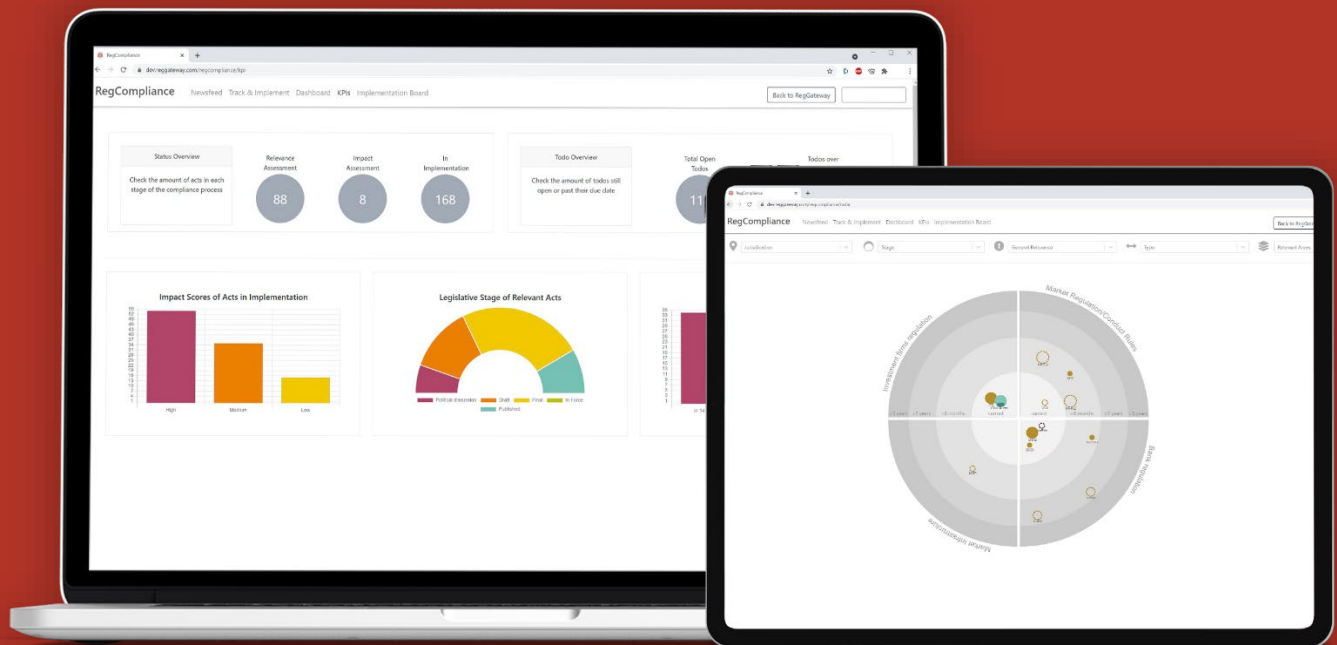


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CHANGE ANALYSIS AND PREVIEW OF RULES

Read the future versions of a law early, including the official explanatory memorandum, and identify any legislative changes.

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

EBA: Final Report on draft RTS on the methods of prudential consolidation under Article 18 CRR

Status: Final

The EBA published its final report on its draft RTS specifying the conditions according to which consolidation shall be carried out in line with Article 18 of the CRR. The EBA notes that the final draft RTS specify the conditions for the application of the different methods of prudential consolidation – entities to be included in the scope of prudential consolidation are, in particular, institutions, financial institutions and ancillary services undertakings. The EBA states that following the approval of the Risk Reduction Measures Package, the draft RTS have been revised in order to reflect the changes introduced in the CRR and in the CRD, as well as the feedback received during the public consultation – in particular, the main changes deal with the newly introduced Article 18(8) of the CRR, allowing competent authorities to extend prudential consolidation also to certain non-financial undertakings. In this regard, the final draft RTS include several risk indicators to be taken into account by competent authorities in assessing whether an undertaking should be fully or proportionally consolidated for prudential purposes.

The EBA proposes that the Delegated Regulation will enter into force on the 20th day following its publication in the OJ.

Date of publication: 15/04/2021

(b) Solvency/Own funds issues

(i) EU

EC: Extension of the transitional provisions related to own funds requirements for exposures to central counterparties

Status: Consultation

Deadline for the submission of comments: 26/05/2021

The EC published for consultation a draft Implementing Regulation on the extension of the transitional provisions related to own funds requirements for exposures to CCPs set out in the CRR. The EC explains that if the transitional period is not extended, institutions established in the EU, or their subsidiaries established outside the EU, having exposures to third-country CCPs that have not been recognised in accordance with EMIR, will be required to increase their own funds for those exposures significantly. Therefore, the EC states that it is necessary to extend the transitional provision in Article 497(1), point (b)(iii), of the CRR by 12 months, until 28 June 2022. The EC notes that the extension of the transitional provision would leave time for the Commission to finalise its equivalence assessments in accordance with Article 25(6) of EMIR and to adopt equivalence decisions where the relevant conditions are met. Furthermore, it would leave time for ESMA to recognise the third-country CCPs concerned.

Date of publication: 28/04/2021

EBA: Draft RTS specifying the types of factors to be considered for the assessment of appropriateness of risk weights under Article 124 (4) of the CRR and the conditions to be taken into account for the assessment of appropriateness of minimum LGD values under Article 164 (8) CRR

Status: Consultation

Deadline for the submission of comments: 29/07/2021

The EBA published a consultation paper on its draft RTS specifying the types of factors to be considered for the assessment of appropriateness of risk weights and the conditions to be taken into account for the assessment of appropriateness of minimum loss given default (LGD) values for exposures secured by immovable property. The EBA explains that the relevant authority, as designated by the Member State, may set higher risk weights or impose stricter criteria on risk weights, or increase the minimum LGD values when the following two conditions are met: (i) the risk weights do not adequately reflect the actual risks related to the exposures secured by mortgages on residential property or commercial immovable property, or that the minimum LGD values are not adequate; and (ii) the identified inadequacy of these risk weights or minimum LGD values could adversely affect the current or future financial stability in the Member State. The EBA notes that the draft RTS focus on the first condition. For institutions applying the standardised approach (SA), these draft RTS specify the types of factors that authorities should consider during the risk weight assessment on the basis of the loss experience of exposures secured by immovable property and forward-looking immovable property market developments. For institutions applying the internal ratings-based (IRB) approach to retail exposures secured by residential or commercial immovable property, these draft RTS provide conditions to be considered when assessing the appropriateness of minimum LGD values. The EBA will hold a public hearing on 30 June.

Date of publication: 29/04/2021

Commission Delegated Regulation (EU) 2021/598 supplementing the CRR with regard to RTS for assigning risk weights to specialised lending exposures

Status: Published in the OJ

Date of entry into force: 04/05/2021

Date of application: 14/04/2022

Commission Delegated Regulation (EU) 2021/598, supplementing the CRR with regard to RTS for assigning risk weights to specialised lending exposures, was published in the OJ. The Regulation specifies how institutions should take into account specific factors (financial strength, political and legal environment, transaction and asset characteristics, strength of the sponsor and developer, and security package) when assigning risk weights to specialised lending exposures in respect of which an institution is not able to estimate probabilities of default, or the institutions' probabilities of default estimates do not meet the requirements set out in the CRR.

Date of publication: 14/04/2021

EBA: Draft RTS on emerging markets and advanced economies under Article 325ap(3) CRR 2

Status: Consultation

Deadline for the submission of comments: 02/07/2021

EBA began consulting on its draft regulatory technical standards (RTS) on the list of countries with an advanced economy for calculating the equity risk under the sensitivities-based method under the alternative standardised approach (FRTB-SA). The Basel Fundamental Review of the Trading Book (FRTB) provides a list of countries that are considered to be 'advanced' for the purpose of the FRTB-SA. The EBA considers that the list would benefit from a review before the FRTB comes into effect, as it has not been reviewed since the first version was published on 14 January 2016. The consultation replicates the FRTB list and seeks stakeholders' views on sources of data and criteria that could be designed to identify other advanced economies and emerging markets for the purpose of FRTB-SA equity risk own funds requirements. In particular, the EBA would expect additional EU/EEA countries to qualify as advanced economies for the purpose of the computation of equity risk own funds requirements under the FRTB-SA.

