



– Consultation Response –

ESMA Consultation Paper on the review of RTS 1 /RTS 2

Brussels, 1 October 2021 | Europex welcomes the opportunity to provide feedback to ESMA’s proposals for amending RTS 1 and –most relevant to us– RTS 2.

Given the long history of discussions on the pre-trade transparency regime and its implications for commodity markets, we truthfully welcome that ESMA acknowledges the need to review its current design and appreciate the effort behind the suggested proposals.

We believe it is crucial that the illiquid market and Large-In-Scale (LIS) transactions waiver methodologies will consider the unique characteristics of commodity trading, one of them being the important role of pre-arranged trading for the development of on-screen trading.

ESMA’s proposals show that alternative proposals have been carefully assessed, and ESMA has paid significant attention to the differences between different commodity asset classes.

However, Europex members are concerned with some of the proposals that lead to an even more negative impact than the current regime. These proposals relate to the liquidity determination for commodity derivatives as well as the LIS threshold calculations, which should evidently be based on order book (or screen data) alone.

In our response, we provide detailed feedback on ESMA’s proposals to review RTS 2, with a particular emphasis on the following:

- *ESMA’s proposal on commodity derivatives 3 to increase the parameter of the “average daily notional amount” (ADNT) to 50 trades per day for all commodity derivatives:* Europex remains of the view that 50 trades per day would be too low and suggest that 100 trades per day would be a more suitable threshold.
- *ESMA’s proposal on commodity derivatives 4 to replace the criterion of ADNT with the criterion of “standard trade size” (STS) and set the parameter of the STS mode at 5 lots for futures:* While Europex supports the introduction of the STS criterion, we believe it should complement the ADNA liquidity criterion and not replace it. Adding this criterion is particularly important for the appropriate calibration of options. Further, we highlight that instead of using ADNA, volume should be measured by looking at the Average Daily Amount traded in Lots (“ADAL”).

- *ESMA's proposal on commodity derivatives 6 to have LIS and SSTI thresholds equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap: After having carefully investigated the ADVL proposal as well as other alternatives, we concluded that the 70 percentile approach is the least flawed methodology and could fit if the approach were slightly adapted.*
- *Proposal Commodity Derivatives 9 whereby ESMA proposes that transparency calculations continue to be performed with all data (on-venue, SI and OTC): Europex is strongly of the view that the liquidity assessment and LIS threshold calculation should be based on on-book data only.*

We remain at ESMA's disposal to discuss the new proposals for IL and LIS waiver methodologies and the quantitative data to be provided for the purpose of the transparency calculations.

Section III: Review of RTS I

> [\[Q1 – Q24\]](#)

Q5 : Which of the two options for the pre-trade transparency requirements for FBA trading systems do you prefer? Please explain in case you are supportive of a different approach than the two options presented.

Should ESMA maintain the proposed definition of FBAs as well as its pre-trade transparency requirements in table 1 of Annex I of RTS1 and align it with table 1 of Annex 1 of RTS2, then Europex strongly believes that exchanges should be able to operate FBAs in line with the requirements following from either of the two options put forward by ESMA. While the requirements mandated in Option 1 already provide for an appropriate amount of transparency, we do not see why FBAs which also display information related to orders, as reflected in Option 2, should not be possible. The varying FBA auctions have been calibrated to the needs of the market participants and we strongly advise to provide exchanges with the flexibility to choose between the two equally valid options. As a matter of fact, we believe that both options fit different situations and products and that a one size fits all approach to them would not be beneficial.

Section IV: Review of RTS II

4.1 General issues

4.1.1 Pre-trade transparency requirements for trading systems

4.1.1.1 Description of trading systems and related pre-trade transparency requirements (Table 1 of Annex 1) (p84, p202-204)

- ESMA proposes to replicate the changes made to RTS 1 table 1 of Annex 1 also in RTS 2 Table 1 of Annex 1 (see sections 3.1.3.1. and 3.1.3.2. of the public consultation and the amended table 1 of

Annex I of RTS 2 in section 6.6, Annex VI). This includes the addition of a new trading system for FBAs and some adjustments to the category of periodic auction trading systems. Furthermore, it includes a slightly different presentation of trading systems not specifically captured in the tables, including hybrid systems (“any other trading system” in RTS 1 and “trading systems not covered by the first 5 rows” in RTS 2).

- > *Q24: Do you agree with the proposed amendments above? If not, please do not reiterate the arguments made under the previous question asked for equity instruments and please rather explain why those amendments are not suitable for non-equity financial instruments.*

Europex tends to disagree with the proposal to align RTS1 and RTS2 with regard to the description of trading systems and pre-trade transparency requirements. This is because we are concerned that the definition of FBAs as proposed by ESMA in Question 4 risks unintentionally capturing too many auction trading systems, whereas the definition of periodic auctions may capture too few. We believe that the FBA definition should capture specifically those FBAs that could benefit from more meaningful pre-trade information, i.e. those auctions that meet the characteristics outlined in paragraph 61 of the consultation paper.

In order to do so, we believe a reference to the duration of the auction has to be introduced. As stated by ESMA in paragraph 61: “FBAs have a shorter duration than conventional periodic auctions, often only lasting for some milliseconds”. Although we appreciate that it is difficult to set a maximum or average length for an auction, we believe it is important to include a reference to the duration of the auction. Furthermore, we recommend maintaining the current definition of periodic auctions, but including a sentence stating that it does not include FBAs.

If ESMA maintains the current definitions and aligns them with table 1 of Annex 1 of RTS2, the unintended consequence will be that auctions set up for non-equities might become subject to pre-trade transparency requirements calibrated for FBAs that have been used in the equity environment to circumvent the DVCM, essentially shifting trades to dark pools. Commodity derivatives auctions have essentially been used to avoid a shift of trades to the uncleared OTC environment. Given that these auctions serve opposite purposes, it should be avoided that they become subject to a one size fits all approach in terms of pre-trade transparency requirements. Instead, the auctions set up by commodity exchanges should continue to be considered as periodic actions.

Please also refer to our response to Question 5. Should ESMA still be convinced that a broader definition of FBAs is needed and is necessary to apply to non-equity instruments, we believe it is crucial to introduce optionality between either Option 1 or Option 2.

4.1.1.2 Format of the pre-trade transparency information (p85, p204-211)

- RTS 2 does currently not prescribe for a specific description of the pre-trade transparency information to be published and the specific format to be used. The current requirements leave discretion to market participants to decide on the exact information that should be published and the format to be used.
- ESMA considers complementing Annex I of RTS 2 by fields to be populated for pre-trade transparency purposes to establish clear minimum requirements for the provision of pre-trade information. ESMA proposes to further specify not only the type of information expected to be disclosed but also the general format to be used depending on the type of execution venue making the information public.

- ESMA has therefore developed a table based on table 3 in Annex I of RTS 2 for post-trade purposes specifying the fields to be populated for pre-trade transparency. The proposed table consists of 20 fields which have been deemed relevant for the purpose of pre-trade transparency.

> *Q25: Do you agree with the proposal to specify the fields to be populated for pre-trade transparency purposes? If not, please explain. In case you support the proposal, please comment on the fields proposed, in particular whether you would consider them necessary and/or whether additional information is required.*

No, we do not believe that there is a need to specify the fields to be populated for pre-trade transparency purposes. Given that it is unclear to what extent the pre-trade transparency information is used by the market, we believe it is premature to decide upon further harmonisation of the fields. Moreover, more data could slow down the operation of the venue, which we do not believe is in the interest of the market participants. Once there is evidence that the pre-trade information is of use to market participants and there is evidence that market participants would like to see further harmonisation, ESMA could reconsider the proposal to further harmonise the pre-trade transparency publication.

Should ESMA still decide a common format is needed, we have four preliminary comments on the table.

