

ALLEN & OVERY



Regulatory monitoring

Newsletter

June 2020

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1. Banking supervisory law

1.1 Prudential regulation

(a) General

(i) EU

EBA: Letter on the submission of technical standards under the risk reduction measures package

Status: Final

The EBA published a letter from José Manuel Campa (EBA Chair) to John Berrigan (Director General for Financial Stability, Financial Services and Capital Markets Union at the EC). The letter states that the EBA plans to submit technical standards due to be delivered by December 2019 and June 2020 within the new deadlines set out in the tables within the letter (in respect of CRR II, CRD V, BRRD II and EMIR), most of which have been set out accordingly in the EBA roadmap on the risk reduction measures package. The EBA confirms that there is no deviation (except for three listed within the tables) beyond that set out in the EBA's roadmap, despite the exceptional circumstances of Covid-19.

Date of publication: 15/06/2020

ECB: Report on areas for improvement in banks' lending standards before the Covid-19 crisis

Status: Final

The ECB published a report on areas for improvement in banks' lending standards before the Covid-19 crisis.

Date of publication: 10/06/2020

EBA: Delivery on the implementation of the new regulatory framework for investments firms

Status: Consultation

Deadline for the submission of comments: 04/09/2020

Following its roadmap for the implementation of the new regulatory framework for investment firms, the EBA launched four public consultations on its first set of regulatory deliverables on prudential, reporting, disclosures and remuneration requirements. The first consultation paper on prudential requirements includes three draft RTS on the reclassification of certain investment firms to credit institutions, five draft RTS on capital requirements for investment firms at solo level, and one draft RTS on the scope and methods of prudential consolidation for investment firms at group level. The second consultation paper on reporting requirements and disclosures, includes draft ITS on the levels of capital, concentration risk, liquidity, the level of activities as well as disclosure of own funds; and draft RTS specifying the information that investment firms have to provide in order to enable the monitoring of the thresholds that determine whether an investment firm has to apply for authorisation as a credit institution. The third and fourth consultation papers on remuneration requirements include draft RTS on the criteria to identify all categories of staff whose professional activities have a material impact on the firm's risk profile or assets it manages ('risk takers'); and draft RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration of risk takers.

- CP on draft RTS prudential requirements for investment firms
- CP on draft ITS on reporting and disclosures for investment firms
- CP on draft RTS on instruments for investment firms remuneration
- CP on draft RTS on pay out in instruments for variable remuneration under IFD

Date of publication: 04/06/2020

EBA: Roadmap on investment firms (IFs) in respect of mandates under the Investment Firms Directive (IFD) and Investment Firms Regulation (IFR)

Status: Final

The EBA published its roadmap on IFs, which sets out the intentions of the EBA in respect of delivering various regulatory products as mandated under the IFD and IFR. The roadmap sets out four principles which the EBA will rely on during the development of the framework: (i) ensuring proportionality with regard to the regulatory requirements aimed at IFs of different size and complexity is a key aspect of the new regime; (ii) recognising that the regimes applicable to credit institutions and IFs are interlinked and overlap; (iii) ensuring that the main risks of IFs are well covered; and (iv) further strengthening a harmonised regulatory environment, in order to foster a European level playing field across types and categories of IFs. In the roadmap, the EBA also provides an overview of the timeline for the planned deliverables as well as detailing relevant policy and strategy. The EBA's delivery is grouped into six thematic areas: (a) thresholds and criteria; (b) capital requirements and composition; (c) reporting and disclosure; (d) remuneration and governance; (e) supervisory convergence and SREP; and (f) economic Social and Governance (ESG) factors and risks. The timetable for the mandates is divided into four phases, which determine which of the following work will be focused on: capital requirements and composition, remuneration and governance, reporting and disclosure, supervisory convergence and the supervisory review and evaluation process (SREP), as well as ESG factors and risks. The timings for the four phases are: (1) phase one to be delivered by December; (2) phase two by June 2021; (3) phase three by December 2021; and (4) phase four during 2022-2025.

Date of publication: 02/06/2020

(ii) International

BCBS: FAQs on the Basel framework

Status: Final

BCBS published a set of FAQs on the Basel framework which covers the following elements in relation to the reform of benchmark rates: the definition of capital, market risk, counterparty credit risk, and the standardised approach to operational risk.

Date of publication: 05/06/2020

BCBS: Updated FAQs on Basel III monitoring

Status: Final

The BCBS published an update on its FAQs on Basel III monitoring. Compared to the previous version there has been added a question on the worksheet "TB risk class".

Date of publication: 03/06/2020

(b) Solvency/Own funds issues

(i) EU

ESRB: Decision on the cancellation of certain reports on actions and measures taken pursuant to Recommendation ESRB/2014/1 and Recommendation ESRB/2015/2

Status: Published in the OJ

Date of entry into force: 02/06/2020

An ESRB decision (dated 2 June) on the cancellation of certain reports on actions and measures taken pursuant to Recommendation ESRB/2014/1, on guidance for setting CCyB rates, and Recommendation ESRB/2015/2, on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures, was published in the OJ. Due to the Covid-19 outbreak, addressees of the Recommendations are no longer requested to submit reports that were due by 30 June.

Date of publication: 19/06/2020

EBA: Consultation on technical standards specifying the prudential treatment of software assets**Status:** Consultation**Deadline for the submission of comments:** 09/07/2020

The EBA began consulting on draft RTS specifying the prudential treatment of software assets. As part of the Risk Reduction Measures package, the CRR has been amended by introducing an exemption from the deduction of intangible assets from CET1 items for prudently valued software assets, the value of which is not negatively affected by resolution, insolvency or liquidation of the institution. These draft RTS specify the methodology to be adopted by institutions, in particular, introducing a prudential treatment based on their amortisation, which is deemed to strike an appropriate balance between the need to maintain a certain margin of conservatism in the treatment of software assets as intangibles, and their relevance from a business and an economic perspective.

Date of publication: 09/06/2020**EBA: Consultation on technical standards on capital requirements of non-modellable risks under the Fundamental Review of the Trading Book (FRTB)****Status:** Consultation**Deadline for the submission of comments:** 04/09/2020

The EBA published a consultation paper on the capitalisation of non-modellable risk factors (NMRFs) for institutions using the new Internal Model Approach (IMA) under the FRTB. The draft RTS specify all of the technical details that are essential for determining the own funds requirements related to non-modellable risks. In particular, they set how institutions are to determine the stress scenario risk measure corresponding to a NMRF. The draft RTS identify two over-arching approaches that may be used by institutions for determining an extreme scenario of future shock: (i) the first over-arching approach (Option A) requires institutions to identify a stress period for each broad risk factor category and to collect data for NMRFs on the stress period in order to determine an extreme scenario of future shock; and (ii) the second over-arching approach (Option B) recognises that, for NMRFs, data availability in a period of stress might be limited and requires institutions to collect data on NMRFs on the current period – this approach aims at improving the quality of the data that is used to calibrate the extreme scenarios of future shocks. Under this first approach, the draft RTS set that institutions can use a direct method or stepwise method. Under the second approach, institutions should use the stepwise method.

Date of publication: 04/06/2020**(c) Securitisation****(i) International****BCBS: Capital treatment of securitisations of non-performing loans****Status:** Consultation**Deadline for the submission of comments:** 23/08/2020

BCBS began consulting on a proposed technical amendment to address a gap in the regulatory framework, setting out a prudent treatment for securitisations of non-performing loans. The technical amendment establishes a 100% risk weight for certain senior tranches of non-performing loan securitisations. The risk weight applicable to the other positions is determined by the existing hierarchy of approaches, in conjunction with a 100% risk weight floor and a ban on the use of certain inputs for capital requirements. The present amendment does not change the applicable capital requirements to securitisations of performing assets. BCBS proposes that this amendment to the securitisation standard will come into effect by no later than 1 January 2023.