Date of publication: 07/04/2021

(ii) Eurozone**ECB: Targeted Review of Internal Models****Status: Final**

The ECB reported on the results of its targeted review of internal models (TRIM). TRIM was a multi-year project launched by the ECB at the beginning of 2016 in close cooperation with national competent authorities (NCAs). TRIM aimed to assess whether the Pillar I internal models used by significant institutions (SIs) within the SSM are appropriate in light of the applicable regulatory requirements and whether their results are reliable and comparable. Overall, TRIM confirmed that the internal models of SIs can continue to be used for the calculation of own funds requirements. However, for a certain number of models, limitations were needed to ensure a level of own funds that was appropriate to cover the underlying risk. This was notably the case for a number of loss given default and credit conversion factor models related to low-default portfolios, for which supervisory backstops were imposed as a result of TRIM. The ECB identified over 5,800 findings and issued binding supervisory measures for banks to take corrective action within given deadlines. Through those measures, TRIM resulted in a 12% increase, or about EUR275 billion, of risk-weighted assets for the investigated models. The ECB concludes that SIs will need to continue to invest in high-quality models. This includes defining internal model strategies for the development and maintenance of internal models. In particular, the independent internal validation function needs to be further strengthened in line with the TRIM requirements.

- [FAQ on the Targeted Review of Internal Models](#)

Date of publication: 19/04/2021

(iii) International**BCBS: Operational Resilience****Status: Final**

BCBS issued Principles for Operational Resilience which aim to make banks better able to withstand, adapt to and recover from severe adverse events. BCBS has also revised its Principles for the Sound Management of Operational Risk (PSMOR), reflecting the natural relationship between operational resilience and operational risk. With respect to operational risk, BCBS has made a limited number of technical revisions to: (i) align the PSMOR with the recently finalised Basel III operational risk framework; (ii) update the guidance where needed in the areas of change management and ICT; and (iii) improve the overall clarity of the principles document. The Principles for Operational Resilience build upon the PSMOR, and are largely derived and adapted from existing guidance on outsourcing-, business continuity- and risk management-related guidance issued by BCBS or national supervisors over a number of years. By building upon existing guidance and current practices, BCBS is seeking to develop a coherent framework and avoid duplication. The Principles for Operational Resilience focus on governance; operational risk management; business continuity planning and testing; mapping interconnections and interdependencies; third-party dependency management; incident management; and resilient cybersecurity and ICT. Both documents were consulted on in August 2020.

- [Principles for operational resilience](#)
- [Revisions to the Principles for the Sound Management of Operational Risk](#)

Date of publication: 31/03/2021

(c) Securitisation**(i) EU****ESMA: Interim templates for simple, transparent and standardised (STS) synthetic securitisation notifications****Status: Final**

ESMA published the interim STS notification templates for synthetic securitisations following amendments to the Securitisation Regulation. The interim templates allow originators to notify ESMA of synthetic securitisations that meet the STS criteria. ESMA explains that the amended Securitisation Regulation extends the STS framework to synthetic securitisations – as with

traditional securitisations, only those synthetic securitisations that meet pre-defined STS requirements will be published on ESMA's website. ESMA notes that until the date of the application of the RTS specifying the content and the format of STS notifications for synthetic securitisations, originators can make the necessary information available to ESMA in writing during the interim period.

The templates are relevant for originators of STS securitisations only.

- [Interim Notification Templates for STS synthetic securitisations](#)

Date of publication: 09/04/2021

(d) Large exposures/Limits to shadow banking entities

(i) Germany

BB: Update of the Reporting Implementation Rules for the Submission of Large Exposure Notifications pursuant to Article 394 CRR and Million Loan Notifications Pursuant to Section 14 of the German Banking Act (*Meldetechnische Durchführungsbestimmung für die Abgabe der Großkreditanzeigen nach Art. 394 CRR und der Millionenkreditanzeigen nach § 14 KWG*)

Status: Final

The German Central Bank (*Bundesbank* – BB) published an update of the Reporting Implementation Rules for the Submission of Large Exposure Notifications Pursuant to Article 394 CRR (Master Data and Submission Procedure) and Million Loan Notifications Pursuant to Section 14 of the German Banking Act (*Kreditwesengesetz* – KWG) (Overall Procedure). The implementing regulation is intended to serve as an aid for the notifying parties in submitting the notifications.

Date of publication: 23/04/2021

(e) Deposit protection

(i) EU

EBA: Draft Guidelines on the delineation and reporting of available financial means of Deposit Guarantee Schemes

Status: Consultation

Deadline for the submission of comments: 28/07/2021

The EBA published a consultation paper on its draft guidelines on the delineation and reporting of available financial means of DGSs. The EBA states that the purpose of the guidelines is to ensure that only funds contributed by credit institutions, or that stem indirectly from such contributions such as recoveries or investment income, will count towards reaching the target level of the DGS fund – conversely, funds that stem directly or indirectly from borrowed resources should not count towards the target level. This clarification aims at preventing a situation where a DGS could meet the target level by taking out a loan. The guidelines follow the EBA's recommendations made in its opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds published on 23 January 2020. The opinion recommended clarifying the Deposit Guarantee Schemes Directive (DGSD), by confirming that borrowed funds or funds stemming from borrowed funds should not count towards reaching the minimum target level for DGS funds. The EBA notes that given that a review of the DGSD is still several years away from being proposed, negotiated and finalised, the proposed guidelines provide such a clarification ahead of any such changes, using the existing DGSD as a legal basis – more precisely, the draft guidelines clarify that available financial means (AFM) are comprised of two subsets: (i) qualified AFM (QAFM) – funds stemming directly or indirectly from contributions of DGS member institutions, which qualify towards reaching the target level of the DGS fund; and (ii) other AFM – funds, which are not QAFM, including borrowed funds that stem from liabilities such as loans, and hence do not count towards reaching the target level of the DGS fund. Furthermore, the EBA states that in terms of reporting, the proposed guidelines will extend the reporting requirements from DGSs to the EBA in order to reflect the clarified concept of AFM, QAFM and other AFM

proposed earlier in the Guidelines – they also require the reporting on outstanding liabilities of DGSs, unclaimed repayments, and high-level information on alternative funding arrangements that are in place.

Date of publication: 28/04/2021

(f) Supervisory reporting

(i) EU

EBA: Draft ITS amending Commission Implementing Regulation (EU) 2021/451 with regard to Additional Liquidity Monitoring Metrics (ALMM)

Status: Consultation

Deadline for the submission of comments: 28/07/2021

The EBA launched a consultation on its draft Implementing Technical Standards (ITS) on supervisory reporting with respect to Additional Liquidity Monitoring Metrics (ALMM) under the CRR. Following the mandate laid down in CRR II, the EBA is proposing to introduce some proportionality considerations in ALMM reporting for small and non-complex institutions. The EBA states that additional amendments to the templates are introduced with the aim of streamlining reporting requirements, filling in data gaps and further clarifying the reporting instructions. In particular, small and non-complex institutions could be exempted from reporting metrics regarding concentration of funding by product type, the funding price for various lengths of funding and information on roll-over of funding. The liquidity metrics and related reporting are thus reduced to the maturity ladder-monitoring tool, concentration of funding by counterparty and by counterbalancing capacity. The EBA is also proposing the exemption of medium-sized institutions from reporting metrics on roll-over funding. The amendments to the reporting templates and annexes aim to clarify inconsistencies and gaps in the reported data as well as to streamline the reporting requirements in certain areas and incorporate clarifications brought forward by a series of Q&As. A public hearing will be held on 28 May.

Date of publication: 28/04/2021

(g) Disclosure

(i) EU

Commission Implementing Regulation (EU) 2021/637 laying down ITS with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of the CRR and repealing Commission Implementing Regulation (EU) No 1423/2013, Commission Delegated Regulation (EU) 2015/1555, Commission Implementing Regulation (EU) 2016/200 and Commission Delegated Regulation (EU) 2017/2295

Status: Published in the OJ

Date of entry into force: 11/05/2021

Date of application: 28/06/2021

Commission Implementing Regulation (EU) 2021/637, which lays down implementing technical standards (ITS) on public disclosure requirements for institutions under the CRR, was published in the OJ. The Implementing Regulation repeals Implementing Regulation (EU) No 1423/2013, Delegated Regulation (EU) 2015/1555, Implementing Regulation (EU) 2016/200 and Delegated Regulation (EU) 2017/2295. The Implementing Regulation introduces a consistent and complete Pillar 3 disclosure framework, providing uniform disclosure formats, templates and tables. This will aid consistency and comparability of the information disclosed by institutions.

Date of publication: 21/04/2021

1.2 Recovery and resolution

(i) Germany

BaFin: Expanded Circular 04/2021 on the minimum requirements for information systems to implement a bail-in (*Erweitertes Rundschreiben zu den Mindestanforderungen an Informationssysteme zur Umsetzbarkeit eines Bail-in (MaBail-in)*)

Status: Final

BaFin published an expanded version of its circular on the minimum requirements for information systems to implement a bail-in (MaBail-in). The original version of the circular (05/2019 (A)) was published on 4 July, 2019. The new version that has now been published contains the following enhancements:

- So far, only bail-in-eligible liabilities of the resolution unit with an insolvency ranking up to and including the debt instruments within the meaning of Section 38 of the Insolvency Code (*Insolvenzordnung* – InsO) in conjunction with Section 46f (6) sentence 1 and (9) of the German Banking Act (*Kreditwesengesetz* – KWG) (“Non-preferred senior debt”) were considered. The new version of the circular basically includes all bail-in-eligible liabilities as well as other liabilities that BaFin considers necessary to be recorded.
- In parallel to the revision of the circular, BaFin has continued to develop the [leaflet on external bail-in implementation](#) (see following entry). In order to be able to take into account the expansions of the execution approach planned beyond the existing basic scenario, the MaBail-in include additional data points.
- A third appendix was added to the MaBail-in, which contains frequently asked questions from the institutions and answers from the resolution authority. This is intended to further increase the transparency and uniformity of administrative action.

