

Consultation on the draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP

Energy Norway is a non-profit industry organization, which represents about 280 companies involved in the production, distribution and trading of electricity in Norway. Most of our member companies are non-financial companies with regards to MiFID and after EMIR implementation they would be considered as non-financial companies below the clearing threshold (NFC -).

Energy Norway welcomes the joint consultation of the European Supervisory Authorities (ESA) on the risk mitigation techniques for non-cleared OTC contracts, which provides clarity on which requirements Norwegian companies will face after implementation of EMIR in Norway through the European Economic Area (EEA) agreement.

We are however concerned about the unclear status and requirements applying to companies from the EEA. The current draft regulation for the technical standard (RTS) mentions specifically only EU countries and third countries. This is a challenge as long as the implementation of EMIR is delayed in the EEA countries. All the same, EEA countries can not considered to be the equivalent of third countries, since through the EEA agreement all European legislation has been and will be applied in these countries.

Energy Norway is especially worried, that due to their uncertain status EEA NFC – will fall under the RTS margining requirements applying to third country companies. We therefore wish at least a clarification confirming that EEA NFC – can be regarded as EU NFC- for the purpose of the exemption from the EMIR margining requirements.

Indeed, the current unclear status of EAA companies can have very unfortunate effects with regards to margining requirements: currently article 2 GEN – "Risk management procedures in specific cases" paragraph 4. (b) only allows EU NFC – companies to derogate from the exchange of initial and variation margining in line with EMIR Art 11. Third country NFC -, amongst them Norwegian companies in the absence of any clarification concerning EEA entities, will not profit from the derogation. This interpretation is supported by statements on page 7 under the "Background and rationale" chapter of the consultation paper, which says explicitly that margin is to be collected from all

third-country entities "even those that would be classified as non-financial entities below the threshold if they were established in the EU".

If the joint European Supervisory Authorities follow that interpretation, Norwegian NFC – companies in the electricity sector would first have to exchange margins for non-cleared OTC contracts traded with European FCs and NFC+ companies, but after EMIR implementation in Norway could stop doing so in line with all other European NFC – companies, since they do not represent systemic risk as rightly recognized in EMIR and this draft standard for risk mitigation techniques. In our view, introducing a margining requirement for EEA NFC - companies therefore doesn't serve any purpose.

In addition, it is also highly disruptive for Norwegian NFC – companies' daily business, costly and discriminatory when compared to their European counterparties: Currently Norwegian companies trade commodity derivative contracts, FX and interest rate contracts OTC to hedge their exposure for fluctuating electricity prices, exchange rates (mainly NOK – Euro - GBP) and interest rates with both Norwegian and European counterparties in the integrated European market. The proposed RTS on risk mitigation techniques without a specific carve out for EEA NFC- would have the detrimental effect of forcing Norwegian companies either to start paying margins (at least variation margins) or to stop trading with European FC and NFC + companies.

This forced choice between margining or restricting trade to Norwegian counterparties and European NFC –introduces discrimination and barriers to free provision of services within the EU, as Norwegian counterparties will lose their ability to freely choose their counterparties. In a common market as integrated and with such a long history as the Nordic electricity market that should be a special cause for concern.

In addition, a margining requirement for EEA NFC - is disproportionate and costly for Norwegian NFC-: it will be for example especially difficult to implement with regards to FX and interest rate derivative transactions, as almost all of Energy Norway's member companies currently have as their counterparties banks established in the EU. After the implementation of the standard they would either have to pay margins or they would have to end their banking relations with all European banks to establish new banking relations with Norwegian banks.

Given that there are no long term gains from making EEA NFC – companies subject to margining requirements, which they will be exempt from once EMIR is properly implemented, we therefore suggest that the joint European Supervisory Authorities EEA NFC – companies enabling them to benefit from the derogation set out in Art. 2GEN Paragraph 4 (b) in equal conditions to EU NFC-.

Energy Norway would like to thank again for having the possibility to contribute to the hearing and remains at your disposal for further questions and information with regards to the above mentioned issue.

Best regards
Energy Norway



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