

**Annex 3 to CEBS 2006 182 (Survey of supervisory practices for Commodities)**

**Which activities related to which underlying products listed in Annex I, C points 5 to 7, 9 and 10 of the MiFID (e.g. oil, electricity, weather) trigger what prudential requirements (e.g. capital requirements?) Please indicate whether different prudential requirements apply to different kinds of instruments (e.g. no requirements for electricity futures but for electricity options) listed in Annex I, C points 5 to 7, 9 and 10 of the MiFID. If applicable, please describe eligible methods, e.g. VaR models, for the calculation of capital requirements**

- **Supervisory requirements exist** in (01) BE, (02) DK, (03) DE, (04) EL, (05) ES, (06) FR, (07) IE, (09) LU, (10) NL, (12) PT, (14) SE, (15) UK, (16) CY, (17) EE, (18) HU, (19) LV, (23) CZ, (24) SK, (25) SI, (27) NO, (28) IC

Negative: (13) FI, (20) LT, (21) MT; (26) LI

Others: (11) AT (activities are subject to the Industrial Code); (29) BU (Current legislation does not allow CIs and IFs to carry out commodity business; after transposition of MiFID it will be allowed for IF)

- Requirements differentiate **between products** in:
  - (03) DE (commodities, weather and other non-commodity "exotic underlyings),
  - (04) EL (oil, derivatives traded on regulated market or OTC),
  - (14) SE (electricity),
  - (15) UK (oil, energy, all other commodities),
  - (19) LV (derivatives traded on regulated market or OTC),
  - (27) NO (exchange traded products)

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- Requirements differentiate **between activities** in:

Type of activity	Prudential requirements				
		No specification	Initial capital requirements	Minimum capital requirements	Others
<b>1) reception and transmission of orders in relation to one or more financial instruments</b>	(02) DK, (03) DE, (05) ES, (06) FR, (09) LU, (10) NL, (14) SE, (15) UK, (18) HU (24) SK, (27) NO, (28) IC	(09) LU, (14) SE, (24) SK, (27) NO, (28) IC	35k: (10) NL 50k: (03) DE, 50 or 150k: (06) FR 300k: (02) DK	(15) UK <sup>1</sup>	
<b>2) execution of orders on behalf of clients</b>	(02) DK, (03) DE, (05) ES, (06) FR, (09) LU, (10) NL, (14) SE, (15) UK, (18) HU, (24) SK, (27) NO, (28) IC	(09) LU, (14) SE, (24) SK, (27) NO, (28) IC	50k: (10) NL 50 or 730k: (03) DE 150k: (06) FR 300k: (02) DK	(06) FR, (15) UK (s. fn. 1)	
<b>3) dealing on own accounts</b>	(02) DK, (03) DE, (04) EL, (05) ES, (06) FR, (09) LU, (10) NL, (12) PT, (14) SE, (15) UK, (17) EE, (18) HU, (23) CZ, (27) NO, (28) IC	(04) EL, (09) LU, (14) SE, (17) EE, (27) NO, (28) IC	730k: (03) DE, (10) NL 1 Mio: (02) DK	(06) FR, (15) UK (s. fn. 1), (18) HU, (23) CZ	
<b>4) portfolio management</b>	(02) DK, (03) DE, (06) FR, (10) NL, (14) SE, (15) UK,	(14) SE, (27) NO, (28) IC	50k: (10) NL 50, 125 or 730k: (03) DE	(06) FR, (15) UK (s. fn. 1)	

<sup>1</sup> Taking into account market risk, counterparty risk, concentration risk to one counterparty, with liquidity adjustments for illiquid assets. Exceptions: adequate financial resources are sufficient for: oil market participant which is not a member of a recognised exchange or entitled to trade with other member, energy market participants whose main business consists of the generation, production, storage, distribution and/or transmission of energy and who have been granted a waiver.

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	(18) HU, (27) NO, (28) IC		150k: (06) FR 300k: (02) DK		
<b>5) investment advice</b>	(02) DK, (03) DE, (14) SE, (15) UK, (24) SK, (27) NO, (28) IC	(14) SE, (24) SK, (27) NO, (28) IC	50: (03) DE <sup>2</sup> 300k: (02) DK	(15) UK <sup>3</sup>	
<b>6) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis</b>	(02) DK, (03) DE, (06) FR, (10) NL, (12) PT, (15) UK, (17) EE, (23) CZ, (27) NO, (28) IC	(17) EE, (27) NO, (28) IC	730k: (03) DE (for underwriters), (10) NL 1 Mio: (02) DK 1.1 or 1.9 Mio €: (06) FR	(06) FR, (15) UK <sup>4</sup> , (23) CZ	
<b>7) placing of financial instruments without a firm commitment basis</b>	(02) DK, (03) DE, (06) FR, (10) NL, (15) UK, (23) CZ, (27) NO, (28) IC	(27) NO, (28) IC	50 or 730k: (03) DE 300k: (02) DK 730k: 10 1.9 Mio. €: (06) FR	(15) UK (s. fn. 4), (23) CZ	
<b>8) operation of multilateral trading facilities</b>	(02) DK, (03) DE, (15) UK, (27) NO, (28) IC	(27) NO, (28) IC	50k: (03) DE 1 Mio.: (02) DK	(15) UK <sup>5</sup>	
<b>9) other activities</b>	(09) LU, (27) NO	(09) LU, (27) NO			

- **Eligible methods for the calculation of capital requirements** (e.g. VaR models)
  - (04) EL (VaR systems),
  - (12) PT (market risk using CAD1 or VaR model)
  - (15) UK (ISD-investment firms may calculate market risk using a CAD 1 or VaR model on satisfaction of requisite conditions, banks may calculate market risk using a CAD 1 or VaR model recognized by the FSA)

<sup>2</sup> From (20) LT(07) IE

<sup>3</sup> See fn. 1, except where the firm is a non-ISD adviser => positive tangible assets net worth and net current assets.

<sup>4</sup> See fn. 1, except where the firm is a corporate finance advisory firm => tangible net worth and net current assets respectively exceeding £ 10,000.

<sup>5</sup> See fn. 1, 3, 4 => capital requirements apply as appropriate depending on the business scope of the firm.