



MiFID II/MiFIR

ESMA launched on 31 January a [consultation](#) on [draft technical standards](#) on the provision of investment services and activities in the EU by third-country firms under MiFIR/MiFID II. The consultation will close on 31 March 2020.

On 6 February ESMA issued a [statement](#) regarding the progress made by National Competent Authorities (NCAs) in ensuring compliance with pre-trade transparency requirements for commodity derivatives. ESMA notes that all NCAs have acted in accordance with the joint action plan that was agreed upon in June 2019 to address the unsatisfactory level of compliance with pre-trade transparency requirements for commodity derivatives, with the notable exception of the FCA.

On 7 February ESMA issued its [final report](#) on the need to align the scope of counterparties subject to the Clearing Obligation (CO) and the Derivatives Trading Obligation (DTO) since the application of EMIR Refit. The report sets out ESMA's recommendations to the Commission, which is required to submit its own report to the European Parliament and the Council by 18 December 2020 on the need for any amendments to the scope of the DTO since the application of EMIR Refit. The deadline for ESMA's report to the Commission is 18 May 2020. ESMA has delivered its report well in advance of the deadline to enable the Commission to take prompt action to rectify any inconsistencies between MiFIR and EMIR Refit that affect the application of the CO and the DTO.

ESMA

On 30 January, ESMA's Board of Supervisors appointed Robert Ophèle (AMF Chair) Chair of the Commodity Derivatives Task Force and the Secondary Markets Standing Committee.

BMR

ESMA published on 14 February its [response](#) to the European Commission consultation on the review of the Benchmark regulation. CMCE also answered to this consultation which run from 11 October to 31 December 2019. The European Commission will use the ESMA and stakeholders feedback to inform its recommendations on the effectiveness of the BMR in a report to be provided this year to the European Parliament and Council.

I. ACTIVE PRIORITIES

Brexit	
<i>CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</i>	
Latest developments & CMCE action	Next steps
Under the terms of the Withdrawal Agreement the UK has now entered a transition period during which time Union law will be applicable in the UK. However, the UK will no longer be represented in the Council and the European Parliament.	

The European Parliament adopted on 12 February a new [resolution](#) on the proposed mandate for negotiations for a new partnership with the UK. The resolution is close to the European Commission's own proposal for a mandate. It calls for the UK to align itself as closely as possible with the EU by citing the need for a level playing field.

Member States are currently finalising the negotiations on the Brexit negotiating mandate, which is expected to be adopted by the Council on 25 February. The provisions on the level playing field proved to be particularly sensitive and will be discussed at another meeting between EU ambassadors next week. France in particular wants the level playing field provisions to be more ambitious.

The negotiations between the EU and the UK on the future relationship are expected to start in March. During the European Parliament plenary session on 11 February, EU's Brexit chief negotiator Michel Barnier indicated that the process for granting equivalence in financial services will remain unilateral and discretionary: "We will keep control of equivalence tools and we will maintain a free hand to make these decisions. Data access, equivalences in the plural for financial services will be proportionate to the joint commitment we enter into with respect to the level playing field".

MiFID II

CMCE priorities: AA exemption, position limits, reporting, physical forwards

Latest developments & CMCE action

ESMA launched on 31 January a [consultation](#) on [draft technical standards](#) on the provision of investment services and activities in the EU by third-country firms under MiFIR/MiFID II. The consultation will close on 31 March 2020.

IFR/IFD introduced changes to the MiFIR/MiFID II regime for the provision of investment services and activities in the EU by third-country firms (article 46/47 MiFIR). These changes include new reporting requirements from third-country firms to ESMA on an annual basis, and also grants ESMA the power to ask third-country firms in the ESMA register to provide data relating to all orders and all transactions in the EU, whether on own account or on behalf of a client, for a period of five years.

ESMA will consider the responses it receives to this consultation paper in Q2 2020 and expects to publish the draft technical standards and send the final report to the European Commission for endorsement in Q3 2020.

