



European Commission
Directorate General Internal Markets and Services
Financial Services Policy and Financial Markets Directorate
Securities Markets
By email to: markt-consultations-mifid@ec.europa.eu

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Argus Media Ltd (Argus) is pleased to respond to the European Commission's public consultation Review of the Markets in Financial Instruments Directive (MiFID).

Argus is one of the leading global price reporting agencies (PRAs) for over-the-counter (OTC) energy markets. The company has over forty years experience in covering spot physical, physical forwards and derivatives energy markets. Through independent reporting of prevailing OTC market prices, Argus — along with other PRAs — has for many decades worked to bring greater post-trade price transparency to the OTC energy markets. Please see the attached Appendix for further details.

Argus' perspectives on this consultation are informed by the following key principles:

- Price reporting agencies provide efficient and effective post-trade price transparency to OTC energy markets. The MiFID review must take full account of PRAs as a long-established and widely-endorsed market infrastructure in these markets.
- Any proposals for new post-trade price transparency requirements must take full account of:
 - the degree of existing post-trade price transparency as provided by existing market infrastructures
 - market participants' views on the need for greater post-trade price transparency than currently exists
 - a rigorous impact assessment to evaluate the effects, including on trading liquidity and depth of market (ie number of market participants), of any new post-trade transparency proposals.
- Non-equity markets are significantly different from equities, and within non-equities there are significant differences between asset classes. OTC energy derivatives are specialist markets in comparison to shares and bonds, with much lower levels of liquidity. US and European regulatory treatment of physical forwards contracts is not aligned and risks regulatory arbitrage.

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Argus response to consultation questions

Argus has decided to limit its response to those questions it considers most directly relevant to its business and the markets for which it provides post-trade price transparency services. Please note this should not be interpreted to mean that Argus has no views on every question where it offers no comment.

(2) What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

The consultation paper proposes that the new broad category of 'organised trading venue' would capture trade taking place in markets served by one or several broker systems that offer voice and/or hybrid voice/electronic execution.

Argus notes this would extend many of MiFID's current provisions, as well as possible new provisions contained in the Commission's consultation on MiFID, to markets which are at present considered entirely OTC. This includes many OTC energy derivatives markets.

Argus believes the Commission must therefore be completely cognisant that in extending MiFID in this way, it will need to take full account, on an asset class by asset class or indeed instrument by instrument basis as necessary, of existing market infrastructures and standard practices in OTC markets.

In particular, the Commission must take full account of the long-established, accepted and extensively-used post-trade price transparency services in OTC energy derivatives markets as provided by PRAs.

(37) What is your opinion on the suggested` modification to the MiFID framework directive in terms of scope of instruments and content of overarching [post and pre-trade] transparency requirements? Please explain the reasons for your views.

The consultation paper states: "The Commission services consider that the principles of the existing MiFID transparency regime for shares could be adopted [for non-equity markets], but the detailed requirements should be suitably tailored to the specificities of the different non-equity asset classes."

Argus believes that it is insufficient for the broad principles of the MiFID transparency regime for equities to be applied to non-equities as overarching principles without modification or qualification. Non-equity markets are significantly different from equities, and within non-equities there are significant differences between asset classes.

For example, OTC energy derivatives are traded by market professionals only — there are no retail investors present in these markets. OTC energy derivatives are specialist markets in comparison to shares and bonds, with much lower levels of liquidity and therefore especially susceptible to damage from mis-calibrated regulatory measures.

In Argus' view, MiFID's overarching transparency requirements should therefore:

i) Recognise that each market is unique and require that transparency regimes take full account of the specificities of each asset class and where necessary of each individual instrument;

ii) Require that transparency regimes for each particular asset class, and where necessary each individual instrument, take full account of the degree of existing pre- and post-trade transparency. Further, require that full account be taken of each market's own views on the need for additional transparency measures;

For example, in the absence of clear evidence of a failure in post-trade price transparency, and with no perceived need either from the buy-side or the sell-side of a particular market for additional post-trade price transparency measures, what would be the justification for requiring additional post-trade price transparency measures?

iii) Require that a robust impact assessment be undertaken in respect of the specific transparency regimes that are proposed for each asset class/instrument. Each impact assessment should include an evaluation of the effects on market liquidity and number of market participants of the proposals.

