

## **PUBLIC STATEMENT**

### **Use of UK data in ESMA databases and performance of MiFID II calculations in case of a no-deal Brexit**

The European Securities and Markets Authority (ESMA) is issuing this statement in relation to the impact on ESMA's databases of a no-deal Brexit with the United Kingdom (UK) leaving the European Union (EU) on 29 March 2019 at 0000 CET/2300 GMT without a withdrawal agreement. In consequence, 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 30 March 2019 no new UK-related data will be received and processed by ESMA nor published on the ESMA website.

This statement informs stakeholders on ESMA's approach to all ESMA IT applications and databases in case of a no-deal scenario and focuses in particular on the MiFID II/MiFIR transparency calculations 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.

There is still a high level of uncertainty as to the final timing and conditions of Brexit. Should the timing and conditions of Brexit change, 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 30 March 2019. Also with effect from 30 March 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 May 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 August 2019. The DVC calculations will not be published in April and May 2019 and will be resumed in June 2019.

ESMA intends to publish all calculations due prior to 29 March 2019. The annual calculations for equity instruments will be published on 1 March 2019 and applied as of 1 April 2019. Furthermore, ESMA will move forward the publication of the annual calculations for bonds (LIS- and SSTI-thresholds) from 30 April 2019 to 1 March 2019. The results of those calculations will be applied, as planned, from 1 June 2019.

Concerning the other annual non-equity calculations (excluding bonds) expected by 30 April 2019, ESMA will not perform these calculations in 2019 but continue relying for one more year on the results of the transitional transparency calculations (TTC). The first regular annual calculations for non-equity instruments will hence be published by 30 April 2020. The main reason for this approach are continued concerns about the quality and completeness of data submitted for non-equity instruments other than bonds, in particular derivatives, which are likely to result in unreliable results. Furthermore, a no-deal Brexit adds further difficulty to improving the quality and completeness of submitted data since UK entities, that are reporting the largest part of derivatives data, will no longer be connected to the ESMA applications and databases after 29 March 2019. Due to remaining data quality issues, ESMA will also not publish the SI-calculations for non-equity instruments other than bonds until at the latest 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 29 March 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 29 March 2019.

Stakeholders are informed that ESMA has postponed the new FIRDS and TREM releases planned for 18 February 2019 implementing a new data reporting format (XML schemas) to

Q3 2019 (after Brexit) to reduce the risks of disruptions to the ESMA IT systems and to limit the impact on market participants who would need to adapt to this new reporting format.<sup>1</sup> In addition, given its interdependence with some changes to the FIRDS CFI validations<sup>2</sup> that were planned in conjunction with this release, the 6-months implementation deadline for the [MiFIR Q&A on Interest Rates Swaps reporting](#)<sup>3</sup> that was published on 26<sup>th</sup> September has also shifted. According to the notification that was published on the [ESMA website](#), this Q&A was envisaged to apply as of the 26<sup>th</sup> March 2019 (i.e. 6 months after the publication date). However, the implementation deadline for this Q&A has now shifted to Q3 2019.]

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 not be possible to be carried out and/or may need to be further postponed. Should this be the case, ESMA endeavours to inform the public at the earliest stage possible.

ESMA cannot exclude that the modifications required to be executed to handle Brexit may lead to the disruption of the ESMA IT applications and databases for a period of time 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 [Brexit section](#) 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 30 March 2019, trading venues and SIs established in the UK will therefore 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 29 March 2019 will be terminated with effect of 30 March 2019 to

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<sup>1</sup> This postponement will take place irrespectively of whether a no-deal Brexit takes place. It should not impact the testing of the new releases.

<sup>2</sup> In particular, some updates to the CFI based validation rules (Annex 5 of the [FIRDS reporting instructions](#)) were planned to be applied in FIRDS production environment in conjunction with this release.

<sup>3</sup> N. 16 of the Q&As on MiFIR data reporting: [https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56\\_qas\\_mifir\\_data\\_reporting.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf)

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 29 March 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 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 competent authority, 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 will take effect from 30 March 2019.

### **Annual transparency calculations for equity instruments**

According to Commission Delegated Regulation (EU) 2017/587 (RTS 1) the first regular transparency calculations for equity instruments based on a reference period from 1 January

to 31 December 2018 should be published by 1 March 2019 and be applied from 1 April 2019. The equity transparency calculations include the following elements: determination of the liquidity status, determination of the most relevant market (MRM) in terms of liquidity for the use of reference price waivers and the tick size regime, the average daily turnover (ADT) for the determination of orders that are large in scale (LIS) and the application of deferrals, the average value of transactions (AVT) for the determination of the standard market size (SMS) for the SI quoting obligations.

