RESPONSE TO QUESTIONNAIRE ON MIFID/MIFIR 2 BY MARKUS FERBER MEP

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Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by 13 January 2012.

Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	As far as trading in electricity, gas and emission allowances is concerned, EUROPEX[1] welcomes that Article 2 continues to implicitly recognise that **non-financial energy market[2] participants (e.g. utilities) depend significantly on hedging for commercial risk mitigation**, and that **they should not have to fully comply with the numerous financial and organisational requirements of MiFID II / MiFIR.** This is especially important as MiFID defines the scope of application for other existing and future legislations (cf. CRD IV/CRR, EMIR, MAD II/MAR). Energy market participants resort to energy trading for mitigating their price risk along the value chain (sourcing,

[1] EUROPEX is a not-for-profit association of European energy exchanges which represents the interests of the exchange based wholesale markets for electrical energy, gas and environmental markets. EUROPEX currently has 14 active members from European countries.

[2] By "energy market(s)" we mean electricity, gas and emission allowances wholesale markets.

		production and retail-business). **This is a usual and important commercial practice, and constitutes a necessary prerequisite for ensuring stable and reasonable prices for the real economy and end-consumers.** Although we generally support and welcome the underlying intention of Article 2, we believe that there is **room for improvement regarding the exact scope and the definition of the exemptions**: Unlike MiFID I, the current MiFID II proposal does not contain a general exemption of commodity trading any longer (former Art 2.1k). Hence, **we believe that it is of great importance that the "ancillary activity" exemption (Art 2.1i) assures that energy companies will remain outside the scope of MiFID**. Moreover, **we strongly argue in favour of a clear and qualitative definition of the notion of "ancillary activity" in Level I legislation**. With regard to the current version of the exemption text, we believe that it may create legal uncertainty for energy companies about whether or not they will fall within the scope of MiFID, and whether or not they will have to comply with the various requirements. **Concerning the exemption for firms "dealing on own account" (Art 2.1d), we would like to point out that OTFs should be treated equally and fulfil the same standards as RMs and MTFs.** In order to keep a level playing field at this point, we suggest an additional legal check as OTFs are currently not mentioned in 2.1d ii. Please also consider our answer to Q6 in this context.

		In order to clearer state that the triple exemption mentioned hereunder relates directly to the double exemptions of 2.1d i-iii, we suggest **amending** the current wording to the following: ***<u>The above mentioned exemptions (i, ii and iii)</u>*** *do not apply to persons exempt under Article 2(1)(i) who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof;* **Regarding the definition of "parent undertakings" and their "subsidiaries" in Article 2.1b, we support a wider and less exclusive definition of these terms** as there are many companies in the energy trading sector (especially small and medium-sized utilities) which have set up joint ventures that clearly serve ancillary activities (cf. energy trading for risk mitigation) but which do not belong to one single parent undertaking. **If the energy sector would not continue to be exempted from MiFID, there is a strong risk that many firms could decide to either significantly limit or completely stop their trading activities.** In this context, it should be noted that electricity, gas and emission allowances markets are relatively immature, and that increasing their market liquidity has been a priority of exchanges, national governments and the EU for many years. **Applying MiFID comprehensively to the electricity, gas and emission allowances markets would not only be**

		disproportional to the intended policy objectives of MiFID but would also contradict the general aim of further market integration and the completion of the EU's internal energy market by 2014. Moreover, such a policy shift could have a significant negative impact on market liquidity and price formation. **Instead of limiting price volatility, MiFID regulation could increase volatility in the energy markets.** Since these prices are used as a key variable in setting end consumer prices, and as they serve as a bench mark for large (industrial) end consumers, an increase in price volatility would constitute a serious risk to the real economy. **Additionally, too narrowly defined exemptions would create a weighty market entry barrier for smaller and new parties which may potentially lead to an increased market concentration.**
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	No response.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	No response.
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	**There must be no additional rules for third country firms as long as they meet equivalent or comparable standards.** If a significant need for extra regulation was nevertheless identified, it would be important to assure a level playing field among EU and non-EU actors in order to avoid any artificial regulatory

