ALLEN & OVERY

Regulatory monitoring

Newsletter

November 2020

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Supervisory law has been increasing in complexity for years. This offers opportunities but also presents both financial services providers and law firms with serious challenges. As one of the largest law firms both on a global scale and within Germany, our aim is to make the quality-control and training instruments which we have developed in-house also available to our clients. In this context, we provide our clients with a modular suite of services which can support you in a variety of ways: via our RegGateway, a specially developed online tool; our RegAcademy, which is based on traditional face-to-face events; and our written briefings, comprising our regular newsletter and ad hoc updates.

RegGateway

With RegGateway, we have created an **online platform for financial services regulation, unique in the German market**, to support practitioners in various ways with the implementation and application of European and German financial regulatory law and to serve as **your *go-to page* for all questions** in the area of financial regulatory law.

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We offer **regulatory breakfast briefings on hot topics** which are relevant to financial institutions as well as an **annual basic course** in financial services regulation.

Microsites

For key topics, we prepare specific microsites. In particular, please see Micro-site on IFD /IFR.

If you wish to learn more about our products, please feel free to contact us.

Contents

1. Bank regulation

1.1 Prudential regulation

(a) General

(i) International

FSB: Annual report on implementation and effects of financial regulatory reforms

Status: Final

The FSB published its 2020 report on the implementation and effects of the G20 financial regulatory reforms. Key conclusions from the report include: (i) the G20 reforms that followed the 2008 crisis have served the financial system well during the pandemic; (ii) bold and decisive actions by authorities have helped maintain global financial stability during the pandemic; (iii) given the pandemic, there has been limited additional progress in implementing G20 reforms since last year with delays in implementing some Basel III standards and substantial work remaining to operationalise resolution planning for systemically important banks and to implement effective resolution regimes for CCPs. The FSB believes that the pandemic represents the first major global test of the post-crisis financial system and therefore provides an opportunity to examine whether reforms have worked as intended: (a) whether the flexibility provided by authorities is actually used by financial institutions – for example, in the case of bank capital and liquidity buffers; and (b) the FSB's holistic review of the turmoil considers the implications for regulatory and supervisory policies, especially for non-bank financial intermediation. The FSB and standard-setting bodies will carry out further work to identify potential lessons learned from the Covid-19 experience for international standards. The FSB also presents the main findings of the FSB's June 2020 consultative report on the evaluation of the effects of too-big-to-fail reforms for systemically important banks. The FSB states that it will be delivered to G20 leaders ahead of their summit on 20/1 November 2020.

Date of publication: 13/11/2020

BCBS: Report on the implementation of Basel standards

Status: Final

The BCBS published a report to the G20 leaders on the implementation of the Basel III regulatory reforms and the outcomes of the Committee's Regulatory Consistency Assessment Programme (RCAP). The report focuses on the BCBS's work on: (i) monitoring the adoption of Basel III standards; (ii) assessing the completeness and consistency of members' regulations vis-à-vis these standards; (iii) analysing the prudential outcomes of those regulations; and (iv) monitoring the jurisdictional Covid-19 measures related to the Basel Framework. Among other things, the BCBS states that: (a) further progress has been made since last year in implementing the Basel III standards in a full, timely and consistent manner; (b) banks have continued to build capital and liquidity buffers while reducing their leverage; (c) recent data, which incorporate the impact of Covid-19, suggest that banks' capital and liquidity ratios have generally remained stable; and (d) the Basel III standards for capital, liquidity and G-SIBs have generally been transposed into domestic regulations within the time frame set by the Basel Committee – the key components, including the risk-based capital standards and the Liquidity Coverage Ratio (LCR), are now enforced by all member jurisdictions. The BCBS will continue to closely monitor the implementation and evaluate the impact of its standards and regularly report to the G20 on progress. The BCBS has submitted the report to G20 leaders ahead of their summit on 21 and 22 November.

Date of publication: 03/11/2020

(b) Solvency/Own funds issues

(i) Germany

BaFin: Consultation 15/2020 – Amendments of the German Solvency Regulation (*Änderungen der SolvV*)

Status: Consultation

Deadline for the submission of comments: 04/12/2020

BaFin published two consultations amending the German Solvency Regulation (*Solvabilitätsverordnung* – SolvV). The Regulation essentially serves to define the details of the Risk Reduction Act (*Risikoreduzierungsgesetz*), which implements the so-called EU Banking Package (CRD V/CRR I/BRRD II). The aim of the Banking Package is to strengthen and clarify existing EU legislation and to transpose other important elements of the regulatory framework agreed in the Basel Committee on Banking Supervision in the wake of the financial crisis of 2007/2008 (Basel III) into EU law. This has been achieved, inter alia, through further amendments to the Capital Requirements Regulation and the Capital Requirements Directive (CRR II and CRD V). In addition to further reducing risks and strengthening the resilience and stability of the financial sector, the Banking Package also provides for substantial administrative relief for small, non-complex institutions in line with the principle of proportionality. The Banking Package is important to provide sufficient buffers for future crises and to further reduce risks to financial stability. While the amendments to the CRR, directly applicable EU Regulation, largely do not require national implementation, the provisions of CRD V must be transposed into national law, in particular through amendments to the German Banking Act (*Kreditwesengesetz* –KWG) and other laws and regulations. The amendments to the CRR only require adjustment in the case of conflicting national regulations, existing references to CRR provisions or if the CRR gives the Member States leeway.

The purpose of the Third Amendment Regulation is mainly to implement the changes introduced by the CRD V to the systemic risk buffer, insofar as these are not implemented by adapting Section 10e of the KWG. The rules introduced in the newly created Section 36a SolvV relate to the refined uses of the system risk buffer, in particular those for addressing sectoral risks to financial stability (especially residential and commercial real estate risks). The rules would only become practically relevant if a systemic risk buffer should be established in Germany – which is currently not the case.

The Fourth Amendment Regulation deals with the buffer of the leverage ratio. Article 141b(4) to (6) CRD II provides rules for calculating the maximum distributable amount in relation to the leverage ratio in order to prevent the ratio from falling below the buffer or to ensure the necessary capital maintenance to fulfil the requirements on the buffer of the leverage ratio. Section 10j (3) sentence 5 of the KWG implements this European requirement, but stipulates that further details shall be implemented in a statutory instrument.

As mentioned, the insertion of section 37a implements Article 141b(4) to (6) CRD. It is implemented by a separate amending regulation, since the required authorisation provision in section 10(1) sentence 1 number 5 letter f of the KWG was created first.

Date of publication: 12/11/2020

(ii) EU

EC: Commission Delegated Regulation amending Delegated Regulation (EU) No 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items

Status: Adopted by EC

The EC adopted a Delegated Regulation, amending Delegated Regulation (EU) No 241/2014 as regards the deduction of software assets from Common Equity Tier 1 item under the CRR. The provisions specify the application of the deductions referred to in Article 36(1)(b) of the CRR, with regard to prudently valued software assets, the value of which is not negatively affected by resolution, insolvency or liquidation of the institution, including the materiality of negative effects on the value which do not cause prudential concerns. The amendments to Delegated Regulation (EU) No 241/2014 introduce a new Article 13a, which specifies that the amount of software assets that shall be deducted from Common Equity Tier 1 items shall be determined on the basis of the prudential accumulated amortisation and sets out the methodology for its calculation. Article 13a further specifies that the prudential accumulated amortisation shall be calculated starting from the date on which the software asset is available for use and begins to be amortised for accounting purposes and that, until this date, institutions shall deduct from

Common Equity Tier 1 items the full amount at which the software asset at stake is recognised on the balance sheet under the applicable accounting framework.

The Council of the EU and the EP will consider the Delegated Regulation – if neither object to it, the Delegated Regulation will be published in the OJ. The Delegated Regulation will enter into force on the day following that of its publication in the OJ.

Date of publication: 12/11/2020

EBA: Revised final draft RTS and Guidelines on methodology and disclosure for global systemically important institutions

Status: Final

The EBA published revised final draft regulatory technical standards (RTS) to specify how to identify the indicators of global systemic importance and revised Guidelines on their disclosure. The need for this revision was prompted by the revised framework introduced by the BCBS in July 2018 to identify global systemically important banks (G-SIBs) as well as by the new requirements laid down in the CRD V, which recognise the importance of cross-border activities within the European Banking Union area. The list of EU G-SIBs identified by the BCBS and the global systemically important institutions (G-SIIs) identified by Member States' authorities have remained identical. One of the key changes stemming from the BCBS's revised approach is the introduction of a new trading volume indicator, which adds up to the existing 12 indicators used to measure systemic importance. In addition, the revised standards include insurance activities in the indicators-based measurement approach. At the EU level, CRD V has mandated the EBA to develop an additional methodology for the identification of G-SIIs that excludes the cross-border activities of EU banks in Member States of the European Banking Union. This additional EU methodology shall take into account the Single Resolution Mechanism (SRM), which could lead to the re-allocation of a G-SII from a higher to a lower sub-category, hence potentially translating into lower capital buffer requirements. These revised RTS will apply from the 2022 G-SII assessment exercise based on end-2021 information. As a result of the revised Basel framework, the EBA Guidelines on G-SIIs disclosure requirements have also been updated. These requirements apply not only to institutions that have already been identified as G-SIIs but also to other very large entities in the EU that have an overall leverage ratio exposure measure exceeding EUR 200 billion. The EBA Guidelines go beyond the requirements laid down in the Regulation and enable Member StateStates' authorities to perform the identification and scoring process and disclosure in a timely manner, and in particular before the identification of any G-SIIs.

The Guidelines have been issued in accordance with Article 16 of Regulation (EU) No 1093/2010 (EBA Founding Regulation), which mandates the Authority to establish consistent, efficient and effective supervisory practices within the ESFS, and to ensure the common, uniform and consistent application of Union law.

- Final report on draft RTS amending Commission Delegated Regulation (EU) No 1222/2014 on the specification of the methodology for the identification of global systemically important institutions
- Final report on Guidelines on the specification and disclosure of systemic importance indicators

Date of publication: 04/11/2020

(iii) International

FSB: Updated list of banks as global systemically important banks (G-SIBs)

Status: Final

The FSB published an updated list of banks identified by it and the Basel Committee on Banking Supervision (BCBS) as G-SIBs. The list is based on end-2019 data and the updated assessment methodology published by the BCBS in July 2013. A new list of G-SIBs will next be published in November 2021. Furthermore, the BCBS has published the following information relating to the 2020 G-SIB assessment: (i) an updated list of denominators of each of the 12 high-level indicators used to calculate the banks' scores; (ii) the 12 high-level indicators for each bank in the sample used to calculate these denominators; (iii) the cut-off score and bucket thresholds – used to identify the G-SIBs in the updated list, and the thresholds used to allocate G-SIBs to buckets for the purpose of calculating the specific higher loss absorbency requirements; and (iv) the reporting instructions used by the BCBS for the G-SIB assessment exercise.

- FSB List of G-SIBs
- BCBS List of Denominators

- BCBS 12 High-level Indicators
- BCBS Cut-off Score and Bucket Thresholds
- BCBS Reporting Instructions

Date of publication: 11/11/2020

(c) Securitisation

(i) EU

EBA: Report on significant risk transfer (SRT) in securitisation transactions

Status: Final

The EBA published a report on significant risk transfer in securitisation under articles 244(6) and 245(6) of the CRR. Taking into account the findings of the discussion paper (DP) on the Significant Risk Transfer (SRT) in securitisation of September 2017, as well as further analysis, the report includes a set of detailed recommendations to the EC on the harmonisation of significant risk transfer (SRT) assessment practices and processes. The report focuses on: (i) the three key subject areas singled out by the DP where inconsistencies were found; and (ii) which greater harmonisation of both supervisory practices and processes would markedly contribute to enhancing the efficiency and consistency of supervisory SRT assessments within the current securitisation framework.

