

EFTA SURVEILLANCE AUTHORITY DECISION

of 17 December 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 Area¹ (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 Justice² (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/EC³ (“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,

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

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.

⁶ Joint Committee Decision No 204/2016 of 30 September 2016.

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/COL⁹ of 16 March 2020, Decision No 056/20/COL¹⁰ of 11 June 2020 and Decision No 106/20/COL¹¹ of 17 September 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 and Decision No 106/20/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 registered since the outbreak of the COVID-19 pandemic, the measure was renewed as the outlook for the future recovery remained uncertain and threats to the orderly functioning and integrity of financial markets and the stability of the financial system were still present in the EEA EFTA States.
- (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

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_Ddecision_under_Art._28\(1\)_of_Regulation_236_2012%20\(1\).pdf](https://www.eftasurv.int/cms/sites/default/files/documents/gopro/5299-ESA_Ddecision_under_Art._28(1)_of_Regulation_236_2012%20(1).pdf).

¹⁰ https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA_Renewal_Ddecision_under_Art._28%281%29_of_Regulation_236_2012%20%281%29.pdf.

¹¹ https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA%20Second%20Renewal%20Decision%20under%20Art.%2028%281%29%20of%20Regulation%20236_2012.pdf.

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)

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

- (6) The EEA States remain highly impacted by the recent developments of the COVID-19 pandemic and the related uncertainty. In this context, the Authority considers that the identification of risks to the orderly functioning and integrity of EEA EFTA States' 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 trigger adverse consequences in the real economy. The overall outlook for a future recovery remains uncertain, despite recent positive developments in the EEA and beyond in relation to vaccines. The concerns expressed by the Authority in its previous Decision No 106/20/COL, regarding the possible increase in the number of COVID-19 cases, did materialise in 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, in the March and April 2020 period.
- (8) As a consequence, a number of containment measures were taken across the EEA, ranging from local lockdowns and curfews to nationwide lockdowns. As witnessed for the first contagion wave of the COVID-19 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 2020 European Economic Forecast¹² 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 2022.¹³ With reference to Norway,¹⁴ the report shows that, following a real GDP decline of 5.1% in the second quarter of 2020, the overall economy is forecast to shrink by around 3½% in 2020, before recovering by around 2¾% in 2021 and around 2% in 2022. Iceland's GDP contracted by more than 10% in the second quarter of 2020. The collapse of tourism and the renewed increase of COVID-19 cases in autumn led to an outlook of a deep recession for 2020.¹⁵ The EC's Autumn European Economic Forecast also indicates that Iceland's exports, in particular tourism, are set for a significant contraction, and "*the timid recovery in 2021 relies on the assumption of partial export recovery, but exports are not expected to return to their 2019 level before 2022*".¹⁶
- (10) Furthermore, the unemployment rate in the Euro area is expected to reach 8.3% in 2020 (7.7% in the EU) and to further increase in 2021.¹⁷ There are projections of a further increase in unemployment in Iceland for 2020, with an expected gradual decline afterwards.¹⁸
- (11) In relation to the evolution of financial markets, the positive news regarding the development and efficiency of vaccines have contributed to significantly improve market valuations and other related parameters very recently: between 6 November 2020 - the

¹² ("European Economic Forecast") Available at:

https://ec.europa.eu/info/sites/info/files/autumn_20_forecast.pdf.

¹³ European Economic Forecast, page 40.

¹⁴ European Economic Forecast, page 163.

¹⁵ European Economic Forecast, page 163.

¹⁶ European Economic Forecast, page 163.

¹⁷ European Economic Forecast, page 49.

¹⁸ European Economic Forecast, page 163.

trading day preceding the first positive announcement in relation to a vaccine candidate¹⁹ - and 2 December 2020, the STOXX EUROPE 800 ex. Switzerland and the Eurostoxx 50 indices gained respectively 8.7% and 9.9%. This trend was followed by the main national indices which increased on average by 10% [Figure 5].

