ESA | EFTA Surveillance Authority

Brussels, 17 September 2020
Case No: 84930
Document No: 1152955
Decision No: 106/20/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 17 September 2020

to renew the temporary requirement for natural or legal persons who have net short positions to apply lower 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 of the EEA EFTA States in accordance with point (a) of Article 28(1) of 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 as incorporated into the Agreement on the European Economic Area

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement on the European Economic Area[1] (the "EEA Agreement"), in particular Annex IX thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice[2] (the "SCA") in particular its Article 25a and Protocol 8 thereof,

Having regard to the Act referred to at point 31i of Annex IX to the EEA Agreement,

> *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[3] ("Regulation No 1095/2010"), and in particular Article 9(5), 43(2) and 44(1) thereof,*

as amended and adapted to the EEA Agreement,[4]

Having regard to the Act referred to at point 29f of Annex IX to the EEA Agreement,

> *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 ("Regulation No 236/2012"),[5] and in particular Article 28 thereof*,

[1] OJ L 1, 3.1.1994, p. 3.
[2] OJ L 344, 31.1.1994, p. 3
[3] OJ L 331, 15.12.2010, p. 84.
[4] Joint Committee Decision No 201/2016 of 30 September 2016.
[5] OJ L 86, 24.3.2012, p. 1.

as amended and adapted to the EEA Agreement,[6]

Having regard to the Act referred at point 29fc of Annex IX to the EEA Agreement,

> *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 ("Delegated Regulation No 918/2012"),[7] and in particular Article 24 thereof,*

as amended and adapted to the EEA Agreement,[8]

> *Having regard to Decision No 020/20/COL[9] of 16 March 2020 and Decision No 056/20/COL[10] of 11 June 2020 of the EFTA Surveillance Authority 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 of the EEA EFTA States in accordance with point (a) of Article 28(1) of 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 as incorporated into the Agreement on the European Economic Area,*

Whereas:

1. Introduction

(1) With Decision No 020/20/COL, the EFTA Surveillance Authority (the "Authority") 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 in the EEA EFTA States to notify the competent authorities details of any such position where the latter reaches, exceeds or falls below 0.1% of the issued share capital in accordance with point (a) of Article 28(1) of Regulation No 236/2012.

(2) The measure imposed by the Authority´s Decision No 020/20/COL addressed the necessity for national competent authorities and the Authority 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 No 056/20/COL, the Authority renewed the temporary requirement of 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 of the EEA EFTA States in accordance with point (a) of Article 28(1) of Regulation No 236/2012. Notwithstanding a partial recovery of the EEA financial markets from the losses

---

[6] Joint Committee Decision No 204/2016 of 30 September 2016.
[7] OJ L 274, 9.10.2012, p. 1.
[8] Joint Committee Decision No 204/2016 of 30 September 2016.
[9] https://www.eftasurv.int/cms/sites/default/files/documents/gopro/5299-ESA_Decision_under_Art._28(1)_of_Regulation_236_2012%20(1).pdf
[10] https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA_Renewal_Decision_under_Art._28%281%29_of_Regulation_236_2012%20%281%29.pdf

registered since the outbreak of the COVID-19 pandemic, the measure was renewed as the outlook for the future recovery remained uncertain.

(4) In accordance with Article 28(10) of Regulation No 236/2012, the Authority must review this measure at appropriate intervals and at least every three months.

(5) The Authority, in cooperation with the European Securities and Markets Authority ("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 analysis conducted, the Authority 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 No 236/2012)

a. Threat to the orderly functioning and integrity of the financial markets of the Union and of the EEA EFTA States

(6) The COVID-19 pandemic continues to have an adverse impact on the real economy with the overall outlook for a future recovery remaining uncertain, particularly in light of recent developments in the European Union (the "EU"), the EEA EFTA States and beyond. The Authority notes that the number of COVID-19 cases has significantly increased in several EEA jurisdictions over the last few weeks, raising concerns about the possibility of a second wave of COVID-19 infections exacerbating the uncertainty of any future outlook.

(7) Equity markets in the EEA, as demonstrated by the Eurostoxx 50 Index, lost 14% in the period between the 20th of February and the 3rd of September 2020, compared to a loss of value of 13% between the 20th of February and the 4th of June (Figure 1 in Annex I]. In Norway the main index dropped by 11.80% in the period between the 20th of February and the 3rd of September, compared to a loss of value of 10.22% between the 20th of February and the 4th of June (Figure 5 in Annex I). In Iceland the main index dropped by 1.50% in the period between the 20th of February and the 3rd of September, compared to a loss of value of 4.44% between the 20th of February and the 4th of June (Figure 5 in Annex I). The Eurostoxx 50 Index, as well as the stock markets in Iceland and Norway, significantly recovered from the drop of approximately 30%, 18% and 30% respectively, registered between February and March[11]. However, the current levels remain lower than those registered prior to the COVID-19 pandemic.

(8) The volatility measured by the VSTOXX[12] in the EU also remains relatively elevated compared to February 2020. The change to the level measured in September (+15%) is slightly higher than that measured in in June (+13%). The same is also true, and even to a larger extent, for the VIX[13] (+18% in September against +9% in June) (Figure 1 in Annex I) and (Figure 2 in Annex I). However, despite the volatility in Iceland and Norway having increased over the period 20 February to 4 June by

---

[11] ESMA Decision (EU) 2020/525 (Figure 2 in the Annex) and Decision of the Authority 020/20/COL (Figure 2 in Annex I).
[12] The VSTOXX measures the implied volatility based on the Eurostoxx 50 option prices.
[13] The VIX Index is calculated by using the midpoint of real-time S&P 500 Index (SPX) option bid/ask quotes.

