



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

Also in this issue:

[Financial Services Industry](#)

[Credit institutions and investment firms](#)

[Investment products and asset management](#)

[Insurance, reinsurance and pensions](#)

[Data protection](#)



1. Regulatory technical standards on major holdings

On 13 May, the Official Journal of the European Union published [Commission Delegated Regulation \(EU\) 2015/761](#) of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings. This Regulation lays down detailed rules for the implementation of Article 9(6b), Article 13(1a)(a) and (b) and Article 13(4) of Directive 2004/109/EC.

2. Interchange fees for card-based payment transactions

On 19 May, the Official Journal of the European Union published [↪ Regulation \(EU\) 2015/751](#) of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions. This Regulation lays down uniform technical and business requirements for card-based payment transactions carried out within the Union, where both the payer's payment service provider and the payee's payment service provider are located therein.

It treats:

- Interchange fees (Interchange fees for consumer debit and credit card transactions; Prohibition of circumvention)
- Business Rules (Licensing; Separation of payment card scheme and processing entities; ...)
- Final Provisions (Competent authorities, Penalties; ...)

It shall apply from 8 June 2015, with the exception of Articles 3, 4, 6 and 12, which shall apply from 9 December 2015, and of Articles 7, 8, 9 and 10, which shall apply from 9 June 2016.

3. European long-term investment funds

On 19 May, the Official Journal of the European Union published [↪ Regulation \(EU\) 2015/760](#) of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds. The Regulation on ELTIFs is aimed at raising and channelling capital towards European long-term investments in the real economy, in line with the Union objective of smart, sustainable and inclusive growth. It lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (EU AIFs) or compartments of EU AIFs that are marketed in the Union as ELTIFs. This Regulation will apply from 9 December 2015.

4. Final guidance on recovery indicators

On 6 May, EBA published its [↪ final Guidelines on indicators for the recovery and resolution plans of credit institutions and investment firms across the EU](#). These provide the minimum list of qualitative and quantitative indicators that institutions should include in their recovery plans and will function as triggers for the recovery plans, as prescribed by the EU Bank Recovery and Resolution Directive (BRRD).

The EBA Guidelines set the requirements that institutions across the EU should follow when developing their recovery plans. The minimum list that institutions should include in their plans comprises, both qualitative and quantitative, indicators grouped into different categories such as capital, liquidity, profitability and asset quality. Where relevant to the characteristics of the specific institutions, macroeconomic and market-based indicators are also included. These indicators will serve to identify the points at which appropriate recovery measures should be considered.

These Guidelines are addressed to competent authorities and will enter into force on 31 July 2015.

5. Final Guidelines on triggers for the use of early intervention measures

On 8 May, EBA published [↪ its final Guidelines on triggers for the use of early intervention measures](#). These Guidelines aim at promoting convergence of supervisory practices in relation to the application of early intervention measures as provided for in the Bank Recovery and Resolution Directive (BRRD). The Guidelines establish a link between the on-going supervision conducted by the Competent Authorities according to the Capital Requirement Directive (CRD) and the early intervention powers set out in the BRRD.

6. Guidelines on triggers for resolution

On 26 May, EBA published its [↪ final Guidelines on the circumstances under which an institution shall be considered as 'failing or likely to fail' \(triggers for resolution\)](#). These Guidelines aim at promoting convergence of EU supervisory and resolution practices in relation to how resolution should be triggered. Determining whether an institution is failing or likely to fail is the necessary element to start any resolution process as it represents one of the three cumulative conditions for triggering resolution.

7. Anti-Money Laundering & Combating Financing of Terrorism

On 20 May, the EC announced in a [↪ press release](#) that the European Parliament has approved new rules to help fight money laundering and terrorist financing in the EU. The new rules consist of:

- A Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
- A Regulation on information accompanying transfers of funds to secure "due traceability" of these transfers

The Commission will supplement this legislation by working on a supranational assessment of risks.

The publication of the package in the Official Journal of the EU is due for around June-July 2015. A process to guide Member States in implementing the Directive into national law will be put in place over the coming months (the implementation period is two years).

In the meantime, on 5 June the Official Journal published the [Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing \(AMLD 4\)](#) and the [Regulation 2015/847 of 20 May 2015 on information accompanying transfers of funds](#).

