

PUBLIC STATEMENT

Brexit: Impact of the end of the transition period on 31 December 2020 on the trading obligation for shares (Article 23 of MiFIR)

In the context of the United Kingdom (UK) leaving the European Union (EU), the European Securities and Markets Authority (ESMA) is issuing this public statement to remind market participants of the application of the EU trading obligation for shares (STO) as of 1 January 2021, i.e. after the end of the transition period provided for in the Withdrawal Agreement between the EU and the UK¹.

In an earlier statement published on 29 May 2019², ESMA has considered the impact of the UK leaving the EU without a withdrawal agreement (“no-deal Brexit”) on the STO under Article 23 of MiFIR³ in the absence of an equivalence decision in respect of the UK by the European Commission and provided guidance on the application of the EU STO in those circumstances.

Since then, pursuant to the Withdrawal Agreement, the UK became a third country on 1 February 2020 and a transition period has been established, whereby EU law will cease to apply to and in the UK on 31 December 2020.

In the absence of an equivalence decision in respect of the UK by the European Commission, the potential adverse effects of the application of the STO after the end of the transition period are expected to be the same as in the no-deal Brexit scenario considered in May 2019. This includes the risk of disruption that conflicting EU and UK STOs may potentially create, in particular for UK branches of EU investment firms and for EU branches of UK investment firms.

The guidance published by ESMA on 29 May 2019 to mitigate those risks and minimise disruption for market participants remains therefore relevant. After the end of the transition period on 31 December 2020, ESMA assumes that all EU shares, i.e. ISINs starting with a

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384 I, 12.11.2019, p. 1).

² <https://www.esma.europa.eu/document/revise-public-statementtradingobligationshares>

³ Article 23 of MiFIR requires investment firms to conclude transactions in shares admitted to trading on a regulated market (RM) or traded on an EU trading venue on: (i) RMs, (ii) multilateral trading facilities, (iii) systematic internalisers or (iv) third-country trading venues assessed as equivalent by the EC. This requirement is, however, not deemed applicable to transactions in shares which are traded in the EU on a non-systematic, ad-hoc, irregular and infrequent basis.

country code corresponding to an EU Member State and, in addition, shares with an ISIN from Iceland, Liechtenstein and Norway⁴ (all together EEA ISINs) will be within the scope of the EU STO. GB ISINs will be outside the scope of the EU STO.

In addition, ESMA has given further consideration to the specific circumstances where a share with an EEA ISIN, hence subject to the EU STO, would be traded on a UK trading venue in British Pounds (GBP). ESMA notes that trading in local currency lines is often mainly targeted at domestic investors of the concerned third country who do not necessarily have access to EU trading venues. In addition, trading in a third-country currency introduces a currency risk for EU investors who may see the value of their investments negatively impacted by unfavourable moves in exchange rates.

EU wide data available to ESMA shows that shares with an EEA ISIN traded on UK trading venues in GBP are limited in number (less than 50) and account for a small proportion of the EU total trading activity (less than 1%).

It can therefore be reasonably assumed that the trading of shares with an EEA ISIN on a UK trading venue in GBP by EU investment firms occurs on a non-systematic, ad-hoc, irregular and infrequent basis. Therefore, it is expected that those trades will not be subject to the EU STO, in accordance with Article 23 of MiFIR.

ESMA has done the maximum possible in close cooperation with the European Commission to minimise disruption and to avoid overlapping STO obligations and their potentially adverse effects for market participants, bearing in mind the legal requirements of Article 23 MiFIR. The approach put forward by ESMA will effectively avoid such overlaps if the UK adopts an approach that does not include EEA ISINs under the UK STO. ESMA however notes that the scope of the UK STO after the end of the transition period remains unclear at this stage.

This statement is only meant to clarify the application of the EU STO with an EEA ISIN and address the specific circumstances of trading of EEA ISIN shares on UK trading venues in GBP. The application of the STO to shares with a different ISIN should continue to be determined taking into account the previous ESMA guidance published on 13 November 2017⁵.

⁴ AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK.

⁵ <https://www.esma.europa.eu/document/reviced-public-statementtradingobligationshares>