

## **ESMA DECISION**

**of 16 December 2020**

**renewing the temporary requirement to natural or legal persons who have net short positions to lower the notification thresholds of net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to notify the competent authorities above a certain threshold in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council**



**THE EUROPEAN SECURITIES AND MARKETS AUTHORITY BOARD OF SUPERVISORS,**

**Having regard** to the Treaty on the Functioning of the European Union,

**Having regard** to the Agreement on the European Economic Area, in particular Annex IX thereof,

**Having regard** to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>(1)</sup>, and in particular Article 9(5), 43(1) and 44(1) thereof,

**Having regard** to Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps<sup>(2)</sup>, and in particular Article 28(1) thereof,

**Having regard** to Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regards to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events<sup>(3)</sup>, and in particular Article 24 thereof,

**Having regard** to the Decision (EU) 2020/525 of 16 March 2020<sup>4</sup> of the European Securities and Markets Authority (ESMA), requiring natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012,

**Having regard** to the Decision (EU) 2020/1123 of 10 June 2020<sup>5</sup> and the Decision (EU) 2020/1689 of 16 September 2020<sup>6</sup>, of the European Securities and Markets Authority (ESMA), renewing the temporary requirement to natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

<sup>2</sup> OJ L 86, 24.3.2012, p. 1.

<sup>3</sup> OJ L 274, 9.10.2012, p. 1.

<sup>4</sup> OJ L 116, 15.4.2020, p. 5–13.

<sup>5</sup> OJ L 245, 30.7.2020, p. 17–30.

<sup>6</sup> OJ L 379, 13.11.2020, p. 60–76.



notify the competent authorities above a certain threshold in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012,

**Whereas:**

**1. Introduction**

- (1) With Decision (EU) 2020/525, ESMA required natural or legal persons with net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to notify the competent authorities details of any such position reaching, exceeding or falling below 0.1% of the issued share capital in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012.
- (2) The measure imposed by the ESMA Decision (EU) 2020/525 addressed the necessity for national competent authorities and ESMA to be able to monitor the net short positions that market participants have entered into in relation to shares admitted to trading on a regulated market, on account of exceptional circumstances present in financial markets.
- (3) With Decision (EU) 2020/1123 of 10 June 2020 and Decision (EU) 2020/1689 of 16 September, ESMA renewed the temporary requirement since, notwithstanding a partial recovery of the EU financial markets from the losses registered since the outbreak of the pandemic, the outlook for a future recovery remained uncertain, threats to the orderly functioning and integrity of financial markets and stability of the financial system were still present and there were pan-EU implications.
- (4) In accordance with Article 28(10) of Regulation (EU) No No 236/2012, ESMA has to review this measure at appropriate intervals and at least every three months.
- (5) ESMA performed this review based on an analysis of performance indicators, including prices, volatility, credit default swaps spread indices, as well as the evolution of net short positions, especially those between 0.1 and 0.2%. Pursuant to the conducted analysis, ESMA has decided that it should renew the measure for an additional three months.

**2. Ability of the measure to address relevant threats and cross-border implications (Article 28(2)(a) of Regulation (EU) No 236/2012)**

**a. Threat to the orderly functioning and integrity of the financial markets**

- (6) ESMA considers that in the current context, which is heavily impacted by the COVID-19 pandemic developments and by the related uncertainty, the identification of risks to the orderly functioning and integrity of EU financial markets should be based on the analysis of the overall macroeconomic environment combined with the evolution of financial markets.
- (7) In relation to the macroeconomic environment, the COVID-19 pandemic continues to have an adverse impact on the real economy with the overall outlook for a future recovery remaining uncertain, despite recent positive developments in the EU and beyond in relation to vaccines. The concerns expressed by ESMA in its previous Decision regarding the possible increase in the number of COVID-19 cases did materialise, leading to a second wave of contagions. The related data on new cases, hospitalisations, intensive care occupancy rates and deaths is comparable to, or even worse than, the March and April period.

- (8) As a consequence, a number of containment measures were taken across the EU, ranging from local lockdowns and curfews to nationwide lockdowns. As for the first contagion wave of the pandemic, it is expected that these measures will impact the national economies both in the short and long term.
- (9) In this respect, the European Commission's (EC) Autumn European Economic Forecast<sup>7</sup> indicates that the annual real GDP in the euro area is set to fall by 7.8% in 2020 with significant variation across Member States. The GDP in the euro area and the EU is not expected to recover before the end of 2022<sup>8</sup>.
- (10) Furthermore, the unemployment rate is expected to reach 8.3% in the Euro area in 2020 (7.7% in the EU) and to further increase in 2021<sup>9</sup>.
- (11) In relation to the evolution of financial markets, the positive news reported on the developments and efficiency of vaccines have contributed to significantly improved market valuations and other related parameters very recently: between 6 November - the trading day preceding the first positive announcement in relation to a vaccine candidate<sup>10</sup> - and 2 December 2020, the STOXX EUROPE 800 ex. Switzerland and the Eurostoxx 50 indices gained respectively 8.7% and 9.9%, a trend followed by the main national indices which increased on average by 10%.
- (12) However, taking the Eurostoxx 50 Index performance as a reference, its price recovery (-8% compared to February) is significantly weaker when compared to that of other indices, such as the NIKKEI 225 (+14.1% compared to February), the S&P 500 (+8.6% compared to February) or the CSI 300 (+22.3% compared to February) [Figure 1].
- (13) When looking specifically into the banking sector, the losses in the STOXX Europe Total Market Banks (ref. European banks) are on 2 December 2020 at 22% compared to 20 February, which is an improvement from the 37% decrease recorded in September [Figure 1]. When analysing the share prices of some of the main European credit institutions (DE, ES, IT, FR) price drops range between 3.41% and 42.62%. Despite the improvement compared to the price decreases recorded in the period from February to September (ranging between 10% and 59%), this data remains indicative of a weakness in the banking sector.
- (14) Furthermore, the risk of a decoupling between asset valuations and economic fundamentals persists, which raises questions about the sustainability of the market rebound going forward<sup>11</sup>. As indicated in the ESMA Risk Dashboard of 11 November 2020<sup>12</sup>, the extent to which these risks will further materialise will critically depend on three drivers: the economic impact of the pandemic, market expectations on monetary and fiscal

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<sup>7</sup> Available at this link: [https://ec.europa.eu/info/sites/info/files/autumn\\_20\\_forecast.pdf](https://ec.europa.eu/info/sites/info/files/autumn_20_forecast.pdf).

<sup>8</sup> European Economic Forecast, page 40.

<sup>9</sup> European Economic Forecast, page 49.

<sup>10</sup> Available at this link: <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-announce-vaccine-candidate-against>.

