

## EU Matters - your newsletter on EU matters, February 2019



February 2019

### General and Institutional Affairs

#### Brexit

- In **preparation for a potential no-deal Brexit**, ESMA has taken certain measures:
  - ESMA and national financial supervisory authorities have agreed **MoUs with the UK Financial Conduct Authority** on supervisory cooperation.  
Read more:  
<https://www.esma.europa.eu/press-news/esma-news/esma-and-eu-securities-regulators-agree-no-deal-brexit-mous-fca>
  - Statement clarifying how **derivatives data reported under EMIR** should be handled, including a timeline for completion of relevant adjustments. The statement addresses:
    - Reporting by CCPs and counterparties
    - Reconciliation and recordkeeping by TRs
    - Access by EU27 authorities
    - Portability and aggregation by TRsRead more:  
<https://www.esma.europa.eu/press-news/esma-news/esma-clarifies-reporting-and-handling-derivatives-data-in-case-no-deal-brexit>
  - Q&As regarding the application of certain provisions in the **Prospectus Directive and the Transparency Directive**. The Q&As address the need for certain issuers to choose a new 'home Member State' and the fact that prospectuses approved by the UK FCA cannot be used in EU27 after Brexit.  
Read more:  
<https://www.esma.europa.eu/press-news/esma-news/esma-qas-clarify-prospectus-and-transparency-rules-in-case-no-deal-brexit>

#### Legislative files

#### Benchmark Regulation

- ESMA has updated its **Q&As on the Benchmark Regulation (BMR)**, providing clarifications regarding the scope of application of the Commission Delegated Regulations adopted under the BMR, depending on the type of benchmark and in particular:

- Regulated-data benchmarks
- Interest-rate benchmarks and
- Commodity benchmarks

Link to the Q&As:

[https://www.esma.europa.eu/sites/default/files/library/esma70-145-114\\_qas\\_on\\_bmr.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_qas_on_bmr.pdf)

## Central Securities Depository Regulation (CSDR)

- ESMA has updated its **Q&As regarding the implementation of CSDR**, clarifying two aspects of the settlement discipline regime in relation to cash penalties:
  - Calculation of cash penalties
  - Cases of non-application of cash penalties

Link to updated Q&A:

[https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2\\_csd\\_r\\_qas.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csd_r_qas.pdf)

## EMIR Refit

- ESMA has published a **statement regarding EMIR Refit implementation**. It addresses issues around the clearing and trading obligations for small financial counterparties and the backloading requirement for reporting entities, ahead of upcoming deadlines, which would represent challenges for these entities due to the political negotiations on EMIR Refit not being finalised.

Link to it:

<https://www.esma.europa.eu/press-news/esma-news/esma-issues-statement-address-upcoming-emir-refit-implementation-issues>

## MiFID

- ESMA has **updated its action plan for SI regime calculations**. ESMA maintains the ongoing publication for equity, equity-like instruments and bonds while postponing the publication for derivatives and other non-equity instruments until at the latest 2020. The delay was necessary, as data completeness for various non-equity asset classes has not yet reached adequate levels.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-plan-systematic-internaliser-regime-calculations-and-publications>

- ESMA has updated its Q&As regarding **market structure and transparency issues**, providing clarifications on:
  - APA reports to competent authorities and ESMA; and,
  - Identification of high frequency trading techniques.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-qas-mifid-ii-and-mifir-market-structure-and-transparency-1>

- ESMA has published an updated version of the MiFID II/MiFIR **transitional transparency calculations for electricity derivatives**.

Link here:

<https://www.esma.europa.eu/policy-activities/mifid-ii-and-mifir/transparency-calculations>

- ESMA has published opinions agreeing with proposals for **position limits** under MiFIDII/MiFIR, regarding the following commodity derivatives: Low Sulphur gasoil, Panamax Freight, Dutch TTF ICE Endex, Dutch TTF Powernext, Dutch Power Base, and Dutch Power Peak.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-agrees-position-limits-under-mifid-ii-0>

## Other news

### Retail

- ESMA has renewed its product intervention decision to restrict the marketing, distribution or sale of **contracts for differences** to retail clients.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/notice-esma%E2%80%99s-product-intervention-renewal-decision-in-relation-contracts-0>

### Market Abuse Regulation (MAR)

- ESMA has published its annual report on the application of **accepted market practices** (AMP) in accordance with MAR. The report includes ESMA's views on the application of AMPs together with recommendations to National Competent Authorities.

Link to the report:

[https://www.esma.europa.eu/sites/default/files/library/esma70-145-1184\\_report\\_application\\_amps.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-145-1184_report_application_amps.pdf)

### Anti-money laundering

- The three European Supervisory Authorities jointly approved a **Multilateral Agreement on the exchange of information** between the European Central Bank (ECB) and all competent authorities responsible for supervising compliance of credit and financial institutions with anti-money laundering and countering the financing of terrorism obligations under the Fourth Anti-Money Laundering Directive (AMLD4). The Agreement will create a clear framework for exchanging information and potentially will enhance the effectiveness of supervisory practices.

Link to the Agreement:

<https://esas-joint-committee.europa.eu/Publications/Other%20Documents/Agreement%20between%20OCAs%20and%20the%20ECB%20on%20exchange%20of%20information%20on%20AML.pdf>

### Calendar dates and events:

#### February

- 4 ESMA open hearing on 'Measures to promote sustainability in EU capital markets', Paris

- 5 ESMA meets its Securities Markets Stakeholder Group
- 6 CEPS/ECMI - Rebranding CMU - Second Meeting, Speakers include Ulrica Renstad, Nasdaq
- 19 EPFSF 'The Fight Against Financial Crime', Brussels
- 19 ESMA's consultation on integrating sustainability risks and factors in MiFID II, closes
- 19 KREAB roundtable – 'Fostering a vibrant EU IPO market', Brussels. Speakers include: Tilman Lueder, European Commission, and Lauri Rosendahl, President Nasdaq Nordics
- 20 ESMA's consultation on Guidelines on Settlement Fails Reporting under CSDR closes
- 21-22 CEPS Ideas lab, Brussels
- 26 3rd Annual Conference on 'FinTech and Digital Innovation: Regulation at the European Level and Beyond', Brussel. Speakers include: Commissioner Valdis Dombrovskis; Steven Maijoor, ESMA; Wendy Jephson, Nasdaq

### **March**

- 5 QED – CMU 27 Building a capital markets union for future, Brussels
- 19 EPFSF 'Priorities for the next European Parliament and Commission', Brussels
- 26 ESMA Board meeting
- 29 UK Withdrawal from EU

### **April**

- 3-5 EUROFI High Level Seminar, Bucharest

### **June**

- 4-5 FESE General Assembly/Convention, Dublin