

## PUBLIC STATEMENT

### Use of UK data in ESMA databases and performance of MiFID II calculations following the end of the UK transition period on 31 December 2020

The European Securities and Markets Authority (ESMA) is issuing this public statement to inform the public of ESMA's approach for the various ESMA databases and IT-systems, including the transparency calculations, after the end of the UK transition period on 31 December 2020.

This statement builds on earlier statements on the [publication of databases and IT-systems](#) published on 5 February 2019<sup>1</sup>, including the update on [28 March 2019](#)<sup>2</sup>, and on 7 October 2019<sup>3</sup> informing the public of ESMA's approach for the various databases and IT-systems in case of a no deal Brexit.

With the end of the transition period on 31 December 2020, 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, as EU law will no longer apply to, and in the UK. Starting from 1 January 2021 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 after the end of the transition period 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 the future relationship between the UK and the EU, ESMA will adjust the approach for ESMA's IT

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_70-155-7026\\_use\\_of\\_uk\\_data\\_in\\_esma\\_databases\\_in\\_case\\_of\\_a\\_no-deal\\_brexit.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_70-155-7026_use_of_uk_data_in_esma_databases_in_case_of_a_no-deal_brexit.pdf)

<sup>2</sup> [https://www.esma.europa.eu/sites/default/files/library/esma90-1-83\\_public\\_statement\\_-\\_brexit\\_update.pdf](https://www.esma.europa.eu/sites/default/files/library/esma90-1-83_public_statement_-_brexit_update.pdf)

<sup>3</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-155-7658\\_statement\\_brexit\\_esma\\_it\\_systems\\_oct\\_19.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-155-7658_statement_brexit_esma_it_systems_oct_19.pdf)

applications and databases and will inform the public of the adjusted approach as soon as possible.<sup>4</sup>

As a general approach, after 31 December 2020, reference data submitted by UK trading venues and systematic internalisers (SIs) to FIRDS will be terminated and 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.

Due to concerns about the temporary disruption of the ESMA IT systems and databases following the end of the transition period, ESMA will not perform the monthly DVC publications for a period of two months. In consequence, the DVC calculations will not be published in January and February 2021 and will be resumed in March 2021.

Furthermore, ESMA will not perform the calculations for the quarterly SI-determination for equity instruments and non-equity instruments and for the quarterly liquidity determination for bonds scheduled for 1 February 2021. The calculation and publication of the quarterly bond liquidity and SI determination for equity and non-equity instruments will be resumed for the next regular publication date on 1 May 2021.

UK-related data will be gradually phased out from all ESMA calculations.

More details on the various calculations are provided below.

UK-related data received until 31 December 2020 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's systems and flagged as inactive/no longer valid with a termination date set to 31 December 2020. ESMA reminds users of the ESMA IT systems and registers that the execution of such changes might not be immediate.

ESMA cannot rule out that the modifications required to be executed to handle the end of the transition period may lead to the disruption of the ESMA IT applications and databases for a short period of time e.g. several days for some systems, resulting in the non-availability of the

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<sup>4</sup> See ESMA's Data Operational Plan following the end of the UK transition period on 31 December 2020, [add hyperlink](#)

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 January 2021 trading venues and SIs established in the UK will no longer be subject to the obligation to submit reference data. Moreover, all instrument records reported by UK trading venues and SIs until 31 December 2020 will be terminated to reflect the scope of instruments subject to the MiFIR transaction reporting and the transparency regime in the EU after Brexit. Those records will remain in the database and publications will show a termination date set to 31 December 2020.

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

As per Article 26(1) of MiFIR, investment 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 methodology taking a variety of factors into account, such as the type of instrument, trading and listing activity.

As a result of the end of the transition period, 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.

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

ESMA published the results of the regular transparency calculations for equity instruments based on a reference period from 1 January to 31 December 2019 on 28 February 2020 and

the results have been applied from 1 April 2020<sup>56</sup>. The next annual transparency calculations for equity instruments will be published by 1 March 2021 based on a reference period from 1 January 2020 to 31 December 2020 and will be applied from 1 April 2021. The calculations will hence include data submitted by the UK. The first annual equity calculations without UK data will be published by 1 March 2022 based on the reference period 1 January 2021 to 31 December 2021.

The end of the transition period will require amendments of the regular transparency calculations that are currently applied with respect to the most relevant market (MRM) in terms of liquidity for the use of reference price waivers and the tick size regime since the MRM has to always be within the EU. ESMA will 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.