More information on the new Anti-Money Laundering & Combating Financing of Terrorism framework can be found in our [Regulatory Newsflash of 16 June 2015](#).

Financial Services Industry

Also in this issue:

[Regulatory highlights](#)

[Credit institutions and investment firms](#)

[Investment products and asset management](#)

[Insurance, reinsurance and pensions](#)

[Data protection](#)



Normative documents

European Council and Parliament

Payment services Directive II (PSD II)

On 5 May 2015 the Council and the European Parliament reached [a tentative agreement on a draft directive aimed at further developing an EU-wide market for electronic payments](#). The updated rules aim to stimulate competition to provide payment services and foster innovative payment methods, especially for online payment services. They still need to be endorsed by Parliament as a whole and the Council.

Two main points:

- Widening consumer choice
- Making payment safer

As soon as a final agreement is reached, Parliament will be put it to a plenary vote.

Consultative or informative documents

/

Credit institutions and investment firms

Also in this issue:

[Regulatory highlights](#)

[Financial Services Industry](#)

[Investment products and asset management](#)

[Insurance, reinsurance and pensions](#)

[Data protection](#)



Normative documents

/

Consultative or informative documents

European Banking Authority (EBA)

Technical standards on specialised lending exposures

On 11 May, EBA launched a [consultation on Regulatory Technical Standards \(RTS\) on specialised lending exposures](#). The proposed RTS aim to specify how institutions should take into account several factors when assigning risk weights to specialised lending exposures and how they should treat these factors. The proposed RTS define four classes of specialised lending: project finance, real estate, object finance, and commodities finance. For each of these four classes, the draft RTS specify a list of factors that institutions shall take into account and propose two options on how these factors should be combined in order to determine the risk weight assigned to the specialised lending exposure.

The consultation runs until 11 August 2015.

Guidance on the implementation of resolution tools

On 20 May, EBA published three sets of final Guidelines aimed at facilitating the implementation of resolution tools in the banking sector across the EU. These Guidelines, which stem from the EU Bank Recovery and Resolution Directive (BRRD), foster convergence on resolution matters by giving detailed guidance to EU Resolution Authorities on the circumstances they should assess when taking their resolution decisions.

The first two sets of Guidelines describe how constraints to resolution tools resulting from [competition](#) and [transparency](#) requirements should be interpreted; their aim is to ensure an efficient and consistent implementation of these tools across the EU.

The third set of Guidelines, on ['necessary services'](#), defines a minimum list of necessary 'critical' services that Resolution Authorities may require from institutions under resolution (i.e. the purchaser after a sale of business, a bridge bank or the transferee after a transfer of assets).

Guidelines on interest rate risk arising from non-trading activities

On 22 May, EBA published an [updated version of the CEBS guidelines on technical aspects of the management of interest rate risk arising from non-trading activities under the supervisory review process](#), published on 3 October 2006. The guidance provided in these updated guidelines applies to the interest rate risk arising from non-trading activities (IRRBB), one of the Pillar 2 risks specified in the Capital Requirements Directive (CRDIV). The Guidelines focus on expectations towards institutions regarding the appropriate identification and mitigation of IRRBB risks.

Guidelines on contributions and payment commitments to deposit guarantee scheme

On 26 May, EBA published its [final Guidelines on contributions to deposit guarantee schemes and on payment commitments](#). Both Guidelines will help ensure consistent application of the new funding mechanisms provided for in the new Deposit Guarantee Schemes Directive (DGSD).

Under these Guidelines, [calculation methods will include a set of core indicators capturing the main dimensions of the risk profile of credit institutions](#). Obligatory indicators will thus cover aspects such as capital, liquidity, asset quality, business model and asset encumbrance. In line with the DGSD, the Guidelines on payment commitments further specify the option for DGSs to authorise credit institutions to contribute, up to 30% of the required contributions, in the form of secured commitments to pay upon request.

The Guidelines provide for criteria on the eligibility and management of collateral. Assets will be eligible for collateral only if they are of sufficiently low risk. The Guidelines also provide that DGSs should limit their exposure to debt, whether public or private, the value of which is highly correlated to events where the DGS would have to use its funds, and therefore might have to call in the payment commitment.

The Guidelines also introduce principles ensuring that the prudential treatment of payment commitments does not encourage procyclicality by incentivising payment commitments over cash contributions.

