

ESMA highlights preparations for MiFID II and Brexit as key issues at ECON hearing

MiFID II

In his statement Mr. Maijoor focused on ESMA work in preparation for the implementation of MiFID II:

“MiFID II implementation highlights that the single rulebook needs to be complemented by supervisory convergence measures. Therefore, in the past 12 months ESMA issued a large number of guidelines and Q&As – often in response to demands from market participants and National Competent Authorities (NCAs) – to ensure coherent and consistent application of the rules coming into force.

“A distinctive part of this convergence work relates to ESMA’s efforts to strengthen consumer protection, which was clearly one of the main aims of the entire MiFID reform. In addition, ESMA has published specific Opinions on commodity position limits and pre-trade transparency waivers – which number in the hundreds. Finally, together with the NCAs we have set up complex IT systems for trade reporting to facilitate the technical delivery of the legal requirements.”

As well as the general readiness of regulators for the start date:

“I remain optimistic about our overall readiness to operate within the new framework in less than three months from now. However, one should not underestimate the size and complexity of this project, and thus the risk of potential glitches in the initial operational period. ESMA does acknowledge the multiple challenges for everyone involved, and will address all issues with available tools as the implementation progresses.

“That said I would also like to draw your attention to resource constraints at ESMA’s end, which require some prioritisation of tasks and projects. One example of this is our recent agreement with NCAs to go-live with the new pre-trade transparency and position limits regimes as of January 2018, with certain ESMA Opinions to come only in the months afterwards, where necessary.”

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:

“This brings me to some Brexit-focused considerations that I would like to share with you, given they relate to all of ESMA’s main activities. Let me start with saying that the reality of certain market participants needing to re-locate from the UK to the EU-27 in order to maintain Single Market access

sparked some concerns about regulatory arbitrage between the EU-27 Member States in order to attract this business. A timely response was required, and ESMA used its currently available tools to react. We issued one general Opinion in May and three sector-specific ones in July for investment firms, secondary markets and asset management, and tackled key aspects of outsourcing and delegation to third countries. We relied strictly on existing EU legislation, and aimed at providing appropriate guidance to the NCAs, which are dealing with requests from re-locating entities. Moreover, in the interest of supervisory and regulatory convergence, ESMA launched the Supervisory Cooperation Network, offering a forum for NCAs to discuss individual relocation cases on an anonymous basis.

“Obviously, Brexit may pose significant financial stability risks, in particular in the event that the UK would leave without any arrangements in place. ESMA has been looking closely at the areas where a cliff-edge effect could mean higher risks for investors and markets as a whole, and, together with other relevant authorities, is working on possible mitigating actions. In addition, as a direct supervisor of Credit Rating Agencies and Trade Repositories within the EU, with a number of entities headquartered in London, ESMA requests appropriate contingency plans from individual supervised entities. ESMA will maintain an ongoing dialogue with stakeholders to reduce as much as possible the risk of disruptions under any scenario.

3rd Country related issues

“Brexit also triggered broader political discussions, including in this Committee, as to whether the current 3rd country equivalence model is fit for purpose. ESMA has also recently commenced its work on reviewing its Guidelines for Endorsement of 3rd country Credit Rating Agencies. However, it is clear that some significant legislative changes need to be considered soon, potentially in a horizontal manner. The first steps have been made by the European Commission in relation to the EMIR Regulation, and I welcome the proposal to assign certain supervisory powers over 3rd country CCPs to ESMA, in particular in relation to CCPs having a significant impact on the stability of the EU financial market.

“Also, the recent ESAs review proposal of the European Commission would not only require ESMA to monitor the equivalence-related developments on an ongoing basis, but also become the direct supervisor of certain key 3rd country benchmarks and prospectuses. In the same vein, assigning supervisory powers for ESMA towards non-EU trading venues could be considered, as suggested in ESMA’s consultation response from earlier this year. I believe that such a step to centralise the third country supervision would bring a number of benefits for the Union as a whole, and I would be delighted to have an opportunity to discuss this with you and other elements of the ESAs review proposal in the coming weeks and months.”