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Regulatory Radar
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Content

Regulatory Highlights

1. The European Central Bank (ECB) publishes a guide on climate-related and environmental risks which lays down supervisory expectations relating to risk management and disclosure

On 27 November, the ECB published a guide on climate-related and environmental risks which lays down supervisory expectations relating to risk management and disclosure. The guide outlines the ECB's understanding of the safe and prudent management of climate-related and environmental risks under the current prudential framework. It describes how the ECB expects institutions to consider climate-related and environmental risks – as drivers of existing categories of risk – when formulating and implementing their business strategy and governance and risk management frameworks. It further explains how the ECB expects institutions to become more transparent by enhancing their climate-related and environmental disclosures. The guide is not binding for the institutions, but rather serves as a basis for supervisory dialogue.

COVID-19 special measures

Normative documents

No relevant texts.

Consultative documents

European Banking Authority (EBA)

Banks report a significant use of COVID-19 moratoria and public guarantees

On 20 November, the EBA published first evidence on the use of moratoria and public guarantees in the European Union banking sector. COVID-19 related moratoria on loan repayments provided breathing space to borrowers across many countries with many banks reporting that loans under moratoria represented a significant share of their total loans. The use of moratoria was particularly widespread for small and medium-sized enterprises and commercial real estate but were also important for mortgage loans in some countries. While public guarantees were used to a lesser extent, they allowed banks to provide new lending to many companies impacted by the crisis. The EBA will be closely monitoring the evolution of moratoria and public guarantee schemes in the following quarters.

Internatinal Organisation of Securities Commissions (IOSCO)

IOSCO's annual meeting addresses the impact of COVID 19 and other critical matters on securities markets

On 23 November, IOSCO issued a press release summarising the matters discussed during their annual meeting. For 2021 two additional priority themes were approved:

- financial stability and systemic risks in non-bank financial intermediation; and
- remote working, misconduct risks, fraud and scams, and operational resilience, in the context of the COVID-19 pandemic.

IOSCO also discussed their current priorities, which include sustainable finance, financial stability and retail market conduct. Interestingly, it was agreed that IOSCO's task force on sustainable finance should further explore the establishment of an assurance framework for sustainability disclosures.

Conduct of Business & Products

Normative documents

No relevant texts.

Consultative documents

Financial Services and Markets Authority (FSMA)

Reminder of the product governance rules that apply when offering structured products in Belgium

On 13 November, the FSMA published a communication (FSMA_2020_14) drawing the attention of credit institutions and insurance distributors on the product governance requirements (FR/NL). The FSMA has recently noted on a few occasions that structured products offered in Belgium were subject to high fees included in the issue price. It noted that the governance of the structured products in question could be improved, in particular with regard to the management of conflicts of interest, the analysis of the aforementioned fees and scenario analyses.

Credit institutions and distributors of insurance products that design structured products must put in place appropriate product governance arrangements. These arrangements ensure that their products effectively serve the best interests of their clients and meet the needs, characteristics and objectives of the target audience.

Questions and answers (Q&As) related to investment instruments

On 23 November, the FSMA published on a consultation on Q&As regarding advertisements for investment instruments in the event of a public offer, admission to trading or marketing to retail clients (FR/NL). These Q&As highlight good practices that will help to ensure that the content requirements are met.

The consultation runs until 4 January 2021.

European Banking Authority (EBA)

EBA encourages financial institutions to put the required focus on consumers' interests when applying product oversight and governance (POG) arrangements

On 3 November, the EBA published its second report on how the industry has implemented the EBA Guidelines on POG. It identifies good practices of financial institutions and concludes that many of them do not sufficiently put the required focus on ensuring that consumers' needs are met in line with the Guidelines. Therefore, the EBA encourages financial institutions to ensure that the interests, objectives and characteristics of consumers are taken into account when applying POG arrangements, in order to avoid consumer detriment.

