

EU Matters - your newsletter on EU matters January 2019



HAPPY NEW YEAR FROM THE TEAM IN BRUSSELS.

January 2019

General and Institutional Affairs

Council

- **Romania took over the presidency** of the Council of the EU on 1 January 2019. The presidency rotates among EU countries on a 6 months basis. As from 1 July 2019 the presidency will be held by Finland.

Brexit

- The Court of Justice of the European Union ruled that the **UK is free to revoke unilaterally** the notification of its intention to withdraw from the EU.
Read the notice:
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-12/cp180191en.pdf>
- The European Commission is implementing a “no-deal” **Contingency Action Plan** in specific sectors. For financial services, the plan includes:
 - A temporary and conditional equivalence decision for 12 months to ensure that there will be no immediate disruption in the **central clearing of derivatives**.
 - A temporary and conditional equivalence decision for 24 months to ensure that there will be no disruption in **central depositaries services** for EU operators currently using UK operators.
 - Two Delegated Regulations facilitating **novation**, for 12 months, of certain OTC derivatives contracts, where a contract is transferred from a UK to an EU27 counterparty.

Read more here:

https://ec.europa.eu/info/publications/communication-19-december-2018-preparing-withdrawal-united-kingdom-european-union-30-march-2019-implementing-commissions-contingency-action-plan_en

- ESMA has clarified that in a no-deal Brexit scenario it aims to **recognise UK CCPs** as third country CCPs in a timely manner, where the four recognition conditions under Article 25 of EMIR are met. ESMA will follow a similar process for the **recognition of the UK CSD** under CSDR in a no-deal Brexit scenario.

Read more:

https://www.esma.europa.eu/sites/default/files/library/esma70-151-2032_esma_statement_recognition_of_uk_ccps_and_csd_in_no_deal_brexit.pdf

- ESMA has issued a statement reminding both UK and EU27 firms, providing investment services, of their obligations to **provide clients with information on the implications of Brexit** on their relationship with clients and on the impact of Brexit-related measures that a firm has taken or intends to take. ESMA and national competent authorities will continue to monitor developments, including by engaging with firms to assess the level of firms' preparedness and to ensure that their clients are appropriately informed in the context of the firms' preparation for Brexit.

Read more here:

<https://www.esma.europa.eu/press-news/esma-news/esma-tells-firms-provide-clients-information-implications-brexit>

Legislative files

CMU

- The European Commission has adopted new rules to further improve and diversify funding sources SMEs. The revamped rules aim to further facilitate the registration of trading venues as '**SME Growth Markets**' by broadening the current definition of SMEs, ultimately making those markets more attractive to small issuers and investors. The rules take the form of an amendment to an existing Delegated Regulation under MiFID II. These measures complement the proposal for a regulation adopted by the Commission in May 2018 on the promotion of the use of SME Growth Markets, which are still under political negotiation.

Read more here:

http://europa.eu/rapid/press-release_MEX-18-6807_en.htm

EU Benchmark Regulation

- ESMA has issued **guidelines on non-significant benchmarks** under the Benchmarks Regulation (BMR). ESMA proposes lighter requirements for non-significant benchmarks, their administrators and their supervised contributors in relation to four areas:
 - procedures, characteristics and positioning of oversight function;
 - appropriateness and verifiability of input data;
 - transparency of methodology; and
 - governance and control requirements for supervised contributors

Read in full:

<https://www.esma.europa.eu/press-news/esma-news/esma-issues-guidelines-non-significant-benchmarks>

- ESMA has also updated its **Q&As** on the Benchmarks Regulation, concerning currency converters.

Link to it:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_gas_on_bmr.pdf

Review of the European System for Financial Supervision

- The European Parliament's **ECON Committee has voted its report** on the Review of the European Supervisory Authorities. ECON for instance agrees with the Commission's original proposal regarding the strengthening ESMA's role in certain regards and also proposes for ESMA to get a stronger mandate on sustainable finance. The Council is still negotiating its position, where after trilogues to reach a final agreement on the legislative text can start.
The voted version of the report is not yet available.