As the consultation paper correctly observes, "The balance between transparency and liquidity in non-equities (as in equities) is hotly debated, with many arguing that too much transparency has a detrimental effect on liquidity."

In the context of energy derivative markets — which are specialist markets with much lower levels of liquidity than other markets falling under MiFID such as equities and bonds — Argus particularly agrees that there is a delicate balance to be struck between transparency and liquidity. Policy proposals must therefore include full impact assessments that rigorously examine the effects that proposals would have on trade liquidity and the number of participants in energy markets and instruments subject to MiFID.

Argus notes that nothing in the above comments would impact on regulators' abilities to have unfettered access to a full dataset of transactions for regulatory oversight purposes. This is provided by MiFID's Transaction Reporting regime and further under the EMIR regulations.

(40) In view of calibrating the exact post-trade transparency obligations for each asset class and type, what is your opinion of the suggested parameters, namely that the regime be transaction-based, and predicated on a set of thresholds by transaction size? Please explain the reasons for your views.

The consultation document is quite right in stating that "As non-equity products are very different one from another..... the exact post-trade transparency regime would need to be defined for each asset class and in some cases for each type of instrument within this asset class."

Argus therefore believes that correct calibration must be broader than purely based on transaction details and a set of transaction-related thresholds. As discussed in our response above to question (37), calibration must:

- i) take full account of the degree of existing post-trade price transparency as provided by existing market infrastructures
- ii) take full account of market participants' views on the need for greater post-trade price transparency than currently exists
- iii) conduct a rigorous impact assessment to evaluate the effects, including on liquidity and number of market participants, of any new post-trade transparency proposals.

In calibrating the obligations, the *status quo* must not *a priori* be excluded as the most appropriate arrangement for post-trade price transparency in any particular asset-class or instrument.

Argus notes that

- no evidence has been presented demonstrating a failure in the existing degree of post-trade price transparency in OTC energy derivatives
- no evidence has been presented of a perceived need from either the buy-side or the sell-side for greater post-trade price transparency measures in these instruments
- no impact assessment has been undertaken considering the effects on market liquidity of any additional post-trade price transparency measures for OTC energy derivatives markets.

Argus therefore considers that the policy case for new post-trade price transparency measures in OTC energy derivatives markets has not been demonstrated.

In addition, Argus notes the lack of certainty regarding MiFID's applicability to physical forwards contracts. These are widespread in European power and gas markets, and also found in key European oil markets. This uncertainty is unhelpful in itself. But in addition, new US law (Dodd-Frank Act) is specifically limited to swaps and does not include forwards in its definition of OTC derivatives. This means that European and US regulations are not fully aligned and leave the clear potential for regulatory arbitrage.

Lastly Argus notes that nothing in the above comments would impact on regulators' abilities to have unfettered access to a full dataset of transactions for regulatory oversight purposes. This is provided by MiFID's Transaction Reporting regime and further under the EMIR regulations.

(41) What is your opinion about factoring in another measure besides transaction size to account for liquidity? What is your opinion about whether a specific additional factor (e.g. issuance size, frequency of trading) could be considered for determining when the regime or a threshold applies? Please justify.

As discussed in our response to question (40), Argus believes that it is vital to fully factor in:

- i) the existing degree of post-trade price transparency;
- ii) the level of buy-side and sell-side perceived need for greater post-trade price transparency; and
- iii) the results of a rigorous impact analysis including on liquidity

(46) What is your opinion about applying these suggestions [on improving the quality of raw data and ensuring it is provided in a consistent format] to non-equity markets? Please explain the reasons for your views.

As the consultation paper makes clear in its introduction to section 4, "data consolidation is primarily considered to be a challenge in equity markets... Experience since the implementation of MiFID shows that the reporting and publication of trade data in shares is not living up to this expectation."

Argus is not aware of any evidence that data consolidation is considered problematic in OTC energy commodity markets covered by MiFID. This includes markets currently regarded as OTC (ie neither traded on Regulated Markets nor MTFs), but which could be captured by a new broader category within MiFID of 'organised trading facility' — such as many OTC energy derivative markets served by brokers.

