

## OPINION

### On ancillary activity – market size calculation – update for the year 2020

#### 1 Legal basis

1. ESMA's competence to deliver an opinion to competent authorities is based on Article 29(1)(a) of Regulation (EC) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>1</sup>(ESMA Regulation).
2. Pursuant to Article 29(1)(a) of the ESMA Regulation, ESMA shall provide opinions to competent authorities for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union.

#### 2 Background

3. Article 2 of Directive 2014/65/EU<sup>2</sup> ("MiFID II") lays down the exemptions from its scope of application. According to point (j) of Article 2(1), MiFID II does not apply to persons dealing on own account or providing investment services in specific cases, including where their activity is an ancillary activity to their main business, provided that certain conditions are met.
4. Commission Delegated Regulation (EU) 2017/592 (the "Delegated Regulation")<sup>3</sup> further specifies the criteria for establishing when an activity is to be considered as ancillary to the main business at a group level pursuant to paragraph 4 of Article 2 of MiFID II.
5. In particular, Article 2(3) of the Delegated Regulation lays down the rules for calculating the overall market trading activity. The calculation of the overall market trading activity is necessary for the establishment of the size of trading activity per market participant which ultimately determines whether an activity is ancillary, and hence, whether a market participant falls within the scope of MiFID II.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 48.

<sup>2</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 174, 1.7.2011, p.1).

<sup>3</sup> Commission delegated regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

6. However, it is challenging for national competent authorities and market participants to determine the market size figures since there is no centralised recording of on-venue and off-venue transactions for commodity derivatives and emission allowances which is publicly available.
7. As a result, national competent authorities and market participants have asked ESMA to provide guidance for the determination of the market size figures to ensure the correct application of Article 2(3) of the Delegated Regulation.
8. ESMA has considered that such guidance will contribute positively to the consistency of supervisory practices and will ensure a uniform approach throughout the Union, as a result of which, ESMA has decided to issue this Opinion.

### 3 Opinion

9. The guidance of ESMA is based on the methodology for the assembling of data described below. ESMA is aware that the data used for the guidance may bear some inherent limitations, including in respect of its accuracy and completeness. Therefore, competent authorities may consider any alternative data which market participants may provide for the purpose of application of Article 2(3) of the Delegated Regulation.

#### *General methodology*

10. The data for the calculation of the on-venue market size was calculated based on trading venues' submissions to the ESMA FITRS system<sup>4</sup> for the 2020 and 2019 figures and collected from the trading venues located in the EEA for the year 2018. The data for the calculation of the OTC market size is based on reports submitted to the Trade Repositories (TRs) under Regulation (EU) No 648/2012<sup>5</sup>.
11. The total market size for both on-venue and OTC markets, i.e. gross notional value traded in EUR was calculated on a dual-sided basis, that is both buyers' and sellers' notional values of each transaction was added to establish a gross notional value traded. This ensures comparability with the approach undertaken by market participants when calculating the size of their own commodity derivatives activity.

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<sup>4</sup> In case of figures regarding emission allowances and derivatives thereof the figures were collected from the trading venues, since the data reported to FITRS is in a different unit of measurement.

<sup>5</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L201, 27.7.2012, p.1).

For the calculation of the notional amount of ETD option contracts the following formula was used:

$$\text{Notional amount of ETD option contracts} = \frac{\text{lot size}}{\text{multiplier}^6} * \text{quantity}^7 * \text{strike price}$$

The same formula should be used for the calculation of the numerator by market participants performing the ancillary activity test.

#### *Data quality measures*

12. For EMIR data the following reconciliation procedure was applied. Each trade was classified into (I) single-sided (one reporting counterparty in the EEA) or double-sided (two reporting counterparties in the EEA) reports. The double-sided reports were (II) reconciled by halving the notional amount of each transaction. Then the single-sided market size was calculated, i.e. aggregation of the notional of the (I) single-sided reports and (II) double-sided reports. In the second step, this single-sided market size was doubled in order to provide the total volume traded.
13. The volumes reported were converted to EUR using the exchange rate of the execution date.
14. With the aim of ensuring that the data provided by TRs is of sufficient quality, outliers have been identified and removed from the aggregation. Outlier thresholds were calculated according to several characteristics (e.g. contract type) of the derivative reported. For this calculation ESMA considered any observation as an outlier that had a larger notional amount than the median plus 3 times the standard deviation (log-normalized). The intragroup transactions as well as transactions related to compression activity were removed as well.