		burden that could potentially hamper the efficient functioning of the (global) energy markets.
Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	No response.
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	By reviewing MiFID, the EU aims at bringing more transparency to wholesale markets as well as limiting the systemic risk in financial markets. (Cf. Opening Clause 4 MiFID). Indeed, **in today's gas and power derivative markets only a relatively small share of trading takes place within the transparent and strictly regulated framework of Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs)** - the two already existing organised trading venues under MiFID. **These venues provide full pre- and post-trade transparency, standardised contracts cleared through central counterparties (CCPs), anonymity and a non-discriminatory access to information and prices through a central order book which guarantee reliable price references.** They also play an institutional role, and help develop and improve the structure of these newly liberalised markets in cooperation with the Transmission System Operators (TSOs), the National

		Regulatory Authorities (NRAs) and numerous market participants[3] - an engagement which in particular serves the general public interest. However, **the major part of electricity and gas derivative trading today takes place in the unregulated and non-transparent OTC market**[4] (mainly through brokers[5]). In order to regulate the intermediated OTC market, the current version of MiFID II would introduce a new type of trading platform: the Organised Trading Facility (OTF). By doing so, the Commission intends to move most of the future trading on regulated trading venues[6]. **Based on the current version of MiFID II, EUROPEX has two major issues regarding the introduction of OTFs:** **1) There is a risk that the level playing field between the three trading venues may become undermined due to the**

[3] For instance, they help design market-based balancing systems in these markets.

[4] For instance, looking at the French wholesale gas market, trades concluded on Powernext Gas Futures currently represent around 15-20% of the transactions carried out (on average ten trades per day). The remaining 80-85% are done through brokers. As of January 2012, there are 36 members on Powernext Gas Futures which also comprise six MiFID regulated banks. Among the other 30 members, only one has an investment firm status. All together, these seven members represent less than 30% of the volume traded on the Exchange. If MiFID II was to oblige the non-regulated members apply for a license as an investment firm, while they account for 70% of current trading volume, there is a strong risk that they would completely shift to OTC.

[5] Please note: In our answer to Q6 we specifically refer to „inter-dealer brokers“ when using the term “broker”. In our understanding, these are companies that are specialised in serving as intermediaries which help facilitate transactions between brokers/dealers and dealers in various markets. An inter-dealer broker does not sale or purchase an asset on behalf of its client(s) but only intermediates a trade between two parties through a trading platform.

[6] This goal has been originally defined at the G-20 Summit in Pittsburgh in November 2009: “*All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements. We ask the FSB and its relevant members to assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.*“

		different set-ups of the individual platform types while potentially creating an advantage for OTFs; **2) It is crucial to separate discretionary from non-discretionary practices.** **1) <u>Doubts on the level playing field between RMs, MTFs and OTF</u>** **MiFID II / MiFIR are intended to enhance competition among regulated trading venues while at the same time keeping a level playing field between the different venue types** (RMs, MTFs, OTFs). In order to do so, they provide for: • **Identical pre- and post-trade transparency requirements[7];** • **Direct access to CCPs[8].** Given the current definitions of the three future MiFID trading venue categories, **EUROPEX believes that regulatory arbitrage opportunities would be created between notably RMs/MTFS and OTFs**. Some of the main reasons **why we believe that OTFs would put free and fair competition at risk** are as follows:

[7] Articles 7 & 9 (MiFIR).

[8] Article 28 (MiFIR): *"Without prejudice to Article 8 of Regulation [ ] (EMIR), a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue on which a transaction is executed. This in particular should ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on its platforms are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP. A CCP may require that the trading venue comply with the reasonable operational and technical requirements established by the CCP. This requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of Regulation [EMIR]."*