<sup>12</sup> Available at this link [https://www.esma.europa.eu/sites/default/files/library/esma50-165-1371\\_risk\\_dashboard\\_no\\_2\\_2020.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-165-1371_risk_dashboard_no_2_2020.pdf).

support measures, and any occurrence of additional external events in an already fragile global environment.

- (15) At the same time, there are other positive signs in the financial markets. The confidence derived from the developments of vaccines is also reflected in the evolution of credit default swap spreads (CDS), sovereign bond yields and volatility.
- (16) European corporate CDS spreads remain five basis points above the levels observed in February 2020 (values similar to those for the ESMA Decision (EU) 2020/1689), while CDS spreads on European high yield, European financials and European financials subordinate show reductions of respectively 39, 6 and 25 basis points if compared to the values underlying the ESMA Decision (EU) 2020/1689 [Figure 1].
- (17) Similarly, 10Y government bond yields appear to have decreased: the 10Y government bonds yields of DE, ES, FR and IT show a decrease with respect to 20 February levels of 14 basis points on average [Figure 1].
- (18) As far as the implied volatility is concerned, it is constantly decreasing but remains very sensitive to market news. The volatility measured by the VSTOXX<sup>13</sup> remains high compared to February 2020 (+8%), similarly the VIX<sup>14</sup> is still +5% on 2 December 2020 compared to February 2020 [Figure 1].
- (19) The percentage of shares with a net short position between 0.1 and 0.2% has not significantly decreased since March 2020 and remains at an average of 12% over the total net short positions, similarly to the situation in September<sup>15</sup> (in which it was at 13%) [Figure 6].
- (20) As already indicated in the previous ESMA Decisions, the lower reporting threshold has demonstrated that in some countries net short positions between 0.1% and 0.2% represent a significant percentage of the total net short positions reported. In conclusion, the percentage of net short positions between 0.1 and 0.2%, which had to be reported due to the temporary lower notification threshold remains a relevant portion of the total and has strong informative value for regulators in the current context.
- (21) Overall, despite the recent price increases in key sectors, the environment still remains fragile: a number of uncertainties in relation to the evolution of the COVID-19 pandemic and its impact on the overall macro-economic scenario continue to persist.
- (22) ESMA notes that the risk of decoupling between asset value and underlying economic fundamentals may arise not only when the equity prices increase without a clear underlying economic growth outlook but also in case the markets overreact to news into unjustified downward spirals.
- (23) Despite the recent developments, the long-term impacts of the COVID-19 crisis on the economy and in general are still unfolding. In particular, the EC's Autumn Economic

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<sup>13</sup> The VSTOXX measures the implied volatility based on the Eurostoxx 50 option prices.

<sup>14</sup> The VIX Index is calculated by using the midpoint of real-time S&P 500 Index (SPX) option bid/ask quotes.

<sup>15</sup> See also section 4(c).

Forecast develops two alternative scenarios<sup>16</sup> ('upside scenario' and 'downside scenario') motivated by the exceptional degree of uncertainty surrounding the evolution of the pandemic and the measures put in place to contain its spread.

- (24) As indicated above, net short positions have not significantly diminished and the implied volatility, despite being lower than the one analysed for Decision (EU) 2020/1689, has proven to be sensitive to new events.
- (25) Specifically, such fragile economic and market environment makes it more likely that short selling pressures could initiate or exacerbate potential negative developments in the coming months which, in turn, could negatively affect market confidence or the integrity of the price determination mechanism. ESMA considers that the combination of the circumstances described above constitutes a serious threat to the orderly functioning and integrity of the financial markets.

#### **b. Threat to the stability of the whole or part of the financial system in the Union**

- (26) As explained by the ECB in its Financial Stability Review<sup>17</sup>, financial stability is a condition in which the financial system – which comprises financial intermediaries, markets and market infrastructures – is capable of withstanding shocks and the unravelling of financial imbalances.
- (27) The COVID-19 pandemic continues having a severe impact on the real economy in the Union. As mentioned above, in its Risk Dashboard of 11 November 2020 ESMA stated that *"EU financial markets continued their recovery in 3Q20 but remain highly sensitive [...] the potential for a sudden reversal in investor's risk assessment is the key risk we see for EU financial markets currently and we thus maintain our risk assessment"*.
- (28) Section 2.a above contains further information on the performance of the banking and financial markets overall.
- (29) The impact of COVID-19 has put the EU economy and its financial markets into a situation of fragility in which further price declines triggered or amplified by short selling strategies could have highly detrimental consequences.
- (30) In this still uncertain situation, ESMA considers that substantial selling pressure and unusual volatility in the price of shares could be amplified by different factors, including by an increasing number of market participants engaging in short selling and building up significant net short positions.
- (31) As indicated above, the percentage of shares with net short positions between 0.1 and 0.2% has not significantly decreased since March 2020 [Figure 6].
- (32) The widespread price losses for credit institutions, which constituted one of the parameters for the renewal decision taken in June and September, improved compared to September but is still at -22% with respect to February 2020 [Figure 1]. This indicates that some credit institutions, which in certain cases are systemically important, remain potentially vulnerable to short selling strategies and to the building up of significant net

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<sup>16</sup> European Economic Forecast, page 61.

<sup>17</sup> <https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201911~facad0251f.en.html>.

short positions, regardless of whether these strategies and positions are supported by fundamental information.

- (33) The risk remains that the accumulation of short selling strategies and the building up of significant net short positions could lead to disorderly downward price spirals for certain issuers, with potential spillover effects within the same Member State or across the EU, that in turn, could eventually put the financial system of one or several Member States at risk.
- (34) Notwithstanding the partial recovery observed in certain EU Member States' financial markets, the uncertainties mentioned above regarding the evolution of COVID-19 and its impact on the EU economy remain and make more relevant the above mentioned concerns about a potential decoupling between asset valuation and economic fundamentals and about the sustainability of the recent rebound in financial markets.
- (35) Therefore, ESMA considers that the current market circumstances continue to seriously threaten the stability of the financial system in the Union.

### **c. Cross-border implications**

- (36) Another condition required for ESMA to be able to take this measure is that the identified threats have cross-border implications.
- (37) As described above, equity markets across the EU, considering both national and pan-European indices, have not fully recovered from the severe price decreases observed in March.
- (38) Given the fact that the financial markets of most EU Member States are affected by these threats, albeit to different degrees, the cross border implications remain particularly serious as the interconnectedness of EU financial markets raise the likelihood of potential spillover or contagion effects across markets in case of short selling pressures.
- (39) ESMA therefore considers that the threats to market integrity, orderly functioning and financial stability described above have cross-border implications. Due to the nature of the COVID-19 crisis, they actually have a pan-EU character.

