Europex

– **Position Paper** –

MiFID II: need for an equal regulatory treatment of Long-Term Transmission Rights (LTTRs) to enable an efficient regime for secondary trading

Brussels, 04 July 2017 | Europex supports the classification of Financial Transmission Rights (FTRs) as financial instruments under MiFID II. This helps fostering a well-functioning, efficient electricity markets and will ensure an efficient regime for secondary trading of FTRs. In addition, there is a significant need for more regulatory clarity as regards Physical Transmission Rights (PTRs) in order to create a level playing field for LTTRs.

One of the objectives of the Capacity Allocation and Congestion Management Guideline (CACM GL) as well as the Network Code on Forward Capacity Allocation (NC FCA) is to optimise hedging opportunities for market participants, regardless of existing bidding zone borders. Hence, Europex considers it is important to ensure an efficient regime for secondary trading of LTTRs.

We would like to explain this argument further in the following two points:

First, all relevant long-term cross-zonal hedging products should be subject to equal regulatory treatment under MiFID II, when offered for secondary trading.

In this context, Europex fully supports the exemption of Transmission System Operators (TSOs) from the obligations in MiFID II and MIFIR as regards the issuance of transmission rights, notably the posting of collateral.

At the same time, we do not support any exemption of TSOs, or any third-party agents, as regards to secondary trading in FTRs.

LTTRs are defined in Article 2 (2) of the Forward Capacity Allocation Guideline (FCA GL) and the “other long term hedging products” are referred to in Article 30.5. (b). An example of the latter is the Spanish and Portuguese FTRs and the Nordic and German Electricity Price Area Differentials (EPADs). All the instruments mentioned above are fulfilling the same intention (hedging) and should have the same legal requirements under MiFID II in order to establish liquid secondary trading in a competitive manner. Otherwise, it would lead to a lack of competition between market venues and reduced efficiency of secondary trading. As result the secondary trading in these instruments would be done bilaterally, outside transparent and supervised venues and uncleared.

Secondly, when it comes to remaining two instruments FTRs and PTRs, we observe a certain regulatory inconsistency. FTRs are classified as financial instruments in MiFID II. In contrast, PTRs as alternative LTTR are not but still may be cash settled according to MiFID texts. If a PTR is cash-settled there is in fact no economic and regulatory difference between PTRs and FTRs. Therefore, Europex argues for creating a level playing field between these hedging instruments. Furthermore, FTRs/PTRs should be introduced for secondary trading on the platforms preferred and already used by the market participants with hedging needs. One fundamental feature would be to set up an open registry of the long-term cross-zonal hedging products issued by the TSOs under the FCA guideline. This would allow an equitable treatment of all venues that want to list those instruments for secondary trading.

Without creating a level playing field between above instruments in terms of regulatory standing and trading alternatives there is a risk for developing various artificially distorted and uncompetitive markets with no legitimate reason. Therefore, Europex argues for clarifying the legal ambiguity between FTRs and PTRs in terms of the instrument classification.

To round up, Europex arguments for equal regulation of FTRs/PTRs (cash settled) as financial instruments are based on the following regulatory articles and texts in MiFID II:

- **Annex I Section C**
  - FTRs are classified as financial instruments under Annex I Section C. It is a standardised financial derivatives contract where and transactions must be settled in cash.
  - PTRs should be classified as financial instrument under Annex I Section C. As PTR may be settled in cash and in such case PTRs is in fact standing equal to a FTR and should therefore also be classified as financial instruments under MiFID II.

- **Article 2. 1 (n)**
  In the article it is clearly stated that a TSO is not exempted with regards to the operation of a secondary market, including a platform for secondary trading in FTRs.

In addition to providing legal clarity that FTRs/PTRs are classified as financial instruments Europex recommends to provide amendments to the final version of the FCA Harmonised Allocation Rules (FCA HAR) to ensure a fair and non-discriminatory treatment of all relevant parties other than the Joint Allocation Office (JAO) to organise secondary trading of FTRs. There should be offered a free option for market participants to choose to buy transmission rights either in a continuous trading market or at auction-based platforms.

About

Europex is a not-for-profit association of European energy exchanges with currently 27 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.

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