4.7% and 63.7% respectively, it decreased between 20 February and 3 September 2020. More specifically, the historical volatility of the OMX Iceland decreased by 25.2% and that of OBX 25 decreased by 19.7%.[14]

(9) The level of credit default swaps (CDS) has decreased between 17% and 28% from 4 June to 3 September (Figure 1 in Annex I). However, to better understand the informative power of CDSs at this moment, the data must be assessed in the broader European context, with particular reference to the European Central Bank's (ECB) decision on the Pandemic Emergency Purchase Programme (PEPP). From the beginning of March, the CDS spreads started to be highly volatile and indicative of a high financial risk. The renewal of the Authority's Decision 020/20/COL, based on data up to 4 June, was also based on the fact that CDS spreads were high and volatile at that time and were considered as an indication of the perception of risk in the market.

(10) However, the increase of the PEPP by a further EUR 600 billion decided on 4 June 2020 brought the ECB's total announced monetary stimulus to EUR 1.35 trillion, reducing the informative value of CDS spreads in relation to the risk perception of the market.

(11) Similar considerations apply in relation to the informative value of the sovereign bond markets, which, as in the case of CDS spreads, are affected by the monetary policy of the central banks. As it appears in (Figure 1 in Annex I), the 10Y government bonds yields of DE, FR, GB and IT show a decrease compared to June levels of average 22 basis points. In Norway the 10Y government bond yields also slightly decreased by 3 basis points from June to September 2020 while in Iceland they increased by 36 basis points.

(12) As a consequence, the Authority considers that the evolution of stock markets, which is significantly less impacted by the central banks' monetary policy, should provide better insights into the current level of risk in EEA financial markets.

(13) Similar to the Eurostoxx 50, the STOXX EUROPE 800 excluding Switzerland Index lost approximately 17% since 20 February 2020, compared to a drop of 16% in the period to June. The STOXX Europe Total Market Banks (ref. European banks) decreased by 37% since February, while in the period to June the loss was of approximately 30% (Figure 1 in Annex I).

(14) As mentioned in ESMA's Report on Trends, Risks and Vulnerabilities No. 2 of September 2020 (TRV)[15], in Q2 2020 there were signs of differentiation across sectors, affecting in particular credit institutions. As of end June, EU airlines and banking sector indices were still 36% and 30%, respectively, below their early January levels. Similarly, The STOXX Europe Total Market Airlines's performance deteriorated from 20 February to 3 September (-47.8%), compared to the period from 20 February to 4 June (-38.9%). Furthermore, (Figure 3 in Annex I) shows that the banking and the insurance sectors in the EEA have been rather stable since June, but the performance between 20 February and 3 September compared to that

[14] Sources: Refinitiv EIKON; ESMA.
[15] https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1287_report_on_trends_risks_and_vulnerabilities_no.2_2020.pdf.

between 20 February and 4 June shows a deterioration (-38% vs. -33%) for the banking sector and (-21% vs. -20%) for the insurance sector. On the contrary, the performance of the non-financial sectors[16] has improved to a small extent: 9% vs. -11%.

(15) The price recovery of certain sectors took place in the context of a further deteriorating macroeconomic environment and a deep and globally synchronised recession. As indicated in the TRV, the current apparent decoupling of financial market performance from underlying economic activity raises questions about the sustainability of the market rebound going forward.

(16) At the aggregated national or EEA level, the price recovery does not seem to have materialised: (Figure 5 in Annex I) shows that price decreases are widespread across the EEA, from June to September 2020 there were no significant improvements and the stock indices performance for 22 EEA markets indicates that the drop from 20 February to 3 September was worse than the drop from 20 February to 4 June. Furthermore, the stock markets of 25 jurisdictions, compared to 24 in June, lost at least 10% of their value when comparing the prices at 3 September to those at 20 February. Over the same period, the share prices of EEA credit institutions have lost between 10% and 59%, compared to losses in value between 9 and 48% recorded in the period from February to June.

(17) The percentage of shares with a net short position between 0.1 and 0.2% steadily increased over the period from 16 March until 11 June 2020 and then remained stable until 4 September, at an average of 13% over the total net short positions (Figure 6 in Annex I). Furthermore, as a result of the lower reporting threshold, in some countries, net short positions between 0.1% and 0.2% represented up to approximately 50% of the total 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 net short positions and has strong informative value for regulators in the current context.

(18) Overall, significant price decreases in key sectors, the potential decoupling of financial market performance and underlying economic activity and a steadily high level of net short positions, coupled with the uncertainty about the evolution of the COVID-19 pandemic and its impact on the real economy, signal that the EEA EFTA States markets remain in a fragile state, when compared to February 2020. The Authority considers that the slight decrease in volatility in Norway and Iceland does not reduce such fragility. The latter makes it more likely that short selling pressures could initiate or exacerbate negative developments in the coming months which, in turn, can negatively affect market confidence or the integrity of the price determination mechanism.

(19) The Authority therefore considers that the combination of the circumstances described above constitutes a serious threat to the orderly functioning and integrity

[16] The non-financial sectors exclude the following sub-sectors: banking, insurance and financial services

of the financial markets and justifies renewing the Authority's Decision 056/20/COL in accordance with Article 28(2)(a) of Regulation No 236/2012.

b. Threat to the stability of the whole or part of the financial system in the EU and of the EEA EFTA States

(20) As explained by the ECB in its Financial Stability Review,[17] 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.