European Securities and Markets Authority (ESMA)

ESMA publishes new Q&As on product governance

On 6 November, ESMA updated its Q&As on MiFID II and MiFIR investor protection and intermediaries topics. These Q&As include three new Q&As on 'product governance' that aim to give guidance on how firms manufacturing financial instruments should ensure that:

- financial instruments' costs and charges are compatible with the needs, objectives and characteristics of the target market;
- costs and charges do not undermine the financial instrument's return expectations; and
- the charging structure of the financial instrument is appropriately transparent for the target market, ensuring that it does not disguise charges or is too complex to understand.

ESMA consults on guidance for funds' marketing communications

On 9 November, ESMA launched a consultation on the draft guidelines on marketing communications under the Regulation on facilitating cross-border distribution of collective investment undertakings. The purpose of these draft guidelines is to specify the requirements for marketing communications sent to investors in order to promote undertakings for collective investments in transferrable securities (UCITS) and alternative investment funds (AIF), including European social entrepreneurship funds (EuSEFs), European Venture Capital Funds (EuVECAs) and European long-term investment funds (ELTIFs). These requirements are that the material shall:

- be identifiable as marketing material;
- describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and
- contain information which is fair, clear and not misleading.

The guidelines take into account the on-line aspects of marketing communications.
The consultation runs until 8 February 2021.

ESMA publishes third annual report on use of sanctions for UCITS

On 12 November, ESMA published its 2019 report on penalties and measures imposed under the UCITS Directive in 2019. This sanction 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.

Penalties and measures imposed under the Alternative Investment Fund Managers Directive (AIFMD) in 2018-2019

On the same day, ESMA published its first annual report on penalties and measures imposed under the AIFMD Directive in 2018- 2019. The report published today 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 number of NCAs issuing sanctions increased between the reporting periods, from 14 in 2018 to 17 in 2019. Whilst the number of financial penalties decreased substantially, the total amount imposed doubled to €9m in 2019 due to high cumulative sanctions issued by two NCAs.

ESMA identifies costs and performance and data quality as new union strategic supervisory priorities

On 13 November, ESMA issued a press release where costs and performance for retail investment products and market data quality as the Union Strategic Supervisory Priorities for national competent authorities (NCAs) were identified. Under these Priorities, the specific topics on which NCAs will undertake supervisory action in 2021, coordinated by ESMA, are:

- costs and fees charged by fund managers: the area of costs and performance is a key part of investor protection. 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. ESMA indicates that Unfair and disproportionate costs and fees can increase investor detriment and affect investors' trust in financial markets; and
- improving the quality of transparency data reported under MiFIR: data is now a core element of securities markets regulation and it is a vital component of NCAs' data-driven approaches to supervision. The reporting datasets and requirements have grown exponentially since the 2008 financial crisis and data quality is improving. Making progress in improving data quality is important to investors, market participants and regulators as reliable and timely data is needed to deter and detect market abuse, provide transparency calculations and identify systemic and counterparty risk building up in jurisdictions.

European Insurance and Occupational Pensions Authority (EIOPA)

Survey on the application of the Insurance Distribution Directive (IDD)

On 12 November, EIOPA launched a survey on the application of the IDD that entered into force on 23 February 2016. The aim of the survey is to gather feedback from stakeholders on the experience with the application of the IDD, in particular on the improvement of quality of advice and selling methods, the impact of the IDD on small and medium-sized enterprises and possible further improvements identified after the application of the IDD. Stakeholders are invited to provide their feedback by 1 February 2021.

EIOPA calls for sound supervisory practices in registering or authorising Institutions for Occupational Retirement Provision (IORPs) to foster a level-playing field across the EU

On 12 November, EIOPA published a supervisory statement on the sound supervisory practices for registering or authorising IORPs, including the assessment of suitability for cross-border activities. The main objective of this supervisory statement is to ensure that IORPs operating cross-border do it under prudent conditions, regardless of the different authorisation or registration regimes. This will foster a level-playing field across the European Union conducive to an internal market for IORPs and ensure adequate protection of the members and beneficiaries. This objective is achieved through supervisory convergence of currently divergent practices and avoiding risks of supervisory arbitrage after the implementation of IORP II Directive.

