



REMIT Review – Joint Trade Association Briefing on amendments to Article 9/Location policy for third country firms

This paper outlines AFME, Europex, Eurelectric, FESE, EFET, CMCE, ISDA, FIA and FIA EPTA ('The Associations') members' concerns in relation to suggested amendments to Article 9 of the European Commission's (EC) proposal for a review of the regulation on wholesale energy market integrity and transparency (REMIT) with respect to market access restriction for third country firms. **The Associations support the draft ITRE report by MEP Carvalho in relation to Article 9, deleting the 'declaration of office' requirement, and strongly urge MEPs to reject amendments 242-244 which effectively introduce a location policy for third country market participants, suggesting that *'market participants shall declare an office that controls and executes trading activities related to European wholesale energy markets in one of the Member State in which they are active'*.**

Location Policy translates into market access barriers

AM 242-244 would require third country firms engaging in wholesale energy markets (spot and derivatives) to establish a trading entity in the European Union (EU). This would require third country firms to move some of their operations, including relevant staff, from their third country home jurisdiction to an EU host jurisdiction. Before doing so, market participants would have to undertake a significant due diligence assessment in order to understand the regulatory implications of establishing a trading entity in the EU. In addition, there would be substantial costs of setting up such an entity in terms of human and capital resources. ***Many firms may be unable to bear such disproportionate costs and would consequently leave the EU market.*** Similarly, potential new market entrants would face strong market barriers due to the associated investments required to set up a trading entity in Europe. Therefore, such a location policy risks hampering the EU's security of energy supply, the competitiveness and the functioning of European energy markets and is likely to result in trading activity in European energy markets shifting to foreign jurisdictions.

Market access barriers negatively impact the EU's competitiveness and liquidity

Third country firms play a crucial role in providing physical energy and liquidity in the main European energy markets, *restrictions on access for these firms would negatively impact the ability of EU firms to both deliver energy into these markets and to use forward contracts to lock in future prices and hedge their exposures*. As a result, firms will face significant difficulties in operating, investing and offering competitive prices to end users and consumers in EU energy markets. It is likely to also render it more difficult to attract international market participants at a time when the EU wants to diversify its suppliers of energy.

Supervision of third country firms

EU and national regulations provide a variety of means to effectively supervise gas and power markets while providing a competitive framework for EU and third country firms. For example, REMIT already requires third country firms to register with the national regulatory authority in the Member State where it is active. If the co-legislators believe further oversight is required with respect to wholesale energy products, we urge them to consider alternative means than implementing a location policy. EU legislation in financial services, for example, provides for a variety of third country frameworks, enabling appropriate supervision of third country firms without requiring these firms to move their operational trading entity to Europe.

Recommendations

The Associations would like to set out the following recommendations:

- Reject Amendments 242-244 to the ITRE draft report
- Support the draft ITRE report by MEP Carvalho in relation to Article 9, deleting the 'declaration of office' requirement. In this context, we support the adopted ECON opinion by rapporteur MEP Kovařík, which received broad backing from ECON MEPs (42 votes in favour), notably ECON amendments 1 and 8.

About AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. www.afme.eu

About CMCE

CMCE is the only association in Europe representing the range of commodity market participants - agriculture, energy, metals and other commodity market participants, benchmark providers, price reporting agencies, and trading venues operating in the EU, EEA, Switzerland and neighbouring countries. The majority of CMCE members use commodity derivative markets to hedge the risks related to their physical activities and assets. CMCE's key purpose is to engage with policymakers and regulators to promote liquid and well-functioning commodity derivative markets in Europe.

About EFET

The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 130 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

About Europex

Europex, the Association of European Energy Exchanges, is a not-for-profit association of European energy exchanges with 34 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level. For more information: www.europex.org

About Eurelectric

Eurelectric is the European association of the electric industry. We speak for more than 3500 European utilities covering the entire value chain from generation to distribution.

About FESE

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 16 Full Members and 1 Affiliate Member from 30 countries.

At the end of January 2023, FESE members had 8,432 companies listed on their markets, of which 21% are foreign companies contributing towards European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access capital markets; 1,502 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE

members are keen to support the European Commission's objective of creating a Capital Markets Union.

FESE is registered in the European Union Transparency Register: 71488206456-23.

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets. Information about FIA and its activities is available on www.fia.org.

About FIA EPTA

The European Principal Traders Association (FIA EPTA) represents Europe's leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk transfer for markets and end-investors across Europe, providing liquidity in all centrally cleared asset classes including shares, bonds, listed derivatives and ETFs. FIA EPTA works constructively with policymakers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe. More information about FIA EPTA and independent market makers is available on: www.fia.org/epta and www.wearemarketmakers.com

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on www.isda.org.