

## **MIFID II: ESMA ISSUES LATEST DOUBLE VOLUME CAP DATA**

Today's updates include DVC data and calculations for the period 1 June 2018 to 31 May 2019 as well as updates to already published DVC periods.

The number of new breaches is 56: 47 equities for the 8% cap, applicable to all trading venues, and 9 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 10 July 2019 to 9 January 2020. The instruments for which caps already existed from previous periods will continue to be suspended.

In addition, ESMA highlights that none of the previously identified breaches of the caps proved to be incorrect thus no previously identified suspensions of trading under the waivers had to be lifted.

As of 5 July, there is a total of 285 instruments suspended.

Please be aware that ESMA does not update DVC files older than 6 months.

### **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.

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## **Weekly schedule of President Donald Tusk**

### **President Donald Tusk to visit Ukraine and the Caucasus region**

President Tusk will travel to Ukraine, Azerbaijan, Armenia and Georgia. On Monday 8 July, President Tusk and President Zelenskyy will both participate in the 21st EU-Ukraine summit in Kyiv to discuss the way ahead for EU-Ukraine relations.

In Azerbaijan, President Tusk will meet President Ilham Aliyev before flying to Armenia, where he will meet President Armen Sarkissian and Prime Minister Nikol Pashynian. On Thursday 11 July, together with Salome Zourabichvili, President of Georgia, and Mamuka Bakhtadze, Prime Minister of Georgia, he will open the 16th international Batumi Conference dedicated to the 10th

anniversary of the Eastern Partnership.

In addition to bilateral relations, advancing regional cooperation and the future of the Eastern Partnership will also feature high on the agenda of the visit.

**Monday 8 July 2019**

**Kyiv, Ukraine (local time)**

13.00 Meeting with Prime Minister Volodymyr Groysman

13.40 Press statements

**EU-Ukraine summit**

14.00 Official welcome by President Volodymyr Zelenskyy and family photo

14.05 Leaders' meeting

14.40 Plenary session

16.30 Joint press conference

17.00 Working dinner

**Tuesday 9 July 2019**

**Baku, Azerbaijan (local time)**

11.00 Meeting with President Ilham Aliyev

12.45 Press statements

13.35 Visit of the Baku International Sea Trade Port

**Wednesday 10 July 2019**

**Yerevan, Armenia (local time)**

11:00 Meeting with Prime Minister Nikol Pashinyan

11:45 Press statements

14:00 Meeting with President Armen Sarkissian,

**Thursday 11 July 2019**

**Batumi, Georgia (local time)**

Batumi International Conference

09.00 Official welcome by Minister for Foreign Affairs David Zalkaliani

09.45 Keynote speech "Europe on the eve of a new decade"

10.00 Meeting with Prime Minister Mamuka Bakhtadze

11.00 Press statements

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## **[EIOPA establishes Expert Practitioner Panel on the Pan-European Personal Pension Product \(PEPP\)](#)**

**EIOPA establishes Expert Practitioner Panel on the Pan-European Personal Pension Product (PEPP)**

- *The European Insurance and Occupational Pensions Authority (EIOPA) kicks-off its policy work on Level 2 measures for the PEPP Regulation*
- *Challenging and diverse scope of deliverables – and tight timeframes – call for innovative and efficient solutions*

Today, the European Insurance and Occupational Pensions Authority (EIOPA) established its [Expert Practitioner Panel on the Pan-European Personal Pension Product \(PEPP\)](#).

To deliver on the forthcoming PEPP Regulation's policy perspective to design a PEPP that exhibits high quality product features around information provision, risk-mitigating techniques and a cost cap for the basic PEPP, the feedback and support from practitioners is important. With the insights of the Expert Practitioner Panel, EIOPA will develop superior solutions and smart policy advice that incentivises financial innovation for the benefit of the European consumers.

The objectives of the Expert Practitioner Panel on PEPP are:

- To inform EIOPA's policy work
- To test policy proposals
- To act as sounding board supporting EIOPA delivering on its mandate

EIOPA's [call for expression of interest of 2 May 2019](#) resulted in an extraordinary group of high-level experts with a diverse set of experiences and expertise, from all the different sectors of eligible PEPP providers.

EIOPA is pleased to confirm the following composition of its [Expert Practitioner Panel on PEPP](#):

Aidan McLoughlin	Independent Trustee
Andrew Marker	Vanguard
Axel Kleinlein	Bund der Versicherten
Carlo Parodi	Intesa Sanpaolo
Christian Lemaire	Amundi
Edward Hiller	Fidelity
Emanuele Maria Carluccio	University of Verona
Herman Kappelle	Aegon
Hugo Prenn	UNIQA
Jasper De Meyer	BEUC – Bureau Européen des Unions de Consommateurs
Jean-Paul Andre-Dumont	Forsides
Jens Rosendahl Frederiksen	PFA
Kristine Lomanovska	SEB LV
Olav Jones	InsuranceEurope
Paul Le Bihan	Union Mutualist Retraite
Piotr Wrzesinski	PIU
Sebastian Görgl	Union Investment
Simone Miotto	PensionsEurope
Stefan Voicu	Better Finance

## **Mergers: Commission approves the acquisition of Flybe by Connect Airways, subject to conditions**

**The European Commission has approved, under the EU Merger Regulation, the acquisition of UK regional air carrier Flybe by Connect Airways, a consortium by Virgin Atlantic, Stobart Aviation and Cyrus. The decision is conditional on full compliance with commitments offered by Connect Airways.**

Today's decision concerns the proposed acquisition by Connect Airways of (i) Flybe, (ii) Propius Holdings Ltd ("Propius", Stobart Aviation's aircraft leasing business) and (iii) Stobart Air Unlimited Company ("Stobart Air", Stobart Aviation's operating airline business).

