Question	Country	Answer
Question 5: Do you have other approaches in mind to address the risks mentioned under 4.?	(01) BE	–
	(02) DK	No
	(03) DE	No
	(04) EL	No
	(05) ES	No, at this stage, it is not envisaged to develop a specific regime covering the commodities business or the institutions participating in that business.
	(06) FR	None
	(07) IE	–
	(08) IT	–
	(09) LU	–
	(10) NL	We do not have other approaches in mind to address the risks mentioned under 4.
	(11) AT	In future, risks will be covered according to the Basel II provisions and the MiFID.
	(12) PT	At the moment the prudential regulation is under revision following the new regime approved through CRD (Directive 2006/48/EC and Directive 2006/49/EC). However, a specific regime covering the commodity business is not envisaged.
	(13) FI	–
	(14) SE	–
	(15) UK	No, though we remain open minded to alternative risk mitigation approaches and look forward to discussion through our membership of the CFCB subgroup.
	(16) CY	None at present, although we shall follow the methodologies specified in directives 2006/48/EC and 2006/49/EC.
	(17) EE	–
	(18) HU	–
	(19) LV	No
	(20) LT	–
	(21) MT	None
	(22) PL	–
	(23) CZ	No
	(24) SK	n/a
	(25) SI	–
	(26) LI	No
	(27) NO	See 1d)
	(28) IC	No
	(29) BU	–
	(30) RU	

Question	Country	Answer
Question 6. What could be appropriate methodologies to address these risks?	(01) BE	–
	(02) DK	n/a
	(03) DE	Standard methods for commodity risks in the CAD are not considered appropriate for energy, for example: charges for basic risk (gap risks) are too high, when structured contracts are hedged by standard exchange products; inter commodity hedges are not acknowledged; methods for calculating capital charges for market risk in non-commodity exotics needed, risk consolidation needed, when banks do physical trading business in separate entities (?),
	(04) EL	n/a
	(05) ES	We have not enough experience in this field so far.
	(06) FR	–
	(07) IE	–
	(08) IT	–
	(09) LU	–
	(10) NL	n/a
	(11) AT	Ad a: no experience so far. ad b) to e): standard best practice in banking business (cf. “guidelines on bank wide risk management – ICAAP”, www.fma.gv.at; www.oenb.at/de/img/lf_icaap_englisch_gesamt___tcm14-39190.pdf)
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	n/a
	(16) CY	Those specified in directives 2006/48/EC and 2006/49/EC.
	(17) EE	–
	(18) HU	–
	(19) LV	n/a
	(20) LT	–
	(21) MT	–
	(22) PL	–
	(23) CZ	See question 4
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	–
	(28) IC	–
	(29) BU	–
	(30) RU	

Question	Country	Answer

Question	Country	Answer
7.1. Are there some regulatory or market based risk mitigants, for commodities business or firms conducting commodities business? What do you think are the most effective ones?	(01) BE	–
	(02) DK	–
	(03) DE	Regulatory mitigants as described above, other mitigants: (OTC) clearing at EEX, the participants of the energy markets are to a great number state owned (at least partially, municipal utilities): so local authorities have a close look on risk the companies are facing
	(04) EL	–
	(05) ES	The clearing house assumes (concentrate) all risk against the buyer and the seller, for doing that the clearing house demands traders to include margin call. And also to be considered as a participant in the market some strict requirements are required as any other clearing house. Any non-financial institution which is member of an official secondary market in futures and options with non-financial underlying must meet the requirements of speciality, experience and solvency (article 59 of the Securities Markets Law). Moreover, industrial members are only allowed to operate on its own.
	(06) FR	One of the most effective mitigant is the right use of call margins which are most of the times included in the contracts. One question linked to this thema is the funding of call margins which transforms market risk into credit risk. - It should be noted that under French law (according to article L431-7 of the French monetary and financial code), the deposits and margin calls related to OTC trades on financial instruments (including commodity derivatives) benefit from a specific protective legal regime, subject to some eligibility conditions (one of the counterparty must be an investment service provider or equivalent, trades conducted under standard master agreements such as ISDA or FBF). In case of insolvency of one of the counterparties, the deposit and margin calls transferred to the other counterparty remain outside of the insolvency procedure concerning the defaulting party and the resulting net position is considered as property of the non-defaulting party. The setting up of such a solution, on a European scale, for deposits and margin calls could be a risk mitigant.
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	Firms can mitigate their risk by taking hedging positions and settling through clearing houses.
	(11) AT	n/a
	(12) PT	The transactions are cleared through a clearinghouse.
	(13) FI	–
	(14) SE	–
	(15) UK	For a summary of the UK regulatory risk mitigation regime for commodities see answers to questions 1 and 4. Additionally, we note: (a) the FSA imposes standards on the MTFs; and (b) we have in place a Market Abuse Regime that applies to all regulated markets and the commodities recognised investment exchanges. **There are a number of market based risk mitigants including: a)** Margining imposed by clearing houses, b) Bilateral margining or other collateral arrangements in OTC transactions, c) Credit controls, d) Netting agreements
	(16) CY	n/a
	(17) EE	–
	(18) HU	–
	(19) LV	–
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	General prudential rules, e.g. capital requirements
	(24) SK	n/a
	(25) SI	–
	(26) LI	No
	(27) NO	Risk management is taken care of by clearinghouses. Kredittilsynet believes this to be the most effective way of risk control of the companies and the entire commodity derivatives market. This requires prudential supervision of clearinghouses and requires supervision of the risk management in the clearinghouse. The total risk in the clearinghouse must be compared to the capital requirements for the clearing business so that potential losses may be covered by the equity capital. The aim is to minimize the systemic risk the concentration of risk the clearinghouse represents
	(28) IC	–
	(29) BU	–
	(30) RU	