(21) The COVID-19 pandemic continues to have a severe impact on the real economy in the EEA. As reported in ESMA's TRV, notwithstanding the market rebound, the market environment remains fragile and ESMA sees, going forward, a *"prolonged period of risk to institutional and retail investors of further – possibly significant – market corrections and (…) very high risks across the whole of the ESMA remit*"[18]. In that respect, ESMA alerted the public to a potential decoupling of financial market performance and underlying economic activity. The Authority agrees with the views and the analysis contained in the TRV and considers that similar risks may materialise in the EEA EFTA States.

(22) Section 2.a above contains information on the performance of stock markets in general and also on the performance of specific sectors such as banking and insurance.

(23) These widespread price decreases have put the majority of EEA shares across all sectors into a situation of fragility in which further price declines not triggered by additional fundamental information could have highly detrimental consequences.

(24) In the still uncertain situation, the Authority considers that substantial selling pressure and unusual volatility in the price of shares could be triggered by different factors, including by an increasing number of market participants engaging in short selling and building up significant net short positions.

(25) In particular, the Authority notes that the price losses for credit institutions, which constituted one of the parameters for the renewal decision taken in June 2020, have not improved (last chart of Figure 3 in Annex I). This indicates that credit institutions, which in certain cases are systemically important, remain potentially vulnerable to short selling strategies and to the building up of significant net short positions, regardless of whether these strategies and positions are supported by fundamental information.

(26) 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 State or across

[17] https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201911~facad0251f.en.html.
[18] TRV, Executive Summary, page 4.

the EU and the EEA EFTA States that, in turn, could eventually put the financial system of one or several EU or EEA EFTA States at risk.

(27) Notwithstanding the partial recovery observed in certain sectors of EEA financial markets, the Authority considers that the current market circumstances continue to seriously threaten the stability of the financial system in the EEA EFTA States.

(28) Within the limit of the Authority's mandate, the intended renewal of the measure obliges natural or legal persons who have a net short position in shares admitted to trading on a regulated market in the EEA EFTA States to report to national competent authorities at a lower threshold than the one established in Article 5 of Regulation No 236/2012.

(29) The renewed measure should maintain the improved capacity of national competent authorities and the Authority to assess the evolving situation adequately, differentiate between market movements led by fundamental information from those that might be initiated or exacerbated by short selling and react if the integrity, orderly functioning and stability of the markets require more stringent actions.

c. Cross-border implications

(30) Another condition for the Authority to be able to take this measure is that the identified threats have cross-border implications.

(31) As described above, equity markets across the EEA, considering both national and pan-European indices, have not fully recovered from the severe price decreases observed in March.

(32) Given the fact that most of the EEA financial markets are affected by these threats, albeit to different degrees, the cross border implications remain particularly serious as the interconnectedness of EEA financial markets raise the likelihood of potential spillover or contagion effects across markets in case of short selling pressure.

(33) The Authority 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 have a pan-EEA and global 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 No 236/2012)

(34) Another condition for the Authority 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.

(35) 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 the Authority's Decision 056/20/COL. In addition, there are no measures in force taken by the competent authorities pursuant to Regulation No 236/2012.

(36) In light of the abovementioned pan-EEA 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 No 236/2012 is not sufficient under the current stressed market conditions. The Authority considers that maintaining the lower reporting threshold should ensure the national competent authorities of the EEA EFTA States and the Authority have the best possible data set available to monitor market trends and prepare themselves and the Authority to take further measures, if necessary.

4. Effectiveness of the measure (Article 28(3)(a) of Regulation No 236/2012)

(37) The Authority must also take into account to what extent the renewed measure significantly addresses the threats identified.

(38) The Authority considers that, despite the extraordinary losses that were incurred in the trading of shares on regulated markets since 20 February 2020, markets have functioned in an orderly way and that the integrity of markets has been largely preserved.

(39) The Authority has therefore analysed the current circumstances, in cooperation with ESMA, in particular with reference to how far they constitute threats to the integrity of markets and to financial stability in the EEA EFTA States and whether the renewed measure of the Authority would will be effective in addressing such threats by taking a forward-looking approach.

a. The measure significantly addresses the threat to the orderly functioning and integrity of financial markets in the EEA EFTA States

(40) 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.

(41) In particular, given the horizontal impact of the continued emergency situation that affects a broad set of shares across the EEA EFTA States, 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 No 236/2012, would therefore go undetected without the renewed measure.

(42) For the above reasons, national competent authorities and the Authority 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 share prices.

(43) The Authority considers that, without this measure being renewed for an additional three months, national competent authorities and the Authority would not have the

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 EEA EFTA State shares that in turn could be further amplified by the accumulation of short positions.

(44) At the same time, the Authority considers it appropriate to maintain the publication threshold laid down in Article 6 of Regulation 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. The Authority will continue to monitor on an ongoing basis the market conditions and will take further measures, in cooperation with ESMA, where needed.

b. The measure significantly addresses the threat to the stability of the whole or part of the financial system in the EEA EFTA States

(45) As described above, in most of the EEA, equity market performance has worsened between June and September 2020, when compared to February 2020. Overall, trading in shares since February was and still is characterised by selling pressure and a relatively high level of volatility. As evidenced above, various risk factors continue to have an impact on many sectors of the real economy and on EEA financial markets. In this environment, engaging in short selling and building up significant net short positions can amplify selling pressure and downward trends which in turn can have highly detrimental effects on the financial stability of financial institutions and companies from other sectors.

(46) In that context, data limitations for national competent authorities and the Authority would restrict their capacity to address potential negative effects on the economy and ultimately the financial stability of the EEA EFTA States.

(47) Therefore, the Authority's renewed measure to temporarily lower the reporting thresholds of net short positions to national competent authorities effectively addresses this threat to the stability of parts or ultimately the whole of the EEA EFTA States 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

(48) 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 in the relevant legislation, in particular the reporting obligations concerning net short positions established in Regulation 236/2012.