### **3. No competent authority has taken measures to address the threat or one or more of the competent authorities have taken measures that do not adequately address the threat (Article 28(2)(b) of Regulation (EU) No 236/2012)**

- (40) Another condition required for ESMA to adopt the measure in this Decision is that a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.
- (41) The market integrity, orderly functioning and financial stability concerns described in ESMA Decision 2020/525 led some national competent authorities to take national actions

aimed at restricting the short selling of shares in Spain, France, Austria, Belgium, Greece and Italy<sup>18</sup> that expired on 18 May.

- (42) Following the expiration or lifting of those temporary measures, no further measures based on Regulation (EU) 236/2012 have been taken in the EU, and as of the date of this Decision, there are no such measures in force.
- (43) At the time of adoption of this Decision, no competent authorities have adopted measures to increase their visibility of the evolution of net short positions through the establishment of lower reporting thresholds, as they can rely on ESMA Decision (EU) 2020/1123.
- (44) The necessity of having increased visibility of net short positions remains acute in a context where the above mentioned restrictions imposed under Article 20 of the Regulation (EU) No 236/2012 are no longer in place and the uncertainty in relation to the prolonged COVID-19 impact described above remains. As short selling and transactions with equivalent effect are no longer subject to other external constraints, national competent authorities across the EU need to be able to identify in advance whether net short positions are building up to an extent which may lead to threats to financial markets and financial stability described above, manifesting themselves and being exacerbated by short selling pressures.
- (45) In light of the abovementioned pan-EU threats, it remains evident that the information received by national competent authorities under the ordinary reporting threshold set out in Article 5(2) of Regulation (EU) No 236/2012 is not sufficient under the current stressed market conditions. ESMA considers that maintaining the lower reporting threshold should ensure that all national competent authorities across the EU and ESMA have the best possible data set available to monitor market trends and prepare themselves and ESMA to take further measures, if necessary.

**4. The measure significantly addresses the threats or improves national competent authorities' ability to monitor the threats (Article 28(3)(a) of Regulation (EU) No 236/2012)**

- (46) ESMA also has to take into account to what extent the renewed measure significantly addresses the threats identified.
- (47) In particular, ESMA has analysed below whether the renewed measure would significantly address the threats to the orderly functioning and integrity of financial markets, to financial stability in the Union and whether it would improve the ability of the competent authorities to monitor the threat.

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<sup>18</sup> In Italy the measure was lifted on 18 May.



**a. The measure significantly addresses the threat to the orderly functioning and integrity of financial markets**

- (48) Under the above described circumstances, any sudden increase in selling pressure and market volatility due to short selling and building up of short positions can amplify downward trends in financial markets. While short selling at other times may serve positive functions in terms of determining the correct valuation of issuers, in current market circumstances it may pose an additional threat to the orderly functioning and integrity of markets.
- (49) In particular, given the horizontal impact of the continued emergency situation that affects a broad set of shares across the Union, any sudden fall in share prices may be exacerbated by additional selling pressure resulting from short selling and increased net short positions that, if below the normal thresholds for notification to the national competent authorities under Article 5 of Regulation (EU) No 236/2012, would therefore go undetected without the renewed measure.
- (50) For the above reasons, national competent authorities and ESMA need to be aware as soon as possible of market participants engaging in short sales and building up significant net short positions to prevent, if necessary, that those positions become signals leading to a cascade of selling orders and a consequent significant fall in prices.
- (51) The renewal of the measure addresses that need by setting forth that natural and legal persons who have a net short position in shares admitted to trading on a regulated market should continue reporting to national competent authorities at a lower threshold than the one established in Article 5 of Regulation (EU) 236/2012.
- (52) Therefore, national competent authorities and ESMA will be able to assess the evolving situation adequately, differentiating between market movements led by fundamental information from those that might be initiated or exacerbated by short selling, and react if the integrity and orderly functioning of the markets require more stringent actions.
- (53) ESMA considers that, without this measure being renewed for an additional three months, national competent authorities and ESMA would have limited capacity to adequately monitor the market in the current uncertain and fragile environment. This is accentuated by the apparent decoupling of financial market performance and the underlying economic activity, coupled with the evolving nature of the COVID-19 pandemic. Such factors could trigger a sudden and significant selling pressure and an unusual additional volatility in the price of Union shares that, in turn, could be further amplified by the accumulation of short positions.
- (54) At the same time, ESMA considers it appropriate to maintain the publication threshold laid down in Article 6 of Regulation (EU) No 236/2012, which equals 0,5 % of the issued share capital of the company, as the lowering of this threshold does not appear to be necessary from the perspectives of maintaining orderly markets and addressing risks to financial stability. National competent authorities and ESMA will continue monitoring on an ongoing basis the market conditions and will take further measures, if needed.

**b. The measure significantly addresses the threat to the stability of the whole or part of the financial system in the Union**

- (55) As described above, despite the encouraging news on vaccine developments recently improving markets performance, in certain countries the fall of stock indices since 20 February 2020 are still at similar levels to those recorded in June or September 2020. Additionally, the EU price recovery is significantly weaker compared to the performance of the other global economies, e.g. the NIKKEI 225, the S&P 500 or the CSI 300. Various risk factors continue to have an impact on many sectors, with for example the performance of financial sector shares remaining weak and widely dispersed across the major EU credit institutions. In this environment engaging in short selling and building up significant net short positions can amplify selling pressure and downward trends which in turn may exacerbate a threat which can have highly detrimental effects on the financial stability of financial institutions and companies from other sectors.
- (56) In that context, without this measure being renewed for an additional three months, national competent authorities and ESMA would face data limitations that would restrict their capacity to address any potential negative effects on the economy and ultimately the financial stability of the Union as a whole.
- (57) Therefore, ESMA's renewed measure to temporarily lower the reporting thresholds of net short positions to national competent authorities efficiently addresses this threat to the stability of parts or ultimately the whole of the Union financial system by reducing data limitations and enhancing the national competent authorities capacity to address upcoming threats at an early stage.

**c. Improvement of the ability of the competent authorities to monitor the threat**

- (58) In ordinary market conditions national competent authorities monitor any threat that may derive from short selling and the building up of net short positions with the supervisory tools established by Union legislation, in particular the reporting obligations concerning net short positions established in Regulation (EU) No 236/2012<sup>19</sup>.
- (59) However, the existing market conditions render it necessary to intensify the monitoring activity of national competent authorities and ESMA of the aggregated net short positions in shares admitted to trading on regulated markets. To that end and given the continued uncertainty related to the development of the COVID-19 pandemic, it remains important that national competent authorities continue receiving information on the build-up of net short positions at the earliest stage possible, before they reach the level of 0.2% of the issued share capital laid down in Article 5(2) of Regulation (EU) No 236/2012.
- (60) This is highlighted by the fact that, despite the price increases since November 2020, the percentage of shares with a net short position between 0.1 and 0.2% has not significantly decreased since March 2020<sup>20</sup> and remains at an average of 12% over the total net short

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<sup>19</sup> Cf. Article 5 of Regulation (EU) No 236/2012.

