



MiFID 2- Public Consultation  
Financial Services Division  
Department of Finance  
Government Buildings  
Upper Merrion Street  
Dublin 2

**Public Consultation on national discretions in the Markets in Financial Instruments Directive (MiFID 2) incorporating elements of the Insurance Distribution Directive**

21<sup>st</sup> September 2016

To whom it may concern,

We would like to thank the Department for giving the Electricity Association of Ireland (EAI) the opportunity to respond to their consultation on national discretions contained within the Markets in Financial Instruments Directive. Our members include generators, suppliers and distributors of power operating across the Single Electricity Market.

A number of the issues covered in this consultation are relevant to markets in financial instruments that help our members manage their risk exposure in physical energy markets. These instruments help smooth price volatility for end customers and allow generators to hedge their exposure to volatile fuel inputs. Our response, included as an appendix to this letter, covers those consultation questions relevant to the electricity sector.

If the Department requires any further clarification on the points covered in our response, we would be happy to provide further information.

Yours sincerely,

Stephen Douglas  
Senior Advisor  
Electricity Association of Ireland (EAI)

### Question 1: Optional Exemptions

- A. The Minister is minded to exercise the discretions provided for in Article 3 (1) (a)-(c). Do you agree with this approach? If not, please outline your reasons.**

N/A

- B. If persons described under Article 3 (1) (a)-(c) are exempted from MiFID, what provisions of MiFID, in your opinion, have no corresponding domestic rules/requirements which are at least analogous, in accordance with the list set out in article 3(2)? Please specify the amended domestic rules that would be required.**

N/A

- C. The Minister welcomes all views in regard to whether to exercise the discretions provided for in Article 3 (1) (d)-(e). In particular, the Minister is interested in the views of any entities that consider they may be in a position to benefit from the exercise of the discretion. If such entities exist in Ireland, they are requested to identify the regulatory regime that they are subject to and to what extent that meets the analogous requirements specified in article 3(2). In the absence of compelling reasons provided in response to this consultation, the Minister is strongly minded not to exercise the discretion.**

We believe that the Department should consider exercising the discretions under Article 3 (1) (d)-(e). The existing Single Electricity Market (SEM) and Irish Gas Market are undergoing a series of major changes to bring them into compliance with the European Third Energy Package. These changes have not yet been fully outlined yet by the relevant National Regulatory Authorities, but once finalised, participants operating in both the I-SEM electricity market and Irish Balancing Point (IBP) for gas will have a greater requirement for markets in financial instruments that allow them to manage their spot energy market exposures.

Specialist entities may come forward to provide these services, assuming that a regulatory regime is in place to facilitate them – these could include brokerage firms or specialist financial intermediaries similar to those that serve electricity, gas and industrial entities in other more mature power, gas and emission markets.

By exercising the discretions under Article (3)(1)(d)-(e), the Department could allow for a proportionate, analogous regime to be put in place by the Designated National Competent Authority that would support the development of the future Irish power and gas markets. The exercise undertaken by the Department to identify requirements for analogous domestic rules for Article 3(1) (a)-(c) could help to facilitate this.

### Question 2: Optional Exemptions and Investor Compensation Scheme

- A. Do you agree with the proposed approach? If not can you provide justifications?**

N/A

### Question 3: Investor Protection, including Conflict of Interest

- A. In light of:**

Electricity Association of Ireland Ltd  
Registered Office: 127 Baggot Street Lower, Dublin 2, Ireland / Registered No.: 443598  
*Directors: Donal Crean; John Newman(Chair); John O'Connor; Peter O'Shea; Dr John Reilly; Barry O'Regan, Ian Luney, Joanne Ross, Bryan Hennessey and Ruth Kent*

- The new MiFID and IDD rules,
- Their divergence in key respects (as outlined above),
- The national discretions provided therein (as outlined above), and
- The need for appropriate levels of protection for consumers of investment products, whoever they may deal with,

Do you consider that there should be level playing field rules in relation to the distribution of, and advice on, functionally equivalent retail investment products?

N/A

**B. If not, can you please explain why level playing field rules should not be followed?**

N/A

**C. Which option, if any, do you think best addresses the interests of retail investors and why? If your preference is for option 2 can you please specify whether you agree with the suggested criteria ((a) to (h) as outlined above).**

N/A

#### **Question 4: Client Order Handling Rules**

**A. Do you agree with the Minister's proposal to continue to exercise this discretion?**

N/A

#### **Question 5: Third Country Firms and Branches**

**A. The Minister is considering the policy options in relation to this national discretion. Please provide any views you may have on this issue, including supporting rationale for or against imposing a branch requirement.**

N/A

**B. Do you agree with that branches of third country firms should be brought within the scope of the MiFID 2 regulations? If not, please provide reasons why you do not favour this approach.**

N/A

#### **Question 6: Higher Fees Applying to Cancelled Orders**

**A. This Article was not previously included in MiFID 1. The Minister is minded to exercise this discretion by extending to regulated markets the flexibility to impose higher fees for cancelled orders. Do you agree with this proposal?**

We agree with the Departments minded-to position to exercise this discretion, although we believe that the National Competent Authority should retain adequate oversight of regulated markets opting to set differential fee structures for cancelled orders.

#### Question 7: Designation of National Competent Authorities

- A. The Minister, having regard to the supervisory role exercised by the Central Bank in relation to MiFID I and more generally financial services legislation, and in the absence of any compelling reasons to the contrary, is strongly minded to designate the Central Bank as the single National Competent Authority**

We agree that the Central Bank is the appropriate National Competent Authority for the purposes of MiFID and the transposing regulations.

#### Question 8: Sanctions

- A. Do you agree with the Ministers views as outlined above?**

N/A

- B. Do you agree with the Ministers views as outlined above?**

N/A

#### Question 9: Other

- A. Are there any other Member State discretions or issues related to the transposition of MiFID 2 that you wish to outline? Please specify the provision of MiFID 2 which is required to be transposed or the area of concern identified.**

We have not identified any other national discretions relevant to the electricity and gas sectors. EAI looks forward to engaging with the National Competent Authority once designated as they consult on the technical level 2 rules finalised by the European Commission.