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REGULATORY UPDATES

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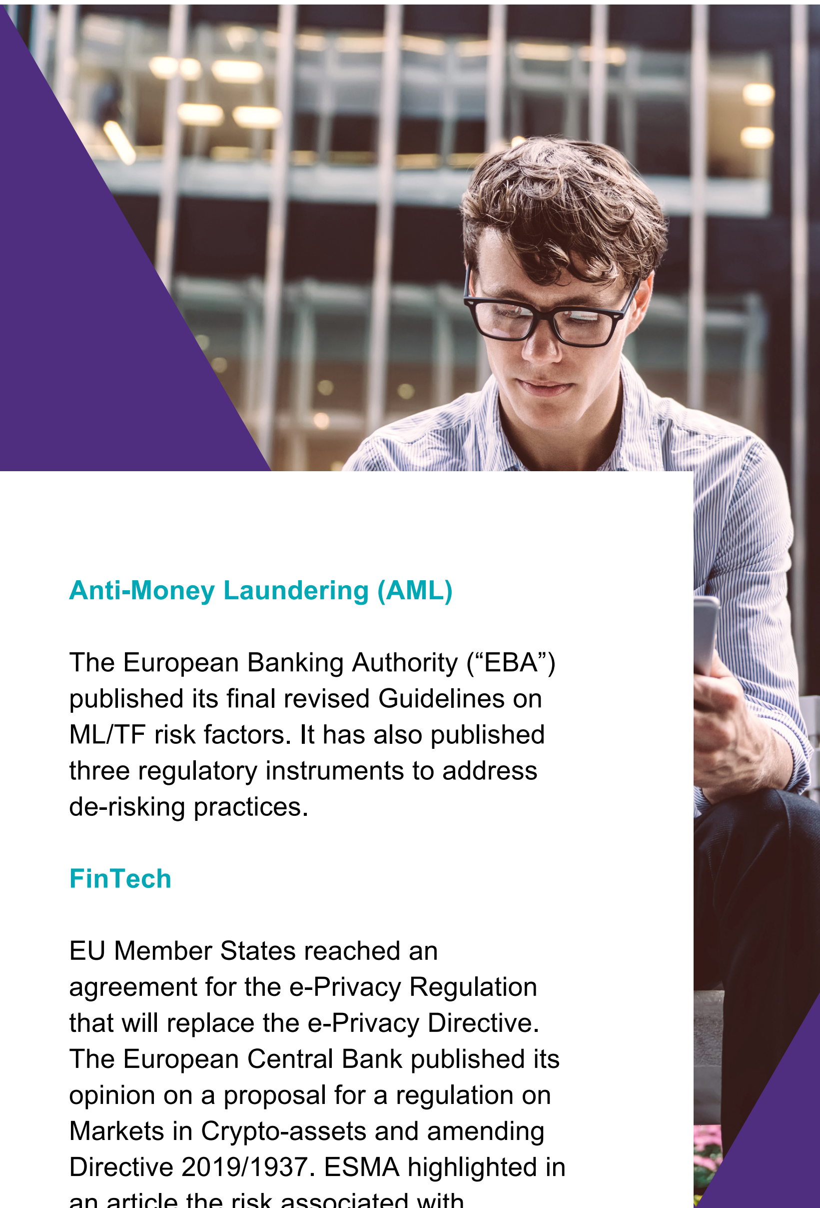


HIGHLIGHTS

The 1st quarter of 2021 was marked by several regulatory developments in various areas such as AML, Corporate Governance, ESG, Risk Management and Capital Markets.

Anti-Money Laundering (AML)

The European Banking Authority ("EBA") published its final revised Guidelines on ML/TF risk factors. It has also published three regulatory instruments to address de-risking practices.

FinTech

EU Member States reached an agreement for the e-Privacy Regulation that will replace the e-Privacy Directive. The European Central Bank published its opinion on a proposal for a regulation on Markets in Crypto-assets and amending Directive 2019/1937. ESMA highlighted in an article the risk associated with investments in non-regulated crypto-assets.