In the absence of any evidence of market failure or a perceived need among market participants for improved data consolidation in OTC energy markets covered by MiFID, Argus cannot see any requirement or justification for extending the consultation's suggestions to these markets.

Argus notes that nothing in the above comments would impact on regulators' abilities to have unfettered access to a full dataset of transactions for regulatory oversight purposes. This is provided by MiFID's Transaction Reporting regime and further under the EMIR regulations.

(50) What is your opinion about applying any of these suggestions [on reducing the cost of post trade data for investors] to non-equity markets? Please explain the reasons for your views.

Argus is not clear whether these proposals are directed at organised trading venues (ie currently Regulated Markets and MTFs), or more widely. Argus and other PRAs provide effective and efficient post-trade transparency services, on a competitive basis, for OTC energy markets.

To the extent that the consultation may be referring to OTC post trade data, as in our response to question (46), Argus is not aware of any evidence that post-trade data costs in relation to OTC energy commodity markets covered by MiFID are excessive. The International Swaps and Derivatives Association (ISDA) has stated that PRA subscription fees are reasonable, as the market is composed of professional market participants.

Competition between PRAs ensures that standards are maintained and costs of service provision remain reasonable. Competition also ensures that PRAs continue to innovate in the provision of price transparency services that are reliable and relevant to the market.

In the absence of any evidence, Argus cannot see any requirement or justification for extending the consultation's suggestions to these markets.

(59) What is your opinion about the introduction of a consolidated tape for non-equity trades? Please explain the reasons for your views.

As discussed in responses above, Argus believes that any proposal to introduce a consolidated tape for any particular asset-class or instrument must consider:

- i) the existing degree of post-trade price transparency
- ii) the level of buy-side and sell-side perceived need for a consolidated tape
- iii) the results of a rigorous impact analysis including on liquidity and number of market participants

In respect of OTC energy derivatives covered by MiFID, Argus is not aware of any evidence that post-trade price transparency is considered problematic. Nor is it aware of any perceived requirement from market participants for a consolidated tape in these markets. Nor has Argus seen any impact assessment looking at the effects, including on market liquidity, of the introduction of a consolidated tape for these markets.

Given the absence of evidence, perceived needs and an impact assessment, Argus cannot see any requirement or justification for extending the consultation's suggestions on a consolidated tape to OTC energy markets covered by MiFID.

Given that OTC energy derivatives markets are specialist and fragile markets, Argus has particular concerns that the introduction of a consolidated tape would lead to a significant loss of

market liquidity, as market participants either chose to leave the market because of the overall regulatory cost burden or move to trade in more lightly regulated jurisdictions. By institutionalising particular reporting formats, a consolidated tape also risks fossilising the markets and removing their ability to innovate. This would be to the direct detriment of energy producers and consumers, who rely on the energy derivatives markets to develop innovative instruments that respond to evolving hedging requirements.

Argus notes that nothing in these comments would impact on regulators' abilities to have unfettered access to a full dataset of transactions for regulatory oversight purposes. This is provided by MiFID's Transaction Reporting regime and further under the EMIR regulations.

(63) What is your opinion about requiring organised commodity derivative trading venues to design contracts in a way that ensures convergence between futures and spot prices? What is your opinion about other possible requirements for such venues, including introducing limits to how much prices can vary in given timeframe? Please explain the reasons for your views.

Argus agrees with the proposal to require organised commodity derivative trading venues to design contracts in a way that ensures convergence between futures and spot prices. This is essential to ensuring an orderly market, particularly approaching and on contract expiry.

Argus notes that in relation to energy commodities, in cases where a contract is cash settled and has no provision for physical delivery, an effective way to ensure this price convergence is for the contract final settlement price to directly reference a robust independent spot price index, such as those provided by PRAs.

However in the context of energy markets, Argus strongly disagrees with the idea of introducing limits to how much prices can vary in any given timeframe. This would be extremely disruptive to a market's ability to find the clearing price of energy and ensure supply meets demand. It would result in less orderly markets and could threaten physical energy supply. For example, it is quite normal for prices in the power market — where there is little ability for storage — to move extremely sharply in order to ensure extra supply is brought on-stream in a period of unexpected demand surge. Indeed power and gas market prices can go negative — where suppliers are willing to pay buyers to take delivery of the commodity — in order to ensure supply and demand are in balance. The imposition of price movement limits would threaten this orderly process and could put physical supply under risk.

