded Derivatives

Problem: The hedge/spec flag is intended for EMIR clearing threshold monitoring, but Exchange Traded Derivatives (ETDs) are legally excluded from the EMIR clearing threshold calculation as only OTC derivatives are in scope. Hence, the flag for ETDs has no supervisory value. Especially as this information is reported by clearing banks mostly only on clearing account level, leading to a misleading picture as no granular reporting on order/transaction level is possible.
Proposal: Remove the reporting requirement for the hedge/spec flag on ETDs within EMIR reporting.

Benefit: Immediate simplification of reporting templates and systems; no misleading information as MiFID ITS4 report grants correct insight for supervisory purposes.

3 Market integration and a more coherent legislative process

3.1 Streamlined EU Legislative Process

Problem: Complex, multi-stage EU legislative procedures make it difficult to adapt quickly to market developments and create overlapping reforms. On many occasions, market participants have also faced legal uncertainty and unnecessary compliance costs when Level 1 requirements apply before the relevant Level 2 technical standards are effective or even adopted, resulting in avoidable financial burdens and inconsistent application across the EU. Also, the very high number of Level 2 measures (in the last legislature, Level 1 acts empowered the Commission to adopt around 430 Level 2 measures) - combined with the very detailed technical nature of these measures - causes an unmanageable amount of implementation work for regulators and all concerned firms (EU Commission had "de-prioritise Level 2 Acts in financial services laws; see link)

Proposal:

- Better coordinate Level 1, 2 and 3 rule-making
- Reduce number of Level 2 measures mandates in Level 1 text to return to a more principle based regulatory approach
- Reduce unnecessary overlaps and stages
- Improve transparency and forward planning of regulatory pipelines
- Ensure Level 1 measures only take effect after corresponding Level 2 measures are published, with a reasonable implementation period for firms
- Empower ESMA to manage technical reporting validation rules directly and more flexibly
- Enhance the European Commission's ability to temporarily suspend requirements and react quickly to major market events, similar to practices in other jurisdictions

Benefit: This approach would deliver faster and more coherent regulatory updates and reduce bureaucracy. Aligning the timing of Level 1 and Level 2 measures would reduce compliance complexity and avoid duplicative efforts. Granting ESMA more technical agility would improve data quality and operational efficiency for firms. Strengthening the Commission's powers to respond to market disruptions would boost the EU's competitiveness and provide clear frameworks for firms to operate during periods of uncertainty. The reduction of the number of Level 2 measures would contribute to the simplification and burden reduction.

3.2 Deletion of German EMIR audit obligation

Problem: Germany has imposed an EMIR audit obligation absent at EU level, creating a significant extra cost and burden by that creating a potential competitive disadvantage for German firms.
Proposal: Remove the national EMIR audit requirement
Benefit: Level playing field in the market and reduced costs for affected companies.

4 Conclusion

These proposals offer a **balanced and pragmatic** way to ease the regulatory burden on Europe's real-economy energy companies while maintaining, and in some cases improving, supervisory outcomes.
They:

- Are suitable for consideration in the context of a targeted legislative Omnibus proposal on EU financial market regulation addressing regulatory burden reduction and simplification of the existing framework (MiFID/MiFIR, EMIR, SFTR and related regimes)
- Do not require fundamental amendments or reform of financial market regulation Deliver high impact at low implementation cost

We invite policymakers to engage with industry and supervisors to prioritise the measures with the highest benefit-to-effort ratio.

5 Annex – Mapping of proposals to regulations

- MiFID
  - Exclude virtual Power Purchase Agreements (vPPAs) and state-backed CfDs for renewable energy sources from definition of financial instruments
  - Clarify “group” definition for hedging, including JVs (50:50 and minority stake)
  - RTS6 (Algorithmic trading) exemption for non-financial firms

- EMIR
  - Simplify clearing threshold methodology (netting, shorter reference period)
  - Include vPPAs in hedging definition
  - Clarification that consequential hedges (e.g. FX hedges arising from commodity derivatives) are risk-reducing under EMIR
  - Clarify “group” definition for hedging, including JVs (50:50 and minority stake)
  - Intragroup reporting exemption / central notification
  - Mandatory delegated (i.e. single side) reporting for NFCs
  - Extend “reporting entity” definition (agent lenders, tri party agents, brokers, clearing members, CCPs)
  - Remove hedge/spec flag requirement for ETD reporting
  - Art. 7d: Delete or fully delegate third country CCP clearing reporting for NFCs
  - (Germany) Deletion of German EMIR audit obligation

- SFTR
  - Mandatory delegated reporting (i.e. single sided) for all NFCs
  - Limit NFC reporting to loan data only (no collateral data)
  - Broader use of third-party valuations (agent lenders, tri party agents, brokers, clearing members)
  - Delete reconciliation fields and tolerance levels for NFCs
  - Limit error corrections for NFCs to live transactions only

- Overarching / National
    - Reduction of static data requirements across EMIR, SFTR, MiFID/MiFIR and other frameworks
    - Streamlining of legislative reforms and simplification of the EU legislative process
    - Deletion of German EMIR audit obligation