Date of publication: 23/11/2020

Commission Delegated Regulation (EU) 2020/1732 supplementing the Securitisation Regulation with regard to fees charged by the European Securities and Markets Authority to securitisation repositories

Status: Published in the OJ

Date of entry into force: 10/12/2020

Commission Delegated Regulation (EU) 2020/1732, supplementing the Securitisation Regulation on fees charged by ESMA to securitisation repositories, was published in the OJ. The provisions cover: (i) recovery of supervisory costs in full; (ii) applicable turnover; (iii) registration fee and extension-of-registration fee; (iv) annual supervisory fees for registered securitisation repositories and trade repositories that have extended their registration; (v) general payment modalities; (vi) payment of registration fees and reimbursements; (vii) payment of annual supervisory fees; and (viii) reimbursement of competent authorities.

The Delegated Regulation is relevant for securitisation repositories only.

Date of publication: 20/11/2020

ESMA: Official translations of its guidelines on securitisation repository data completeness and consistency thresholds

Status: Final

Date of application: 01/01/2021

The ESMA published the final translations of its guidelines on securitisation repository data completeness and consistency thresholds. This step marks the date of entry into force and is required for the applicability of the guidelines. The final report had been published on 10 July 2020.

Date of publication: 11/11/2020

(ii) International

BCBS: Amending capital requirements for non-performing loan securitisations

Status: Final

The BCBS published a technical amendment on the capital treatment of securitisations of non-performing loans. The rule closes a gap in the Basel Framework by setting out prudent and risk-sensitive capital requirements for non-performing loan securitisations. The BCBS consulted publicly on the technical amendment in June. The Committee agreed to add the following elements to the securitisation standard in the Basel Framework, to be implemented by no later than 1 January 2023: (i) an explicit definition of securitisations of non-performing loans; (ii) removal of the option to use foundation internal risk-based parameters as inputs for the internal ratings-based approach (SEC-IRBA) for all securitisations of non-performing loans; (iii) introduction of a 100% risk-weight floor for exposures to securitisations of non-performing loans that are risk weighted under the SEC-IRBA or the standardised approach (SEC-SA); and (iv) for the senior tranches of securitisations of non-performing loans where the non-refundable purchase price discount is equal to, or greater than, 50% of the securitised portfolio, the risk weight under SEC-IRBA or SEC-SA is 100%. All other provisions of the current securitisation standard, including the use of external ratings-based approach (SEC-ERBA) and the possibility of capping the capital requirement for exposures from the same transaction, will also apply to securitisations of non-performing loans. This technical amendment does not change any rule related to securitisations of performing loans – in contrast to the consultative proposal, the final rule: (i) permits banks to apply the external ratings-based approach to non-performing loans securitisation exposures, without the 100% risk-weighted floor; and (ii) includes discounts on tranche sales in the definition of discount incurred by the originating bank that factors in the capital requirements.

As acts of the BCBS themselves are not legally binding, an implementation by financial institutions is not required. However, it is expected that the act will be implemented into EU law at a later stage which in turn would then be legally binding.

Date of publication: 26/11/2020

(d) Liquidity

(i) Germany

BaFin: Letter to qualify banks and savings banks as small and non-complex institutions (SNCI)

Status: Final

BaFin published a letter on the qualification of banks and savings banks as small and non-complex institutions (SNCI) in accordance with Article 4(1) No. 145 of the Capital Requirements Regulation (CRR) and on the application to use the simplified NSFR (Simplified Net Stable Funding Ratio – sNSFR) according to Article 428ai CRR. The background to this letter is that institutions can now submit an application to use the sNSFR. In principle, an institution that meets the conditions of Article 4(1) No. 145 CRR is to be qualified as a small and non-complex institution. According to Article 428ai CRR, small and non-complex institutions can apply to BaFin for permission that they only have to comply with and report the simplified NSFR instead of the full NSFR. The published letter describes how the qualification as an SNCI takes place, how the application for the use of the sNSFR must be made and what information must be provided.

Date of publication: 25/11/2020

(ii) EU

EBA: Report on the effects of the unwind mechanism of the liquidity coverage ratio (LCR) over a three-year period

Status: Final

The EBA published a report analysing the functioning of the unwind mechanism of the liquidity coverage ratio (LCR), based on common reporting of larger EU banks. Overall, the empirical evidence does not support the hypothesis that the unwind mechanism has a detrimental impact on the business and risk profile of credit institutions. The EBA's analysis shows that the specific impact of the unwind mechanism on the LCR is practically null and therefore it is also not possible to affirm that it could have an effect on the stability and orderly functioning of financial markets. At country level, the data suggests that the unwind mechanism would not lead to any specific effect on the LCR, except for one EU country. As regards the possible impact

on the functioning of the monetary policy, the report, which is built under the assumption that the amount of central bank reserves has been substantially cut, shows that the specific effect of the unwind mechanism would be immaterial. The EBA also analyses possible modifications to the unwind mechanism and the Report shows that their impact is limited as well. Introducing a zero floor to avoid the components of the high-quality liquid assets becoming negative as a consequence of the unwind mechanism would not have effects in terms of the LCR based on current reporting data. In addition, better aligning of the unwind mechanism with the Basel LCR standards for what concerns the type of operations that are taken into consideration in the unwinding would not have material impacts. The EBA recommends that the analysis be extended over the next year to gain more experience and to be able to include in the sample smaller banks after the Euclid project has entered into force.

Date of publication: 19/11/2020

(e) Risk management/SREP/Pillar 2/Outsourcing

(i) International

FSB: Discussion Paper on Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships

Status: Consultation

Deadline for the submission of comments: 08/01/2021

The FSB published a discussion paper which builds on its report published in December 2019 on third-party dependencies in cloud services and aims to facilitate a broader discussion on current regulatory and supervisory approaches to the management of outsourcing and third-party risks. In addition, the FSB sets out some additional issues relating to outsourcing and third-party risk management in the financial sector which the Covid-19 pandemic has highlighted.

Date of publication: 09/11/2020

(f) Remuneration

(i) Germany

BaFin: Consultation 15/2020 – Amendments of the Institution Remuneration Regulation (*Änderung der InstitutsVergV*)

Status: Consultation

Deadline for the submission of comments: 04/12/2020

BaFin published a Consultation on two amendments of the Institution Remuneration Regulation (*Institutsvergütungsverordnung* – InstitutsVergV). CRD V and the Risk Reduction Act (*Risikoreduzierungsgesetz*) require adjustments and specification of the provisions on remuneration in the InstitutsVergV, which are implemented by the Third Amendment Regulation. The provisions regarding the remuneration regulations to be complied with by small non-complex institutions will be adapted; in addition the amount up to which variable remuneration is subject to simplified requirements will be specified. The principle of a gender-neutral remuneration policy is now explicitly included in the legislation. In addition, the rules on the identification of risk-takers will be adapted.

The requirements introduced by the Risk Reduction Act with regard to the buffer for the leverage ratio in accordance with the new Section 10j of the German Banking Act (*Kreditwesengesetz* – KWG) is to be included in the catalogue of criteria to be observed when determining the total amount of variable remuneration. The Fourth Amendment Regulation achieves this by the newly added letter c in Section 7 (1) sentence 3 number 2 of the Regulation.

Date of publication: 12/11/2020

(g) Large exposures/Limits to shadow banking entities

(i) Germany

BaFin: Consultation 15/2020 – Amendment of the German Large Exposures and Million Loan Regulation (*Änderung der GroMiKV*)

Status: Consultation

Deadline for the submission of comments: 04/12/2020

BaFin published a Consultation Paper on the third amendment of the German Large Exposures and Million Loan Regulation (*Großkredit- und Millionenkreditverordnung* – GroMiKV). The amendment aims in particular to introduce into GroMiKV the changes introduced by CRR II to the rules on large exposures. These amendments concern the revised capital base for the calculation of the large exposure limits and the prohibition of the simultaneous application of the exemptions laid down in Article 400(1) and (2) to the same risk position. Furthermore, this Regulation is intended to facilitate the raising of capital by regional credit institutions or central credit institutions in a network listed in Article 2 (5) of the GroMiKV. The legislator intends to exercise its option under Article 493(3)(d) CRR more extensively in the future. In addition, the wording has been adapted following the amendment of a provision referred to in the Regulation and the deletion of the provisions on the use of the derogation under Article 94(1) CRR, since, inter alia, the corresponding notification requirements are laid down in CRR II.

Date of publication: 12/11/2020

1.2 Recovery and resolution

(i) Germany

BaFin: New version of the circular on the minimum requirements for the feasibility of a bail-in (*Neufassung des Rundschreibens zu den Mindestanforderungen zur Umsetzbarkeit eines Bail-in* – MaBail-in)

Status: Consultation

Deadline for the submission of comments: 16/12/2020

BaFin published a draft new version of the circular on the minimum requirements for the feasibility of a bail-in for consultation. The authority had published the original circular on the minimum requirements for the feasibility of a bail-in on 4 July 4 2019.

The draft of the new version contains requirements for the management information systems of the institutions concerned to provide the information at all times that is necessary for an effective and efficient implementation of the resolution instruments for the participation of the holders of relevant capital instruments and the creditors' participation in accordance with Sections 89 and 90 of the Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) are essential. It also includes requirements for the technical and organisational equipment so that the information can be provided within 24 hours of being requested by the resolution authority.

MaBail-in is to be expanded in some points. For example, additional data points for the further development of the external bail-in implementation and the expansion of the data delivery to all bail-in-capable liabilities should be required – but with due regard to the principle of proportionality. A catalogue of frequently asked questions is also to be included.

The drafted new version of MaBail-in is aimed at all institutions under the direct responsibility of BaFin as the national resolution authority, for which no insolvency scenario has been defined as a resolution strategy.

Date of publication: 17/11/2020

(ii) EU

CoEU: Adopting draft CCP Recovery and Resolution Regulation

Status: Draft

The EC published a communication to the EP on the proposed Regulation on the recovery and resolution of central counterparties (CCPs), following the Council of the EU's adoption of the proposed Regulation at first reading. The EC supports the results of the interinstitutional negotiations and therefore accepts the Council's position at first reading; however it expresses institutional concerns as to the retroactive postponement by one year of the open access provisions in MiFIR. The EC did not include these provisions in its initial proposal and they are, in the EC's view, not entirely in line with the EU's institutional set-up, in particular the EC's right of initiative, and cannot constitute a precedent for future negotiations. As the MiFIR changes at issue do not entail a substantive change of policy, but are rather limited to a short postponement of the MiFIR access provisions, the EC states that it will not now stand in the way of their adoption. The text of the proposed Regulation on which the Council voted and a draft statement of the Council's reasons have also been published. The Chair of the ECON Committee has indicated that, should the Council adopt the agreed text as its first-reading position, she would recommend to the EP's plenary session that the EP should in its second reading approve this Council first-reading position. With certain limited exceptions, the provisions of the proposed Regulation will start applying 18 months after its date of entry into force.

The regulation is primarily relevant for CCPs.

