



Brexit update 8th March 2019

Status of physical NBP, UK power and Swiss power contracts after a no deal Brexit addressed in ESMA statement

ESMA has issued a statement which seeks to clarify that, in the event of a no deal Brexit, NBP, UK power and Swiss power forward contracts will continue to benefit from the C6 REMIT carve-out when traded through an EU OTF provided there is an active spot market for those products located in the EU.

ESMA's interpretation focuses on the wording of the definition of "wholesale energy product" in article 2(4)(b) of REMIT which refers to "derivatives relating to electricity or natural gas produced, traded or delivered in the Union". ESMA has interpreted the reference to trading of electricity or natural gas in this definition to mean the underlying spot market such that a relevant spot market will need to be located in the EU if derivatives in electricity and natural gas are also to fall within the definition.

Therefore, provided spot contracts in UK power, NBP and Swiss power continue to be traded on EU venues after a no deal Brexit, forward contracts for the same products traded on an EU OTF will continue to benefit from the carve-out in C6 of Annex I to MiFID II. Should Griffin need to relocate its OTF to France, Griffin would, as it does today, list spot contracts for NBP, UK power and Swiss power to ensure that longer term contracts could qualify for the C6 carve-out.

NBP, UK power and Swiss power forward contracts should also continue to be classified as non-financial instruments in the UK because the UK version of REMIT will include the same definitions but with an extension to include electricity and natural gas produced, traded or delivered in the UK or the EU. Alongside this, the definition of financial instruments in the UK's Regulated Activities Order will be amended to include "wholesale energy products traded on an EU OTF" in the UK's MiFID II equivalent of C7 thereby taking those contracts outside of financial regulation.

ESMA's statement is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-155-7253_public_statement_mifidii_bmr_provisions_under_a_no_deal_brexit.pdf

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