Date of publication: 13/04/2021

BaFin: Expanded leaflet on external bail-in implementation (*Erweitertes Merkblatt zur externen Bail-in-Implementierung*)

Status: Final

BaFin published the expanded version of the leaflet on external bail-in implementation. The new leaflet expands the leaflet of the same name that was published on 1 October, 2019. The new version focuses procedurally and technically on all legal forms and all share classes and also takes into account foreign currency bonds.

While the trading repeal/suspension previously only included the regulated market of the Frankfurt Stock Exchange, the new version also includes the repeal/suspension of trading on regulated and non-regulated markets of the regional stock exchanges.

The leaflet previously assumed that the conversion of a stock corporation would not change the class of shares. A notification from the resolution authority was sufficient to allow the new shares of the same class to be admitted to the regulated market. The “simplified application for approval” now covers all other cases. In addition to the class of shares, the legal form of the institute or the stock exchange listing may also change after the resolution.

The leaflet is aimed at all institutions within the meaning of Section 2 (1) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) and companies within the meaning of Section 1 No. 3 SAG in the Federal Republic of Germany for which the resolution strategy provides for a bail-in. This also includes institutions within the remit of the Single Resolution Board (SRB) as the resolution authority.

Date of publication: 13/04/2021

(ii) EU**SRB: New guidance on liquidity and funding in resolution****Status: Final**

The SRB published a new guidance on liquidity and funding in resolution. As outlined in the SRB's [Expectations for Banks](#) document, banks are expected to: (i) develop methodologies to estimate ex-ante the liquidity needs for the implementation of the resolution strategy; (ii) be able to measure, report and forecast their liquidity position and relevant liquidity metrics during the resolution process; and (iii) be able to identify and mobilise assets (especially of lower quality and less liquid) that could be used as collateral to obtain liquidity in resolution anticipating any legal, regulatory and operational obstacles to their mobilisation under stressed conditions.

This guidance focuses on the estimation of liquidity needs, and aims to enhance banks' resolvability and preparedness for a potential resolution. Banks will be assessed on this element in the 2021 resolution planning cycle.

Date of publication: 30/04/2021**EC: Commission Delegated Regulation .../... supplementing the BRRD with regard to RTS determining the content of the contractual terms on recognition of resolution stay powers****Status: Adopted by EC**

The EC adopted a Delegated Regulation on regulatory technical standards (RTS) determining the content of the contractual terms on recognition of resolution stay powers under BRRD. The Delegated Act specifies the content of the term required in Article 71a(1) of BRRD, taking into account institutions' and entities' different business models. Article 71a(1) of BRRD (which was inserted by BRRD II), requires institutions and entities to include terms that recognise the stay powers of resolution authorities in their financial contracts that they enter into and which are governed by third-country law.

The Council of the EU and the EP will now scrutinise the draft Delegated Regulation and if neither object, the Delegated Regulation will enter into force 20 days after its publication in the OJ.

Date of publication: 22/04/2021**Commission Implementing Regulation (EU) 2021/622 laying down ITS for the application of the BRRD with regard to uniform reporting templates, instructions and methodology for reporting on the minimum requirement for own funds and eligible liabilities****Status: Published in the OJ****Date of entry into force: 06/05/2021**

Commission Implementing Regulation (EU) 2021/622 laying down implementing technical standards (ITS) on uniform reporting templates, instructions and methodologies for reporting on the minimum requirement for own funds and eligible liabilities (MREL) under BRRD was published in the OJ. The Implementing Regulation replaces the existing ITS in order to reflect the amendments to BRRD by BRRD II, relating in particular to MREL subordination levels and the MREL applied to entities that are not themselves resolution entities.

Date of publication: 16/04/2021**(iii) International****FSB: Survey for FMIs on questionnaire on continuity of access for firms in resolution****Status: Consultation****Deadline for the submission of comments: 03/05/2021**

The FSB began an online survey that seeks feedback on stakeholders' experience of using its questionnaire on the continuity of access to financial market infrastructures (FMIs) for firms in resolution. To inform resolution planning, firms and authorities may have similar information expectations as they engage with FMIs on arrangements and safeguards that would affect the client's access to FMI services in the run-up to, and during, its resolution. In August 2020, therefore, the FSB published a

common template in the form of a questionnaire for FMIs to streamline the provision of this information. FMIs are expected to publish their responses to the questionnaire or make them available in other ways to their clients and their resolution authorities. Responses to the survey will inform the revision of the questionnaire by FSB member authorities.

Date of publication: 06/04/2021

FSB: Final Report on the evaluation of the effects of too-big-to-fail reforms

Status: Final

The FSB published the final report on its evaluation of the effects of too-big-to-fail (TBTF) reforms for systemically important banks (SIBs). The evaluation examines the extent to which the reforms have reduced the systemic and moral hazard risks associated with SIBs, as well as their broader effects on the financial system. The evaluation finds that TBTF reforms have made banks more resilient and resolvable, and that they have produced net benefits to society. Indicators of systemic risk and moral hazard moved in the right direction, suggesting that market participants view these reforms as credible. Increased bank resilience and greater market discipline have been tested by the Covid-19 pandemic; however, banks (thanks also to the unprecedented fiscal, monetary and supervisory support measures) have so far been able to absorb the shock. Nevertheless, the FSB found some gaps that need to be addressed: (i) resolution reforms should be implemented in full to enhance the feasibility and credibility of resolution, minimising the need for state support of failing banks. This includes further work to enhance the resolvability of SIBs; (ii) there is still scope to improve public disclosures of information relating to resolution frameworks and funding mechanisms, the resolvability of SIBs and resolution actions; (iii) information may be needed for public authorities to assess the potential impact of resolution actions (such as bail-in) on the financial system and the economy; and (iv) the application of the reforms to domestic SIBs warrants further monitoring. In addition, risks arising from the shift of credit intermediation to non-bank financial intermediaries should continue to be closely monitored. The FSB also published an overview of responses to its public consultation and an Addendum to the technical appendix providing more information on the analytical updates. The next FSB evaluation will be on the effects of G20 financial reforms on bond market liquidity; the evaluation will be launched in mid-2021 and be completed in 2022.

Date of publication: 01/04/2021

2. Investment firms regulation

(i) Germany

BT: Adoption of the Law on the Supervision of Investment Firms (*Wertpapierinstitutsgesetz – WpIG*)

Status: Final

The German Parliament (*Bundestag* – BT) has adopted the Law on the Supervision of Investment Firms (*Gesetz zur Umsetzung der Richtlinie (EU) 2019/2034 über die Beaufsichtigung von Wertpapierinstituten – Wertpapierinstitutsgesetz – WpIG*).

Currently, investment firms are, in principle subject to a similar prudential regime as credit institutions, namely under CRR / CRD. In Germany, CRD is implemented, in particular, in the German Banking Act (*Kreditwesengesetz – KWG*). In contrast to credit institutions, however, investment firms have a business model with a different risk profile, as they do not accept deposits. In order to take account of the specific requirements for business models and different risk profiles of investment firms, specific requirements for supervision and capital requirements of investment firms were being developed by IFD / IFR. These requirements will vary in proportion to the size of the investment firms.

The German Ministry of Finance has decided to implement IFD not only by inserting amendments into the KWG, but by creating a completely new regime for investment firms, the WpIG. In proportion to the size and importance of investment firms for financial stability, the WpIG essentially contains: (i) requirements relating to initial capital; (ii) requirements relating to the organisation of business and certain notification obligations; (iii) supervisory powers of the competent supervisory authorities, in particular with regard to the solvency of investment firms and capital and liquidity requirements; (iv) criteria for assessing the appropriateness of internal capital requirements; (v) requirements for the executive board and supervisory bodies of investment firms with regard to internal corporate governance; and (vi) rules on remuneration policy for certain categories of investment firm employees.

The WpIG is relevant to all investment firms as they will first need to assess in which category of investment firms they fall and what new rules they need to comply with, if any.

As a next step, the Law will be published in the German Federal Law Gazette (*Bundesgesetzblatt*) and is expected to enter into force on 26 June 2021.

We can provide you with DeltaViews/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide DeltaViews of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

We have summarized the impact of the new prudential regime for investment firms on our [micro-site](#).