Question	Country	Answer
7.2. Are these markets subject to specific prudential legislation?	(01) BE	Once derivatives will be traded, the market will be subject to the control of the CBFA.
	(02) DK	–
	(03) DE	Clearinghouses need to have a licence from BaFin or at least by local authority (Länder). They are required to have a sound risk management system (including sufficient collateralisation).
	(04) EL	–
	(05) ES	Yes, these markets are subject to the Spanish Securities Markets Law.
	(06) FR	These markets are not subject, in France, to specific legislation.
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	Not the EnDex itself, but the members are (see under 1).
	(11) AT	n/a
	(12) PT	Yes
	(13) FI	
	(14) SE	–
	(15) UK	Generally, no.
	(16) CY	–
	(17) EE	–
	(18) HU	Similar requirements as to investment service providers.
	(19) LV	–
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	General prudential rules, e.g. capital requirements
	(24) SK	n/a
	(25) SI	–
	(26) LI	There are no such markets in Liechtenstein.
	(27) NO	Yes, as described in 7.1
	(28) IC	–
	(29) BU	–
	(30) RU	

Question	Country	Answer

Question	Country	Answer
7.3. Are these markets subject to specific prudential supervision?	(01) BE	The prudential treatment of commodity business, in particular for gas and electricity, should take into account the various activities that can be involved, which do not need to be in the scope of prudential regulation. This business can only involved pure financial transactions but also physical activities and asset control.
	(02) DK	–
	(03) DE	Yes: ECC is under prudential supervision and additionally under market supervision
	(04) EL	–
	(05) ES	These markets are under the supervision on the Spanish Securities Markets Commission.
	(06) FR	These markets are under the supervision of the French Financial Markets Authority. Moreover, Euronext is a specialized financial institution (which is a French specific category of licensing) and Powernext (Electricity, CO 2) is an investment firm ; these two institutions are both under the supervision of the French Banking Commission and the French Financial Market Authorities.
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	Not the EnDex itself, but the members are (see under 1).
	(11) AT	No
	(12) PT	The Iberian Derivatives Market (OMIP) is under supervision of Comissão do Mercado de Valores Mobiliários (Securities Market Commission).
	(13) FI	
	(14) SE	–
	(15) UK	Yes, see answers to questions 1 and 4.
	(16) CY	–
	(17) EE	–
	(18) HU	Similar supervision as regarding investment service providers. The supervision and regulatory reporting obligations are in line with the extent of the risk of the operation.
	(19) LV	–
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	Off-site and on-site supervision in relation to general prudential requirements
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	Yes, as describe in our answer in 7.1.
	(28) IC	–
	(29) BU	–
	(30) RU	