European Covered Bond Council (ECBC)

New standards on the harmonisation of covered bonds and extendable maturities

On 26 November, the ECBC published an article on the implementation process of the new covered bonds Directive into national law. According to the ECBC, the harmonisation of covered bond frameworks via the national implementation of the new covered bond Directive should result in a less fragmented market in which investors will be even better protected, while the high quality of the covered bond product is safeguarded. By doing so, there will likely also be more clarity and transparency about covered bonds with extendable maturity triggers, also further strengthening the covered bond product.

Financial Crime & Market Integrity

Normative documents

No relevant texts.

Consultative documents

Financial Action Task Force (FATF)

Joint experts' meeting 23-26 November 2020

On 26 November, the FATF concluded its four-day annual joint experts' meeting. Participants exchanged views, shared insights, and learnt about current good practices on issues that included:

- the financing of recent ethnically or racially motivated terrorist attacks and groups, as well as national experiences in countering this risk;
- the environmental crime and more particularly, money laundering cases linked to illegal logging and land clearance, mining related crimes and waste trafficking;
- illicit arms trafficking and terrorist financing where the international legal framework on preventing terrorist access to arms and broader provisions covering illicit arms trafficking were presented; and
- digital transformation regarding the usage of advanced analytics such as text mining, privacy preserving technology, online analytical processing and social network analysis in the fight against money laundering and terrorist financing.

European Banking Authority (EBA)

Opinion of the EBA setting out how prudential supervisors should consider money laundering and terrorist financing (ML/TF) risks in the context of the Supervisory Review and Evaluation Process (SREP)

On 4 November, the EBA published an opinion on how to take into account ML/TF risks in the SREP. The EBA expects prudential supervisors to cooperate in a timely manner with anti-money laundering and counter terrorist financing (AML/CFT) supervisors to alert them to ML/TF risks and draw on their expertise as necessary and appropriate. It is not expected for the prudential supervisors to duplicate the expertise and tasks of AML/CFT supervisors. The EBA stresses the importance of cooperation.

The steps supervisors should take to factor ML/TF risks into the SREP will be addressed at a later stage, in the upcoming revision of the SREP Guidelines. Given the more precise nature of the changes that will be made to the SREP Guidelines, the EBA has decided not to publicly consult on this opinion, nor to carry out a cost-benefit analysis, and to take these steps instead when the SREP Guidelines will be revised. For the same reason no advice from the Banking Stakeholder Group was requested. The EBA expects prudential supervisors to consider ML/TF risks in the SREP in particular in the following components of the SREP:

a. the monitoring of key indicators;
b. business model analysis;
c. assessment of internal governance and institution-wide controls;
d. assessment of risks to capital; and
e. assessment of risks to liquidity and funding.

Governance & Risk Management

Normative documents

No relevant texts.

Consultative documents

Financial Stability Board (FSB)

FSB consults on regulatory and supervisory issues relating to outsourcing and third-party relationships

On 9 November, the FSB published a discussion paper on regulatory and supervisory issues relating to outsourcing and third-party relationships.

The discussion paper identifies a number of issues and challenges. For instance, financial institutions have to ensure that their contractual agreements with third parties grant to them, as well as to supervisory and resolution authorities, appropriate rights to access, audit and obtain information from third parties. These rights can be challenging to negotiate and exercise, particularly in a multi-jurisdictional context. The management of sub-contractors and supply chains is another challenge that was highlighted in the context of financial institutions' response to COVID-19.

The consultation runs until 8 January 2021.

Sustainable Finance

See Highlight 1. The European Central Bank (ECB) publishes a guide on climate-related and environmental risks which lays down supervisory expectations relating to risk management and disclosure

Normative documents

No relevant texts.

