



THE IMPACT ON THE COMMODITY MARKET

Pavel Kovalčík, CEZ Group

Bucharest, November 2017

MIFID II – LEGISLATIVE BACKGROUND



MiFID II – DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments

.....*effective after implementation on national level*

MiFIR – REGULATION (EU) No 600/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments

.....*effective from 3.1.2018*

Regulatory Technical Standards (RTS)

RTS 20 – Ancillary Services Test, (EU) 2017/592

RTS 21 – Position Limit Reporting, (EU) 2017/591

RTS 22 – Transaction Reporting, (EU) 2017/590

RTS 24 – Order Requirements, (EU) 2017/580

MiFID II Delegated Regulation - COMMISSION DELEGATED REGULATION (EU) 2017/565

KEY ELEMENTS



Key elements for commodity industry

Definition of financial instruments (FI)

- Financial settled Commodity Derivatives are in scope
- **EUA, CER** („*emission allowances*“) are fully in scope – forwards & spot !!
- REMIT carve out - physically settled gas & power contracts traded on OTF are exempted

Ancillary Activity test

- Two-step Combined Self Assessment test to determine if entity falls under or stay outside MiFID scope



Main Business Test (MBT)

+

Market Size Test (MST) shall be passed for exemption

Position Limit

- Position limits are set by competent authority (**ČNB, BAFIN, FCA...**) on size of net position in commodity derivatives traded on regulated market, MTF or OTF and in economically equivalent OTC contracts
- Position exceeding the limit can be closed by default !!
- Position limits apply irrespective whether MiFID licensed company or not
- „*spot month*“ **and** „*other month*“



MIFID II - ANCILLARY ACTIVITY TEST

1) Main Business Test (MBT) - made as trading activity test (TAT) or capital employed test (CET)

MBT

$$TAT = \frac{GNV^{1)} \text{ in risk-taking EU commodity derivatives}}{GNV \text{ of total commodity derivatives (risk taking+hedging)}} = \begin{cases} <10\% & \rightarrow \text{class 1} \\ 10\% - 49,9\% & \rightarrow \text{class 2} \\ >50\% & \rightarrow \text{class 3} \end{cases}$$

or

$$CET = \frac{15\% \text{ net position (long or short) x price} + 3\% \text{ gross position (long+short) x price}}{\text{Total assets -short term debt (at group level)}} = <10\% \rightarrow \text{class 1}$$

AND

2) Market Size Test (MST) - proprietary trading to be compared with EU market size

MST

	Commodity specific MST thresholds			
	Gas, oil	Power	Coal	Emissions (EUAs)
class 1 (<10%)	3%	6%	10%	20%
class 2 (10%-49.9%)	1.5%	3%	5%	10%
class 3 (≥50%)	0.6%	1.2%	2%	4%

1) GNV=Gross Notional Value



MIFID II - ANCILLARY ACTIVITY TEST

II

Calculation

- Financial instruments in scope only
- Test shall be calculated annually considering 3 previous years average
- MBT – basis applied:
 - Numerator – on entity level - privileged transactions (hedging, intragroup, liquidity providing) are deducted
 - Denominator – on group level
- MST – ESMA published market size data → *but incomplete – approximation is needed*

Notification

- Annually to relevant NCA ¹⁾ (applicable also for other Legal Entities involved in trading with financial instruments) → *no EU standard*
- First notification– Q1 2018 (Jan, 3rd) → *however differences on national level*
- Exemption applies on entity level → *discrepancies on national level*

¹⁾NCA - National Competent Authority



MIFID II - POSITION LIMIT

Scope

- All companies with trading activity → not only MiFID licensed
- Commodity derivatives traded on trading venues & OTC commodity derivatives contracts which are „*economically equivalent*“ (EE OTC)
- Position limit will be set for each individual product
- Position limits are applicable at all times
- Starting point: 25% of the deliverable supply (spot month contracts) or open interest (other month contracts)
- NFCs¹⁾: possibility to apply for hedging exemption
- NRA²⁾ sets position limits / if more jurisdictions, NRA where largest market is domiciled decides
- NRA monitors the open interest

¹⁾ NFC - Non Financial Counterparty

²⁾ NRA - National Regulatory Authority



MIFID II – OPEN ISSUES

Position limit & Transaction reporting

- In force - *January 3rd, 2018*
- Investment firms & Exchanges have obligation *however additional data will be required from NFC ¹⁾*

Static Data – Client Identification Code (LEI code), Trading Capacity, Execution & Investment decision within firm (Trader's National ID), etc. – [once](#), then each update

Dynamic Data – hedge flag – per transaction, per position in each product (ISIN) [on daily basis](#)

- Trading venues implementing data exchange schemes with market participants
.....*EFET is very active.....development of common approach*

¹⁾ NFC – non-financial counterparties



MIFID II – CEE MARKETS

- **Czech Republic**
 - CZ PXE commodity products will be traded only on EEX
 - Status of 42FS broker is still not known – OTF – yes/no?
 - MiFID II is implemented on national level
- **Slovakia**
 - SK PXE commodity products will be traded only on EEX
 - MiFID II is implemented on national level
- **Hungary**
 - New company established – HUDEX - regulated market (MiFID) - Power & Gas
 - Position limit, transaction reporting – open issues
 - MiFID II is implemented on national level
- **Poland**
 - Status of TGE is still not known – OTF – yes/no?
 - MiFID II is not implemented on national level yet
- **Romania**
 - OPCOM - regulated by energy regulator – no change expected
 - MiFID II is or not implemented on national level yet ???
- **Bulgaria**
 - IBEX – only spot products are traded – no change expected
 - MiFID II is or not implemented on national level yet ???



MIFID II – OTHER ISSUES

Market size data

- ESMA published data - 2015 (only ETD), 2016 (only H2 2016), 2017 not available)

Notification

- No standard within Europe for the first notification
- Examples – ESMA Q&A, ČNB, BAFiN (*Jan, 3rd, 2018*), Poland (*Apr, 30th, 2018*), Italy (*Dec, 31st, 2017*)

Brokers

- Not known yet their status - OTF

Brexit & EU

- UK establishes regulatory benchmark in many aspects
..... what happens after Brexit?





THANK YOU FOR YOUR ATTENTION.



Pavel Kovalčík, CEZ GROUP

Email address: pavel.kovalcik@cez.cz