(49) However, the existing market conditions render it necessary to intensify the monitoring activity of national competent authorities and of the Authority 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 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.

(50) This is highlighted by the percentage of shares with a net short position between 0.1 and 0.2%, which steadily increased in the EEA over the period 16 March until 11 June 2020 and has remained stable since then, until 4 September, at on average 13% over the whole observation period (Figure 6 in Annex I). 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 the Authority and ESMA, remain a relevant portion of the total net short positions.

(51) Therefore, the Authority'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 the Authority 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 No 236/2012)

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

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

6. The Authority'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 No 236/2012)

(54) The Authority must assess whether the measure has detrimental effects which would be considered disproportionate compared to its benefits.

(55) The Authority considers it appropriate that national competent authorities closely monitor the evolution of net short positions before considering adopting any more intrusive measure. The Authority notes that the regular 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.

(56) Although the introduction of an enhanced reporting obligation may have added an additional burden to reporting entities, the latter have already adapted their internal systems upon the application of the Decisions of the Authority 020/20/COL and 056/20/COL 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.

(57) 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 exceptions foreseen for market making activities and stabilisation programmes, which are maintained, are meant not to increase the burden for entities that offer important services in terms of providing liquidity and reducing volatility, particularly relevant in the current situation.

(58) In terms of the scope of the renewed measure, the Authority 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 Member States and EEA EFTA States' economies and trading venues, suggest that an EEA-wide measure is likely to be more effective than national sectoral measures in providing early market intelligence to national competent authorities.

(59) In terms of creating market uncertainty, the measure does not introduce new regulatory obligations, as by lowering the relevant threshold it only modifies the reporting obligation that has been in force since 2017. The Authority also highlights that the renewed measure remains limited to the reporting of shares that are admitted to trading on a regulated market in the EEA EFTA States, to capture those positions where additional reporting appears most relevant.

(60) Therefore, the Authority considers that such enhanced transparency obligations 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.

(61) In terms of duration of the measure, the Authority 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. The Authority 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.

(62) On that basis and as of this date, the Authority considers 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),(5) and (6) of Regulation No 236/2012, Protocol 8 to the SCA)

(63) On 15 September 2020, the Authority notified the national competent authorities of Norway, Iceland and Liechtenstein of the intended measure in accordance with Article 28(5) of Regulation 236/2012 and invited them to provide technical advice in

accordance with Article 4 of Protocol 8 to the SCA. On 16 September 2020, the national competent authorities of Iceland and Norway replied to the Authority and raised no objections to the adoption of the proposed Decision.

(64) The Authority's renewed measure will apply as of 18 September 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[19] 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 (MIFID II).

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 Article 5 and 9 of Regulation No 236/2012 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

3. In accordance with Article 16 of Regulation No 236/2012, 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.
4. In accordance with Article 17 of Regulation 236/2012, the temporary additional transparency obligations referred to in Article 2 shall not apply to transactions performed due to market making.
5. 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.[20]

---

[19] Joint Committee Decision No 78/2019 of 29 March 2019, the Act is referred to at point 31ba of Annex IX to the EEA Agreement, OJ L 173, 12.6.2014, p. 349.
[20] Joint Committee Decision No 259/2019 of 25 October 2019, the Act is to be referred to at point 29a of Annex IX to the EEA Agreement (pending fulfilment of constitutional requirements), OJ L 173, 12.6.2014, p. 1.

Article 4

Entry into force and application

This Decision enters into force on 18 September 2020. It shall apply from the date of its entry into force for a period of three months.

Article 5

This decision is only drafted in English.

Done at Brussels on 17 September 2020.

For the EFTA Surveillance Authority

Bente Angell-Hansen President	Frank J. Büchel Responsible College Member	Högni Kristjánsson College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.

ANNEX I

In this Annex, “ESMA’s decision” refers to the ESMA’s and the Authority’s 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 No 236/2012.