Date of publication: 16/04/2021

(ii) EU

EBA: Draft RTS on the disclosure of investment policy by investment firms under Article 52 of Regulation (EU) 2019/2033 on the prudential requirements of investment firms

Status: Consultation

Deadline for the submission of comments: 01/07/2021

The EBA published a consultation paper on draft regulatory technical standards (RTS) on disclosure of investment policy by investment firms under Article 52 of the Investment Firms Regulation (IFR). The draft RTS: (i) put forward comparable disclosures that should help stakeholders understand investment firms' influence over the companies in which they have voting rights and the impact of investment firms' policies on aspects such as the governance or management of those companies; (ii) put forward templates and tables for the disclosure of information on the investment firm's voting behaviour, explanation of the votes, and the ratio of approved proposal, with the objective to show if the investment firm is an active shareholder that generally uses its voting rights, and how it uses them; (iii) include information on the use of proxy advisory firms that should help address uncertainties about potential conflicts of interest; and (iv) include information on investment firms' voting guidelines, including, when relevant, a breakdown by geographical zone, economic sector or topic of the resolution being voted. The EBA notes that these disclosure requirements apply to class 2 investment firms with total assets above EUR100 million –

these firms will have to disclose this information in relation to those companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5 % of all voting rights issued by the company. The EBA will hold a public hearing on 6 May.

Date of publication: 31/03/2021



3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

Guideline (EU) 2021/565 of the ECB amending Guideline (EU) 2019/1265 on the euro short-term rate (€STR)

Status: Published in the OJ

Guideline (EU) 2021/565 of the ECB was published in the OJ. The guideline amends guideline (EU) 2019/1265, which governs the euro short-term rate (€STR) and establishes the ECB's responsibility for its administration. The amending guideline updates: (i) the tasks and responsibilities of the ECB to include the calculation and publication of compounded rates; and (ii) the framework for the consultation of stakeholders to improve clarity. The amending guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro (NCBs). The NCBs shall comply with the amending guideline at the latest by 15 April.

This Guideline is addressed to all Eurosystem central banks.

Date of publication: 07/04/2021

3.2 Consumer protection rules

(i) Germany

BGH: Ruling on the invalidity of clauses that feign the customer's consent in the event of an amendment to the bank's GTCs (*Urteil zur Unwirksamkeit von Klauseln, die die Zustimmung des Kunden bei einer Änderung der AGB der Bank fingieren*)

Status: Final

The German Federal Supreme Court (*Bundesgerichtshof* – BGH) published a ruling on the invalidity of clauses that “assume” the customer's consent in the event of an amendment to the bank's general terms and conditions (GTCs). The XI Civil Senate, which is responsible for banking law, ruled that clauses in a bank's GTCs are invalid if they assume the customer's consent without any restriction of content. According to the Federal Supreme Court, the clauses are fully subject to a general terms and conditions review. They were to be interpreted in the light of EU law in such a way that they affected all contracts concluded by the defendant with its customers within the framework of the business relationship, such as securities transactions and savings transactions. According to the XI Civil Senate, the clauses would not stand up to the scrutiny of general terms and conditions. The fictitious consent would unreasonably deviate, to the detriment of the customers, from essential basic ideas of § 305 para. 2, Section 311 para. 1, Section 145 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) by qualifying silence as acceptance of a request to change the contract.

Date of publication: 27/04/2021

(ii) EU

EC: EU strategy for retail investors

Status: Consultation

Deadline for the submission of comments: 18/05/2021

The EC began consulting on a roadmap on a retail investment strategy for the EU, as part of its capital markets union action plan. The retail investment strategy aims to provide a coherent approach to empower consumers to take financial decisions and benefit from the internal market and to address the challenge of low capital market participation rates in the EU. The strategy

aims to assess the entire retail investor journey and will put the investor at the heart of EU policies in the spirit of “an economy that works for the people”. The initiative aims to tackle issues including: (i) investor protection rules are currently set out in a number of sector specific legislative instruments, including MiFID, PRIIPs, UCITS, and the IDD (the rules and disclosures can differ from one instrument to another, which may make it more difficult for consumers to make investment decisions that correspond to their needs); (ii) due to payments of inducements, advice provided by intermediaries may sometimes be biased towards products with higher rewards for the intermediaries; (iii) ineffective suitability assessments; (iv) the impact of digital innovation on the retail investment market, such as social media and online brokerages; (v) the general level of consumer understanding and familiarity with retail investment products; (vi) the possible need for further differentiation between different investor categories; (vii) the high complexity of some retail investment products; and (viii) improving access to effective individual redress.

The EC has also commissioned a study on disclosures to consumers, inducements and advice, and the suitability and appropriateness assessment tests. It will publish the results in autumn 2021 and will represent an important input for the retail investment study.

Date of publication: 21/04/2021

EC: Speech on making finance work for citizens

Status: Final

The EC published a speech by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union, in which she considers how to make financial services work for citizens. Highlights include: (i) the EC will work with the OECD to develop a joint financial competence framework in order to develop a common understanding of what financial literacy means (the framework could be used by national governments or at regional or indeed local level, or by civil society organisations, to develop financial education strategies, tools and campaigns); (ii) the EC alongside the ECB is monitoring the latest developments in relation to access to cash and changes since the onset of the Covid-19 crisis. If necessary, it may decide to take action to protect the availability of cash towards the end of the year; (iii) the EC is concerned and is stepping up its enforcement in relation to the lack of compliance with the SEPA rule that gives consumers and businesses the right to make euro payments from their account to another bank account regardless of whether these two accounts are located in the same Member State; (iv) the EC, together with ESMA, is looking at whether any further measures or changes to rules may be needed to make the European system safe and secure for retail investors, noting the effect of the digitalisation on the ease of access to trading platforms; (v) in early 2022, the EC will publish its retail investment strategy, which will be an opportunity to place retail investors at the heart of its policies and assess the entirety of the retail investor journey (as a first step, the EC will shortly launch a public consultation to gather views on how the current rules work and what might need to change); (vi) on sustainable finance, the EC is developing an EU taxonomy, a proposal for an EU Green Bond Standard, and in 2021 will adopt an EU Ecolabel for retail investors; and (vii) the EC is assessing how to progress towards further supervisory convergence – a common set of rules that are consistently applied by all national regulators.

Date of publication: 20/04/2021

EC: Mini-sweep on consumer credit

Status: Final

The EC updated its sweeps webpage to provide information on a mini-sweep of consumer credit websites (a “sweep” is a set of checks carried out on websites simultaneously to identify breaches of EU consumer law in a particular sector). Consumer protection authorities from 13 Member States and 2 EEA countries took part. The primary objective was to check on various technical devices (PC, tablets, smartphones), whether traders comply with EU consumer rules on standard information in online advertising of consumer credit, if the overall presentation of the consumer credit offers cannot mislead consumers, and if the offers do not aggressively exploit consumer vulnerabilities. Key findings include: (i) 36% of the 118 websites that were swept were flagged for potential irregularities with EU consumer law; (ii) 30% of consumer credit advertising, which indicates an interest rate or any figures relating to the cost of credit, did not include all the standard information by means of a representative example in a clear, concise and prominent way as required by the Consumer Credit Directive; (iii) the suspected infringement rate was 8% higher for websites checked by smartphones; (iv) on 34% of checked creditor websites it was unclear how the creditworthiness assessment is performed, including the personal data used for that purpose and the possible use of machine learning; and (v) 47% of advertisements/websites for short-term high-cost products were flagged. In the vast majority of these

cases, this was because the standard information required for advertising was not presented by means of a representative example in a clear, concise and prominent way.

Date of publication: 16/04/2021

3.3 Credit rating agencies

(i) EU

ESMA: Response to the European Systemic Risk Board (ESRB) on the procyclical impact of downgrades of corporate bonds on markets and entities across the financial system

Status: Final

ESMA published a letter (dated 29 March) from its Chair, Steven Maijoor, replying to the ESRB's letter on the procyclical impact of downgrades of corporate bonds on markets and entities across the financial system. In the letter, Mr Maijoor replies to some of the key issues mentioned in the ESRB's letter – specifically, Mr Maijoor focuses on the two actions proposed in the ESRB's letter regarding the transparency of Credit Rating Agency (CRA) methodologies and contractual references to credit ratings, by providing an overview of: (i) the current state of play from a regulatory perspective, highlighting aspects of the CRA Regulation and ESMA's activities that are relevant in the context of the ESRB's letter; (ii) ESMA's preliminary observations on the definition of ratings, the rating “through-the-cycle” concept and the timely incorporation of information in credit ratings by CRAs; and (iii) possible follow-up work on contractual references to credit ratings and the transparency on some of the more technical aspects of CRA methodologies.

