

The entry into application of MiFID II / MiFIR: the start of a new era of European energy commodity derivatives trading

Brussels, 3 January 2018 | Today's entry into application of the revised Markets in Financial Instruments Directive (MiFID II) and its accompanying Regulation (MiFIR) marks a major milestone in European energy commodity trading. The great majority of gas and electricity derivative contracts as well as all EU ETS emission allowances are now classified as financial instruments – along with all other commodity derivatives. New rules for market venues, like energy exchanges, where these financial instruments are traded, apply along with numerous other changes affecting market participants and market infrastructure providers.

From the beginning, Europex and its members have accompanied the legislative and implementation process of MiFID II / MiFIR with great attention. We have continuously voiced concerns on various aspects and given technical advice to relevant stakeholders. Our initial call to keep the general commodity exemption of MiFID I in place, arguing that energy trading had not been at the origin of the financial crisis in 2007/2008 and mostly serves hedging purposes for the industrial value chain, had unfortunately been rejected.

However, we welcome that parts of the Commission's initial legislative proposal have improved along the process. This applies in particular to the exemptions and the liquidity provision rules. What has not been translated into legislation, though, are our repeated requests to reduce the potential impact on market liquidity, to avoid double reporting and to minimise the administrative burden.

While we understand the heavy workload of ESMA and the national competent authorities in implementing MiFID II / MiFIR, we would have wished for clearer and timelier guidance. This applies for example to the definition of 'spot month contracts' which was only clarified on 15 December 2017 with limited time left for implementation. The delay of the transposition of MiFID II into national law in some Member States, or even the lack thereof till today in a few cases, should have been avoided.

Given the central role of MiFID II / MiFIR for all related financial services legislation, like EMIR, CRD IV / CRR, MAD II / MAR and others, it is crucial that distinct energy commodity issues are taken systematically into account when discussing new or amending existing legislation. It is important to recognise the relevance of energy trading for providing strong and clear price signals in an ever more complex energy system, to allow for price risk mitigation of industrial production and final consumption, to enable the energy transition and to meet the EU's and global climate targets.

Today's entry into application of MiFID II / MiFIR represents the long-prepared start of a new journey of energy commodity trading as an integral part of the financial services legislation in Europe. Europex stands ready to assist along this new path and remains open for further dialogue.

About

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