Question	Country	Answer
Question 8: What are the differences in terms of prudential risk between the different types of firms mentioned under 1.? Please specify in which way and to which extent these risks differ from the risks addressed by the prudential regime set out in the CRD	(01) BE	The prudential treatment of commodity business, in particular for gas and electricity, should take into account the various activities that can be involved, which do not need to be in the scope of prudential regulation. This business can only involved pure financial transactions but also physical activities and asset control.
	(02) DK	The Danish FSA has no experience in this field.
	(03) DE	The risks, market participants are facing, are quite comparable, even though some industrial traders have additional possibilities to minimize risk through "physical options". But the decisive question is: Do different firms also impose the same risk on the financial market if their own market risk or counterpart risk would materialise? Banks and traders aren't similar in this aspect. (e.g traders don't have to care for customers deposits). And another important question is: can risk limitation be effective? We would subscribe this for banks, but energy traders are exposed to vital risk not being covered by prudential requirements. (e.g. there is no groupwide risk consolidation for commodity traders). The target of regulators can't be to prescribe risk management for the sake of its own. What we should achieve is market stability and investor protection.
	(04) EL	None.
	(05) ES	n/a
	(06) FR	The risk is the same for all the intermediaries
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	n/a
	(11) AT	No differences (integrated prudential supervision)
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	Systemic Risk and Market Confidence: Banks and ISD firms are currently subject to capital requirements under FSA rules. The key differentiating factor between banks and all other firms dealing in commodity derivatives is the concern of systemic risk. This risk stems from the unique nature of banks' balance sheets and, more importantly, the pivotal role that banks play in the payment system. For example, the news of one bank failure can create a 'bank-run' or panic in otherwise solvent banks. Inter-bank markets and transactions, particularly through the payments system, mean that as one bank fails, the effects of its failure are rapidly transmitted to other banks. The important role that banks have economically, therefore, means that the failure of a large bank could involve significant disruption to the wider economy. ISD and specialist commodity firms do not pose similar systemic risks. Market confidence concerns may be higher for some clearing brokers or oil market participants (likely to be MiFID Article 2 exempt), relative to other commodity derivative firms. Failure of a large oil market participant (such as a BP or a Shell) may also dent market
	(15) UK	Market commentary suggests that these firms contribute to a sizeable proportion of derivatives trading activity and their failure can impact market behaviour of other participants. Other players, such as arrangers would appear to pose little market confidence issues given that they simply introduce counterparties.
	(15) UK	Market Risk: Some specialist commodities firms differ from banks and ISDs in that they do not have exposure to market and position risk. For instance, arrangers do not hold positions and name passing brokers, which merely introduce trading counterparties to each other, do not hold any positions of their own. Some Article 2 exempt firms (e.g. trading subsidiaries of large oil corporations) and Article 48 exempt firms (e.g. clearing brokers) take on market risk and position risk similar to that of brokers and banks dealing in commodity derivatives. While these firms take on market risk, the nature of the market risk may be different from that addressed in the CRD. For example, a recent KPMG report (2006) suggests that capital requirement for market risk, under CRD, is not sensitive to other (and potentially more important) risks that commodity derivatives firms face (e.g., volumetric risk). This shortcoming suggests that application of CRD-type requirements to some firms may not be commensurate with the market risks faced by these firms and could possibly contribute to regulatory arbitrage.
	(15) UK	Counterparty risk: Banks and ISD firms take on credit or counterparty risk when dealing in commodity derivatives. Article 2 exempt firms (e.g. trading subsidiaries of large oil corporations) and Article 48 firms (e.g. clearing brokers) pose similar counterparty risks. For banks and ISD firms, capital requirements are designed to address systemic risk that could arise from the failure of such firms stemming from significant credit losses. These are specifically addressed, for example, by the CRD, which requires capital to be held for settlement and counterparty risks. The CRD capital requirements for settlement and counterparty risks, however, were not designed with specialist commodity firms' practices in mind and, as a result, may not be appropriate for such firms. For instance, settlement terms are generally longer for oil and energy trading firms, compared to the metal traders. Further, such firms typically trade with counterparties that are unrated (KPMG, 2006). However, these are established market practices and do not necessarily suggest higher risks imposed by such firms.
	(15) UK	Because clearing brokers (some of which are likely to fall under Article 48) provide liquidity and accelerate the execution of transactions, their failure could be of broader significance. Operational Risks: Operational risks can be a significant component of risks faced by Article 2 exempt firms i.e. the risk in operating the physical assets. These operational risks are different in nature from those faced by banks and ISD firms.
	(16) CY	There are no differences in the regulation of the firms mentioned in 1 above.
	(17) EE	–
	(18) HU	Operational risk: The record keeping system of the investment service providers is more accurate than that of the commodity exchange service providers.
	(19) LV	The prudential regime in Latvia does not differ from the prudential regime set out in the CRD.
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	n/a
	(24) SK	n/a
	(25) SI	–
	(26) LI	In Liechtenstein there are only credit institutions that conduct commodity business on behalf of their clients.
	(27) NO	See the answers in 7 a)
	(28) IC	n/a
	(29) BU	–