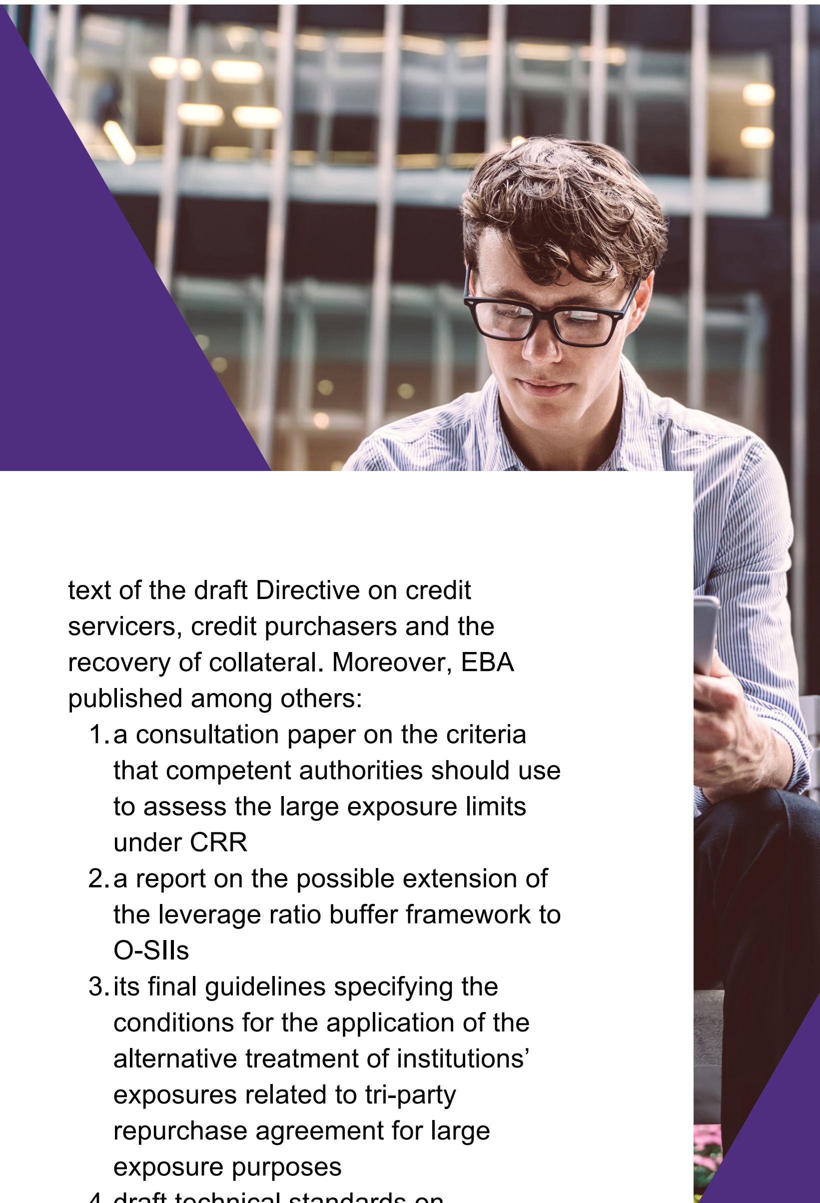
Corporate Governance

The EBA published a final draft in regard to the technical standards on the supervisory reporting and disclosures of investment firms.

Environmental, Social and Governance (ESG)

The UN Environmental Programme Finance Initiative (UNEP FI) published three reports on climate risk management tools for financial institutions. The EC published a summary report on the consultation to the Renewed Sustainable

HIGHLIGHTS



Finance Strategy. The European Supervisory Authorities (ESAs) published the final report on draft RTS on sustainability-related disclosures under SFDR. ESMA proposed rules for Taxonomy -alignment of non- financial undertaking and asset managers and the Joint Committee of the three ESAs (EBA, EIOPA and EESMA) delivered its final report concerning draft regulatory technical standards (RTS) on the content, methodologies, and presentation of disclosures under the Sustainable Financial Disclosure Regulation. EBA advised the Commission on key performance indicators (KPIs) for transparency on institutions.

Risk Management

The EBA published two final draft Regulatory Technical Standards (RTS) on (i) the criteria to identify all categories of staff whose professional activities have a material impact on the investment firm's risk profile or asset it manages ('risk takers') and
(ii) on the classes of instruments that adequately reflect the credit quality of the investment firm and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration.

The Economic and Monetary Affairs Committee (ECON) had agreed on the text of the draft Directive on credit servicers, credit purchasers and the recovery of collateral. Moreover, EBA published among others:

1. a consultation paper on the criteria that competent authorities should use to assess the large exposure limits under CRR
2. a report on the possible extension of the leverage ratio buffer framework to O-SIIs
3. its final guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to tri-party repurchase agreement for large exposure purposes
4. draft technical standards on disclosure of indicators of global systemic importance by G-SIIs (Global Systemically Important Institutions)
5. two reports on the consistency of risk weighted assets (RWAs)
6. a decision in the middle of March making Basel III monitoring exercise mandatory from December 2021
7. draft revised Guidelines on stress test of Deposit Guarantee Schemes (DGSs) for consultation.

EBA has also launched the 2021 EU wide stress test exercise and it has published the results of the annual transparency calculation for equity and equity-like instruments.

HIGHLIGHTS

The Basel Committee on Banking Supervision ("BCBS") published:

- a consultation on technical amendments regarding the standard on minimum haircut floors for securities financing transactions (SFTs);
- guidelines regarding Operational Resilience;
- updated Principles for the sound Management of Operational Risk (PSMOR).

Capital Markets

EC consulted on establishment of a European Single Access Point (“ESAP”) that aims to address information published by companies that are capital market participants, as well as SMEs looking for funding. Furthermore, the EC published a strategy to enhance openness, strength and resilience in Europe’s economic and financial system.

European Parliament adopted Benchmark Regulation (“BMR”) amending Regulation to address benchmark cessation risks and exempt certain third-country FX (Foreign exchange) benchmarks.

ESMA published two opinions on position limits regarding commodity derivatives under MiFID II / MIFIR.

ECB published a guide on the supervisory approach to consolidation in the banking sector.

Two regulations were published in regard to regulatory technical standards (RTS) by the European Union. ESRB published a report on the financial stability implications of support measures aimed at protecting the real economy from COVID-19. The European Parliament and the Council of the EU announced that they have adopted the Directive amending MiFiD II. ESMA highlights improvements for European long-term investments funds (ELTIF) Regulation. ESMA published its annual report on the application of waivers and deferrals for equity instruments under MiFIR and announced that it will launch a Common Supervisory Action with National Competent Authorities on MiFID II Product Governance rules. Moreover, the EBA issued a revised list of validation rules included in its implementing technical standards (ITS) on supervisory reporting. ESMA published its first report on trends risks and vulnerabilities for 2021.

Anti-Money Laundering (AML)

Final revised Guidelines on ML/TF risk factors

The European Banking Authority (EBA) published its final revised Guidelines on ML/TF risk factors. The revisions consider changes to the EU Anti Money Laundering and Counter Terrorism Financing (AML/CFT) legal framework and address new ML/TF risks, including those identified by the EBA's implementation reviews.

The EBA strengthens the requirements on individual and business-wide risk assessments and customer due diligence (CDD) measures adding new guidance on the:

1. identification of beneficial owners;
2. use of innovative solutions to identify and verify customers' identities and how financial institutions should comply with legal provisions on enhanced customer due diligence related to high-risk third countries.

These guidelines are addressed to credit and financial institutions as defined in Article 3(1) and 3(2) of Directive (EU) 2015/849 and competent authorities responsible for supervising these firms' compliance with their anti-money laundering and counter-terrorist financing (AML/CFT) obligations. Competent authorities should use these guidelines when assessing the adequacy of firms' risk assessments and AML/CFT policies and procedures.

The EBA published its final revised Guidelines on ML/TF risk factors.