- EC communication
- Council communication
- Draft statement of Council's reasons
- Adopted text

Date of publication: 18/11/2020

EC: Review of the Bank Recovery and Resolution Directive (BRRD), Single Resolution Mechanism (SRM) Regulation and the Deposit Guarantee Schemes Directive (DGSD)

Status: Consultation

Deadline for the submission of comments: 08/12/2020

As part of its review of the BRRD, SRM Regulation and DGSD, the EC published a combined evaluation roadmap and inception impact assessment. The EC states that it will undertake a targeted evaluation of these three legislative texts, focusing on areas such as measures for preparing for and preventing bank failures, as well as those applicable once a bank has been declared failing or likely to fail (for example, the overall incentive set-up in bank crisis management, the availability of specific tools, and the level of depositor protection). The EC states that the initiative will aim at addressing problems that have been identified: (i) the framework currently appears to contain incentives towards using tools outside of resolution; (ii) there are currently differences across Member States in the availability and actual use of tools in insolvency; (iii) the legal certainty and predictability of the current framework is sub-optimal, particularly in a cross-border context; (iv) the framework could foster further market integration and hence resilience and efficiency, in particular the Banking Union; and (v) discrepancies in depositor protection across Member States in terms of the scope of protection and payout processes are observed and may undermine the confidence in the financial safety nets. The EC also highlights its objectives: (a) increasing financial stability and safeguarding a high level of depositor confidence; (b) further mitigating taxpayers' exposure and reducing the bank-to-sovereign link; (c) ensuring that depositors enjoy the same level of protection irrespective of the place of incorporation of the bank; (d) increasing the effectiveness and efficiency of the crisis management and deposit insurance framework; and (e) ensuring a level playing field across banks and across Member States, reducing barriers to the single market in financial services, improving the functioning of the financial safety net and creating incentives for further cross-border integration. The EC states that policy options include revisions of the legislative framework, as well as non-legislative tools including interpretation or guidance on applying the current framework. The EC intends to publish a consultation on the review this month, and intends to adopt legislative proposals for a Regulation and a Directive in the third quarter of 2021.

Date of publication: 10/11/2020

(iii) International

FSB: 2020 Resolution Report

Status: Final

The FSB published its ninth report on the implementation of its resolution reforms. The report takes stock of progress made by FSB members in implementing reforms and summarises findings from the FSB's monitoring of resolvability across the banking, financial market infrastructure, and insurance sectors. Key findings in relation to banks include: (i) the sixth round of the resolvability assessment process conducted during 2019-2020 confirmed that crisis management groups (CMGs) are broadly satisfied with the current progress of global systemically important banks (G-SIBs) toward resolvability; (ii) most G-SIBs are estimated to already meet the final 2022 minimum external TLAC requirement, and the market has so far absorbed issuance without difficulty; (iii) disclosure of external TLAC levels by G-SIBs has improved over the past year, however there is still little information available to market participants on the distribution of TLAC within groups; and (iv) an FSB stocktake demonstrates that CMGs are working well, but that authorities should continue to test resolution plans on the basis of simulations and scenario analyses. Key points in relation to central counterparties (CCPs) include: (a) a review by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) qualified 13 CCPs as systemically important in more than one jurisdiction (SI>1 CCPs); (b) to support discussions on CCP resolvability within CMGs, the FSB developed in 2020 a resolvability assessment process (RAP) questionnaire that will be used for the first time in the 2021 RAP for SI>1 CCPs; and (c) the FSB will organise with the BCBS, CPMI and IOSCO workshops for authorities on the potential financial stability impact from the use of various recovery and resolution tools.

Date of publication: 18/11/2020

FSB: Final guidance on CCP financial resources for resolution and announcement of further work

Status: Final

The FSB published final guidance on financial resources to support central counterparty (CCP) resolution and on the treatment of CCP equity in resolution. The guidance will support resolution authorities and crisis management groups in assessing the adequacy of financial resources for CCP resolution and provides guidance on approaches to the treatment of CCP equity in resolution. The guidance: (i) sets out five steps to guide authorities in assessing the adequacy of a CCP's financial resources and the potential financial stability implications of their use; and (ii) addresses the treatment of CCP equity in resolution, providing a framework for resolution authorities to evaluate the exposure of CCP equity to losses in recovery, liquidation and resolution and how (where possible) the treatment of CCP equity in resolution could be adjusted. The draft guidance does not cover the wind-down plans of systemically important CCPs. The FSB intends to consider in five years' time whether any adjustments are needed to the guidance in the light of market developments and resolution authorities' experience with using the guidance. The FSB also announced that, in collaboration with the Committee on Payments and Market Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO), it will conduct further work on CCP financial resources through their respective committees. This will consider the need for, and develop as appropriate, international policy on the use, composition and amount of financial resources in recovery and resolution to further strengthen the resilience and resolvability of CCPs in default and non-default loss scenarios. This would include assessing whether any new types of pre-funded resources would be necessary to enhance CCP resolvability. The FSB also published an overview of responses to the consultation on the guidance.

The guidance is addressed to authorities and therefore does not require implementation by companies.

Date of publication: 16/11/2020

1.3 Stress tests/Macroprudential topics

(i) EU

EBA: Methodology for 2021 EU-wide stress test

Status: Final

The EBA published the final methodology, draft templates and template guidance for the 2021 EU-wide stress test along with the key milestones of the exercise. The objective of the test is to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks and the EU banking system to

shocks, and to challenge the capital position of EU banks. In particular, it is designed to inform the SREP carried out by competent authorities. The disclosure of granular data on a bank-by-bank level is meant to facilitate market discipline and also serves as a common ground on which competent authorities base their assessments. The EBA notes that the methodology and templates include some targeted changes compared to the postponed 2020 exercise, such as the recognition of FX effects for certain P&L items, and the treatment of moratoria and public guarantees in relation to the Covid-19 crisis. The stress test exercise will be launched in January 2021 with the publication of the macroeconomic scenarios and the results published by 31 July 2021.

- Press release
- Methodological note
- Template guidance
- Draft templates

Date of publication: 13/11/2020

2. Market regulation/Conduct rules

2.1 Benchmarks

(i) EU

EP: Adopting BMR amending Regulation at first reading

Status: Final

The EP adopted at first reading the proposal for a regulation amending Regulation (EU) 2016/1011 (BMR) as regards the exemption of certain third-country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation. In its report, the EP sets out its amendments to the draft amending Regulation. The EP instructs its President to forward its position to the Council, the EC and the national parliaments.

Date of publication: 19/11/2020

ESMA: Updated Q&A on the Benchmarks Regulation (BMR)

Status: Final

ESMA published its updated Q&As on the BMR, providing clarification on transitional provisions regarding critical benchmarks. The updated Q&As also provide guidance to market participants on BMR requirements.

Date of publication: 06/11/2020

(ii) Eurozone

ECB: Working group on euro risk-free rates launches two public consultations on fallbacks to EURIBOR

Status: Consultation

Deadline for the submission of comments: 15/01/2021

The Working Group on Euro Risk-Free Rates published two consultations on fallbacks to EURIBOR. Firstly, the Working Group published a consultation where stakeholders are invited to provide their views on fallback rates based on the euro short-term rate (€STR) and spread adjustment methodologies, in order to produce the most suitable EURIBOR fallback measures per asset class. The Working Group considered two types of rates: (i) forward-looking rates which are based on the derivatives markets referencing the €STR and which reflect market expectations of the evolution of the €STR – these rates are known at the start of the interest rate period; and (ii) backward-looking rates which are based on simple mathematical calculations of the value of past realised daily fixings of the €STR over a given period of time – these rates are known and available at the end of the interest rate period. The Working Group acknowledges that for more sophisticated and globally operating market participants, the most appropriate EURIBOR fallback measure would be based on backward-looking rates. However, the Working Group also acknowledges that there may be some use cases for certain products or for less sophisticated and locally operating market participants where it is necessary to know the interest rate in advance, and therefore the forward-looking rates could be applied. As these rates do not exist at this stage, and should such rates not be available in due time, the Working Group proposes a waterfall structure according to product types. Secondly, the Working Group published a consultation where stakeholders are invited to give their views on potential events that could trigger such fallback measures. The Working Group has identified a generic set of potential EURIBOR fallback trigger events that market participants could consider, including in fallback provisions in their contracts and financial instruments referencing EURIBOR.

- Consultation on EURIBOR fallback trigger events
- Consultation on €STR-based EURIBOR fallback rates

Date of publication: 23/11/2020

(iii) International

FSB: Reforming Major Interest Rate Benchmarks – 2020 Progress report

Status: Final

The FSB published its 2020 progress report on reforming major interest rate benchmarks. In 2014, the FSB made recommendations in response to the declining volume of transactions in key interbank unsecured funding markets, as well as to cases of attempted manipulation in relation to key IBORs – this report highlighted a structural post-crisis decline in liquidity in the interbank unsecured funding markets underpinning IBOR benchmarks. The FSB states that these already challenging liquidity conditions were further exacerbated by developments in March – these developments underscore that these markets are not the main markets that banks rely upon for funding and highlight the challenges when seeking to develop robust credit measures drawing upon unsecured wholesale funding costs. The FSB therefore maintains its view that financial and non-financial sector firms across all jurisdictions should continue their efforts in making wider use of more robust risk-free rates (RFRs) in order to reduce reliance on IBORs where appropriate. The FSB notes that transition away from LIBOR in particular remains an essential task and a priority for the G20, which will strengthen the global financial system. The FSB also emphasises that given the extent of risks associated with a failure to prepare adequately for the transition, the onus of action is on firms. Looking beyond LIBOR, the FSB highlights that benchmark transition more broadly remains a crucial step to increase the resilience of markets reliant on interest rate benchmarks, through a combination of reforms to existing benchmarks and increased use of more robust RFRs.

Date of publication: 20/11/2020

2.2 Consumer protection rules

(i) EU

EC: Staff working document on the Distance Marketing Directive (DMD) evaluation

Status: Final

The Council of the EU published a cover note attaching the EC's staff working document on its evaluation of the DMD. The staff working document presents the results of the regulatory fitness and performance programme (REFIT) evaluation of the DMD, which was carried out in 2019 and finalised this year. Key points in the EC's conclusion are that: (i) the evaluation found that the objectives of the Directive were in line with the expected needs of consumers and financial service providers at the time the Directive was introduced and remain relevant – however, developments in the market (such as increasing digitalisation of the financial services sector) and the emergence of new selling practices on the one hand and new insights in the area of consumer behaviour on the other hand, reveal that some consumer needs are not fully addressed by the Directive; (ii) the objective of contributing to better consumer protection and trust has been achieved to some extent; (iii) the objective of single market consolidation has been achieved to a limited extent; (iv) the Directive has created a level playing field for financial services providers by introducing a minimum set of rules for distance selling at EU level which led to a less fragmented regulatory framework for them – the level playing field could be further improved by ensuring maximum harmonisation of the national transposition of the Directive and its more consistent enforcement; (v) all Member States have implemented the Directive and are enforcing it – however, the variety in the enforcement landscape across Member States, with different types and magnitudes of sanctions and remedies available to consumers, point to de facto differences in the level of consumer protection across the EU; and (vi) current achievements in consumer protection and the level playing field can be attributed to the Directive only to a limited extent and have decreased over time – however, the Directive still provides a sound safety net to capture the distance selling of any new financial products or of products whose sector-specific legislation does not set out rights for consumers as regards information to be provided prior to the conclusion of a contract or the right of withdrawal. The evaluation results will feed into the review of the Directive.

Date of publication: 09/11/2020

EC: Report on implementation of the Consumer Credit Directive (CCD)

Status: Final

The EC published its report to the EP and the Council on the implementation of the Consumer Credit Directive. The overall finding of the evaluation is that the Directive has been partially effective in ensuring high standards of consumer protection and

fostering the development of a single market for credit, and that its objectives are still relevant in the context of a regulatory landscape showing significant fragmentation across the EU. Key findings include: (i) the most effective provisions in the Directive relate to the provisions on the rights of withdrawal and early repayment and the provision regulating the Annual Percentage Rate of Charge; (ii) provisions regarding the creditworthiness assessments and credit databases have not been fully effective; (iii) the principal benefit of the Directive, namely the reduction in consumer detriment, outweighs the initial and ongoing implementation costs; (iv) there are no major inconsistencies with other relevant EU-level legislation, but further alignment or synergies with such legislation may help improve legal clarity for consumers and creditors; and (v) in order to sustain its relevance in the short and medium term, the Directive may need to cover the new emerging consumer habits and emerging market developments brought by digitalisation. These facts point to the possible need of the review of certain provisions of the Directive, particularly on the scope of application and the credit-granting process. The EC will include these considerations in the revision of the Directive expected in Q2 2021.