<sup>20</sup> The reports of the daily net short positions from Denmark are missing over the period 31 August – 4 September due to a technical issue.

positions, similarly to the situation in September. Therefore, it can be concluded that the percentage of net short positions between 0.1 and 0.2%, which had to be reported due to the lower notification threshold imposed by ESMA, remain a relevant portion of the total net short positions.

(61) Therefore, ESMA's renewed measure will maintain the improved ability of national competent authorities to deal with any identified threats at an earlier stage, allowing them and ESMA to timely manage threats to the orderly functioning of markets and to financial stability, should any sign of market stress manifest itself.

#### **5. The measures do not create a risk of regulatory arbitrage (Article 28(3)(b) of Regulation (EU) No 236/2012)**

(62) In order to adopt or renew a measure under Article 28 of Regulation (EU) No 236/2012, ESMA should take into account whether the measure creates a risk of regulatory arbitrage.

(63) Since ESMA's renewed measure concerns the reporting obligations of market participants with respect to all shares admitted to trading on regulated markets in the Union, it will ensure a single reporting threshold for all national competent authorities, ensuring a level-playing field among market participants within and outside the Union in respect of the trading of shares admitted to trading on regulated markets in the Union.

#### **6. ESMA's measure does not have a detrimental effect on the efficiency of financial markets, including by reducing liquidity in those markets or creating uncertainty for market participants, that is disproportionate to its benefits (Article 28(3)(c) of Regulation (EU) No 236/2012)**

(64) ESMA has to assess whether the measure has detrimental effects which would be considered disproportionate compared to its benefits.

(65) ESMA considers it appropriate that national competent authorities closely monitor the evolution of net short positions before considering adopting any more intrusive measure. ESMA notes that the normal reporting thresholds (0.2% of the issued share capital) may not be adequate in the continued exceptional market conditions to timely identify trends and materialising threats.

(66) Although the introduction of an enhanced reporting obligation may have added an additional burden to reporting entities, currently the latter have already adapted their internal systems upon the application of the ESMA Decisions (EU) 2020/525, (EU) 2020/1123 and (EU) 2020/1689, and therefore this renewed measure is not expected to further impact the reporting entities' compliance costs. Additionally, it will not limit the capacity of market participants to enter into or increase their short positions in shares. As a result, the efficiency of the market will not be affected.

(67) Compared to other potential and more intrusive measures, this renewed measure should not affect the liquidity in the market as the increased reporting obligation for a limited set of market participants should not change their trading strategies and therefore their participation in the market. Additionally, the maintained exception foreseen for market making activities and stabilisation programmes is meant not to increase the burden for



entities that offer important services in terms of providing liquidity and reducing volatility, which is particularly relevant in the current situation.

- (68) In terms of scope of the renewed measure, ESMA believes that limiting it to one or several sectors or to any subset of issuers may not achieve the desired outcome. The magnitude of the price declines recorded after the outbreak of the COVID-19 pandemic, the wide range of shares (and sectors) affected and the degree of interconnection between the EU economies and trading venues, suggest that an EU-wide measure is likely to be more effective than sectoral measures in providing early market intelligence to national competent authorities.
- (69) In terms of creating market uncertainty, the measure does not introduce new regulatory obligations, as by lowering the relevant threshold it only modifies the normal reporting obligation that has been in force since 2012. ESMA also highlights that the renewed measure remains limited to the reporting of shares that are admitted to trading on a regulated market in the Union to capture those positions where additional reporting appears most relevant.
- (70) Therefore, ESMA considers that such an enhanced transparency obligation should not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to its benefits and should not create any uncertainty in the financial markets.
- (71) In terms of duration of the measure, ESMA considers that a renewal of the measure for three months is justified considering the information available at this point in time and the remaining overall uncertain outlook in the context of the COVID-19 pandemic. ESMA intends to revert to the regular reporting obligation as soon as the situation improves, but at the same time cannot discard the possibility of extending the measure should the situation worsen or should markets remain in a fragile state.
- (72) On that basis and as of this date, ESMA deems this Decision to renew the temporary increased transparency measure on net short positions to be proportionate given the continued adverse circumstances.

#### **7. Consultation and notice (Article 28(4) and (5) of Regulation (EU) No 236/2012)**

- (73) ESMA has consulted the ESRB. The ESRB has not raised any objections to the adoption of the proposed Decision.
- (74) ESMA has notified national competent authorities of the intended Decision.
- (75) ESMA's renewed measure will apply as of 19 December 2020.

#### **HAS ADOPTED THIS DECISION**

##### *Article 1* **Definition**

For the purposes of this Decision, a ‘regulated market’ means a regulated market as referred to in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>(21)</sup>.

#### *Article 2*

### **Temporary additional transparency obligations**

1. A natural or legal person who has a net short position in relation to the issued share capital of a company that has its shares admitted to trading on a regulated market shall notify the relevant competent authority, in accordance with Articles 5 and 9 of Regulation (EU) No 236/2012 of the European Parliament and of the Council where the position reaches or falls below a relevant notification threshold referred to in paragraph 2 of this Article.
2. A relevant notification threshold is a percentage that equals 0.1% of the issued share capital of the company concerned and each 0.1% above that threshold.

#### *Article 3*

### **Exemptions**

1. In accordance with Article 16 of Regulation (EU) No 236/2012 of the European Parliament and of the Council, the temporary additional transparency obligations referred to in Article 2 shall not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country.
2. In accordance with Article 17 of Regulation (EU) No 236/2012 of the European Parliament and of the Council, the temporary additional transparency obligations referred to in Article 2 shall not apply to transactions performed due to market making activities.
3. The temporary additional transparency obligations referred to in Article 2 shall not apply to a net short position in relation to the carrying out of a stabilisation under Article 5 of Regulation (EU) No 596/2014 of 16 April 2014 on market abuse <sup>(22)</sup>.

#### *Article 4*

### **Entry into force and application**

This Decision enters into force on 19 December 2020. It shall apply from the date of its entry into force for a period of three months.

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<sup>21</sup> OJ L 173, 12.6.2014, p. 349.

<sup>22</sup> OJ L 173, 12.6.2014, p. 1.



Done at Paris, on 16 December 2020

*For the Board of Supervisors*

*Steven Majoor*

*The Chair*

## ANNEX

In this Annex, “ESMA decision” refers to the ESMA decision of 16 March 2020 to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council [[LINK](#)].