- (12) However, taking the STOXX EUROPE 800 ex Switzerland Index performance as a reference (-10% compared to February 2020), its price recovery is significantly weaker when compared to that of other indices, such as the NIKKEI 225 (+14.1% compared to February 2020), the S&P 500 (+8.6% compared to February 2020) or the CSI 300 (+22.3% compared to February 2020) [Figure 1]. With reference to Norwegian and Icelandic indices, from 20 February 2020²⁰ to 2 December 2020 the OBX 25 decreased by 3.4% and the OMX Iceland All share increased by 10.9% [Figure 5].
- (13) When looking specifically into the banking sector, the losses in the STOXX Europe Total Market Banks (ref. European banks) on 2 December 2020 are at 22% compared to 20 February 2020, which is an improvement from the 37% decrease recorded in September 2020 [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 2020 to September 2020 (price drops ranging between 10% and 59%), this data remains indicative of a continuing weakness in the banking sector.
- (14) Furthermore, the risk of a decoupling between asset valuations and economic fundamentals persists and raises questions about the sustainability of the market rebound going forward. As indicated in the ESMA Risk Dashboard of 11 November 2020,²¹ the extent to which these risks will further materialise will critically depend on three drivers: the economic impact of the COVID-19 pandemic, market expectations on monetary and fiscal support measures, and any occurrence of additional external events in an already fragile global environment.
- (15) At the same time, there are positive signs in the financial markets. The confidence derived by the developments of vaccines is also reflected in the positive evolution of credit default swaps (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 Authority's Decision No 020/20/COL - while CDS spreads on European high yield, European financials and European financials subordinate show reductions of 39, 6 and 25 basis points if compared to the to the levels observed in February 2020 [Figure 1].
- (17) Similarly, 10Y government bond yields appear to have improved: the 10Y government bonds yields of DE, ES, FR and IT show a decrease of 14 basis points on average with respect to the levels of 20 February 2020 [Figure 1]. For Norway and Iceland, the sovereign 5 years CDS spreads respectively increased by 1.2 and 2.3 basis points from 20 February 2020 to 2 December 2020 (which corresponds to a percentage increase of 17% and 3%). The 10Y government bonds yields from 20 February 2020 to 2 December 2020 increased by 9.4 basis points for Iceland and it decreased by 50.6 basis points for Norway.

¹⁹ Available at: <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-announce-vaccine-candidate-against>.

²⁰ The date of 20 February was used in the Decision adopted in March to give an idea of the immediate pre-COVID situation.

²¹ Available at: https://www.esma.europa.eu/sites/default/files/library/esma50-165-1371_risk_dashboard_no_2_2020.pdf.

- (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 VSTOXX²² remains high compared to February 2020 (+8%). Similarly, the VIX²³ is still +5% on 2 December 2020 compared to February 2020 [Figure 1]. In Iceland and Norway, the historical volatility of the OMX Iceland and of the OBX 25 increased between 20 February 2020 and 2 December 2020 from 15 to 18% and from 16 to 23% respectively. Hence, it is not following the decreasing trend observed for the VIX and the VSTOXX.²⁴
- (19) The Authority points out that the percentage of shares with a net short position between 0.1 and 0.2% across the EEA 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 2020²⁵ (in which it was at 13%) [Figure 6].
- (20) As already indicated in the previous Decisions by the Authority, 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 in the EEA EFTA States persist.
- (22) The Authority 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) The long-term impacts of the COVID-19 crisis on the economy and in general are still unfolding. In particular, with reference to the EU, the EC's Autumn Economic Forecast develops two alternative scenarios ('upside scenario' and 'downside scenario')²⁶ motivated by the exceptional degree of uncertainty surrounding the evolution of the COVID-19 pandemic and the measures put in place to contain its spread.
- (24) The Authority considers it possible that scenarios similar to those described by the EC's Autumn Economic Forecast ('upside scenario' or 'downside scenario') could materialise in the EEA EFTA States.
- (25) In that context, the Authority notes that net short positions have not significantly diminished and that the volatility of equity prices even increased in Norway and Iceland (for the EU States the implied volatility is lower than the levels observed in September 2020, but proved sensitive to new events).
- (26) In addition, the Authority considers that the 10.9% appreciation of the OMX Iceland All Shares with respect to February 2020 is not *per se* an indicator of the country's exit from the COVID-19 related crisis. As explained above, market developments should be read in the framework of the overall economic scenario, which, for Iceland, consists of a deep recession outlook for 2020. Iceland's markets rebound should be seen in the context of the risk of decoupling between asset valuations and economic fundamentals, which puts

²² The VSTOXX measures the implied volatility based on the Eurostoxx 50 option prices.

²³ The VIX Index is calculated by using the midpoint of real-time S&P 500 Index (SPX) option bid/ask quotes.

²⁴ In this respect, as indicated in Decision No 106/20/COL, between 20 February and 3 September 2020 the historical volatility of the OMX Iceland decreased by 25.2% and that of OBX 25 decreased by 19.7%.

²⁵ See also section 4.3.

²⁶ European Economic Forecast, page 63.

the sustainability of such rebound into question. Finally, given the interconnectedness of EEA financial markets, such rebound might also be threatened by the developments in other EEA financial markets.