Date of publication: 05/11/2020

CoEU: Position on draft Directive on representative actions for the protection of the collective interests of consumers

Status: Final

The Council of the EU (CoEU) announced that it had adopted its position (dated 21 October) at first reading on the draft Directive on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC. Directive 2009/22/EC did not sufficiently address the challenges relating to the enforcement of consumer law. The draft Directive: (i) requires Member States to put in place a system of representative actions for the protection of consumers' collective interests against infringements of Union law covering actions for both injunctions and redress measures; (ii) empowers qualified entities designated as such by Member States to seek injunctions and/or redress, including compensation or replacement, on behalf of a group of consumers that has been harmed by a trader who has allegedly infringed one of the EU legal acts set out in the annex to the directive, such as financial services, travel and tourism, energy, health, telecommunications and data protection; (iii) distinguishes between qualified entities entitled to bring actions in the Member State where they have been designated (domestic representative actions) and those entitled to bring actions in any other Member State (cross-border representative actions); (iv) provides clear rules on the allocation of judicial costs in a representative action for redress based on the 'loser pays' principle; and (v) imposes on qualified entities a number of transparency requirements, in particular as regards their funding by third parties. The EP is expected to approve the Council's position at first reading before the end of the year. It shall enter into force on the twentieth day following its publication in the OJ, after the EP's approval. Member States will have 24 months from the entry into force of the directive to transpose it into national law, as well as an additional six months to start applying these provisions.

Date of publication: 04/11/2020

EBA: Second Report on the application of the guidelines on product oversight and governance (POG) arrangements

Status: Final

The EBA published its second report on the application of the guidelines on POG arrangements. It identifies ways for financial institutions to strengthen further the application of the EBA POG Guidelines. It does so by outlining good practices identified in the sample concerning the scope of the EBA POG Guidelines and general governance, the identification of the target market, product testing, product monitoring and remedial actions, and the POG arrangements for distributors. This report confirms the conclusions made in the first report that while the manufacturers surveyed had implemented the internal processes in relation to product oversight for retail products, this was not necessarily done in a way that put the requisite focus on ensuring that consumers' needs are met, or that attracted the same level of attention as the compliance with the requirements or the profitability of the product and service. Manufacturers seemed to focus entirely on the requirements set out in the EBA Guidelines on internal governance under CRD IV, rather than the EBA's POG Guidelines. The EBA and relevant competent authorities will continue to monitor how financial institutions apply the EBA POG Guidelines and whether they make use of the good practices identified in this report.

Date of publication: 03/11/2020

2.3 Credit rating agencies

(i) EU

ESMA: Speech on upcoming challenges for credit rating agencies (CRAs)

Status: Final

ESMA published a speech by Verena Ross, ESMA Executive Director, on CRAs. Firstly, the speech addresses the CRA regulatory framework, stating that the CRA Regulation was a big step forward for ensuring the quality and reliability of credit ratings in the EU. Secondly, the speech addresses the structure of the CRA industry in Europe – the market is characterised by a high degree of concentration among a small number of large CRAs, and there are also a number of medium-sized CRAs who offer the same suite of rating offerings as the large CRAs but do not have the same market share, as well as smaller CRAs who are specialised in either certain industries or certain markets. Thirdly, the speech highlights that, for 2021, ESMA's areas of priority will be to identify and address new risks posed by Covid-19, monitor that CRAs are ensuring the independence of their rating processes and assess that their methodologies are robust, systematic and continuous. In addition, ESMA will engage with CRAs to address concerns in the areas of IT and information security controls. Finally, the speech outlines the challenges ahead for the credit ratings industry: (i) climate change – the European Green Deal is a key priority and there is still a lot of work ahead to ensure that investors have the information points that they need to fully integrate ESG factors into their investment decision-making processes; (ii) ESMA has been actively engaging with CRAs since the start of the Covid-19 crisis to ensure the continuity of their operations were assured, and to understand how they were factoring the economic impact into their analysis, and ESMA states that it is also clear that the wave of downgrades that followed the onset of the Covid-19 crisis has sparked a renewed debate on the role of, and reliance on, credit ratings in the financial system; and (iii) there is still a concern that key pieces of EU financial regulation and private contracts like investment fund documentation contain references to credit ratings that could lead to mechanistic reliance – ESMA is actively participating in this debate.

Date of publication: 06/11/2020

2.4 MiFID/MiFIR

(i) Germany

BaFin: Notes on decrease applications as per Section 16j(2) of the Financial Services Supervision Act (*Hinweise zu Reduzierungsanträgen nach § 16j Abs. 2 FinDAG*)

Status: Final

BaFin published updated notes to apply for reduced fees as per Section 16j(2) of the Financial Services Supervision Act (*Finanzdienstleistungsaufsichtsgesetz* – FinDAG). Pursuant to Section 16j (2) FinDAG, certain institutions can apply for the deduction of certain income from the commission result when determining the apportionment of BaFin costs for the supervisory area of securities trading when determining the apportionment-relevant assessment volume. The deduction items are only to be taken into account by BaFin if they amount in total to more than one-fifth of the total commission income and the apportionment payer has applied for non-consideration before 1 February of the calendar year following the apportionment year and has proven the existence of the prerequisites by submitting suitable documents. Facts which are submitted or proven late shall not be taken into account. The amounts of the deductions must be proven by a certificate issued by a chartered accountant, a sworn auditor or an auditing company.

Date of publication: 06/11/2020

(ii) EU

EP: Adopting position on proposed directive amending MiFID II to help recovery from Covid-19

Status: Final

The EP adopted its position at first reading on the proposed directive amending MiFID II as regards information requirements, product governance and position limits to help the recovery from the Covid-19 pandemic. The text that has been published is a

provisional edition, reflecting the EP's amendments to the proposal. The EP states, among other things, that: (i) to better enhance investor protection, it is critical that the debt level of retail investors is taken into account in the suitability assessment, in particular given the rising level of consumer debt due to the Covid-19 pandemic; (ii) the EC should come forward with a report on the impact of the application of position limits and position management on liquidity, market abuse and orderly pricing and settlement conditions in the commodity derivatives market – an evidence-based assessment of the commodity derivatives regime and the consultation of a diverse range of stakeholders is essential when reviewing the substance of those provisions; (iii) the changes to the position limit regime are designed to support the development of new energy contracts, in particular in the electricity market, and do not seek to relax the regime for agricultural commodity contracts; and (iv) the aim of the amendments is to make temporary exceptions and remove clear red tape in order to mitigate the economic crisis – the amendments therefore avoid opening up more complex issues of the legislation which could risk causing more burdens for the sector and larger changes to the legislation should first be re-evaluated in the planned review of MiFID II.

The next step is for the Council of the EU to adopt the proposed Directive.

Date of publication: 25/11/2020

ESMA: Advice on the criteria for Data Reporting Services Providers (DRSP)

Status: Consultation

Deadline for the submission of comments: 04/01/2021

ESMA published a consultation paper on proposals for technical advice to the EC on delegated acts relating to the criteria to identify authorised reporting mechanisms (ARMs) and approved publications arrangements (APAs) that, by way of derogation from MiFIR on account of their limited relevance for the internal market, are subject to authorisation and supervision by a competent authority of a Member State. Among other things, the consultation: (i) sets out technical advice on DRSP derogation criteria requested by the EC; (ii) sets forth the proposed method to determine if the APA or ARM services are provided to investment firms authorised in one Member State; (iii) outlines the proposed calculation method with regard to the number of trade reports or transactions; (iv) describes the method to determine whether the ARM or APA is part of a group of financial market participants operating cross-border; (v) presents other qualitative and quantitative elements to determine if ARMs should have a derogation on account of their limited relevance for the internal market; (vi) sets out the criteria that determine upfront which data reporting services providers (already authorised in the EU) are derogated from ESMA supervision; and (vii) clarifies whether the elements to determine if an ARM or APA should have a derogation are cumulative or not.

After considering feedback received, ESMA expects to publish a final report and submission of the technical advice to the EC in Q1 2021.

The document is relevant only for ARMs and APAs.

Date of publication: 20/11/2020

ESMA: Consultation on supervisory fees for data reporting services providers

Status: Consultation

Deadline for the submission of comments: 04/01/2020

ESMA began consulting on supervisory fees for data reporting services providers (DRSPs) to be supervised by ESMA from 2022 due to the new competences under the ESA Review Regulation. The proposed fee framework for DRSPs draws on the existing fee frameworks for Trade Repositories and Securitisation Repositories which set out application as well as annual supervisory fees. ESMA is proposing both application and authorisation fees, as well as an annual supervisory fee for DRSPs. It has also proposed a timeline for the payment of the fees. ESMA expects to submit technical advice to the EC and publish its final report in Q1 2021.

The fees on which ESMA is consulting relate only to the authorisation and supervision of DRSPs by ESMA. These fees have no effect on the fees charged by national competent authorities (NCAs) which supervise DRSPs that are authorised and supervised pursuant to Article 2(3) MiFIR.

The document is practically relevant for DRSPs only.

Date of publication: 19/11/2020

ESMA: Decision on delegation to its Chair of the assessment regarding third-country trading venues (TCTVs) for the purposes of Articles 20 and 21 of MiFIR

Status: Final

ESMA published a decision delegating to its Chair the task of assessing whether a TCTV meets the criteria set out in Article 2 in respect of all asset classes traded on such trading venue or a subset of them, for the purposes of Article 20 and Article 21 of MiFIR, and to reflect the result of such assessment in the relevant list of TCTVs. This decision repeals and replaces ESMA's October 2018 decision on the assessment, reflecting ESMA's updated opinion determining TCTVs for the purpose of transparency under MiFIR (published in June). ESMA states that the scope of the delegation to the Chair of ESMA also covers non-controversial negative assessments – the Board of Supervisors retains the powers to perform controversial assessments.

Date of publication: 09/11/2020

ESMA: Updated Q&A on MiFID II and MiFIR investor protection and intermediaries topics

Status: Final

ESMA published its updated Q&As on MiFID II and MiFIR investor protection and intermediaries topics. The update includes three new Q&As on product governance that aim to give guidance on how firms manufacturing financial instruments should ensure that: (i) financial instruments' costs and charges are compatible with the needs, objectives and characteristics of the target market; (ii) costs and charges do not undermine the financial instrument's return expectations; and (iii) the charging structure of the financial instrument is appropriately transparent for the target market, ensuring that it does not disguise charges and is not too complex to understand.

Date of publication: 06/11/2020

ESMA: Consultation on Guidelines on the MiFID II/ MiFIR obligations on market data

Status: Consultation

Deadline for the submission of comments: 11/01/2021

On 5 December 2019, ESMA published the MiFID II/MiFIR Report on the developments in prices for pre- and post-trade data and the consolidated tape for equity instruments 8. In this report, ESMA presented, inter alia, its assessment and recommendations on the development of prices for market data and the application of the main MiFID II/MiFIR provisions aiming at reducing the cost of market data: the requirement to publish market data on a reasonable commercial basis (RCB); the requirement to provide market data in a disaggregated format; and the requirement to make market data available free of charge 15 minutes after publication. In the report, ESMA made some recommendations to the European Commission on possible amendments to Level 1 provisions and also committed to develop supervisory guidance in the area of market data. ESMA has now drafted this guidance in the form of Guidelines.

With the draft guidelines, ESMA states that, by providing clarity for market participants, the proposed guidelines will ensure better and uniform application of these obligations. The CP: (i) covers ESMA's proposal for guidelines on the provision of market data on the basis of costs; (ii) sets out ESMA's proposal for guidelines on the obligation to provide market data on a non-discriminatory basis; (iii) sets out ESMA's proposal for guidelines on the per-user fee obligation; (iv) explains the rationale for guidelines on the obligation to keep market data unbundled; (v) covers guidelines on the transparency obligations in relation to the development of a standardised publication format, standardisation of key terminology used, accounting methodologies for setting market data fees, as well as auditing practices; and (vi) sets out ESMA's proposal for guidelines on the provision of market data free of charge 15 minutes after publication.