FIGURE 1 – FINANCIAL INDICATORS

Equity market performance	Changes from 20/02/2020 to 02/12/2020	Index level as of 02/12/2020	Changes from 20/02/2020 to 03/09/2020	Index level as of 03/09/2020	Changes from 20/02/2020 to 04/06/2020	Index level as of 04/06/2020
STOXX EUROPE 800 ex. Switzerland	-10%	125	-17%	116	-16%	117
EURO STOXX INDEX	-6%	392	-13%	362	-13%	364
EURO STOXX 50	-8%	3,521	-14%	3,304	-13%	3,323
US S&P500	9%	3,663	2%	3,451	-8%	3,112



CSI 300	22%	5,067	16%	4,817	-4%	3,982
JP Nikkei	14%	26,801	0%	23,466	-3%	22,864
Global	8%	248	-1%	228	-9%	211
European banks	-22%	115	-37%	93	-30%	104
IT financials	-24%	29	-30%	27	-29%	28
ES financials	-24%	50	-48%	34	-35%	42
DE financials	-7%	132	-13%	123	-11%	126
FR financials	-21%	141	-34%	118	-28%	130
Volatility	Changes from 20/02/2020 to 02/12/2020	Index level as of 02/12/2020	Changes from 20/02/2020 to 03/09/2020	Index level as of 03/09/2020	Changes from 20/02/2020 to 04/06/2020	Index level as of 04/06/2020
VSTOXX	8%	22	15%	29	13%	28
VIX	5%	21	18%	33	9%	25
Credit Default Swaps	Changes in bps from 20/02/2020 to 02/12/2020	CDS spreads in bps as of 02/12/2020	Changes in bps from 20/02/2020 to 03/09/2020	CDS spreads in bps as of 03/09/2020	Changes in bps from 20/02/2020 to 04/06/2020	CDS spreads in bps as of 04/06/2020
Europe corporate	5	45	5	45	22	62
Europe high yield	53	251	92	290	157	355
Europe financials	9	53	15	59	29	73
Europe financials subordinate	13	100	38	124	62	149



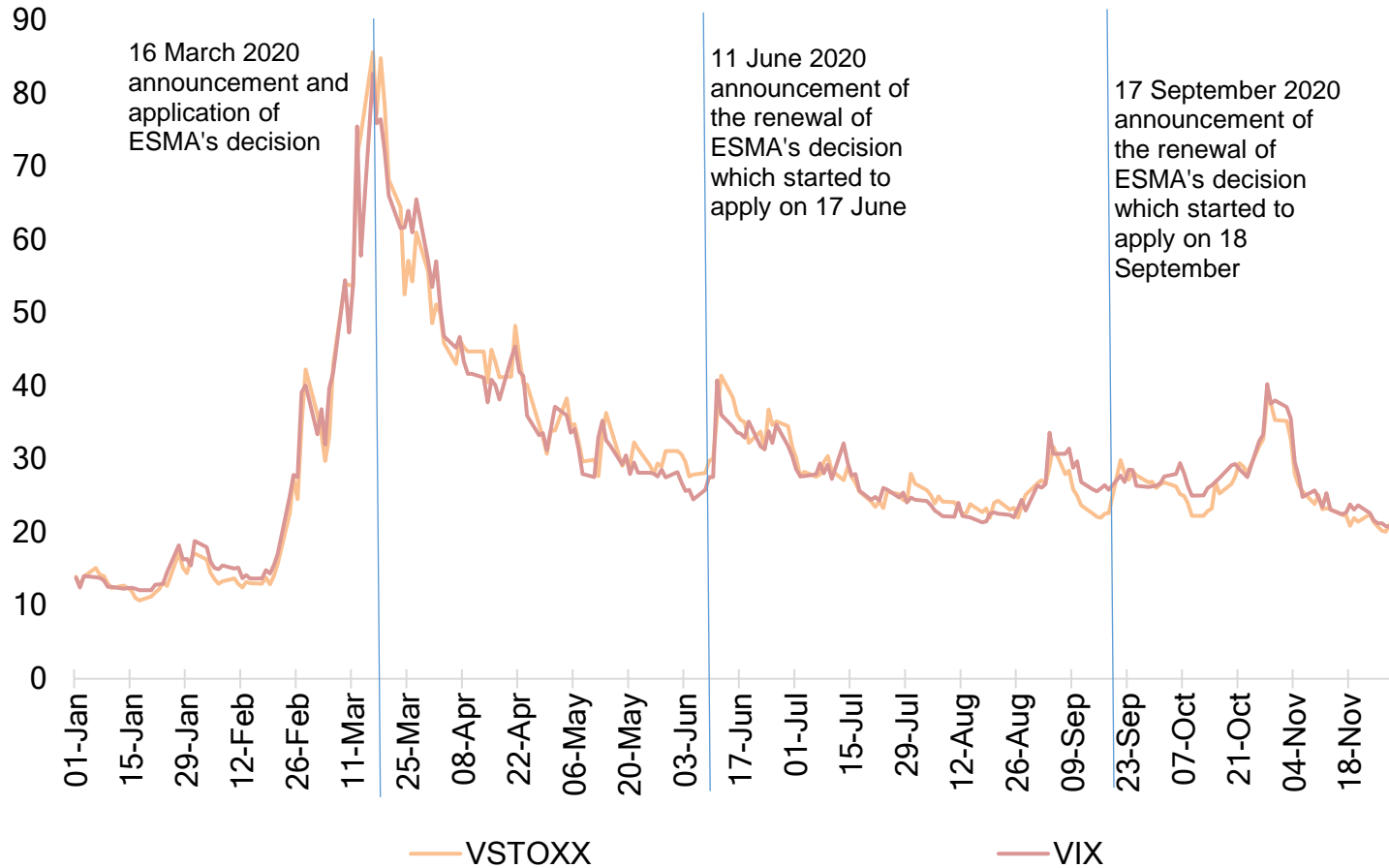


10Y Government bonds	Changes in bps from 20/02/2020 to 02/12/2020	Bond yields in% as of 02/12/2020	Changes in bps from 20/02/2020 to 03/09/2020	Bond yields in% as of 03/09/2020	Changes in bps from 20/02/2020 to 04/06/2020	Bond yields in% as of 04/06/2020
DE10Y	-8	-0.52	-5	-0.49	15	-0.29
ES10Y	-13	0.11	9	0.33	32	0.55
FR10Y	-7	-0.29	2	-0.19	23	0.01
IT10Y	-31	0.60	15	1.06	51	1.42
US10Y	-57	0.95	-90	0.62	-67	0.86
GB10Y	-22	0.36	-34	0.24	-24	0.34
JP10Y	7	0.03	8	0.04	9	0.05

Note: Equity market changes expressed in relative terms, other changes in absolute terms.  
Sources: Refinitiv EIKON; ESMA.



