AUTORITÉ DES MARCHÉS FINANCIERS

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Brexit: how will it impact market activities?

To accompany the players of the Paris financial marketplace, 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 after the end of the Transition Period (as of 1st January 2021).

Central counterparties (CCPs): temporary equivalence and recognition decisions

In order to prevent potential risks to financial stability, the European Commission adopted a temporary equivalence decision on September 21, 2020 regarding the UK regulatory framework applicable to CCPs for an 18-month period from January 1st 2021. The European Commission considers that this equivalence period should give EU-based clearing members sufficient time to reduce their exposure to UK market infrastructures and to allow EU-based CCPs time to further develop their clearing offer for the transactions concerned.

Following this equivalence decision, ESMA adopted recognition decisions on September 28, 2020 for the three UK CCPs (LCH Ltd, ICE Clear Ltd and LME Clear Ltd). These decisions are effective for an 18 month-period from the expiry of the transition period, i.e. until June 30, 2022. ESMA simultaneously classified each of these three clearing houses according to their level of systemic importance for the stability of the European Union and its Member States (« tiering »): LME Clear Ltd is classified as Tier 1 and ICE Clear Ltd and LCH Ltd as Tier 2. During the equivalence period, the European authority will carry out a full analysis under

Article 25(2c) of EMIR in order to examine whether any of these clearing houses are of such systemic importance that they should not be recognised to provide certain services within the European Union.

- European Commission - Temporary equivalence decision regarding the regulatory framework applicable to CCPs – September 21, 2020
- ESMA press release regarding the recognition of UK CCPs – September 28, 2020

Central securities depositories (CSDs): temporary equivalence

On 25 November 2020, the European Commission adopted an equivalence decision determining, for a limited time period, that the regulatory and supervisory framework applicable to CSDs established in the UK is equivalent in accordance with the Central Securities Depositories Regulation (CSDR). This decision, granted for a six-month period as of January 1st 2020, will allow Union issuers to use UK CSDs to perform notary and central maintenance services concerning transferable securities constituted under the law of a Member State. The equivalence period should give EU 27 CSDs the time needed to further develop their offer of services in relation to EU 27 issuers and will also allow EU 27 issuers the time needed to migrate their positions to EU 27 CSDs.

Following this equivalence decision, on 11 December 2020 ESMA recognised temporarily Euroclear UK & Ireland Limited (EUI), the CSD established in the UK, as a third-country CSD, from 1st January until 30 June 2021.

- European Commission - Equivalence decision regarding the framework applicable to central securities depositaries – 25 November 2020
- ESMA statement regarding the recognition of UK central securities depositary (CSD) – 11 December 2020

Exemptions for Brexit-related contract novations

On November 23, 2020, ESMA published two final reports relating to amendments to the Delegated Regulations facilitating, for a 12 months period from the expiry of the Transition Period, the novation of certain OTC derivative contracts for which a contract is transferred from a counterparty established in the EU-27: provided that certain conditions are met, contracts novated during this period could benefit from an exemption from clearing obligation and bilateral margin requirements.

- Final report of ESMA, EBA and EIOPA on the Delegated Regulation on the application of risk management procedures for uncleared derivatives in case of novation due to Brexit – November 23, 2020

- ESMA's final report on the Delegated Regulation on the application of the clearing obligation in case of novation due to Brexit – November 23, 2020

Impact of Brexit on the application of MiFID II/MIFIR

On October 1st, 2020, ESMA has specified its approach to the application of some key MiFID II/MiFIR provisions after the end of the transition period on 31 December 2020. Among the aspects covered are:

- the impact of Brexit on the judicial treatment of players under MiFID II concerning derivative contracts of « wholesale energy products » traded on an OTF (Organized Trading Facility) which are physically settled;

- the post-trade transparency regime for non-equity instruments and the position limits regime for commodity derivatives traded on UK trading venues;

- the post-trade transparency regime for OTC transactions between EU investment firms and UK counterparties;

- ESMA approach regarding « main indices » and « recognised exchanges » in the specification of eligible collateral under the Capital Requirement Regulation (CRR).