European Securities and Markets Authority (ESMA)

Final guidelines clarifying the definition of commodity derivatives under MiFID I

On 6 May, ESMA published [guidelines on the Markets in Financial Instruments Directive \(MiFID\) I](#). The purpose of these guidelines is to provide a common, uniform and consistent application of the definitions of commodity derivatives under C6 and C7 of Annex I of the current MiFID I, until MiFID II comes into force on 3 January 2017, when the European Commission issues its delegated acts in relation to these definitions.

ESMA has prepared these guidelines, because currently there is no single, commonly adopted definition of derivatives in the EU under MiFID I, particularly in the case of physically settled commodity forwards. These guidelines therefore clarify the definitions by specifying, in particular, what is meant by “physically settled” and confirming that forwards traded on a regulated market or Multilateral Trading Facility (MTF) fall within the scope of MiFID I, Annex C6. Under MiFID II the Commission is empowered to prepare delegated acts to further define C6 and C7 and ESMA presented its technical advice in this regard in December 2014. However, ESMA sees no inconsistencies between these guidelines and its advice to the Commission. These guidelines will apply from 7 August 2015 and will be superseded by the Commission’s delegated acts on MiFID II.

Financial Stability Board (FSB)

Thematic Review on Supervisory Frameworks and Approaches for SIBs

On 26 May, the FSB published [the results of a thematic peer review on supervisory frameworks and approaches for systemically important banks \(SIBs\)](#). The review, which was conducted in close collaboration with the Basel Committee on Banking Supervision (BCBS), assesses progress towards enhancing supervisory frameworks and approaches for SIBs since the financial crisis, in particular for global systemically important banks (G-SIBs). The peer review found that supervision has become more risk-based; supervisory tools such as business model analysis, stress testing and horizontal reviews have been enhanced and are increasingly used to provide a more forward-looking approach, capturing both current and emerging risks. The scope of supervision has also expanded to incorporate macro-prudential and resolvability considerations, and the dialogue with institutions has been enhanced. Notwithstanding the aforementioned, the FSB is of the view that further work is needed to improve and assess supervisory effectiveness. In particular, a key finding from the review is the importance of strengthening cross-border supervisory cooperation and building the mutual trust that is needed – in good times, but even more so in difficult times. Effectiveness could also be strengthened by establishing and implementing clear and transparent supervisory strategies and priorities. Communication with firms on these priorities, as well as on the outcomes from supervisory activities, including data requests, needs to be strengthened.

Investment products and asset management

Also in this issue:

[Regulatory highlights](#)

[Financial Services Industry](#)

[Credit institutions and investment firms](#)

[Insurance, reinsurance and pensions](#)

[Data protection](#)



Normative documents

/

Consultative or informative documents

European Banking Authority (EBA)

Draft technical standards on the mapping of ECAs credit assessments for securitisation positions

On 7 May, EBA launched a [consultation on draft Implementing Technical Standards \(ITS\) on the mapping of External Credit Assessment Institutions' \(ECAIs\) credit assessments for securitisation positions](#). These ITS will be part of the Single Rulebook in banking aimed at enhancing regulatory harmonisation across the European Union (EU) and will allow the credit ratings of all registered credit rating agencies to be used for the purposes of calculating institutions' capital requirements. These draft ITS specify the correspondence or 'mapping' between credit ratings and credit quality steps that shall determine the allocation of appropriate risk weights to credit ratings issued by ECAIs on securitisations where the Standardised Approach (SA) or the Internal Ratings Based (IRB) approach for securitisations are used.

The consultation will run until 7 August 2015.

Valuation of derivatives in resolution

On 13 May, EBA launched [a public consultation on its draft Regulatory Technical Standards \(RTS\) defining the valuation of derivative liabilities for the purpose of bail-in in resolution](#). These standards have been developed within the framework of the Bank Recovery and Resolution Directive (BRRD) which sets procedures for the recovery and resolution of credit institutions across the EU. The draft RTS provide EU resolution authorities with a methodology for the valuation of derivative liabilities of credit institutions placed under resolution and ensure that the discipline brought in by the new bail-in tool can effectively be extended to these liabilities too.

The consultation will run until 13 August 2015.

