BUSINESSEUROPE

THE DIRECTOR GENERAL

To Coreper

18 September 2024

Dear Ambassador,

EU Benchmarks Regulation

I write to you regarding current discussions related to the revision of the EU Benchmarks Regulation (BMR) and the possible removal of the exemption for FX spot benchmarks.

The impact of the removal of the exemption will be that EU counterparties will no longer be able to hedge risk associated with the currency of (at least) the following jurisdictions: India, Taiwan, Korea, Philippines and potentially Argentina.

Based on an initial analysis using data from the EMIR trade repository, it was understood that exposure to FX benchmarks would be below the significant benchmark threshold and, therefore, exempt. However, further analysis showed this not to be the case and that FX benchmarks would now be classified as significant and caught under the scope of the BMR. Given that the existing exemption, which was introduced in 2021, was based on a detailed Commission Impact Assessment and extensively discussed in trilogues, we believe this to be a technical omission in the current legislative proposals rather than a substantial change in the European political position.

EU counterparties would no longer be able to hedge the above-mentioned currency risks because the administrators of the relevant benchmarks are typically appointed by a central bank and in some cases wholly managed by the central bank. To have their key policy benchmarks controlled by an EU entity (in the case of endorsement or recognition) would thus be problematic. Considering that there is no fallback benchmark available for these currencies; there is no alternative for EU counterparties.

The FX spot benchmarks concerned are predominantly used in the Non-Deliverable Forward (NDF) market, which is an over-the-counter (OTC) derivative market, and widely used by corporates to hedge exposures to third country currencies. The contracts are drawn up and agreed upon by only the parties involved. This allows for more flexibility with terms, and because all terms must be agreed upon by both parties, the result of an NDF is generally favourable to all.

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Without access to the NDF market, the business strategy for European corporates will be severely impacted as they will be required to use non-EU entities to provide these services (where that is possible due to licensing restrictions), and most likely resulting in increased costs or being unable to participate in these markets at all.

In order to counter the risk that non-financial companies will no longer be able to hedge certain risks related to these countries, it is important that the current exemption is maintained. This will not only safeguard European non-financial companies' ability to manage financial risks but also their overall competitiveness when non-EU competitors face less constraints to use relevant benchmark-related FX instruments.

We hope that you share these concerns and remain at your disposal should you wish to discuss this further.

Yours sincerely,

Markus J. Beyrer