- ESMA public statement on the Impact of Brexit on the application of MiFID II/MiFIR – 1 October 2020

- ESMA public statement on the addition of UK venues to opinions on third-country trading venues – 27 October 2020

Trading obligation for shares (share trading obligation - STO)

On October 26, 2020, ESMA published its final position on the share trading obligation which complements ESMA public statement of 29 May 2020. It specifies that after the end of the transition period on 31 December 2020 ESMA assumes that all EU shares, i.e. with an ISIN starting with a country code from an European Economic Area country are within the scope of the share trading obligation. Indeed, MiFIR requires to conclude transactions in shares on regulated markets, multilateral trading facilities, systematic internalisers or third-country trading venues assessed as equivalent. In addition, ESMA has further considered that shares with an EEA ISIN traded on UK trading venues in GBP are limited in number and that the

trading of such shares can be reasonably assumed to occur on a non-systematic, ad-hoc, irregular and infrequent basis. Therefore, those trades will not be subject to the EU STO, in accordance with Article 23 of MiFIR.

- ESMA public statement on the impact of Brexit on the trading obligation for shares (Article 23 of MiFIR) – 29 May 2019

- ESMA public statement on the impact of the end of the transition period on 31 December 2020 on the trading obligation for shares (Article 23 of MiFIR) – 26 October 2020

Trading obligation for derivatives (derivatives trading obligation – DTO)

On November 25, 2020 ESMA issued a public statement on the trading obligation for derivatives which requires that some counterparties conclude transactions in some derivatives on regulated markets, multilateral trading facilities (MTF) or organised trading facilities (OTF). At this point in time, ESMA does not consider necessary to introduce a change of its approach and considers that the continued application of the DTO after the end of the transition period would not create risks to the stability of the financial system. ESMA will continue to monitor the situation to assess whether markets would be sufficiently liquid to allow EU market participants to execute transactions in derivatives subject to the DTO on eligible trading venues after the end of the transition period.

- ESMA public statement on the impact of the end of the transition period on 31 December 2020 on the trading obligation for derivatives (Article 28 of MiFIR) – 25 November 2020.

Market Data and MiFID II calculations

On November 10, 2020, ESMA issued a statement to inform the public of its approach in the use of UK data from the Financial Conduct Authority and as regards the relevant competent authority for any EU-traded instruments. Starting from 1st January 2021, reference data submitted by UK trading venues and systematic internalisers to the Financial Instruments Reference Database (FIRDS) will be terminated.

In this context, the statement informs that ESMA will not perform some calculations nor some publications in the framework of MiFID II. In particular, the Double Volume Cap calculations capping transactions executed with certain pre-trade transparency waivers will not be published in January and February 2021. Similarly, ESMA will not perform the calculations for the quarterly systematic internalisers test nor the liquidity calculation for bonds scheduled for 1st February 2021.

- ESMA public statement on the use of UK data in ESMA databases and performance of MiFID II calculations following the end of the UK transition period on 31 December 2020 – 10 November 2020

- ESMA public statement on data – 19 March 2019

EMIR and SFTR reporting

On 10 November 2020, ESMA issued a statement in order to provide certain clarifications relating to the derivatives reported under EMIR and related to the securities financing transactions (SFTs) reported under SFTR after the end of the transition period, for concerned counterparties and trade repositories.

- ESMA statement regarding EMIR and SFTR reporting – 10 November 2020

Benchmark regulation

In its communication of 1st October 2020, ESMA detailed the consequences of the expiration of the Brexit transition period for its register for benchmark administrators and third country benchmarks under the Benchmark regulation. During the BMR transitional period, EU supervised entities can still use benchmarks provided by UK administrators or third country administrators endorsed or recognised in the UK.

- ESMA statement on benchmarks – 1st October 2020

Obligation to inform clients

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.

- ESMA statement – Reminder to firms on their MIFID obligations on disclosure of information to clients
  – 19 December 2018

The AMF encourages financial market participants to read all of these statements and decisions.

More about

- ESMA's website - Brexit page
- European Commission – Press release – 9 July 2020

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