

EU Matters - your newsletter on EU matters, March 2019



March 2019

General and Institutional Affairs

Brexit

- ESMA has published a statement informing stakeholders on the **impact on ESMA's databases in case of a no-deal Brexit**, when the UK FCA will stop sending data to ESMA and will no longer have access to ESMA's IT applications and databases. The statement focuses in particular on the MiFID II/MiFIR transparency calculations performed by the various ESMA databases (FIRDS, FITRS, DVC system) as well as the annual ancillary activity calculations.
Read more here:
https://www.esma.europa.eu/sites/default/files/library/esma_70-155-7026_use_of_uk_data_in_esma_databases_in_case_of_a_no-deal_brexit.pdf
- ESMA has announced that in the event of a no-deal Brexit, **three CCPs and the CSD established in the UK will be recognised to provide their services in the EU**.
 - The CCPs are: LCH Limited, ICE Clear Europe Limited and LME Clear Limited.
Read more: https://www.esma.europa.eu/sites/default/files/library/esma71-99-1114_esma_to_recognise_three_uk_ccps_in_the_event_of_a_no-deal_brexit.pdf
 - The CSD is: Euroclear UK and Ireland Limited
Read more: https://www.esma.europa.eu/sites/default/files/library/esma71-99-1119_esma_to_recognise_the_uk_central_securities_depository.pdf
- ESMA has also agreed **MoUs with Bank of England** regarding the recognition of the CCPs and the CSD. The MoUs include cooperation arrangements and provide ESMA with adequate tools to monitor the CCPs' and CSD's ongoing compliance with the recognition conditions and to assess any material risk they pose, directly or indirectly, to the EU or any of its Member States, including to their financial stability.
See the press release:
<https://www.esma.europa.eu/file/50295/download?token=ihNhB59v>
- Prompted by Brexit, ESMA has published a MiFID II supervisory briefing on the **supervision of non-EU branches** of EU firms providing investment services and activities. This briefing covers the following topics:
 - Supervisory expectations in relation to the authorisation of investment firms
 - Ongoing activities of non-EU branches including reporting and collection of information

- Supervisory activity and cooperation with non-EU Competent Authorities

Link to the briefing:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-1493_mifid_ii_supervisory_briefing_on_the_use_of_third-country_branches_by_eu_firms.pdf

Legislative files

CMU

- EU institutions have reached a political agreement on the European Commission's proposal for a harmonised framework for **covered bonds**.

The new framework:

- provides a common definition of covered bonds
- defines the structural features of the instrument
- defines the tasks and responsibilities for the supervision of covered bonds
- sets out the rules allowing the use of the 'European Covered Bonds' label
- strengthens the conditions for granting preferential prudential treatment to covered bonds under the capital requirement regulation

Read the press release:

<https://www.consilium.europa.eu/en/press/press-releases/2019/02/27/capital-markets-union-political-agreement-reached-on-eu-framework-for-covered-bonds/pdf>

EMIR

- ESMA has issued an update of its **Q&A on EMIR data reporting**.

You can read it here:

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

- EU institutions have reached a political agreement on the European Commission's proposal on **simplifying EMIR rules applying to non-financial counterparties, small financial counterparties and pension funds** using financial derivative products. Among other things, a new category of "small financial counterparties" is introduced, which will be exempted from the obligation to clear their transactions through a CCP, while remaining subject to risk mitigation obligations.

Link to the press release:

<https://www.consilium.europa.eu/en/press/press-releases/2019/02/05/capital-markets-union-deal-on-updated-rules-for-financial-derivative-products-and-clearing/pdf>

MiFID

- ESMA has updated its **Q&As on MiFIR data reporting**, providing further clarifications relating to the following issues:

- reporting the LEI of the issuers to FIRDS in cases where the issuer of the instrument has a branch(es) that have a LEI.
- reporting maturity, expiry and termination dates to FIRDS.

See it here:

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_gas_mifir_data_reporting.pdf

- A political agreement has been reached on an **extension of the "tick size" regime to systematic internalisers**, thus enhancing the level-playing field between systematic internalisers and trading venues. These rules amend MiFID II and MiFIR, and are part of an agreement on the European Commission's proposal for a package of measures setting out new prudential requirements and supervisory arrangements for investment firms. The objective of the reform is to adapt the requirements to the firms' risk profiles and business models while preserving financial stability.
Press release:
<https://www.consilium.europa.eu/en/press/press-releases/2019/02/26/investment-firms-presidency-and-parliament-agree-on-a-new-regulatory-and-supervision-framework/pdf>
- The European Commission has adopted a Delegated Regulation further specifying the MiFID provisions on the calculation of the **tick size for third country financial instruments**, in cases where the most liquid market is located outside the EU.
View the amended regulation:
<http://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-904-F1-EN-MAIN-PART-1.PDF>

EU Benchmark Regulation (Sustainable finance – Low-carbon benchmarks)

- A political agreement has been reached on the European Commission's proposal to introduce **two new categories of low-carbon benchmarks** in the EU Benchmark Regulation: 1) a climate-transition benchmark and 2) a specialised benchmark which brings investment portfolios in line with the Paris Agreement. The new categories are voluntary labels designed to orient the choice of investors who wish to adopt a climate-conscious investment strategy.
- Separately, the EU institutions also agreed to grant providers of "critical benchmarks" two extra years until 31 December 2021 to comply with the EU Benchmark Regulation requirements. The same was agreed for benchmarks produced outside the EU.
Link to the European Commission's press release:
http://europa.eu/rapid/press-release_IP-19-1418_en.htm

Other news

ESMA

- ESMA has renewed the prohibition of the marketing, distribution or sale of **binary options** to retail clients, in effect since 2 July 2018, for a further three-month period as from 2 April 2019.
Link to the press release:
<https://www.esma.europa.eu/file/50314/download?token=FEVLJFA7>
- ESMA has started to make the **annual transparency calculations for equity and equity-like instruments** available.
Read more here:
<https://www.esma.europa.eu/press-news/esma-news/mifid-ii-esma-makes-available-results-annual-transparency-calculations-equity>

- ESMA has published a document listing the ‘**national prospectus thresholds**’, i.e. the thresholds below which an offer of securities to the public does not need a prospectus in the various Member States of the EU.

Link to the document:

https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193_prospectus_thresholds.pdf

Calendar dates and events:

March

- 5 QED – CMU 27 Building a capital markets union for future, Brussels
- 6-7 EASME – European Innovation Council & Nasdaq; European Investor day – Stockholm
- 21 European Commission – 2nd high-level conference on sustainable finance with the objective of encouraging a global approach to sustainable finance, Brussels
- 26 ESMA Board meeting
- 29 UK (scheduled) withdrawal from EU

April

- 3-5 EUROFI High Level Seminar, Bucharest, Romania
- 24 Europex General Assembly, Amsterdam

May

- 23-26 European Parliament elections

June

- 4-5 FESE Convention, Dublin

Past copies of EU MATTERS newsletter can be found here:

<https://business.nasdaq.com/discover/public-policy-advocacy/spotlight-on-brussels/index.html>