Date of publication: 23/06/2020

(d) Authorisation and passporting

(i) EU

EBA: Final technical standards under the CRD to enhance quality and consistency of information for passport notifications

Status: Final

The EBA published final revised technical standards under Articles 35, 36 and 39 of the CRD to enhance quality and consistency of information for passport notifications. The amending technical standards increase the quality and consistency of information to be provided by a credit institution notifying its home competent authorities when it intends to open a branch or provide services in another Member State, as well as of the communication between home and host authorities. In particular, the most material revisions that have been made by the EBA are: (i) requesting the credit institution to indicate as accurately as possible, the intended start date of each activity for which the notification is submitted, rather than just the core business activities – such change applies to both the branch and the services passport notification; (ii) with regard to the establishment of branches, additional granularity has been included in relation to the financial plan – assumptions underpinning forecasts are now expressly requested to be included in the notification; and (iii) in respect of branch, planned termination, a new requirement has been added to the communication to be made by the credit institution – it imposes the submission of a statement by the credit institution indicating the measures that have been or that are being undertaken to ensure that it will no longer hold deposits or repayable funds from the public through the branch after the termination.

Date of publication: 18/06/2020

(e) Internal governance/“Authorised Persons Regime“

(i) Germany

BaFin: Consultation 06/20 (BA) on managers and supervisory bodies

Status: Consultation

Deadline for the submission of comments: 17/07/2020

BaFin published its Consultation 06/20 (BA) on managers and supervisory bodies. The Consultation covers two leaflets that are going to be amended: (i) the [leaflet](#) on managers in accordance with the German Banking Act (*Kreditwesengesetz* – KWG), the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz* – ZAG) and the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB); and (ii) the [leaflet](#) on the members of administrative or supervisory bodies pursuant to the KWG and the KAGB. In revising the above-mentioned documents, BaFin focused on incorporating into its administrative practice guidelines issued by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) in the context of the limited compliance statements it issued for this purpose. Specifically, these are the "Guidelines on the assessment of the suitability of members of the management body and key function holders" (EBA/GL/2017/12) and the "Guidelines on Internal Governance" (EBA/GL/2017/11).

Date of publication: 03/06/2020

(ii) EU

EBA: Final technical standards under the CRD to identify staff with a material impact on the institution's risk profile

Status: Final

The EBA published revised Regulatory Technical Standards (RTS) under the CRD to identify all categories of staff whose professional activities have a material impact on the institution's risk profile ("risk takers"). Following feedback received during the consultation phase, the EBA has made the following changes to its draft RTS: (a) qualitative criteria have been revisited to enhance the application of proportionality; (b) the definition of managerial responsibility has been revised to take into account that institutions of different sizes have different layers of hierarchical levels; (c) clarification on how the criteria should be applied on a consolidated, sub-consolidated and individual basis; and (d) some flexibility in calculating the amount of

remuneration for the application of the quantitative requirements has been introduced. In terms of quantitative criteria, the 0.3% of staff with the highest remuneration criterion has been amended to be applied only by institutions that have more than 1,000 staff in order to reduce the burden for small institutions. The final draft RTS retains the qualitative criterion that identifies the staff with high levels of remuneration above EUR 750 000.

Date of publication: 18/06/2020

(f) Deposit protection

(i) EU

EBA: Report on the peer review of Deposit Guarantee Scheme (DGS) stress tests and the resilience of DGSs

Status: Final

The EBA published a report on its first peer review of DGS stress tests and the resilience of DGS. The purpose of the peer review was to assess the resilience of DGS based on the results of the DGS stress tests, and to identify good practices and areas for improvement. In its report, the EBA assessed the results of 135 DGS stress tests performed by 32 DGS from 27 EU Member States. The priority tests covered: (i) operational and funding capabilities; (ii) credit institutions' single customer view (SCV) files containing depositor information to prepare for a DGS payout; and (iii) cross-border cooperation in case of cross-border branches. The EBA concluded that such tests have become an established tool to prepare for DGS interventions. In addition, the EBA is of the view that using the grading system outlined in the Guidelines on stress tests of DGS, the overall resilience of DGS across the EU is 'fair', which is the second best result, after 'optimal' – the identified shortcomings are isolated or can easily be addressed by the DGS at the point of failure, and are unlikely to affect the ability of DGS to perform their tasks in line with the Deposit Guarantee Schemes Directive (DGSD). The peer review includes provisions stemming from the outbreak of the Covid-19 pandemic – specifically, the EBA outlines lessons learnt from a real-life payout case in one EU Member State.

Date of publication: 17/06/2020

(g) Notifications

(i) Germany

DB: Overview of the most important notification and reporting regulations for financial services institutions and securities trading banks

Status: Final

The German Central Bank (*Deutsche Bundesbank* – DB) published an update on its overview of the most important notification and reporting regulations for financial services institutions and securities trading banks.

Date of publication: 15/06/2020

(h) Supervisory reporting

(i) EU

EBA: Final draft ITS on supervisory reporting requirements for institutions under the CRR

Status: Final

The EBA published its final draft ITS on supervisory reporting requirements for institutions under the CRR. The reporting ITS reflect the changes brought in by the CRR2 and the Prudential Backstop Regulation and include new reporting requirements on counterparty credit risk and net stable funding ratio, non-performing exposures minimum coverage and changes to different areas of reporting, including own funds, credit risk, large exposures, leverage ratio, FINREP and G-SII indicators. These ITS

include several proportionality measures, including simplified net stable funding ratio reporting for small and non-complex institutions. The first reporting reference date will be 30 June 2021.

Date of publication: 25/06/2020

EBA: Study of institutions' reporting costs under the CRR

Status: Final

The EBA published a draft cover note on its 'cost of compliance study' of institutions' reporting costs under Article 430(8) of the CRR. The draft cover note discusses, amongst other things, the: (i) scope of the compliance study which aims at understanding the overall reporting costs of institutions, including ad hoc supervisory requests, with the core objective being understanding the costs and their drivers associated with supervisory reporting; (ii) EBA's approach to the study; (iii) overall indicative timeline for the study – the original intention of the EBA, also considering the timelines specified in the CRR mandate, was to complete the cost of compliance study and deliver the results to the EC by the end of 2020 but this timeline is severely affected by the Covid-19 pandemic and will need to be adjusted and finalised; and (iv) communication with stakeholders – the EBA is working on the cost of compliance study together with relevant competent authorities across the EU. The EBA is planning to organise the analytical work based on four components: (a) an initial questionnaire to credit institutions to collect quantitative and qualitative information on reporting costs and cost drivers as well as benefits. This will be the main source of information for the study. The EBA wants to understand the degree of effectiveness of proportionality measures put in place so far and test respondents' views on potential future changes to the supervisory reporting requirements and the EBA reporting framework; (b) a second questionnaire to the users of reporting, which aims to gather a deeper understanding of the benefits of standardised supervisory reporting for its various users; (c) interviews with selected industry associations and institutions; and (d) fact finding case studies.

Date of publication: 03/06/2020

(i) Disclosure

(i) EU

EBA: Final draft ITS on public disclosures by institutions of the information referred to in Titles II and III of Part Eight of the CRR

Status: Final

The EBA published its final draft ITS on public disclosures by institutions of the information referred to in titles II and III of Part Eight of the CRR. The disclosure ITS optimise the Pillar 3 policy framework for credit institutions by providing a single overarching package that brings together all previous pieces of regulation and incorporates all prudential disclosures, thus facilitating implementation by institutions and improving clarity for users of such information. The ITS implement the disclosures in a way so as to ensure that market participants have sufficient and comparable information to assess the risk profiles of institutions, in line with the BCBS Pillar 3 standards and with the increased standardisation of institutions' public disclosures. The CRR2 definitions for 'small and less complex institutions' and 'large institutions' support proportionality of Pillar 3 disclosures. In addition, the ITS include thresholds to trigger additional disclosures for large banks based on their risk profiles. The reporting ITS reflect the changes brought in by the CRR2 and the Prudential Backstop Regulation and include new reporting requirements on counterparty credit risk and net stable funding ratio, non-performing exposures minimum coverage and changes to different areas of reporting, including own funds, credit risk, large exposures, leverage ratio, FINREP and G-SII indicators. These ITS include several proportionality measures, including simplified net stable funding ratio reporting for small and non-complex institutions. The first disclosure reference date will be 30 June 2021.

Date of publication: 25/06/2020

(j) FinTech

(i) EU

EC: Speech on legislative proposals for cryptoassets and digital operational resilience

Status: Final

The EC published a speech by Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union (CMU), on the EC's strategy on digital finance. The EC aims to: (i) deepen the single market for digital financial services and assess the merits of an EU-wide open finance policy; (ii) present legislation on an EU wide framework for crypto-assets by the end of 2020 to provide legal certainty and a passport for markets in crypto-assets; and (iii) present legislation requiring all financial institutions to comply with standards of operational resilience – setting out: (a) effective channels for reporting cyber incidents; (b) tools for testing the cyber-resilience of financial firms; and (c) a financial oversight mechanism for outsourcing to third party ICT providers such as cloud services.

