

Consob's consultation on amendments to the 'Markets Regulation'

■ EFET comments - 28 February 2019

Introduction

The European Federation of Energy Traders (EFET¹) welcomes the opportunity to provide comments to the Consob's consultation on the amendments to the Market Regulation. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. We welcome Consob's proposal for amendments to the Markets Regulation, as long as this leads to a simplification and improvement of the MiFID II Framework for Italian companies.

Detailed observations

We welcome Consob's proposal to have the notification deadline on the 1st of April, as it is the case in other European countries.

Based on the consultation text, we understand that Consob amendments to the "Markets Regulation" are meant to simplify notification requirements for market participants. However, we see some ambiguity in the text proposed, as if formally refers to "calculation results".

In this context, we believe that providing detailed calculations with market participants' notification form may cause several issues. In our opinion, this would introduce a new obligation, to the disadvantage to the Italian market participants, deviating from the principles of harmonisation between the various EU member states legislation, which is one of the primary objectives of the EU Single Market.

Indeed, MiFID requires market participants to simply notify that they make use of the ancillary activity exemption. In line with this provision, no member state of the European Union has set the obligation to provide the results of the tests to the competent National Competent Authorities (NCAs).

The regulator may decide to request the calculations on the basis of which the claim to the ancillary activity exemption has been made, but this is to be done only on a case-by-case basis (always in line with MiFID provisions).

Based on the above consideration and for the avoidance of doubts, we suggest that the Markets Regulation reads as it follows:

*4. I soggetti di cui all'articolo 4-terdecies, comma 1, lettera l), punti i) e ii), del Testo Unico che non intendono sottoporre alla Consob ~~una~~ la richiesta di **autorizzazione all'esercizio dei servizi e delle attività di investimento** comunicano entro il 1° aprile di ogni anno alla Consob la volontà di servirsi dell'esenzione in virtù dell'esercizio di un'attività ritenuta accessoria rispetto all'attività principale. ~~A tal fine fornendo forniscono alla Consob una la motivazione dettagliata descrizione e valutazione le risultanze dei calcoli delle condizioni e circostanze di cui agli articoli 2 e 3 ai sensi del regolamento delegato (UE) 2017/592. effettuati in conformità alla procedura dettata dall'articolo 4 del citato regolamento.~~*

¹ 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: www.efet.org