Industry needs more time to prepare for MiFID 2

The deadline for implementing the EU's revised Markets in Financial Instruments Directive is too close for energy companies to prepare properly. EU Policy & Regulation Editor **Andreas Walstad** reports from London.

INDUSTRY players have asked for more time to implement the EU's revised Markets in Financial Instruments Directive (MiFID 2) as they fear the current deadline of January 2017 will be too difficult to meet, particularly for smaller companies.

A call for the deadline to be moved back by a year was made by the Brussels-based Association of European Energy Exchanges (Europex) in a statement published last week.

Europex noted the technical advice offered by the European Securities and Markets Authority (ESMA) on implementing MiFID 2/MiFIR had been delayed by several months.

"The presumed start of the application of MiFID II/MiFIR in January 2017 will require market participants, energy exchanges, clearing houses, regulators and many others to implement major changes in their general organisation and IT systems," Europex said.

Putting into place the position-reporting and position limits within one year or less would also be difficult, Europex warned. It said experience from transaction reporting obligations under the European Market Infrastructure Regulation and Regulation on Wholesale Energy Market Integrity and Transparency have shown such measures take time.

The short timeframe for implementing MiFID 2 was widely debated at the E-mart Energy conference in Barcelona last week. Although large companies may have the resources to do it, meeting the deadline may prove too burdensome for smaller firms, delegates heard.

"Even for the likes of Shell, implementation of MiFID 2 represents an enormous challenge. We have a well-established project team in place and are able to draw upon a wide range of expertise within Shell. Smaller energy companies and utilities may not be so fortunate," said Marc Cornelius, Shell's head of compliance for Europe, Africa and Asia.

The general feeling within the industry was that the requirements needed to be implemented in the best possible way for future business operations, not just in a hurry to please regulators. Proper implementation will require time, delegates at the E-Mart conference agreed.

"Firms want to implement it [MiFID 2] well – companies take compliance and legal obligations seriously. To implement in less than 12 months – to say it is challenging is an understatement," Cornelius told delegates.

Counter-party risk

MiFID 2 – which places capital requirements and trading restrictions on energy firms – was one of several laws drawn up in response to the 2008 financial crisis. It aims to reduce counter-party risk on derivatives markets, including for commodities such as gas futures.

One key issue is that companies that do not secure exemptions from MiFID licensing would be subject to capital requirements under the EU's Capital Requirement Regulation. This means energy companies and energy-intensive industries would have to prove they have enough cash to cover trading losses, depending on their risk profile and financial structure.

In addition to capital requirements, MiFID 2 will also impose position limits on energy trading, ranging from 10% to 40% of deliverable supply. Many industrial producers that trade energy as an ancillary service will be captured by the directive, despite heavy lobbying from the industry.

Stakeholders have long argued the new obligations will be too burdensome for many companies, and that market participants may reduce trading activity or leave markets altogether. The result could be less liquidity in energy markets, which is the exact opposite of what Brussels aims to achieve.

"The obligations under MiFID 2 make it more expensive to trade, which means players will reduce activity in energy markets," Paul Dawson, chairman of the European Federation of Energy Traders, told journalists at the conference. His concerns were shared by other delegates.

"We are concerned how the capital requirements and position limits under MiFID 2 will affect liquidity, particularly in gas and electricity markets," Daniel Wragge, head of political and regulatory affairs at the European Energy Exchange, told *Interfax* at the conference.

"Nobody can predict exactly to what extent it will make an impact, but we have asked for more time to implement this directive. We think 2018 is a reasonable deadline," he added.

The European Commission has until 28 December to decide whether to adopt the technical standards proposed by ESMA. Whether Brussels will request amendments to soften the obligations or extend the deadline beyond 2017 remains unclear.

"At the moment we do not know when MiFID 2 will apply, but we are assuming 3 January 2017," Jasper Jorritsma, project leader at the Netherlands Authority for the Financial Markets, told delegates.

Egbert Laege, chief executive of Powernext, added: "MiFID 2 is meant for good reasons. As the final formulation and timelines are still outstanding, it is a moving target and it takes time to implement the process." ■

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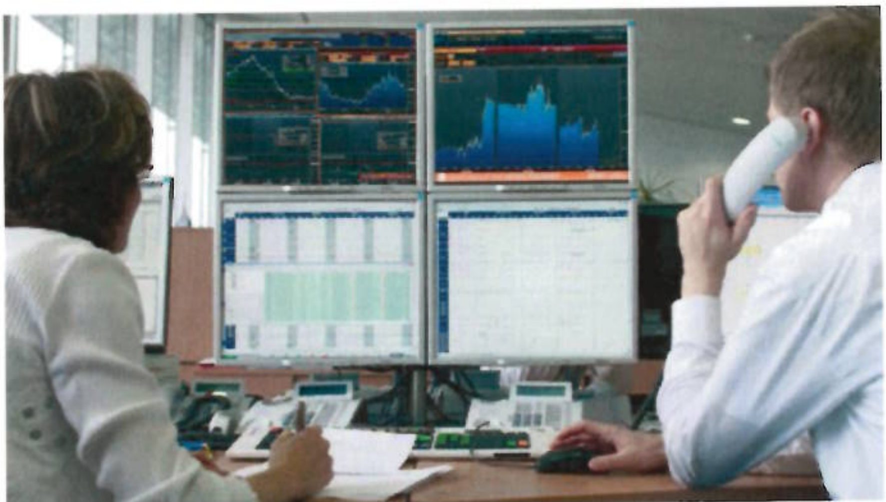

Trading at Austria's Verbundnetz Gas. The new regulation placing trading restrictions on companies. (VNG)