

Expert Group on agricultural commodity derivatives and spot markets





1. Scope of Financial Regulation

Financial regulation scope for commodity trading mainly derives from MiFID scope and does not distinguish energy contracts from other commodity contracts (metals, agricultural products and others)

Definition of financial instruments (Annexe I Section C MiFID)

- Financial regulation only applies to financial instruments
- Spot contracts out of the scope (except for market abuse purpose)
- Specific rules for ETD and OTC derivatives

- MiFID/MiFIR
- EMIR
- MAD/MAR

Exemption to MiFID authorisation (Article 2.1(j) MiFID II)

- Ancillary trading activity in commodity derivatives
- Privileged transactions: (i) intra-group transactions, (ii) hedging exemption, (iii) liquidity providing exemption

- MiFID/MiFIR
- EMIR
- CRD



MIFID I

2. Financial Instruments Definitions – C5, C6 and C7

RMs MTFs

C5: cash settled mandatory or at the option of one of the parties

C6: can be physically settled ETD contracts

C7: can be physically settled OTC derivatives contracts: standardised, cleared and express intention of the parties to qualify it as a FI

RMs MTFs OTFs OTC

C5: cash settled mandatory or at the option of one of the parties

C6: can be physically settled ETD contracts

C7: physically settled OTC derivatives contracts: standardised and economically equivalent to a listed derivative

Exemption for REMIT derivatives that must be physically settled



3. Ancillary activity exemption (1)

Main orientations in ESMA's RTS:

- 1. Two independant tests (i) market share and (ii) main business test
- 2. Hedging, intragroup and liquidity providing activities are not taken into account in the calculus (privileged transactions)
- 3. Activities are to be understood at EU level only
- 4. Trade repositories data will be used for the calibration of the thresholds



3. Ancillary activity exemption (2)

Exemption of Art. 2(1)(j) MiFID II: "dealing on own account in commodity derivatives/ emission allowances and derivatives therefof, or providing investment services in such instruments to customers / suppliers providing the activity is ancillary to their main business"

1st test – Market share per commodity category

Size of trading activity (EU) – privileged transactions (EU)

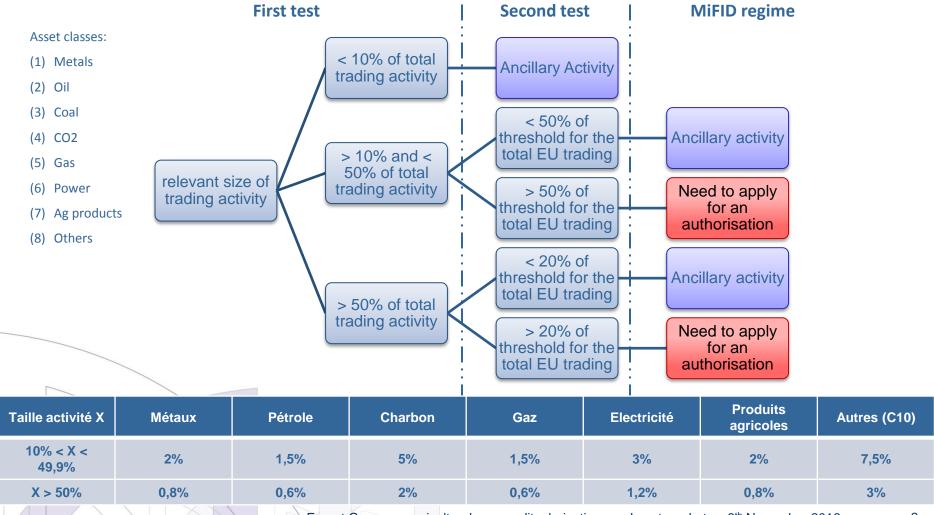
Market size in GNV (EU)

_	Category	Metals	Oil	Coal	Gas	Power	Ags products	Others
	Threshold	4%	3%	10%	3%	6%	4%	15%



3. Ancillary activity exemption (3)

2nd test – Main business test





3. Ancillary activity exemption (4)

ESMA decided to align MiFID 2 hedging definition to EMIR's definition

- > Article 10(4)(a) EMIR
- EMIR's RTS n°149/2013 article 10
- EMIR Q&A question 10

Broad definition that includes macro and portofolio hedging (cross commodity hedging) but relies on a contract per contract identification.



3. Ancillary activity exemption (5) - consequences

Beeing authorised under MiFID 2 (a dedicated subsidiary will endorse the speculative trading activity)

MiFID / MiFIR

- Reporting
- Organisational requirements
- Cannot benefit from the hedging exemption for position limits purposes

EMIR

Lost of the NFC status

Commodity derivatives are however not yet subject to the clearing obligation

CRD / CRR

- Application of prudential requirements

However commodity dealers are exempted from capital requirement until December 31st 2017 (probably exetended to 2020)