- 1) We do not believe the inclusion of the ISIN will add value, as only few customers use this label when they select the product they wish to trade;
- 2) Market participants are generally aware of the size of a lot and the inclusion of notional and notional currency is not needed;
- 3) It seems contradictory to include the strike and strike currency of an option, but not include other data such as the maturity of the option and whether it is a put/call; and
- 4) We have noted that there is no field to distinguish between bids and asks.

4.1.2 LIST and SSTI thresholds in RTS 2 excluding commodity derivatives (p92-93)

- Awaiting the proposals from the EC, ESMA would not undertake any fundamental changes now. Instead, ESMA would consider carrying out a targeted review of specific issues in a subsequent review of RTS 2, in a similar vein to what is currently being done for commodity derivatives.
- ESMA invited stakeholders to comment on which item would be most pressing to resolve at this point in time and suitable for a targeted review.

> *Q26: Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.*

No comments.

4.1.3 Amendments to Article 13

4.1.3.1. Date of application of transparency calculations p94

- The annual transparency calculations are published by 30 April each year and apply from 1 June each year. To ensure that the process of updating the transparency calculations runs as smoothly as possible while maintaining the timelines envisaged in RTS 2, ESMA proposes that “The results of the calculations shall apply from **the first Monday of June** each year following publication **until the day before the first Monday of June of the subsequent year.**”
- In addition, RTS 2 provides for a derogation for bonds, except ETCs and ETNs, in Article 13(18). Accordingly, NCAs should ensure the publication of the liquidity determination for bonds on a quarterly basis, on the first day of February, May, August and November. In this case, the date of application is the sixteenth day of February, May, August and November and apply for a three-month period. Also here, ESMA is of the view that the date of application should start on a Monday.

4.1.3.2. Submission of quantitative data (p95, p322-328)

- As for RTS 1, it is proposed to further specify the details of the relevant quantitative data in a new Annex of RTS 2 i.e. Annex V. This is intended to not only provide more clarity and legal certainty to market participants but also, more generally, to ensure more convergent reporting practices contributing ultimately to improved data quality. As explained, the detailed description of the new table to be inserted into the Annex of RTS 2 is provided under section 4.3.3.

> *Q27: Do you agree with the proposed changes to Article 13? If not, please explain*

With regard to the proposed **date of application of transparency calculations**: We very much welcome ESMA’s suggestion not to implement changes on a fixed date, such as 1 June, but to start on a Monday, allowing for changes to be made over the weekend. However, we are of the opinion that the third Monday of June would be preferable as:

1) The first week of any month is often preceded by the weekend following the expiries of commodity derivative contracts. During the weekend the exchange and clearing house are focusing their resources on ensuring this life cycle event is completed correctly.

2) In the past, new transparency calculation sometimes coincided with the use of a different data template from ESMA. If this occurs, there is very little time between April 30 and the first Monday of June to work through the impact of the changes to the data template and implement the updated transparency calculation at the same time. A period of 6 weeks seems more suitable to ensure that the deadline is met and the changes are implemented in an orderly manner.

Alternatively, as we understand that the preferred week depends on the type of products a trading venue lists, we would also support a more flexible approach whereby a deadline is set, rather than a fixed date. The deadline should then take into account the 6 weeks period to implement the changes, as suggested above.

With regard to the **submission of quantitative data**: Yes, we believe that the new table with quantitative data will provide clarity, certainty and, not least, quality with regard to the data that is required.

.4.1 Other amendments to the main text of RTS 2

4.1.4.1. Article 4(2)(a) of RTS 2 p95

- Currently, Article 4(2)(a) of RTS 2 established the minimum size of reserve orders as monetary thresholds in euros. ESMA clarified in a Q&A that “the minimum size of orders held in an order management facility of a trading venue pending disclosure should be calculated according to Table 4 of Annex II of RTS 2 except for emission allowances and emission allowance derivatives for which the notional amount of traded contracts should be used”. ESMA proposes to move this Q&A into RTS 2 by adding a new paragraph 4 to Article 4 of RTS 2:

“(4) For the purpose of letter (a) of paragraph 2, market operators and investment firms operating a trading venue shall calculate the minimum size of orders held in an order management facility:

(a) as set out in Table 4 of Annex II of RTS 2 for all financial instrument except for emission allowances, emission allowance derivatives and commodity derivatives;

(b) the notional amount of traded contracts shall be used for emission allowances, emission allowance derivatives and commodity derivatives.”

- > *Q28: Do you agree with the proposed changes to Article 4? If not, please explain.*

We agree and support the proposal, understanding it confirms the status quo.

4.1.4.2. Article 12 of RTS 2, non-price forming transactions p96-97

- ESMA wants to simplify the regime of non-price forming transactions by amending Article 12 of RTS 1 where some exemptions appear duplicative and therefore redundant. The changes proposed regarding the flagging of non-price forming transactions in non-equity financial instruments are described in section 4.4.1.
- > *Q.29: Do you agree with the proposed changes to Article 12? If not, please explain. Please do not reiterate the general comments made in the equity section and try to focus on arguments that are specific to non-equity financial instruments.*

No comments.

4.2. Commodity derivatives, emission allowances and derivatives on emission allowances

4.2.1 Overview of commodity derivatives, EA and DEA available in the EU after Brexit p98

- **Proposal Commodity Derivatives 1: [Metals] Determine that all metal sub-asset classes do not have a liquid market**

4.2.2. Liquidity determination for commodity derivatives (p99, p333-334)

- ESMA concludes that the costs of changing the liquidity criterion from ADNT to MDNT would outweigh the benefits, hence is not taking this proposal forward. It explains that the use of MDNT instead of ADNT is unlikely to make a significant difference. ESMA says this is because there are very few cases where, for a given sub-class, the ADNT is higher than a given threshold while the MDNT is lower than the same threshold. ESMA has tested this for different parameters with the same result.
- **Proposal Commodity Derivatives 2: [ADNT] Maintain the criterion “average daily number of trades” (do not switch to “median daily number of trades”)**

4.2.3 Calibration of the ADNT (p100, p334-335)

- ESMA suggests an approach where the ADNT parameter is the same for all classes and proposes to calibrate the parameter at 50 trades per day, which roughly corresponds to a frequency of one trade every 10 minutes.
 - ESMA explains “that the sensitivity of the results to the calibration of the ADNT varies depending on the asset classes. For derivatives on agriculture, natural gas and for DEA, the sensitivity of the results to the calibration is low: choosing any parameter between the current 10 trades per day, and 100 trades per day, would not make a big difference and most of the trading activity would continue to be captured under liquid classes even with a parameter set at 100 trades per day. For freight derivatives and emission allowances, any calibration above 30 (for freight) and 10 (for EA) would render the whole asset class illiquid. Finally for derivatives on electricity, the sensitivity of the results to the calibration is high: moving the cursor between the current 10 trades per day, and 100 trades per day, would decrease the proportion of trades captured under liquid classes from 92% to 48%.”
 - ESMA concludes there are two possible routes: either to consider that the same parameter should be used for all asset classes, which means considering that irrespective of the asset class, a class cannot be liquid if it trades less often than X times per day; or to set the parameters per asset class in such a way that comparable percentages of trading activity would fall under liquid class.
 - According to ESMA, the impact of this new calibration would be very limited on agriculture, natural gas and derivatives on emission allowances. On electricity derivatives, the percentage of trades caught under liquid classes would decrease from 91.8% to a level of 71.4%, which remains significant. Based on 2020 data, no freight classes would be deemed liquid with a calibration of 50 trades per day. Given that freight derivatives are exclusively traded off- book (trade registration), a different outcome might be disproportionate. Finally on EA, while the data used for the calibration would also lead to no liquid EA classes, it has been estimated that after the migration of EA and DEA contracts from ICE Futures to ICE Endex, the currently liquid EA class would remain liquid, even with a parameter of 50 trades per day.
- **Proposal Commodity Derivatives 3: [ADNT] Increase the parameter of the ADNT to 50 trades per day for all commodity, C10, EA and DEA sub-classes.**

4.2.2.2 Average daily notional amount (ADNA) p101

- ESMA has worked on a proposal to replace the ADNA by a measure of the standard trade size (STS), under the assumption that the more liquid an instrument, the smaller the STS. This STS should be denominated either in the unit of the underlying commodity (i.e. in tonnes, MWh etc.) or in lots to avoid the influence of price and currency fluctuations. To simplify the analysis and make it comparable across asset classes, the STS is calculated in lots.