ESMA will consider the feedback it receives to this consultation and expects to publish a final report and final guidelines by Q2 2021.

Date of publication: 06/11/2020

ESMA: Guidance on the annex to ESMA opinion determining third-country trading venues for the purpose of transparency under MiFIR

Status: Final

ESMA updated its guidance on the annex to its opinion determining TCTVs for the purpose of transparency under MiFIR. The update refers to cases where market identifier codes (MIC) are not populated.

Date of publication: 06/11/2020

2.5 Securities financing transactions

(i) EU

ESMA: First Q&As on SFTR reporting

Status: Final

ESMA published a set of Q&As to promote common supervisory approaches and practices in the application of the Securities Financing Transactions Regulation (SFTR) in relation to regulatory data reporting topics. The Q&As cover the following, arising from Article 4 of the SFTR: (i) frequency of reports; (ii) reporting of settlement fails; (iii) reporting of repos initially collateralised on a per-transaction basis and subsequently on a net-exposure basis; (iv) reporting of trading venue for cleared and non-cleared securities financing transactions; and (v) reporting of cash collateral for margin lending. ESMA will update and expand the Q&As as and when it deems it appropriate.

The Q&As affect trade repositories and entities that have a reporting obligation under SFTR.

Date of publication: 05/11/2020

2.6 Transparency requirements/Shareholder requirements

(i) EU

ESMA: Official translations of its guidelines on enforcement of financial information

Status: Final

ESMA published the official translations of its guidelines on enforcement of financial information. There is no difference in content to the previously published Final Report. National Competent Authorities (NCAs) to which these Guidelines apply must notify ESMA whether they comply or intend to comply with the Guidelines, within two months of the date of publication by ESMA of the Guidelines in all EU official languages.

The Guidelines are addressed to the NCAs as they give guidance on enforcement matters. Therefore, there is no implementation action required by financial institutions.

Date of publication: 23/11/2020

ESMA: Updated Q&As on the Transparency Directive in the context of the Brexit transition period

Status: Final

ESMA published its updated Q&As on the Transparency Directive, which makes minor modifications to question 26 (concerning the obligations that an issuer – which had the UK as its home Member State before the end of the transition period and which is admitted to trading on one or more regulated markets in the EU27 Member States or the EEA EFTA states – has under the Transparency Directive in relation to disclosing its choice of a new home Member State), to reflect the end of the UK's transition period for leaving the EU.

Date of publication: 09/11/2020

EC: Interpretative Communication on the preparation, audit and publication of the financial statements included in the annual financial reports drawn up in accordance with Commission Delegated Regulation (EU) 2019/815 supplementing the Transparency Directive on the European Single Electronic Format (ESEF)

Status: Final

The EC published an Interpretative Communication on the preparation, audit and publication of the financial statements included in the annual financial reports drawn up in accordance with Commission Delegated Regulation (EU) 2019/815 supplementing the Transparency Directive with regard to regulatory technical standards on the specification of an ESEF. The Communication provides clarifications on Union provisions concerning: (i) audit; (ii) the use of an e-signature; (iii) the issuers' responsibility and liability; (iv) the use of ESEF files to fulfil other Union obligations; and (v) the officially appointed mechanisms.

Date of publication: 06/11/2020

3. Market infrastructure

3.1 Custody rules

(i) EU

Commission Implementing Decision (EU) 2020/1766 determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) No 909/2014

Status: Published in the OJ

Date of entry into force: 27/11/2020

Date of application: 01/01/2021

EC Implementing Decision (EU) 2020/1766 was published in the Official Journal determining that, for a limited period of time, the regulatory framework applicable to UK CSDs is equivalent in accordance with Regulation (EU) 909/2014 on improving securities settlement in the EU and on CSDs (CSDR). From 1 January 2021, CSDs established in the United Kingdom ('UK CSDs') will be considered third-country CSDs within the meaning of CSDR. As such, they may not provide notary and central maintenance services in relation to financial instruments constituted under the law of a Member State unless they are recognised by ESMA in accordance with Article 25 of CSDR. In the absence of such recognition, Union issuers may not use UK CSDs to perform notary and central maintenance services concerning transferable securities constituted under the law of a Member State. Such a situation may result in temporary challenges for Union issuers to fulfil their legal obligations, as those services provided by UK CSDs in relation to corporate securities and exchange-traded funds constituted under the domestic law of Ireland ('Irish corporate securities and ETFs') are currently not provided by CSDs authorised in the Union ('Union CSDs'). The EC therefore consider it justified and in the interest of the Union and its Member States to ensure that UK CSDs may continue to provide services in the Union after 31 December 2020 for a limited period of time. The EC states that in view of the United Kingdom's announcement that certain requirements that will come into force under the Union legal framework in the future will not be incorporated in its domestic law, the EC considers that the legal and supervisory arrangements currently in place in the United Kingdom can only be deemed as equivalent for a limited period of time. The decision becomes applicable on 1 January 2021, and expires on 30 June 2021. Given the United Kingdom's announcement about the future divergence as regards the legal and supervisory arrangements applicable to UK CSDs, market participants are expected to prepare for a situation without a further equivalence decision in this area.

Date of publication: 26/11/2020

ESMA: Report to the EC on CSDR internalised settlement

Status: Final

ESMA published a report to the EC on internalised settlement in accordance with Article 74(1)(c) of CSDR. CSDR requires ESMA to submit annual reports to the EC on the implementation of CSDR, including assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action. No major risks have been identified by ESMA, however NCAs have identified some risks, the most common being operational risk and custody risk. In terms of measures to mitigate those risks, ESMA refers to the adequate identification of the clients' accounts involved, and the improvement of the operational processes. ESMA highlights the importance of continuing to monitor internalised settlement, in order to assess if this activity should be regulated in the future, in particular considering the extremely high values and volumes of internalised settlement, as well as the high level of concentration shown by the data reported by settlement internalisers.

Date of publication: 05/11/2020

3.2 EMIR

(i) EU

ESAs: Final report regarding EMIR RTS on various amendments to the bilateral margin requirements in view of the international framework as well as on novations from UK to EU counterparties

Status: Final

The ESAs published an updated final report to the final report and the draft RTS submitted by the ESAs to the Commission and subsequently published on the websites of the ESAs on 4 May 2020 (ESAs 2020 09). Taking into account further considerations with respect to OTC derivative intragroup transactions as well as to equity option transactions, the previous version of the Final Report from May was further reviewed and updated, leading to this new version of the Final Report on the draft RTS on bilateral margining. This updated version of the Final Report thus replaces entirely the version previously submitted to the Commission in May 2020.

The draft RTS relate to two main topics, the introduction of a number of amendments to the Commission Delegated Regulation on bilateral margining that take into account the international framework agreed by the BCBS and the IOSCO and the progress made in its implementation, as well as the treatment of OTC derivative contracts novated from a counterparty established in the UK to a counterparty established in a Member State as a consequence of the withdrawal of the UK from the EU.

Date of publication: 23/11/2020

ESMA: Final report regarding EMIR RTS on the clearing obligation regarding intragroup transactions as well as on novations from UK to EU counterparties

Status: Final

ESMA published a final report regarding EMIR RTS on the clearing obligation regarding intragroup transactions as well as on novations from UK to EU counterparties. The draft RTS relate to two main aspects, the treatment of certain intragroup transactions concluded with a third-country group entity, as well as the treatment of OTC derivative contracts novated from a counterparty established in the UK to a counterparty established in a Member State as a consequence of the withdrawal of the UK from the EU.

Date of publication: 23/11/2020

ESMA: Report on post-trade risk reduction services with regard to the clearing obligation (EMIR Article 85(3a))

Status: Final

ESMA published a report on post-trade risk reduction services with regard to the clearing obligation under Article 85(3a) of EMIR. ESMA concludes that the benefits of allowing certain post-trade risk reduction (PTRR) services transactions to be exempted from the clearing obligation would reduce risk in the market, allow for legacy trades to be compressed, increase participation in PTRR services of counterparties less interested to participate today (due to complex structures) and overall reduce complexity in the market by using simpler trades for rebalancing. ESMA is of the view that, in the absence of compelling evidence or reasoning to the contrary, those positive effects outweigh, inter alia, the increased operational burden on market participants and regulators and the increase in gross risk in the non-cleared netting sets (in case of portfolio rebalancing).

Date of publication: 10/11/2020

4. Anti-money laundering

(i) EU

EBA: Opinion on how to take into account money laundering/terrorist financing risks in the Supervisory Review and Evaluation Process

Status: Final

The EBA published an opinion setting out in high-level terms how it expects prudential supervisors to take into account ML/TF risks in the Supervisory Review and Evaluation Process (SREP). The EBA expects prudential supervisors to: (i) develop a sufficient understanding of ML/TF risks to enable them to identify ML/TF risks and prudential concerns – those that are particularly relevant to prudential supervisors include those that are indicative of broader deficiencies in the internal governance or internal controls framework, such as ICT-related weaknesses; and (ii) cooperate effectively and in a timely manner with AML/CFT supervisors to exchange information on ML/TF risks and to assess the implication of those risks for the safety and soundness of the institution they supervise - both AML/CFT supervisors that form part of the same competent authority and AML/CFT supervisors from different competent authorities and in cross border situations. The EBA will include more detailed guidance on how ML/TF risks should be considered by prudential supervisors as part of their overall SREP assessment in the revised version of the SREP Guidelines that are expected to be published by the end of December 2021.

The EBA has delivered this Opinion in accordance with Article 29(1)(a) of Regulation (EU) No 1093/2010, which mandates the Authority to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.

This Opinion is part of the EBA's wider work to strengthen the link between prudential and AML/CFT supervision, and to lead, coordinate and monitor the EU financial sector's fight against ML/TF. It reflects a specific request in the Council Anti-Money Laundering Action Plan of 2018.

Date of publication: 04/11/2020

5. Payments

5.1 Payment accounts

(i) Germany

BaFin: Application notes for the samples published in accordance with Section 47 (2) of the Payment Accounts Act (*Zahlungskontengesetz*)

Status: Final

BaFin published application notes on the standardised presentation format of the fee information document in accordance with Section 47(2) of the Payment Accounts Act (*Zahlungskontengesetz* – ZKG).

The application notes are relevant to all payment service providers offering payment accounts to consumers.

Date of publication: 18/11/2020

5.2 Payment and settlement systems

(i) EU

EPC: The SEPA Request-To-Pay (RTP) Scheme Rulebook

Status: Final

The EPC published the first version of the Single Euro Payments Area (SEPA) Request-To-Pay (RTP) scheme rulebook. The SRTP scheme covers the set of operating rules and technical elements (including messages) that allow a Payee to request the initiation of a payment from a Payer in a wide range of physical or online use cases. The scheme can be considered as a complement to the payment flow because it supports the end-to-end process and lies between an underlying commercial transaction and the payment itself. An RTP as such can be seen as an enabler for digital payments as well as for instant payments at the point of sale..

Date of publication: 30/11/2020

EPC: SEPA payment scheme rulebooks and related implementation guidelines (IG)

Status: Final

The EPC published the 2021 EPC SEPA payment scheme rulebooks, these being version 1.0 of the: (i) 2021 SEPA Credit Transfer (SCT); (ii) SEPA Instant Credit Transfer (SCT Inst); (iii) SEPA Direct Debit (SDD) Core; and (iv) SDD Business to Business (B2B). All 2021 EPC SEPA payment scheme rulebooks will enter into force on 21 November 2021. The EPC has also published Implementation Guidelines (IG) on the SEPA rules for the: (a) customer-to-PSP (C2PSP) ISO 20022 XML message standards based on the new rulebooks for SCT, SCT Inst, SDD Core, and SDD B2B; (b) inter-PSP ISO 20022 XML message standards based on the new rulebooks for SCT, SCT Inst, SDD Core and SDD B2B; and (c) e-Mandate service ISO 20022 XML message standards based on the new rulebooks for SDD Core and SDD B2B. The EPC has also published a document that sets the maximum amount per instruction that can be processed under the SCT Inst scheme based on the new SCT Inst rulebook – the document also gives the EPC the possibility to adapt the maximum amount per instruction under the SCT Inst scheme outside the regular payment scheme rulebook release management cycle.