Consultative documents

European Commission (EC)

The EC launches a public consultation on criteria defining environmentally sustainable activities

On 20 November, the EC launched a public consultation on the first two sets of criteria for determining which economic activities can qualify as environmentally sustainable, under the EU's Taxonomy. These sets of criteria have been published in a draft delegated act which lays down the technical screening criteria for climate change mitigation and for climate change adaptation. This Delegated Regulation will apply from 1 January 2022 and will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. The consultation runs until 18 December 2020.

European Central Bank (ECB)

ECB report on institutions' climate-related and environmental risk disclosures

On 27 November, the ECB published a report on institutions' climate-related and environmental risk disclosures. The report finds that banks are lagging behind on their climate-related and environmental risk disclosures. While there has been some improvement since the previous year, 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.

European Banking Authority (EBA)

The EBA launches a consultation to incorporate ESG risks into the governance, risk management and supervision of credit institutions and investment firms

On 5 November, the EBA published a discussion paper on Environmental, Social and Governance (ESG) risks management and supervision aiming to collect feedback for the preparation of its final report on the topic. The discussion paper provides a comprehensive proposal on how ESG factors and ESG risks could be included in the regulatory and supervisory framework for credit institutions and investment firms.
The consultation runs until 3 February 2021.

European Securities and Markets Authority (ESMA)

ESMA specifies obligations on environmentally sustainable activities

On 5 November, ESMA published a consultation paper on the draft advice to the EC on Article 8 of the Taxonomy Regulation. This specifies the content, methodology and presentation of the key performance indicators that non-financial undertakings and asset managers are required to disclose. The consultation ran until 4 December 2020 and ESMA will deliver its final advice to the EC by 28 February 2021.

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA consults on insurers' key performance indicators on sustainability for non-financial reporting

On 30 November, EIOPA published a consultation paper on EIOPA's advice regarding Article 8 of the Taxonomy Regulation. This consultation refers to the relevant ratios to be mandatorily disclosed by insurers and reinsurers falling within the scope of the Non-Financial Reporting Directive as well as on the methodologies to build those ratios. Hereby, EIOPA responds to a call for advice, addressed to the three European Supervisory Authorities, to support the European Commission in developing the definitions and methodologies to be used for the disclosure requirements stemming from the Taxonomy Regulation. The consultation runs until 12 January 2021.

Financial Stability Board (FSB)

The FSB publishes a report on the implications of climate change for financial stability

On 25 November, the FSB published a report on the implications of climate change for financial stability. Building on the FSB Stocktake of financial authorities' experience in including physical and transition climate risks as part of their financial stability monitoring, the report assesses the channels through which physical and transition risks could impact the financial system and how they might interact. Particular focus is on the potential amplification mechanisms and cross-border effects, and on the channels that could materialise in the short-to-medium term.

Capital & Liquidity

Normative documents

European Commission (EC)

Amendment to the regulatory technical standards (RTS) for own funds requirements for institutions, regarding the deduction of software assets from Common Equity Tier 1 (CET1) items

On 12 November, the EC published a final draft Commission Delegated Regulation of 12 November 2020 amending the RTS on own funds requirements for institutions, as regards the deduction of software assets from CET1 items. The draft Delegated Regulation states that software assets that are intangible assets as defined in the CRR shall be deducted from CET1 items in a specific way. To that end the Regulation first defines the calculation of prudential accumulated amortisation, and then explains how to calculate the deduction with the values at hand.

This Regulation will apply and enter into force on the day following that of its publication in the Official Journal of the European Union (OJ).

European Systemic Risk Board (ESRB)

Recommendation of the ESRB on identifying legal entities

On 26 November, the Recommendation of the ESRB on identifying legal entities was published in the OJ. The recommendation requests the EC to take certain actions towards the introduction of an EU framework on the use of the legal entity identifier (LEI). It also stipulates the actions relevant authorities should take while the EU framework on the use of the LEI is pending completion. Addressees of the recommendation are required to report on actions taken in response to the recommendation by 31 December 2021 for the recommended transitional actions to be taken, and by 30 June 2023 for the EU framework on the use of the LEI.