The European Banking Authority (EBA) published three regulatory instruments to address de-risking practices based on evidence gathered in its call for input

These instruments refer to decisions taken by financial institutions not to provide services to customers in certain risk categories. This can leave customers without access to the financial system. De-risking can be a legitimate risk management tool in some cases but it can also be a sign of ineffective ML/TF risk management, with severe consequences. EBA also set out steps that financial institutions and competent authorities should take to manage risks associated with individual business relationships in an effective manner.

More information about these three instruments here.

FinTech

EU Member States reached an agreement for the e- Privacy Regulation that will replace the e- Privacy Directive.

Representatives of the EU Member States reached an agreement on the Council of the European Union negotiating mandate for the draft e-Privacy Regulation which will replace the e-Privacy Directive

Note the following key points for the draft e-privacy Regulation which were highlighted in Council's press release on 10 February 2021:

- It will cover electronic communications content and communications metadata (e.g. information on location and time and recipient of communication)
- It will cover machine-to-machine data transmitted via public network
- Apply when end-users are in the EU even when their communication data is processed outside the EU
- Regarding cookies, the draft Regulation emphasizes that users should have a genuine choice with respect to the use of cookies or similar technologies. Making access to a website conditional on cookie consent as an alternative to a paywall (i.e. "the use of so called "cookie walls") will only be permitted if the user is able to choose between that offer and an equivalent offer by the same provider that does not involve consenting to the use of cookies. The Council's text further envisions that users will be able to give consent to the use of certain types of cookies by whitelisting one or several providers in their browser settings.

Once adopted, the draft e-privacy Regulation provides for a transition period of two years starting 20 days after the final text is published in the EU Official Journal.

ESMA published a letter sent by the European Supervisory Authorities ("ESAs") to the EU co-legislators (the EP, EC, and Council of the EU) on the legislative proposal for Digital Operational Resilience ("DORA")

The letter which was published on 9 February 2021 highlights challenges and proposals for successful implementation of the creation of a joint-ESAs executive body which would be responsible for the overall oversight work for cross-sectoral critical third-party providers (CTPPs), as well as the establishment of a cross-ESAs team to work on the oversight of CTPPs; and proposal for far greater involvement for the ESAs in the follow-up process.

On 19 February 2021, European Central Bank published its opinion on a proposal for a regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

The European Central Bank (ECB) submitted a 27-page opinion on the draft European Union (EU) regulations for Markets in Cryptoassets (MiCA) telling European Union lawmakers that they should have the final word on whether 'asset- referenced tokens' (stablecoins) and 'e-money tokens' should be allowed to launch in the euro zone without jeopardizing its control over inflation or the safety of payments.

Under the proposed regulation, crypto-assets, in particular the two sub-categories of 'Asset Referenced Tokens' and 'e-money Tokens', have a clear monetary substitution dimension having regard to the three functions of money as a medium of exchange, store of value and unit of account.

According to the ECB, 'Asset Referenced Token' (Stablecoin) issuers must comply with the same robust liquidity requirements as mainstream financial institutions such as banks and “rigorous liquidity requirements” are necessary to ensure the protection of redemption rights and customers' direct claims to the reserve assets held.

It also reiterated concerns about the assets used to back the Tokens. The demand for assets such as treasury bills might increase, impacting their price, distorting markets and could challenge the Euro for payments.

On 17 March 2021, the European Securities and Markets Authority (ESMA) published an article highlighting the risks associated with investments in non-regulated crypto-assets as part of its first Trends, Risks and Vulnerabilities (TRV) Report of 2021

Europe’s main securities regulator has repeated its warning on the danger of investing in unregulated crypto assets. The statement from the European Securities Markets Authority (ESMA) was part of its ‘Trends, Risks and Vulnerabilities 2021’ report.

ESMA has allegedly highlighted the fact that Crypto-assets come in many forms but the majority of them remain unregulated in the European Union, underpinning that consumers buying and/or holding these instruments do not benefit from the guarantees and safeguards associated with regulated financial services.

ESMA had issued a similar warning in February 2018 but felt compelled to repeat itself given that virtual currencies like bitcoin "continue to attract public attention".

The regulator also referenced the European Commission’s proposal for a regulated crypto assets market, published in September 2020 and known as the Markets in Crypto Assets (MiCA) framework, highlighting the inevitable need for a common EU regulatory framework adoption, in order investors to benefit from any of the safeguards foreseen in that proposal.

Corporate Governance

The European Banking Authority ("EBA") published a final draft in regard to the technical standards on the supervisory reporting and disclosures of investment firms.

New supervisory reporting and disclosures framework for investment firms

On 5 March 2021, the European Banking Authority (EBA) published final draft implementing technical standards (ITS) on the supervisory reporting and disclosures of investment firms.

The provisions on disclosure are contained in Articles 46 to 53 of the Investment Firm Regulation (IFR). Investment firms are required to disclose their capital resources, capital requirements, remuneration policies, practices and governance standards.

The draft ITS set out the main aspects of the new reporting framework in relation to the calculation of own funds, levels of minimum capital, concentration risk, liquidity requirements and the level of activity in respect of small and non-interconnected investment firms. The draft ITS propose a different set of templates to cover small and non-interconnected investment firms, and to include information that is proportionate to their size and complexity.

The draft ITS will be submitted to the European Commission for endorsement before being published in the Official Journal of the EU.

On 2nd March 2021, the European Central Bank published a guide on methods of determining penalties for regulatory breaches

The European Central Bank (ECB) has published a guide that outlines the methodology to calculate the penalties used to sanction supervised entities for breaches of prudential requirements under Council Regulation 1024/2013.

The ECB enjoys wide discretion within its power to impose such administrative penalties, which must be effective, proportionate and dissuasive, but are not subject to any amount threshold under the Regulation.

Pursuant to the Guide, the ECB takes account of all relevant circumstances relating to the breach and sets the level of a penalty in relation to the severity of the breach and, in order to ensure proportionality, also to the size of the supervised entity. In doing so, it first determines the appropriate base amount and then adjusts it by increasing it or reducing it after making consideration of all factors.