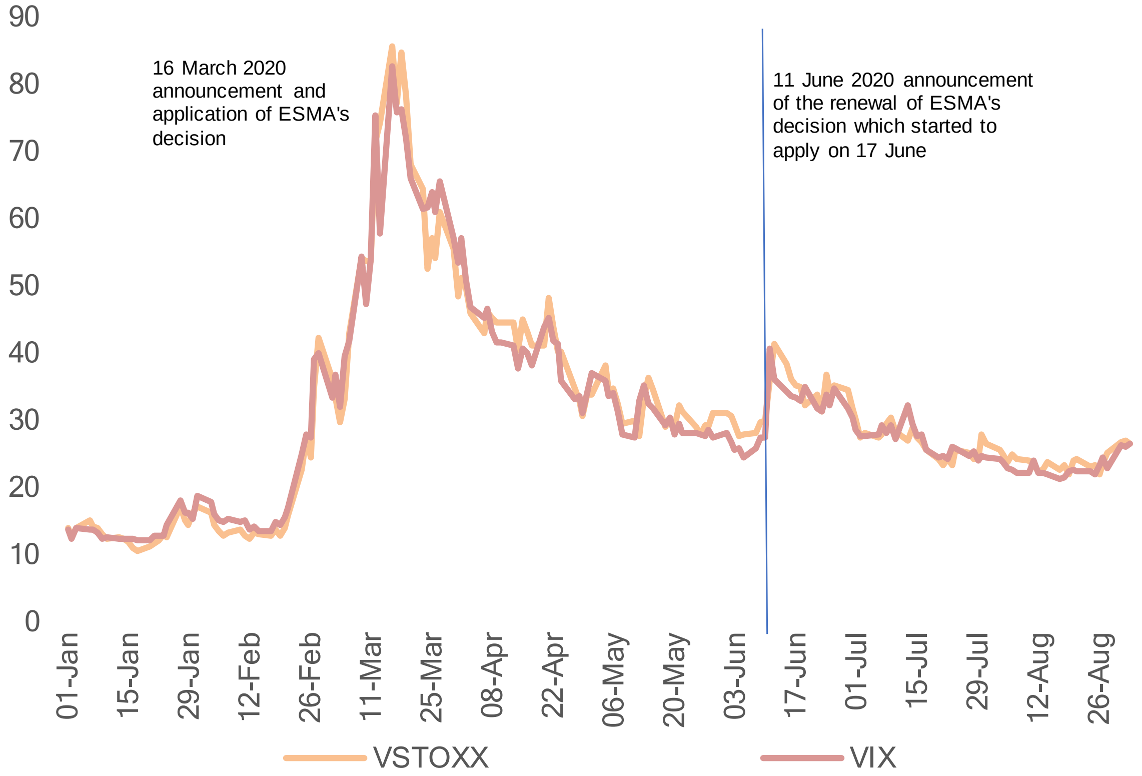
FIGURE 1 – FINANCIAL INDICATORS

Equity market performance	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	-17%	116	-16%	117
EURO STOXX INDEX	-13%	362	-13%	364
EURO STOXX 50	-14%	3,304	-13%	3,323
US S&P500	2%	3,451	-8%	3,112
JP Nikkei	0%	23,466	-3%	22,864
Global	-1%	228	-9%	211
European banks	-37%	93	-30%	104
IT financials	-30%	27	-29%	28
ES financials	-48%	34	-35%	42
DE financials	-13%	123	-11%	126
FR financials	-34%	118	-28%	130
Volatility	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	15%	29	13%	28
VIX	18%	33	9%	25
Credit Default Swaps	Changes in bps from 20/02/2020 to 03/092020	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	22	62
Europe high yield	92	290	157	355
Europe financials	15	59	29	73
Europe financials subordinate	38	124	62	149
10Y Government bonds	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	-5	-0.49	15	-0.29
ES10Y	9	0.33	32	0.55
FR10Y	2	-0.19	23	0.01
IT10Y	15	1.06	51	1.42
US10Y	-90	0.62	-67	0.86
GB10Y	-34	0.24	-24	0.34
JP10Y	8	0.04	9	0.05
NO10Y	-75	0.67	-72	0.70
IS10Y	-31	2.72	-67	2.36

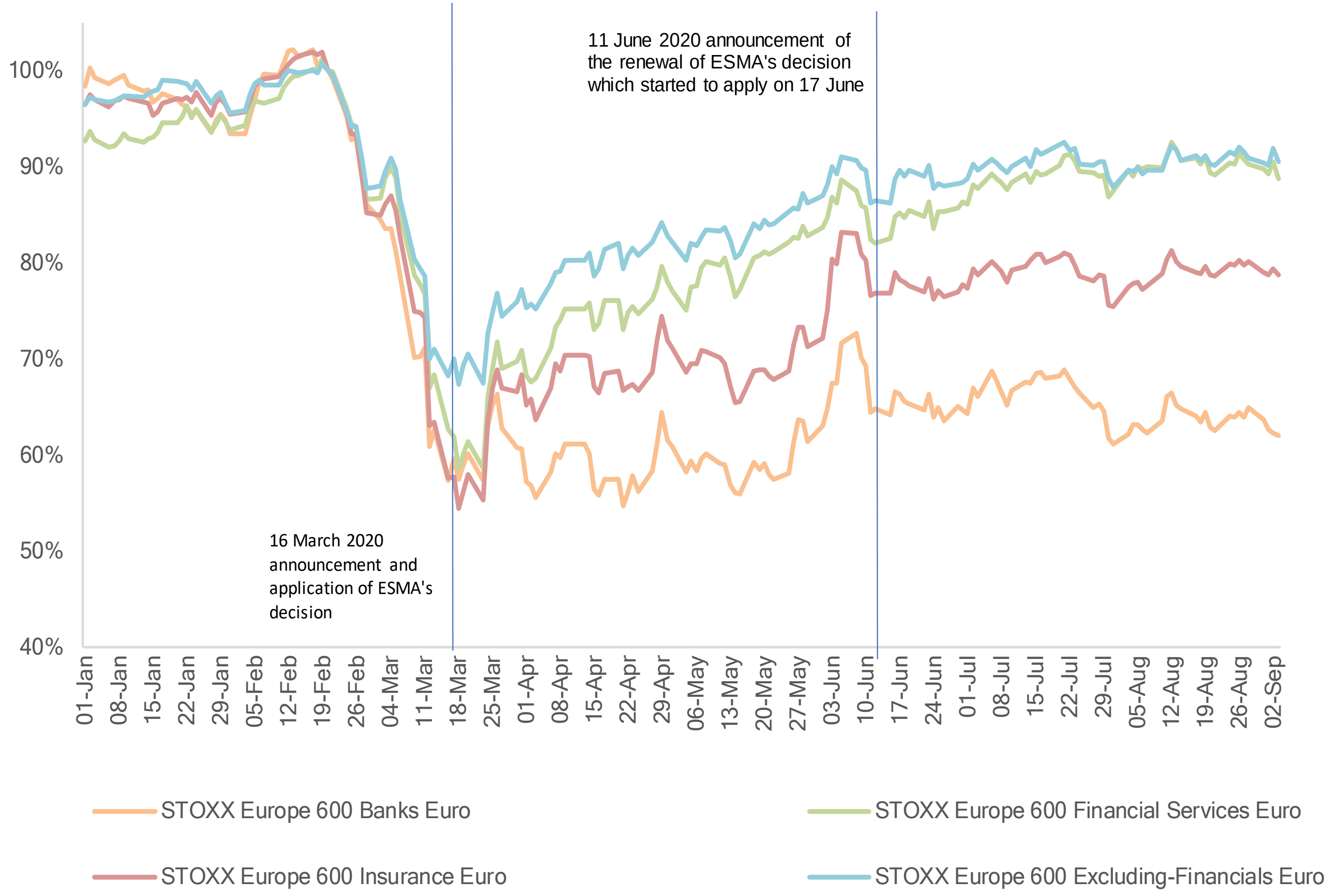
Note: Equity market changes expressed in relative terms, other changes in absolute terms.
Sources: Refinitiv EIKON; ESMA.