Consultative documents

Basel Committee on Banking Supervision (BCBS)

BCBS publishes new details on global systemically important banks (G-SIBs), accompanying the Financial Stability Board's (FSB's) updated list of G-SIBs

On 11 November, the BCBS released further information on its 2020 assessment of G-SIBs, to enhance understanding of G-SIB scores. In July 2018, the BCBS introduced a revised framework for assessing G-SIBs. The revised assessment methodology will take effect in 2022 (based on end-2021 data), and the resulting higher capital buffer requirement will be applied in January 2024, one year later than originally scheduled.

Concurrently, the FSB published its 2020 list of G-SIBs. The list does not contain Belgian banks. However, it does contain ING Bank in the lowest bucket which requires an additional capital buffer of 1%, and it also contains BNP Paribas in the second-lowest bucket which requires an additional capital buffer of 1.5%.

BCBS amends capital requirements for non-performing loan (NPL) securitisations

On 26 November, the BCBS published the technical amendment on capital treatment of securitisations of NPLs. The rule, which the BCBS started developing before the onset of the Covid-19 pandemic, closes a gap in the Basel framework by setting out prudent and risk sensitive capital requirements for NPL securitisations. The BCBS consulted publicly on the technical amendment in June 2020. In contrast to the consultative proposal, the final rule permits banks to apply the external ratings-based approach to NPLs securitisation exposures, without the 100% risk weight floor. In addition, the final rule includes discounts on tranche sales in the definition of discount incurred by the originating bank that factors in the capital requirements.

BCBS jurisdictions agreed to implement the technical amendment no later than January 2023.

European Banking Authority (EBA)

EBA publishes revised final draft RTS and guidelines on methodology and disclosure for G-SIBs

On 4 November, the EBA published its final report on the draft RTS on the specification of the methodology for the identification of G-SIBs and its final report on guidelines on the specification and disclosure of systemic importance indicators. The need for this revision was prompted by the revised framework introduced by the BCBS in July 2018 to identify G-SIBs as well as by the new requirements laid down in the fifth Capital Requirements Directive (CRD V), which recognise the importance of cross-border activities within the European Banking Union area. The guidelines will apply from 16 December 2020. The revised RTS will apply in full from the 2022 G-SII assessment exercise based on end-2021 information. However, the points regarding the inclusion of insurance subsidiaries' activity in the indicator value and score calculations, and the inclusion of the trading volume indicator will apply from 1 December 2021.

EBA publishes the methodology for the 2021 European Union (EU)-wide stress test

On 13 November, the EBA published its 2021 EU-wide stress test, which sets out the methodology for the stress test. The publication also includes the accompanying templates and the template guidance. The methodology and templates include some targeted changes compared to the postponed 2020 exercise, such as the recognition of foreign exchange effects for certain items on the income statement, and the treatment of moratoria and public guarantees in relation to the current 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.

EBA publishes report on benchmarking of national insolvency frameworks across the EU

On 18 November, the EBA published a report on the benchmarking of national loan enforcement frameworks across EU Member States, in response to the EU Commission's call for advice. The Report introduces for the first time a set of benchmarks for bank loan recovery and identifies areas where the divergence in the national insolvency regimes is wider. In addition, the Report provides an overview of the characteristics of insolvency regimes that help explain the differences across the EU.

The report is based on loan-by-loan data. Benchmarks are calculated by asset class for recovery rates (gross and net), time to recovery and judicial cost to recovery. The dispersion among different categories of loans and across the EU27 is high for most of the benchmarks in most loan categories. The legal system that forms the basis of the enforcement framework is a significant factor explaining the recovery rates and time to recovery. The results also indicate that the existence of certain characteristics related to both the legal framework and the judicial capacity are important to improve the recovery outcomes.