4.2.2.3 Calibration of the liquidity parameters for commodity derivatives (p101, 335-351)

- As explained in the non-equity transparency review report, there are two main issues related to the use of the ADNA to determine the liquidity of commodity derivatives. First, the ADNA does not allow distinguishing between (1) a market with on average few trades of large sizes (potentially illiquid); and (2) a market with on average numerous trades of small sizes (potentially liquid). Those two markets could have the same average daily notional amount while exhibiting different liquidity profiles.
 - ESMA therefore proposes to replace the ADNA with the STS as a quantitative liquidity criterion. To calculate the STS, ESMA would favour using the most frequently traded size (STS_mode) over the median trade size (STS_median) as the former is likely to prove more robust in particular on the least liquid classes. In terms of calibration, ESMA suggests using the value 5 lots for all asset classes meaning that any class with an STS_mode lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).
 - However, the data shows that no option classes would be deemed liquid with a calibration of the STS_mode at 5 lots. Setting a different parameter for options could be justified on the basis of structural differences in the liquidity distribution of options compared to that of futures. In this respect, ESMA seeks stakeholders' feedback on the existence of such structural differences, and the underlying reasons behind them, which could in turn justify setting ad-hoc parameters for options. For the purpose of this CP, ESMA suggests setting the same parameter for all contract types (including options) and may reconsider this proposal on the basis of the feedback received from stakeholders.
- **Proposal Commodity Derivatives 4: [ADNA] Replace the criterion “average daily notional amount” with the criterion “standard trade size” calculated as the most frequently traded size (mode) and set the parameter of the STS_mode at 5 lots for futures: any class for which the most frequently traded size is lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).**
- **Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS_mode for all contract types, including options (5 lots)**

4.2.1 Calculation of LIS and SSTI thresholds for commodity derivatives, EA and DEA (p104-109, p351-357)

4.2.3.1 Issues with the current determination of LIS and SSTI thresholds

- Stakeholders stressed in the past that the current methodology to calculate the LIS/SSTI thresholds (based on percentiles and floor) leads to a counter-intuitive effect, in the sense that it leads by construction to higher thresholds for the least liquid classes compared to the most liquid classes, which contradicts the original objective. Following up on this idea, it should be stressed that the counter-intuitive effect of the percentile approach is partially linked to the use of the ADNA as a quantitative liquidity criterion. As discussed in the previous section, the ADNA tends to determine as liquid some classes which are dominated by few trades of large sizes (and are in reality not very liquid). On the most liquid classes, the distribution of trade sizes is concentrated on small sizes. This translates into smaller values of any given percentile compared to the less liquid classes. Hence the elimination of those “less liquid classes” from the set of liquid classes (via the replacement of the ADNA with the STS) partially addresses the problem.
- In addition, the percentile approach as currently set presents three other issues: (1) the volumes are converted to EUR (and thresholds are set in EUR); (2) the level of the floor is such that most

liquid classes have an LIS equal to the floor; (3) the rounding rules in Article 13(12) of RTS 2 inflate the size of the thresholds.

- ESMA sees merit in replacing the current methodology to calculate the LIS and SSTI threshold with the ADVL approach: LIS/SSTI are equal to a set percentage of the average daily volumes (in lots) of the sub-class. The percentages are set at: 1% for pre-trade SSTI, 5% for pre-trade LIS, 10% for post-trade SSTI and 15% for post-trade LIS. The LIS and SSTI thresholds are rounded (up or down) to the nearest 5 lots.
 - Minimum values (floors) are established to guarantee that the thresholds do not fall below certain levels. The floors are set at: 5 lots for the pre-trade LIS and pre-trade SSTI; and 10 lots for the post-trade LIS and post-trade SSTI.
 - Maximum values (caps) are established to guarantee that the thresholds do not exceed disproportionate levels. The caps are set at: 200 lots for the pre-trade LIS and pre-trade SSTI; and 300 lots for the post-trade LIS and post-trade SSTI.
 - The phase-in approach applicable to the pre-trade SSTI threshold is maintained (1% corresponds to Stage 4 and the following percentages are used for the other stages -- Stage 1: 0.7%; Stage 2: 0.8%; Stage 3: 0.9% and Stage 4: 1%).
- **Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.**
- ESMA seeks input on (1) the choice of the ADVL as a basis to determine the LIS (and SSTI) thresholds (and possible alternatives); (2) the calibration of the ADVL approach (percentage, floor, cap and rounding); (3) the use of a linear function of the ADVL to calculate the LIS/SSTI. ESMA remains open to consider alternative approaches to the determination of the LIS/SSTI thresholds and welcomes stakeholders' feedback in this respect.

4.2.4 General issues related to the liquidity determination and the calculation of LIS/SSTI thresholds for commodity derivatives, EA and DEA

4.2.4.1 Liquidity framework set in lots versus units p109-113

- The costs of setting the liquidity framework in units versus lots are much higher. It adds complexity in the setup of RTS 2, and that complexity would remain along the chain (reporting to ESMA, calculation by ESMA, re-conversion of thresholds by reporting entities). From a proportionality perspective this complexity appears excessive compared to the risk that the approach seeks to address (i.e. a circumvention of the regime via artificial decrease of the lot sizes).
 - While this risk should not be underestimated, it may be addressed in a different, less complex, manner. For example, changes to the lot sizes could require the formal authorisation of the competent authorities and be subject to a yearly monitoring by ESMA.
 - To further elaborate this proposal, ESMA seeks stakeholders' feedback on the existing market practice regarding lot sizes in particular how they are currently set, under which circumstances and how often do they currently change.
- **Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.**

4.2.4.2 Impact of the proposed changes to the liquidity determination and the calculation of LIS/SSTI thresholds on reporting to FITRS p113-114

- To perform the liquidity determination, and the calculation of LIS/SSTI thresholds in accordance with the proposals set out in the CP, ESMA needs to introduce changes to the reporting of quantitative data to FITRS. Currently, the reporting of quantitative data to FITRS is defined in the FITRS reporting instructions, but it is not specified in RTS 2. To provide more legal certainty, ESMA is proposing in the CP (see section 4.3.4) to add a new Annex V to RTS 2 specifying the format and content of the data to be provided for the purpose of determining a liquid market, and the LIS and SSTI thresholds.

4.2.4.2.1 Impact of the proposed changes to the liquidity determination and the calculation of LIS/SSTI thresholds on reporting to FITRS

- To perform the liquidity determination, and the calculation of LIS/SSTI thresholds in accordance with the proposals set out in the CP, ESMA needs to introduce changes to the reporting of quantitative data to FITRS. Currently, the reporting of quantitative data to FITRS is defined in the FITRS reporting instructions, but it is not specified in RTS 2. To provide more legal certainty, ESMA is proposing in the CP (see section 4.3.4) to add a new Annex V to RTS 2 specifying the format and content of the data to be provided for the purpose of determining a liquid market, and the LIS and SSTI thresholds.

