

Proposition de règles prudentielles pouvant s'appliquer aux fournisseurs d'électricité et de gaz naturel

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Introduction d'une régulation prudentielle de l'activité de fourniture d'électricité et de gaz naturel

Question 1 : Êtes-vous d'accord avec les principes généraux exposés par la CRE ?

Ni favorable, ni défavorable

Commentaire :

Considering the French definition of energy suppliers, as outlined in the pertinent footnote of pg. 12 of the consultation, it is not certain whether traders fall within the scope, especially when it comes to electricity suppliers. We understand CRE's concerns in terms of ensuring a resilient energy supply and protecting vulnerable consumers in France in the aftermath of the energy crisis. However, if targeted to traders, the obligations would be overly far-reaching. **In general, wholesale traders in the French market should be excluded from the scope of the proposed obligation.**

Wholesale markets are already much more highly regulated in regarding risk management, both through EU legislation (EMIR and REMIT), as well as via the monitoring of gas suppliers by DGE. **The upcoming regulation must protect the specific features of energy markets and their participants. Therefore, we fundamentally question the imposition of additional prudential requirements. Only MiFID-licensed investment firms must fulfil such obligations from which, however, wholesale traders are exempt through the ancillary activity exemption. Such requirements would negatively impact liquidity and competition in the energy markets and ultimately result in higher prices for consumers.**

We supported during the EMD negotiation process prudent portfolio management and recommended tailoring supplier hedging obligations, if any, to the actual contractual commitments the suppliers have with their consumers. Hence, we welcome the direction of CRE's proposals for supplier hedging obligations that reflect the different types of offers and consider suppliers' financial robustness. We acknowledge the first principle of symmetry between coverage and supplier contract price commitments as a step in the right direction, which sheds light on potential under-covered commitments and protects consumers. We identify **a trade-off between a detailed and tailored evaluation of hedging strategies and the amount of information ultimately required by the Regulator**, as the latter risks burdening suppliers and traders, as well as the CRE itself, with additional reporting commitments, on top of their current ones under other pieces of EU Law, most notably REMIT and EMIR.

Providing a floor for volume coverage appears coherent. **We would nonetheless like additional details on how that minimum volume would be decided.** In a portfolio covering all customer segments, there is always a volume risk depending on weather, economic situation, industrial activities and other factors. **Too high of a minimum coverage rate might lead to over-coverage, which, in turn, would create additional risks. Other consequences of an excessive coverage level would include price increases for end consumers and reduced competition in retail markets.**

The obligations should not hinder the use of hedging instruments in managing risks. **Rather, we should incentivise further long-term hedging instruments, including Long-Term Transmission Rights, which can provide better coverage and keep costs down for consumers.** The proposal should also allow space for suppliers to develop innovative ways to manage risk more efficiently.

Regarding the second principle on supplier financial capacity surveillance, we understand the CRE's attention to commercial robustness. **The tests and differentiation between strong and limited robust suppliers need**

to be transparent and coherent.

An annual evaluation may require substantial amounts of commercially sensitive information. Therefore, the CRE should consider other regulatory requirements that market participants respect and if the information requested may be found among other regulatory submissions. **For this, the CRE should prioritise credit ratings provided by credit rating agencies for impartial and objective financial assessments.**

The timing of tests and requests for information should also consider the deadlines for other regulatory requirements and significant market events (i.e. auctions), especially when switching to a new calendar year.

Regarding the third and last principle of establishing a risk management strategy within company governance, we encourage the sharing of best practices. However, to maintain confidentiality, CRE should stick to general information provided by suppliers in terms of their financial robustness and conduct bilateral meetings to enquire about further details, if need be.

Définition de l'obligation de couverture des fournisseurs

Question 2 : Sur la différenciation entre les types de consommateurs, êtes-vous d'accord avec l'analyse de la CRE ?