Investment Firm Review (IFR)

- Council agreed its position on the European Commission's proposal for a new regulatory and supervision framework for investment firms. The European Parliament voted on its position on this file 24 September 2018. **Trilogue negotiations are now starting** between the Council and the Parliament to reach a final agreement on the legislative text.
Read the Council's press release here:
<https://www.consilium.europa.eu/en/press/press-releases/2019/01/07/investment-firms-council-agrees-position-on-new-regulatory-and-supervision-framework/pdf>

MiFID

- ESMA has published **amended guidelines on the application of C6 and C7 of Annex 1 of MiFID II**, which concern commodities instruments.
Read full text:
<https://www.esma.europa.eu/press-news/esma-news/esma-amends-guidelines-application-c6-and-c7-under-mifidii>
- ESMA will delay its final publication of a full list of **third-country trading venues for the purpose of post-trade transparency and position limits** under MiFID II/MiFIR. According to the statement, pending the publication of the lists, investment firms do not have to make public their transactions concluded on third-country venues via an approved publication arrangement.
Read more:
<https://www.esma.europa.eu/press-news/esma-news/esma-provides-update-assessment-third-country-trading-venues-purpose-post-trade>
- ESMA published a final report on the **tick-size regime for third country shares**. ESMA proposes that National Competent Authorities of EU trading venues, where third-country shares are traded, be allowed to decide on an adjusted average daily number of transactions on a case-by-case basis in order to take into account the liquidity available on third country venues in the calibration of tick sizes.
Link to the report:
https://www.esma.europa.eu/sites/default/files/library/esma70-156-834_final_report_on_the_proposed_amendments_to_rts_11.pdf
- ESMA has updated its MiFID II and MiFIR **Q&As on commodity derivatives topics**. These Q&As provide clarification on issues related to the MiFID II/MiFIR regime for commodity derivatives, including on position limits, position reporting and ancillary activity.
Read more here:
https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-36_gas_commodity_derivatives.pdf

- ESMA has updated its **Q&As regarding transparency rules** under MiFID II and MiFIR. The new Q&As provide clarification on the following topics:
 - Publication of request for market data (RFMD) transactions;
 - Default transparency regime for equity instruments (amendment to an existing Q&A); and,
 - Default LIS and SSTI thresholds for bonds.

Read the Q&As:

https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35_gas_transparency_issues.pdf

Sustainable Finance

- ESMA has launched consultations on sustainable finance. ESMA seeks input on **integration of sustainability risks and factors** into MiFID II (securities trading), AIFMD and the UCITS Directive, as well as on how to improve the quality and consistency of **disclosures of ESG factors** when considered as part of a credit rating action. A draft advice and proposed guidelines touch upon organisational requirements, operating conditions, risk management, conflicts of interest, product governance and disclosure requirements.

ESMA will also hold an open hearing on 4 February 2019.

Read more here here:

<https://www.esma.europa.eu/press-news/esma-news/esma-consults-measures-promote-sustainability-in-eu-capital-markets>

- The Council reached its position on the European Commission's proposals for introducing **disclosure obligations** on how financial companies integrate environmental, social and governance factors in their investment decisions and on **low-carbon benchmarks**. As the European Parliament already formed its position on the same files, trilogue negotiations to find a final agreement on the legislative texts are starting.

Read the Council's press release:

<https://www.consilium.europa.eu/en/press/press-releases/2018/12/19/green-finance-council-agrees-position-on-low-carbon-benchmarks-and-disclosure-requirements/>

Anti-money laundering

- The Council reached its negotiating position on the European Commission's proposal to reinforce the role of the European Banking Authority as regards risks posed to the financial sector by money laundering activities. The Council will need to negotiate with the European Parliament to reach a final agreement before the new rules can be adopted and applied.

