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## Brexit: how will it impact market activities?

**To support financial market players, the Autorité des Marchés Financiers is providing market participants with relevant information published by the European Commission and ESMA in recent months that will help them to pursue their activities in the event of a no-deal Brexit.**

On 19 December 2018, the European Commission announced a series of emergency measures to be implemented in the event of a no-deal Brexit.

Very specifically, it has adopted the following measures with regard to the financial sector:

- a temporary and conditional equivalence decision concerning the United Kingdom's regulatory framework for clearing houses for a period of twelve months from the Brexit date, in order to guarantee the absence of any immediate disruption to the central clearing of derivative products;
- a temporary and conditional equivalence decision concerning the United Kingdom's regulatory framework for central securities depositories for a period of 24 months from the Brexit date, in order to guarantee the absence of any disruption to the services of central depositories for EU operators which have previously involved UK operators;
- two delegated regulations to facilitate the novation – for a period of twelve months from the Brexit date – of certain over-the-counter derivative contracts, for which a contract is transferred to a counterparty established in the 27-member EU (exemption from clearing obligation and bilateral margin requirements, provided that certain conditions are met).

## Clearing and securities settlement: a recognition decision

Following these equivalence decisions, and to prevent any interruption to business or negative impacts on financial stability within the Union, on 18 February and 1st March 2019 respectively, ESMA announced its decision to recognise three clearing houses (LCH Ltd, ICE Clear Ltd and LME Clear Ltd) and one central securities depository (Euroclear UK and Ireland Ltd), both established in the United Kingdom in accordance with EMIR and the Central Securities Depositories Regulation (CSDR), respectively. This decision is intended to come into effect on the Brexit date.

## Trading obligation and transparency

On 7 March 2019, ESMA also clarified the implications of certain provisions arising from the European Markets in Financial Instruments Directive (MiFID 2 and MiFIR) in the context of a possible no-deal Brexit. The AMF encourages financial market participants to familiarise themselves with these implications.

The issues addressed include:

- legal treatment, for participants who are subject to MiFID 2, of energy contracts traded on a non-European organized trading facility (OTF) with physical delivery;
- the trading obligation for certain derivatives under MiFIR;
- post-trading transparency for non-share financial instruments and the position limit regime for derivative products on commodities with regard to transactions carried out on trading venues established in the United Kingdom;
- post-trading transparency for over-the-counter transactions carried out between an investment firm established in the European Union and a counterparty in the United Kingdom.

The European authority addressed the issue of the trading obligation for shares in a subsequent notice, published on 19 March.

## Market data and calculation of MiFID 2 thresholds

On 5 February 2019, ESMA also clarified the consequences of a no-deal departure by the United Kingdom in terms of access to market data originating from the Financial Conduct

Authority and for the relevant competent authority for reported transactions involving financial instruments listed in the Union. In such an event, the ESMA reference database on financial instruments would no longer cover the data originating from trading venues or systematic internalisers established in the United Kingdom.

In such a context, the European authority has stated its intention to suspend some of its calculations and publications of thresholds performed in the framework of MiFID 2. For example, in April and May 2019, ESMA would probably have to interrupt its monthly publications on the double volume cap imposed upon transactions carried out without pre-trading transparency.

## Benchmark administration

In its notice published on 7 March, ESMA also clarified the consequences of a no-deal departure in relation to its register of benchmark administrators under the Benchmarks Regulation. In this regard, the European Authority stipulates that during the transitional period provided for by the Regulation, the Union's regulated institutions can continue to use the benchmarks provided by British administrators.

## Obligation to inform clients

Lastly, in December 2018, ESMA reminded investment firms and credit institutions of their obligations to inform their clients about the possible effects of the United Kingdom's departure from the European Union on their relationship with these clients.

### Read more


- ✎ European Commission - Press release - 19 December 2018
- ✎ Commission implementing decision - Regulatory framework applicable to central counterparties
- ✎ Commission implementing decision - Regulatory framework applicable to central securities depositories
- ✎ Commission delegated regulation - Risk-management procedures for certain OTC derivatives contracts not cleared by a CCP

- Commission delegated regulation - Clearing obligation for certain types of contracts
- European Commission - Technical adjustments to financial services contingency measures to reflect the Decision of the European Council of 22 March
- ESMA's website - Brexit page
- ESMA - Press release - ESMA to recognise three UK CCPS in the event of a no-deal Brexit
- ESMA - Press release - ESMA to recognise the UK Central Securities Depository in the event of a no-deal Brexit
- ESMA - Public statement - Impact of Brexit on MiFID II/MiFIR and the Benchmark Regulation (BMR)
- ESMA - Public statement - Use of UK data in ESMA databases and performance of MiFID II calculations in case of a no-deal Brexit
- ESMA - Public statement - ESMA's Data Operational Plan under a no-deal Brexit scenario
- ESMA - Statement - Reminder to firms on their MiFID obligations on disclosure of information to clients
- ESMA - Public statement - Impact of Brexit on the trading obligation for shares

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