

## PUBLIC STATEMENT

### Use of UK data in ESMA databases and performance of MiFID II calculations in case of a no-deal Brexit on 31 October 2019

The European Securities and Markets Authority's (ESMA) statement on the [publication of databases and IT-systems](#), including the update on [28 March 2019](#), informed the public of ESMA's approach concerning the various transparency calculations in case of the United Kingdom (UK) leaving the European Union (EU) without a withdrawal agreement (no-deal Brexit). Following the European Council's [decision](#) on 11 April the period under Article 50(3) TEU was extended resulting in a new potential no-deal Brexit date on 31 October 2019.

In case of a no-deal Brexit on 31 October 2019, the UK Financial Conduct Authority (FCA) will stop sending data to ESMA and will no longer have access to ESMA's IT applications and databases. Starting from 1 November 2019 no new UK-related data will be received and processed by ESMA nor published on the ESMA website.

This updated statement informs stakeholders on ESMA's approach to all ESMA IT applications and databases in case of a no-deal Brexit on 31 October 2019 and focuses in particular on the MiFID II/MiFIR publications performed by the various ESMA databases (Financial Instruments Reference Database (FIRDS), Financial Instruments Transparency System (FITRS), double volume cap mechanism data (DVC system)) as well as the annual ancillary activity calculations). Should there be further changes to the timing and conditions of Brexit, ESMA will adjust the approach for ESMA's IT applications and databases and will inform the public of the adjusted approach as soon as possible.

As a general approach, reference data submitted by UK trading venues and systematic internalisers (SIs) to FIRDS will be terminated taking effect on 1 November 2019. With effect from 1 November 2019 the FCA will cease to be the relevant competent authority (RCA) for any EU-traded instruments. To accommodate this change, ESMA will re-determine the RCA for all financial instruments that remain available for trading in the EU ('non-terminated financial instruments') for which the FCA is currently the RCA to ensure that the RCA is within the EU.

In the case of a no-deal Brexit, ESMA will freeze the quarterly calculations for the SI-determination for equity instruments and bonds, the quarterly determination of the liquidity status of bonds and the monthly DVC publications for a period of two months after Brexit due to concerns about the temporary disruption of the ESMA IT applications and databases. This implies that ESMA will not perform the calculations for the quarterly SI-determination for equity instruments and bonds and for the quarterly liquidity determination for bonds scheduled for 1 November 2019. The calculation and publication of the quarterly bond liquidity and SI determination for equity instruments and bonds will be resumed for the next regular publication date on 1 February 2020. The DVC calculations will not be published in November and December 2019 and will be resumed in January 2020.

UK-related data will be gradually phased out from the ancillary activity calculations.

More details on the various calculations are provided below.

UK-related data received until 31 October 2019 in all other ESMA IT systems and registers will, depending on the systems and registers in question, be either removed or will remain in ESMA systems and be flagged as inactive/no longer valid with a termination date on 31 October 2019.

As already announced in ESMA's statement on the [publication of databases and IT-systems](#) due to concerns over the low level of data quality, ESMA will postpone the publication of the annual transparency calculations for non-equity instruments other than bonds (liquidity status, LIS, SSTI) to 2020. In consequence, pending the publication of the annual transparency calculations for instruments other than bonds by 30 April 2020, the transitional transparency calculations will continue to apply which include UK-related data.

The publication of the transparency calculations is highly dependent on the quality and completeness of data submitted into the ESMA data systems. ESMA therefore cannot exclude that some transparency calculations may need to be further postponed. Should this be the case, ESMA will inform the public at the earliest stage possible.

ESMA cannot rule out that the modifications required to be executed to handle a no-deal Brexit may lead to the disruption of the ESMA IT applications and databases for a period of time after the withdrawal date e.g. several days or weeks for some systems, resulting in the non-

availability of the system, both for the submission of data as well as for the publication of the data received. ESMA will inform the public immediately should such a situation occur.

Stakeholders are invited to consult the dedicated [Brexitection](#) on the ESMA website summarising the work that ESMA has done and is doing in this area.