FIGURE 2 – VOLATILITY INDICATORS

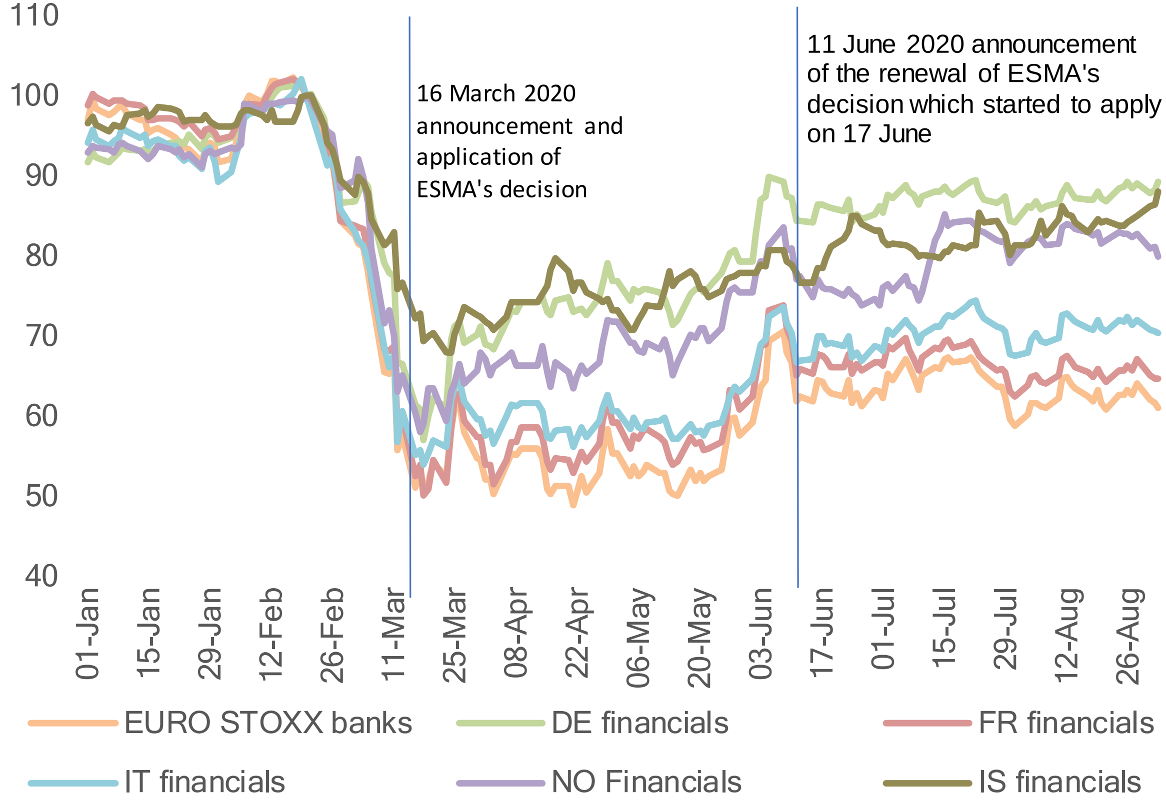


Note: Implied volatilities of EURO STOXX 50 (VSTOXX) and S&P 500 (VIX), in %.
Sources: Refinitiv Datastream, ESMA.

