Press Release (PR-15-05)

Energy regulators fear increased obligations on energy traders could make Energy Union unachievable

- **Financial market (MiFID II) legislative proposals could reduce energy market liquidity**
- **Energy traders already subject to stringent regulation under REMIT and 3rd Package**

The Council of European Energy Regulators (CEER[1]) has advised the European Commission of its concerns that proposals for the Delegated Acts of a key financial market regulation[2] (MiFID II) could make it more difficult to deliver the Internal Energy Market, a pillar of the recent Energy Union Communication.

Financial Market (MiFID II) proposals could reduce energy market liquidity

CEER believes that the proposals for the MiFID II Delegated Acts could have profound negative effects on the cost of trading in the energy market and make it harder for new firms to enter the market. To achieve competition in the energy generation and supply market, firms need to have liquid wholesale gas and electricity markets to buy and sell the energy they need in a cost effective way. The changes, proposed in the current Technical Advice from the European Securities and Markets Authority (ESMA), would have the opposite effect by increasing barriers to entry, and reducing much needed energy market liquidity[3].

Energy traders already subject to stringent regulation under REMIT and 3rd Package

Energy regulators support the goals of financial regulation to improve market conduct and establish more transparent and trustworthy financial markets.

However, CEER believes that the current proposals for the Delegated Acts will narrow unduly the scope of the exemption agreed by the legislators in the primary MiFID II Regulation. This exemption recognised that firms trading wholesale gas and electricity products are already regulated under the EU Regulation on wholesale energy market integrity and transparency (REMIT)[4]. Subjecting energy traders to additional regulation intended for financial markets leads not only to an increased regulatory burden for energy traders but also to an increased cost burden, potentially reducing liquidity and undermining efforts to create a competitive Internal Energy Market.

CEER Vice President, Annegret Groebel, explained:
"*While energy regulators fully support an effective financial market oversight, we also aim to avoid duplication of regulation. Energy trading is already subject to effective supervision by REMIT. Avoiding duplication ensures effective functioning of energy trading including sufficient liquidity which ultimately results in benefits to consumers."*

The European Commission (EC) is due to adopt the Delegated Acts by June 2015. CEER calls on the European Commission, Parliament and Council, in their forthcoming discussions on the MiFID II Delegated Acts, to avoid placing additional obligations on energy traders and to take into account the associated risks to energy market liquidity and prices faced by energy consumers. This can be achieved by protecting the 'REMIT carve-out' in MiFID II as it stands.

Brussels, 20 April 2015

Ends (see Notes for Editors)

Notes for Editors:

1. The Council of European Energy Regulatory (CEER) is the voice of Europe's national energy regulators. Its members and observers are the independent statutory bodies responsible for energy regulation at national level. Visit www.ceer.eu.

2. Products that are Financial Instruments (FIs) fall under EU financial regulation. The definition of Financial Instruments is provided in the Markets in Financial Instruments Directive (MiFID), which determines the scope of financial regulation.

3. CEER is of the view that the European Securities and Markets Authority's (ESMA) Technical Advice to the European Commission regarding Section C6 ("must be physically settled") and Section C7 (contracts deemed to be "equivalent") of MiFID II goes against the spirit of the "REMIT carve out" agreed by legislators in the primary ((Level 1) legislation of MiFID II. This will lead to increased obligations placed on firms that trade wholesale gas and electricity products (who are already subject to the REMIT Regulation). Besides the regulatory burden, subjecting these firms to MiFID II could have profound negative effects on the cost of trading in the energy market. There is a need for more liquidity in energy markets. The changes proposed to Sections C6 and C7 would have the opposite effect by increasing barriers to entry, making it more difficult to deliver competitive energy markets, and have a negative impact on prices for energy consumers and on security of supply. The primary legislation of MiFID II (in Section C6) excludes from its scope certain wholesale energy products covered under the Regulation of wholesale energy market integrity and transparency (REMIT). This was agreed to recognising that wholesale gas and electricity contracts are subject to effective supervision by energy regulators with tailor-made provisions under REMIT.

4. Section 6 of MiFID II widens the scope of trading venues for which the definition of Financial Instruments applies. However, it also includes a specific exemption (the so-called 'REMIT carve out'). CEER believes that the exemption from MiFID II provided for wholesale energy products which "must be physically settled" applies to the contract itself and should not differentiate between the parties trading that contract. CEER strongly objects to any attempt to further define the exemption so as to exclude certain market participants based on which physical assets they hold. Furthermore, CEER agrees with the arguments in the ACER Recommendation (No. 01/2015 of 17 March 2015) on the criteria needed to define what "must be physically settled".

   Section 7: CEER further believes that Section C7 relating to contracts which are deemed to be "equivalent" could result in certain bilateral contracts (which allow large industrial consumers to manage their energy consumption more efficiently) being captured as Financial Instruments under MiFID II. CEER has raised these concerns in a letter from the CEER President to the EU Commissioner for Financial Stability, Financial Services and Capital Markets Union. CEER has previously responded to the ESMA public consultation on its draft Regulatory and Technical Standards also with the aim of protecting market liquidity and end consumers. Both are published on www.ceer.eu. CEER has suggested changes to ESMA's proposals which would vastly reduce the potential negative effects on electricity and gas markets, and stands ready to work with ESMA and the European Commission on revised wording which mitigates these risks.

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