Date of publication: 24/06/2020

ECON: Draft Report with recommendations to the Commission on Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets

Status: Draft

The EP published a draft report with recommendations to the EC on digital finance. In respect of general considerations, the EP states the importance of aligning the EC's work with international regulatory bodies in developing international standards given the cross-jurisdictional nature of digital finance and calls on the EC to: (i) deploy a proportionate, cross-sectorial and holistic approach to its work on FinTech; (ii) act as first mover in order to create a favourable environment for European FinTech hubs and firms to scale up. The EP also stress that law and supervision in the area of FinTech should be based on specific principles (these being that the same services and their associated similar risks should be subject to the same rules, technology neutrality and a risk-based approach). For defining a framework for cryptoassets, the EP state that: (a) applying existing regulations to previously unregulated cryptoassets will be necessary; (b) clear guidance on the applicable regulatory and prudential processes is needed in order to provide regulatory certainty regarding crypto-assets; (c) any further categorisation of cryptoassets should be balanced and flexible in order to give space for innovation in the sector while ensuring that risks can be identified at an early stage; and (d) a common Union framework on crypto-assets should help increase consumer and investor protection. In respect of a common approach to cyber resilience of the financial sector, the EP: (1) calls on the EC to propose legislative changes in the area of ICT and cyber security requirements for the EU financial sector in order to address any inconsistencies, gaps and loopholes that are found to exist in relevant law; and (2) stresses the need for further information sharing and enhanced coordination between relevant regulatory and supervisory authorities. For the collection and analysis of data, the EP calls for effective oversight of 'big data' analytics in a way that addresses the opacity of models while ensuring that there is sufficient access to relevant and quality data, and also requests that the EC: (I) examines how to ensure that digital finance entities can access on an equitable basis relevant and useful data to help ensure that innovative FinTech businesses can grow within the EU and beyond; and (II) considers a framework for digital onboarding and the use of digital financial identities, which would aim to harmonise these measures across the EU insofar as necessary.

Date of publication: 04/06/2020

ESMA: Consultation on cloud outsourcing guidelines

Status: Consultation

Deadline for the submission of comments: 01/09/2020

ESMA published a consultation paper on draft guidelines on outsourcing to cloud service providers. The purpose of these draft guidelines is to provide guidance on the outsourcing requirements applicable to firms where they outsource to cloud service providers. These draft guidelines are intended to help firms identify, address and monitor the risks that may arise from their cloud outsourcing arrangements (from making the decision to outsource, selecting a cloud service provider, monitoring outsourced activities to providing for exit strategies). ESMA sets out nine guidelines on: (i) governance, oversight and documentation; (ii) pre-outsourcing analysis and due diligence; (iii) contractual requirements; (iv) information security; (v) exit strategies; (vi) access and audit rights; (vii) sub-outsourcing; (viii) written notification to competent authorities; and (ix)

supervision of cloud outsourcing arrangements. ESMA will consider the responses it receives in Q3 and expects to publish a final report and guidelines in Q4 of this year or Q1 2021.

Date of publication: 03/06/2020

(ii) International

IOSCO: Consultation on AI/ML guidance for market intermediaries and asset managers

Status: Consultation

Deadline for the submission of comments: 26/10/2020

IOSCO began consulting on proposed guidance on the use of artificial intelligence (AI) and machine learning (ML) by market intermediaries and asset managers. The consultation proposes six measures to assist IOSCO members in creating appropriate regulatory frameworks to supervise market intermediaries and asset managers that use AI and ML. The proposed measures seek to ensure that market intermediaries and asset managers have the following features: (i) appropriate governance, controls and oversight frameworks over the development, testing, use and performance monitoring of AI and ML; (ii) ensuring staff have adequate knowledge, skills and experience to implement, oversee, and challenge the outcomes of the AI and ML; (iii) robust, consistent and clearly defined development and testing processes to enable firms to identify potential issues prior to full deployment of AI and ML; and (iv) appropriate transparency and disclosures to investors, regulators and other relevant stakeholders.

Date of publication: 25/06/2020

(k) Sustainable finance

(i) EU

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

Status: Published in the OJ

Date of entry into force: 12/07/2020

The EP announced that it has adopted the Taxonomy Regulation, which includes new rules to determine whether an economic activity is environmentally sustainable. The Regulation lays down environmental objectives and allows economic activity to be labelled as environmentally sustainable if it contributes to at least one of the objectives without significantly harming any of the others. The objectives are: (i) climate change mitigation and adaptation; (ii) sustainable use and protection of water and marine resources; (iii) transition to a circular economy, including waste prevention and increasing the uptake of secondary raw materials; (iv) pollution prevention and control; and (v) protection and restoration of biodiversity and ecosystems. The EP states that the Regulation should help to achieve the goal of a climate-neutral EU by 2050. The Regulation also includes a clear mandate for the EC to start defining environmentally harmful activities.

Date of publication: 22/06/2020

ECB: Banking Supervision's approach to climate risks

Status: Final

The ECB published a speech by Andrea Enria (Chair of the ECB's Supervisory Board) at the European Central Bank Climate and Environmental Risks Webinar, addressing the ECB Banking Supervision's approach to climate risks. The speech highlights that although methodologies for estimating the magnitude of climate-related risks for banks are still being developed, available estimates suggest that the impact of climate-related risks is likely to be significant. Furthermore, Andrea Enria emphasises that the nature of climate-related risks requires forward-looking supervision – climate change provides an opportunity to broaden horizons and combine short-term, business-as-usual risk management tools with mechanisms that allow to better understand and manage risks driven by more structural, long-term changes in economies. Also, the speech outlines that the adequate pricing of climate-related risks will contribute to a smoother transition to a low-carbon economy. Andrea Enria draws attention to the ECB's draft guide (published on 20 May) which describes how the ECB Banking Supervision expects banks to consider, manage

and disclose climate-related and environmental risks in the light of current regulatory requirements. The Banking Supervision intends to provide transparency about the ECB's understanding of safe and prudent management of these risks within the current prudential framework, increase the industry's awareness of these risks as well as improve risk management practices. It is also closely coordinating its approach with other supervisors and with regulators, specifically developing the guide with national competent authorities (NCAs). Once the guide is finalised, the ECB expects banks to assess whether their current practices are safe and prudent in the light of its supervisory expectations and to start adapting their practices where necessary.

Date of publication: 17/06/2020

EC: Consultation on a Proposal for a Regulation on a EU standard for 'green bonds'

Status: Consultation

Deadline for the submission of comments: 02/10/2020

The EC published a consultation alongside an impact assessment, requesting feedback on its initiative for establishing an EU Green Bond Standard (GBS). In its consultation, the EC states that the Covid-19 pandemic shows the importance of integrating social issues and objectives into the broader functioning of the economy. The EC also states that the EU GBS aims to address barriers identified in the current market by: (i) reducing uncertainty about what constitutes green investment by linking it to the EU taxonomy; (ii) standardising costly and complex verification and reporting processes; and (iii) establishing an official standard to which potential incentives could be linked. In its consultation, the EC asks questions in respect of: (a) the potential need for an official / formalised EU GBS; (b) the proposed content of the standard; (c) the use of proceeds and the link to the EU Taxonomy; (d) grandfathering and new investments; (e) incentives, in particular whether specific financial or alternative incentives are necessary; (f) issues for public sector issuers; and (g) improving the cost of financing for green projects or assets. The impact assessment covers, amongst other things: (1) problems the initiative aims to tackle; (2) the basis for EU intervention (legal basis and subsidiarity check); (3) objectives and policy options; and (4) preliminary assessment of expected impacts – such as likely economic impacts. If a legislative approach is taken to enact the initiative, an implementation plan will be established. The deadline for feedback on the impact assessment is 10 July.

Date of publication: 12/06/2020

ESRB: Report on measuring climate change risks to financial stability

Status: Final

The ESRB published a report on measuring climate change risks to financial stability. The report gives an overview on the climate conditions of the past decades and the changing trends. Furthermore, the report shows the global insured catastrophe losses which were due to climatic events. In its second chapter, the report deals with the question of financial markets pricing such shocks or building capacity to do so in the future. The fourth chapter explains what we can learn from forward-looking scenario analysis based on existing information and methods, and the report ends with a chapter on conclusions, open issues and the proposed way forward.