#### *Asset class and contract type specifications*

15. In accordance with Article 2(1) of the Delegated Regulation, the market sizes are provided for the following asset classes: agricultural products, metals, oil and oil products, coal, gas, power, emission allowances and derivatives thereof and other commodities.
16. For OTC data retrieved from TRs, the relevant classes of commodity derivatives were defined as follows:

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<sup>6</sup> Multiplier: number of underlying instruments to be delivered for one contract

<sup>7</sup> Quantity: number of contracts traded

- a. Metals: “commodity base” reported as ‘ME’ and “commodity details” reported as ‘PR’ (precious) or ‘NP’ (non-precious)
  - b. Oil and oil products: “commodity base” reported as ‘EN’ (energy) and “commodity details” reported as OI (oil)
  - c. Coal: “commodity base” reported as EN (energy) and “commodity details” reported as CO (coal)
  - d. Gas: “commodity base” reported as EN (energy) and “commodity details” reported as NG (natural gas)
  - e. Power: “commodity base” reported as EN (energy) and “commodity details” reported as EL (electricity) or IE (inter-energy)
  - f. Agricultural products: “commodity base” reported as ‘AG’ and “commodity details” reported as ‘GO’ (grains oilseeds), ‘DA’ (dairy), ‘LI’ (livestock), ‘FO’ (forestry), ‘SO’ (softs), ‘SF’ (seafood) or ‘OT’ (other)
  - g. Other commodities: “commodity base” reported as FR (freights) and “commodity details” reported as DR (dry), WT (wet) or OT (other), “commodity base” reported as IN (index) or EX (exotic) as well as “commodity base” reported as EV (environment) and “commodity details” reported as WE (weather)
  - h. Derivatives on emission allowances: “commodity base” reported as EV (environment) and “commodity details” reported as EM (emissions).
17. Commodity ETD data was calculated based on the reporting of the trading venues to the FITRS system:
- a. Metals: “Base product” reported as “Metals”
  - b. Oil and oil products: “Base product” reported as “Energy” and “Sub product” reported as “Oil”
  - c. Coal: “Base product” reported as “Energy” and “Sub product” reported as “Coal”
  - d. Gas: “Base product” reported as “Energy” and “Sub product” reported as “Natural gas”
  - e. Power: “Base product” reported as “Energy” and “Sub product” reported as “Electricity”
  - f. Agricultural products: “Base product” reported as “Agricultural”
  - g. Other commodities: “Base product” reported as “Freight” or “Paper”
18. The ETD data regarding emission allowances and derivatives thereof was provided by the trading venues trading those financial instruments.

## 4 Estimates

Values in million EUR, double-sided, annualised

### 2020 estimates

Class	ETD	OTC	TOTAL
Metals	39,774,448	1,685,707	41,460,155
Oil	37,601,343	470,572	38,071,915
Coal	118,604	14,210	132,814
Gas	777,918	101,294	879,212
Power	445,381	53,334	498,715
Agriculture	930,631	201,936	1,132,567
Other C(10)	29,978	652,210	682,188
Emission allowances and derivatives thereof	653,804	33,739	687,543

### 2019 estimates

Class	ETD	OTC	TOTAL
Metals	26,646,686	1,464,143	28,110,829
Oil	48,577,564	2,393,795	50,971,359
Coal	155,039	15,160	170,199
Gas	883,881	133,788	1,017,669
Power	391,494	82,290	473,784
Agriculture	848,206	329,870	1,178,076
Other C(10)	15,160	224,227	239,387
Emission allowances and derivatives thereof	563,788	35,137	598,925

### 2018 estimates

Class	ETD	OTC	TOTAL
Metals	26,646,827	5,329,125	31,975,952
Oil	52,365,109	1,993,077	54,358,186
Coal	236,793	20,320	257,113
Gas	1,248,261	190,498	1,438,759
Power	711,435	17,861	729,296
Agriculture	902,770	1,327,255	2,230,025
Other C(10)	13,700	1,106,244	1,119,944
Emission allowances and derivatives thereof	451,120	6,087	457,207



## Disclaimer

The analysis displayed in this opinion incorporates data related to European Economic Area (EEA) Member States based on the notifications received by ESMA, the publication of which does not affect the status of incorporation of relevant EU law into the EEA Agreement and any related legal consequences. Reported data under EMIR may be subject to future revisions, reflecting possible data quality issues and reporting completeness.