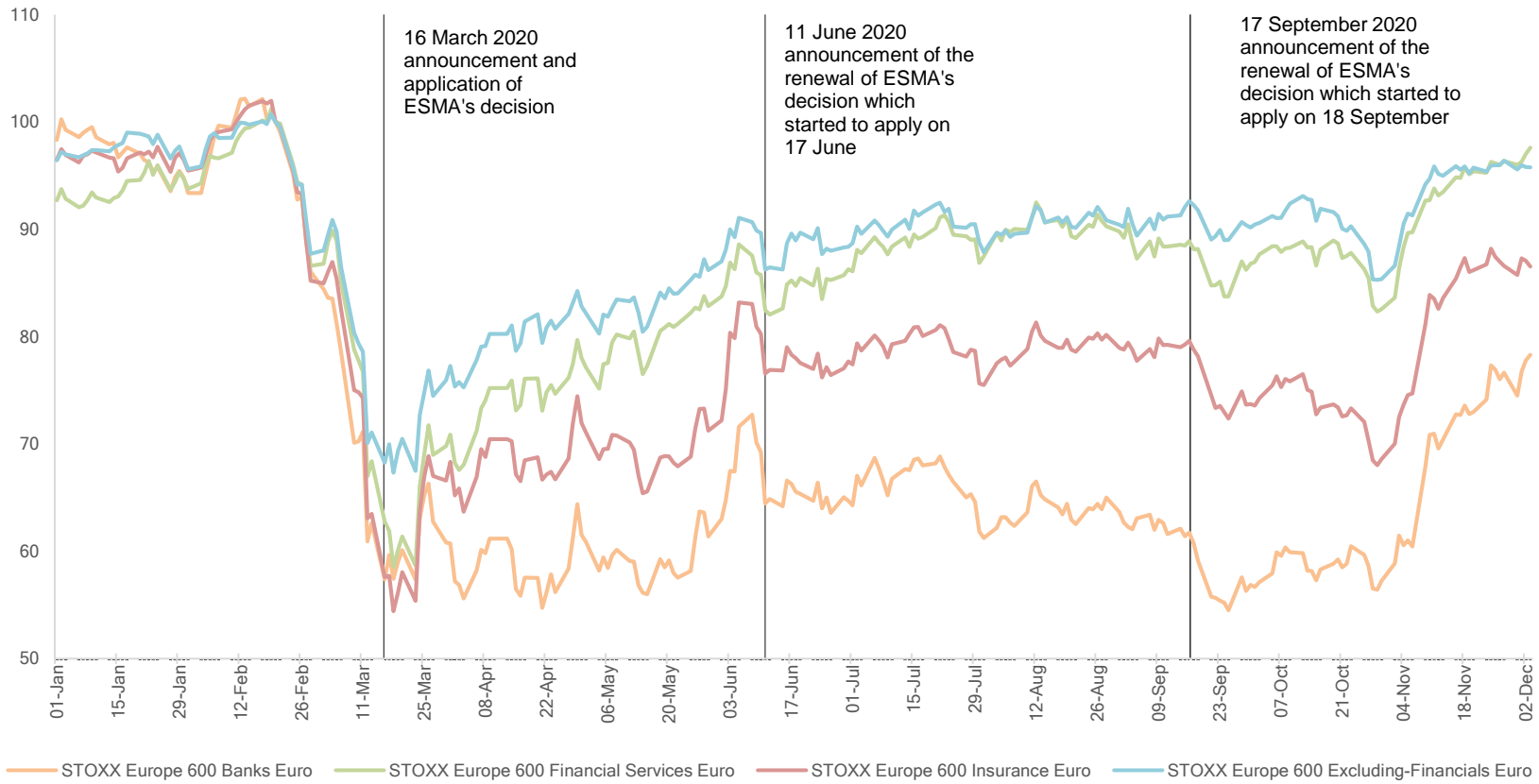
FIGURE 2 – VOLATILITY INDICATORS



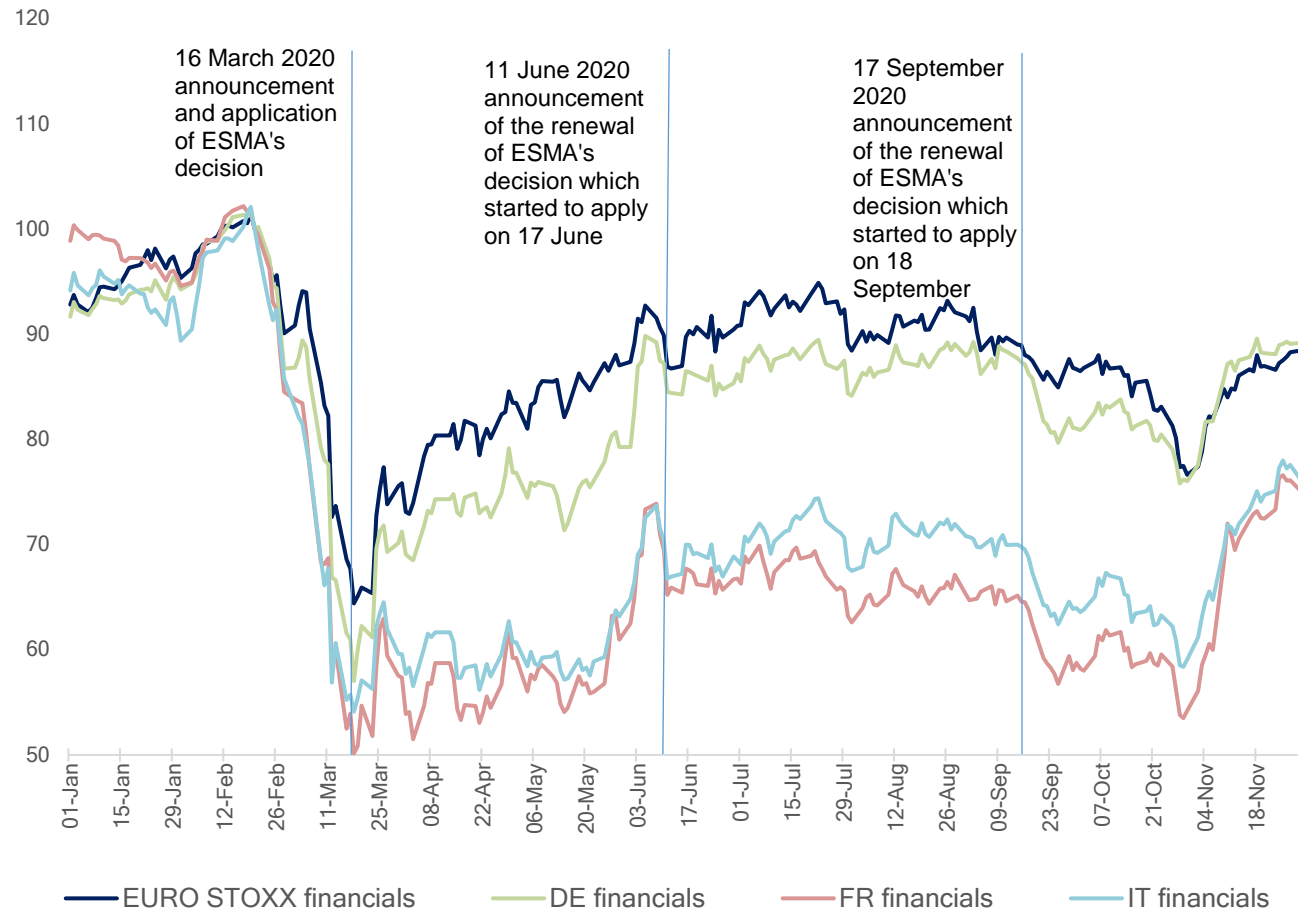
Note: Implied volatilities of EURO STOXX 50 (VSTOXX) and S&P 500 (VIX), in %.  
Sources: Refinitiv Datastream, ESMA.