Read a press release from the Council:

<https://www.consilium.europa.eu/en/press/press-releases/2018/12/19/anti-money-laundering-council-agrees-position-on-reinforced-supervision-for-banks/>

Central Securities Depositories Regulation (CSDR)

- ESMA has published two consultation papers on **settlement fails reporting and standardised procedures and messaging protocols** under the CSDR. These

consultation papers represent a first step in the development of the guidelines in these areas and remain open for feedback until 20 February 2019.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-consults-guidelines-settlement-fails-reporting-and-standardised-procedures>

Non-legislative news

Fintech

- European Parliament's Committee on International Trade has voted a Report on **Blockchain: a forward-looking trade policy**. The report calls for measures to boost blockchain adoption in trade and business and stresses the need to develop global interoperability standards.

Link to the report:

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0407&format=XML&language=EN>

- The European Supervisory Authorities published a joint report on **innovation facilitators** (regulatory sandboxes and innovation hubs). The report sets out a comparative analysis of the innovation facilitators established to date within the EU and best practices for the design and operation of innovation facilitators.

Read the full report:

https://www.esma.europa.eu/sites/default/files/library/jc_2018_74_joint_report_on_regulatory_sandboxes_and_innovation_hubs.pdf

- ESMA has published its Advice on **initial coin offerings and crypto-assets**. ESMA clarifies the existing EU rules applicable to crypto-assets that qualify as financial instruments, and provides ESMA's position on gaps and issues in the current regulatory framework for consideration by EU policymakers.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/crypto-assets-need-common-eu-wide-approach-ensure-investor-protection>

Retail

- ESMA has renewed the restriction on the marketing, distribution or sale of **contracts for differences (CFDs)** to retail clients, in effect since 1 August, from 1 February 2019 for a further three-month period.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-renew-restrictions-cfds-further-three-months-1-february-2019>

- ESMA has **renewed the prohibition on the marketing, distribution or sale of binary options 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-binary-option-0>

- ESMA has published its first Annual Statistical Report on the **cost and performance of retail investment products**. The Report covers UCITS, Alternative Investment Funds

sold to retail investors and Structured Retail Products. ESMA finds that investment product performance is highly impacted by charges.

Link to report:

https://www.esma.europa.eu/sites/default/files/library/esma50-165-731-asr-performance_and_costs_of_retail_investments_products_in_the_eu.pdf

Recent consultations

- ESMA call for evidence on **periodic auctions** for equity instruments. Nasdaq replied to the consultation and called for enhanced supervisory convergence, see reply attached.

<https://business.nasdaq.com/discover/public-policy-advocacy/spotlight-on-brussels/market-in-financial-instruments-directive/index.html>

Did you know?



The euro, Europe's common currency, turned 20 on 1 January 2019. Exactly 20 years ago 11 EU countries launched the euro as a common currency and introduced a shared monetary policy under the European Central Bank.

Calendar dates and events:

January

- 15 UK parliament scheduled to vote on Brexit deal
- 22 EPFSF 'Economic outlook on Financial Services Reform in the EU', Brussels
- 29 17th Annual European Financial Services Conference, Brussels
- 30 ESMA Board meeting

February

- 4 ESMA open hearing on 'Measures to promote sustainability in EU capital markets', Paris
- 19 EPFSF 'The Fight Against Financial Crime', Brussels
- 19 ESMA Consultation on integrating sustainability risks and factors in MiFID, the UCITS Directive and AIFMD closes
- 20 ESMA Consultation on Guidelines 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', Brussels

March

- 19 EPFSF 'Priorities for the next European Parliament and Commission', Brussels
- 19 ESMA Consultation on Disclosure Requirements (sustainability) Applicable to Credit Ratings closes
- 26 ESMA Board meeting
- 29 UK scheduled to exit the EU

April

- 3-5 Eurofi High Level Seminar, Bucharest