- EPC 2021 SCT rulebook version 1.0
- EPC 2021 SCT Inst rulebook version 1.0
- EPC 2021 SDD Core rulebook version 1.0
- EPC 2021 SDD B2B rulebook version 1.0
- EPC 2021 SCT rulebook C2PSP IG

- EPC 2021 SCT Inst rulebook C2PSP IG
- EPC 2021 SDD Core rulebook C2PSP IG
- EPC 2021 SDD B2B rulebook C2PSP IG
- EPC 2021 SCT rulebook Inter-PSP IG
- EPC 2021 SCT Inst rulebook Inter-PSP IG
- EPC 2021 SDD Core rulebook Inter-PSP IG
- EPC 2021 SDD B2B rulebook Inter-PSP IG
- EPC 2021 SDD Core rulebook e-Mandate service IG
- EPC 2021 SDD B2B rulebook e-Mandate service IG
- EPC Document – Maximum Amount for SCT Inst rulebook

Date of publication: 26/11/2020

EPC: Clarification papers on SEPA Credit Transfer (SCT), SEPA Instant Credit Transfer (SCT Inst), SEPA Direct Debit (SDD) Core and SDD Business-to-Business (B2B) rulebooks

Status: Final

The EPC published two clarification papers on: (i) version 1.6 of the 2019 rulebooks on SCT and SCT Inst; and (ii) version 1.3 of the 2019 rulebooks on SDD Core and SDD B2B. The papers address operational aspects related to the rulebooks, seeking to ensure consistent implementation of the rulebooks by payment service providers (PSPs) participating in the schemes. Furthermore, the papers provide guidance and recommendations to scheme participants on how to handle situations that are not described in the rulebooks.

- EPC Clarification Paper – 2019 rulebooks on SCT and SCT Inst versions 1.6
- EP Clarification Paper – 2019 rulebooks on SDD Core and SDD B2B versions 1.3

Date of publication: 26/11/2020

EPC: Update on 2019 SEPA scheme rulebooks – Version 1.2

Status: Final

The European Payments Council (EPC) announced that it had published version 1.2 of its 2019 SEPA scheme rulebooks. This version includes an updated section 5.4, which includes among other things, the relevant authorisation and regulatory requirements for payment service providers from countries not belonging to the EEA, to which the geographical scope of the payment schemes has been extended. This is necessary due to the inclusion of Andorra and the Vatican City State/the Holy See in the geographical scope of the payment schemes, and the ratification of the UK Withdrawal Agreement.

- Press release
- 2019 SEPA Credit Transfer rulebook version 1.2
- 2019 SEPA Instant Credit Transfer rulebook version 1.2
- 2019 SEPA Direct Debit Core rulebook version 1.2
- 2019 SEPA Direct Debit Business-to-Business rulebook version 1.2

Date of publication: 30/10/2020

(ii) Eurozone

ECB: Revision of the Regulation on oversight requirements for systemically important payment systems (the SIPS Regulation)

Status: Consultation

Deadline for the submission of comments: 08/01/2021

The ECB published its proposed amendments to Regulation of the European Central Bank (EU) No 795/2014 on oversight requirements for systemically important payment systems (ECB/2014/28) (the SIPS Regulation) for public consultation. The

SIPS Regulation sets out the oversight requirements for both large-value and retail payment systems of systematic importance. It applies to payment systems operated both by central banks and by private operators.

The following three amendments to the SIPS Regulation are being proposed: (i) setting out the criteria for determining which of the Eurosystem central banks is to be designated as the competent authority for conducting the oversight of a SIPS; (ii) ensuring that all relevant factors can be taken into account when assessing the systemic importance of a payment system; and (iii) introducing a phasing-out period prior to reclassifying a SIPS as a non-SIPS, i.e. SIPS status would be withdrawn only after the payment system concerned has not met the SIPS identification criteria for two years in a row as assessed in the verification exercises.

In addition, the ECB published two draft amending decisions on (i) Decision (EU) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of systemically important payment systems, and (ii) Decision (EU) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with Regulation (EU) No 795/2014.

- Draft amendment on Decision (EU) 2019/1349
- Draft amendment on Decision (EU) 2017/2098

Date of publication: 27/11/2020

(iii) International

CPMI: Call for papers on cross-border payments for conference

Status: Consultation

Deadline for the submission of comments: 20/01/2021

The Committee on Payments and Market Infrastructures (CPMI) opened a call for policy-oriented, theoretical, legal and/or empirical papers on cross-border payments. CPMI asks that papers cover at least one of the following three related themes: (i) making existing payment infrastructures and arrangements fit for cross-border purpose; (ii) streamlining data exchange to improve cross-border payments; and (iii) exploring the international dimension of new payment infrastructures and arrangements. CPMI is open to submissions from authors from academia, public institutions (including central banks), special interest groups and the private sector.

CPMI will select certain papers to be discussed at its conference on 'Pushing the frontiers of payments: towards a global payments area' to be held on 12 and 19 March 2021.

Date of publication: 16/11/2020

6. Institutional supervisory framework

(i) EU

ESMA: New Union Strategic Supervisory Priorities for NCAs

Status: Final

ESMA announced that it had identified, using its new convergence powers, costs and performance for retail investment products and market data quality as the Union Strategic Supervisory Priorities for national competent authorities (NCAs). Under these Priorities, the specific topics on which NCAs will undertake supervisory action in 2021, coordinated by ESMA, are: (i) costs and fees charged by fund managers - ESMA considers that problems linked to cost and performance are multifaceted due to the lack of transparency and undue costs or differences observed in the application of certain MiFID requirements across Member States; and (ii) improving the quality of transparency data reported under MiFIR - the reporting datasets and requirements have grown exponentially since the 2008 financial crisis and a better understanding of the requirements by market participants could avoid poor and late reporting.

Date of publication: 13/11/2020

7. Investment funds

(i) Germany

BaFin: UK Funds – Submission of sales notices before the end of the transition period is possible

Status: Final

BaFin published information on how to distribute UK funds after the end of the transition period on 31 December 2020 in Germany. UK funds are currently still distributed in Germany under Section 310 of the German Capital Investment Code (KAGB) for undertakings for collective investments in securities (UCITS) and Section 323 KAGB for special AIFs (alternative investment funds that may only be sold to professional and semi-professional investors) using the passport procedure. After the end of the transition period, this option and thus the distribution authorisation will no longer apply. If these funds are to continue to be marketed in Germany after the end of the transition period, they must each go through a bilateral third-country distribution notification procedure on the basis of Section 320 KAGB for the former UK UCITS or Section 329/Section 330 KAGB for the special AIF.

Distribution notification procedures for UK funds that are to be resold in Germany can also be carried out before the end of the transition period on 31 December 2020, even if they are not yet third-country funds at that time, in order to be able to continue distribution without interruption.

Date of publication: 19/11/2020

BaFin: Duties and responsibilities of the depositary (*Aufgaben und Pflichten der Verwahrstelle*)

Status: Final

BaFin published its Circular 05/2020 (WA) on the duties and responsibilities of the depositary under Chapter 1 section 3 of the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB) as per Chapter IV of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (hereinafter: AIFM Level 2 Regulation) and Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (hereinafter: UCITS V Level 2 Regulation). It replaces Circular 08/2015 (WA) on the duties and obligations of the depositary pursuant to Chapter 1 Section 3 of the KAGB dated 7 October 2015. It is not exhaustive inasmuch as further obligations or specifications may arise from other pronouncements of BaFin.

Date of publication: 04/11/2020

(ii) EU

ESMA: Speech on future challenges for fund managers

Status: Final

ESMA published a speech by Verena Ross, ESMA Executive Director on future challenges for fund managers. Key points include: (i) liquidity issues in the asset management sector in light of Covid-19 - ESMA acted upon a recent recommendation from the ESRB and coordinated a focused supervisory exercise with investment funds exposed to less liquid asset classes to assess their preparedness to potential future adverse shocks. ESMA concluded that there are a number of shortcomings in the way liquidity is managed in certain segments of the asset management sector. This deserves further action: by asset managers who need to promptly address any misalignment between their funds' investment strategies and redemption policies and by NCAs who need to keep monitoring and actively supervise the funds under their jurisdiction; (ii) on delegation in light of Brexit and the AIFMD review - ESMA observes that investment managers often make use of large-scale delegation arrangements and that Brexit will likely make delegation to non-EU entities more pronounced. Ms Ross refers to ESMA's AIFMD review letter to the EC in August of this year and that the stated objective of the clarifications suggested by ESMA in its AIFMD review letter is to ensure that the key legal requirements on delegation and substance are clear and unambiguous. Ms Ross notes that the existing AIFMD legal text already states that investment management functions delegated shall "not exceed by a substantial

margin" the functions retained by the authorised AIFM and that it has invited the EC to further specify this concept. Ms Ross emphasises that ESMA fully acknowledges that delegation is (and should remain) permitted under the AIFMD and UCITS rules. ESMA is purely asking for clarification of existing text; and (iii) on the ESG agenda - Ms Ross highlights a number of ESMA's key initiatives including: (a) its Strategy on Sustainable Finance; (b) in the context of ESMA's risk analysis reporting in the Trends, Risks and Vulnerabilities (TRV) publication, they now also incorporate ESG indicators; (c) planning future climate-related stress tests; and (d) pursuing supervisory convergence of national practices, focusing on preventing greenwashing, miss-selling and fostering transparency and reliability of non-financial reporting. Ms Ross confirms that the ESAs final report on the draft regulatory technical standards under the disclosure regulation is due by the end of January 2021. Ms Ross reiterates that, although the application date of the technical standards under the disclosure regulation will be delayed, the obligations stemming from the Level 1 regulation must be applied according to the original schedule starting from 10 March 2021. Ms Ross notes that the ESAs are aiming to launch a consultation paper in January 2021 on additional taxonomy-related product disclosures stemming from empowerment given to the ESAs by the Taxonomy Regulation.

Date of publication: 19/11/2020

ESMA: Informing fund managers to improve readiness for future adverse shocks

Status: Final

ESMA published a report on the preparedness of investment funds with significant exposures to corporate debt and real estate assets, for potential future adverse liquidity and valuation shocks. The report identifies five priority areas for action which would enhance the preparedness of these fund categories: (i) ongoing supervision of the alignment of the funds' investment strategy, liquidity profile and redemption policy; (ii) ongoing supervision of liquidity risk assessment; (iii) fund liquidity profile reporting; (iv) increase of the availability and use of Liquidity Management Tools (LMTs); and (v) supervision of valuation processes in the context of valuation uncertainty. ESMA states that, from a financial stability perspective, the priority areas should also reduce the risk and the impact of collective selling by funds on the financial system, by addressing the liquidity and valuation risks at the level of the investment fund – ESMA will continue to monitor this risk through regular assessments of the resilience of the fund sector and participation to the development and operationalisation of the macroprudential framework for non-banks. In light of Covid-19, ESMA has reinforced its coordination role regarding investment fund supervision through the organisation of frequent exchanges with national competent authorities on market developments and supervisory risks, in particular on liquidity issues.

Date of publication: 12/11/2020

ESMA: Reports on penalties and measures imposed under the AIFMD and the UCITS Directives in 2018-2019

Status: Final

ESMA published its: (i) first report on the use of sanctions under the AIFMD; and (ii) third annual report on the use of sanctions for UCITS. The report on AIFMD contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs from 1 January 2018 to 31 December 2018 and from 1 January 2019 to 31 December 2019.