Figure 3 – EEA sectoral stock indices

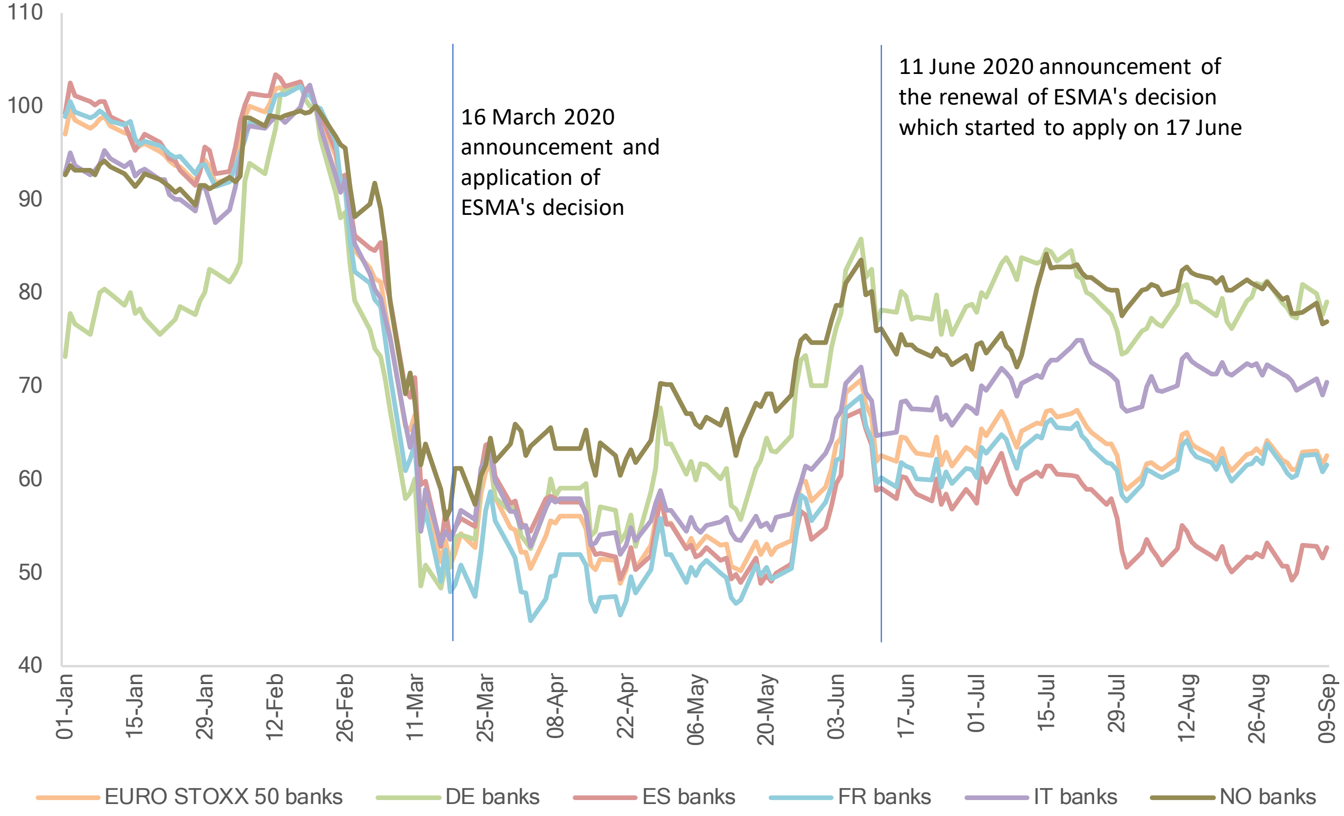


Note: Equity prices. 2020-02-20 = 100.
Sources: Refinitiv Datastream, ESMA.



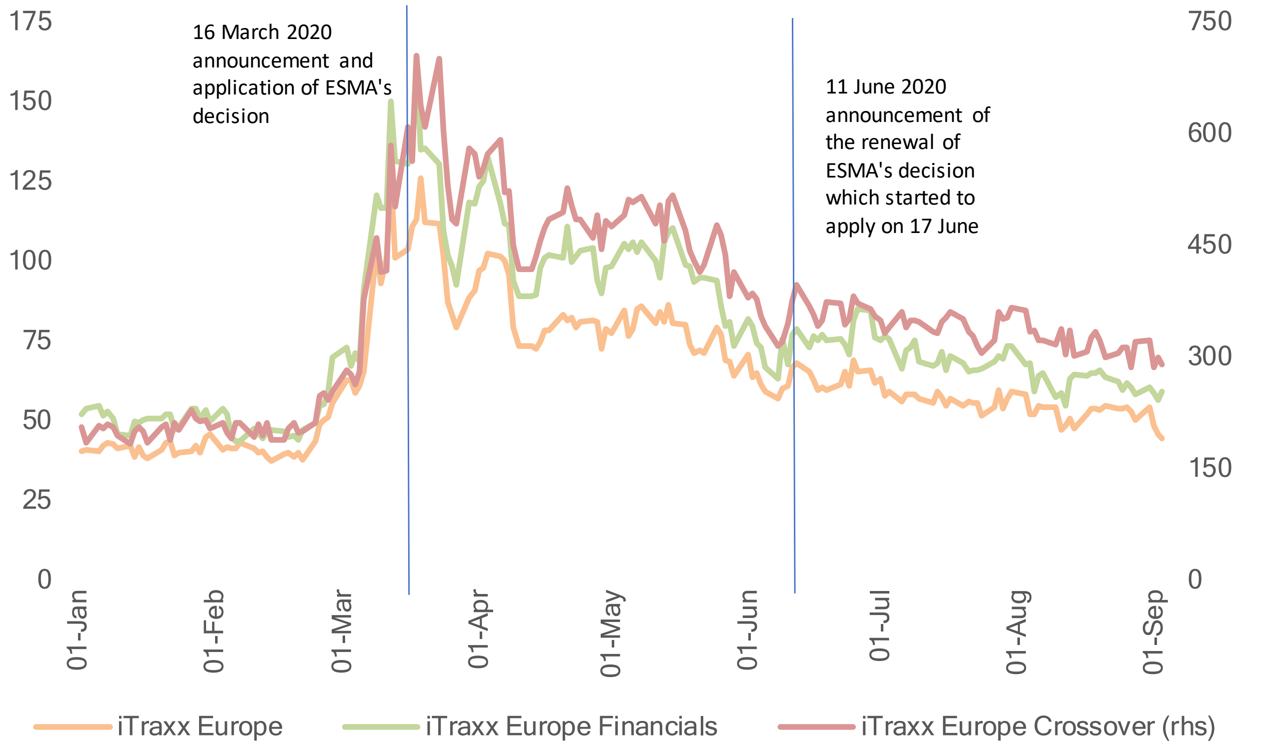
Note: Equity prices. 2020-02-20 = 100.
Sources: Refinitiv Datastream, ESMA.

ESA | EFTA Surveillance Authority



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.