- (27) Such a fragile economic and market environment makes it more likely that short selling pressures could initiate or exacerbate negative developments in the coming months which, in turn, could negatively affect market confidence or the integrity of the price determination mechanism.
- (28) The Authority therefore considers that the combination of the circumstances described above constitutes a serious threat to the orderly functioning and integrity of the financial markets of the EU and of the EEA EFTA States.

2.2 Threat to the stability of the whole or part of the financial system in the Union

- (29) As explained by the ECB in its Financial Stability Review,²⁷ 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.
- (30) The COVID-19 pandemic continues to have a severe impact on the real economy in the EEA. 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.”* The Authority agrees with the views and the analysis contained in the ESMA Risk Dashboard and, as explained above, considers that similar risks may materialise in the EEA EFTA States.
- (31) The impact of COVID-19 has put the EEA economy into a situation of fragility in which further price declines amplified by a lack of information for regulators on short selling strategies could have highly detrimental consequences.
- (32) In this 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.
- (33) As indicated above, the percentage of shares with a net short position between 0.1 and 0.2% in the EEA has not significantly decreased since March 2020 [Figure 6].
- (34) The widespread price losses for credit institutions, which constituted one of the parameters for the renewal decision taken in June and September 2020, limitedly improved with respect to September 2020 but is still at -22% with respect to February 2020 [Figure 1]. 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.
- (35) 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 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.
- (36) Notwithstanding the partial recovery observed in certain sectors of EEA financial markets and in the markets of certain EEA EFTA States, the uncertainties mentioned above regarding the evolution of COVID-19 and its impact on the EEA economy remain and

²⁷ <https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201911~facad0251f.en.html>.

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.

- (37) Therefore, the Authority considers that the current market circumstances continue to seriously threaten the stability of the financial system in the EEA EFTA States.

2.3 Cross-border implications

- (38) Another condition for the Authority to be able to take this measure is that the identified threats have cross-border implications.
- (39) 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. The market rebound witnessed in Iceland, on the other hand, carries the risk of not being sustainable, in light of the above-mentioned risk of decoupling between financial markets performance and the fundamentals of the country.
- (40) Given 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.
- (41) 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 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)

- (42) Another condition required 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.
- (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 the Authority's Decision No 106/20/COL. In addition, there are no measures in force taken by the competent authorities pursuant to Regulation No 236/2012. In this context, national competent authorities across the EEA EFTA States 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 as described above, manifesting themselves in, and being exacerbated by, short selling pressure.
- (44) 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 The measure significantly addresses the threats or improves national competent authorities' ability to monitor the threats (Article 28(3)(a) of Regulation No 236/2012)

- (45) The Authority must also take into account to what extent the renewed measure significantly addresses the threats identified.
- (46) In particular, the Authority in cooperation with 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 EEA EFTA States and whether it would improve the ability of the competent authorities to monitor the threat.

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

- (47) 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.
- (48) 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.
- (49) 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.
- (50) The renewal of the measure addresses that need by setting out 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 No 236/2012.
- (51) Therefore, national competent authorities and the Authority 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.
- (52) The Authority considers that, without this measure being renewed for an additional three months, national competent authorities and the Authority 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 EEA EFTA State shares that in turn could be further amplified by the accumulation of short positions.
- (53) 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.

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

- (54) As described above, despite the encouraging news on vaccine developments recently improving markets performance, and despite the market rebound in Iceland, in certain EEA countries stock indices since 20 February 2020 are still at similar levels to those recorded in June or September 2020. Additionally, the EEA price recovery is significantly weaker compared to the performance of the other global economies (such as 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 EEA 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.
- (55) In that context, without this measure being renewed for an additional three months, national competent authorities and the Authority would face data limitations that would restrict their capacity to address potential negative effects on the economy and ultimately the financial stability of the EEA EFTA States.
- (56) 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.

4.3 Improvement of the ability of the competent authorities to monitor the threat

- (57) 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 No 236/2012.
- (58) 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 No 236/2012.
- (59) 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% in the EEA has not significantly reduced since March 2020²⁸ and remains at an average of 12% over the total net short positions, while it was at 13% in September [Figure 6]. 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 by ESMA, remain a relevant portion of the total net short positions.
- (60) 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

²⁸ The reports of the daily net short positions from Denmark are missing over the period 31 August – 4 September due to a technical issue.

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)

- (61) 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.
- (62) 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)

- (63) The Authority must assess whether the measure has detrimental effects which would be considered disproportionate compared to its benefits.
- (64) 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 identify in a timely way trends and materialising threats.
- (65) 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 Authority Decisions No 020/20/COL, No 056/20/COL and No 106/20/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.
- (66) 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 intended 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.
- (67) In terms of the scope of the renewed measure, the Authority considers 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.