4.2.4.2.2 Quantitative data related to LIS/SSTI thresholds

- In relation to the proposal #6 (LIS/SSTI calculated as a set percentage of the average daily volumes in lots, bounded by a floor and a cap), ESMA needs to collect the total volumes (in lots) executed on any given day. Under the current framework, total volumes are not reported, instead the volumes are reported under each trade-size bin, from which total volumes can be inferred. Besides, under the current framework, volumes are only reported in EUR.
- To allow the calculation of the LIS/SSTI thresholds under the proposed methodology, ESMA is adding the field “Total volume in lots” in Table 2 of the new Annex V of RTS 2. In addition, it is necessary that total volumes are also reported in the underlying unit (MWh, tonnes etc), for the purposes of the calculations supporting the exercise of the temporary suspension of transparency obligations as per Article 16 of RTS 2.

- **Proposal Commodity Derivatives 8: [Reporting to FITRS] number of transactions shall be reported to FITRS per trade-size bins which are defined in the new Annex V of RTS 2. Total volumes in lots and total volumes in underlying units shall also be reported to FITRS as specified in the new Annex V of RTS 2.**

4.2.4.3 Underlying data: on-venue and OTC data p114

- ESMA reports that for commodity derivatives, EA and DEA, very few OTC transactions are in the scope of MiFID because they do not meet the conditions of being “traded on a trading venue” (ToTV). ESMA explains that according to the reported data in 2020, the proportion of volumes executed OTC and on SI was negligible compared to the volumes executed on venue.
- As a result, ESMA considers that for commodity derivatives, EA and DEA, it remains appropriate to perform to transparency calculations on the basis of all data (status quo) even if the calibration was performed with on-venue data only.
- **Proposal Commodity Derivatives 9: [data scope] The transparency calculations continue to be performed with all data (on-venue, SI and OTC)**

4.2.5 Summary of the proposals related to commodity derivatives, C10 derivatives, EA and DEA and questions to stakeholders

- Proposal Commodity Derivatives 1: [Metals] Determine that all metal sub-asset classes do not have a liquid market
- Proposal Commodity Derivatives 2: [ADNT] Maintain the criterion “average daily number of trades” (do not switch to “median daily number of trades”)
- Proposal Commodity Derivatives 3: [ADNT] Increase the parameter of the ADNT to 50 trades per day for all commodity, C10, EA and DEA sub-classes.
- Proposal Commodity Derivatives 4: [ADNA] Replace the criterion “average daily notional amount” with the criterion “standard trade size” calculated as the most frequently traded size (mode) and set the parameter of the STS_mode at 5 lots for futures: any class for which the most frequently traded size is lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).
- Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS_mode for all contract types, including options (5 lots)
- Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.
- Proposal Commodity Derivatives 7: [Units or Lots] Set the liquidity framework in lots (STS_mode parameter set in lots, volumes reported to ESMA in lots, LIS and SSTI thresholds published in lots) accompanied by Level 3 measures to address the risk of downward revisions of the lot sizes
- Proposal Commodity Derivatives 8: [Reporting to FITRS] number of transactions shall be reported to FITRS per trade-size bins which are defined in the new Annex V of RTS 2. Total volumes in lots and total volumes in underlying units shall also be reported to FITRS as specified in the new Annex V of RTS 2.
- Proposal Commodity Derivatives 9: [data scope] The transparency calculations continue to be performed with all data (on-venue, SI and OTC)

- > *Q.30: Q.30: Please provide your comments on the analysis and proposals related to the liquidity framework applicable to commodity derivatives, EA and DEA detailed in Section 4.2 and summarised in Section 4.2.5. Please list the proposals with their ID (#1 to #9) for ease of reference.*

As an introductory remark, we believe there is one important issue that touches upon all the below proposals, i.e. the data scope. While proposal 9 deals with the issue, we would like to flag from the beginning that both the liquidity assessment as well as the LIS threshold calculation should be performed on the basis of on-book (or screen) data alone.

For the data collection, however, Europex believes it was important for ESMA to compare data from screen trading, pre-arranged trading as well as the uncleared space. This is because assessing the differences between these spaces in terms of, for example, liquidity and standard trade sizes, will help assess the potential impact of a new LIS waiver threshold methodology.

The assessment of whether a market is liquid or not and whether a trade is large in scale or not, however, should evidently be based on order book data alone. This is because it is the order book that needs to be liquid enough to support a LIS threshold. The trades pre-arranged off-order book do not

directly contribute to the liquidity of the order book and hence should not be considered when assessing the liquidity of a contract. Also, whether a trade is large in scale or not should be assessed on the basis of order book data alone. This is because trade sizes are typically significantly larger off book and hence will give a misleading picture of what may be considered as “large-in-scale” on order book.

This becomes especially relevant for commodity derivatives which generally originate from the OTC markets. To mention some attributes that define the commodity markets uniqueness’ is to look at the market participants trade behaviour, e.g., speculative appetite, hedge requirements/needs and professionalism. Even within a commodity product seeing substantial trading today, the mix of participants and their needs vary. In commodity products where there is always a high degree of fundamental hedgers, the maturities are often longer dated, adjustments in their portfolios are often tied to certain expiries, seasonality, and are to some extent more ad-hoc than in the equity markets, for example.

Where commodity markets have reached a certain/decent liquidity (in terms of transactions and volume) they are often dependent on the symbiosis of a well-functioning broker market, catering to longer dated contracts and more tailored requirements from the traders (such as options and option strategies), in tandem with an independent exchange order book, determining a trustworthy closing price. Often, a pre-arranged trade is fundamental to get markets active during the day.

In addition, most commodity markets have alternative routes than exchange registration of pre-arranged trades, where the result from curbing the broker driven share of the market has detrimental and adverse effect on both the overall liquidity and systemic risk (i.e., trades end up in the uncleared environment). As an example, a market such a dry bulk freight derivatives, which is entirely traded off book, will be unable to support a LIS threshold on its order book as there are no trades taking place on this order book. It would therefore not make sense for this market to be classified as liquid on the basis of the proposed parameters.

In the electricity and gas markets, the markets are heavily dependent on brokers to tailor and conclude options and options strategies, as well as longer dated futures trades and the more ad-hoc portfolio adjustments when getting closer to expiry, especially for the less active, though very important fundamental hedgers. With the proposed setup, accumulating screen and pre-negotiated trades, we are concerned that products including their maturity buckets will be wrongfully accounted for.

Proposal Commodity Derivatives 1:

Yes, we agree and support the proposal.

Proposal Commodity Derivatives 2 [ADNT] Maintain the criterion “average daily number of trades” (do not switch to “median daily number of trades:

Yes, on the basis of the data provided by ESMA, we agree and support the proposal.

Proposal Commodity Derivatives 3: [ADNT] Increase the parameter of the ADNT to 50 trades per day for all commodity, C10, EA and DEA sub-classes

As a preliminary comment, Europex reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining whether a market is liquid or not. This is particularly valid for calculating ADNT.

Appreciative of the analysis of the implications of using different thresholds across different asset classes, we remain of the view that 100 trades per day would be a more suitable threshold.

Even when the data scope is limited to on-book data, 50 trades per day, which roughly corresponds to a frequency of one trade every 10 minutes, would be too low because of three reasons:

1. Trading is rarely uniformly distributed throughout the day;
2. ESMA disagrees that liquidity should be assessed on a venue-per-venue basis. This means that the proposed ADNT of 50 trades corresponds to one trade every 10 minutes across all venues. As not all traders have access to software that bundles the liquidity of several venues onto one screen, even 5 minutes (ADNT 100) remains a low number; and
3. Moving to 100 trades per day means that there will be more observations to base the LIS threshold on and the counterintuitive effects of the percentile approach to calculate the LIS threshold will be further reduced. (Please refer to our response to Proposal Commodity Derivatives 6 on LIS/SSTI.)