On 6 February ESMA also issued a [statement](#) regarding the progress made by National Competent Authorities (NCAs) in ensuring **compliance with pre-trade transparency requirements for commodity derivatives**. ESMA notes that all NCAs have acted in accordance with the joint action plan that was agreed upon in June 2019 to address the unsatisfactory level of compliance with pre-trade transparency requirements for commodity derivatives, with the notable exception of the FCA. ESMA now encourages EU27 NCAs to supervise trading venues application of pre-trade transparency requirements and apply fines and sanctions in case of any breach. In the case of the FCA, ESMA notes that the FCA did not act as promptly as other NCAs in engaging with LME and ICE Futures Europe (the two commodity exchanges under the FCA's supervision). While, LME and ICE Futures Europe have

Next steps

31 March 2020 – ESMA consultation on the provision of investment services and activities in the EU by third-country firms under MiFID II/MiFIR closes

31 March 2020 – Deadline for ESMA to provide input to the European Commission on MiFID II/MiFIR review report on position limits and reporting

<p>elaborated plans to apply pre-trade transparency requirements for commodity derivatives, ESMA urges that they be implemented without further delay.</p> <p>On 7 February ESMA issued its final report on the need to align the scope of counterparties subject to the Clearing Obligation (CO) and the Derivatives Trading Obligation (DTO) since the application of EMIR Refit. The report sets out ESMA's recommendations to the Commission, which is required to submit its own report to the European Parliament and the Council by 18 December 2020 on the need for any amendments to the scope of the DTO since the application of EMIR Refit. The deadline for ESMA's report to the Commission is 18 May 2020. ESMA has delivered its report well in advance of the deadline to enable the Commission to take prompt action to rectify any inconsistencies between MiFIR and EMIR Refit that affect the application of the CO and the DTO.</p> <p>CMCE action CMCE submitted on 8 January its response to the ESMA consultation on position limits. ESMA published on 14 January the responses to this consultation.</p> <p>A call with the CMCE MiFID WG was organised on 11 February to discuss the ongoing ESMA consultation on the draft RTS on the provision of investment services and activities in the EU by third-country firms under MiFIR/MiFID II. The WG considered whether it was advisable to ask ESMA for clarification on how the Article 46 reporting requirements would apply to third-country entities eligible for the ancillary activity exemption. Clarification from ESMA could be sought by either responding to the consultation under consideration or by sending a letter to ESMA. The WG ultimately decided that no action should be taken as drawing ESMA's attention to this matter could be counterproductive.</p>	
EMIR	
<i>CMCE priorities: reporting, risk mitigation for uncleared trades, calculation of NFC's positions</i>	
Latest developments	Next steps
There were no significant developments in the past 2 weeks.	
Benchmarks	
<i>CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence</i>	
Latest developments & CMCE action	Next steps
ESMA published on 14 February its response to the European Commission consultation on the review of the Benchmark regulation. CMCE also answered to this consultation which run from 11 October to 31 December 2019. The European Commission will use the ESMA and stakeholders feedback to inform its recommendations on the effectiveness of the BMR in a report to be provided this year to the European Parliament and Council.	<p>28 February 2020 – FCA consultation on SM&CR closes</p> <p>7 December 2020 – Application of the SM&CR regime to benchmark administrators</p>

CMCE action

The BMR WG is currently preparing its response to the FCA consultation on extending SMR to benchmark administrators. On 20 January it also participated to the FCA roundtable on this issue.

II. WATCHING BRIEF

IFR

CMCE priorities: commodity dealer IF regime, scope of class I, changes to MiFID III/MiFIR third-country regime

Latest developments & CMCE action

The [IFR/IFD](#) texts were published on 5 December 2019 in the EU Official Journal. IFR will apply from 26 June 2021, except points (2) and (3) of Article 63 on tick sizes and systematic internalisers, which will apply from 26 March 2020, and point 30 of Article 62 on which will apply from 25 December 2019. Concerning IFD, Member States shall adopt the national transposition measures by 26 June 2021.

Next steps

26 June 2021 – Application of IFR

MAR

CMCE priorities: Insider dealing, MM indicators

Latest developments & CMCE action

There were no significant developments in the past 2 weeks.

CMCE action

CMCE submitted its response to the ESMA consultation on MAR review on 28 November 2019. ESMA published on 13 December 2019 the [responses](#) received to this consultation.

Next steps

Spring 2020 – ESMA to submit the final report providing technical to the European Commission on MAR review

SFTR

CMCE priorities: reporting obligations

Latest developments & CMCE action		Next steps
<p>CMCE action On 13 February CMCE participated to a joint association meeting with FCA on readiness for commodities SFTR reporting. GFMA, LBMA, EFET, AFME and FIA also participated to the meeting. To follow up on the meeting, the associations will then send a letter to FCA.</p>		<p>11 April 2020 – Reporting obligation for investment firms 11 January 2021 – Reporting obligation for non-financial counterparties</p>
Other relevant developments		
International role of the euro	There were no significant developments in the past 2 weeks.	
REMIT	There were no significant developments in the past 2 weeks.	