- (68) 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.
- (69) 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.
- (70) 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.
- (71) 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)

- (72) On 14 December 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 15 December 2020, the national competent authorities replied to the Authority and raised no objections to the adoption of the proposed Decision.
- (73) The Authority'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/EU²⁹ 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

²⁹ 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.

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

1. 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.
2. 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.
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.³⁰

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.

Article 5

This decision is only drafted in English.

Done at Brussels on 17 December 2020.

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
Responsible College Member

Högni Kristjánsson
College Member

For Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Catherine Howdle.

³⁰ 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 (entry into force on 1 January 2021), OJ L 173, 12.6.2014, p. 1.

ANNEX

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 (EU) No 236/2012 of the European Parliament and of the Council [\[tws\]](#).

FIGURE 1 – FINANCIAL INDICATORS

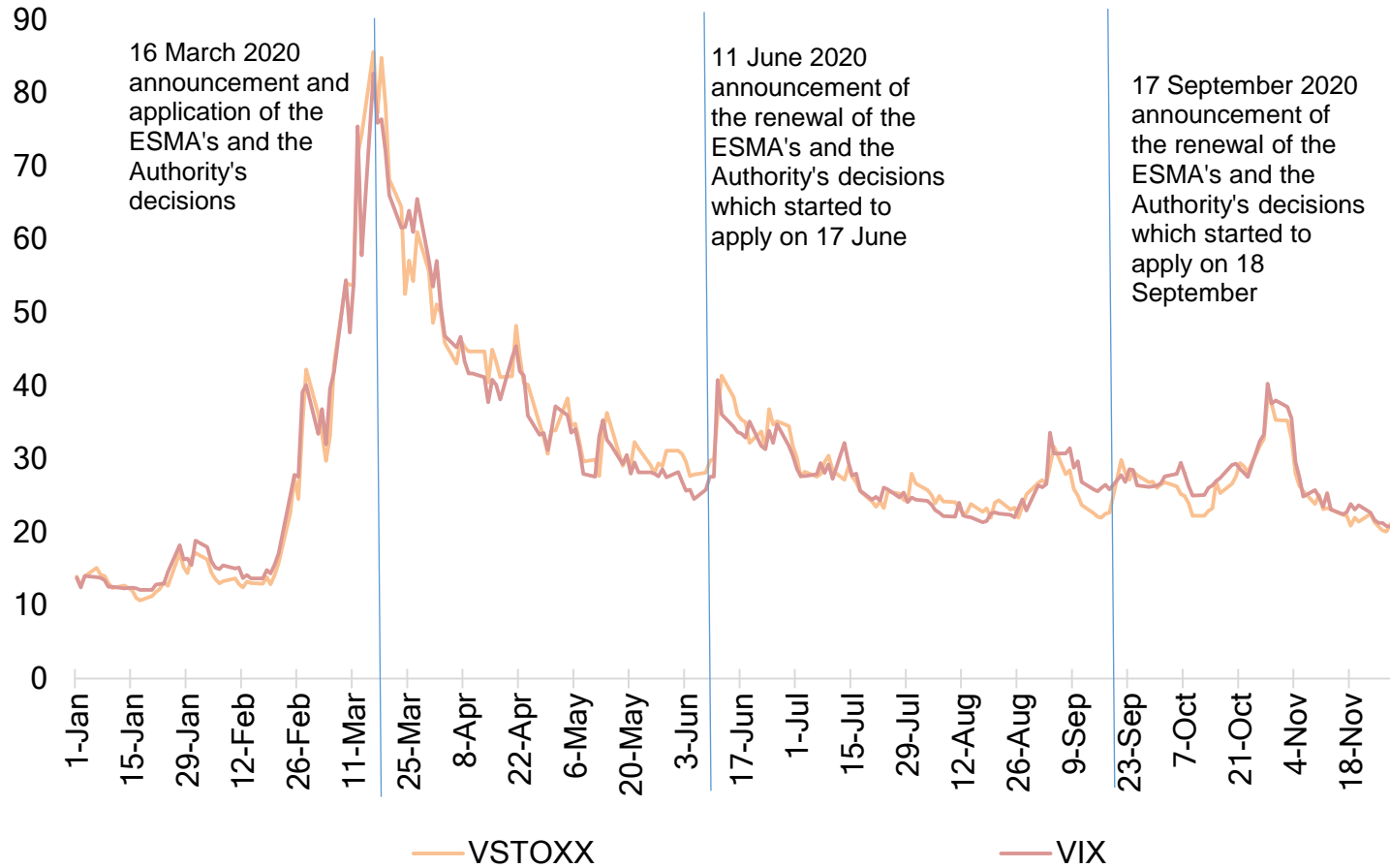
Equity market performance	Changes from 20/02/2020 to 02/12/2020	Index level as of 02/12/2020	Changes from 20/02/2020 to 03/09/2020	Index level as of 03/09/2020	Changes from 20/02/2020 to 04/06/2020	Index level as of 04/06/2020
STOXX EUROPE 800 ex. Switzerland	-10%	125	-17%	116	-16%	117
EURO STOXX INDEX	-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.

