

PRESS RELEASE

Adjust the MiFID II/MiFIR implementation timeline to reality Europex calls for a one-year delay for the application of MiFID II/MiFIR

Brussels, 25 November 2015 | MiFID II/MiFIR poses new and fundamental challenges to the business models of numerous stakeholders in the energy market. 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. All necessary modifications need to be anticipated, prepared for and implemented in due time and in full accordance with the new rules. However, the technical legislation (Level 2) that needs to provide guidance for the implementation of MiFID II/MiFIR has been significantly delayed. Parts of the Level 2 rules which are critical for energy market stakeholders will not be finalised before months, making it impossible to comply and adapt businesses and administrations before January 2017. **Europex therefore calls for a one-year postponement of the start of the application of MiFID II/MiFIR to 1 January 2018.**

Meanwhile, the Level 2 legislation should be delivered in due time, so that all involved parties can adapt and make the necessary changes.

Market parties and other energy market stakeholders need to take strategic decisions about the future of their businesses in response to the new regulatory framework. Utilities, who have so far benefited from a general exemption for commodity trading, would be obliged to obtain a MiFID license as early as in January 2017, provided that their trading activity is not considered ancillary to their main business. Given that the ancillary activity exemption in Article 2 of MiFID II depends significantly on hitherto non-disclosed market data and elements of the threshold calculation methodology that still have to be further defined, utilities are currently unable to start adapting their behaviour to the new framework. **Therefore, only 2017 trading data should be taken into consideration when calculating the future thresholds.**

In addition, Europex would like to point out that it might be impossible to implement position reporting and position limit rules within one year or less. As the experience with the implementation of both EMIR and REMIT reporting has shown, this will require considerable time and effort by all parties involved, including ESMA and the National Competent Authorities. **Position limits and reporting should therefore not enter into application before 2018.**

Furthermore, Europex remains seriously concerned that the current definition of financial instruments in relation to commodity derivatives in MiFID II is too narrow to avoid a shift of liquidity to trading in non-financial instruments. It is important to realise that the fewer contracts will be covered by the financial instruments definition, the more difficult it will be for companies still trading in financial instruments to stay below the threshold of the ancillary activity exemption which is calculated on the basis of the amount of traded financial instruments. Such a situation will trigger a vicious circle as there will be a strong incentive to drop out of the financial instruments market altogether and to switch to trading in non-financial instruments instead. In order to avoid such a vicious circle, and as advocated in the past, **Europex strongly calls for a broad and clear definition of financial instruments in relation to commodity derivatives.**

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