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Press Statement

European energy markets need appropriate treatment under proposed EU regulation of financial transactions

The members of the European Federation of Energy Traders (EFET), of Eurelectric and of Eurogas call for continued recognition that EU energy markets need appropriate treatment under the new EU financial regulatory proposals. Traded wholesale markets in electricity and gas are an essential feature of an open and liberalised European energy sector and it is crucial these markets are not undermined. EFET, Eurelectric and Eurogas (“the Associations”) are convinced that companies with a predominantly physical energy supply business do not pose systemic risk in the wider financial markets particularly where activity is mainly focused on hedging commercial risks. To this end, the Associations note the recognition from the European Commission of these principles as a positive outcome. The Associations now urge Member States and the European Parliament to maintain these key principles as they begin the process of reacting to the European Commission’s proposals.

The Associations in principle support improvements in the EU legislative and regulatory framework to enhance transparency in the energy market and maintain confidence in market mechanisms. We insist, however, that new measures must be proportionate, appropriate, and targeted at identifiable and measurable risks. Thus the Associations have supported and contributed positively to the development of the recently adopted Regulation on Energy Market Integrity and Transparency (REMIT). REMIT ensures greater transparency and oversight of trading activities in wholesale energy markets, while respecting the specificities of the electricity and gas sectors.

The Associations are concerned that proposals for a revised Directive and Regulation on Markets in Financial Instruments (MiFID and MiFIR) and a new Regulation on Market Abuse (MAR) (replacing parts of the equivalent Directive) could reverse the progress signified by REMIT. Overlapping or sector-inappropriate provisions affecting energy traders which are not financial institutions risk undermining the tailored approach of REMIT. The recognition by the European Commission that there is no justification to revise the boundary between physical and financial energy markets is welcomed although the Associations urge further work is necessary to ensure that the treatment of EUAs does not undermine this crucial market.

Non-proportionate and overlapping regulation could deter widespread participation in markets in energy futures and related instruments. That would threaten overall wholesale power and gas market liquidity, would increase overall levels of risk and reduce investment capability; this at a time when the EU is seeking to enhance further the functioning of the single market in energy, following the implementation of third EU energy legislative package. A downturn in market liquidity and depth could in turn adversely affect the degree of competition in downstream energy markets and thereby be to the direct detriment of consumers.

These adverse consequences would result in particular from:

- Mandatory clearing for all standardised OTC derivatives: market participants falling within the scope of a revised MiFID will be subject to mandatory central clearing as foreseen in the European Market Infrastructure Regulation (EMIR). This would impose a significant cash liquidity risk, which many firms will find difficult to manage.

- Imposition of capital requirements: although the European Commission has recently confirmed the specific exemptions from capital requirements until 31 December 2014¹, if these exemptions disappear, all energy companies falling under MiFID would also need to hold additional significant and costly levels of capital to cover their exposures.
- Subjection of non-financial energy supply firms to the rigours of a full licensing regime: this regime is designed for major financial institutions engaged in a wide range of derivatives markets (including instruments linked to equities, bonds, interest rates and currency exchange rates).

The Associations have urged the European Commission and national policymakers to keep those companies, whose main business is the production or supply of energy and whose activity is mainly the managing of commercial risk, exempt from MiFID. These companies use derivatives as a way of managing production and supply risks and are neither of systemic importance to the wider financial system nor do they pose any risk to private investors. To this end, the Associations recognise the proposals released by the European Commission as a positive outcome but it will be crucial that sight is not lost of these principles as we move into the long process of agreeing the new regulatory framework.

¹ See article 474 of the “PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on prudential requirements for credit institutions and investment firms PART III” available on http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/20110720_regulation_proposal_part3_en.pdf