It is noteworthy to mention that the ECB may, in certain cases, impose a symbolic administrative pecuniary penalty. The justification for imposing such a penalty will be indicated in its decision.

Environmental, Social and Governance (ESG)

The EC published a summary report on the consultation to the Renewed Sustainable Finance Strategy.

The UN Environmental Programme Finance Initiative (UNEP FI) published three reports on climate risk management tools for financial institutions

The three reports published on 17 February 2021 are:

1. Pathways to Paris - a practical guide to climate transition scenarios for financial professionals;
2. Decarbonisation and Disruption - understanding the financial risks of a disorderly transition using climate scenarios; and
3. Climate Risk Landscape - a comprehensive overview of climate risk assessment methodologies.

The EC published a summary report of its consultation on Renewed Sustainable Finance Strategy

The summary report as published by the EC on 10 February 2021 provides an overview of the responses received to the consultation on the Renewed Sustainable Finance Strategy that was open from 8 April 2020 to 15 July 2020 and aimed to gather feedback on how to strengthen the foundations for sustainable finance.

The summary report highlights the support received from the respondents for ESG research and ratings, while it indicates the key areas where respondents would welcome further definitions and standards i.e. EU Green Bond Standards, Prospectus and Green Bonds, and other standards.

The European Banking Federation, together with the United Nations Environment Programme Finance Initiative (UNEP FI), published a report that for the first time assesses how the EU Taxonomy can be applied to core banking products

The report is based on case studies analysing transactions and existing client relationships across a large spectrum of sectors, economic activities and geographical locations.

The report is the result of a one-year collaboration between 26 major European banks, eight banking associations and five observing organisations. It tests, pilots and assesses the complexities of applying the EU Taxonomy to core banking products. It outlines concrete steps and principles for practical application of the taxonomy regulation and offers eight recommendations for regulators and legislators, owners of standards and frameworks, labels and certification schemes, and banks themselves to facilitate and improve the operationalizing of the EU taxonomy for its application to banking products.

The European Supervisory Authorities (“ESAs”) published the final report on draft RTS on sustainability-related disclosures under SFDR.

On 2 February 2021, the ESAs published the Final Report on draft RTS related to the content, methodologies and presentation of sustainability-related disclosures under SFDR.

The RTS cover entity-level principal adverse impact (PAI) reporting (Chapter II), pre-contractual disclosures for products that promote environmental or social characteristics (Chapter III), website disclosures (Chapter IV), and disclosures in periodic reports for products that promote environmental or social characteristics and of sustainable investments (Chapter V).

The RTS also contain Annexes which provide a set of templates:
- Annex I - Template PAI statement
- Annex II - Template pre-contractual disclosure for products that promote environmental or social characteristics
- Annex III - Template pre-contractual disclosure for products that have sustainable investment as their objective
- Annex IV – template periodic disclosures for products that promote environmental or social characteristics
- Annex V- template periodic report for financial products that have sustainable investment as their objective

The RTS are expected to apply from 1 January 2022.

ESMA proposes rules for Taxonomy-alignment of non-financial undertakings and asset managers

The European Securities and Markets Authority (ESMA) published its Final Report on advice under Article 8 of the Taxonomy Regulation, which covers the information to be provided by non-financial undertakings and asset managers to comply with their disclosure obligations under the Non-Financial Reporting Directive (NFRD).

The recommendations define the Key Performance Indicators (KPIs) disclosing how, and to what extent, the activities of businesses that fall within the scope of the NFRD qualify as environmentally sustainable under the Taxonomy Regulation.

The European Supervisory Authorities (ESA) published the Final Report on Draft Regulatory Technical Standards

The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) delivered its final report concerning draft regulatory technical standards (RTS) on the content, methodologies, and presentation of disclosures under the Sustainable Financial Disclosure Regulation (SFDR) to the European Commission (EC) for endorsement (which is expected within three months).

The proposed RTS aim to strengthen protection for investors by improving environmental, social and governance (ESG) disclosures on the principal adverse impacts of investment decisions and on the sustainability features of financial products. The RTS contain a harmonized approach to all financial products: the same disclosures are required for a very broad range of products with different levels of granularity and length. Financial market participants and financial advisers are required to apply most of the provisions on sustainability-related disclosures laid down in the SFDR from 10 March 2021; however, the application of the RTS will be later.

The ESAs have proposed that the RTS should apply from 1 January 2022.

EBA advises the Commission on key performance indicators (KPIs) for transparency on institutions' environmentally sustainable activities, including a green asset ratio (GAR)

The European Banking Authority (EBA) published an Opinion in response to the Commission's call for advice on KPIs and related methodology for the disclosure by credit institutions and by investment firms of information on how and to what extent their activities qualify as environmentally sustainable in accordance with the EU Taxonomy.
In the Opinion and accompanying report and annexes, the EBA:
1. elaborates on the KPIs that institutions should disclose and
2. includes some policy recommendations to the Commission.

The main KPI proposed is the Green Asset Ratio (GAR), which identifies the institutions' assets financing activities that are environmentally sustainable according to the EU taxonomy, such as those consistent with the European Green Deal and the Paris agreement goals.

Risk Management

The EBA published two final draft Regulatory Technical Standards (RTS) on (i) the criteria to identify all categories of staff whose professional activities have a material impact on the investment firm's risk profile or asset it manages ('risk takers') and (ii) on the classes of instruments that adequately reflect the credit quality of the investment firm and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration.

EBA published two final RTS on investment firms' risk takers and instruments used for variable remuneration

EBA published on 21 January 2021, two final RTS on the following:

- Criteria to identify categories of staff whose processional activities have a material impact on an investment firm's risk profile or assets it manages under the Investment Firm Directive (IFD)
  - Risk takers will now be identified based on a combination of qualitative and quantitative criteria specified in the RTS. To ensure that all risk takers are identified, members of staff are identified as having a material impact on the institution's risk profile as soon as they meet at least one of the qualitative or quantitative criteria in the RTS or, where necessary because of the specificities of their business model and additional internal criteria.