Review of EMIR

On 21 May, the EC started its review of the European Market Infrastructure Regulation ("EMIR") by launching [a public consultation on the Regulation](#). The consultation consists of a questionnaire in which stakeholders are requested to provide their views on topics issues such as:

- The access of CCPs to central bank liquidity facilities
- The functioning of supervisory colleges for Central Counterparties ("CCPs")

- The margin practices of CCPs
- The scope of the Regulation
- Compliance difficulties, ongoing impediments or unintended consequences associated with the various EMIR obligations (clearing obligations, trade reporting and risk mitigation techniques)
- The impact of EMIR on the cross-border Activity in the OTC derivatives markets
- The operating requirements for CCPs and Trade Repositories

Responses to the public consultation can be submitted until 13 August 2015.

European Securities and Markets Authority (ESMA)

Technical standard No 4 on central clearing of IRS

On 11 May, ESMA opened a [consultation](#) seeking stakeholders' views on proposed regulatory technical standards on the clearing obligation under Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR).

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations.

This paper provides explanations on the draft regulatory technical standards establishing a clearing obligation on additional classes of OTC interest rate derivatives that were not included in the first RTS on the clearing obligation for interest rate swaps. The addition consists of the following classes: fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements denominated in NOK, SEK and PLN.

Updates to Q&As on the AIFMD application

On 12 May, ESMA published updated [questions and answers](#) on the application of the AIFMD. The Q&A includes new questions and answers on reporting and calculation of leverage.

Modification of UCITS Directive

On 22 May, ESMA published an [Opinion](#) to the European Union (EU) institutions on the impact of EMIR on UCITS. In the opinion, ESMA calls for a modification of the UCITS Directive to take into account the clearing obligations for certain types of over-the-counter (OTC) financial derivative transactions under EMIR.

In July 2014, ESMA published a discussion paper on the calculation of counterparty risk by UCITS for OTC financial derivative transactions subject to clearing obligations. ESMA also published a [feedback statement](#) on the discussion paper.

ESMA is of the opinion that:

- The UCITS Directive should no longer distinguish between OTC financial derivative transactions and ETDs. Instead, the distinction should be between cleared and non-cleared OTC financial derivative transactions
- For OTC financial derivative transactions that are not centrally cleared, there is no need to modify the UCITS Directive and the current counterparty risk limits of Article 52 of the UCITS Directive should continue to apply
- Counterparty risk limits should be calibrated to the different types of segregation arrangements taking into account elements such as the portability of the position in the case of a default of the clearing member. In particular, under individual segregation, UCITS should not apply counterparty risk limits to clearing members whereas under omnibus client segregation UCITS should apply some counterparty risk limits
- UCITS' counterparty risk limits to EU CCPs and some non-EU CCPs recognised by ESMA should take into account the relatively low counterparty risk of these entities

International Organization of Securities Commissions (IOSCO)

Sound practices at large intermediaries for assessing credit risk

On 7 May, the International Organization of Securities Commissions published the consultation report on [Sound Practices at Large Intermediaries: Alternatives to the Use of Credit Ratings to Assess Creditworthiness](#).

The report proposes 13 sound practices for large market intermediary firms to consider in the implementation of their internal credit assessment policies and procedures. IOSCO believes that identifying sound practices regarding the suitable alternatives to credit ratings for assessing credit risk should reduce the potential overreliance of large intermediaries on credit

rating agencies (CRAs). In turn, this reduction would help increase investor protection, while contributing to market integrity and financial stability.

Joint Committee of the European Supervisory Authorities

Recommendations on securitisation

On 12 May, the Joint Committee published a [report detailing its findings and recommendations regarding the disclosure requirements and obligations relating to due diligence, supervisory reporting and retention rules in existing EU law on Structured Finance Instruments \(SFIs\)](#).

In this Report, the Joint Committee is making a series of recommendations which should be considered in light of further work on the transparency requirements of SFIs, and the European Commission public consultation on securitisation. The Report states that these recommendations should not be introduced in isolation and should take into account the already existing requirements for disclosure, due diligence and reporting for comparable instruments.