Connect Airways is a consortium founded by Virgin Atlantic, Stobart Aviation and Cyrus. Through the consortium, the three companies will jointly control Flybe, Propius and Stobart Air following the merger.

### **The Commission's merger investigation**

The Commission investigated the impact of the proposed transaction on the market for air transport of passengers on routes from British airports to other European airports as well as some intra-UK routes.

The Commission's investigation found that the transaction, as initially notified, would have led to quasi-monopolies on two direct European routes, namely Birmingham – Amsterdam and Birmingham – Paris.

This quasi-monopoly situation would result from Air France-KLM acquiring indirect control over Flybe, via its joint control over Virgin Atlantic. The Commission approved the joint acquisition of Virgin Atlantic by Air France-KLM, Delta and Virgin group in February 2019. The Commission also noted that entry of competitors into these routes would be difficult, considering that both Amsterdam Schiphol and Paris Charles de Gaulle airports are very congested airports.

The Commission also investigated the effects of the transaction on several other markets, such as passenger air transport to/from Amsterdam Schiphol airport, cargo air transport services, ground-handling services or airport infrastructure services but did not find competition concerns in any of these.

## **The proposed remedies**

To address the competition concerns identified by the Commission with regard to the Birmingham – Amsterdam and Birmingham – Paris routes, Connect Airways offered a set of commitments.

Connect Airways committed to the release of five daily slot pairs at Amsterdam Schiphol airport and three daily slot pairs at Paris Charles de Gaulle airport. Under the proposed commitments, these slots will be released to competing airlines that want to fly the Birmingham – Amsterdam and Birmingham – Paris routes.

The commitments fully address the competition concerns identified by the Commission regarding Connect Airways' acquisition of Flybe. The Commission therefore concluded that the proposed transaction, as modified by the final commitments, would no longer raise competition concerns. This decision is conditional upon full compliance with the commitments.

## **The Commission's derogation decision of 21 February 2019**

Under the EU Merger Regulation, companies have the obligation not to implement a notifiable transaction before it has been declared compatible with the common market (Article 7(1) of the EU Merger Regulation). This serves to avoid that competition could be harmed beyond repair before the Commission has taken its decision. At the same time, EU merger rules enable the Commission to give a temporary approval for certain parts of a transaction (on the basis of Article 7(3) of the Merger Regulation) in a way that does not harm effective competition, and in order to avoid negative effects for consumers.

On 21 February 2019, the Commission granted Connect Airways such a derogation. As a result, Connect Airways was allowed to acquire Flybe's shares prior to the merger clearance, subject to strict conditions, in particular related to voting rights. The derogation decision helped prevent flight cancellations to the detriment of consumers and helped avoid staff layoffs, while the merger review was ongoing.

## **Companies and products**

**Flybe**, based in the UK, is a British regional airline with a focus on short-haul, point-to-point flights. It currently operates 190 routes serving 12 countries from 73 departure points in the United Kingdom and other European countries.

**Cyrus**, based in the US, is an investment adviser and an investor in public and private airlines.

**Stobart Group**, based in Guernsey, is active in aviation and infrastructure markets, including (i) operating regional airline Stobart Air and (ii)

developing London Southend Airport.

**Virgin Atlantic**, is the ultimate holding company of international passenger airline Virgin Atlantic Airways and international tour operator Virgin Holidays. Virgin Atlantic is currently controlled by Virgin Group and Delta Air Lines. On 12 February 2019, the Commission cleared unconditionally the proposed acquisition of joint control by Virgin Group, Delta Air Lines and Air France-KLM over Virgin Atlantic.

**Air France-KLM**, based in France, is the holding company of Air France, the French national carrier airline and KLM, the Dutch national carrier airline. The company provides passenger air transport services, cargo air transport services and maintenance, repair and overhaul services.

### **Merger control rules and procedures**

The proposed transaction was notified to the Commission on 14 May 2019.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede competition in the European Economic Area or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II). If commitments are proposed in Phase I, the Commission has 10 additional working days, bringing the total duration of a Phase I case to 35 working days.

More information will be available on the [competition](#) website, in the Commission's [public case register](#) under the case number [M.9287](#).

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## **Beyond Ratings SAS' CRA registration withdrawn**

The withdrawal decision follows the official notification to ESMA by Beyond Ratings on 31 May 2019 of its intention to renounce its registration under the conditions set out in Article 20(1)(a) of the CRA Regulation. ESMA confirms that Beyond Ratings has effectively stopped its rating activities.

Point (a) of Article 20(1) of the CRA Regulation provides that without prejudice to Article 24, ESMA shall withdraw the registration of a credit rating agency where the credit rating agency expressly renounces the

registration or has provided no credit ratings for the preceding six months.