Date of publication: 13/04/2021

ESMA: Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies – 2nd Edition

Status: Final

ESMA published the final guidelines on the submission of periodic information to ESMA by Credit Rating Agencies – 2nd Edition – following its [Final Report](#) on these Guidelines of 05 February 2019.

The Guidelines are relevant for Credit Rating Agencies only.

Date of publication: 07/04/2021

3.4 General complaints handling

(i) EU

ESAs: Report on the application of their Guidelines on complaints-handling

Status: Final

The ESAs published a report on the application of their guidelines on complaints-handling, describing the assessment of how the guidelines have been applied since their date of application and the main findings that have been identified. The ESAs state that the guidelines have: (i) been successful in terms of the number of national competent authorities (NCAs) that comply with them; and (ii) contributed to the achievement of the purposes for which they were developed, especially in ensuring a consistent approach to complaints-handling across the banking, insurance and securities sectors, and have also resulted in better outcomes for consumers. The ESAs highlight that there is no need to review the guidelines at this stage and no further assessment of the application of the guidelines is warranted.

Date of publication: 31/03/2021

3.5 MiFID/MiFIR

(i) EU

EC: Commission Delegated Regulation (EU) .../... correcting Delegated Regulation (EU) 2017/565 supplementing MiFID II as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Status: Adopted by the EC

The EC adopted a Delegated Regulation (Amending Delegated Regulation) correcting Delegated Regulation (EU) 2017/565, which supplements MiFID II as regards organisational requirements and operating conditions for investment firms and defined terms. To be fully compliant with MiFID II, the Amending Delegated Regulation corrects: (i) Article 1 paragraph 1 to clarify that it requires the application of Article 64(4), Article 65 and Chapter VIII of that Regulation instead of Article 59(4), Article 60 and Chapter IV; and (ii) errors that appeared in several cross-references in the Annex I, more precisely under ‘Client assessment’, ‘Order handling’, ‘Client order and transactions’, ‘Reporting to clients’, ‘Communication with clients’ and ‘Organisational requirements’.

The Council of the EU and the EP will now consider the draft Amending Delegated Regulation. If neither the Council nor the EP object, it will be published in OJ and will enter into force on the 20th day following that of its publication.

Date of publication: 21/04/2021

ESMA: MiFID II review report on the functioning of Organised Trading Facilities (OTF)

Status: Final

ESMA published its MiFID II review report on the functioning of Organised Trading Facilities (OTF), which contains proposals aimed at clarifying the MiFID II provisions relating to OTFs and, more generally, multilateral systems to ensure efficient EU market structures and to enhance the level playing field between all firms operating in the EU while reducing the level of complexity for market participants.

Date of publication: 08/04/2021

ESMA: MiFID II review report on the functioning of the regime for SME Growth Markets

Status: Final

ESMA published its final report on the functioning of the regime for SME Growth Markets (GM) under MiFID/MiFIR, which contains recommendations and possible amendments to the MiFID II framework to the SME GM regime which are needed to improve the attractiveness of the regime. The report suggests that the SME GMs regime in the EU, as it stands, has been relatively successful, with 17 multilateral trading facilities registering as SME GMs to date. ESMA’s proposals include: (i) that the EC take into account a potential harmonisation of requirements for SME issuers in the context of the discussion on the establishment of the European Single Access Point; (ii) an amendment of Article 78(2)(h) of Delegated Regulation (EU) 2017/565 in order to require firms to make financial reports in the year prior to admission to trading public where available, which could help investors to retrieve helpful information; and (iii) to extend the issuer non-objection requirement in the first part of Article 33(7) of MiFID II concerning the admission to trading of an instrument already admitted on SME GMs to any trading venue. ESMA believes that such extension would be beneficial in reducing the risks of fragmentation of liquidity. ESMA has submitted the report to the EC and the EC is expected to take it into consideration for further legislative proposals on the MiFID II SME GM regime.

Date of publication: 07/04/2021

ESMA: Guidelines on certain aspects of the MiFID II compliance function requirements**Status:** Final**Date of application:** 06/06/2021

ESMA published the final guidelines on certain aspects of the MiFID II compliance function requirements which means that they have been translated into all official languages of the EU. The [final report](#) was published on 5 June 2020. The official translation triggers the date of application of the guidelines, which is two months following the publication.

Date of publication: 06/04/2021**ESMA: Updated Q&As MiFID II and MiFIR market structures topics****Status:** Final

ESMA updated its Q&A on market structures topics under MiFID II and MiFIR. A Q&A in the tick size regime section has been modified to reflect the amendment introduced in Article 49(1) of MiFID II which excludes Large in Scale transactions from the mandatory tick size regime.

Date of publication: 06/04/2021**ESMA: Statement to promote coordinated action by national competent authorities (NCAs) under MiFID II****Status:** Final

ESMA published a statement to promote coordinated action by national competent authorities (NCAs) under MiFID II. The statement relates to the temporary suspension of the obligation on execution venues to make available to the public data related to the quality of execution of transactions on their venues (RTS 27 Reports). ESMA explains that these reports are rarely read and do not enable investors and other users to make any meaningful comparisons on the basis of the information they contain.

Date of publication: 31/03/2021

3.6 Prospectus regulation

(i) Germany

BaFin: Application of ESMA guidelines on prospectus requirements**Status:** Final

BaFin has announced that it complies with the guidelines of the European Securities and Markets Authority ESMA on the disclosure obligations under the EU Prospectus Regulation and that it fully applies the [German version](#) of 4 March 2021 in its supervisory practice. The guidelines are intended to ensure that market participants apply the requirements from the annexes to Delegated Regulation (EU) 2019/980 uniformly and that the responsible supervisory authorities can also ensure this. They update the recommendations issued by ESMA and the Committee of European Securities Regulators (CESR) from 2011 under the Prospectus Directive.

So far, issuers had to include pro forma financial information in the prospectus for individual transactions beyond a 25% threshold for the relevant size indicators. The new guidelines stipulate that, in principle, they must also prepare pro forma financial information for transactions below the 25% threshold if individual transactions together with other transactions exceed this threshold. Exceptions to this rule only apply in individual cases if it would mean a disproportionate effort for the issuer to meet the investor's need for information. Issuers who want to claim disproportionate effort should coordinate with BaFin in good time. In any case, they should do this before submitting the prospectus to BaFin. For the first time, guidelines on prospectus requirements also contain instructions on how issuers must prepare their profit forecasts on the basis of pro forma financial information.

The guidelines make it clear in which cases issuers may themselves take into account the issue proceeds from the offer in the prospectus when calculating the business capital. In principle, this is only permitted if and to the extent that institutions have subscribed to the issue on the basis of a firm commitment. There must be no risk that the offer will continue if an institution

suspends the takeover agreement. In addition, in the case of an unrestricted declaration on business capital, the issuer should always state whether the proceeds from the offer are included in the calculation.

Date of publication: 15/04/2021

3.7 Securities financing transactions

(i) EU

ESMA: Updated statement on the implementation of LEI requirements for third-country issuers under the SFTR reporting regime

Status: Final

ESMA updated its statement on the implementation of LEI requirements for third-country issuers under the SFTR reporting regime. The updated LEI statement maintains ESMA position as described in its original statement that was published on 6 January 2020 and provides an extended timeline for the reporting of LEIs of third-country issuers of securities used in Securities Financing Transactions (SFTs) until 10 October 2022. The updated statement also sets out the expectations towards Trade Repositories and counterparties, as well as the relevant supervisory actions to be carried out by authorities.

Date of publication: 13/04/2021

ESMA: Updated SFTR Q&As

Status: Final

ESMA has updated its Q&A on SFTR data reporting to simplify the reporting of SFTs when an external portfolio manager is used. The update complements [ESMA's guidance on reporting under SFTR](#).

Date of publication: 06/04/2021

(ii) International

FSB: FAQ on the global securities financing data collection and aggregation

Status: Final

The FSB published FAQs on global securities financing data collection and aggregation. The FAQs have been prepared by the FSB's Data Experts Group on Securities Financing Transactions (SFTDEG) to help the national implementation of the FSB's data standards and processes for collecting and aggregating global data on SFTs (the SFT Data Standards). As market practices evolve, the SFTDEG will continue to update the FAQs as needed going forward.

Date of publication: 12/04/2021

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Updated CSDR Q&As

Status: Final

ESMA published its updated Q&As on the CSDR. ESMA explains that the revised ESMA Regulation (Article 16b(5)) specifies that ESMA transfers queries which interpret Union law to the EC. The updated Q&As contain answers provided by the EC that relate to: (i) the provision of CSD services in other Member States – the first Q&A clarifies that Article 23 of CSDR applies to all types of financial instruments, as defined under MIFID II, whether or not admitted to trading, or traded, on trading venues, and the second Q&A clarifies that, for the purpose of Article 23(2) of CSDR, the “law under which the securities are constituted” should by default be the standard law of the issuance of the securities and/or, if determined by the issuer, the national law of the issuer; and (ii) the exemption from the application of cash penalties and the buy-in requirements for settlement fails relating to transactions involving central counterparties (CCPs) – the third Q&A clarifies that only settlement fails relating to transactions for which a CCP interposes itself between the counterparties should be captured by the exemption under Article 7(11) of CSDR.