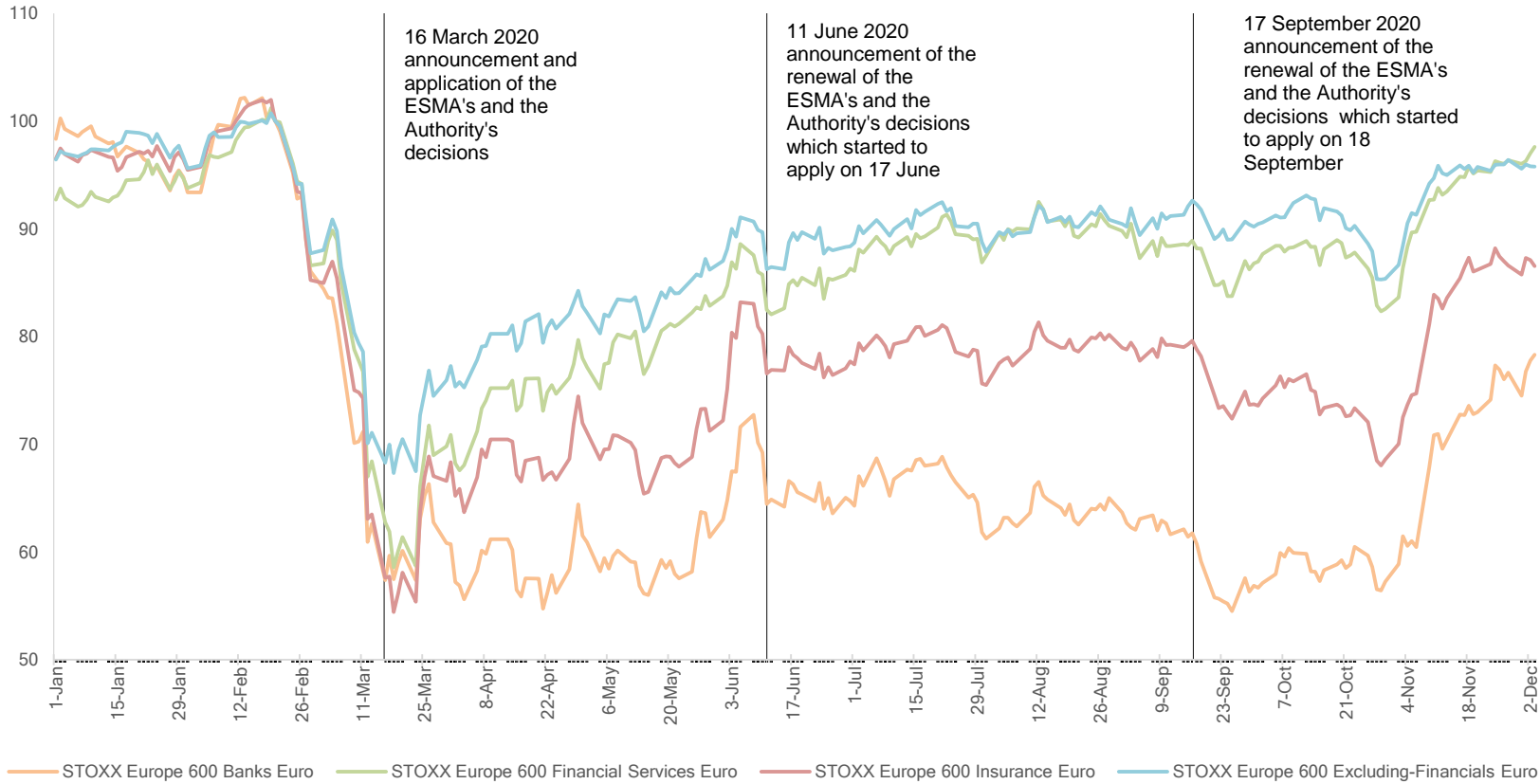
Sources: Refinitiv EIKON; ESMA.