Date of publication: 08/06/2020

EC: Proposals for Delegated Regulations on the obligation to advise clients on social and environmental aspects of financial products

Status: Consultation

Deadline for the submission of comments: 06/07/2020

The EC began consulting on the draft texts of six Commission Delegated Regulations and Directives as part of the EU's action plan on sustainable finance, ensuring that sustainability risks and factors are taken account of and supplementing the UCITS Directive, AIFMD, MiFID II – with regards to product governance obligations and certain organisational requirements and operating conditions for investment firms, Solvency II and the Insurance Distribution Directive.

- [Commission Delegated Directive - UCITS](#)
- [Commission Delegated Regulation - AIFMD](#)
- [Commission Delegated Directive - MiFID product governance](#)
- [Commission Delegated Regulation - MiFID investment firms](#)
- [Commission Delegated Regulation - Solvency II](#)

- [Commission Delegated Regulation - IDD](#)

Date of publication: 08/06/2020

ECON and ENVI: Recommendation for second reading of the proposed Taxonomy Regulation

Status: Final

The EP's Economic and Monetary Affairs Committee (ECON) and Environment, Public Health and Food Safety Committee (ENVI) published a recommendation for a second reading of the proposed Taxonomy Regulation. This contains: (i) a draft EP legislative resolution; (ii) a short justification, proposing that ECON-ENVI recommend that the Plenary confirms the position of the Council at first reading, without amending it; (iii) procedure – committee responsible; and (iv) the final vote by roll call in committee responsible.

Date of publication: 02/06/2020

1.2 Recovery and resolution

(i) Germany

BaFin: FAQ on the form "Recovery plan according to simplified requirements pursuant to section 19 SAG" (*Sanierungsplan nach vereinfachten Anforderungen gemäß § 19 SAG*)

Status: Final

BaFin published an FAQ on the form "Recovery plan according to simplified requirements pursuant to section 19 SAG" (*Sanierungsplan nach vereinfachten Anforderungen gemäß § 19 SAG*). It covers the following topics: (i) general; (ii) format; (iii) cover; (iv) summary; (v) strategic analysis; (vi) corporate governance; (vii) indications; and (viii) options for actions.

In addition to that, [BaFin announced](#) that it has replaced the Excel form "Recovery plan according to simplified requirements pursuant to section 19 SAG" with an electronic web form.

Date of publication: 30/06/2020

BaFin: General ruling extending the general ruling published on 26 June 2019

Status: Final

BaFin announced the extension of its general ruling published on 26 June 2019 until 28 December 2020. The purpose of the general ruling is that BaFin, as the resolution authority, may grant institutions a general permission in advance to terminate, redeem, repay or buy back instruments of eligible liabilities before their contractual maturity.

Date of publication: 26/06/2020

(ii) EU

EBA: Application of early intervention measures in the European Union according to Articles 27-29 of the BRRD

Status: Consultation

Deadline for the submission of comments: 25/09/2020

The EBA published a discussion paper on the application of early intervention measures (EIMs) in the EU under the BRRD. In the discussion paper, the EBA sets out the results of the survey on the application of the EIMs that the EBA conducted among the national competent authorities (NCAs) in the first half of 2019. It found that there has been limited application of EIMs since the BRRD entered into force and that almost half of the NCAs decided to apply supervisory measures instead of EIMs in cases where early intervention conditions were met. Also, in a relatively large number of cases where the early intervention triggers were breached, the NCAs subsequently concluded that the firm in question had not actually met the conditions for

EIMs. The EBA considers the key challenges faced by supervisors in the application of the current regulatory framework on the EIMs and various options for addressing them. It groups the identified issues into three main categories: interaction between EIMs and other supervisory powers; disclosure and reputation risks; and specification of early intervention triggers. The EBA requests stakeholders' views on the issues raised in the discussion paper.

Date of publication: 26/06/2020

Council and EP: Political agreement on the recovery and resolution of clearing houses

Status: Final

The EP and Council of the EU (CEU) announced that they had struck a deal on a common set of rules for central counterparties (CCPs) and their authorities to prepare for and deal with financial difficulties. The EP highlights the following agreed principles: (i) to distinguish between a “default event” when one or more clearing members fail to honour their financial obligations and a “non-default event” such as a business failure incurring losses – CCPs will need to draw up comprehensive and effective plans for dealing with both cases; (ii) a prohibition or restriction of dividends and bonuses in case of a default event caused by mismanagement; (iii) to introduce an additional, pre-funded second skin in the game to be used after the default fund, which would be further defined by ESMA; (iv) a closed list of resolution tools including cash calls (additional contributions) to non-defaulting members twice as big as a default fund, variation margin gains haircutting – reduction of the value of any gains payable by CCP to non-defaulting members, sale of business and government stabilisation tools as a last resort – they also envisage a review clause in order to re-assess the list; (v) that when a CCP in a non-default case reduces payments to non-defaulting clearing members and clients it should recompense them, once its health is restored, through cash payments or ownership in future profits; and (vi) contractual arrangements allowing clearing members to pass losses on to their clients in case of the resolution should also include the right for clients to any compensation that clearing members receive – these provisions should also apply to indirect clients. Following the finalisation of technical work, the text will be submitted to EU ambassadors for endorsement with a view to reaching agreement in the form of a (pre-negotiated) CEU position at first reading. It will then undergo a legal linguistic revision. The CEU states that, with certain limited exceptions, the new framework will start applying 18 months after the date of entry into force of the Regulation.

Date of publication: 23/06/2020

(iii) International

FSB: Evaluation of the effects of too-big-to-fail reforms

Status: Consultation

Deadline for the submission of comments: 30/09/2020

The Financial Stability Board (FSB) published a consultation report that sets out the preliminary results of its evaluation of the effects of the too-big-to-fail reforms (TBTf) for systemically important banks (SIBs). The FSB notes that the evaluation did not examine the implications of recent economic and financial developments because the analysis in the consultation report was largely completed before the outbreak of the Covid-19 pandemic. While the report does not make policy proposals, it does draw conclusions that are relevant to policymakers, market participants and other stakeholders. Despite the progress made in many areas, the report finds that there are still gaps that need to be addressed. For example, improvements to the resolvability of SIBs could be made, public funds continue to be used to support small or medium-sized banks, even in jurisdictions with well-developed resolution frameworks, and the application of the reforms to domestic systemically important banks (D-SIBs) needs monitoring further.

Date of publication: 28/06/2020

2. Covid-19

(i) EU

Regulation (EU) 2020/873 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the Covid-19 pandemic

Status: Published in the OJ

Date of entry into force: 27/06/2020

Date of application: 27/06/2020

Regulation (EU) 2020/873 amending the Capital Requirements Regulation (CRR) and the CRR II Regulation as regards certain adjustments in response to the Covid-19 pandemic was published in the Official Journal of the EU. This Regulation is known as the CRR Amending Regulation or the CRR Quick Fix. The CRR Amending Regulation makes targeted changes to the CRR and the CRR II Regulation to ensure that the prudential regulatory framework interacts smoothly with various measures that address the Covid-19 pandemic.

Date of publication: 26/06/2020

Commission Delegated Regulation (EU) 2020/866 amending Delegated Regulation (EU) 2016/101 supplementing the CRR with regard to RTS for prudent valuation under Article 105(14) of the CRR

Status: Published in the OJ

Date of entry into force: 26/06/2020

Commission Delegated Regulation (EU) 2020/866, made in response to the Covid-19 pandemic, was published in the OJ supplementing the CRR with regard to RTS for prudent valuation under 105(14). The Delegated Regulation will enter into force on 26 June, the day following its publication in the OJ. The Regulation was adopted at first reading by the Council of the EU (CEU) on 24 June and by the EP in a vote on 18 June.