We furthermore appreciate the impact analysis from ESMA, as Europex members of course do not have a complete view over the venue-aggregated data. We acknowledge the impact from moving from 50 to 100 trades per day might be limited for gas, for example, but also notice it does bring a significant change as to which power contracts are to be classified as liquid or illiquid.

Finally, we agree with ESMA that the same parameter should be used for all asset classes. Appreciating liquidity is a very complex matter to assess and simple parameters as ADNT and ADNA all have their weaknesses, we would not opt for setting parameters in such a way that a certain amount of trading activity would be deemed liquid. Liquidity has to be determined by opportunity to trade, not by the goal of treating a certain percentage of trading activity as liquid.

Proposal Commodity Derivatives 4: [ADNA] Replace the criterion “average daily notional amount” with the criterion “standard trade size” calculated as the most frequently traded size (mode) and set the parameter of the STS_mode at 5 lots for futures: any class for which the most frequently traded size is lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).

First of all, Europex reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining whether a market is liquid or not. This is valid for both STS and ADNA.

We support the introduction of the criterion Standard Trade Size (“STS”), as it is indeed a remedy to one of the two most important issues with using ADNA, i.e. The ADNA does not allow distinguishing between (1) a market with, on average, few trades of large sizes (potentially illiquid); and (2) a market with, on average, numerous trades of small sizes (potentially liquid). Those two markets could have the same average daily notional amount while exhibiting different liquidity profiles. However, from this follows that the STS liquidity criterion should complement the ADNA liquidity criterion and not replace it. If the criterion referring to volume (currently ADNA) would be removed, the STS criterion remedies a problem of a criterion that is no longer present, i.e. ADNA.

The reason why the STS should complement a criterion referring to volume is because the STS should not be considered as a direct measure of assessing liquidity. This is because the assumption that the more liquid an instrument the smaller the STS does not always hold true. A market characterised by

small commercial hedgers will for example typically trade smaller sizes than markets that primarily see large commercial hedgers as well as financial firms providing access to other market participants. Moreover, there are large differences between short term maturities such as daily futures and weekly futures compared to calendar futures. The STS of short-term maturities tends to be higher than for long term maturities because the firsts are used as final portfolio adjustment before delivery and transactions in these contracts involve lower notional amounts (i.e., trading limits admit more lots and arbitrage operations require more volumes than for longer maturities) As a consequence, the long-term maturities will artificially be more quickly deemed liquid than short-term maturities.

Adding the STS mode_5 criterion is particularly important for ensuring that options markets in commodities are classified appropriately. Almost no screen trading takes place in the options contracts which exist in for example gas, power or emissions derivatives. Under some of the methodologies discussed by ESMA in the consultation document, an extremely inappropriately high LIS threshold ranging from 200 lots to 1000 lots could apply to these options markets if they are classed as liquid. The implementation of such unreasonably high LIS thresholds would have serious negative consequences for the orderly functioning of these markets.

Finally, it is important that the criterion referring to volume (currently ADNA) will no longer be expressed in notional values but in lots. As proposed by ESMA in its Proposal Commodity Derivatives Nr. 7, we believe that we should look at Average Daily Amount of Lots traded, i.e. ADAL, to have an appropriate reflection of the volume traded in a given contract.

Treatment of energy commodity options & spreads

As noted earlier, with several modifications to, amongst others, the liquidity determination, Europex supports the percentile approach for establishing the LIS thresholds. Energy options contracts and certain spread trading strategies, however, require special treatment under RTS 2, as they have different characteristics and would receive inappropriate LIS thresholds if a standard methodology would be applied.

Energy options

The varying proposals for the determination of LIS thresholds (percentile, ADVL, etc.) which are under consideration produce highly inappropriate results for energy options contracts. This is exacerbated by the data scope referring to both pre-arranged trading and order book trading. Please refer to our introductory remark.

According to ESMA's calculations the TTF Gas contract would be exposed to a LIS threshold between 200 and 1000 lots, depending on the methodology used (ADVL or percentile approach). Considering that currently no screen activity takes place on the TTF Gas options market, the consequences of this market being deemed liquid is that nearly all block transactions would be below LIS. This could result in trading activity moving outside of Europe (i.e. third country exchanges) or remaining uncleared, as the ICE's option screen isn't liquid. Such developments would strongly contradict with EU flagship policy ambitions to strengthen the international role of the Euro, whereby the Commission identified the TTF Gas contract as the primary euro-denominated benchmark contract in the field of energy.

The ICE Endex TTF Gas Option contract is a derivative on a derivative, as at expiry a position in a TTF Gas Options contract exercises into a position in the underlying TTF Gas Futures contract. A position in the options contract thereby doesn't result in a cash payment (cash settlement) or physical delivery of natural gas (physical settlement). The TTF Gas Options contract is nonetheless generally considered a physically settled contract by virtue of the characteristics of the underlying derivative (TTF Gas Futures).

Considering the above detailed characteristics, the TTF Gas Options contract does not naturally fit the category of 'Energy commodity options' as specified in RTS 2. Existing ESMA Q&A[1] already recognizes different types of options contract by the introduction of the sub class "derivatives on derivatives", whereby options classed as such are largely subjected to the pre-trade transparency requirements that follow from the underlying futures contract.

Europex suggests building on this existing approach from the ESMA Q&A to revise RTS 2, whereby energy options with a derivative as underlying should apply the LIS threshold of the underlying derivative contract (if the underlying derivative contract is deemed liquid under RTS 2). It would however not be appropriate to adopt the liquidity determination of the underlying futures derivative for the options contract, as this would risk inappropriately classifying options contracts as liquid.

An alternative approach to calculating a more appropriate LIS threshold would be to make use of the Delta of an option contract to calculate the LIS threshold. This would be in line with the approach taken under the position limits regime.

In strategies such as spread trading (simultaneous execution of two or more derivatives contracts with a different underlying, location or maturity) or Delta hedges, the total size of the different legs in a strategy should be considered as a package when assessed against the relevant LIS threshold.

However, with inter-commodity spread trading strategies, which by definition involve separate derivative contracts with different underlying commodities, an alternative approach is warranted. This is because the applicable LIS threshold is based on lots and is thereby unable to accommodate for the different units of measurement which are standard in the varying underlying commodity of the derivative contracts. ICE for example allows market participants to simultaneously trade 2 lots of gas, 1 lot of power and 4 lots of EUAs by means of the inter-commodity spread trading strategy "clean spark spreads". The trading strategy allows market participants to instantly hedge the costs of green power production based on gas and is an important trading strategy which aids the energy transition and is an important tool to meet EU climate change ambitions.

In order to not disturb the orderly functioning of these markets and to allow market participants to hedge their risks, Europex recommends either to fully account for the different units of measurement of the different underlying commodities when establishing an LIS for inter-commodity spreads, or simply apply the lowest LIS of a commodity derivative contract determined liquid which is traded as part of the strategy.

Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS_mode for all contract types, including options (5 lots): Yes, we support this proposal. Options are rarely efficiently traded on screen, as options and option packages are often complicated and too illiquid per strike to gain much traction. As such, it is therefore of no surprise that they are deemed illiquid. We do not see why a different parameter should apply to options. Please also refer to our answer to Proposal Commodity Derivatives 4 regarding the need to also use ADAL as part of the liquidity assessment.

Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.

As a preliminary comment, Europex reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining the LIS threshold.

Although we appreciate the efforts to consider new methodologies of setting a LIS threshold, Europex disagrees with the new proposal.

We agree that indeed the following issues with the current approach need to be addressed:

1. The percentile approach leads to a counter-intuitive effect in the sense that it leads by construction to higher thresholds for the least liquid classes compared to the most liquid classes, which contradicts the original objective;
2. The volumes are converted to EUR (and threshold are set in EUR);
3. The level of the floor is such that most liquid classes have a LIS equal to the floor; and
4. The rounding rules in Article 13(12) of RTS2 inflate the size of the thresholds.