FIGURE 2 – VOLATILITY INDICATORS

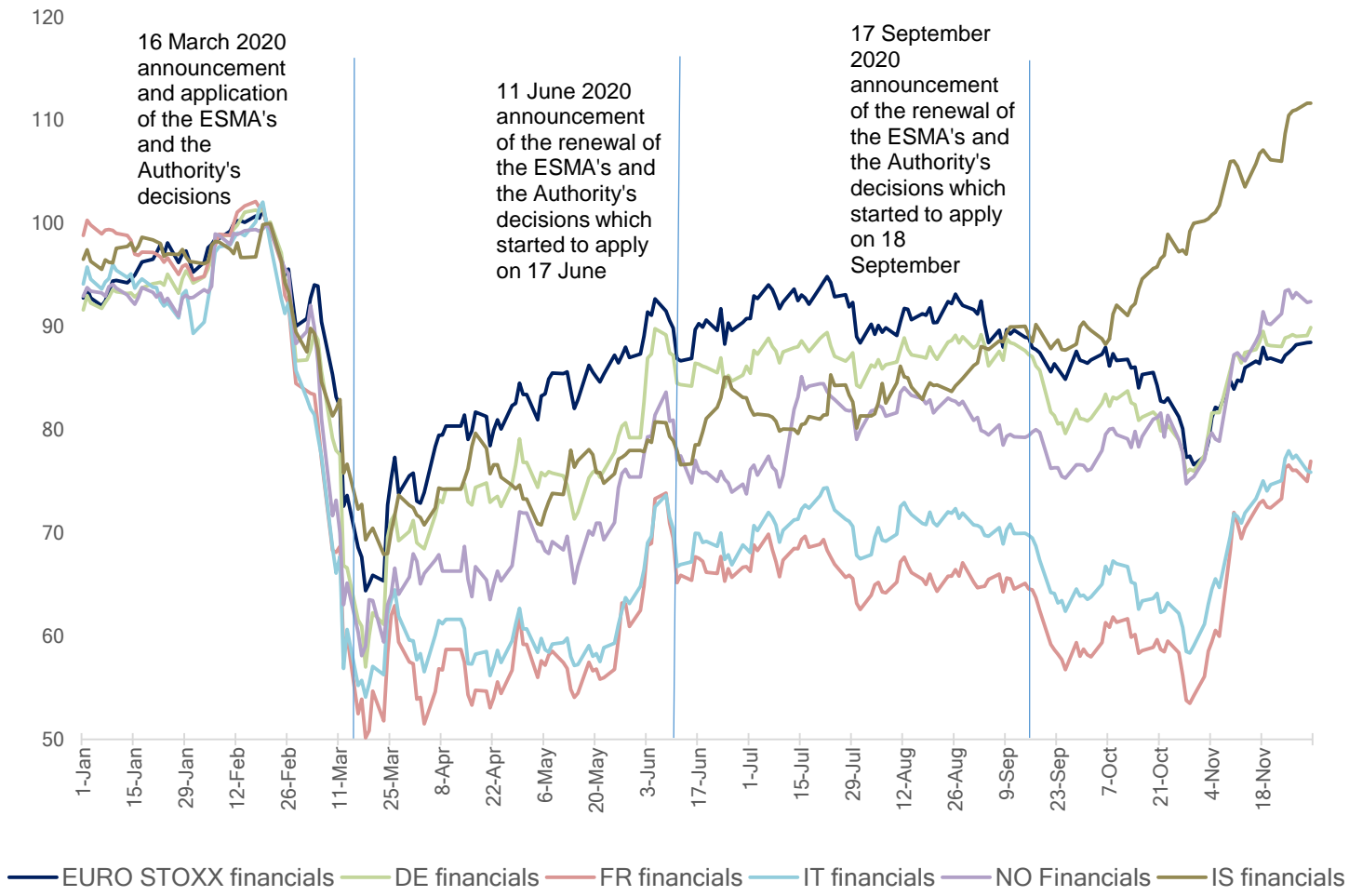


Note: Implied volatilities of EURO STOXX 50 (VSTOXX) and S&P 500 (VIX), in %.
Sources: Refinitiv Datastream, ESMA.

