EU Matters
– your newsletter on EU Affairs
December & January 2022

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Institutional Affairs
• Roberta Metsola (Malta, European People’s Party) have been appointed as a new Chair of the European Parliament.
• ESMA appointed Erik Thedéen as its Vice Chair. Mr Thedéen, who is the Director General of the Swedish Finansinspektionen (FI), will serve a 2½ year term effective immediately.
• From January 1st, France took over the Presidency in the Council. Some of the Presidency priorities includes:
  – Digital technology: French priority will be the economic regulation and accountability of platforms, especially with regard to hate speech, with legislation on digital services and markets (DSA and DMA);
  – Ecological transition: French priority will be the establishment of carbon pricing at the EU borders for imported products. It is a matter of economic and ecological efficiency;
  – A new growth and investment model for the European Union and the euro area (Read more).

Market Statistics
• ESMA published two Annual Statistical Reports (Reports) analysing the European Union’s (EU) derivatives and securities markets. The Reports, based on data submitted under the European Markets and Infrastructure Regulation (EMIR) and the Markets in Financial Instruments Directive (MiFID), provide an overview of EU/EEA markets in 2020. The two Reports provide a first comprehensive view of the EU derivatives and securities markets after Brexit, i.e. notably without the data reports from UK financial participants. In both, the impact of the withdrawal is significant: The size of derivatives markets and the volume of securities trading are around two-thirds lower without the UK. ESMA’s Reports provide, in dedicated sections, extensive comparative evidence to document the effects of Brexit on market statistics, juxtaposing post-Brexit EEA30 and pre-Brexit EEA31 data, while also considering the continued participation of the UK in the EU Single Market until the end of 2020 (Read more).

Anti-money laundering
• The European Banking Authority (EBA) published its revised Guidelines on risk-based supervision of credit and financial institutions’ compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) obligations. The Guidelines set out the steps supervisors should take to ensure adequate AML/CFT oversight of their sector and support the adoption, by credit and financial institutions, of effective ML/TF risk management policies and procedures (Read more).

Corporate Reporting
• ESMA published the 2021 ESEF XBRL taxonomy files and an update to the ESEF Conformance Suite to facilitate implementation of the ESEF Regulation. ESMA aims to facilitate the implementation of the European Single Electronic Format (ESEF) by providing to XBRL taxonomy files and Conformance Suite test files that reflect the requirements contained in the
2021 draft update to the ESEF Regulation and the 2021 update to the ESEF Reporting Manual. The ESEF Regulation requires that all issuers with securities listed on an EU regulated market prepare their annual financial reports in xHTML and mark-up the IFRS consolidated financial statements contained therein using XBRL tags and the iXBRL technology (Read more).

Market abuse
• ESMA published its Final Report on the amendment of the Market Abuse Regulation (MAR) guidelines on delayed disclosure in relation to prudential supervision. The Guidelines are adding certain cases to the list of legitimate interests of issuers for delaying public disclosure of inside information. The Guidelines also introduce clarifications on the institutions’ case-by-case assessment as to whether they would be in possession of inside information in relation to the institution-specific Supervisory Review and Evaluation Process (SREP) decisions received from their prudential competent authority, with particular reference to the Pillar 2 Capital Requirements (P2R) and Capital Guidance (P2G) (Read more).
• ESMA published its annual report on the application of accepted market practices (AMPs) in accordance with the Market Abuse Regulation (MAR). The number of liquidity contracts and the volumes traded under the AMPs has decreased for the four NCAs that have them in place (CNMV, CMVM, CONSOB and AMF) from June 2020 to June 2021, with only a marginal number of contracts operational under the Italian and Portuguese AMPs. The Report will now be submitted to the European Commission. It will help ESMA’s ongoing work in fostering supervisory convergence in the application of MAR (Read more).

Clearing
• ESMA published a Statement and Report on the conclusions from its assessment of Tier 2 Central Counterparties (CCPs) UK. The Report identifies three clearing services, one provided by LCH Ltd and two by ICE Clear Europe Ltd, as being of substantial systemic importance for the EU’s financial stability and posing risks that may not be fully mitigated under the current EMIR regulatory framework. ESMA concludes that it will not recommend to the European Commission to derecognise a Tier 2 CCP, or one of its services, at this point in time. The Report includes four sets of policy measures as a response to identified risks and vulnerabilities relating to systemically important UK CCPs serving European market participants (Read more).
• ESMA launched a consultation paper to review the European Market Infrastructure Regulation’s (EMIR) requirements on anti-procyclicality (APC) margin measures for central counterparties (CCPs). ESMA is seeking input from stakeholders on a potential review of its Regulatory Technical Standards (RTS) with the aim of harmonising the existing APC margin measures for CCPs as well as specific anti-procyclicality tools (Read more).

MiFIDII/MiFIR
• ESMA published its Annual Report on waivers and deferrals for equity and non-equity instruments covering the year 2020. The report includes an analysis based on waivers for which ESMA issued an opinion to the competent authority. It also provides an overview on the use of waivers and the application of the deferral regime in the European Economic Area (EEA) for trade transparency under MiFIR. Overall, ESMA observed no major change in market microstructure and waivers and deferrals regimes remain an integral part of the EEA market structure. The withdrawal of the United Kingdom (UK) from the EU at the end of 2020 meant that this was a transitional year, and in order to take a forward-looking approach ESMA did not include UK data for 2020 in the report. Wherever possible, a comparison with the UK and with last year’s findings were included in the report, to reflect the UK’s impact on EEA markets prior to Brexit (Read more).
• ESMA published the final report on its Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements. The Guidelines cover several important aspects of the appropriateness process, spanning from the information to be provided to clients about the purpose of the appropriateness assessment, the arrangements necessary to understand clients and products, to the matching of clients with appropriate products and the effectiveness of warnings. Moreover, other related requirements are clarified, such as the execution-only exemption and record-keeping and controls. (Read more).

