



– Feedback on Commission legislative proposal –

BMR review: call to maintain and improve small commodity benchmark exemption, in case Annex II commodity benchmarks are to remain in scope

Brussels, 23 January 2024 | Europex welcomes the Commission's proposal to review the Benchmark Regulation (BMR) with regard to its scope, the use of benchmarks and certain reporting requirements. We explicitly support the approach to reduce the scope of the BMR without a complete overhaul of the regulatory framework.

This said, we are truly concerned by the Council's proposal to extend the full scope of the BMR to all Annex II commodity benchmarks, incl. to non-significant benchmarks, based on the argument that this would help to lower price volatility. Indeed, if implemented, this would likely have the opposite effect, exacerbating commodity price volatility, with EU users effectively becoming prohibited from using benchmarks which are vital to their day-to-day risk management capability. In addition, it would also put these users at a competitive disadvantage to their peers in other jurisdictions outside the EU.

Considering the Council's position, it is important to note that the Commission proposes to delete the current exemption for non-significant commodity benchmarks in Article 2.2(g) as this would no longer be required, if non-significant commodity benchmarks were no longer in scope. However, should the co-legislators decide differently and keep all or some commodity benchmarks in, incl. non-significant commodity benchmarks, it is crucial to ensure that the exception is maintained and improved to allow the existing non-significant benchmarks to keep serving as important and widely used references without imposing new, unproportional requirements on them. Indeed, a large number of firms, many of them energy utilities and the wider industry, rely on this type of benchmark for managing their price and volume risks.

Moreover, the current BMR Annex II definition of commodity benchmarks seems to negate the existence of commodity benchmarks that are not contributor-based. Hence, the small commodity benchmark exemption in Article 2.2(g) currently only applies to small contributor-based commodity benchmarks but not to small non-contributor-based benchmarks. Should the co-legislators decide that Annex II commodity benchmarks are to be put back in scope, it is crucial to maintain / reintroduce the small commodity benchmark exemption and to ensure that all small commodity benchmarks subject to Annex II can benefit from the exemption (i.e., contributor-based and non-contributor-based commodity benchmarks alike).

Finally, and in line with the general policy objective to rationalise the BMR application, we recommend increasing the maximum total notional value of financial instruments referencing the benchmark from 100 million EUR to at least 500 million EUR in Art. 2.2(g). As the notional value is not a common reference for commodity markets due to their inherent price volatility, market participants typically look at 'lots' instead. A higher notional threshold of EUR 500 million would therefore provide some relief / rationalisation, allowing for more flexibility in naturally volatile commodity markets.

About

Europex is a not-for-profit association of European energy exchanges with 33 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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