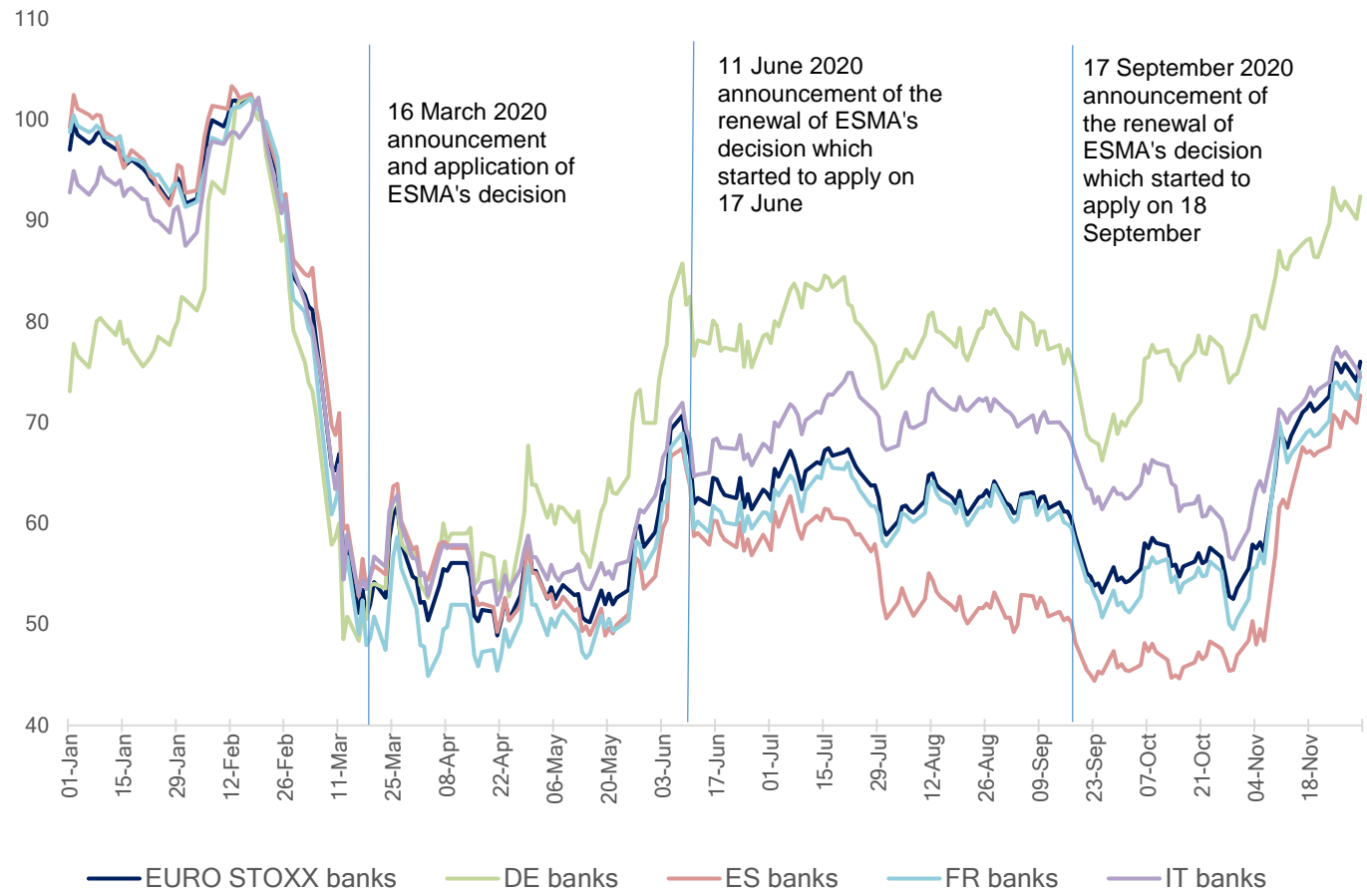
FIGURE 3 – EU SECTORAL STOCK INDICES



Note: Equity prices. 2020-02-20 = 100.  
Sources: Refinitiv Datastream, ESMA.