		Non-discretionary (RMs/MTFs) vs. discretionary (OTFs) execution of transactions: EUROPEX believes that MiFID II does not provide a level-playing field regarding the organisation of trading (which constitutes the core activity of all three types of regulated trading venues.) Indeed, the draft regulation provides that "*While regulated markets and multilateral trading facilities are characterised by non-discretionary execution of transactions, the operator of an organised trading facility should have discretion over how a transaction is to be executed"*[9]. This key difference between MTFs/RMs and OTFs has the following consequences: o **On RMs/MTFs each market participant is given access to exactly the same prices and the same information at the same moment in time through a central order book**[10]. Hence, at one given time, all participants can only find one price for a specified product. Moreover, orders are not only classified according to their prices but also based on their time stamp. Thus, if two participants send two orders at the same price, those orders would be executed according on a first-come first-serve basis. **This is very important in particular for smaller market participants (e.g. small utilities) with little negotiation power.** o **On the future OTFs (former brokers), voice trading would still be allowed, and the discretion over the**

[9] Opening Clause 8 (MiFIR)

[10] Please note that some RMs/MTFs may sometimes use "Requests for quote" (RFQ). Yet, this is not a very common practice in electricity and gas derivative markets. In any case, when there is such a RFQ, the information is sent to all trading participants as RMs/MTFs are not allowed to apply discretionary practices.

		execution of transactions would persist. At a given time, several prices may be found for a specified product: the risk of course being that better prices are given to bigger clients. **Hence, this discretionary practice may create unfair competition conditions between market participants.** **This situation could put at risk the existing level playing field between brokers and the still not very liquid gas and power derivative markets.** All this combined would mean that: o **A liquidity shift from RMs/MTFs to OTFs is to be expected** because there will be no more incentive to go through exchanges if OTFs can provide exactly the same services plus additional ones that RMs/MTFs cannot provide on their side (discrimination on execution of transactions, non-cleared contracts, etc.). This would be worsened by the new exemption regime if RMs/MTFs and OTFs are not treated the same way. **EUROPEX believes that such consequences would be contrary to the more general goals of creating:** ➢ **an improved level playing field between trading venues and** ➢ **a more transparent and more secure wholesale market**

		2) <u>Separation of discretionary and non-discretionary practices</u> **The current version of MiFID II contains much ambiguity about the status of hybrid OTC platforms which combine discretionary OTC voice brokerage and discretionary on-screen trading on the one side as well as non-discretionary OTC on-screen on the other side. In order to avoid any risk of interference between them, it is important to clearly separate discretionary activities from non-discretionary ones.** In our view, this means that existing (or future) hybrid OTC platforms will have to split their business: **Non-discretionary on-screen trading will have to be moved to RMs or MTFs while voice brokerage and discretionary on-screen trading may remain on OTFs.** In order to avoid any confusion and/or risk of market distortion, the split-up should be ensured by imposing Chinese walls and a clear financial and organisational separation of all hybrid platforms.
	7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?	Given that standardised products are to be traded on organised trading venues, OTC traded products should be clearly distinguished from them. Trading in look-alike products may eventually attract increased non-transparent OTC trading which would be contrary to the 2009 G-20 commitments. A comprehensive definition of OTC trading should be provided in Level II legislation as this is a technical matter.
	8) How appropriately do the specific requirements related to	No response.

	algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	No response.
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	No response.
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	In principle, EUROPEX welcomes the idea that some specified derivatives should be traded on organised venues. However: - **If trading of energy derivative contracts on organised trading venues is made compulsory, the points EUROPEX made in its answer to Q 6 fully apply**. - ESMA needs to take into account all relevant underlying market fundamentals
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	No response.
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers?	No response.

	If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	
	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	**In order to prevent unintended market distortions, position limits should be defined with great care, and should neither hamper the level playing field between market participants nor between trading venues.** Moreover, the difference between financially and physically settled contracts as well as other important technical aspects of individual markets and/or asset classes must be taken into account in order to ensure that position limits do not lead to unintended collateral damages. General technical guidelines should be defined by ESMA in close cooperation with national regulators as they are closer to the respective markets. **When defining the rules, they should allow for an appropriate level of flexibility at all levels (Exchanges, competent authorities, ESMA) and should not categorically exclude the exemption of certain markets and/or asset classes.** Given that **position limits should only be considered serve as a means of last resort**, it is important to note that **certain Member States have already far reaching alternative arrangements in place**. This includes, e.g., a direct comprehensive overview of all positions in a market by the national regulator down to the individual positions of each exchange. If any suspicion of market abuse occurs, competent authorities may act on the basis of direct intervention mechanisms. Concepts like position accountability or soft position limits should be further studied and taken into consideration.