### **Reference data**

The obligation to submit reference data according to Article 27 of MiFIR applies to trading venues and SIs established in the EU. With effect from 1 November 2019 trading venues and SIs established in the UK will in case of a no-deal Brexit no longer be subject to the obligation to submit reference data. Moreover, in consequence of Brexit all instrument records reported by UK trading venues and SIs until 31 October 2019 will be terminated with effect of 1 November 2019 to reflect the new scope of instruments subject to the MiFIR transaction reporting and the transparency regime and traded on SIs in the EU after Brexit. Those records will remain in the database and publications will show a validity end date set to 31 October 2019.

Terminating UK instrument records after Brexit will result in removing from the scope of the MiFIR transaction reporting requirements and the transparency regime financial instruments that are only available for trading on UK trading venues, i.e. single-listed UK instruments. ESMA expects that this initial effect will be gradually rebalanced by UK trading venue operators establishing venues in the EU and submitting new reference data. Nevertheless, it is unlikely that all instruments currently available on UK trading venues will be available for trading on EU trading venues in the medium term and the relocation of trading will take time. This implies that initially the number of instruments that are within the scope of the MiFIR transaction reporting requirements and the transparency regime will be significantly narrower after Brexit compared to today's situation.

### **Relevant Competent Authority (RCA)**

As per Article 26(1) of MiFIR, investments firms report transaction data to their home competent authorities. Subsequently, the relevant transactions are routed to the RCA that is determined based on the most relevant market in terms of liquidity for a given financial instrument. ESMA determines which of the national competent authorities (NCAs) is the RCA

based on a complex methodology taking a variety of factors into account, such as the type of instrument, trading and listing activity.

As a result of Brexit, the UK will cease to be the RCA for EU-traded instruments. To accommodate that change, ESMA will re-determine the RCA for the non-terminated instruments where the UK is currently the RCA, including equities, bonds, derivatives and other instruments. The new RCA, that will be an EU NCA, will be assigned as per the existing rules but without taking into account any information provided by UK trading venues and SIs, e.g. turnover on UK markets will be disregarded. The new RCA would take effect from 1 November 2019.

### **Annual transparency calculations for equity instruments – adjustment of MRM**

ESMA published the results of the first regular transparency calculations for equity instruments based on a reference period from 1 January to 31 December 2018 on 6 March 2019 and the results have been applied from 1 April 2019<sup>1</sup>.

Brexit will require amendments to the most relevant market (MRM) in terms of liquidity for the use of reference price waivers and the tick size regime MRM since the MRM has to always be within the EU. ESMA therefore intends to adjust the MRM for those instruments for which the annual calculations determined a UK trading venue as the MRM by selecting the EU trading venues with the highest turnover in the EU as the MRM shortly.

### **Quarterly liquidity determination for bonds**

According to Commission Delegated Regulation (EU) 2017/583 (RTS 2) the results of the quarterly liquidity determination for bonds should be published on 1 February, 1 May, 1 August and 1 November every year based on data covering the preceding calendar quarter and should be applied from 16 February, 16 May, 16 August and 16 November, respectively.

In case of a no-deal Brexit, ESMA will not publish the quarterly liquidity determination for bonds on 1 November 2019 due to concerns about potential disruptions of the ESMA IT systems after Brexit. ESMA will maintain the ongoing publication of the liquidity status of newly issued bonds. In consequence, and in line with Q&A 10 of section 4 of the MiFID II transparency Q&As, all

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<sup>1</sup> On 21 June 2019 ESMA published updated results of the annual equity transparency calculations. The updated results have been applied since 8 July 2019.

bonds for which no liquidity assessment has been published, should be deemed illiquid until the publication of the liquidity assessment. ESMA would resume the publications as of 1 February 2020 covering data from 1 October to 31 December. Those publications would include UK-related data only for the period 1 October to 31 October 2019.

### **Calculations for SI determination**

Commission Delegated Regulation (EU) 2017/565 sets out the quantitative thresholds for determining whether an investment firm trades on a frequent, systematic, and substantial basis and hence qualifies as an SI. Investment firms are required to assess every quarter whether over the last 6 months their OTC transactions carried out on own account when executing client orders meet those thresholds.