However, having investigated the proposal to use ADVL and also having looked into alternative methodologies, Europex believes we might “throw the baby out with the bathwater” when completely removing the percentile approach.

1. As stated in #302 of the consultation, the counter-intuitive effect of the percentile approach is partially linked to the use of ADNA as a liquidity criterion. ESMA expects that adding the STS_mode 5 liquidity criterion will largely remove this issue. We believe that if also the ADNT is properly calibrated (100 trades per day) the issue might be removed entirely. (Please also refer to our response to Proposal Commodity Derivatives 3.)
2. Converting the LIS thresholds into lots will remove the second issue.
3. Removing the minimum floor, for which we do not see a proper justification, will remove the third problem. We do not see a need to impose a minimum floor as the calibration of a LIS threshold requires significant caution to avoid setting the limit too high. This is for the obvious reason that a LIS threshold that is set too high will push trades off-book, in the uncleared OTC space, instead of on-book. Imposing one minimum floor across all markets, fully disregards this need for caution.
4. Also, the rounding rules can be easily adjusted as has already been proven by ESMA’s data collection. It used small trade size bins (1 lot until 20 lots, 5 lots until 100 lots and 50 lots thereafter).

It might therefore be unnecessary to entirely change the current percentile approach.

The use of the ADVL approach for the calculation of the LIS threshold dissociates large-in-scale and normal market size, introducing new contentive effects for liquid markets (in the sense of ADNT and STS). The ADVL approach creates an almost-linear relation between the LIS threshold and the number of transactions while ignoring normal trade sizes. In a market with an ADNT of 1000 and only 1-lot trades (i.e. STS=1), 5% of ADVL means 50 lots (i.e., 50 times the largest trade seen in this contract), while 95% percentile means 1 lot. This effect can be seen in ESMA’s simulation for the most liquid contracts, which systematically reach the cap defined by ESMA. In this example, a 50 lots trade seems excessively large compared to normal deal sizes. Since the counterintuitive effect of the percentile approach can be corrected with an adequate value of ADNT and the combination of both the average daily notional amount traded in lots (ADAL) and the STS mode 5 criterion, the percentile approach seems a more appropriate approach to establish the level where a trade can be considered large-in-scale. Even with the introduction of the 200 lots cap put forward as part of the ADVL proposal, it would effectively mean an increase of over 500 percent of the existing LIS threshold applicable to TTF Gas Futures (47 lots).

We investigated other alternatives but concluded that the percentile approach is probably the least flawed methodology. However, it is unclear to us where the 95th percentile, mentioned in paragraph 309 page 106 of the consultation paper, originates from. We would strongly recommend maintaining the percentile at 70 or – preferably – adopting a phase-in approach starting at 30% and gradually moving it up to 70%. This would be more suited given the need for a cautious approach not to push trades to the uncleared OTC space.

Proposal Commodity Derivatives 7: [Units or Lots] Set the liquidity framework in lots (STS_mode parameter set in lots, volumes reported to ESMA in lots, LIS and SSTI thresholds published in lots) accompanied by Level 3 measures to address the risk of downward revisions of the lot sizes.

We agree with ESMA that using lots is the more pragmatic way forward.

However, we would like to note that the framework will need to be adapted, as per our comments on the former proposals, to function adequately. We recognize the need for measures to address the risk of downward revisions of the lot sizes, but we believe this will be limited if the framework is designed adequately. One suggestion would be that ESMA decides on a standard for the different commodity contracts and that if you have listed a different type of contract, one would have to compute your LIS versus this standard. E.g., 1 lot on a monthly electricity contract has a standard between 672 MWh and 745 MWh. If a trading venue lists a contract with a different “contract base” (e.g., not in MWh, but in KWh), the trading venue would have to use the standard from the “main” setup to compute your LIS threshold, similar to how ESMA treats position limits when calculating mini or micro contracts into full size contracts.

However, it should be noted that a downward revision of a lot size could be justified when trying to build a niche market, trading separately from a large benchmark contract, where there is a genuine need for trading in smaller units. The initial proposal made by ESMA in the consultation paper which makes changes to the lot sizes, could require the formal authorisation of the competent authorities and be subject to a yearly monitoring by ESMA, does sound to be rigid. An open dialogue with the competent authorities could though be called for.

Proposal Commodity Derivatives 8: [Reporting to FITRS] number of transactions shall be reported to FITRS per trade-size bins which are defined in the new Annex V of RTS 2. Total volumes in lots and total volumes in underlying units shall also be reported to FITRS as specified in the new Annex V of RTS 2.

ESMA suggests two new fields to the quantitative data, ‘Total Volume in Lots’ (where applicable) and ‘Total Volume’ to FITRS. As a general comment, reporting of lots as such is welcome. However, as Transparency Quantitative data reporting for Non-Equity is made using what is called ‘bins’ (i.e. reported values are assigned a bin size depending on value of transaction) additional guidelines would be needed on how to assign ‘bins’ when using lot sizes instead of notional amount. Such a requirement on further technical reporting instructions not covered by the RTS would somewhat diverge from one of the key points from ESMA in the RTS 2 consultation which is that none of the reporting tables for quantitative data is regulated in the RTS today, but rather in separate ‘reporting instructions’ issued by ESMA. It is important that proper reporting guidelines are issued to complement the updated RTS to facilitate a harmonised understanding of the updated requirements.

Proposal Commodity Derivatives 9: [data scope] The transparency calculations continue to be performed with all data (on-venue, SI and OTC):

We are strongly of the view that the liquidity assessment and LIS threshold calculation should be performed on the basis of on-book data only. Please see our introductory comment. In the context of the data collection, Europex did advise ESMA to also look at off-book data and ideally also data on the OTC uncleared market. This recommendation was made with the intention to enable ESMA to reflect on the differences between on- and off-book trading as discussed in the introductory comment. However, the assessment itself should be based on nothing but order book data.

4.3 Reporting fields (Tables 1, 2 and 4 of Annex II, Annex III and Tables 1 and 2 of Annex IV)

4.3.1 Fields for the purpose of post-trade transparency (Tables 1 and 2 of Annex II) p117-125

- ESMA proposes amendments to different fields in Table 2 of Annex II of RTS 2.

> *Q.31: Do you agree with the changes proposed to Table 2 of Annex II of RTS 2 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?*

From a market participant's perspective, we do not see the need to make these changes. Moreover, we believe that for exchange traded derivatives all the proposed information should already be available within the reference data. Adding further detailed information to trade messages slows them down and may introduce further latency to the overall data stream.

4.3.2 Measure of volume (Table 4 of Annex II) p125-126

- ESMA proposes to amend table 4 of Annex II of RTS 2 (which provides indication on the measure of volume that is relevant for the determination of the LIS and SSTI thresholds, the ADT and the ADNA) in order to provide further clarity on the values to be reported for the purposes mentioned above. The table is provided in 5.6 Annex VI – Draft RTS amending RTS 2, in red the changes with respect to the current version of the table..

> *Q.32: Do you agree with the changes proposed to Table 4 of Annex II of RTS 2 (Measure of volume) presented above? Do you think that it now provides more clarity? If not, please explain and provide any alternative proposal you might have?*

With regard to commodity derivatives, we understand that ESMA proposes that the measure of volume no longer refers to the national amount of traded contracts but to the equivalent amount of commodity or emission allowance traded expressed in measurement unit. We agree and support this proposal.

4.3.3 Reference data to be provided for the purpose of the segmentation criteria necessary for the performance of the transparency calculations (Reporting to FITRS) p126-138

- ESMA makes several proposals related to the segmentation criteria of different sub-asset classes.