The UCITS report contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive from 1 January 2019 to 31 December 2019. Furthermore, ESMA states that the data gathered under the UCITS sanction reports published so far shows that the sanctioning powers are not equally used among NCAs and, except for certain NCAs, the number and amount of sanctions issued at national level seems relatively low.

- Penalties and measures imposed under the AIFMD Directive
- Penalties and measures imposed under the UCITS Directive

Date of publication: 12/11/2020

ESMA: Consultation on Guidelines on marketing communications under the Regulation on cross-border distribution of funds

Status: Consultation

Deadline for the submission of comments: 08/02/2021

Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings specifies that AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading. The Regulation provides that ESMA shall develop guidelines on the application of these requirements for marketing communications, taking into account the online aspects of such marketing communications. This consultation paper represents the first step in the development of these guidelines and sets out proposals on which ESMA is seeking the views of external stakeholders.

The purpose of the draft guidelines is to specify the requirements for marketing communications sent to investors in order to promote UCITS and AIFs, including EuSEFs, EuVECAs and ELTIFs. These requirements are that the material shall: (i) be identifiable as marketing material; (ii) describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and (iii) contain information which is fair, clear and not misleading. The guidelines take into account the online aspects of marketing communications. Since the scope of the Regulation is limited, by virtue of its Article 2, to fund managers, only these entities are subject to the guidelines. These guidelines should apply to all communications that have a marketing purpose. The guidelines do not aim at replacing existing national requirements on the information to be included in marketing communications. ESMA will consider feedback with a view to issuing final guidelines by 2 August 2021.

Date of publication: 09/11/2020

ESMA: Guidelines on performance fees in UCITS and certain types of AIFs

Status: Final

Date of application: 05/01/2021

ESMA published the translations of its guidelines on performance fees in UCITS and certain types of alternative investment funds (AIFs); the final report on these guidelines had been published on 3 April 2020. Their objective is to promote greater convergence and standardisation in the field of performance fees and promote convergent supervision by competent authorities. In particular, they aim to ensure that performance fee models used by the management companies comply with the principles of acting honestly and fairly in conducting their business activities and acting with due skill, care and diligence, in the best interest of the fund that they manage, in such a way as to prevent undue costs being charged to the fund and its investors. Also, they aim at establishing a common standard in relation to the disclosure of performance fees to investors. These guidelines apply from 5 January 2021, two months after the date of publication of the guidelines.

Date of publication: 05/11/2020

(iii) International

IOSCO: Thematic Review on consistency in implementation of Money Market Funds reforms

Status: Final

IOSCO published a final report setting out the findings of its thematic review of the implementation of selected key Policy Recommendations for MMFs by nine IOSCO member jurisdictions – the Policy Recommendations were intended to strengthen the resilience of MMFs globally and reduce their susceptibility to runs, with a focus on MMFs that feature a constant net asset value (CNAV). Key findings include: (i) participating jurisdictions have generally implemented policy reforms in relation to the reform areas to strengthen the frameworks applicable to MMFs; (ii) there is no uniform definition of what constitutes a MMF in the assessed jurisdictions; (iii) MMF markets have continued to grow – significantly in some large jurisdictions (the US and China) and in a more limited manner in other jurisdictions (the EU); (iv) there have been material changes in the industry, driven by different factors; (v) in relation to the requirement for MMFs to hold a minimum amount of liquid assets to strengthen their ability to face redemptions and prevent fire sales, there is a large variety of definitions of the instruments each jurisdiction deems

to be liquid; and (vi) most jurisdictions have introduced specific safeguards to contain the risks associated with CNAVs rather than requiring the conversion to floating net asset value (NAV) with the notable exception of the US market.

IOSCO has also published a thematic note on MMFs during the March-April period. The thematic note analysis focuses, in the first instance, on a factual description of the events that took place across jurisdictions during March based on available data and sources. It describes where the MMF sector remained stable and where it came under stress, taking into account the differences between MMF type and currency. Finally, it suggests further analysis to strengthen the money markets' ecosystem and MMFs' regulatory framework.

- Thematic note

Date of publication: 20/11/2020

8. Special topics

8.1 Covid-19

(a) Prudential regulation

(i) International

IOSCO: Annual meeting addresses the impact of Covid-19 and other critical matters on securities markets

Status Final

IOSCO published a press release, stating that its members attended the 45th annual meeting to discuss the impact of Covid-19 on capital markets and other priority issues currently facing securities market regulators and supervisors. At the meeting, the IOSCO Board approved the following two additional priority themes for 2021: (i) financial stability and systemic risks in non-bank financial intermediation (NBFI); and (ii) remote working, misconduct risks, fraud and scams, and operational resilience, in the context of the Covid-19 pandemic. The Board agreed that the IOSCO Sustainable Finance Task Force should further explore the following areas: (a) pathways to mandatory disclosure, beyond comply or explain requirements; (b) engaging with the IFRS Foundation, to ensure that any proposals stemming from the consultation paper meet securities regulators' expectations both in terms of content and governance; and (c) advancing discussions regarding the establishment of an assurance framework for sustainability disclosures. Furthermore, the Board agreed to undertake further work on: (1) good practices or recommendations for audit committees on goodwill impairment; (2) potential valuation-related issues in financial reporting, auditing and disclosures; and (3) the impact of Covid-19 on secondary trading market microstructure mechanisms, the operations of trading venues and business continuity planning.

Date of publication: 23/11/2020

(b) Conduct rules

(i) EU

EP: Adopting position on proposed directive amending MiFID II to help recovery from Covid-19

Status: Final

The EP adopted its position at first reading on the proposed directive amending MiFID II as regards information requirements, product governance and position limits to help the recovery from the Covid-19 pandemic. The text that has been published is a provisional edition, reflecting the EP's amendments to the proposal. The EP states, among other things, that: (i) to better enhance investor protection, it is critical that the debt level of retail investors is taken into account in the suitability assessment, in particular given the rising level of consumer debt due to the Covid-19 pandemic; (ii) the EC should come forward with a report on the impact of the application of position limits and position management on liquidity, market abuse and orderly pricing and settlement conditions in commodity derivatives market – an evidence-based assessment of the commodity derivatives regime and the consultation of a diverse range of stakeholders is essential when reviewing the substance of those provisions; (iii) the changes to the position limit regime are designed to support the development of new energy contracts, in particular in the electricity market, and do not seek to relax the regime for agricultural commodity contracts; and (iv) the aim of the amendments is to make temporary exceptions and remove clear red tape in order to mitigate the economic crisis – the amendments therefore avoid opening up more complex issues of the legislation which could risk causing more burdens for the sector and larger changes to the legislation should first be re-evaluated in the planned review of MiFID II.

The next step is for the Council of the EU to adopt the proposed Directive.

Date of publication: 25/11/2020

(c) Other

(i) Eurozone

ECB: Interview addressing monetary policy, Covid-19 recovery and post-Brexit transition period preparations

Status: Final

The ECB published an interview with Yves Mersch, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, covering (among other things): (i) how much the second wave of Covid-19 infections and lockdowns darken the eurozone economic outlook; (ii) whether a double dip recession is expected; (iii) the desired outcome from the ECB's current recalibration of its monetary policy instruments; (iv) whether the deposit rate could be cut further; (v) whether there is a danger of fiscal dominance (monetary policy becoming subservient to fiscal policy); (vi) how the ECB's strategy review is likely to change its inflation target and whether it should follow the US Federal Reserve in shifting to average inflation targeting; (vii) how far the ECB should go to tackle climate change; (viii) whether banks should not be allowed to restart dividend payments and share buy-backs at the end of this year; and (ix) whether the financial sector is doing enough to prepare for the UK leaving the EU single market.

Date of publication: 25/11/2020

(ii) International

FSB: Report on Covid-19 impact on financial stability and policy responses

Status: Final

The FSB published a report delivered to G20 Leaders ahead of their November Summit, considering the financial stability impact and policy responses to the Covid-19 pandemic. The FSB report provides an update as to: (i) financial stability developments and risks relating to Covid-19; (ii) the international policy responses; (iii) the effectiveness of policies; and (iv) the challenges that lie ahead and the way forward for the FSB. The FSB will: (a) continue to assess and share, on a timely basis, information on financial stability risks from Covid-19, including banks' ability to provide financing to the real economy, functioning short-term funding markets, and the availability of dollar funding globally; (b) build on the holistic review of the March market turmoil, and in coordination with the standard setting bodies (SSBs), initiate and coordinate the international regulatory response to strengthen the resilience of the NBFI sector while preserving its benefits; (c) continue to facilitate sharing of information on jurisdictions' policy responses and on their use of tools to design, calibrate and assess policies; (d) continue to support crisis management preparedness, including by enhancing cooperation and coordination through crisis management groups and colleges; and (e) discuss the factors to be considered in preparation for an orderly unwinding of support measures, once appropriate, and avoid unintended effects across sectors and jurisdictions.

Date of publication: 17/11/2020

FSB: Holistic review of the March market turmoil

Status Final

The FSB published a report, delivered to G20 Leaders ahead of their November Summit, which provides a holistic review of the March market turmoil. The FSB examines the effects of the pandemic, noting that the breadth and dynamics of the economic shock and related liquidity stress in March were unprecedented. It notes that structural changes in the financial system over the past decade have also increased the reliance on market-based intermediation to finance growing levels of debt. The G20 regulatory reforms and market-driven adjustments in the aftermath of the 2008 financial crisis have resulted in credit risk being increasingly intermediated and held outside the banking sector. Interconnectedness has also increased and taken new forms in some areas. With the overall growth of non-bank financial intermediation (NBFI), market liquidity has become more central to financial resilience. The FSB concludes that this turmoil underscores the need to strengthen the resilience of non-bank financial intermediation (NBFI). Issues that may have caused liquidity imbalances and propagate stress include: (a) significant outflows from non-government MMFs; (b) similar dynamics, albeit less intense and widespread, in specific types of open-ended funds; redistribution of liquidity from margin calls; (c) the willingness and capacity of dealers to intermediate in core funding markets; and (d) the drivers of dislocations in key government bond markets, including the role of leverage in amplifying the stress. The review sets out an NBFI work programme, focusing on three main areas: (i) work to examine and address specific risk factors

and markets that contributed to amplification of the shock; (ii) enhancing understanding of systemic risks in NBFI and the financial system as a whole, including interactions between banks and non-banks and cross-border spill-overs; and (iii) assessing policies to address systemic risks in NBFI.

- Press release
- Review and work programme

Date of publication: 17/11/2020

8.2 Brexit

(i) EU

Commission Implementing Decision (EU) 2020/1766 determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) No 909/2014

Status: Published in the OJ

EC Implementing Decision (EU) 2020/1766 was published in the Official Journal determining that, for a limited period of time, the regulatory framework applicable to UK CSDs is equivalent in accordance with Regulation (EU) 909/2014 on improving securities settlement in the EU and on CSDs (CSDR). From 1 January 2021, CSDs established in the United Kingdom ('UK CSDs') will be considered third-country CSDs within the meaning of CSDR. As such, they may not provide notary and central maintenance services in relation to financial instruments constituted under the law of a Member State unless they are recognised by ESMA in accordance with Article 25 of CSDR. In the absence of such recognition, Union issuers may not use UK CSDs to perform notary and central maintenance services concerning transferable securities constituted under the law of a Member State. Such a situation may result in temporary challenges for Union issuers to fulfil their legal obligations, as those services provided by UK CSDs in relation to corporate securities and exchange-traded funds constituted under the domestic law of Ireland ('Irish corporate securities and ETFs') are currently not provided by CSDs authorised in the Union ('Union CSDs'). The EC therefore consider it justified and in the interest of the Union and its Member States to ensure that UK CSDs may continue to provide services in the Union after 31 December 2020 for a limited period of time. The EC states that in view of the United Kingdom's announcement that certain requirements that will come into force under the Union legal framework in the future will not be incorporated in its domestic law, the EC considers that the legal and supervisory arrangements currently in place in the United Kingdom can only be deemed as equivalent for a limited period of time. The decision becomes applicable on 1 January 2021, and expires on 30 June 2021. Given the United Kingdom's announcement about the future divergence as regards the legal and supervisory arrangements applicable to UK CSDs, market participants are expected to prepare for a situation without a further equivalence decision in this area.