- Classes of instruments that reflect the credit quality of investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration
  - These introduce requirements for investment firms regarding Additional Tier 1, Tier 2 and other instruments used for the purposes of variable remuneration, to ensure that they appropriately reflect the credit quality of the investment firm and to specify possible alternative arrangements for the pay out of variable remuneration where investment firms do not issue any of the instruments referred to in Article 32 of the IFD.

Erratum of the taxonomy package on reporting framework 3.0 phase 1

On 21 January 2021, EBA published the relevant erratum. The corrections are mainly on the taxonomy files in the COREP Net Stable Funding Ratio (NSFR) module and COREP Leverage Ratio (LR) module where EBA has addressed the issue of non-reportable data points on columns 0020 and 0030 of tables C 84. EBA has also amended a member code for "Cash pooling arrangements" in C 47.

In this context, EBA has updated certain documents in the Data Point Model (DPM) version 3.0 and the taxonomy package 3.0. The parallel changes on minimum requirement for own funds and eligible liabilities (MREL) and total loss-absorbing capacity (TLAC) reporting framework for the 3.0 Data Point Model (DPM) cycle are also included.

EBA reporting framework 3.0 comprises amendments linked to the revised Capital Requirements Directive and Regulations (CRR2 and CRD5), the revised Bank Resolution and Recovery Directive (BRRD2), and the Investment Firms Regulation (IFR).

This version of the reporting framework is expected to apply from 30 June 2021.

Consultation paper on guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of CRD IV

The guidelines published on 15 January 2021, clarify the relevant dates for the calculation of the total value of the assets in the EU, taking into account the fluctuation in the value of assets.

In particular, the guidelines specify that for the purpose of the application of the IPU requirement, the total value of assets in the Union of the third-country group should be calculated as an average over the last four quarters.

The EBA states that in order to meet the IPU requirement in a timely manner it is necessary that institutions belonging to third-country groups apply a forward-looking approach – therefore, it is specified that they should assess at least annually whether the threshold is expected to be breached within the three-year horizon. In addition, the guidelines specify certain procedural aspects related to the monitoring of the threshold by competent authorities and the establishment of the IPU where necessary.

The deadline for comments closed on 15 March 2021.

The Economic and Monetary Affairs Committee (ECON) announced that it had agreed on the text of the draft Directive on credit services, credit purchasers and recovery of collateral

On 14 January 2021, the European Parliament announced that its Economic and Monetary Affairs Committee (ECON) had agreed on the text of the draft Directive on credit servicers, credit purchasers and the recovery of collateral. The ECON MEPs have also agreed to start negotiations with the Council and the European Commission on the draft text. The draft Directive is a key component in the Commission's plan for developing a secondary market for distressed assets.

The measures adopted aim to foster the development of professional secondary markets for credit agreements originally issued by banks and qualified as non-performing. Third parties (credit purchasers) would be able to buy such NPLs across the EU. Credit purchasers (for example investment funds) are not creating new credit, but buying existing NPLs at their own risk.

EBA published draft technical standards on disclosure of indicators of global systemic importance by G-SIIs

On 18 February 2021, the EBA published its draft ITS on disclosure of indicators of global systemic importance by G-SIIs. These standards help to identify which banks are GSIIIs and specify the formats and instructions in accordance with which G-SIIs disclose the information required under the CRR and aim at ensuring consistency of information. The EBA notes that the ITS will amend the final draft ITS on institutions' public disclosures with the strategic objective of defining a single, comprehensive Pillar 3 framework under the CRR that should integrate all the relevant Pillar 3 disclosure requirements.

Consultation paper on the criteria that competent authorities should use to assess the large exposure limits under CRR

The consultation published by EBA on 17 February 2021 also details how competent authorities may determine the time considered appropriate for the institution to return to compliance, and measures to be taken to ensure the timely return to compliance with those limits. The guidelines will apply from 1 March 2022. The deadline for comments is 17 May 2021.

The EC published a report on the possible extension of the leverage ratio buffer framework to O-SIIs (other systemically important institutions), as well as on the definition and calculation of the total exposure measure

The EC concludes that it:
(i) does not consider it appropriate to introduce a leverage ratio surcharge for O-SIIs in the current context – this question should be examined as part of the comprehensive review of the macroprudential toolbox in banking by 30 June 2022; and
(ii) considers it appropriate to adjust the calculation of the total exposure measure referred to in Article 429(4) of the CRR to align the treatment of client-cleared derivatives with internationally agreed standards.

EBA published its final guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to tri-party repurchase agreements for large exposure purposes

The guidelines published on 16 February 2021:
(i) recommend a set of elements that an institution and a tri-party agent should include in their service agreement for the use of the alternative treatment;
(ii) establish a set of safeguards that the tri-party agent has to put in place and for which the institution needs to verify the appropriateness for the use of the alternative treatment;
(iii) specify how institutions should determine the limits to be applied by a tri-party agent with regard to the securities of a collateral issuer, as well as the general framework under which such limits can be revised; and
(iv) include a non-exhaustive list of circumstances that could lead the competent authority to raise material concerns and that would prevent the use of the alternative treatment by institutions – a procedure for dealing with those material concerns is also specified. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations.
The guidelines will apply from 28 June 2021.

The EC adopted a Delegated Regulation amending Delegated Regulation 1222/2014 supplementing CRDIV regarding RTS for the specification of the methodology for the identification of global systemically important institutions (G-SIIs)

The text of the adopted Delegated Regulation on 11 February 2021 can be found here.

The G-SII identification framework comprises for the first time an additional EU methodology to allocate G-SII buffer rates to identified G-SIIs.

Relevant authorities wishing to make use of this additional EU methodology shall provide clear and observable evidence of the proposed decisions under the sound supervisory judgement principle.

Report on the implementation of selected Covid-19 measures

The report which was published on 29 January 2021 follows the two reports published by the EBA earlier, namely the Guidelines on moratoria and Guidelines on Covid-19 reporting and disclosures.