Technology
• ESMA published a call for evidence on distributed ledger technology (DLT). The call for evidence seeks input from stakeholders on the use of DLT for trading and settlement and on the need for amending the regulatory technical standards (RTS) on regulatory reporting and transparency requirements. The Regulation on a pilot regime for market infrastructures...
based on DLT (DLT Pilot) requires ESMA to assess whether the RTS developed under MiFIR relative to certain pre-and post-trade transparency and data reporting requirements need to be amended in order to be effectively applied to securities issued, traded and recorded on DLT (Read more).

Sustainable Finance
- The European Commission began consultations with the Member States Expert Group on Sustainable Finance and the Platform on Sustainable Finance on a draft text of a Taxonomy Complementary Delegated Act covering certain gas and nuclear activities. The EU Taxonomy guides and mobilises private investment in activities that are needed to achieve climate neutrality in the next 30 years. Taking account of scientific advice and current technological progress, as well as varying transition challenges across Member States, the Commission considers there is a role for natural gas and nuclear as a means to facilitate the transition towards a predominantly renewable-based future. In addition, to ensure transparency, the Commission will amend the Taxonomy Disclosure Delegated Act so that investors can identify if activities include gas or nuclear activities, and to what extent, so they can make an informed choice (tbc) (Read more).
- European Commission adopted a Communication on Sustainable Carbon Cycles, setting out how to increase removals of carbon from the atmosphere. Removing and storing more carbon, from the atmosphere, oceans and coastal wetlands, is essential to achieve the EU’s legally binding commitment to become climate neutral by 2050. The European Commission plans to propose a regulatory framework on carbon removal later in 2022 (Read more).

Post Trading
- ESMA published a Statement to clarify the practical implementation of the EU CSDR settlement discipline regime. The CSDR settlement discipline regime is scheduled to start applying on 1 February 2022. However, the expected amendment to CSDR should allow ESMA to propose a later start date for the CSDR buy-in regime. ESMA expects NCAs not to prioritise supervisory actions in relation to the application of the buy-in regime until the provision for postponing the application of the buy-in regime is formally in place. The application and supervision of the other CSDR settlement discipline requirements, in particular the settlement fails reporting and the cash penalties regimes, will go ahead as planned (Read more).

LIBOR Transition
- ESMA released a public statement on the implementation of the changes to the clearing obligation (CO) and derivative trading obligation (DTO) in light of the benchmark transition. The Statement clarifies the situation in which ESMA’s proposed draft regulatory technical standards (RTSs) on the CO and DTO will not enter into force in time for the transition to alternative benchmarks of EONIA or LIBOR-based OTC derivative contracts by the end of 2021. ESMA encourages national competent authorities to take a risk-based approach to their supervisory tasks and not to prioritise their supervisory actions in relation to the CO and DTO for certain interest rate derivative classes from 3 January 2022. ESMA recommends voluntary clearing of derivative classes that will be included in the scope of the CO ahead of its start date (Read more).

Publications and events
Institution publications
- European Securities and Markets Authority (ESMA):
  - ESMA has updated the following Questions and Answers:
    - Application of the AIFMD
    - Improving securities settlement in the EU and on central securities depositories
    - Application of the UCITS Directive
    - On SFTR data reporting
  - ESMA published a statement to clarify the transfer of competences and duties relating to supervisory and enforcement activity in the field of certain data reporting services providers (DRSPs) from National Competent Authorities (NCAs) to ESMA (Read more).
Coalition and Association publications
• Federation of European Securities Exchanges (FESE):

- FESE published a report entitled ‘Exchanges in 2021: the year in statistics,’ which is a summary of FESE Members’ trading figures (Read more).
- FESE issued a response to the ESMA Consultation Paper on the Review of the MiFID II Framework on Best Execution Reports (Read more).
- FESE issued a response to ESMA call for evidence on the European Commission mandate on certain aspects relating to retail investor protection (Read more).
- FESE issued a response to the IOSCO Consultation on the Revised Principles for the Regulation and Supervision of Commodity Derivatives Market (Read more).
- FESE issued a press release regarding a raise of concerns of Exchanges over ESMA’s Annual Statistical Report on 2020 data (Read more).
- FESE issued a report entitled ‘Trading venue outages: a framework for industry-wide standard protocols in equity markets’ (Read more).

Calendar

February

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<td>2</td>
<td>ESAs high-level conference on financial education and literacy.</td>
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<td>8</td>
<td>FESE Board meeting.</td>
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<td>8-9</td>
<td>Afore Technology conference.</td>
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<td>11</td>
<td>European Commission’s Targeted Consultation on Listing Act closes.</td>
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<td>11</td>
<td>ESA public hearing on the review of the PRIIPS regulation.</td>
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<td>15</td>
<td>European Commission is expected to publish a package on Sustainable Corporate Governance (TBC).</td>
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<td>18</td>
<td>Consultation on Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP).</td>
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March

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<td>4</td>
<td>Call for evidence on the DLT Pilot Regime.</td>
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<td>22 &amp; 23</td>
<td>Management Board and Board of Supervisory meeting.</td>
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Read past issues of EU Matters here.