Date of publication: 26/11/2020

ESMA: Statements for the end of UK transition period

Status: Final

ESMA published a public statement that clarifies the application of the EU's derivatives trading obligation (DTO) following the end of the transition period. The statement clarifies that the DTO will continue applying without changes after the end of the transition period. ESMA considers that the continued application of the DTO would not create risks to the stability of the financial system. The statement confirms the approach outlined in ESMA's previous statement in March 2019. Although ESMA acknowledges that this approach creates challenges for some EU counterparties, particularly UK branches of EU investment firms, it considers that EU counterparties can meet their obligations under the DTO by trading on EU trading venues or eligible trading venues in third countries. Based on the current legal framework, and in the absence of an equivalence decision by the EC, ESMA does not see room for providing different guidance.

- Impact of the end of the transition period on 31 December 2020 on the trading obligation for derivatives (Article 28 of MiFIR)
- Final view on the derivatives trading obligation (DTO)

Date of publication: 25/11/2020

ESMA: Updated Brexit statements for the end of UK transition period

Status: Final

ESMA updated three statements to address the impact on reporting under EMIR and SFTR and on the operation of ESMA databases and IT systems after the UK transition period. Specifically, ESMA updated its statements on: (i) issues affecting EMIR and SFTR reporting – covering issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 EMIR and of securities financing transactions reported under Article 4 of SFTR; (ii) the use of UK data in ESMA databases and performance of MiFID II calculations – covering MiFID II/MiFIR publications performed by the various ESMA databases, as well as the annual ancillary activity calculations; and (iii) ESMA's Data Operational Plan – covering actions related to the Financial Instruments Reference Data System (FIRDS), Financial Instrument Transparency System (FITRS), Double Volume Cap System (DVCAP), transaction reporting systems, and ESMA's registers and data.

- Statement on issues affecting EMIR and SFTR reporting
- Statement on the use of UK data in ESMA databases and performance of MiFID II calculations
- Statement on ESMA's Data Operational Plan

Date of publication: 10/11/2020

ESMA: Updated Q&As on the Transparency Directive in the context of the Brexit transition period

Status: Final

ESMA published its updated Q&As on the Transparency Directive, which makes minor modifications to question 26 (concerning the obligations that an issuer – which had the UK as its home Member State before end of the transition period and which is admitted to trading on one or more regulated markets in the EU27 Member States or the EEA EFTA states – has under the Transparency Directive in relation to disclosing its choice of a new home Member State), to reflect the end of the UK's transition period for leaving the EU.

Date of publication: 09/11/2020

EBA: Reminder of the need for readiness in view of the Brexit transition period ending on 31 December 2020

Status: Final

The EBA published a press release to remind financial institutions of the need for readiness in view of the Brexit transition period ending on 31 December, specifically to finalise the full execution of their contingency plans in accordance with the conditions agreed with relevant competent authorities (CAs), as well as to ensure adequate communication regarding their preparations and possible changes to any affected EU customers. Key points emphasised by the EBA are that: (i) the transition period agreed between the EU and the UK following the UK withdrawal from the EU on 1 February 2020 will end on 31 December 2020, meaning that EU law will stop applying in the UK from 1 January 2021 – from that date, the provision of financial services from UK authorised institutions to EU customers on a cross-border basis (passporting) will no longer be possible; (ii) UK financial institutions offering services to EU customers should ensure they have obtained the necessary authorisations from EU competent authorities and have effectively established themselves before the end of the transition period, as well as providing adequate information to their EU customers regarding the availability of services after the end of the transition period; (iii) eIDAS certificates issued to the UK-based account information service providers and payment initiation service providers should be revoked and no longer supported; and (iv) payment service providers should include additional details regarding the payer and the payee for the transfer of funds between the EU and UK.

Date of publication: 09/11/2020

8.3 Sustainable finance

(i) EU

ESMA: Draft advice to the European Commission under Article 8 of the Taxonomy Regulation

Status: Consultation

Deadline for the submission of comments: 04/12/2020

ESMA began consulting on its draft advice to the EC on Article 8 of the Taxonomy Regulation, which specifies the content, methodology and presentation of the key performance indicators (KPIs) that non-financial undertakings and asset managers are required to disclose. The key draft proposals address: (i) in relation to non-financial undertakings, the content of the three KPIs, namely the proportion of turnover, and capital and operating expenditure related to environmentally sustainable activities which must be disclosed, and sets out specific considerations relating to the methodology for their preparation and presentation; and (ii) in relation to asset managers, the advice proposes a KPI calculation model based on eligible investments; this comes together with advice on how this KPI should be calculated and presented to allow uniform disclosure on how the activities are directed at funding environmentally sustainable economic activities. In accordance with the EC's call for advice, ESMA closely cooperated with the other two ESAs to ensure consistent and coherent recommendations from the three authorities.

After having received the responses, ESMA will deliver its final advice to the European Commission by 28 February 2021.

Date of publication: 05/11/2020

EBA: Discussion paper on management and supervision of ESG risks for credit institutions and investment firms

Status: Consultation

Deadline for the submission of comments: 03/02/2021

The EBA published a discussion paper, which includes proposals for common definitions of ESG risks to credit institutions and investment firms (institutions) as risks that stem from the current or prospective impacts of ESG factors on its counterparties. The EBA acknowledges that qualitative and quantitative indicators, metrics and methods currently available to the institutions for the assessment of risks may be more advanced for environmental risks compared to social and governance risks – therefore, the management of ESG risks by institutions as well as the incorporation of ESG risks in supervision may, in an initial stage, give particular prominence to environmental risks. Nevertheless, the EBA states that the progress in this policy field, including the further development of the EU Taxonomy Regulation, will gradually allow institutions and supervisors to exploit social and governance indicators, and integrate them, respectively into the management and supervision of ESG risks. This report provides an overview of the approaches for the assessment of ESG risks that exist on the market identified by the EBA, divided into different types: (i) portfolio alignment method; (ii) risk framework method; and (iii) exposure method. The decision on which methodological approach to choose will also depend on the size, the complexity and the business model of the respective institution. Furthermore, the EBA sees the need to: (a) enhance incorporation of ESG risks into institutions' business strategies, business processes and proportionately incorporate ESG risks in their internal governance arrangements; and (b) introduce a new area of analysis in the supervisory assessment, evaluating whether credit institutions sufficiently test the long-term resilience of the business model against the time horizon of the relevant public policies or broader transition trends.

The feedback sought in the consultation to this discussion paper will inform the EBA final Report on management and supervision of ESG risks for credit institutions and investment firms. It will be also taken into account for the EBA's ongoing work related to the fulfilment of its mandates to develop a technical standard implementing the ESG risks Pillar 3 disclosure requirements included in Part Eight of the Capital Requirements Regulation (CRR2 - Article 434a and 449a) and to assess whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives would be justified as a component of Pillar 1 capital requirements (Article 501c of CRR 2), as explained in the EBA Action Plan on Sustainable Finance.

Date of publication: 03/11/2020

EC: Extending deadline for draft RTS under SFDR

Status: Final

The EC published a letter by John Berrigan, Director General for Financial Stability, Financial Services and Capital Markets Union at the Commission, to the ESAs about the application of the Sustainable Finance Disclosure Regulation (SFDR) and related regulatory technical standards (RTS). John Berrigan writes that the co-legislators agreed in March 2019 on an ambitious time frame for the Regulation, requiring the joint development by EIOPA, ESMA and EBA of most of the draft RTS by 30 December 2020. The unprecedented economic and market stress caused by the Covid-19 crisis has necessitated an extension of the deadline for the public consultation on the draft RTS. However, as the application of the Regulation is not conditional on the formal entry into force of these RTS, all application dates are being maintained as laid down by the Regulation. Therefore, financial market participants and financial advisers subject to the Regulation will need to comply with its high-level and principle-based requirements from 10 March 2021, with the RTS entering into force later.

Date of publication: 30/10/2020

(ii) Eurozone

ECB: Guide on climate-related and environmental risks

Status: Final

The ECB published a final version of its guide on climate-related and environmental risks for banks in the single supervisory mechanism (SSM). As per this guide, banks are expected to consider the extent to which their current management and disclosure practices for climate-related and environmental risks are sound, effective and comprehensive in the light of the expectations set out in the guide. Where needed, banks are expected to promptly start enhancing their practices.

A report has been published alongside the guide that aims to provide an overview of the level of disclosure of climate-related and environmental risks in SSM countries. It concludes that banks need to make significant efforts to better support their disclosure statements with relevant quantitative and qualitative information. In the second half of 2021, the ECB intends to identify remaining gaps and discuss them with the banks.

The guide applies with immediate effect. It has immediate effect for significant banks subject to ECB supervision.

Date of publication: 27/11/2020

ECB: Interview on sustainable finance

Status: Final

The ECB published an interview with Yves Mersch, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on sustainable finance. Among other things, the interview covers: (i) whether it is part of the ECB's mandate to engage with the capital market segment of green and sustainable finance; (ii) the risks facing green and sustainable finance over the coming years; (iii) given that the EU taxonomy for green and sustainable finance is a complex system of classification, whether this is a masterstroke by the EU that will advance this market segment and possibly also serve as an example for other countries and regions; (iv) what the EU taxonomy means for risk assessment in practice; (v) when it is expected for financial markets and market participants to be fully green and sustainable; (vi) the specific transition risks of transitioning towards green and sustainable capital markets; (vii) whether banks are providing sufficient disclosure on specific risks that are neither green nor sustainable, and whether these are already incorporated in the ECB's banking supervision; (viii) how far banks go in their disclosure and whether they go far enough for the ECB; (ix) whether there is concern that a major case of greenwashing could arise, and if markets are sufficiently forearmed against this or stable enough; (x) how important sustainability ratings are, whether these are already deployed in supervision, and if they are robust enough for an appropriate estimation of risks and opportunities; (xi) whether providers should report several sustainability ratings or just one; and (xii) whether the ECB deploys green and sustainable investments in its fund management – if so, what the investment criteria is.

Date of publication: 21/11/2020

(iii) International

FSB: Report on the implications of climate change for financial stability

Status: Final

The FSB published a report on the implications of climate change for financial stability. The report investigates channels through which climate-related risks might impact the financial system, and it also examines potential mechanisms within the financial system that might amplify the effects of climate-related risk as well as the cross-border transmission of risks. Key points include that: (i) the value of financial assets/liabilities could be affected either by the actual or expected economic effects of a continuation in climate change (physical risks), or by an adjustment towards a low-carbon economy (transition risks); (ii) current central estimates of the impact of physical risks on asset prices appear relatively contained but may be subject to considerable tail risk; (iii) the manifestation of physical risks could lead to a sharp fall in asset prices and increase in uncertainty; (iv) a disorderly transition to a low carbon economy could have a destabilising effect on the financial system; (v) climate-related risks may also affect how the global financial system responds to shocks; (vi) the breadth and magnitude of climate-related risks might make effects more pernicious than in the case of other economic risks; (vii) the interaction of climate-related risks with other macroeconomic vulnerabilities could increase risks to financial stability; and (viii) some authorities find that actions to reduce and manage exposure to climate-related risks are not applied systematically by most firms – furthermore, the efficacy of actions taken by financial firms may also be hampered by a lack of data with which to assess clients' exposures to climate-related risks, or the magnitude of the effects. By October 2021, the FSB will conduct further work to assess the availability of data through which climate-related risks to financial stability could be monitored, as well as any data gaps.

Date of publication: 23/11/2020

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