Date of publication: 25/06/2020

EBA: Extending deadline for the application of its Guidelines on payment moratoria to 30 September

Status: Final

Acknowledging the crucial role played by banks in providing financing to European businesses and citizens during the ongoing Covid-19 pandemic, the EBA extended the application date of its Guidelines on legislative and non-legislative moratoria to 30 September. With EU economies not yet fully opened, this extension shows the importance of a continued support to the measures taken by banks to extend loans in response to the extraordinary nature of the current situation. The EBA is highly aware of the trade-off faced in making the extension, as persistent liquidity shortages under the current circumstances may develop into solvency issues that need to be properly assessed by banks on a case-by-case basis. In addition, the EBA highlights that the implementation timeline envisaged in the EBA's IRB roadmap to repair internal models used to calculate own funds requirements for credit risk under the Internal Ratings Based (IRB) approach remains overall unchanged. The EBA, nonetheless, also recognises that there may be institution-specific circumstances requiring more flexibility. Consequently, the EBA notes that supervisors may want to use their supervisory discretion in line with Article 146 of the Capital Requirements Regulation (CRR).

Date of publication: 18/06/2020

ESMA: Public statement on actions to mitigate the impact of Covid-19 on the EU financial markets – MiFIR open access provisions for exchange traded derivatives (ETDs)

Status: Final

ESMA issued a public statement aiming to: (i) clarify the application of the MiFIR open access provisions (OAP) for trading venues (TVs) and CCPs in light of Covid-19; and (ii) coordinate the supervisory actions of NCAs by setting out the issues they should consider when assessing OAP requests.

Date of publication: 11/06/2020

ESRB: Second set of actions in response to the coronavirus emergency

Status: Final

The ESRB announced a second set of macroprudential actions in response to the Covid-19 emergency: (1) with regards to implications for the financial system of guarantee schemes and other fiscal measures to protect the real economy, the ESRB has decided to establish an EU-wide framework to monitor the financial stability implications of the support measures – with this framework, the ESRB intends to complement and enhance what is being done at the national level by fostering the exchange of experiences and the early identification of cross-sectoral and cross-border issues; (2) the ESRB has published a recommendation that introduces minimum requirements for national monitoring of financial stability implications of measures taken to protect the real economy in response to Covid-19, and establishes a framework for reporting to the ESRB – this does not create new reporting requirements for financial institutions, as the ESRB will rely on the reporting and data collected by national macroprudential authorities and member institutions; (3) in a communication to EIOPA, the ESRB has strongly encouraged EIOPA to finalise and operationalise a liquidity monitoring framework for (re)insurers as a response to Covid-19; (4) the ESRB also recommends that the Pillar 2 provisions in the Solvency II regulatory regime be enhanced in the medium term to enable supervisors to require individual (re)insurers with a vulnerable liquidity profile to hold a liquidity buffer; (5) the ESRB has continued to monitor developments in the corporate bond market, including possible implications of large-scale corporate bond downgrades across the financial system; (6) the ESRB has published a recommendation on the restriction of distributions during the pandemic, together with a background report; and (7) with regards to liquidity risks arising from margin calls, the ESRB has published a recommendation aimed at: (i) limiting cliff effects in relation to the demand for collateral; (ii) enhancing CCP stress test scenarios for the assessment of future liquidity needs; (iii) limiting liquidity constraints related to margin collection; and (iv) promoting international standards related to mitigating procyclicality in the provision of client clearing services and in securities financing transactions.

The recommendations are accompanied by two reports on (i) system-wide restraints on dividend payments, share buybacks and other pay-outs; and (ii) liquidity risks arising from margin calls.

- Recommendation on monitoring the financial stability implications of debt moratoria, and public guarantee schemes and other measures of a fiscal nature
- Recommendation on restriction of distributions
- Recommendation on liquidity risks arising from margin calls
- Report on system-wide restraints on dividend payments, share buybacks and other pay-outs
- Report on liquidity risks arising from margin calls

Date of publication: 08/06/2020

EBA: Final Report on Guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis

Status: Final

The EBA published a final report on guidelines in respect of reporting and disclosure of exposures subject to measures applied in response to the Covid-19 crisis. The EBA state that monitoring of the application of the moratoria on loan repayments, Covid-19-related forbearance measures and the use of public guarantees to new lending is crucial for the purposes of risk analysis of individual institutions and for the overall financial stability in the EU. The guidelines cover: (i) reporting requirements to monitor the use of payment moratoria and the evolution of the credit quality of the exposures subject to such moratoria in accordance with the EBA Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the Covid-19 crisis (GL on moratoria); (ii) disclosure requirements for the exposures subject to the payment moratoria in accordance with the GL on moratoria; (iii) reporting and disclosure requirements for the new loans subject to specific public guarantees set

up to mitigate the effects of the Covid-19 crisis; and (iv) reporting requirements on other forbearance measures applied in response to Covid-19 crisis. The reporting and disclosure requirements are strictly in the context of the Covid-19 pandemic, and are therefore expected to be time limited. The EBA also state that reporting should be performed on a quarterly basis, with the first reference date of 30 June, and for an expected period of 18 months. Also, disclosure should be performed semi-annually on 30 June and 31 December. The EBA has decided not to carry out public consultations and has notified the Banking Stakeholder Group (BSG) of its intention to issue these guidelines, requesting their advice. To facilitate reporting on the basis of these guidelines, the EBA will provide a technical package and will fully integrate the new reporting into the EBA reporting framework. The EBA will also link the technical release of the new reporting requirements with the existing planned release (as a separate module in 2.10 phase 2) and will publish the v2.10 Phase 2 release this month.

- [Annex 1- Covid -19 reporting templates](#)
- [Annex 2 - Covid-19 reporting instructions](#)
- [Annex 3 - Covid-19 disclosure template](#)

Date of publication: 02/06/2020

3. Brexit

(i) EU

EBF: Paper on the future relationship of the EU and UK in financial services

Status: Final

The European Banking Federation (EBF) published a paper (dated 25 May) on the future relationship of the EU and the UK in financial services, detailing the EBF's view on the use of the equivalence regime. Their analysis presupposes a deal, stating that the absence of which would raise a separate set of significant risks, which they analysed in 2019. They urge the EU and the UK to agree to an extension of the transitional arrangement before the end of the June deadline to give all parties more time to reach a satisfactory agreement, especially considering the exceptional circumstances arising from the ongoing Covid-19 crisis. In Annex 1, the EBF lists what the EBF has identified as First Priority Areas requiring equivalence, as well as a non-exhaustive list of other areas in Annex 2. The paper also contains a call to action to their members and on banks to finalise preparations for the end of the transition period and to envisage all the scenarios possible.

Date of publication: 29/05/2020



4. Market regulation/Conduct rules

4.1 General

(i) Germany

Regulation amending the Regulation on the notification of voting rights (*Verordnung zur Änderung der Stimmrechtsmitteilungsverordnung*)

Status: Published in the Federal Gazette

BaFin's Regulation amending the Regulation on the notification of voting rights (*Verordnung zur Änderung der Stimmrechtsmitteilungsverordnung*) has been published in the German Federal Gazette. The amendment deals with what to do in case of a technical incident during the electronic submission of the notification of voting rights.

Date of publication: 17/06/2020

(ii) EU

ECON: Draft Report on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation

Status: Draft

The EP's Committee on Economic and Monetary Affairs (ECON) issued a draft report on further development of the Capital Markets Union (CMU), focusing on improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation. The draft report takes the form of a motion for an EP resolution covering: (i) financing business; (ii) promoting long-term and cross-border investments and financial products; (iii) market architecture; (iv) retail investors; (v) financial education; (vi) digitalisation; and (vii) the EU's role in global markets. It recommends, among other things, that the current reporting frameworks under MiFID II and EMIR should be simplified as they are very costly and complex.

Date of publication: 17/06/2020

4.2 Benchmarks

(i) EU

ECB: Recommendation by the working group on euro risk-free rates

Status: Final

The ECB announced recommendations from the working group on euro risk-free rates for voluntary compensation for legacy swaption contracts affected by the discounting transition to the €STR. Market participants are advised to contact swaption counterparties to discuss and decide on voluntary compensation. There is no single preferred option for implementing voluntary compensation, but several potential modalities have been identified. The feasible options for the timing and methodology of voluntary compensation are a: (i) single-date cash compensation; (ii) single-date notional/strike adjustment; or (iii) cash compensation at the expiry date of the swaps. The working group acknowledges that some market participants may not see these three options as the best, and takes note that other bilateral arrangements may also be possible.