The main recommendations of the report are:

- Due diligence requirements should be harmonised within the EU
- Standardised investor reports should reflect the dynamics of SFIs and be stored in a centralised public space
- All type of investors should be empowered to effectively conduct their own stress tests
- A harmonised due diligence and disclosure framework should be complemented with a comprehensive regime for supervision and enforcement

Insurance, reinsurance and pensions

Also in this issue:
[Regulatory highlights](#)
[Financial Services Industry](#)
[Credit institutions and investment firms](#)
[Investment products and asset management](#)
[Data protection](#)



Normative documents

/

Consultative or informative documents

European Insurance and Occupational Pensions Authority (EIOPA)

Pensions stress test and quantitative assessment on solvency for occupational pension funds

On 11 May, EIOPA launched its first stress test for Institutions for Occupational Retirement Provision (IORPs), and a quantitative assessment of further work on solvency of IORPs.

The [stress test](#):

- Will assess the resilience of IORPs and their pension schemes to adverse market scenarios and a longevity scenario
- Covers both defined benefit (DB) schemes and defined contribution (DC) plan
- Will provide insight and raise awareness of the occupational pensions' sector risks and vulnerabilities, while potential transmission mechanisms of IORPs to the rest of the financial sector and the real economy will also be evaluated

The [quantitative assessment on solvency](#) will gather data of IORPs on potential uses of the holistic balance sheet within an EU-wide supervisory framework. The outcomes will support EIOPA in further developing its Advice to the European Commission on EU solvency rules for IORPs and follows last year's consultation paper on further work on solvency of IORPs.

The selection of the IORPs which will be finally involved in every jurisdiction will be made by national supervisors. They will keep as well the prerogative of the direct contact with IORPs for the data submission, during the quality assurance phase to deal with any validation issue, and during the Questions & Answers (Q&A) process, which EIOPA will have in place during the exercise with weekly updates on its website. The stress test and the quantitative assessment will be conducted in parallel to minimise the burden on IORPs. Both exercises will run until 10 August 2015.

European Systemic Risk Board (ESRB)

Adverse stress test scenarios for EU-wide stress test of pension funds

On 12 May, the ESRB published [the adverse macro-financial scenarios for the EU-wide stress tests for defined benefit pension funds](#) to be carried out by the EIOPA in 2015. These scenarios include risks and vulnerabilities that have been identified, the underlying economic narrative and calibrated shocks to key financial market variables. These shocks should be interpreted as one-off, instantaneous and permanent shifts in asset prices relative to their end-2014 levels. Guidance on applying the stress test to defined benefit pension funds under national regulations or to defined contribution funds will be provided separately by EIOPA and is not part of this document.

Data Protection

Also in this issue:

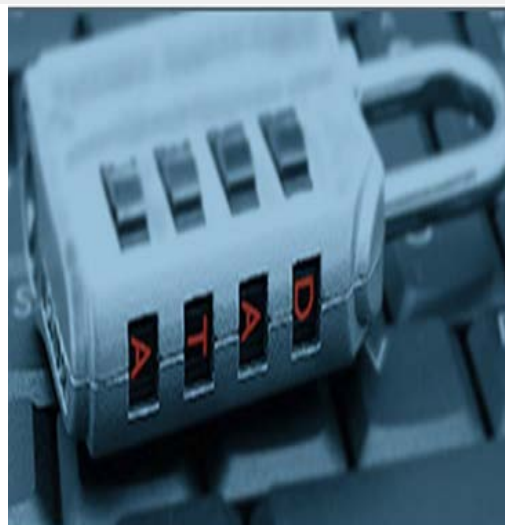
[Regulatory highlights](#)

[Financial Services Industry](#)

[Credit institutions and investment firms](#)

[Investment products and asset management](#)

[Insurance, reinsurance and pensions](#)



Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a bi – monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every two months, we include a reference to the latest issue of this newsflash, together with a list of the topics treated in that newsflash.

Highlights of the [May 2015 issue](#):

- Latest news on the EU Data Protection Reform
- Cyber Crime: Council of EU starts discussions on NIS Directive
- Data Retention: European Commission confirms there will be no new Data Retention Directive
- Privacy at the workplace: Council of Europe's Recommendation on the processing of personal data of employees and job candidates
- Cloud computing: Amazon cloud contract terms are found to meet EU standards on data transfers by Luxembourgish DPA
- Privacy Enforcement: Damage Actions in the UK
- Deloitte & Privacy recent "wins"
- Past & forthcoming interesting events

We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to [Regulatory Radar](#). Visit our website [here](#).

[Homepage](#)



[Deloitte Enterprise Risk Services](#)

Berkenlaan 8B
1831 Diegem
Belgium

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 200,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2015. For information, contact Deloitte Belgium.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.