Date of publication: 31/03/2021

4.2 EMIR

(i) EU

ESMA: Final report on EMIR and SFTR data quality

Status: Final

ESMA published its final report on EMIR and SFTR data quality. The report covers the progress made to date in improving EMIR data quality for regulatory and supervisory use and concludes that, while good progress has been made, additional efforts are needed by national competent authorities (NCAs) and ESMA to further improve EMIR data quality. The report is the first review of data quality since the introduction of the EMIR and SFTR reporting regimes. It also reviews the quality of data reported by trade repositories and gives an overview of actions taken by both ESMA and the NCAs to improve data quality.

Date of publication: 15/04/2021

Commission Implementing Decision (EU) 2021/583 amending Implementing Decision (EU) 2016/1073 on the equivalence of designated contract markets in the United States of America in accordance with EMIR

Status: Published in the OJ

Date of entry into force: 15/04/2021

EC Implementing Decision (EU) 2021/583, amending Implementing Decision (EU) 2016/1073 on the equivalence of designated contract markets (DCMs) in the US in accordance with EMIR, was published in the OJ. The text explains that since the adoption of Implementing Decision (EU) 2016/1073, a number of additional DCMs established in the USA have obtained authorisation from the Commodity Futures Trading Commission (CFTC) to trade in derivatives. In light of the information received from the CFTC, those additional DCMs comply with the legally binding requirements that are equivalent to the requirements for EU-regulated markets laid down in Title III of Directive 2014/65/EU (MiFID II).

Date of publication: 12/04/2021

EC: Report to the European Parliament on whether trades that directly result from post-trade risk reduction services should be exempted from the clearing obligation for OTC derivatives under EMIR

Status: Final

The EC published a report to the EP and Council of the EU on whether trades that directly result from post-trade risk reduction services should be exempted from the clearing obligation for OTC derivatives under EMIR. The report explains that Article 85(3)(c) of EMIR mandates the EC to report to the EP and the Council on whether trades that directly result from post-trade risk reduction services (PTRR services), including portfolio compression, should be exempt from the clearing obligation referred to in Article 4(1) of EMIR. Specifically, Article 85(3)(c) requires the EC to take into account the three following aspects, namely: (i) the extent to which PTRR services mitigate risk, in particular counterparty credit risk and operational risk; (ii) the potential for circumvention of the clearing obligation if an exemption was to be granted; and (iii) the potential disincentive to central clearing if an exemption was to be granted.

Date of publication: 12/04/2021

ESMA: Final Report on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met (Articles 15(3) and 49(5) EMIR)

Status: Final

ESMA published its Final Report on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met.

Next steps: ESMA is submitting the Final Report, along with the final draft regulatory technical standards to the Commission. The Commission has three months to decide whether to endorse the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the endorsement, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

Date of publication: 08/04/2021

ESMA: Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories

Status: Final

Date of application: 30/06/2021

ESMA published its [final report](#) and guidelines (both dated 23 March) on the reporting of periodic information and material changes by trade repositories (TRs) to ESMA under EMIR and SFTR. The guidelines clarify the format and frequency of the different categories of information which ESMA expects to receive in its role as supervisor of TRs registered in accordance with EMIR and/or SFTR. ESMA expects the guidelines to: (i) reduce efforts to request this information sporadically and ensure that no information is omitted; (ii) reduce the processing time of information received; (iii) ensure a level playing field by establishing harmonised reporting templates; (iv) ensure complete information necessary for ESMA's risk-based supervision; (v) improve the internal planning of ESMA's supervision teams with regard to information review and facilitate processing; and (vi) standardise practices that are already implemented by TRs on a best efforts basis. All periodic information items that have annual frequency and a reporting deadline of 31 January should, in the first year, be submitted by 30 June.

Date of publication: 06/04/2021

ESMA: Updated Q&As on the implementation of EMIR

Status: Final

ESMA published its updated Q&As on the implementation of EMIR. The updated Trade Repository (TR) Q&A 51 provides further clarifications on two aspects related to intragroup transactions (IGT) reporting exemption: (i) reporting of details of

derivatives when the IGT reporting exemption ceases to be valid; and (ii) location of parent undertaking for purposes of the IGT reporting exemption.

Date of publication: 31/03/2021

4.3 Clearing, settlement, and CCPs related rules other than in the context of derivatives

(i) EU

ESMA: Annual peer review of EU CCP supervision

Status: Final

ESMA published its annual peer review report on the supervision of EU central counterparties (CCPs) by national competent authorities (NCAs), which measures the effectiveness of NCA supervisory practices in assessing CCP compliance with EMIR's requirements on liquidity stress testing. The review also assessed whether NCAs in doing so are complying with the relevant general principles and criteria agreed at ESMA, eg via EMIR Q&A, ESMA Guidelines and Recommendations, best practices, and in particular with ESMA's opinion on CCP Liquidity Risk Assessment under Article 44(1) of EMIR of 2018. Overall, the review found that NCAs' supervisory activities on CCPs' liquidity stress testing are satisfactory. However, the peer review showed that the assessment of some areas of liquidity stress testing was not always being performed or evidenced sufficiently. In particular, NCAs should make sure that the settlement of obligations of defaulting clearing members is reflected in full in the liquidity stress testing framework. The report identifies several best practices and considerations to further enhance supervisory convergence with respect to CCPs' liquidity stress testing. On the functioning of CCP colleges, the review of colleges' activities during the reporting period remains overall positive. In particular, ESMA appreciated the efforts of chairing NCAs to meet the expectations and best practices highlighted in past peer reviews and to update the colleges on the recent market developments related to the Covid-19 crisis. ESMA will follow up on the report's findings to identify, where relevant, the most appropriate tools to further enhance supervisory convergence.

Date of publication: 08/04/2021

ESMA: Final Report containing draft RTS on changes to a CCP's activities and models

Status: Final

ESMA published its final report containing draft regulatory technical standards (RTS) relating to changes to central counterparty (CCP) services and activities, as well as models and parameters under EMIR 2.2. EMIR requires a CCP wishing to extend its business to additional services or activities, which are not covered by the initial authorisation, to submit a request for extension of authorisation to its competent authority. Prior to making any significant change to its risk models or parameters, a CCP must also obtain validation from its competent authority and ESMA. The draft RTS specify: (i) the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation; (ii) the conditions under which changes to the CCP's models and parameters are significant and therefore require a validation; and (iii) the procedures for consulting the CCP college on whether those conditions are met. ESMA has submitted the draft RTS to the EC for endorsement, following which the Commission Delegated Regulation will be subject to the non-objection of the EP and the Council.

Date of publication: 08/04/2021

5. Anti-money laundering

(i) Germany

BaFin: Circular 06/2021 (GW) on high-risk countries (*Rundschreiben betreffend Hochrisiko-Staaten*)

Status: Final

BaFin published Circular 06/2021 (GW) on third countries that have strategic deficiencies in their systems for combating money laundering and terrorist financing, which represent significant risks for the international financial system (high-risk countries). The circular considers the EU and FATF country lists due to deficits in the fight against money laundering, terrorist financing and the financing of proliferation and describes the legal consequences and measures of BaFin with regard to these countries with increased risk.

The circular is aimed at all parties subject to BaFin under the German Money Laundering Act (*Geldwäschegesetz – GwG*) in the Federal Republic of Germany.

Date of publication: 22/04/2021

6. Payments

6.1 Payment services/E-money

(i) Germany

BaFin: Draft circular on the payment services supervisory requirements for the IT of payment and e-money institutions (*Entwurf eines Rundschreibens zu den zahlungsdiensteaufsichtlichen Anforderungen an die IT von Zahlungs- und E-Geld-Instituten (ZAIT)*)

Status: Consultation

Deadline for the submission of comments: 14/05/2021

BaFin has launched the consultation of its planned circular “Payment services supervisory requirements for the IT of payment and e-money institutions”. In this circular, BaFin specifies the IT requirements for payment and e-money institutions. The requirements are based on the existing BaFin circular on banking supervisory requirements for IT (BAIT). In addition, they implement two guidelines of the European Banking Authority (EBA) into BaFin’s administrative practice, namely the Guidelines on information and communication technology (ICT) and security risk management (GL/2017/17) and the Guidelines on outsourcing (GL/2019/02). In addition, the circular already takes into account the amendments to the Circular Minimum Requirements for Risk Management (MaRisk) and the BAIT that are currently being consulted.

The circular is relevant for all payment and e-money institutions within the meaning of Section 1(3) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*).