The report adds further FAQs, which clarify:
(i) the functioning of the nine-month cap which limits the period of time for which payments on a certain loan can be suspended, postponed or reduced as a result of the application (and reapplication) of general payment moratorium; and
(ii) the guidelines on reporting and disclosure – specifically, the treatment of loans and advances subject to expired moratoria.

The EBA confirms that the report may be updated in the future with additional clarification on the prudential treatment of Covid-19 related measures, as well as on the implementation issues around existing policies in the context of the pandemic.

The Basel Committee on Banking Supervision ("BCBS") published a consultation on technical amendments pertaining to the standard on minimum haircut floors for securities financing transactions (SFTs)

The technical amendments which were published in January 2021 and form part of the chapter CRE56 of the consolidated Basel framework seek to clarify the application of the exemption for collateral upgrade transaction and to correct a misstatement in the formula used to calculate haircut floors for netting sets of STFs.

The consultation closed on 31 March 2021.

The Joint Committee (JC) of ESAs published a consultation paper on draft implementing technical standards (ITS) amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) of the CRR

The JC is required to monitor the existing mappings and has thus analysed whether the

mapping of existing ECAIs remains appropriate – the JC note that the monitoring review has identified that the existing mapping tables of the ITS are to be amended for 10 ECAIs either as a result of:
(i) changes in the allocation of Credit Quality Steps (CQS) due to an updated assessment of risk in line with the EBA methodology, based on additional information collected since the mapping was produced; or
(ii) assignment of mappings for newly introduced credit rating scales by existing ECAIs.
Therefore, the JC state that the Implementing Regulation will need to be amended accordingly – the revised draft ITS will propose amendments to the mapping tables specified in Annex III of Implementing Regulation (EU) 2016/1799. The following changes will be made: (a) introduction of mappings for the two newly established ECAIs and removal from the mapping tables of credit rating agencies that have lost ECAI status following their de-registration as a CRA under the CRA Regulation; and
(b) amendments due to the re-allocation of CQS and amendments due to new credit rating scales.
The deadline for comments closed on 5 March 2021.

EBA launched 2021 EU wide stress test exercise

The EU-wide stress test is the sixth exercise since its establishment, and was launched by EBA on 29 January 2021. Along with methodology and set of templates, EBA released the macroeconomic scenarios.

ESMA publishes the results of the annual transparency calculations for equity and equity-like instruments

The European Securities and Markets Authority (ESMA) published the results of the annual transparency calculations for equity and equity-like instruments, which become effective from 1 April 2021.

The calculations made available include:
(i) the liquidity assessment as per Articles 1 to 5 of CDR 2017/567;
(ii) the determination of the most relevant market in terms of liquidity as per Article 4 of CDR 2017/587 (RTS 1);
(iii) the determination of the average daily turnover relevant for the determination of the pre-trade and post-trade large in scale thresholds;
(iv) the determination of the average value of the transactions and the related the standard market size;
(v) the determination of the average daily number of transactions on the most relevant market in terms of liquidity relevant for the determination of the tick-size regime.

EBA consults on technical elements for the implementation of the alternative standardised approach for market risk as part of its FRTB roadmap

The European Banking Authority (EBA) launched two public consultations on its draft Regulatory Technical Standards (RTS) on gross jump-to-default (JTD) amounts and its draft RTS on residual risk add-on (RRAO).

These draft RTS specify:
(i) how gross JTD amounts are to be determined for the purposes of calculating the default risk charge for non-securitisation instruments, and
(ii) how to identify instruments exposed to residual risks for the purposes of the residual risk add on (RRAO) - under the alternative standardised approach for market risk.

These draft RTS are part of the phase 3 deliverables of the EBA roadmap for the new market and counterparty credit risk approaches.

Both consultations will run up to 12 June 2021.

Public consultation on draft revised Guidelines on stress tests of Deposit Guarantee Schemes (DGSs)

On 11 March 2021, the European Banking Authority (EBA) EBA proposed to revise the guidelines on the stress tests conducted by national Deposit Guarantee Schemes (DGSs) under the Deposit Guarantee Schemes Directive (DGSD).

The proposed revisions will extend the scope of the DGS stress testing, by requiring more tests that will cover additional aspects of DGS interventions. EBA also proposed a revised reporting template for DGSs to share the outcomes of the stress tests.

The deadline for the DGSs to submit their next reporting template is set on 16 June 2024. The comment period on the revised guidelines ends on 11 June 2021. Post consultation, the guidelines will be subject to EBA for final adoption.

The Reports on the consistency of risk weighted assets (RWAs) across all EU institutions authorised to use internal approaches for the calculation of capital requirements for 2020

On 15 March 2021, the European Banking Authority (EBA) published two reports that examine the consistency of risk-weighted assets (RWAs) across EU institutions authorized to use internal approaches for the calculation of capital requirements for 2020.

The reports analyze the variability observed in risk-weighted assets for market risk and credit risk, including high- and low-default portfolios. EBA also published a document (Annex) that presents the methodological choices and caveats on the credit risk benchmarking exercise analysis.

The results of the benchmarking exercise on credit and market risks confirm that the majority of risk-weight variability can be explained by fundamentals.

Report on the monitoring of liquidity coverage ratio (LCR) implementation in the EU

On 15 March 2021, the European Banking Authority (EBA) published a report on the monitoring of liquidity coverage ratio (LCR) implementation in the EU. The report highlights areas in which further guidance is deemed useful for banks and Member State supervisors in order to foster a common understanding and harmonisation of the application of the liquidity standard across the EU, as well as to reduce some level playing field issues.

The report follows an earlier report that was published in July 2019 and pursues the same approach and objectives. In particular the report discusses the usage of liquidity buffers, guidance on unwinding mechanism waivers, recourse to central bank support and additional outflows from derivatives, in the context of a crisis, in particular in view of the Covid-19 pandemic. The report also provides guidance on the treatment of fiduciary deposits, LCR optimisation risk, interdependent inflows and outflows for LCR purposes, and the treatment of deposit guarantee scheme deposits.