- > *Q.33: Do you agree with ESMA’s proposals on Table 1 (Symbol) and Table 2 of Annex IV of RTS 2? If not, please explain and provide any alternative proposal you might have.*

Please refer to our response to Q35.

4.3.3.3 Liquidity assessment, LIST and SSTI thresholds (Tables in Annex III of RTS 2)

- In order to clarify the above reference data used for the segmentation of the asset classes, ESMA proposes to add to the tables for the purpose of the liquidity assessment of each asset class, the reference data fields in RTS 2 and RTS 23 used to segment the data into sub-asset or sub-classes, as well as other pertinent amendments to each table.

- > *Q.34: Do you agree with ESMA’s proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives (Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.*

Yes, we agree and support the proposal.

4.3.3.3.7 Summary of ESMA’s proposals on segmentation criteria for commodity derivatives and C10 derivatives

ID	Section in the CP	Description	Objective	Impact on reporting
SC_Commo 1 (settlement location)	4.3.3.3.7.1	Settlement location should be a segmentation criterion for gas (in addition to electricity), and reported with an EIC code.	Increase homogeneity of sub-classes	Yes ⁴²
SC_Commo 2 (settlement location)	4.3.3.3.7.1	Settlement location should not be a segmentation criterion for energy other than gas and electricity (unless a standard is provided by stakeholders)	Increase homogeneity of sub-classes	Yes
SC_Commo 3 (delivery period)	4.3.3.3.7.2	Add the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts	Increase homogeneity of sub-classes	Yes
SC_Commo 4 (energy type)	4.3.3.3.7.3	Align wording of the list of energy types with RTS 23 (in particular add renewable energy)	Consistency with RTS 23	No
SC_Commo 5 (load type)	4.3.3.3.7.4	For energy sub-asset classes, delete the segmentation criterion “load type”	Remove redundancies	Yes
SC_Commo 6 (underlying energy for natural gas)	4.3.3.3.7.5	For energy sub asset-classes, the segmentation criterion “underlying energy” should not apply to natural gas	Remove redundancies	No
SC_Commo 7 (settlement type)	4.3.3.3.7.6	For commodity swaps, align the segmentation criterion “settlement type” with RTS 23	Consistency with RTS 23	No
SC_Commo 8 (underlying agricultural commodity)	4.3.3.3.7.7	For agricultural sub asset- classes, split the segmentation criterion “underlying agricultural commodity” in two	Consistency within RTS 2	No
SC_Commo 9 (freight derivatives)	4.3.3.3.7.8	For freight derivatives, amend the values listed after segmentation criterion “contract type” and delete the contract type FFA from the reference data table.	Data quality in RTS 2	Yes

SC_Commo 10 (freight derivatives)	4.3.3. 3.7.8	Define reporting standards for RTS2#12 “specification of the size related to the freight sub- type” and RTS2#13 “specific route or time charter average”.	Data quality in RTS 2	Yes
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- > *Q.35: Please provide your comments in relation to the proposals related to the segmentation criteria applicable to commodity derivatives summarised in Table 11. Please list the proposals with their ID for ease of reference. Do you have other proposals related to the segmentation criteria applicable to commodity derivatives and C10 derivatives?*

[SC_Commo_1: Settlement location should be a segmentation criterion for gas (in addition to electricity), and reported with an EIC code.

We agree that the settlement location should be a segmentation criterion for natural gas and that for electricity and natural gas the settlement location should be reported with market standard (EIC code) instead of a free text. We also agree with aligning the reporting of this field with EMIR reporting to trade repositories, apart from contracts with delivery outside of the EU.

SC_Commo_2: Settlement location should not be a segmentation criterion for energy other than gas and electricity (unless a standard is provided by stakeholders).

Although there might not be any energy contracts other than electricity and gas in the EU at this stage, we believe it is important for RTS2 to be future-proof and to keep the settlement location criterion for all energy contracts. It is noteworthy, however, that revisions of certain settlement locations occur when for example two zones merge. We believe it is justified to require the use of a reporting standard which can be determined at a later stage when those contracts emerge.

SC_Commo_3: Add the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts:

We strongly support adding the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts for the reasons laid out in the consultation paper. However, to avoid confusion, instead of duration of the delivery period, it would be better to use the term “contract term” (e.g., monthly, yearly, daily). This way, there will be no artificial split between contracts that are delivered 30 days and contracts that are delivered 31 days. We would appreciate a dialogue with ESMA to ensure that the same standards are used by everyone.

SC_Commo_4: Align wording of the list of energy types with RTS 23 (in particular add renewable energy):

While Europex does not disagree with adding “renewable energy”, we wonder which types of energy exactly ESMA had in mind, as for example solar power and wind power futures from our perspective are C10 derivatives.

SC_Commo_5: For energy sub-asset classes, delete the segmentation criterion “load type”:

Europex agrees with the analysis and supports the proposal to delete segmentation criterion 4.

SC_Commo_6: For energy sub asset-classes, the segmentation criterion “underlying energy”

should not apply to natural gas: Europex disagrees that “underlying energy” should not apply to natural gas. It is important that a distinction can be made between for example LNG, hydrogen and natural gas. As it would indeed not make sense to make the distinction via the segmentation criterion “delivery zone”, it should be made possible via the segmentation criterion “underlying energy”.

SC_Commo_7: For commodity swaps, align the segmentation criterion “settlement type” with RTS 23: No comments.

SC_Commo_8: For agricultural sub asset- classes, split the segmentation criterion “underlying agricultural commodity” in two: Europex agrees with splitting segmentation criterion 1 in two. However, further sub products for dairy are necessary.

SC_Commo_9: For freight derivatives, amend the values listed after segmentation criterion “contract type” and delete the contract type FFA from the reference data table: Europex agrees with deleting the contract type FFA as futures and FFAs are used interchangeably.

SC_Commo_10: Define reporting standards for RTS2#12 “specification of the size related to the freight sub- type” and RTS2#13 “specific route or time charter average”:

Europex agrees that containerships should be considered as a further sub product of dry freight. Europex also agrees with having fixed lists for the segmentation criterion 4 (specification of the size related to the freight sub-type) and the segmentation criterion 5 (specific route or time charter average). However, both should include a field called “other” to ensure that when new sizes of ships emerge, as well as new routes, they can be categorised properly. Particularly routes are subject to a lot of change, hence it would certainly benefit from such a category. Furthermore, Europex noted there is only a list of routes or time charters for wet freight. We would recommend to ESMA to also have a list detailing the different routes and time charters for dry freight. These would include 4TC, 5TC, 6TC, 10TC, C3, C5, C7, P1A, P2A, P3A, P1E, P2E, P3E and “Other”.

4.3.4 Quantitative data to be provided for the purpose of transparency calculations (Reporting to FITRS) p138

- The new Annex V of RTS 2 aims at clarifying the quantitative data to be collected for the purpose of the transparency calculations for non-equity instruments.
- The new table to report quantitative data for the purpose of the transparency calculations (Reporting to FITRS) are in 5.6 Annex VI – Draft RTS amending RTS 2, changes with respect to the table in the reporting instructions are highlighted in red. See section 4.1.3.2 for the necessary amendment of Article 13(5) of RTS 2 to reflect this additional table.

Q36 : Do you agree with ESMA’s proposal on the new Table of Annex V of RTS 2 (Details of the data to be provided for the purpose of determining a liquid market, the LIS and SSTI thresholds for non-equity financial instruments)? If not, please explain and provide any alternative proposal you might have.

It is difficult to provide solid feedback, as the quantitative data to be provided depends on the final proposal on the IL and LIS waiver threshold methodologies. Once this proposal is final, Europex would be very appreciative of a dialogue with ESMA conversation on the quantitative data to be provided for the purpose of the transparency calculations.