Date of publication: 12/04/2021

7. Banking union

7.1 European Deposit Insurance Scheme (EDIS)

(i) EU

SRB: Response to EC review of the crisis management and deposit insurance framework

Status: Final

The SRB published its response to the EC's review of its crisis management and deposit insurance (CMDI) framework. The SRB's considerations include that: (i) a much deeper analysis would be needed to assess quantitatively to what extent the CMDI framework has met its objectives (although, generally, SRB considers that the CMDI has met or partially met its objectives; it notes that more work is needed in minimising recourse to public financing and taxpayers' money, ensuring a level playing field, and providing legal certainty and predictability (significant complexity remains)); (ii) the resolution objectives are fit and appropriate for the CMDI framework, noting two further objectives, which can be seen as supporting or ancillary: resolvability, and preventing the destruction of value; (iii) eventually, raising alternative measures to the European Deposit Insurance Scheme (EDIS) to EU level would be preferable to introducing measures in national systems and would better achieve CMDI framework objectives such as predictability, value maximisation, ensuring a level playing field across Member States, and managing cross-border bank failure; (iv) overall, deposit guarantee scheme (DGS) flexibility should be preserved to strengthen the CMDI framework (such flexibility could help to allow the resolution authority to act, minimising the impact of the failure on financial stability, and maximising franchise value; clarity should be provided on how the different measures, such as preventive and alternative measures for the use of DGS, and precautionary recapitalisation, interact with the resolution framework; and there should be a clear delineation between the criteria and conditions for use of preventive and precautionary tools versus the tools that are meant to support the transfer of some assets and liabilities of a bank and to facilitate its exit); (v) the resolution framework has a comprehensive set of tools at its disposal, and what is required is an enhancement of these tools; and (vi) it seems unnecessary and unhelpful to change SRB governance arrangements if the review of the CMDI framework enhances (rather than overhauls) the resolution toolkit. Overhauling the governance seems to pose more risks than advantages at this stage, particularly if any intermediate step is geared towards EDIS. In this regard, and in line with the original EC proposal, the SRB should be the entity managing a future EDIS.

Date of publication: 21/04/2021

8. Institutional supervisory framework

(i) International

BCBS: Work programme and strategic priorities for 2021-22

Status: Final

BCBS published its work programme and strategic priorities for 2021-22. The work programme focuses on three key themes: (i) Covid-19 resilience and recovery: as the pandemic and economic crisis continue to unfold, BCBS's work related to Covid-19 will continue to form a core part of its work programme (this includes the ongoing monitoring and assessment of risks and vulnerabilities to the global banking system; where deemed relevant, BCBS stands ready to deploy additional policy and/or supervisory measures to mitigate these risks; BCBS is conducting an evaluation of the initial "lessons learned" from the Covid-19 crisis with regards to the Basel III standards, and intends to finalise an interim report in Summer 2021, to be followed by subsequent updates); (ii) horizon scanning and mitigation of medium-term risks and trends: BCBS will pursue a forward-looking approach to identifying, assessing and mitigating medium-term risks and structural trends to the banking system (this includes work related to the ongoing digitalisation and disintermediation of finance, climate-related financial risks, and the impact on banks' business models resulting from a "low-for-long" interest rate environment); and (iii) strengthening supervisory coordination and practices: BCBS will pursue a range of initiatives aimed at strengthening supervisory coordination and practices, with a focus on the role of artificial intelligence/machine learning in banking and supervision, data and technology governance by banks, operational resilience, and the role of proportionality in bank regulation and supervision. BCBS has also marked a clear end to the Basel III policy agenda. Going forward, BCBS' Basel III-related work will focus on: (a) monitoring the full, timely and consistent implementation of these standards by its members; and (b) completing an evidence-based evaluation of the effectiveness of these reforms.

Date of publication: 16/04/2021

9. Investment funds

9.1 Product regulation

(a) UCITS

(i) Germany

BT: Adoption of the Fund Location Act (*Fondsstandortgesetz* – FoStoG)

Status: Final

The German Parliament (*Bundestag* – BT) has adopted the Fund Location Act (*Fondsstandortgesetz* – FoStoG). It is aimed at strengthening Germany as a fund establishment jurisdiction and implementing Directive (EU) 2019/1160 amending Directives 2009/65/EC and 2011/61/EU with regard to the cross-border distribution of undertakings for collective investments. The Fund Establishment Jurisdiction Act is intended to bundle regulatory and tax measures to strengthen Germany's fund location. In addition to the adjustment to European legal requirements, the draft law contains further proposals to make Germany more attractive as a fund location.

In terms of capital markets law, the new act essentially contains: (i) further reduction of bureaucracy for fund managers, among others, abolition of the use of a permanent data carrier to inform investors, unless provided for by EU law, abolition of numerous written form requirements, and more flexibility for fund managers when changing fund rules; (ii) further digitisation of supervision; (iii) more flexibility for real estate fund managers; (iv) expansion of the product range for fund managers; (v) introduction of regulations to revoke the cross-border distribution of investment funds (Directive implementation); and (vi) introduction of regulations for the pre-marketing of investment funds (Directive implementation).

In addition, the KAGB and the WpHG will be adapted to European legal Regulations (Disclosure Regulation and Taxonomy Regulation) in terms of greater consideration of sustainability aspects in the investment decisions of financial market players.

As a next step, the Act will be published in the German Federal Law Gazette (*Bundesgesetzblatt*) and is expected to enter into force on 1 July 2021.

We can provide you with DeltaViews/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide DeltaViews of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 23/04/2021

10. Special topics

10.1 Covid-19

(a) Conduct rules

(i) EU

Regulations amending the securitisation framework to help the recovery from Covid-19

Status: Published in the OJ

Date of entry into force: 09/04/2021

Regulation (EU) 2021/557 amending the Securitisation Regulation and laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the Covid-19 crisis, and Regulation (EU) 2021/558 amending the CRR as regards adjustments to the securitisation framework to support the economic recovery in response to the Covid-19 crisis, were published in the OJ. The amendments to the Securitisation Regulation: (i) extend the simple, transparent and standardised securitisation framework to on-balance-sheet synthetic securitisation as this type of securitisation is an important risk management tool for bank lending to corporates, in particular SMEs; and (ii) remove regulatory obstacles to the securitisation of non-performing exposures (NPEs) to enable broader use of securitisation by banks to free their balance sheets from NPEs. The previous framework was not designed for NPE securitisations and contained disincentives that might discourage banks from securitising NPEs. Both Regulations come into force on the third day after publication in the OJ, except Articles 1(2) and (4) of Regulation 2021/558, which shall be applied from 10 April 2022.

- Regulation (EU) 2021/557 amending the Securitisation Regulation to help the recovery from the Covid-19 crisis
- Regulation (EU) 2021/558 amending the CRR as regards adjustments to the securitisation framework to support the economic recovery in response to the Covid-19 crisis

Date of publication: 06/04/2021

(b) Other

(i) International

FSB: Letter to G20 on Covid-19 support measures, SIB reforms, NBFIs and a roadmap on climate-related financial risks

Status: Final

The FSB published a letter (dated 30 March) sent by Randal Quarles, FSB Chair, to G20 leaders ahead of their April 2021 summit. The FSB summarises its key G20 deliverables as follows: (i) the FSB is working on drawing lessons from the Covid-19 pandemic for financial stability (the FSB has published a report to assist policymakers in forming views on whether, when and how to extend, amend or end their support measures); (ii) the FSB is submitting the final report on the effects of 'too big to fail' reforms for systemically important banks (SIBs), both globally and domestically (the real life test provided by the Covid-19 pandemic has confirmed that the reforms have helped to reduce the risks previously posed by SIBs); (iii) following up on its holistic review of the March 2020 market turmoil, a key priority for the FSB this year is its ongoing work to strengthen the resilience of non-bank financial intermediation (NBFIs) (the FSB will submit policy proposals to enhance money market fund resilience to the G20 in July); and (iv) the FSB is also taking a lead role in coordinating work to better understand and address climate-related financial risk. The FSB is building on last year's report on the financial stability implications of climate change, with three climate-related workstreams underway covering data, disclosures, and regulatory and supervisory practices. These workstreams will provide important input for the two reports that the G20 has requested from the FSB, on ways to promote consistent, high-quality climate disclosures based on the recommendations of the Task Force for Climate related Financial Disclosures, and on the data necessary for the assessment of financial stability risks and related data gaps. The FSB will develop

a roadmap that will identify where climate-related work on financial risk is underway, what work is needed, and how the different workstreams fit together. This will leverage work being carried out by standard-setting bodies and international organisations while simultaneously using the FSB's mechanisms to identify vulnerabilities and build consensus on the way forward.