Furthermore, ESMA is also intending to adjust the average daily number of transactions (ADNT) for those instruments where the MRM has been amended based on the regime for adjusting ADNTs deriving from Commission Delegated Regulation (EU) 2017/588 (RTS 11). Market participants are reminded that Q&A 3 of the Section of Equity transparency of the [“Question and Answers on MiFID II and MiFIR transparency topics”](#) document and Q&A 8 of the Tick Size section of the [“Question and Answers on MiFID II and MiFIR market structures topics”](#) document apply in the case the relevant parameters of the MRM and related ADNT on the MRM are not published.

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

ESMA published the results of the regular transparency calculations for non-equity instruments based on a reference period from 1 January to 31 December 2019 on 15 July 2020 and the results have been applied from September 2020. The next annual transparency calculations

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<sup>5</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-confirms-application-date-equity-transparency-calculations>

<sup>6</sup> On 7 July 2020 ESMA published updated results of the annual equity transparency calculations. The updated results have been applied since 13 July 2020.

<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-updated-annual-transparency-calculations>

for non-equity instruments will be published by 30 April 2021 based on a reference period from 1 January 2020 to 31 December 2020 and will be applied from 1 June 2021. The calculations will hence include data submitted by the UK for the whole reference period. The first annual non-equity calculations without UK data will be published by 30 April 2022 based on the reference period 1 January 2021 to 31 December 2021.

### **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.

Following the end of the transition period, ESMA will not publish the quarterly liquidity determination for bonds on 1 February 2021 due to concerns about potential disruptions of IT systems after the end of the transition period. 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 as from 16 February 2021 illiquid until the application of the next liquidity assessment. ESMA will resume the publications as of 1 May 2021 covering data from 1 January to 31 March 2021. Those publications will no longer include UK-related data and apply from 16 May 2021.

### **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.

Following the end of the transition period, ESMA will not perform the publication of the SI calculations for equity and non-equity instruments on 1 February 2021 due to concerns about potential disruptions of IT systems. In consequence, investment firms will not need to perform the SI-test until ESMA publishes the results of the next SI-calculations on 1 May 2021, and the mandatory SI regime will not apply from 15 February to 14 May 2021. Nevertheless, investment firms can continue to opt into the SI-regime for all financial instruments.

The SI-calculations will be resumed at the next regular publication date, i.e. on 1 May 2021 based on an observation period from 1 October 2020 to 31 March 2021, and investment firms will be required to perform the SI determination by 15 May 2021. The May publication for equity instruments and non-equity will hence include UK-related data up to 31 December 2020. The first SI-calculation without UK data will be published on 1 August 2021 based on an observation period from 1 January 2021 to 30 June 2021.

ESMA reminds reporting entities of their obligations to continue reporting transparency data also in the absence of the February 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 the end of the transition period should occur on the fifth working day of January 2021 and be based on the observation period December 2019 - November 2020 since ESMA is currently publishing the DVC results with a 1-month delay.

Following the end of the transition period, ESMA will not perform the DVC calculations in January and February 2021 based on the periods 1 December 2019 to 30 November 2020 and 1 January 2020 to 31 December 2020 due to concerns about potential disruptions of IT-systems after Brexit. The DVC calculations will be resumed in March 2021 covering the period 1 February 2020 to 31 January 2021, hence for the first time the calculations will be based on data partially excluding UK figures, for 1 out of 12 months of the look-back period (January 2021).

ESMA reminds reporting entities of their obligations to continue reporting DVC data also in the absence of the DVC publications in January and February 2020 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 February 2022 publication based on the observation period January - December 2021 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 EU 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 the 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.

Following the end of the transition period, 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 2021 will include UK trading venue data as well as trade repository reports by UK firms until 31 December 2020.

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 Y2021 would be based on EU data including UK data for Y2020, Y2019 and Y2018. The Y2022 calculations

would be based on EU data excluding UK data for Y2021 and EU data including UK data for Y 2019 and Y2018 and so on until the Y2024 calculations that would ultimately be based on EU data only for the three preceding years (2023, 2022 and 2021).

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. ESMA however also notes that as part of its proposal to amend MiFID to help the recovery from the Covid-19 pandemic, and as suggested in ESMA's Report on position limits, the European Commission has proposed to delete the quantitative tests associated with the ancillary activity exemption and to only rely on qualitative elements<sup>7</sup>.

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<sup>7</sup> [https://ec.europa.eu/finance/docs/law/200724-mifid-review-proposal\\_en.pdf](https://ec.europa.eu/finance/docs/law/200724-mifid-review-proposal_en.pdf)