ESMA is voluntarily publishing every quarter, by the first calendar day of February, May, August and November, the denominators to be used for the performance of the SI test, i.e. the total number of transactions and total turnover executed in the financial instrument/class of financial instruments in the EU.

In case of a no-deal Brexit, ESMA will not perform the first publication of the SI calculations for equity instruments and bonds after Brexit on 1 November 2019 due to concerns about potential disruptions of the ESMA IT systems after Brexit. In consequence, investment firms will not need to perform the SI-test until ESMA publishes the results of the next SI-calculations, and will not be required to comply with the SI requirements. Nevertheless, investment firms can continue to opt into the SI-regime for all financial instruments. The SI-calculations for equity instruments and bonds would be resumed at the next regular publication date, i.e. on 1 February 2020 based on an observation period from 1 July 2019 to 31 December 2019. The February publication for equity instruments and bonds will hence include UK-related data up to 31 October 2019.

ESMA reminds reporting entities of their obligations to continue reporting transparency data also in the absence of the November publication in order to ensure that the transparency data covers trading activity necessary for the next annual publications.

## **Double Volume Cap**

According to MiFIR the first publication of the DVC results after Brexit should occur on the fifth working day of November 2019 and be based on the observation period October 2018 - September 2019 since ESMA is currently publishing the DVC results with a 1-month delay.

In case of a no-deal Brexit, ESMA will not perform the DVC calculations in November and December 2019 due to concerns about potential disruptions of the ESMA IT-systems after Brexit. The DVC calculations would be resumed in January 2020. DVC publications would continue to include UK-related data submitted to the ESMA IT systems up to 31 October 2019.

ESMA reminds reporting entities of their obligations to continue reporting DVC data also in the absence of the DVC publications in November and December in order to ensure that the DVC data covers trading activity in the previous 12 months necessary for forthcoming publications.

UK-related data will be gradually phased out from the calculations following Brexit over a period of twelve months. The December 2020 publication based on the observation period November 2019 - October 2020 will be the first one no longer including UK-related data. ESMA is aware that this approach will overstate the volume of trading under the waivers in the EU27 for a limited period of time due to most of the waiver activity currently being located in the UK. However, ESMA considers that this approach is nonetheless the least disruptive for financial markets as it would not lead to a sudden cliff-edge effect by removing UK data retroactively and basing the DVC results on a completely different set of data leading to substantially different results from one publication date to the next.

## **Ancillary Activity calculations**

Under MiFID II, non-financial counterparties are required to measure their own activity against total market sizes in commodity derivatives to assess whether they have to apply for authorisation as an investment firm.

To assist market participants with those calculations, ESMA publishes on a yearly basis an estimation of the market size of commodity derivatives and emission allowances for the preceding year based on data collected from trading venues as well as data reported to trade repositories under EMIR.

After a no-deal Brexit, ESMA will continue to include UK data in the estimates published for the periods for which the UK was still a member of the EU. Accordingly, the estimation of the market size to be published in 2020 will include UK trading venue data as well as trade repository reports by UK firms until 31 October 2019.

ESMA notes that the calculations of the size of the trading activities for the ancillary activity test have to be performed over a three-year rolling period preceding the date of calculation. Non-financial counterparties will therefore have to gradually phase out UK data from their calculations over that same time period. The calculations to be performed in Y2020 would be based on EU data including UK data for January to October 2019, Y2018 and Y2017. The Y2021 calculations would be based on EU data excluding UK data for Y2020 as well as November and December 2019 and EU data including UK data for January to October 2019, Y2018 and Y2017 and so on until the Y2023 calculations that would ultimately be based on EU27 data only for the three preceding years (2022, 2021 and 2020).

ESMA is aware of the fundamental impact the UK leaving the Union will have particularly on commodity derivatives markets. ESMA believes that phasing-out UK data over the maximum period permitted for the ancillary activity test to be the best approach for ensuring legal certainty and avoiding volatile results over the period of adaptation following the UK's departure.