- [Letter to G20](#)
- [Report on Covid-19 support measures](#)

Date of publication: 06/04/2021

10.2 Sustainable finance

(i) Germany

BaFin: FAQ on the Sustainability-Related Disclosures Regulation

Status: Final

BaFin published an FAQ on [Regulation \(EU\) 2019/2088](#) on sustainability-related disclosures in the financial services sector (the Disclosure Regulation). In the FAQ, Bafin answers the question of whether financial investment intermediaries with a licence pursuant to Section 34f of the German Trade Regulation Act (*Gewerbeordnung – GewO*) fall under the Disclosure Regulation or are exempt from the Regulation via the optional exemption in Article 3 of MiFID II implemented in Germany.

Date of publication: 23/04/2021

(ii) EU

EC: Proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting

Status: Draft

The EC adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD) as part of its sustainable finance package. This proposal builds on and revises the sustainability reporting requirements set out in the Non-Financial Reporting Directive (NFRD), in order to make sustainability reporting requirements more consistent with the broader sustainable finance legal framework, including the SFDR and the Taxonomy Regulation, and to tie in with the objectives of the European Green Deal. Compared to the NFRD sustainability reporting requirements, the principal elements of this proposal are to: (i) extend the scope of the reporting requirements to additional companies, including all large companies and listed companies (except listed micro-companies) (in recognition of the economic difficulties they face in light of the Covid-19 pandemic, SME requirements would apply only three years after they would apply to other companies); (ii) require assurance of sustainability information; (iii) specify in more detail the information that companies should report, and require them to report in line with mandatory EU sustainability reporting standards (the European Financial Reporting Advisory Group (EFRAG) would be responsible for developing these standards); and (iv) ensure that all information is published as part of companies' management reports, and that companies digitally tag information such that it is machine readable and feeds into the EU single access point. The proposal would amend four existing pieces of legislation: the Accounting Directive, the Audit Directive, the Audit Regulation and the Transparency Directive. The EC will now engage in discussions with the EP and the Council. In parallel, the EFRAG will start work on a first set of draft sustainability reporting standards, which it aims to have ready by mid-2022.

- [Impact assessment](#)
- [Impact assessment summary](#)
- [FAQ](#)

Date of publication: 21/04/2021

EC: Sustainable finance package

Status: Adopted by the EC

The EC adopted a package of measures on EU taxonomy, corporate sustainability reporting, sustainability preferences and fiduciary duties. The package comprises: (i) the EU Taxonomy Climate Delegated Act, which provides the first set of technical screening criteria of EU taxonomy and a common language for sustainable activities (the criteria cover the economic activities of roughly 40% of EU-domiciled listed companies, in sectors including energy, forestry, manufacturing, transport and building, which are responsible for almost 80% of direct greenhouse gas emissions in Europe; the EC explains the changes it has made to the Delegated Act following consultation in its communication on the sustainable finance package; the Delegated Act will be formally adopted at the end of May once translations are available in all EU languages and will apply from 1 January 2022; and a complementary Delegated Act will be adopted later in 2021 on agriculture and certain energy sectors such as nuclear power and natural gas not yet included in the Delegated Act agreed today); (ii) a proposal for a Corporate Sustainability Reporting Directive; and (iii) six amending Delegated Acts on investment and insurance advice, fiduciary duties, and product oversight and governance. The legislation incorporates sustainability considerations into frameworks for the UCITS Directive, AIFMD, MiFID II, Solvency II, and the Insurance Distribution Directive.

- [EC communication on sustainable finance package](#)
- [Sustainable finance package webpage](#)
- [Press release](#)
- [Sustainable finance package factsheet](#)

Date of publication: 21/04/2021

(iii) Eurozone

ECB: Speech on guiding banks towards a carbon-neutral Europe

Status: Final

The ECB published a speech by its Vice-Chair of the Supervisory Board and Member of the Executive Board, Frank Elderson, on guiding banks towards a carbon-neutral Europe, with a focus on how climate change considerations will be taken into account by ECB Banking Supervision, addressing the following aspects: (i) climate change creates material risks for banks, so it is the ECB's job to ensure that the banks under its supervision address these risks adequately and proactively; (ii) by compelling banks to adequately assess and manage climate-related risks, the ECB is, in effect, safeguarding the financing of the transition to a low-carbon economy as well (if banks proactively manage climate-related risks, they will not be blindsided by stranded assets, meaning that capital will be preserved and can be used to finance investments in the low-carbon transformation; and climate-related risks being adequately represented on banks' balance sheets will also contribute to these risks being appropriately priced); (iii) the main risk drivers for banks are physical risks and transition risks, both of which will become increasingly material for banks in the coming years (recently, a Task Force on Climate-related Financial Risks, which operates under the BCBS, looked into the effects of physical and transition risks on banks and concluded that climate-related risks can be captured in risk categories that are already used by financial institutions, eg credit risk, market risk, liquidity risk and operational risk; however, there is still need of an enhanced toolbox that can better measure climate risks; this is why the ECB is encouraging banks to enhance both the quantity and the quality of their climate-related disclosures, and to become more transparent about their overall exposures to climate-related risks; the ECB considers that Euro area banks need to drastically improve their capacity to manage climate-related and environmental risks and start acknowledging how these risks can drive others, including credit, market, operational and liquidity risks); (v) the ECB has already started work on incorporating climate-related risks into its SREP methodology; this year the outcomes of these assessments will not be translated into quantitative capital requirements across the board, but the ECB may impose qualitative or quantitative requirements on a case-by-case basis; the ECB expects the actions taken in 2021 to result in banks being adequately prepared for the full supervisory review in 2022); and (vi) as banks become better prepared to face the risks posed by climate change, they need to be led by people who are also better prepared to deal with these topics. When assessing the suitability of prospective members of the management body of banks, knowledge and experience of climate-related and environmental risks will be among the areas of general banking experience against which suitability will be assessed. The ECB will seek to include an understanding of climate-related and environmental risks as a specific area of expertise within the collective suitability of a bank board.

Date of publication: 29/04/2021

(iv) International

BCBS: Analytical reports on climate-related financial risks

Status: Final

The BCBS published two reports on climate-related financial risks. First, the BCBS published a report on climate-related risk drivers and their transmission channels – this report explores how climate-related financial risks can arise and impact both banks and the banking system. The main findings are that: (i) banks and the banking system are exposed to climate change through macro- and micro-economic transmission channels that arise from two distinct types of climate risk drivers; (ii) evidence suggests that the impacts of these risk drivers on banks can be observed through traditional risk categories; (iii) existing literature largely focuses on the impacts of climate risk drivers on those aspects of the economy relevant to banks' credit risk, and to a lesser extent on market risk; (iv) the economic and financial market impacts of physical and transition risks can vary according to geography, by sector and by economic and financial system development; (v) climate-related events and risks are uncertain, and may be subject to non-linearities; (vi) to size climate-related financial risks, banks and regulators require plausible ranges of scenarios to assess the potential impacts of both physical and transition risk drivers on their exposures; (vii) there is a limited amount of research and accompanying data that explore how climate risk drivers feed into transmission channels and the financial risks faced by banks; (viii) traditional risk categories used by financial institutions and reflected in the Basel Framework can be used to capture climate-related financial risks; and (ix) a better understanding of risk drivers and their transmission channels across all risk types could be gained from further research by a broader community. Secondly, the BCBS published a report providing an overview of conceptual issues related to climate-related financial risk measurement and methodologies, as well as practical implementation by banks and supervisors. The key findings are that: (a) climate-related financial risks have unique features, necessitating granular and forward-looking measurement methodologies; (b) to date, measurement of climate-related financial risks by banks and supervisors has centred on mapping near-term transition risk drivers into counterparty and portfolio exposures; (c) banks and supervisors have predominantly focused on assessing credit risk, as they advance in applying methods to translate climate-related exposures into categories of financial risk; and (d) while banks and supervisors remain at an early stage of translating climate-related risks into robustly quantifiable financial risk, work continues to gather pace.

- [Climate-related risk drivers and their transmission channels](#)
- [Climate-related financial risks – measurement methodologies](#)

Date of publication: 14/04/2021

11. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

BT: Adoption of the Fund Jurisdiction Act (*Fondsstandortgesetz – FoStoG*)

Status: Final

The German Parliament (*Bundestag* – BT) has adopted the Fund Jurisdiction Act (*Fondsstandortgesetz – FoStoG*). For more information, please see section 9.1(a) above.

Date of publication: 23/04/2021

BT: Adoption of the Law on the Supervision of Investment Firms (*Wertpapierinstitutsgesetz – WpIG*)

Status: Final

The German Parliament (*Bundestag* – BT) has adopted the Law on the Supervision of Investment Firms (*Gesetz zur Umsetzung der Richtlinie (EU) 2019/2034 über die Beaufsichtigung von Wertpapierinstituten – Wertpapierinstitutsgesetz – WpIG*). For more information, please see section 2 above.

Date of publication: 16/04/2021

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