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EFET calls for the re-introduction of the *capital employed test* in MiFID II RTS on the ancillary activity exemption

The European Federation of Energy Traders (EFET)[1] today reinforces its calls for the re-introduction of the *capital employed test* in the Markets in Financial Instruments Directive (MiFID II). This test should be considered an additional option to determine eligibility for an ancillary activity exemption from MiFID II licensing requirements.

The tests proposed by the European Securities and Markets Authority (ESMA) in the final draft Regulatory Technical Standards (RTS) and currently under consideration by the European Commission no longer take into account the scale of the asset base and of the main industrial and commercial business of a Group (RTS 20).

This means that as a result of the ESMA proposals many non-financial companies trading in commodity derivatives on an ancillary basis are at risk of being brought under the scope of MiFID II. They would face disproportionate capital, prudential and liquidity requirements, normally applicable only to investment banks.

The consequences for the energy industry and consumer prices may be dramatic, as some firms would have to adapt or restrict their activities, while others may decide to exit the market altogether. The likely reduction in market liquidity will translate into reduced competition and market efficiency and consequently, into higher energy prices for consumers. Ultimately, the competitiveness and security of the European economy will be compromised.

"We welcome the assessment of the European Commission and ESMA to delay the implementation of MiFID II. We call on the European Parliament and Council to promptly confirm the new timetable," said Peter Styles, *Chair of the EFET Electricity Committee and Member of the EFET Board*.

EFET supports a delay of the entire MiFID II package to ensure that both regulators and businesses are able to put in place the infrastructure and processes needed to effectively meet their MiFID II obligations. The delay should also be used to improve RTS 20 with a view to delivering a well-designed and balanced framework, fully aligned with the letter and the spirit of the Level I text.

For more information on the potential impact of the final draft RTS proposed by ESMA and on the solutions proposed by EFET, see our website http://www.keepeuenergycompetitive.eu/. A **joint statement on MiFID II** co-signed by nineteen associations representing different parts of the energy industry can also be found here: http://www.keepeuenergycompetitive.eu/newsroom/joint-statement.

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[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at www.efet.org.