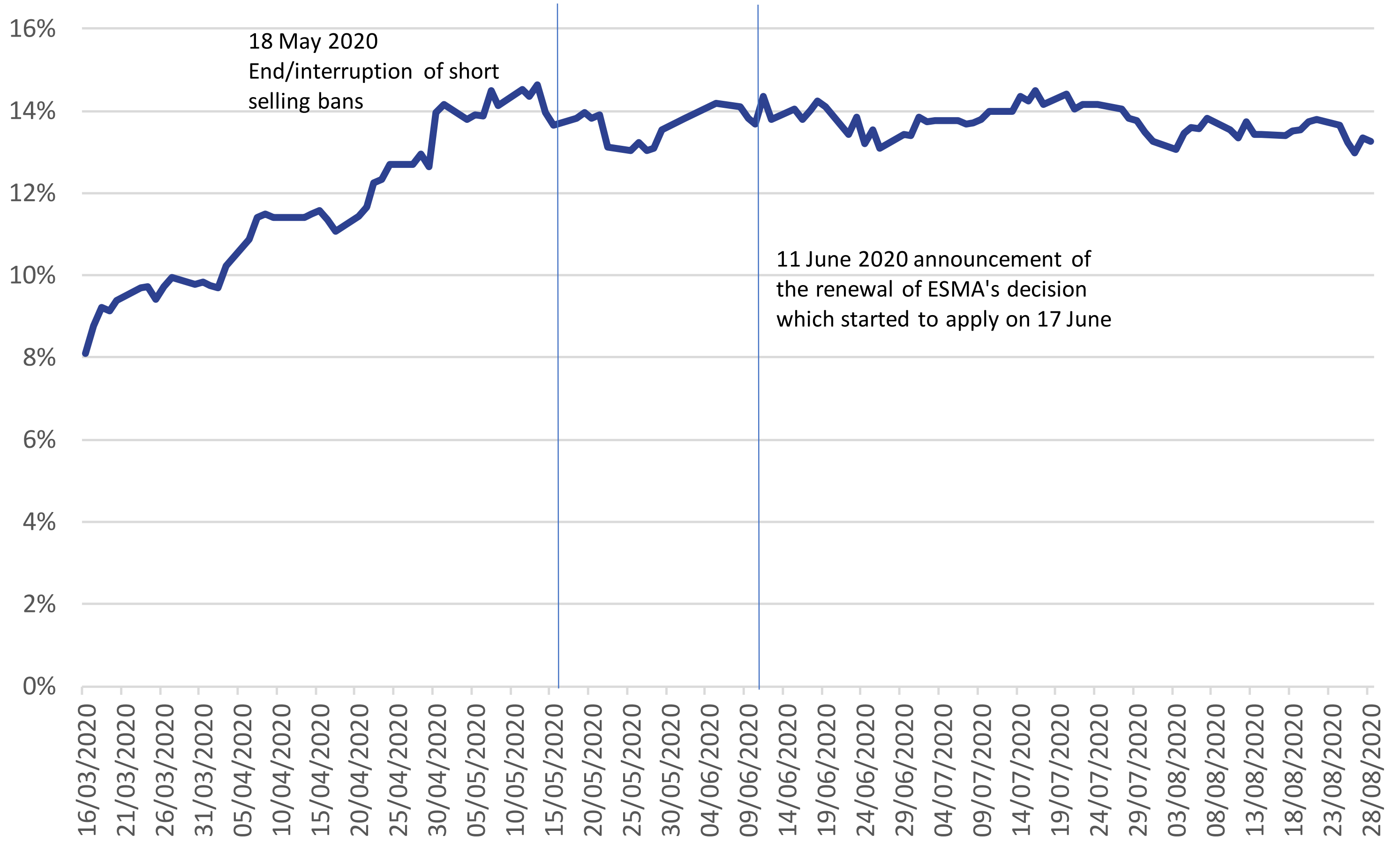
FIGURE 5 – EUROPEAN STOCK INDICES PERFORMANCE PER COUNTRY

	Percentage change from 20 Feb 2020 to 3 Sep 2020	Percentage change from 20 Feb 2020 to 4 June 2020
STOXX EUROPE 800 ex. Switzerland	-16.67%	-15.78%
EURO STOXX INDEX	-13.22%	-12.72%
EURO STOXX 50	-13.57%	-13.07%
AT	-30.21%	-23.30%
BE	-19.22%	-14.86%
BG	-20.67%	-15.69%
CY	-39.52%	-34.73%
CZ	-17.81%	-13.94%
DE	-4.44%	-7.32%
DK	4.24%	-2.48%
EE	-13.55%	-13.16%
ES	-29.45%	-21.88%
FI	-5.35%	-8.66%
FR	-17.37%	-15.91%
GB	-21.32%	-13.93%
GR	-29.24%	-26.64%
HR	-19.61%	-17.16%

HU	-24.05%	-17.83%
IE	-13.00%	-12.90%
IS	-1.50%	-4.44%
IT	-22.04%	-20.01%
LT	5.06%	-1.98%
LU	-25.92%	-21.60%
LV	5.53%	-1.81%
MT	-20.80%	-12.92%
NL	-11.66%	-9.17%
NO	-11.80%	-10.22%
PL	-15.75%	-13.47%
PT	-20.09%	-13.64%
RO	-10.73%	-11.45%
SE	-7.28%	-9.47%
SI	-13.01%	-10.83%
SK	-7.05%	0.07%

Sources: Refinitiv EIKON; ESMA.

FIGURE 6 – NSP BETWEEN 0.1% AND 0.2% OVER THE PERIOD 16 MARCH – 4 SEPTEMBER 2020



Sources: ESMA.