Date of publication: 16/06/2020

4.3 MiFID/MiFIR

(i) Germany

BaFin: Updated FAQ on MiFID II conduct rules under sections 63 et seq. WpHG

Status: Final

BaFin updated its FAQs on MiFID II conduct rules under sections 63 et seq. of the German Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG). The update affects an amendment on the requirements for the evaluation of the taping recordings according to section 83 (9) WpHG by the institutions and adds the following new questions: (i) on the extent of verification of phone recordings; (ii) on the target market comparison according to section 80 (9-11) WpHG and section 12 of the Regulation specifying the rules of conduct and organisational requirements for investment service providers (*Wertpapierdienstleistungs-Verhaltens- und Organisationsverordnung* – WpDVerOV); (iii) on the ex-ante cost information in accordance with section 63 (7) WpHG in conjunction with article 50 of the Delegated Regulation (EU) 2017/565; (iv) on which cost information must be read over the telephone if the customer so wishes under the conditions of ESMA Q&A 9.28; (v) on the definition of “relevant persons” under article 2 of Delegated Regulation (EU) 2017/565.

Date of publication: 09/06/2020

(ii) EU

ESMA: Guidelines on certain aspects of the MiFID II compliance function requirements

Status: Final

ESMA issued its final guidelines on the MiFID II compliance function with the aim of enhancing the value of existing standards by providing additional clarifications on certain specific topics. The guidelines cover: (i) responsibilities of the compliance function, including guidelines on compliance risk assessment, monitoring and reporting obligations, and advisory and assistance obligations; (ii) organisational requirements of the compliance function, including guidelines on effectiveness, skills, knowledge, expertise and authority, permanence and independence, and outsourcing of the compliance function; and (iii) competent authority review of the compliance function. The guidelines will apply from two months of the date of publication of the guidelines on ESMA’s website in all EU official languages.

Date of publication: 05/06/2020

ESMA: Update on transparency and position limit opinions for third country venues

Status: Final

ESMA published updated versions of its opinions on determining third-country trading venues (TCTVs) for the purpose of: (i) transparency under MiFID II/MiFIR; and (ii) position limits under MiFID II. ESMA has now finalised the review of the information provided by TCTVs following its assessment of over 200 TCTVs against criteria published in opinions in 2017. In respect of the opinion on post-trade transparency, the annex includes a list of 136 venues from 25 countries. Most have a positive assessment for all the instruments available on the venue, while several have a partially positive assessment, i.e. a positive assessment which is limited to a subset of instruments. The instruments for which the assessment is not positive are specified in the Excel file. Investment firms concluding transactions on TCTVs absent from the list should make those transactions post-trade transparent via an approved publication arrangement (APA) by 3 October 2020. In respect of the opinion on position limits, the annex to the opinion on position limits includes a list of seven venues from four countries. All venues on that list have a fully positive assessment – thus, commodity derivatives traded on venues included on that list should be not be considered as economically equivalent OTC contracts for the purpose of the position limits regime. ESMA remains open to future submissions from TCTVs, should they have EU market participants which consider that such assessment would be relevant.

- [ESMA Opinion – Transparency under MiFID II/MiFIR](#)
- [ESMA Opinion – Position Limits under MiFID II](#)

Date of publication: 03/06/2020

ESMA: Update on its Q&As on MiFID II and MiFIR: (i) market structures topics; and (ii) transparency topics

Status: Final

ESMA published two updated Q&As on MiFID II and MiFIR in respect of: (i) market structures topics; and (ii) transparency topics. On market structures topics, the update adds a new question in respect of multilateral systems facilitating the execution of repurchase agreement (repo) transactions, asking whether the operation of a system facilitating the multilateral interaction of trading interests in securities financing transactions requires authorisation as a trading venue. On transparency topics, the update: (a) in respect of the conversion of large in scale (LIS) and size specific to the instrument (SSTI) thresholds in lots, modifies the answer to how trading venues should convert LIS and SSTI thresholds into lots under Article 13(9) of RTS 2; and (b) provides new questions on default liquidity status, SSTI and LIS thresholds of non-equity instruments as well as on publication of transactions in an aggregated form.

- [ESMA Q&As – Market Structure Topics](#)
- [ESMA Q&As – Transparency Topics](#)

Date of publication: 29/05/2020

4.4 Consumer protection rules

(i) EU

EC: Inception impact assessment on the review of the Consumer Credit Directive

Status: Consultation

Deadline for the submission of comments: 01/09/2020

The EC published an inception impact assessment after its evaluation of the Consumer Credit Directive (CCD) found that the CCD does not fully achieve its objectives. The main problems include: (i) inadequate scope – the emergence of new operators (e.g. peer-to-peer lending platforms) and new forms of consumer credit (e.g. short-term, high-cost loans and instant microloans, often below the €200 threshold for loans to be covered by the CCD) has meant that the CCD is sometimes ineffective in protecting consumers from these new trends that fall out of scope; (ii) content and disclosure of information – the requirements for providing information in advertising and at the pre-contractual stage do not reflect the growing use of digital devices in credit contracts and the information provided to consumers in accordance with the Directive is often too complex to be understood; (iii) insufficient safeguards to ensure responsible lending/borrowing – the vagueness of the provisions on assessing creditworthiness can allow for credits to be granted without thorough assessment of the consumer's ability to repay, which also leads to divergence among Member States; and (iv) exceptional situations – the CCD does not contain provisions (such as hardship clauses, forbearance, etc.) to protect lenders' and borrowers' interests in the event of exceptional and systemic economic disruption, such as that caused by Covid-19. The EC expects a proposal to revise the CCD is likely, and it is indicatively planned for Q2 2021.

Date of publication: 23/06/2020

4.5 Market abuse

(i) Germany

BaFin: FAQs on MAR in German available

Status: Final

BaFin published a German translation of ESMA's FAQs on the Market Abuse Regulation (MAR). An overview of all of BaFin's translations of ESMA Q&As is available [here](#).

Date of publication: 05/06/2020

4.6 Short selling

(i) EU

ESMA: Renewing its Decision requiring net short position holders to report positions of 0.1% and above

Status: Final

ESMA published a decision renewing its decision to temporarily require the holders of net short positions in shares traded on EU regulated market to notify the relevant NCA if the position exceeds 0.1% of the issued share capital. The measure applies from 17 June 2020 for a period of three months.

Date of publication: 10/06/2020

4.7 Transparency requirements/Shareholder requirements

(i) EU

ESMA: Final report on the draft RTS amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the RTS on ESEF

Status: Final

ESMA published a final report on the draft RTS amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the RTS on ESEF.

Date of publication: 18/06/2020



5. Market infrastructure

5.1 EMIR

(i) EU

ESRB: Opinion on ESMA report on post trade risk reduction services relating to the EMIR clearing obligation

Status: Final

The ESRB published its opinion on ESMA's report on post trade risk reduction services (PTRRS) with regards to the clearing obligation under EMIR. Under EMIR, the ESRB and EMIR are required to report under which conditions, trades that directly result from PTRRS, including portfolio compression and counterparty rebalancing, should be exempted from the clearing obligation. The ESRB's points include that: (i) overall, PTRRS are designed to reduce outstanding risk, contributing to making the non-centrally cleared OTC markets safer and more resilient to shocks from the failure of market participants; (ii) while PTRRS reduce risks, residual and emerging risks must be duly understood, disclosed and addressed; (iii) the assessment of risk-reduction benefits is counterparty-specific; and (iv) from a macroprudential perspective, PTRRS are beneficial if they reduce the overall systemic risk. The ESRB concludes that while the use of PTRRS in non-centrally cleared OTC markets can help to reduce aggregate risk exposures, exempting their use from the clearing obligation may introduce the risk of regulatory arbitrage and circumvention. Any exemptions should: (a) demonstrably reduce risk; (b) be limited to multilateral portfolio compression and other specific justified types of PTRRS; (c) be limited to market risk neutral, non-price forming transactions; and (d) be limited to non-centrally cleared transactions.

Date of publication: 25/06/2020

EC: Set of proposals for Delegated Regulations

Status: Consultation

Deadline for the submission of comments: 09/07/2020

The EC began consulting on three draft delegated regulations with regards to: (i) specifying the criteria to be applied by ESMA when determining whether a third-country CCP is systemically important or likely to become systemically important for the financial stability of the EU or of one or more of its Member States; (ii) the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment; and (iii) fees charged by the ESMA to third country CCPs. ESMA has consulted on and provided the EC with technical advice on each of the delegated regulations, and the Expert Group of the European Securities Committee has provided its views on the provisional content. The deadline for comments on the consultations is 9 July. After the consultations, the Council of the EU and the EP will consider the draft delegated regulations and if neither object, they will be published in the OJ and will enter into force the day after their publication.