Ni favorable, ni défavorable

Commentaire :

The focus of the analysis is on the retail market. Furthermore, wholesale markets are already much more highly regulated regarding risk management. We provide no further comment as traders do not deliver to end consumers. **We remind you that supplier hedging obligations are optional under the reviewed Electricity Market Design and focused on the power market. Therefore, we raise the question of the relevance of including natural gas suppliers in the obligation's scope as the Electricity Directive cannot serve as the legal basis for its inclusion.**

Question 3 : Etes-vous d'accord avec la définition des offres entrant dans le périmètre de contrôle proposée par la CRE ?

Défavorable

Commentaire :

The offers to end consumers limit the scope of the obligations to the retail power market. The obligations must remain consistent with the mapping of consumers and not expand into pure trader hedging strategies on the electricity and gas wholesale markets.

Question 4 : Etes-vous d'accord avec la proposition de la CRE, à savoir la mise en place d'un double contrôle portant à la fois sur un contrôle ex-post et un contrôle prévisionnel des obligations de couverture ?

Défavorable

Commentaire :

We identify a confidentiality risk, especially for ex-post control. In cases where a company already has a financial rating, we ask for their exemption from the provision of further information. If additional information is still required, we ask the CRE to conduct bilateral meetings on a case-by-case basis.

Question 5 : Un contrôle au pas de temps annuel vous semble-t-il suffisant ? Un contrôle semestriel pour couvrir chaque saison serait-il davantage approprié ?

Semestrial controls would add a significant burden to both companies and the CRE.

Question 6 : Partagez-vous l'analyse de la CRE concernant les périodes d'évaluation des couvertures ?

Favorable

Commentaire :

The granularity proposed by the CRE for N-1 controls (monthly) looks relevant, as well as for N (quarterly) to N+3 (yearly) controls.

Moreover, we kindly remind you of the obligations' impact on and interaction with the forward market: there are long-term contractual transactions that go beyond France and are not necessarily bound to the energy markets. The obligations might reduce fixed-price offers, reduce liquidity and lead to the market exit of suppliers.

Cross-border trading of hedging products should not be impeded by regulatory burdens and rather incentivised to promote further flexibility and security of energy supply. We reiterate our position on the need for regulatory stability for strong and liquid forward markets to enable a secure, affordable and decarbonised supply of energy.

Additionally, transactions on the forward market do not necessarily end up with a physical delivery of the energy commodity. Hence, it is crucial to distinguish between traders and suppliers for the scope of the obligations and account for the different types of contracts and hedging tools used.

Question 7 : Partagez-vous l'analyse de la CRE concernant le dimensionnement des obligations minimales de couverture ?

Défavorable

Commentaire :

We understand that following the energy crisis the CRE wishes to prevent high-risk behaviours. Nonetheless, this should be done without penalising companies who are already acting prudently. **The level set should be one easily satisfied by a prudent supplier, as a too-high level would result in further price rises for end consumers and reduced competition in retail markets.** The proposal should also allow suppliers to seek innovative ways to manage risk more efficiently.

We identify a risk of over-coverage due to over-estimation of future off-take because of clients being over-optimistic, lower-than-expected economic activities, and inaccurate weather/winter forecasts. Hence the 97% minimum coverage obligation ends up increasing unnecessary costs for suppliers and may be counterproductive in case of over-estimation – such as "stop and go" or "hedging reversal" effects – or changes in margin calls conditions.

Question 8 : En vous appuyant sur des analyses quantitatives étayées dans la mesure du possible, partagez-vous la prise en compte du risque d'attrition telle que proposée par la CRE ?

Ni favorable, ni défavorable

Commentaire :

We ask for the quantitative analyses to be fully transparent.

Question 9 : Partagez-vous l'analyse de la CRE sur les prérequis nécessaires pour chaque moyen de couverture explicité ?

Ni favorable, ni défavorable

Commentaire :

We acknowledge the very detailed analysis of the different means of coverage and what the CRE wishes to monitor (volumes, counterparty reliability). However, we request additional clarity regarding the documents required by the CRE when distinguishing among three types of cases in the wholesale market, especially in terms of information a supplier would request from a counterparty and if that would differ much from internal counterparty checks. **The structure and content of the chapter linked to these questions demonstrate once again the focus on power and underlines the question of how the natural gas suppliers would relevantly be included within the regulation's scope.** There is no clear information on how equity natural gas from producers should be accounted for. A similar product to a Power Purchasing Agreement (PPA) does not exist in the gas market. A significant amount of information asked in the consultation is highly confidential and can potentially distort the market in case of inside data leakage.