Argus further notes that the consultation paper says: "Commodity derivative contracts traded on organised trading venues are generally the most liquid, with the broadest participation by users and investors, and can serve as a benchmark price setting and discovery function feeding into, for example, energy and food prices for EU users and consumers."

Argus believes that while commodity derivative contracts such as futures and swaps are vital risk management instruments for the market, they are generally not the most appropriate benchmarks for use in pricing of physical energy supplies. More appropriate benchmarks are those reflecting market prices of spot physical supplies.

(66) What is your opinion on whether to classify emission allowances as financial instruments? Please explain the reasons for your views.

Argus believes that emissions allowances should not be classified as financial instruments.

Emissions allowances are spot contracts in the actual commodity — ie in certificates giving the right to emit one tonne of CO2.

Articles 38(1) and 38(2) of the MiFID Implementation Regulation (EC1287/2006) make clear that spot commodity contracts are not classified as financial instruments for the purposes of MiFID.

The Commission is rightly concerned with serious failings in the EU ETS and will no doubt want to consider measures to deal with this. DG CLIMA's upcoming review is the best place to recommend further legislative proposals to the EU ETS.

Concluding remarks

In conclusion, Argus would like to take the opportunity to re-confirm its continuing availability to assist the Commission as the review of MiFID progresses, in order to ensure the safe and effective functioning of Europe's energy derivatives markets, while avoiding any unintended consequences such as damage to existing transparency infrastructures or market liquidity.

Yours faithfully



Adrian Binks
Chairman and Chief Executive
Argus Media Ltd

Appendix Price reporting agencies

Argus is a leading European energy price reporting agency (PRA). The company is an independent provider of market price information, data and market commentary for European and international natural gas, electricity, crude oil, petroleum products, emissions and coal markets.

Argus' assessments of open-market OTC energy prices are extensively used by European and other governments¹ as independent references for taxation and other purposes, by major energy producers and consumers as price references in long-term supply contracts, and by market participants for portfolio mark-to-market, counterparty exposure management and a wide range of investment and market analysis purposes.

Argus operates in an open, competitive and efficient marketplace of price reporting agencies. These agencies are long established, respected and extensively used providers of post-trade price transparency on energy markets. Other price reporting agencies include Platts, Icis (including Icis-Heren), OMR, Opus, Kortess, APPI and Rim. Thomson Reuters and Bloomberg also compete in this space.

Argus was founded in 1970. It has European staff in London (HQ), Hanover, Paris, Bucharest, Porto, Rome, Stockholm, Vienna, Warsaw, Kiev, Moscow. Its reports are available on a non-discriminatory basis to anyone subscribing.

One primary function of PRAs is to help level the playing field between participants in the OTC energy markets by providing subscription access, on standard terms, to post-trade price information. So Argus is committed to, and is an active proponent of, market transparency.

On a daily basis, Argus' well-trained expert market reporters identify prevailing prices in OTC energy markets through the application of detailed and rigorous methodologies. These are publicly available online at www.argusmedia.com/methodology. The company has robust governance and operates a rigorous and transparent controls framework. A global compliance officer oversees a rolling programme of audits and ensures full adherence to the company's compliance policy — available at www.argusmedia.com/compliance.

Further information on Argus can be found at www.argusmedia.com.

¹ Examples:

- The UK government uses Argus prices in assessing statutory market values for non arm's length sales of North Sea crudes — see Oil Taxation (Market Value of Oil) Regulations 2006
- The Belgian ministry of economic affairs uses Argus prices in its formula to set the maximum values that can be charged for petroleum products and LPG within Belgium
- Saudi Arabian, Kuwaiti and Iraqi state-owned oil companies use the Argus Sour Crude Index (ASCI) price as the benchmark price for all grades of crude oil sold to US customers
- The Russian government uses Argus prices in its formulas to set export duty levels for crude, petroleum products and LPG