		Generally, the diversity and the specificities of the different underlying commodities will make it very hard to successfully implement position limits in energy commodity markets. **Because of the particular physical reality behind electricity and gas trading, those limits could hamper some actors to hedge their positions or to sell/buy energy according to their actual needs in relation to the production**. In addition, they could have a negative impact on the trading behaviour of market participants which could lead to increased price volatility and less market liquidity if the position limits are set to strictly.
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	No response.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	No response.
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	No response.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	No response.

	19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?	No response.
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?	No response.
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	For EUROPEX transparency constitutes one of the corner stones for the further development of an integer and liquid energy trading market. We therefore strongly support enhanced transparency standards. Nevertheless, the new transparency rules of MiFID II should take into account existing market specifics. Experience of best transparency practice drawn from the equity markets should only be applied with great caution to those new markets that may fall under the new scope of MiFIR. **Given that the data structure of equity markets is different to that of energy commodity markets, both markets should not be dealt with equally.** Moreover, the current MiFID II proposal should be reviewed with regard to the transparency requirements for OTFs. **Published price quotes provided by OTFs should be firm**. This is currently not a general practice in the (voice) brokered market where prices are tailored to their clients' profiles. Publishing a price which is not firm has no value for market transparency.

		If pre-trade transparency relates to the bids/offers on screen that should be publicly available, **it must be clearly stated that the market fundamentals of the electricity and gas commodity derivative markets are very different from equity markets** as they are driven by the physical reality of production and consumption. EUROPEX is a strong supporter of transparency in trading markets. We are, however, convinced that unintended new market conditions might harm liquidity. **Transparency requirements should therefore always take into account the underlying specifics of a market.**
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	Since the proposed **pre-trade transparency requirements in MiFIR remain rather general for the time being**, it is not possible to comprehensively assess whether they are appropriate or not. Nevertheless, EUROPEX would like to point out the importance of market specifics in relation to particular financial instruments. A simple copy-paste of the transparency regime for the highly mature equity markets should not be applied one-by-one to commodity derivatives, especially as regards electricity and gas. **An appropriate calibration can only be achieved when the relevant market stakeholders are involved.** In relation to electricity and gas, ACER would be the competent sector specific regulator. In general, EUROPEX agrees that pre-trade transparency is of

		great importance. However, for the improvement of market integrity, it must be ensured that relevant **fundamental data** (involving a potential price effect) is accessible in a transparent and open manner. EUROPEX would like to suggest **providing ESMA under Art 8 sub 4(a) MiFIR with the necessary competences instead of the European Commission** since transparency criteria should be defined by the authority which is the closest to the markets. Furthermore, we recommend to introduce this clause as a new sub 3 to article 7 (Art 7 sub 3) instead of keeping it in Art 8, which relates to the rules applicable to the waiver regime and not to the pre-trade transparency requirements as such. **Amendment suggestion** *Remove art. 8 sub 4 (a) and replace it by:* *Art 7 (3)* *ESMA will adopt, by means of …, the range of orders or quotes, the prices and the depth of trading interests at those prices, to be made public for each class of financial instrument concerned in accordance with paragraph 1 of Article 7. ESMA will consult with the competent authorities and relevant market specific regulators when defining these criteria.*
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	Non-discriminatory, appropriate and clearly defined waivers should in principle be acceptable if specific conditions (market model, etc.) are not met. However, **this should not lead to a situation of asymmetric information or undermine free and fair competition between market participants.**