The guidance provided in the report is not formally legally binding although the EBA expects banks and Member State competent authorities to follow it. It constitutes best practice and focuses on aspects where diverse approaches have been observed with a potential material impact.

The European Banking Authority made the Basel III monitoring exercise mandatory from December 2021

On 16 March 2021, the European Banking Authority published a decision making the Basel III monitoring exercise mandatory from December 2021. EBA is making participation in the Basel III monitoring exercise mandatory for banks, from December 2021. The change from voluntary participation to mandatory stems from the need to expand the sample to more jurisdictions and credit institutions, making it more representative; another aim is to reach a stable sample over time by providing authorities with a sound legal basis that frames participation of institutions.

The decision also modifies the semiannual character of the voluntary exercise by requesting information on an annual basis. Annex 1 to the decision identifies the parts of the current structure of the Basel monitoring templates that banks participating in the mandatory Basel monitoring exercise should complete. This decision enters into force immediately.

On 31 March 2021 Basel Committee issued principles for operational resilience and risk

The specific principles aim to make banks better able to withstand, adapt to and recover from severe adverse events. In addition the Committee revised the Principles for the sound management of operational risk (PSMOR) reflecting the natural relationship between operational resilience and operational risk.

Capital Markets

EC consulted on establishment of a European Single Access Point ("ESAP") that aims to address information published by companies that are capital market participants, as well as SMEs looking for funding. Furthermore, the EC published a strategy to enhance openness, strength and resilience in Europe's economic and financial system.

On 21st January, the EC began consulting on the way to establish a European Single Access Point (ESAP) for companies' financial and sustainable investment-related information that must be made public pursuant to EU legislation

The EC explains that the collection and dissemination of data is fragmented as per EU law in the financial services and capital markets union (CMU) area, with the establishment of the ESAP the first action in the EC's current CMU Action Plan.

The EC believes that the ESAP will:
(i) address primarily information published by companies that are capital market participants, as well as SMEs looking for funding;
(ii) encompass information disclosed pursuant to the Non-Financial Reporting Directive and it could also be extended to other categories of ESG information disclosed by financial institutions; and
(iii) entail streamlining disclosure mechanisms set-out in EU legislation.

The platform should build to the greatest extent possible on existing EU and national IT infrastructure.

The deadline for comments closed on 3 March 2021.

The EC presented a new strategy to stimulate the openness, strength and resilience of the EU's economic and financial system

The EC set out how the EU can reinforce its open strategic autonomy in the macro-economic and financial fields by promoting the international role of the euro, strengthening the EU's financial market infrastructures, improving the implementation and enforcement of EU's sanctions' regimes, and increasing the EU's resilience to the effects of the unlawful extra-territorial application of unilateral sanctions and other measures by third countries. In its communication the EC sets outs 15 key action proposals in order to achieve these objectives. The EC will monitor the actions on an ongoing basis. It will review the state of implementation in 2023.

EP adopts Benchmark Regulation ("BMR") amending Regulation to address benchmark cessation risks and exempt certain third-country FX benchmarks

On 19 January 2021, the European Parliament announced that it has adopted its position at first reading on the proposed Regulation amending the BMR as regards the exemption of certain third-country FX benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation.

The EC will be granted the power to replace when necessary:
(i) "critical" benchmarks, which influence financial instruments and contracts with an average value of at least €500 billion and could thus affect the stability of financial markets across Europe;
(ii) benchmarks with no, or very few, appropriate substitutes whose cessation would have a significant and adverse impact on market stability; and
(iii) third country benchmarks whose cessation would significantly disrupt the functioning of financial markets or pose a systemic risk for the financial system in the Union. EU market participants will be able to use benchmarks administered in a country outside the EU until the end of 2023. The EC will be empowered to adopt a delegated act by 15 June 2023 to

prolong this extension by a maximum two years until, but such an extension will have to be duly motivated.

ESMA published two Opinions on position limits regarding commodity derivatives under MiFID II/MiFIR

ESMA found that the proposed position limits are consistent with the objectives established in MiFID II and with the methodology developed for setting those limits.

ECB published a guide on its supervisory approach to consolidation for banks in the single supervisory mechanism (SSM)

The guide covers the following:
(i) the overall approach to the supervisory assessment of consolidation projects;
(ii) the supervisory expectations regarding consolidation projects;
(iii) the supervisory approach to key prudential aspects of the consolidation transaction; and
(iv) the ongoing supervision of the newly combined entity; and
(v) the application of this framework to consolidation transactions involving less significant institutions (LSIs).

Two Delegated Regulations were published in relation to the regulatory technical standards

First, Commission Delegated Regulation (EU) 2021/236 was published which amends the regulatory technical standards (RTS) laid down in Delegated Regulation (EU) 2016/2251 as regards to the timing of when certain risk management procedures will start to apply for the purpose of the exchange of collateral.

Second, Commission Delegated Regulation (EU) 2021/237 was published which amends the RTS laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts. The Delegated Regulations entered into force on 18 February 2021 (the day following their publication in the Official Journal of EU).

The ESRB published a report on the financial stability implications of support measures aimed at protecting the real economy from the effects of Covid-19

The report published on 16 February 2021 shows that the fiscal response designed to support the real economy has stabilised lending and that the financial system has continued to function – however, as risks still lie ahead.

The European Parliament ("EP") and Council of the EU ("Council") announced they have adopted the proposed Directive amending MiFID II and proposed Regulation amending the Prospectus Regulation

Both set of rules belong to the Capital Markets Recovery Package which is part of the EU's overall Covid-19 recovery strategy.

Amendments to the proposed Directive relate among others to the following:

- Exemption of eligible counterparties from the product governance requirements applicable to financial instruments exclusively marketed or distributed to them;
- Reduction in the information on costs and charges that must be provided to professional client's and eligible counterparties.

Amendments to the proposed Regulation include amendments to establish a new "EU recovery prospectus". This shorter prospectus will make it easier for companies to raise capital to meet their funding needs while ensuring adequate information is provided to investors. The new regime will apply until the end of 2022.