Question	Country	Answer
	(30) RU	

Question	Country	Answer
Question 9: Where do these differences come from? From the nature of activities in the commodities market? From the other business carried out by these firms?	(01) BE	–
	(02) DK	n/a
	(03) DE	The risk appetite on the commodities market is much higher, which doesn't seem to be a danger for the market; a couple of firms have other means to minimize risks such as "physical options" or they have owners which would be able to compensate losses. For the time being no financial energy trader could survive by just providing services in financial commodity derivatives. All the firms are subsidized by their parent companies, they share their prosperity as well as their risks.
	(04) EL	n/a
	(05) ES	n/a
	(06) FR	n/a
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	n/a
	(11) AT	No differences.
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	These differences in prudential risks come from both the nature of activities of the commodity market participants and nature of their other businesses. For instance, Arrangers (such as EMPs, which are likely to be Article 2 exempt) and Name passing brokers (e.g. Article 48 exempt) only introduce counterparties and therefore pose less prudential risks compared banks, ISD firms, oil market participants (likely to be Article 2 exempt) and clearing brokers. As evident from this description, there are also differences within different types of specialist commodities firms that are grouped in a single category. For example, arrangers take on little counterparty and market risk, while the market and counterparty risks of oil market participants can be significantly higher, as they actively take on positions for proprietary trading purposes. Both of these firms could be MiFID exempt under Article 2.
	(15) UK	Therefore, a broader categorisation that looks at the nature of activities of these firms is more useful. Differences also come from the nature of the other business carried out by the firms. Systemic risk concerns for instance for banks, generally do not arise out of their commodity derivatives business, which in some respects is similar to that undertaken by ISD, Article 2 and Article 48 firms. Instead, these concerns arise from the pivotal role of banks in the payments systems. Differences in the prudential risks also arise within similar types of firms, depending on whether they trade OTC or over the exchange. Most clearing brokers trade on exchange (mainly LME) and there is a lower risk of counter-party risk because all trades are protected by the margin funds held at the LCH. Where trading is OTC, there is greater risk of customer loss and greater difficulty in recreating positions. There is also higher counterparty risk on OTC trades.
	(16) CY	n/a
	(17) EE	–
	(18) HU	The particular reason is the size of the mentioned institutions
	(19) LV	n/a
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	n/a
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	See the answers in 7 a)
	(28) IC	n/a
	(29) BU	–
	(30) RU	

Question	Country	Answer
Question 10: Is a different prudential treatment of firms mentioned under 1. justified and if so on which basis? Please indicate in particular whether or not you apply different requirements for the fitness and properness of the managers of the firms	(01) BE	–
	(02) DK	The Danish regulation does not specify different requirements for the fitness and properness of the managers of the firms.
	(03) DE	If a trader serves no retail or investment clients, but only other participants of the market; capital charges aren't necessary. To foster the stability of the market (incl. physical market) qualitative requirements (like in large exposure rules Art. 45 CAD) are preferable. These could be applicable also to physical traders.
	(04) EL	n/a
	(05) ES	n/a
	(06) FR	Commodities are exchanged only between specialists who have a good knowledge of these markets : as a consequence, the risk for the investors is less important than with other financial products. So, a different prudential treatment of firms mentioned under 1. is certainly justified with exceptions to CRD for firms which are part of a non financial group and trade commodities only with the group, for firms which trade on own account financial instruments relative to commodities.
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	n/a
	(11) AT	See 8 and 9.
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	The market failures that motivate prudential regulation of financial firms generally fall into two broad classes: negative externalities and information asymmetries. The current prudential regime imposes capital requirements on those firms where it has concerns of systemic and non-systemic risks, along with any information asymmetries. The specialist commodities firms pose less systemic financial risk relative to banks. While there may not be strong economic arguments to expect a systemic financial risk of failure from exempt commodity investment firms, there may nevertheless be nonsystemic risks arising from their operations. However, despite this the significance and extent of non-systemic risks are lower than that of banks or large ISD firms. Financial collapse elsewhere can endanger the assets and threaten solvency of these investment firms if client assets are closely associated with those of the firm. This is particularly true for those investment firms dealing on their own account, for instance own account traders or trading subsidiaries of large oil corporations.
	(15) UK	However, as argued earlier, these failures are purely of a non-systemic nature (as witnessed from the case of Enron), which would not provide a strong justification for prudential regulation. Some exempt commodity firms such as OTC name passing brokers that only introduce counterparties should also pose little of the above risks. Even if a firm fails, customers can still trade through other brokers. However, as demonstrated by the case of Enron, there may be implications for the size of the market. It has been suggested that a different prudential regime should be explored given the need to protect retail investors and end consumers, especially if there are information asymmetries present. However, with regard to the latter, market regulators (such as Ofgem) have rules in place to ensure the eventual supply of the commodity to the consumer in case of a firm failure. On the former, there is insufficient evidence of direct retail investor participation. If however, there are retail investors in this market, they would be dealing with brokers (most likely banks or investment firms which are already subject to prudential requirements).
	(15) UK	However, if they do go through non-regulated clearing brokers, for instance consumer protection concerns will be higher. This concern will be lower in exchange traded transactions because the exchange stands behind them. The criteria for assessing the fitness and propriety of approved persons will apply as it does for all firms for managers of energy market and oil market participants who are currently non-ISD. That in assessing fitness and propriety, the FSA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates, is also relevant. Except for this subjective approach, there are no distinctions in the assessment of individuals' fitness and propriety whether managing in Banks, ISD investment firms, IPRU (INV) Ch 3 firms, EMPS or OMPS.
	(16) CY	n/a
	(17) EE	–
	(18) HU	No, there isn't, but risk based approach within the supervision.
	(19) LV	n/a
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	n/a
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	See the answers in 7 a). - No specific requirements are applied to managers unless the firm is under supervision because of activity related to other business areas. If so, then in accordance with Norwegian legislation there may be fit and proper requirements for the managers of the firm dependent on the type of firm – credit institution and investment firm, yes – others, maybe.
	(28) IC	n/a
	(29) BU	–
	(30) RU	