Question 10 : Pensez-vous pertinent d'adapter les niveaux d'obligation pour couvrir les risques inhérents à chaque produit de couverture ?

Favorable

Commentaire :

We think it is relevant, provided there is a better understanding of different products by CRE and proportionally matches the obligations to the risks. However, requiring additional detailed information may prove burdensome. The CRE should check if the requested materials are already available elsewhere and avoid double reporting. See also our response to question 9.

We also reiterate the **risk of regulatory overburdening and overlap between the obligations and European regulations** like REMIT and EMIR – which can lead to redundant, inconsistent and unaligned reporting flows triggering additional and unnecessary validation procedures.

Question 11 : Estimez-vous utile de prévoir la possibilité d'appliquer un taux d'abattement graduel, plutôt que de rejeter les couvertures offrant un degré de fiabilité insatisfaisant ?

Ni favorable, ni défavorable

Commentaire :

We would appreciate clarification on how the discount rate will apply in case of unsatisfactory reliability of the hedge, as well as on the methodology for its calculation.

We also seek to understand the consequences of rejecting coverage. If trading activities are to be halted, then a gradual reduction rate would serve as a signal and could be improved. We ask CRE to **ensure that the reduction rate is not disproportionate and too costly**. Ultimately, we seek to understand what the comparable financial costs would be and if a revision of the hedging strategy and coverage would lead to no extra costs through an adaptation period.

Lastly, the proposal should **avoid penalising companies who are already acting prudently**. Otherwise, it would lead to further increases in prices for end consumers and reduced competition in supply.

Question 12 : Identifiez-vous d'autres types de produits susceptibles de remplir l'obligation de couverture ?

No comment.

Question 13 : Quels indicateurs financiers sont suivis régulièrement au sein de votre société pour évaluer la capacité à résister aux aléas de votre activité ?

No comment.

Question 14 : Les éléments comptables et financiers qui seraient collectés par la CRE permettent-ils à votre sens d'évaluer correctement la capacité financière de la société à résister aux aléas ?

Ni favorable, ni défavorable

Commentaire :

No comment.

Suivi de la politique de gestion des risques et de la gouvernance

Question 15 : La liste des risques spécifiques à l'activité de fourniture proposée par la CRE vous paraît-elle exhaustive ?

Favorable

Commentaire :

The risks list seems to cover much ground. We highlight the obligations' impact on and interaction with the forward market: there are long-term contractual transactions that go beyond France and are not necessarily bound to the electricity energy market. The obligations might reduce fixed-price offers, reduce liquidity and lead to the withdrawal of suppliers.

The proposal should avoid restricting the types of hedging instruments used by suppliers. We reiterate the need for additional Long-Term Transmission Rights on forward markets for better cross-zonal trading and risk management. We also advise the CRE to leave space for developing innovative ways for suppliers to manage their risk efficiently.

We reiterate that the impact of the obligation includes reduced fixed-price offers and reduced liquidity, leading to the withdrawal of suppliers.

Question 16 : Partagez-vous les mesures organisationnelles (gestion des ressources humaines et gouvernance), proposées par la CRE ?

Ni favorable, ni défavorable

Commentaire :

We caution against the regulatory burden on suppliers on account of their additional reporting obligations, notably under EMIR and REMIT, which risks leading to redundant, inconsistent and unaligned reporting flows triggering additional and unnecessary validation procedures. We support **the sharing of best practices while leaving the specific design of governance to each supplier**. We advise prioritising bilateral meetings between companies and CRE in case of needed insights on risk management strategies, to ensure confidentiality. If our members' strategies become public information, there is a risk of market distortion.

Liste des pièces jointes à la contribution :

240930 Energy Traders Europe TF FR CR CRE supplier hedging obligation.pdf