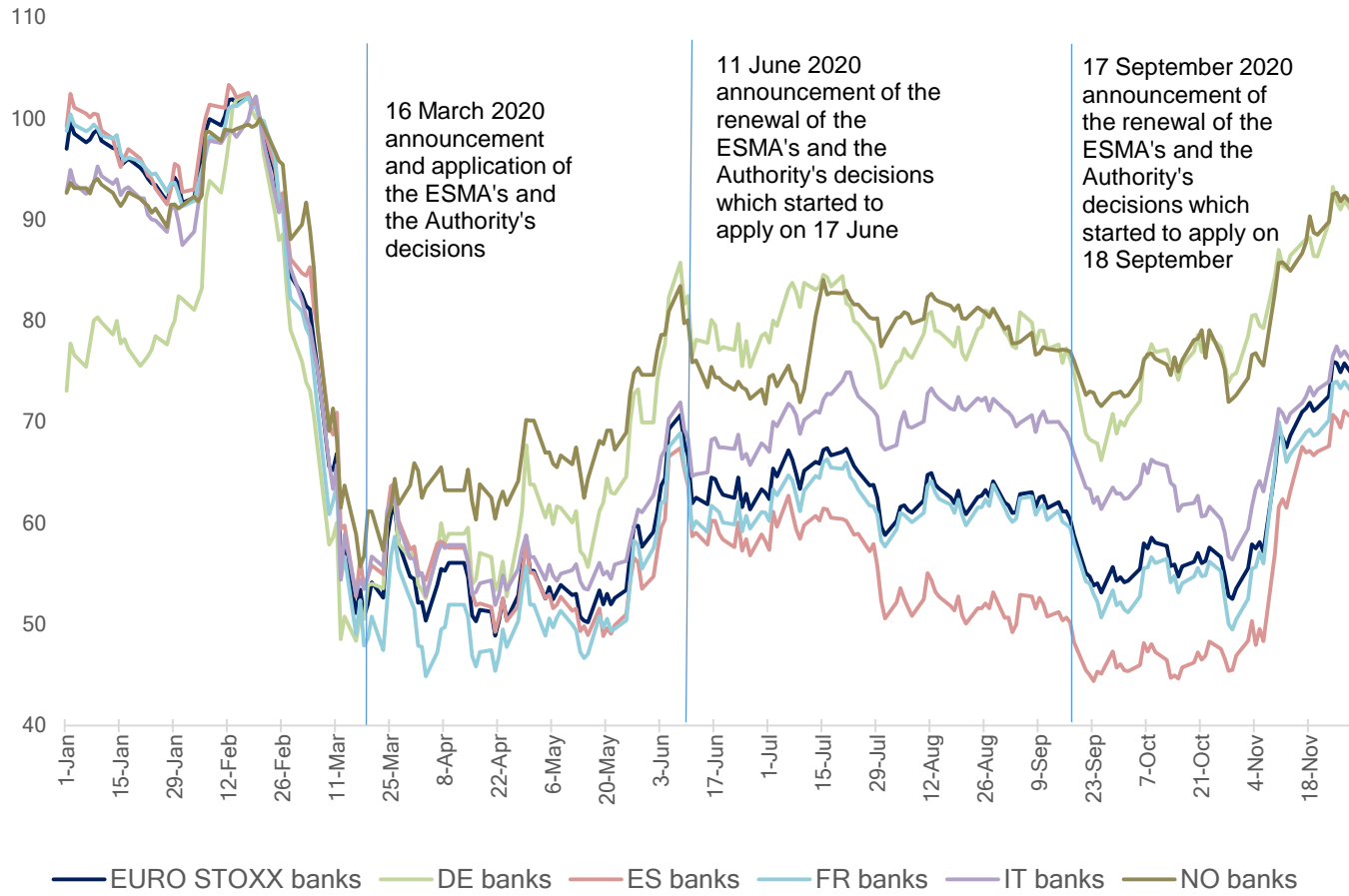
FIGURE 3 – EEA SECTORAL STOCK INDICES



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

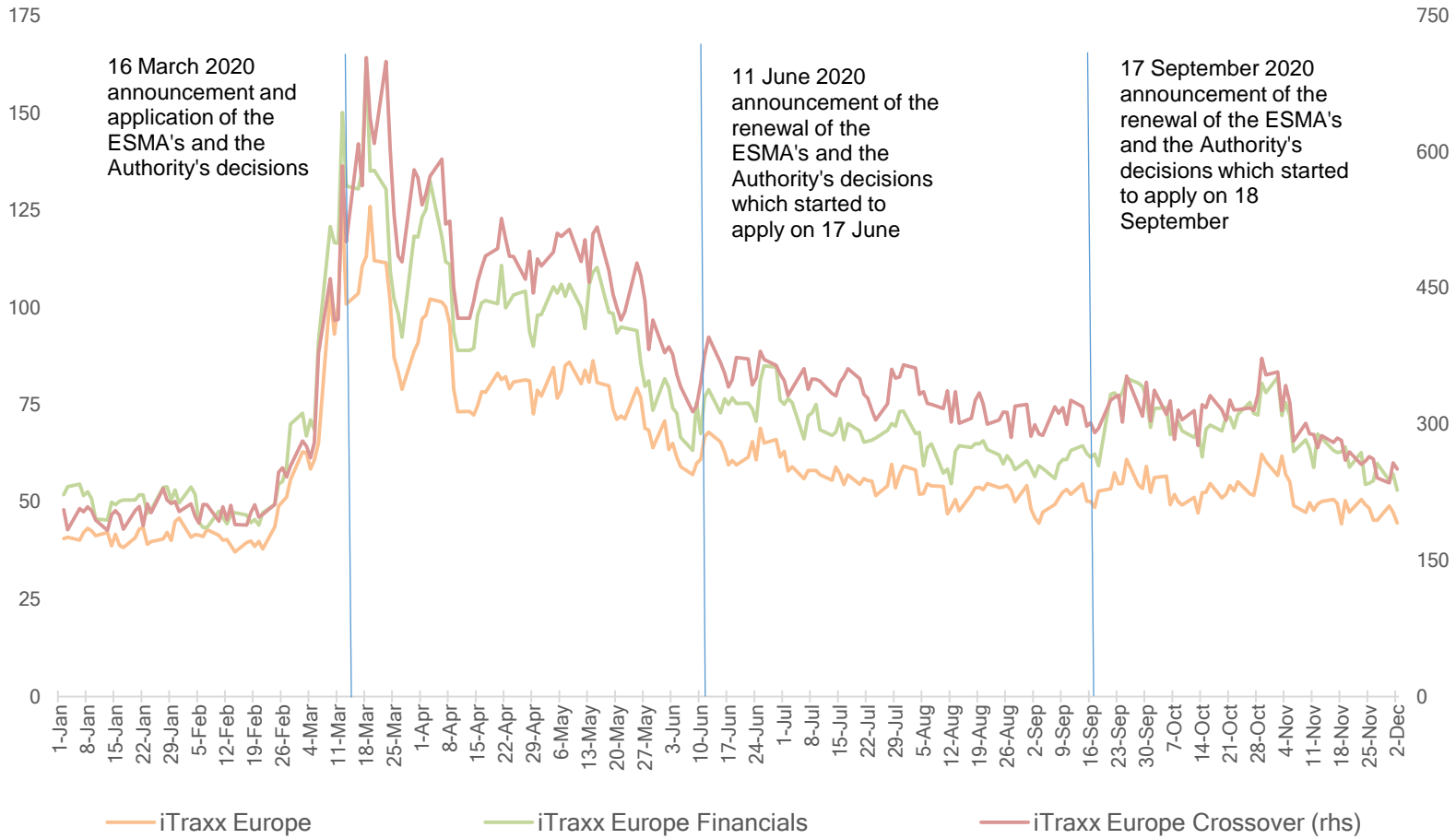


Note: Equity prices. 2020-02-20 = 100.
Sources: Refinitiv Datastream, ESMA.



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
STOXX EUROPE 800 ex. Switzerland	8.67%	-9.74%	-16.67%	-15.78%
EURO STOXX INDEX	9.41%	-6.06%	-13.22%	-12.72%
EURO STOXX 50	9.90%	-7.89%	-13.57%	-13.07%
AT	21.10%	-17.84%	-30.21%	-23.30%
BE	16.24%	-9.94%	-19.22%	-14.86%
BG	0.55%	-22.03%	-20.67%	-15.69%
CY	25.10%	-27.80%	-39.52%	-34.73%
CZ	11.15%	-12.35%	-17.81%	-13.94%
DE	6.68%	-2.57%	-4.44%	-7.32%
DK	-1.90%	10.16%	4.24%	-2.48%
EE	11.25%	-4.72%	-13.55%	-13.16%