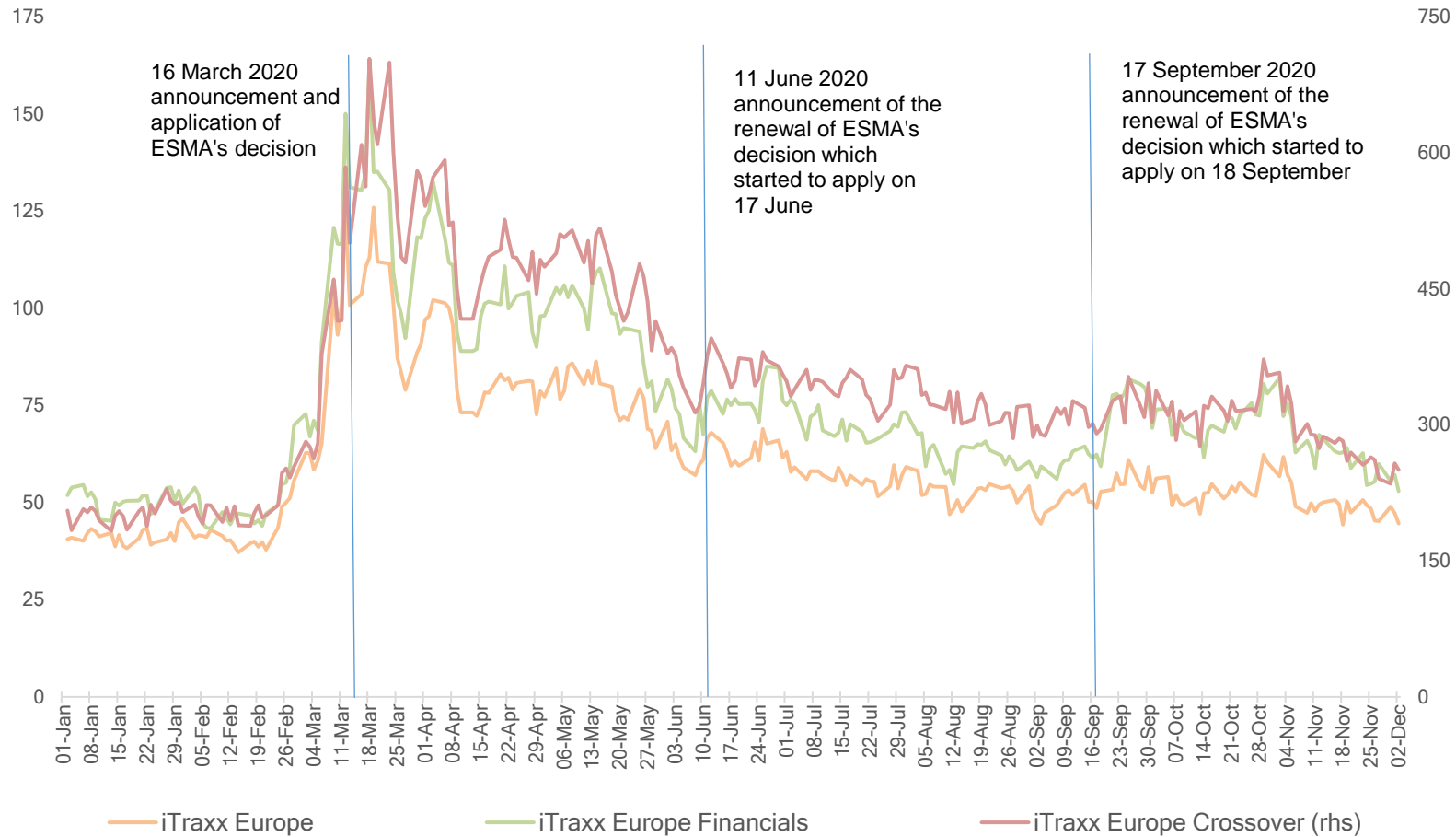
Note: Equity prices. 2020-02-20 = 100.  
Sources: Refinitiv Datastream, ESMA.



Note: Equity prices. 2020-02-20 = 100.  
Sources: Refinitiv Datastream, ESMA.



**FIGURE 4 – EU CDS SPREAD INDICES**



Note: CDS spreads on European IG corporates (iTraxx Europe), European HY corporates (iTraxx Europe Crossover) and European Financials, in bps.  
Sources: Refinitiv EIKON, ESMA.



FIGURE 5 – EUROPEAN STOCK INDICES PERFORMANCE PER COUNTRY

	Percentage change from 6 Nov 2020 to 2 Dec 2020	Percentage change from 20 Feb 2020 to 2 Dec 2020	Percentage change from 20 Feb 2020 to 3 Sep 2020	Percentage change from 20 Feb 2020 to 4 June 2020
<b>STOXX EUROPE 800 ex. Switzerland</b>	8.67%	-9.74%	-16.67%	-15.78%
<b>EURO STOXX INDEX</b>	9.41%	-6.06%	-13.22%	-12.72%
<b>EURO STOXX 50</b>	9.90%	-7.89%	-13.57%	-13.07%
<b>AT</b>	21.10%	-17.84%	-30.21%	-23.30%
<b>BE</b>	16.24%	-9.94%	-19.22%	-14.86%
<b>BG</b>	0.55%	-22.03%	-20.67%	-15.69%
<b>CY</b>	25.10%	-27.80%	-39.52%	-34.73%
<b>CZ</b>	11.15%	-12.35%	-17.81%	-13.94%
<b>DE</b>	6.68%	-2.57%	-4.44%	-7.32%
<b>DK</b>	-1.90%	10.16%	4.24%	-2.48%
<b>EE</b>	11.25%	-4.72%	-13.55%	-13.16%
<b>ES</b>	19.66%	-17.22%	-29.45%	-21.88%
<b>FI</b>	6.38%	1.96%	-5.35%	-8.66%
<b>FR</b>	12.54%	-7.91%	-17.37%	-15.91%
<b>GB</b>	9.36%	-13.09%	-21.32%	-13.93%
<b>GR</b>	29.14%	-16.82%	-29.24%	-26.64%
<b>HR</b>	10.22%	-13.43%	-19.61%	-17.16%

	Percentage change from 6 Nov 2020 to 2 Dec 2020	Percentage change from 20 Feb 2020 to 2 Dec 2020	Percentage change from 20 Feb 2020 to 3 Sep 2020	Percentage change from 20 Feb 2020 to 4 June 2020
<b>HU</b>	10.74%	-14.42%	-24.05%	-17.83%
<b>IE</b>	5.56%	-0.58%	-13.00%	-12.90%
<b>IS</b>	5.78%	10.90%	-1.50%	-4.44%
<b>IT</b>	11.64%	-12.39%	-22.04%	-20.01%
<b>LT</b>	4.44%	3.84%	5.06%	-1.98%
<b>LU</b>	14.85%	-7.78%	-25.92%	-21.60%
<b>LV</b>	-0.47%	6.81%	5.53%	-1.81%
<b>MT</b>	15.14%	-13.86%	-20.80%	-12.92%
<b>NL</b>	6.64%	-1.80%	-11.66%	-9.17%
<b>NO</b>	11.02%	-3.37%	-11.80%	-10.22%
<b>PL</b>	11.81%	-9.62%	-15.75%	-13.47%
<b>PT</b>	14.45%	-14.54%	-20.09%	-13.64%
<b>RO</b>	6.43%	-7.58%	-10.73%	-11.45%
<b>SE</b>	5.47%	1.06%	-7.28%	-9.47%
<b>SI</b>	8.13%	-9.57%	-13.01%	-10.83%
<b>SK</b>	-0.99%	-3.02%	-7.05%	0.07%

Sources: Refinitiv EIKON; ESMA.





FIGURE 6 – NSP BETWEEN 0.1% AND 0.2% OVER THE PERIOD 16 MARCH – 30 NOVEMBER 2020

