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Essen, 27 June 2022

#### **Review of EMIR clearing threshold for commodities**

Dear Executive-Vice President Timmermans,

We are contacting you with regard to the review of the clearing threshold for commodities ("EMIR CCT") under the Regulation (EU) No 648/2012 ("EMIR"). The European Securities and Market Authority ("ESMA") has a mandate to periodically review the EMIR clearing thresholds and update them where necessary, to ensure that these thresholds remain appropriate. We are of the opinion that this review offers an opportunity to implement changes which would facilitate the energy transition, enhance European competitiveness and improve the functioning of markets, whilst safeguarding transparent and safe financial markets.

On 3 June 2022, ESMA published its final report on *EMIR RTS on the commodity derivative clearing threshold* (ESMA70-451-114) following a public consultation. ESMA has proposed to immediately increase the EMIR CCT from € 3 bn to € 4 bn and suggests further EMIR reforms. While we believe that the proposal to increase the EMIR CCT should have been much more ambitious, we welcome this ESMA report in many other aspects. It acknowledges the energy industry's concerns and the urgency to increase the EMIR CCT to remedy the effects of changed conditions of energy markets. Furthermore, we support ESMA's recommendation that "only derivatives not cleared at an authorised or recognised CCP should count towards the [EMIR C]CT".

In this context EFET has commissioned a study by Frontier Economics and Luther law firm ("Study"), which we enclose to this letter for reference. The Study aims, on a scientific basis, to substantiate the energy industry's request for an EMIR CCT increase to € 12 bn and also sets out options for further EMIR reforms. We support both the findings and conclusions of this Study.

The EMIR CCT, which encompasses energy products such as electricity, natural gas and carbon emission allowances, was initially set at € 3 bn in 2012 and has remained unchanged ever since (despite changing market conditions). The low level of the prevailing EMIR CCT creates a stark choice for many European non-financial firms: They either meet costly and burdensome NFC+-EMIR requirements or restrict their activities to avoid breaching the EMIR CCT. Such a curtailment of business can have adverse effects on market liquidity and limit the options for renewable investors, who need to hedge their investments in order to be able to access external funds.

The Study finds that the current EMIR CCT level is too low for three reasons:

- It does not reflect the changed energy market conditions in 2022 as compared to 2012. It has neither been adapted to the drastic increase in energy prices nor to the effects of Brexit on the re-classification of derivatives executed on UK markets as OTC derivatives.
- It is not suited for facilitating the European energy transition and achieving the climate targets of the European Green Deal. The European Green Deal requires hundreds of billions of euros' worth of investments in the energy sector in the current decade. Private investments in renewable energy will play a key role. As government support phases out, the availability of market-based opportunities for reducing risks (such as OTC derivative trading) becomes increasingly important to make new renewable investments financeable. However, the prevailing EMIR CCT severely restricts energy companies from offering hedging solutions to renewable investors. For example, a single financial PPA, an over-the-counter derivative which is in the scope of EMIR, for a large-scale offshore wind park can lead to a company exceeding the CCT of € 3 bn.
- It puts EU energy companies at a competitive disadvantage as EMIR provides the most restrictive regulatory standards for OTC commodity derivative markets regulation among G20 jurisdictions.

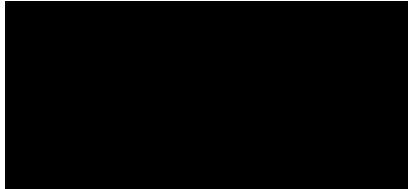
The Study concludes by recommending an immediate and permanent increase of the EMIR CCT to a minimum of € 12 bn to at least compensate for energy price increases. Moreover, the Study recommends further EMIR reforms to facilitate the financing of the fast-growing private renewable investments needed for Europe's transition into a low-carbon economy. The Study provides several proposals for relevant changes to the EMIR framework and particularly supports the change that derivative trades which are centrally

cleared by an authorized or recognized central counterparty should be excluded from the scope of derivatives that contribute to the EMIR CCT.

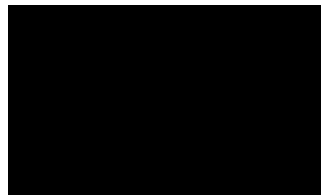
We would welcome the opportunity to explain to you the above-mentioned proposals to make EMIR fit for purpose, which have been substantiated in the attached independent scientific Study. We would be grateful if you could propose to us suitable dates and times for a meeting in person or a video conference.

Best regards,

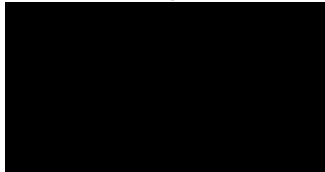
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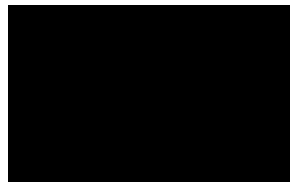
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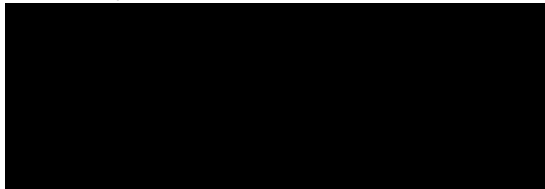
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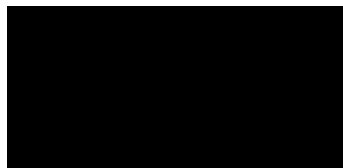
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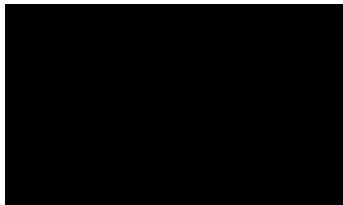
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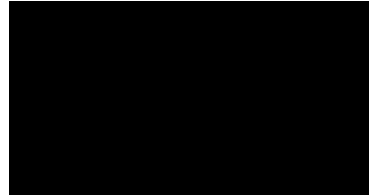
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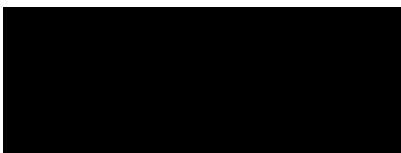
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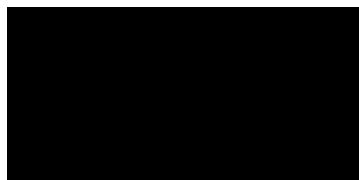
RWE Supply & Trading GmbH



Statkraft Energi AS/Statkraft Markets GmbH



Verbund Energy4Business GmbH



This letter also goes to:

Mairead McGuinness, Commissioner for financial services, financial stability and Capital Markets Union  
Kadri Simson, Commissioner for Energy, developing an integrated, interconnected and properly functioning European energy market

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