4.4 Flags (Table 3 of Annex II of RTS 2)

- The new Annex V of RTS 2 aims at clarifying the quantitative data to be collected for the purpose of the transparency calculations for non-equity instruments.
- ESMA issued guidance in its Q&As on the application of flags, explaining in particular that flags should only be applied in case the circumstances described and that, where none of the specified

circumstances apply, the transaction should be published without a flag. Moreover, ESMA provided guidance on which flags are mutually exclusive and which flags can be combined with other flags as well as on the use of the supplementary deferral flag.

- Nevertheless, ESMA noted since the application of MiFID II that a number of issues with flags persist, thereby undermining the quality and usability of transactions published, in particular for OTC-transactions.
- Since ESMA understands that the Commission is likely to propose amendments to the (supplementary) deferral regime, ESMA suggests keeping for the time being the supplementary flags and only review those once there is certainty on the future (supplementary) deferral regime.
- In view of these observations, ESMA has reviewed the complete set of flags with the objective of ensuring that flags are applied in a consistent manner across the Union by all market participants, thereby delivering meaningful and accurate information of important characteristics of different types of transactions to market participants and regulators. Based on this review, ESMA suggests deleting one flag, amending a number of flags and introducing very few additional flags. Finally, ESMA is suggesting requiring the publication of flags in a prescribed order.

4.4.1 Deletion of ACTX flag

- RTS 2 provides for an agency cross transaction flag (ACTX) to be used for OTC- transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
- Agency-cross transactions were a practice frequently used by UK investment firms, in particular pre-MiFID II where the activity of broker-crossing networks was not regulated. However, given that under MiFID II SIs are not allowed to perform matched principal trading on a regular basis, the use of the flag is limited to pure OTC-trading. Moreover, since Article 23(2) of MiFIR requires firms that operate an internal matching system to be authorised as an MTF, the practical use case of the ACTX flag appears limited. ESMA therefore suggests deleting the ACTX flag.

> *Q.37: Do you agree with ESMA's proposal to delete the ACTX flag? Please explain.*

No comments.

4.4.2 Amendment of existing flags

- ESMA is SMA is considering to merge the current non-equity deferral flags, i.e. the LIS deferral, the illiquid deferral and the SSTI deferral, into one general deferral flag ('DEFR').

> *Q.38: Do you agree with ESMA's proposal to merge the current non-equity deferral flags into one general flag?*

No comments.

4.4.2 Amendment of existing flags

> *Q.39: Do you agree with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments? If not, please explain.*

We agree and support the proposal.

4.4.3 Addition of new flags

Pre-trade waiver flags

- Currently, there are no transparency flags in the non-equity sphere to indicate that a transaction benefitted from a LIS, SSTI or illiquid waiver. Nevertheless, at the same time ESMA has also observed while reviewing waiver opinions that the 'LRGS' or 'ILQD' deferral flags are often used to indicate that the transaction benefitted from a waiver. In order to solve for this inconsistency, ESMA hence proposes to fill the current existing gap by introducing a dedicated waiver flag.
- ESMA would propose not to introduce specific flags for LIS, SSTI and illiquid waivers, but rather one general waiver flag ('WAIV') that can be used across non-equity transactions benefiting from these waivers. As was mentioned in relation to the proposal for the equity pre-trade LIS flag, there may be some information leakage for partially filled LIS orders. While it concerns the introduction of a more general pre-trade waiver flag encompassing LIS, SSTI and illiquid waivers, the combination of certain information (waiver for a liquid instrument with an order size above LIS on an order book) may still lead to such information leakage. Hence, it may be considered to limit the flag to only completely filled LIS orders in addition to orders benefitting from an SSTI or illiquid waiver.

> *Q.40: Do stakeholders agree with ESMA's proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver? For LIS, should it be limited to completely filled LIS orders?*

We do not believe that introducing a general waiver flag will add any value for market participants. This is because when concluding transactions off-book, market participants are already aware of the fact that these transactions must benefit from a waiver, otherwise, an off-book transaction would not be possible.

Pre-arranged transaction flags

- ESMA suggests introducing a specific flag for the subset of pre-arranged transactions.
- While MiFIR does not have specific provisions for negotiated or pre-arranged transactions for non-equity instruments, ESMA considers it nevertheless possible to formalise negotiated or pre-arranged transactions on a trading venue subject to meeting the conditions for the respective waivers from pre-trade transparency set out in Article 9(1) of MiFIR. This is further clarified by Q&A 11 on negotiated trades in the ESMA Q&A on formalised on transparency issues.
- A flag for pre-arranged transactions that are formalised on trading venues ('NTTR') would allow to identify the use of these types of transactions, for both NCAs and market participants. ESMA would invite stakeholders to comment on whether they also consider that adding such a new flag in RTS 2 would add value.

> *Q 41: Do you agree with ESMA's proposal to introduce a flag for pre-arranged non-equity transactions?*

We do not believe that the introduction of a flag for pre-arranged non-equity transactions will be useful for market participants and NCAs, who can already identify such pre-arranged transactions formalised on trading venues, even in real-time. However, it might be useful for ESMA to distinguish pre-arranged trading from order book trading to calculate the IL and LIS thresholds. Please see also our comments to proposal Commodity Derivatives 9 of Question 30.

4.4.4 Order of flags

- ESMA provides a table (table 12) with an overview of the proposed list of flags for the purpose of post-trade transparency and proposes to add it in section 3.2.2 to Annex II of RTS 2 (as table 3) and to replace the current table 3 of Annex II of RTS 2 by the table 12 (see consultation paper paras 465-468).

5. Implementation and timing issues (RTS 1 & RTS 2)

- ESMA suggests that a minimum implementation period of 6 months should be provided, between the publication in the Official Journal of the European Union (OJ) of the amending RTS 1 and 2, and the date of application, concerning the following changes:
 - New requirements concerning the reporting of quantitative data to FITRS: new Annex IV or RTS 1 and new Annex V of RTS 2);
 - Amendments concerning the reporting of reference data to FITRS: amended Annex IV of RTS 2;
 - Amendments concerning the liquidity assessment, LIS and SSTI thresholds for commodity derivatives, C10 derivatives, EA and DEA: the relevant sections of amended Article 13 of RTS 2, and the relevant amended tables in Annex III of RTS 2.
- In addition ESMA proposes that reporting entities start reporting under the new format on 1 January of a given year. ESMA explains that doing otherwise would create a situation in which reporting entities would report (1) under the old format until a certain day of the year; (2) under the new formats from another day of the same calendar year. In that scenario, it would not be possible for ESMA to make the transparency calculations with a uniform set of data for the full year.
- ESMA is aware that this solution may create an important delay in the application of the new regime, which may be detrimental to the objectives pursued. The impact on the delay would depend on the time in the year when the amended RTS is published in the OJ. If the amended RTS is published in the OJ in the first half 2022, the date of application would be 1 January 2023 and the first publication by ESMA of the transparency calculations under the new regime would take place in 2024, based on 2023 data.
- But if the amended RTS is published in the OJ in the second half of 2022, the date of application would be 1 January 2024 (to respect the minimum 6 months implementation period) delaying the above calendar by one year.
- Other solutions could be envisaged to minimise this delay and stakeholders are invited to provide their feedback in this respect.

> *Q 42: Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2? Do you have proposals to minimise the delay??*

In order to plan, test and implement technical changes appropriately and securely, we believe that an implementation period of 18 months is necessary. However, we would appreciate it if amendments concerning the liquidity assessment, LIS and SSTI thresholds for commodity derivatives, C10 derivatives, EA and DEA, the relevant sections of amended Article 13 of RTS 2, and the relevant amended tables in Annex III of RTS 2, were processed sooner than the timeline suggested, e.g. by mid of 2022.

About

Europex is a not-for-profit association of European energy exchanges with 29 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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