

FESE response to the ESMA consultation on technical standards for commodity derivatives

21st August 2024, Brussels

Q1 - Do you agree with ESMA's proposal to extend the requirements to set, review and report accountability levels to trading venues trading derivatives on emission allowances? Do you have any other comments on ESMA's proposed amendments? Please elaborate.

We agree with the ESMA proposal to extend the requirements to set, review and report accountability levels to trading venues offering derivatives on emission allowances.

As a general comment, FESE wishes to stress that it supported the conclusions from the 2020 ESMA report on the MiFID II Review on position limits and position management, which reinforced the changes that were subsequently introduced in the MiFID "quick fix". These changes made commodity derivative markets much more efficient and flexible. As such, we do not see a need for bigger changes in the way position limits and position management controls work apart from those included in this ESMA consultation paper. The system is currently working as intended.

Q2 - Do you foresee any challenges with the use of JSON format compared to XML? Please provide estimates of the costs and benefits (short- and long-term) related to the potential transition to JSON.

FESE notes that ESMA is considering the use of JSON format for reporting in a number of areas (i.e. RTS3, RTS21, RTS23). It is critical that any approach ESMA decides to take in relation to reporting formats must be holistic and seek to progressively extend to all areas and reporting layers; otherwise, it will not produce benefits and instead would lead to additional complexity and unnecessary cost. Fundamentally, any evolution towards the JSON format must as a prerequisite receive full endorsement from all NCAs and commitment that they will also adjust their practices and requirements in favour of a new unique format. Some NCAs currently sometimes require and request different reporting formats for operational reasons for the same reporting purposes. A broader evolution towards JSON can only be meaningful and successful if such discrepancies can be dismantled in favour of a unique format that is used by all.

Lastly, given that this would be a significant structural change, it is important that sufficient implementation time is provided for this transition (between 6 - 12 months at a minimum) and it is necessary that any evolutions towards this only be taken in a context where it can be confirmed to the industry by ESMA that JSON would be the go-to format for the foreseeable future and that at a minimum no new reporting format would be introduced or required in the coming 5 to 8 years.

Q3 - Do you agree with the other proposals to change ITS 4? Please use the reference number in the table above to provide comments on a specific proposal. In relation to the proposed change 5, are there other units of underlying to be added to the existing list including for reporting the information on emission allowances? In relation to the proposed change 7, are there other position types that should be added to provide more granular reporting, beyond

the existing (futures, options and other)? In relation to the proposed change 8, do you foresee any scenarios in which the possibility to use the National ID should be retained?

Regarding change 5, FESE agrees that harmonising the unit of reporting would be beneficial for all users of the weekly position reports. To easily compare weekly position reports we believe it makes most sense to report all these contracts in MWh.

Two side comments:

- It would be important for ESMA to clarify what the threshold is for publishing weekly position reports. While it is clear that in lots the threshold is 10.000, it is not clear to us what the threshold is if MWh is used.
- If we had only one unit of measurement, there would be no code needed.

To the question of whether there are other units of underlying to be added to the existing list (including for reporting the information on emission allowances), the short answer is no.

ESMA proposes to amend the field “notation of the position quantity” to specify that position in derivatives on electricity and natural gas should be expressed in units of underlying and that positions in other derivatives should be expressed in lots. We would like to underline however that there appears to be a discrepancy between the language and explanations provided in the table on page 16 and Article 83 as the maximum threshold expressed in point (b) only refers to lots. We would suggest that this discrepancy be clarified and consider that it would be most appropriate for thresholds also to be expressed in MWh, MBTU and THMS in point b.

The proposed change 7 may create an issue that is not documented in the consultation. Today, futures based on emission allowances are categorised as Position Type “EMIS”. EMIS positions only have a position maturity of “SPOT” (referring to the spot month contract). With the suggested withdrawal of the EMIS category, emission allowance futures will be changed to Position Type FUTR and will need to be reported with position maturities of SPOT (the spot month contract) and OTHR (all other contract maturities). FESE recommends specifying that in emissions allowance futures the spot month of a contract is the December maturity, as the main futures contract maturity traded in emissions allowances is currently the December contract. This approach is in line with position management arrangements, whereby accountability levels are set for the December emission allowances contract, as this contract maturity is classified as the spot month contract. All other contract maturities are classified as other months.

Without the above-described correct identification of the spot month contract in emission allowance futures, we do not support withdrawing the EMIS category. The incorrect classification of the spot month contract would create an artificial division that doesn't reflect how the emission allowance futures market operates.

FESE agrees to the proposed change 8. To the question of whether we foresee any scenarios in which the possibility to use the National ID should be retained? No. It should only be retained for the position holder and ultimate parent.

We agree with all other changes. Related to proposed change 9, however, we believe sufficient implementation time should be foreseen.

Q4 - Do you support the draft Technical Advice related to Article 83 of CDR 2017/5654?

FESE would find it useful for ESMA to clarify the threshold for publishing weekly position reports, in terms of MWh for power and gas contracts, and in terms of lots for all other commodity derivative contracts. While it is clear that the latter is 10.000 lots, it is not clear what the threshold is if a different unit of measurement is used.

As a general comment, we would kindly ask ESMA to clarify the language for the conditions triggering the weekly reporting in item 68 under 3.2.1 Amendments to ITS 4 section. Our understanding is that if the “futures and options combined” exceed the threshold of 20 open positions and absolute amount of 10,000 lots, two reporting should be done, (i) for the futures and options and (ii) new weekly report excluding options. If the thresholds are not exceeded, no reporting should be done. However, we have concerns from a legal perspective that the language in item 68 might be misleading as it could also be understood that even if “futures and options combined” do not exceed the thresholds, new weekly report excluding options must be reported in all cases. The confusion arises due to the following sentence “...thresholds apply to the weekly report based on futures and options combined, and not individually to the new weekly reports (excluding options)”. Thus, we suggest ESMA to improve the language in item 68 to make the conditions triggering the weekly reporting less prone to misunderstanding.