

Protecting Intellectual Property Rights: new EU Customs action plan adopted by the Council

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MIFID II: ESMA ISSUES LATEST DOUBLE VOLUME CAP DATA

Today's updates include DVC data and calculations for the period of 1 September 2017 to 31 August 2018 as well as updates to already published DVC periods.

The number of new breaches is 69: 57 equities for the 8% cap, applicable to all trading venues, and 12 equities for the 4% cap, that applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 11 October 2018 to 10 April 2019. The instruments for which caps already existed from previous periods will continue to be suspended.

In addition, ESMA highlights that some trading venues in the meantime have submitted corrected data that affects past DVC publications. For a total number of 3 instruments, this means that previously identified breaches of the 8% and 4% caps proved to be incorrect. For these instruments, the suspensions of trading under the waivers should be lifted.

As of 8 October, there is a total of 652 instruments suspended.

Please be aware that ESMA does not update DVC files older than 6 months. In other words, suspensions that were expected to be triggered in the past months due to the publication of the DVC results in the files related to the periods 1 January 2017 to 31 December 2017, 1 February 2017 to 31 January 2018 and 1 March 2017 to 28 February 2018 cannot be lifted anymore.

In addition, the “Expected suspension end date” for suspensions that are active as of 8 October 2018 has been changed whenever the suspension period was equal to 6 months and 1 day. The suspensions are expected to start before 8:00 am CET on the “Suspension start date” and terminate at the close of trading day on the “Suspension end date”.

Background

MiFID II introduced the DVC to limit the amount of dark trading in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC is calculated per instrument (ISIN) based on the rolling average of trading in that instrument over the last 12 months.

[Annex to the Statement for ECON Hearing on 8 October 2018](#)

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[ESMA highlights progress on MiFID implementation at ECON hearing](#)

MiFID II

In his statement Mr. Maijor focused on ESMA’s progress on the implementation of MiFID II:

“MiFID II has given a new perspective on the use of ESMA’s Opinions: in the last 12 months, ESMA issued around 400 Opinions to NCAs on both pre-trade transparency waivers and position limits in commodity contracts, and a few hundred more will be finalised soon.”

“The application date of the MiFID II/MiFIR package marked the assignment of new product intervention powers to ESMA. This was an important development for retail investors in the EU, who have been put at risk for years by Binary Options and Contracts for Differences (CFDs), distributed across the EU out of a few Member States. Equipped with these new powers, ESMA adopted in spring this year measures banning Binary Options and restricting the sales, marketing and distribution of CFDs, and so directly improved retail investor protection across the Union.”

“Overall, I believe that MiFID II implementation is a very good example of what ESMA’s contribution to investor protection, orderly markets and financial stability in the EU financial markets can and should be. I would underline that this project is still ongoing, and significant allocation of resources, in particular for data and IT issues, market monitoring and supervisory convergence work, continues to be planned over the next months.”

Capital Markets Union

“We have progressed swiftly on a number of Level 2 mandates assigned to ESMA under the new Prospectus and Securitisation Regulations. In both cases, the co-legislators arranged for a sufficiently long implementation period, which is helpful for planning and executing ESMA’s work.

“Furthermore, ESMA has continued to support the CMU project through its multiple supervisory convergence activities. This included, during the year, important peer reviews – on Guidelines dealing with Efficient Portfolio Management Techniques (EPM) for UCITS and on certain aspects of the compliance function under MiFID I – and the cross-sectoral project on the performance and fees of investment services, which has been carried out jointly with the EBA and EIOPA.. I believe it is important to keep the momentum of these convergence activities, as a number of CMU areas require further attention, including participation of retail investors in the capital markets.”

UK withdrawal from the European Union

He also spoke about ESMA’s work on preparing for the withdrawal of the UK from the European Union:

“[As] as the supervisor of Credit Rating Agencies and Trade Repositories in the EU with a number of them headquartered in London – ESMA required appropriate contingency planning from individual supervised entities. We are carefully monitoring the execution of these plans to ensure that they are meeting all the requirements in the EU27 in case of a no-deal by the end of March 2019.”

Joint Committee of the European Supervisory Authorities

As the current Chair of the Joint Committee of the three European Supervisory Authorities, Steven Maijoor also delivered a [statement](#) on the work of the Joint Committee over the past year, focusing primarily on PRIIPs issues and developments in anti-money laundering.