- Proposal for a Delegated Regulation on derivatives trading – determining the systemic risk of non-EU clearing houses (tiering criteria)
- Proposal for a Delegated Regulation financial market regulation – compliance of non-EU clearing houses
- Proposal for a Delegated Regulation on fees to be charged to third-country central counterparties

Date of publication: 11/06/2020

ESMA: Extending deadline for responses to consultation on EMIR REFIT

Status: Final

ESMA announced that it is extending the deadline for responses to its [consultation on EMIR REFIT](#) to 3 July 2020.

Date of publication: 09/06/2020

ESMA: Final Report on FRANDT commercial terms for clearing services**Status: Final**

ESMA published a final report which presents ESMA's final technical advice to the EC on how to specify the conditions under which the commercial terms of clearing service providers (CSPs) are to be considered to be FRANDT in accordance with Article 4(3a) of EMIR (as amended by EMIR Refit). In response to the feedback received to its consultation, ESMA state, amongst other things, that the FRANDT principles should build on the existing requirements, in particular the current requirements for public disclosure and risk assessments. ESMA also discusses its suggestions on the: (i) scope of the FRANDT principles; (ii) information that ought to be subject to public disclosure; (iii) client categorisation; (iv) public disclosure and transparency – information provided in the RFP, as well as the contract terms proposed in the “Proposal and Agreed Terms”; (v) onboarding process; (vi) risk assessment by clearing service providers (CSPs); (vii) fees; (viii) standard agreements and contract terms; (ix) technology; and (x) enforcement of FRANDT requirements. The requirements covered in the technical advice have been designed to address clearing clients and CSPs' concerns and aim to: (a) facilitate comparability of the information disclosed; (b) address the process of onboarding clearing clients; (c) standardise the information disclosed to clients bilaterally; and (d) encourage further standardisation of contractual terms.

Date of publication: 02/06/2020

(ii) International**CPMI and IOSCO: Central counterparty default management auctions – Issues for consideration****Status: Final**

The Committee on Payments and Market Infrastructures (CPMI) and IOSCO published a report together with a [cover note](#), outlining certain issues that CCPs should consider regarding default management auctions processes. Topics covered include: (i) the roles and responsibilities of relevant stakeholders in an auction, including the CCP Board, experts and a default management group; (ii) considerations for a successful default management auction such as a framework for approaching hedging risk and certain design elements; (iii) the operational issues to consider when planning and executing a default management auction; (iv) issues to consider when deciding whether to permit client participation in an auction; and (v) the default of a common participant across multiple CCPs. The paper also outlines several areas for further industry work, based on its June 2019 discussion paper, divided according to whether there is: (a) broad industry consensus – such as with methods of communication; (b) differing views – such as with the governance of a CCP's default management process; and (c) an emerging practice – such as synchronising default management processes.

Date of publication: 26/06/2020

6. Anti-money laundering

(i) Germany

BaFin: FAQs on the reporting requirements for business relations and transactions relating to North Korea and/or Iran

Status: Final

BaFin published FAQs on its General Rulings of 13 May 2020 imposing reporting requirements for business relations and transactions relating to [North Korea](#) and/or [Iran](#). It contains 15 questions of form and content.

Date of publication: 10/06/2020

(ii) EU

Commission Delegated Regulation (EU) 2020/855 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849, as regards adding several countries to the table in point I of the Annex and deleting other countries from this table

Status: Published in the OJ

Date of entry into force: 09/07/2020

The Commission Delegated Regulation amending the list of high-risk third countries with strategic AML/CTF deficiencies under MLD IV was published in the OJ. Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia are no longer considered to present AML/CTF deficiencies and have been removed from the list. The Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe have been added.

Date of publication: 19/06/2020

EBA: Call for input to understand impact of de-risking on non-financial institutions and customers

Status: Final

The EBA published a call for input to understand the scale and drivers of 'de-risking' at EU level and its impact on customers. 'De-risking' refers to financial institutions deciding not to service a particular customer or category of customers, in order to manage customers' profiles associated with higher money laundering and terrorist financing (ML/TF) risks. This call, which forms part of the EBA's work to lead, coordinate and monitor the EU financial sector's AML/CFT efforts, aims to understand why financial institutions choose to de-risk instead of managing the risks. The EBA seeks to hear from all groups affected by de-risking, thus the call for input is of interest to stakeholders across the financial sector and their users. Responses to the call for input will inform the EBA 2021 Opinion on ML/TF risks and potentially other policy outputs. The call for input runs until 11 September.

Date of publication: 15/06/2020

7. Payments

7.1 Payment supervisory law

(i) EU

EC: Report on the application of Regulation (EU) 2015/751 on interchange fees for cardbased payment transactions

Status: Final

The EC published a report on the application of Regulation (EU) 2015/751 on interchange fees for cardbased payment transactions. The covered topics are: (i) achieved benefits following the introduction of the Investment Firms Regulation (IFR); (ii) areas where continuous robust enforcement, enhanced monitoring and further fact finding are required; and (iii) areas where the impact of the IFR requires further examination over a longer period of time.

Date of publication: 29/06/2020

EBA: Opinion on obstacles to the provision of third party provider services under the Payment Services Directive

Status: Final

The EBA published an opinion on the obstacles to the provision of TPP services under the PSD, the Regulatory Technical Standards (RTS) on strong customer authentication (SCA) and common and secure communication (CSC). The opinion aims to support the objectives of PSD2 of enabling customers to use new and innovative payment services offered by TPPs by addressing a number of issues regarding the interfaces provided by account servicing payment service providers (ASPSPs) to TPPs. The opinion: (i) clarifies when mandatory redirection is an obstacle to the provision of TPPs' services and the authentication procedures that ASPSPs' interfaces are required to support; (ii) provides clarifications on a number of obstacles identified in the market, including requiring multiple SCAs, the manual entry of the IBAN in the ASPSPs' domain, or imposing additional checks of the consent given by the customer to the TPP; and (iii) explains that requiring re-authentication every 90 days for account information services in accordance with the RTS on SCA & CSC is not an obstacle. The EBA expects National Competent Authorities to take the necessary actions to ensure compliance of the interfaces offered by ASPSPs with the PSD2 and the RTS and, where obstacles are identified, to ensure that ASPSPs remove them within the shortest possible time. The EBA will monitor the way in which the clarifications provided in the opinion are taken into account. Where the EBA identifies inconsistencies, despite the clarifications provided in the opinion, it will take the actions needed to remedy them.

Date of publication: 04/06/2020

8. Banking union

8.1 Single Supervisory Mechanism (SSM)

(i) EU

Council of the EU: Progress report on the strengthening of the Banking Union

Status: Final

The Council of the EU published a report (dated 29 May) on the presidency progress report on the strengthening of the Banking Union. With a view to facilitate strengthening the Banking Union, and in line with the stated priorities of the Croatian Presidency in the area of deepening the Economic and Monetary Union, the Council Ad Hoc Working Party on the Strengthening of the Banking Union (AHWP) members held an informal videoconference on 18 May 2020, where they discussed the progress achieved in the various work streams. This progress report summarises the state of play as discussed at that informal meeting and has been prepared under the responsibility of the Croatian Presidency, taking into account the views expressed by AHWP members. At the meeting, there was support in favour of a hybrid model as the best basis for further discussions on the liquidity phase of EDIS (with disagreement over some of its main parameters). The ECB gave a presentation on risk-based contributions (RBCs), considered key to address concerns related to deposit insurance and concluded that when considering distribution across Member States and banks, RBCs benchmarked at Banking Union level would be key to tackle moral hazard concerns and to avoid cross-subsidisation, by implementing a “polluter pays” approach. In respect of the EDIS RBC and of the data collection exercise launched under Finland's Presidency, the progress of these has slowed down due to the Covid-19 emergency. The ECB also elaborated on the scope of EDIS application, covering: (i) the impact on EDIS depending on whether IPS (Institutional Protection Scheme) membership is recognised for the purpose of contributions or not – the ECB concluded that IPS account for a significant share of covered deposits and that full exclusion of IPS from EDIS would lead to a reduction of the target size of the deposit insurance fund; (ii) the treatment of non-CRR institutions; and (iii) the inclusion of measures other than pay-outs under Article 11(3) and (6) of the DGSD. The meeting also covered monitoring of other developments in the Banking Union: (a) implementation of the banking package; (b) specific Covid-19 related measures; and (c) measures to tackle non-performing loans (NPLs). The Presidency invites the Committee of Permanent Representatives to take note of this report, with a view to progressing work further.