	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	No response.
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	(a) Competent authorities should receive the **right data under the transaction reporting obligation as defined in Title IV**. Post-trade transparency should focus on data that provides relevant information to the public. EUROPEX would like to emphasise the importance of **aligning the reporting obligations** (format, etc.) under MiFIR with other relevant reporting obligations already in place, such as those under REMIT. (b) EUROPEX believes that **post-trade transparency should take into account market specifics**. The current wording is far too general, and could result in an unequal burden for the operators of immature and upcoming markets. Moreover, transparency requirements should be well-balanced, since they could otherwise have an unintended negative impact on the future development of markets and the overall market liquidity. (c) Art 9(1) stipulates that transactions should be published near real time with only a very limited technical delay. **EUROPEX believes that clarification is needed regarding this article.** In order to define that the publication of real-time data is only aimed at market participants, the wording "shall make details of all such

		transactions public" should be amended to "shall make details of all such transactions available to market participants." (d) **Data publication does not come without costs**. The prohibition to provide pre- and post-trade data for a commercial fee after 15 minutes does not take into account the fact that validating, publishing and maintaining the database is linked to a significant and continuous financial effort. These costs may be easily regained in highly liquid markets. For immature and upcoming markets, however, they will constitute an unequal burden which needs to be covered via, e.g., increased trading fees. In consequence, these costs will be paid by traders instead of data users. EUROPEX believes that RMs/MTFs should be allowed to have an appropriate fee catalogue in place, allowing them to charge a reasonable fee for the provision of data also after 15 minutes after a trade took place. (e) **A one-size-fits-all approach for post-data publication is inappropriate as the value of information after the 15 minute delay differs substantially when comparing equity to commodity markets.** This is especially true for energy commodity markets where the average trading frequency is substantially lower than in standard equity markets. (f) EUROPEX believes that the assessment for authorising deferred publication (Art 10 MiFIR) should not be

		exclusively based on the size of the transaction. **Other important aspects such as the market structure, the relative burden of costs in order to comply with the publication obligations and the ability of a RM/MTF to cover these costs from its income should be taken into account**. Moreover, in commodity markets, high volumes are therefore always traded OTC because they could otherwise provide important price signals. Again an example that market specifics should be taken into account when defining publication rules. **Amendment suggestions:** **Art 9 sub 1 MiFIR – last sentence** Remove: *public* Replace by: available to market participants **Art 12 MiFIR** **Introduction of a wavering possibility for competent authorities** Art. 12 sub 3 (*new*) Competent authorities shall be able to waive the obligation per instrument for RMs, MTFs and OTFs to publish the information in accordance with Articles 3 to 10 free of charge 15 minutes after the publication of a transaction. The competent authority shall assess the waiver based on the following aspects: (i) the market model; (ii) the specific characteristics of the trading activity on that RM/MTF/OTF in the specific instrument; (iii) the liquidity profile, including the number and type of

		market participants in a given market and any other relevant criteria for assessing liquidity; (iv) the size or type of orders. Waivers shall be reviewed by ESMA (as defined in Art 8(5)). **Art 23 sub 8 MiFIR** **Alignment of transaction reporting between different regulators / trading legislation** Art 23 sub 8 (a) 'data standards and … such reports' Add: *ESMA will consult other relevant authorities, such as ACER, in order to align the transaction reporting obligations with other existing or future European legislations (e.g. REMIT) to lower the administrative burden*.
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	No response.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No response.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	Given the ever increasing complexity and interdependence of the EU's financial services legislation, it is crucial to align and harmonise the different legislative texts in order to make them more coherent and to avoid potential legal contradictions and/or loopholes. With regard to MiFID II/MiFIR, **we think that two currently tabled proposals are of particular interest: EMIR**

		and CRD IV/CRR. This is especially true since the proposals cross-reference each other, and MiFID II predefines the scope of application for the above mentioned legislations.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	No response.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	No response.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	Due to the wide use of delegated acts in the European Commission's MiFID II/MiFIR proposals, **the actual scope and impact of the new MiFID is hard to assess. This creates much legal and political uncertainty among the parties active in the energy trading markets.** A detailed analysis of the impact on the real economy could only be done after Level II legislation will have been adopted. Therefore, we urge the Parliament to define a more appropriate framework. In addition, **we believe that implementing acts (Art 291 TFEU) are better suited for Level 2 measures** concerning MiFID II/MiFIR as they assure a better coordination between all stakeholders and facilitate final implementation.
Detailed comments on specific articles of the draft Directive		
Article	**Comments**	

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