

18 October 2012

## **EFET Position on the Exemptions Framework for MiFID 2 and MiFIR**

The European Federation of Energy Traders (EFET)<sup>1</sup> has some serious concerns with parts of the MiFID 2 and MiFIR legislative texts suggested by the ECON Committee of the European Parliament on 26 September. The Committee's amendments to the exemptions framework do not take due account of the needs of industrial and commercial firms within the European energy sector. EFET sees that if the ECON Committee text should be adopted as it stands, it would become hardly possible for many firms, whose main group business consists of the production and/ or supply of electricity and/ or gas, to remain exempt from the MiFID licensing framework.

Especially the version of the '**ancillary activity exemption**' (Article 2(1)(d) of MiFID) voted by the Committee introduces strict limitations to the activities that non-financial firms active in the wholesale energy markets are expected to engage in. These limitations would render them practically unable to make use of derivative contracts to manage their business without falling outside the exemption.

For example, the Committee has specified the following four new criteria in Art. 2(1)(i) and 2.3a (the ancillary activity exemption and ancillary activity criteria):

- The activity should be a **minority** not only at group level, but also **at entity level**;
- The activity should not be a **significant activity** in the relevant markets;

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<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information, please refer to: [www.efet.org](http://www.efet.org).

- Firms with positions of '**systemic relevance**' (i.e. above the clearing threshold as referred in EMIR) are viewed as unlikely to qualify for the exemption;
- Non-financial firms acting as **market makers** in commodity derivatives cannot qualify for the exemption.

Particularly this last criterion is invidious and could severely damage liquidity in European wholesale power and gas markets. Market making in energy markets has played a key role in providing liquidity and allowing wholesale energy markets to develop effectively so all players have the ability to access markets to manage their risks. We fear that several European electricity and gas companies will be deterred from market making activity, if a consequence of that activity were automatic capture by the MiFID regulatory framework. In the absence of such market making, the volume of wholesale transactions and the number of participants active in the whoesale energy market will inevitably be impaired.

Therefore EFET calls upon the European Parliament to respect the need for a long-term perspective and to take a more proportionate and calibrated regulatory approach when finalizing the scope of the ancillary activity exemption available to industrial and commercial companies.

If you have any questions on this document, please do not hesitate to contact Peter Styles, Member of the EFET Board and Chairman of the EFET Electricity Committee ([P.Styles@efet.org](mailto:P.Styles@efet.org)), or Aygul Avtakhova, EFET Regulatory Associate, Market Supervision Committee Secretary ([A.Avtakhova@efet.org](mailto:A.Avtakhova@efet.org)).

On behalf of the European Federation of Energy Traders (EFET)



**Jan van Aken**

*EFET Secretary General*