Date of publication: 03/06/2020

9. Institutional supervisory framework

(i) EU

EBA: Changes to its Q&A tool

Status: Final

The EBA announced that it has expanded the scope of its Q&A process and tool to enable the submission of questions on the Anti-Money-Laundering Directive (AMLD) and Consumer Protection legislation under the EBA's scope. Going forward, submitted questions, subject to meeting the prescribed criteria, will be published on the EBA website while their answers are being prepared. The EBA has also made some changes to expand and update its online Interactive Single Rulebook (ISRB). The changes reflect the new Article 16(b) of the EBA founding Regulation on Q&A. The EBA has also published its June update of its document on additional background and guidance for asking questions. The update to the ISRB states that as of 12 June, the ISRB has been expanded to include the AMLD and Wire Transfer Regulation (WTR). Additionally, it has been updated to include the: (i) CRR as amended by CRR II; (ii) CRD IV as amended by CRD V; and (iii) BRRD as amended by BRRD II.

- [EBA Press Release](#)
- [EBA ISRB](#)
- [EBA Additional Background and Guidance](#)

Date of publication: 17/06/2020

ESMA: 2019 Annual Report and updates 2020 Annual Work Programme

Status: Final

ESMA published its annual report, setting out key actions taken in the previous year. ESMA's recent work has been focused on its response to the Covid-19 crisis. The annual report covers: (i) ESMA's mission, objectives and activities; and (ii) achievements against its objectives. In order to reflect these challenging times for the financial markets, ESMA has also published a revised version of its 2020 Work Programme. To respond adequately to the repercussions of Covid-19 on the financial markets, a full assessment of ESMA's activities for 2020 was undertaken. Each activity in the original 2020 work programme was evaluated and assessed against criteria of relevance for the market and urgency, as well as impact on stakeholders and on that basis classified into high, medium or low priority. The results of the assessment are provided in the revised work programme, which includes the changes in relation to new items added as high priority and elements that are delayed or removed from the work programme. Annex I sets out delays to ESMA's planned consultations. ESMA has maintained some flexibility in its work programme to respond to potential new initiatives, such as those relating to the Capital Markets Union.

- [2019 Annual Report](#)
- [2020 Annual Work Programme](#)

Date of publication: 15/06/2020

EBA: 2019 Annual Report

Status: Final

The EBA published its 2019 Annual Report. It is divided into the following chapters: (i) enhancing regulation and supervision; (ii) horizontal priorities affecting the EU financial sector; (iii) analysing risks, vulnerabilities and data; (iv) making the organisation effective and efficient; and (v) priorities for 2020.

Date of publication: 11/06/2020

ESMA: New Peer Review Methodology

Status: Final

ESMA published its peer review methodology integrating the improvements to the process introduced by the revised ESMA Regulation. The methodology sets out: (i) the peer review framework; (ii) the determination of topics for peer reviews; (iii) the peer review process; (iv) the framework for the follow-up to peer review; and (v) the instruction of fast track peer reviews to be launched in case of an urgent convergence issue.

Date of publication: 05/06/2020

EBA: Report on the convergence of supervisory practices in 2019

Status: Final

The EBA published a report on the convergence of supervisory practices in 2019. The report: (i) summarises the assessment of convergence of supervisory practices in 2019 – overall, the report finds that the key topics for supervisory attention identified in the EBA 2019 convergence plan have been largely implemented in supervisory work across the EU, although to different degrees; (ii) provides detail on the EBA's policy work supporting supervisory convergence in 2019 and training as an important tool for the EBA in ensuring that the foundations for a common approach are widely shared; and (iii) sets out the EBA's further work in 2020 – significant supervisory efforts and resources are and will be dedicated to monitoring institutions' preparation for the crisis in 2020, as well as further implications of Covid-19 on credit institutions' operations and financial soundness, including policies implemented to protect the economy. The EBA states that the key topics that it has identified in the 2020 Convergence Plan are particularly relevant in the context of the challenges posed by the Covid-19 crisis, namely: (a) ICT risk and operational resilience; (b) loan origination standards; (c) profitability; (d) capital and liability management; and (e) money laundering and terrorism financing risks as well as other conduct risks for prudential supervisors.

Date of publication: 29/05/2020

(ii) International

SRB: Annual Report 2019

Status: Final

The SRB published its Annual Report 2019.

Date of publication: 30/06/2020

BIS: Annual Report 2019/20 and Annual Economic Report

Status: Final

The BIS published two reports: the annual report 2019/20 and the Annual Economic Report. The first covers, over six chapters, the following topics: (i) looking forward and back; (ii) promoting global monetary and financial stability; (iii) promoting international cooperation; (iv) financial results and profit allocation; (v) governance and organisation; and (vi) financial statements. The second report deals with: (i) Covid-19: a global sudden stop; (ii) a monetary lifeline: central banks' crisis response; and (iii) central banks and payments in the digital era.

- [Annual Report 2019/20](#)
- [Annual Economic Report](#)

Date of publication: 30/06/2020

IOSCO: Report concerning Good Practices on Processes for Deference

Status: Final

The International Organization of Securities Commissions (IOSCO) published a report on good practices on processes for deference. Due to the global nature of wholesale securities and derivatives markets, many authorities have implemented deference processes that allow them to rely on one another to regulate and supervise market participants, and help reduce

potentially duplicative or conflicting regulations. The report sets out 11 good practices on processes for deference to assist regulatory authorities in mitigating the risk of unintended, regulatory-driven market fragmentation and to strengthen international co-operation. The good practices cover all phases of deference assessments, from the initial stages to the processes put in place once an assessment determination has been made.

Date of publication: 26/06/2020



10. Investment funds

(i) EU

ESMA: Guidelines on the reporting to competent authorities under Article 37 of the MMF

Status: Final

ESMA issued the official translations of its guidelines on standardised procedures and messaging protocols when reporting to NCAs under Article 37 of the MMF Regulation. The guidelines will apply from 22 August.

Date of publication: 22/06/2020

EC: Report assessing the application and the scope of the Directive on Alternative Investment Fund Managers (AIFMD)

Status: Final

The EC reported to the EP and the Council of the EU assessing the application and scope of the AIFMD. The report looks at the impact of AIFMD on AIFs, AIFMs, investors, monitoring and assessment of systemic risk, investment in private companies and investment in/or for the benefit of developing countries. The EC explains, amongst other things, that the AIFMD has: (i) improved the monitoring of risks to the financial system and the cross-border raising of capital for investments in alternative assets; and (ii) played a role in creating an internal market for AIFs and reinforcing the regulatory and supervisory framework for AIFMs in the EU. The report states the EC is still assessing whether there is a need for any proposals, including amendments to the AIFMD.

Date of publication: 10/06/2020

ESMA: Updated reporting instructions for MMF reporting

Status: Final

ESMA published updated reporting instructions to be used for reporting under the MMFR. ESMA has implemented amendments on the XML schema and reporting instructions in a new version, v1.1. Reporting entities should use the version v1.1 to submit reports required under Article 37 of MMF regulation by September.

Date of publication: 04/06/2020

ESMA: Supervisory briefing on the supervision of costs in UCITS and AIFs

Status: Final

ESMA published a supervisory briefing, promoting convergence in the supervision of costs in UCITS and AIFs. Following the publication of its first annual statistical report in January 2019 on costs and performance of retail investment products which showed the significant impact of costs on the final returns for investors, ESMA started work with national competent authorities (NCAs) to assess different national approaches to the supervision of the cost-related provisions under UCITS and AIFMD. To reduce the risk of regulatory arbitrage and ensure equal levels of investor protection throughout the EU, ESMA has produced the supervisory briefing addressed to NCAs which focuses on how NCAs supervise the relevant cost-related provisions under UCITS and AIFMD and on the managers' obligation to prevent undue costs being charged to investors. The briefing is expected to be considered by NCAs when supervising cost-related issues, including the duty of not charging undue costs to investors. The briefing can also give market participants indications of compliant implementation of the relevant UCITS and AIFMD provisions.

Date of publication: 04/06/2020

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