The legislative texts are expected to be published in the Official Journal of the EU before the end of February. Amendments to MiFID II will enter into force on the day following their publication and member states will be required to transpose them into national law within nine months of that date. The measures will become applicable 12 months after the entry into force of the directive. Amendments to the Prospectus Regulation will enter into force on the 20th day following the date of their publication.

ESMA highlights improvements for European long-term investment funds (ELTIF) Regulation

ESMA explains in its letter to the EC that ELITFs can play an important role in the post-covid recovery however only a small number of ELITFs have been launched. The areas that ESMA suggests to the EC that could be amended are e.g. Eligible assets and investments; Authorization process; Conflicts of interests; Portfolio composition and diversification; Prospectus and cost disclosure; Specific requirements concerning retail investors.

ESMA published its annual report on the application of waivers and deferrals for equity instruments under MiFIR

The Annual Report published by ESMA includes an analysis based on waivers for equity and equity-like instruments for which ESMA issued an opinion to the competent authority in the period between 1 January and 31 December 2019. It also includes an overview of the deferral regime for equity and equity-like instruments applied across the different EU Member States.

ESMA announced it will launch a Common Supervisory Action (CSA) with National Competent Authorities (NCAs) on MiFID II Product Governance rules

The CSA as announced by ESMA on 1 February 2021 will be conducted over the course of 2021. The purpose is for ESMA and NCAs to assess the progress made by the manufacturers and distributors of financial products.

Revised list of validation rules included in its Implementing Technical Standards (ITS) on supervisory reporting

After updating or deactivating a number of validation rules in the Implementing Technical Standards (ITS) on supervisory reporting, the European Banking Authority (EBA) has issued a revised list of ITS for filing across the EU. The revised list highlights the rules that have been deactivated either for incorrectness or for triggering IT problems.

EBA cautions that data submitted in line with the ITS should not be validated against this list of incorrect, deactivated rules.

ESMA has published its first report on trends, risks and vulnerabilities for 2021

The Report analyses the impact of Covid-19 on financial markets during the second half of 2020 and highlights the increasing credit risks linked to significant corporate and public debt overhang, as well as the risks linked with investments in non-regulated crypto-assets.

Globally, risks in markets under ESMA's remit remain very high. The significant rebound of equity markets and the valuation of debt indices which reached pre-pandemic levels, contrast with weak economic fundamentals. The main risk for European Union's (EU) financial markets is that this ongoing decoupling leads to a reversal in investor risk assessment and a sudden market correction.

In addition, it is noteworthy that during the Covid-19-related market stress in 1Q20, investment funds faced a significant deterioration of liquidity in some segments of the fixed income markets combined with large-scale investment outflows from investors. The acute market stress period of February 2021 showed that EU money market funds remain vulnerable to liquidity risk on their asset and liability sides.

To conclude, the wider Covid-19 impacts continue to fuel digitalization, with positive outcomes for consumers and firms but at the same time challenges and risks, especially related to cyber-resilience.

APPENDIX: GLOSSARY

AANA
Aggregate Average Notional Amount

AML/CFT
Anti-Money Laundering and Countering the Financing of Terrorism

AI
Artificial Intelligence

AISPs
Account Information Service Providers

AIFMD
Alternative Investment Funds Market Directive

BCBS
Basel Committee on Banking Supervision

BRRD
Bank Resolution and Recovery Directive

BMR
EU Benchmark Regulation

CCP
Central Counterparty

CDD
Customer Due Diligence

CMU
Capital Markets Union

CRD IV
Capital Requirements Directive IV

CQS
Credit Quality Steps

DGSs
Deposit Guarantee Schemes

DLT
Distributed Ledger Technology

DORA
Digital Operational Resilience

DPM
Data Point Model

EBA
European Banking Authority

EC
European Commission

ECB
European Central Bank

ECON
Economic and Monetary Affairs Committee

EIOPA
European Insurance and Occupational Pensions Authority

ELTIF
European Long-Term Investments Funds

EP
European Parliament

ESAs
European Supervisory Authorities

ESAP
European Single Access Point

ESG
Environmental, Social and Governance

ESMA
European Securities and Markets Authority

EU
European Union

FICC
Fixed Income Clearing Corporation

FX
Foreign exchange

FSB
Financial Stability Board

GAR
Green Asset Ratio

G-SIIs
Global Systemically Important Institutions

IOSCO
International Organization of Securities Commissions

IAS
International Accounting Standards

APPENDIX: GLOSSARY

iFD
Investment Firm Directive

IFR
Investment Firms Regulation

IFRS
International Financial Reporting Standards

ITS
Implementing Technical Standards

IT
Information Technology

JC
Joint Committee

JTD
Jump-To-Default

KPIs
Key Performance Indicators

LIBOR
London Inter-Bank Offered Rate

LSIs
Less Significant Institutions

LR
Leverage Ratio

MiCA
Markets in Crypto Assets

MiFID/MIFIR
Markets in Financial Instruments Directive/Markets in Financial Instruments Regulation

ML/TF
Money Laundering and Terrorist Financing

NFRD
Non-Financial Reporting Directive

MREL
Minimum Requirement for own funds and Eligible Liabilities

NBFI
Non-Bank Financial Intermediation

NPEs
Non-Performing Exposures

NPL
Non-Performing Loans

NSFR
Net Stable Funding Ratio

O-SIIs
Other Systemically Important Institutions

OJ
Official European Journal

P2B
Platform to Business

PISPs
Payment Initiation Services Providers

RRAO
Residual Risk Add-On

RTS
Regulatory Technical Standard

RegTech
Regulatory Technology

SFDR
EU Regulation on sustainability-related disclosures in the financial services sector

SFTR
Securities Financing Transactions Regulation

SFT
Securities Financing Transactions

SupTech
Supervisory Technology

TCFD
Task Force on Climate-related Financial Disclosures

OTC
Over-the-Counter

UNEP FI
United Nations Environmental Programme Finance Initiative

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