ESMA will perform these calculations as planned. The calculations will include UK-related data submitted to the ESMA IT systems for the whole calendar year 2018 and will hence reflect the EU market at that time, i.e. including the UK. ESMA considers that taking into account the UK data for this annual update correctly reflects that the UK was still a member of the Union in 2018. In addition, ESMA after discussing this issue with numerous stakeholders considers that performing the calculations incorporating UK data as the least disruptive approach for financial markets in the case of a no-deal Brexit.

Brexit will require amendments to the MRM in terms of liquidity since the MRM has to be always within the EU. ESMA therefore intends to adjust the MRM for those instruments for which the March calculations determine a UK trading venue as the MRM. ESMA is planning to determine as the MRM the EU trading venue with the highest turnover in the EU as early as possible. For newly issued instruments, the MRM will be changed to the EU trading venue where that instrument was first admitted to trading or first traded.

## **Transparency calculations for non-equity instruments**

### 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.

ESMA will not publish the first quarterly liquidity determination for bonds after Brexit on 1 May due to concerns about 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 bonds for which no liquidity

assessment has been published, should be deemed illiquid until the publication of the liquidity assessment. ESMA will resume the publications as of 1 August 2019 covering data from 1 April to 30 June 2019. Those publications will no longer include UK-related data.

Annual transparency calculations for bonds (LIS, SSTI) and for all non-equity instruments other than bonds (liquidity status, LIS, SSTI)

According to RTS 2, the first annual transparency calculations for non-equity instruments should be published by 30 April 2019 based on a reference period covering 1 January to 31 December 2018 and apply from 1 June 2019. The calculations cover the following elements: determination of the liquidity status for all derivatives, structured finance products, emission allowances, ETCs and ETNs; and the thresholds for determining whether orders/transactions are large in scale (LIS) and above a size specific to the instrument (SSTI) and are therefore eligible for a waiver/deferral for all non-equity instruments including bonds.

ESMA intends to perform the annual transparency calculations for bonds (LIS, SSTI) and publish the results on 1 March 2019, i.e. ahead of Brexit, to ensure continuity in bond trading and for markets to be able to operate on updated trading data. For the same reasons as described in the equities section, these calculations will include UK-related data submitted to the ESMA IT systems for the whole calendar year 2018 and will hence reflect the EU market at that time, i.e. including the UK.

However, 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 TTC will continue to apply which equally include UK-related data.

**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.

ESMA will not perform the first publication of the SI calculations for equity instruments and bonds after Brexit on 1 May 2019 due to concerns about 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 will be resumed at the next regular publication date, i.e. on 1 August 2019 based on an observation period from 1 January 2019 to 30 June 2019. The August publication for equity instruments and bonds will hence include UK-related data up to 29 March 2019. As of November 2019, the SI calculations will reflect only EU27 data.

Concerning the SI calculations for non-equity instruments other than bonds, ESMA will not perform those calculations until at the latest 2020 due to concerns about the completeness and quality of data received. Once the submitted data reaches an acceptable level, ESMA will start performing those calculations. ESMA will inform market participants as soon as a date for publishing the SI calculations for non-equity instruments other than bonds has been set.

### **Double Volume Cap**

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

ESMA will not perform the DVC calculations in April and May 2019 due to concerns about disruptions of the ESMA IT-systems after Brexit. The DVC calculations will be resumed in June 2019. The publication will include UK-related data submitted to the ESMA IT systems up to 29 March 2019.

ESMA reminds reporting entities of their obligations to continue reporting DVC data also in the absence of the DVC publications in April and May 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 May 2020 publication based on the observation period April 2019 - March 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.

ESMA will continue to include UK data in the estimates published as long as the UK was a member of the EU. Accordingly, the estimation of the market size to be published in 2019 will include UK trading venue data as well as trade repository reports by UK firms for 2018.

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 Y2019 would be based on EU data including UK data for Y2018, Y2017, and Y2016. The Y2020 calculations would be based on EU data excluding UK data for Q2, Q3, and Q4 2019 and EU data including





UK data for Q1 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.