Question	Country	Answer

Question	Country	Answer
Question 11: Could a different prudential treatment of the firms mentioned under 1. jeopardize the functioning of the markets?	(01) BE	–
	(02) DK	Currently the market is immaterial in Denmark.
	(03) DE	For banks and commodity traders: no, as we experience in Germany nowadays; for financial commodity traders and physical commodity traders: yes. Financial commodity trading is commodity trading by slightly other means. Both traders are direct competitors on the commodities market. Strict financial requirements would put financial traders at a big disadvantage.
	(04) EL	n/a
	(05) ES	n/a
	(06) FR	See under 12
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	The reputation of the markets could be harmed.
	(11) AT	See 8 and 9.
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	Yes e.g. we understand that a proposal to remove regulatory capital requirements was mooted at a meeting last year with some LME brokers who were "appalled" at the implications for their credibility, believing it would result in a major loss of business. However, a market failure could not yet be proven beyond a reasonable doubt.
	(16) CY	There are no such markets in Cyprus at present, therefore we are not in a position to provide further guidance.
	(17) EE	–
	(18) HU	n/a
	(19) LV	n/a
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	n/a
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	No as far as we can see.
	(28) IC	n/a
	(29) BU	–
	(30) RU	

Question	Country	Answer
Question 12: What would be the implications of applying the same prudential treatment to all firms mentioned under 1.?	(01) BE	–
	(02) DK	n/a
	(03) DE	Most of the industrial traders would have to leave the market, because the capital costs were too high
	(04) EL	n/a
	(05) ES	n/a
	(06) FR	For question 11 and 12, we should take into consideration the need to avoid unnecessary regulatory burden especially in the context of emerging growing market as the electricity or CO 2 markets in France.
	(07) IE	–
	(08) IT	–
	(09) LU	n/a
	(10) NL	That depends on the treatment chosen. It's important that measures are proportional to the risks involved. If small, simple firms are faced with high prudential requirements, they would have to withdraw from the market and market competition would be harmed.
	(11) AT	See 8 - “same risk, same rule, same prudential supervision”.
	(12) PT	n/a
	(13) FI	–
	(14) SE	–
	(15) UK	(15) This would depend on the prudential treatment applied. As a generalisation prudential treatment should be risk-sensitive. Applying the same prudential treatment to all firms runs the risk of not be taking into account the different nature of activities, externalities and information asymmetries associated with the firms belong to different categories. For instance, applying the same type of capital requirements on energy and oil market participants for, say, settlement risks, as those imposed on banks could result in disproportionate capital requirements for these firms, since they have dramatically different settlement practices and, possibly, risk implications. Such an application could, in the extreme, result in disproportionate (and risk-insensitive) capital increases, causing market exits and therefore externalities to the economy as a whole. Additionally, the cost of holding this capital may be reflected in higher prices for consumers. It may also cause firms to relocate to other non-EU countries while fewer market participants are likely to reduce the benefits of competition.
	(16) CY	There are no such markets in Cyprus at present, therefore we are not in a position to provide further guidance.
	(17) EE	–
	(18) HU	n/a
	(19) LV	n/a
	(20) LT	–
	(21) MT	n/a
	(22) PL	–
	(23) CZ	n/a
	(24) SK	n/a
	(25) SI	–
	(26) LI	n/a
	(27) NO	–
	(28) IC	n/a
	(29) BU	–
	(30) RU	