ES	19.66%	-17.22%	-29.45%	-21.88%
FI	6.38%	1.96%	-5.35%	-8.66%
FR	12.54%	-7.91%	-17.37%	-15.91%
GB	9.36%	-13.09%	-21.32%	-13.93%
GR	29.14%	-16.82%	-29.24%	-26.64%

HR	10.22%	-13.43%	-19.61%	-17.16%
HU	10.74%	-14.42%	-24.05%	-17.83%
IE	5.56%	-0.58%	-13.00%	-12.90%
IS	5.78%	10.90%	-1.50%	-4.44%
IT	11.64%	-12.39%	-22.04%	-20.01%
LT	4.44%	3.84%	5.06%	-1.98%
LU	14.85%	-7.78%	-25.92%	-21.60%
LV	-0.47%	6.81%	5.53%	-1.81%
MT	15.14%	-13.86%	-20.80%	-12.92%
NL	6.64%	-1.80%	-11.66%	-9.17%
NO	11.02%	-3.37%	-11.80%	-10.22%
PL	11.81%	-9.62%	-15.75%	-13.47%
PT	14.45%	-14.54%	-20.09%	-13.64%
RO	6.43%	-7.58%	-10.73%	-11.45%
SE	5.47%	1.06%	-7.28%	-9.47%
SI	8.13%	-9.57%	-13.01%	-10.83%
SK	-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

