



## EFET FACT SHEET:

*In June 2015, the European Securities and Markets Authority (ESMA) “pre-approved” the Regulatory Technical Standards (RTS) that would establish ways of working under MiFID II, the European Union’s updated markets in financial instruments legislation.*

- I. EFET and its members strongly support the goals of MiFID II: to increase transparency, better protect investors, reinforce confidence, address unregulated areas, and improve the overall functioning and oversight of financial markets.
- II. EFET also believes that efficient, integrated, transparent and liquid energy markets are vital to ensuring a secure, sustainable and competitive energy supply to European consumers. Effective competition and market accessibility at the wholesale level facilitate reliable price formation and risk hedging by suppliers and larger users of energy. In turn they allow choice for smaller consumers and underpin competition in retail markets.

### **The impact of ESMA’s proposed rules on competition and energy prices**

- III. EFET, as well as a number of European governments, is concerned that ESMA’s proposed ways of implementing this important EU financial sector legislation could have a negative impact on **competitiveness energy security, affordability and sustainability**. Adverse impacts on the degree of liquidity and on the cost of participation in wholesale markets would tend to increase energy prices across Europe. Such outcomes are in stark contrast to the policy pillars underpinning the European Commission’s stated ambitions for an EU Energy Union.
  - a. Although MIFID II includes an exemption for companies whose trading activity is “ancillary” or secondary to their primary commercial business, **the formula currently proposed to determine “ancillary” activity, gravely undermines the regulation’s original intent**. It will make many energy companies and other real economy firms subject to requirements applicable to investment banks.
  - b. This could trigger a cascade of negative impacts that would make it more difficult to deliver competitive and secure energy markets, and drive up energy prices.
    - i. For energy companies, reduced liquidity means that it will become more difficult to assess & manage risk and to obtain funding. This will increase prices and the cost of doing business which will inevitably be passed on to the European economy



through producers and consumers. (For additional details, see EFET Factsheet: Unintended Consequences)

- ii. EU electricity consumers will pay some **€5bn** every year for every one percent increase in final prices resulting from lower competition and efficiency, while EU gas consumers will pay around **€1.8bn** for every one percent increase in retail gas prices. Every hour's increase in the loss of load expectation (LOLE) per year at peak would cost Europe's consumers **€12bn**. (For additional details, see EFET Factsheet: Unintended Consequences)

### **Energy Companies are not Banks – and should not be treated as such**

- IV. Any proposed approach to implementing this legislation must recognise that **energy companies are fundamentally different from financial companies, and are already highly regulated.**
  - a. Unlike banks, energy companies invest in energy infrastructure and human capital. They are neither suppliers of credit nor are they excessively leveraged. Commodities traded by energy companies pose no threat to deposits, raise no issue of investor protection, take no deposits from private clients, and do not rely on access to central bank liquidity to meet liquidity requirements.
  - b. Energy trading is already subject to rigorous oversight through REMIT. Moreover, traders must also comply with a variety of licensing, environmental and labour laws, and the various meticulous regulations of the countries in which they operate. Existing financial regulations, such as EMIR and the Market Abuse Regulation also apply.
  - c. As these regulations already impose high standards and costs on energy companies, subjecting these companies to additional regulation intended for financial markets would lead not only to an increased regulatory burden for energy traders but also to an unsustainable cost burden. Such obligations would ultimately impact prices faced by energy consumers.

### **Addressing the challenges through fair and balanced regulation**

- V. Energy companies believe that the **trading activity thresholds proposed by EU financial regulators to define who is and who is not exempt do not acknowledge this fundamental distinction.** If enacted in their proposed form, the rules would see many companies involved in energy trading,



including small and medium-sized utilities, either being treated as if they were banks, subject to the higher costs and onerous capital requirements, or forced to reduce substantially their activity in the market.

- a. We believe the thresholds proposed by the European Securities and Markets Authority (ESMA) to determine if an energy company qualifies for the exemption are not correctly calibrated in face of the original intent of MIFID II legislation to consider an energy companies main business.
  - b. We propose a step by step approach based on the ESMA proposal to assess whether the **capital employed in the derivatives' trading is ancillary to the main business**. This approach will avoid the exit of market participants and mitigate any adverse consequences for energy markets, the wider real economy, and consumers. (see *EFET Factsheet: Unintended Consequences*)
- VI. We support the need for rigorous financial market oversight, and we are committed to working with European regulators to **develop fair and balanced regulation that supports the goal for improved financial market oversight while also ensuring efficient and competitive energy markets**, both of which benefit European consumers.