EBA analyses effect of the unwind mechanism of the liquidity coverage ratio (LCR)

On 19 November, the EBA published a report on the effects of the unwind mechanism of the LCR over a three-year period, from the end of 2016 to the first quarter of 2020. The unwind mechanism is set out in the LCR Delegated Regulation. Unwinding here refers to the closing of (complex) trading positions. In the LCR Delegated Regulation, the unwind mechanism is embedded in the calculation of the excess liquid asset amount, which is the amount of liquid assets that is held in excess of the limits provided in the LCR Delegated Regulation and that is therefore to be deducted from the current holdings of high-quality liquid assets when calculating the LCR liquidity buffer. 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.

Interestingly, the EBA's analysis shows that the specific impact of the unwind mechanism on the LCR is practically null. Thus, it is also not possible to affirm that it could have an effect on the stability and orderly functioning of financial markets. Also, 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 analysed possible modifications to the unwind mechanism and the report shows that their impact is limited as well.

European Securities and Markets Authority (ESMA)

ESMA publishes a report on the preparedness of reviewed investment funds and presents five priority areas for improvement

On 12 November, ESMA published a report on the recommendation of the European Systemic Risk Board (ESRB) on liquidity risk in investment funds. On 15 June 2020, the ESRB Recommendation of 6 May 2020 on liquidity risks in investment funds was published in the OJ.

This report sets out ESMA's analysis and conclusions on the preparedness of the investment funds that were reviewed and presents five priority areas identified to enhance the preparedness of funds that have significant exposures to corporate debt and real estate assets to potential future adverse shocks.

The funds exposed to corporate debt and real estate funds under review overall managed to adequately maintain their activities when facing redemption pressures and/or episodes of valuation uncertainty. The analysis of their behaviour during the market stress linked to the COVID19 pandemic revealed that only a limited number of the analysed funds suspended subscriptions and redemptions while the vast majority was able to meet redemptions requests and maintain their portfolio structure. Nonetheless, some critical reflections remain, yielding the five priority areas. Interestingly, 3 priorities relate to the fund's liquidity position and one presses National Competent Authorities (NCAs) to carry out further supervisory activities to ensure that management companies valuation procedures cover all market situations including valuation approaches for stressed market conditions.

Disclosure & Reporting

Normative documents

European Commission (EC)

Technical information for (re)insurance undertakings on the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2020 until 30 December 2020

On 10 November, the Commission Implementing Regulation (EU) 2020/1647 of 9 November 2020 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2020 until 30 December 2020 in accordance with Solvency II Directive was published in the Official Journal of the European Union. In order to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings, technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments are laid down for the current reference dates.

This Regulation entered into force on 11 November 2020 and applies from 30 September 2020.

Consultative documents

European Securities and Markets Authority (ESMA)

ESMA consults on supervisory fees for data reporting services provided (DRSP)

On 20 November, ESMA launched a public consultation on supervisory fees for data reporting services provided. Following the European Supervisory Authorities' review, the authorisation and supervision of DRSP will be transferred from national competent authorities to ESMA starting January 2022. The consultation aims to gather stakeholder views on fees for DRSPs that will be supervised by ESMA. 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.

The consultation runs until 4 January 2020.

Crisis Management

Normative documents

No relevant texts.

Consultative documents

European Commission (EC)

EC publishes a roadmap for the review of the bank crisis management and deposit insurance framework

On 10 November, the EC published a roadmap for the review of the bank crisis management and deposit insurance framework, which covers the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR), and the Deposit Guarantee Schemes Directive (DGSD). The review aims to: make the framework more efficient, flexible and coherent for handling the resolution or insolvency of European Union (EU) bank failures; ensure depositors receive equal treatment; give depositors more protection, including by possibly creating a common depositor protection mechanism. This combined roadmap/inception impact assessment is provided for information purposes only. It does not prejudge the final decision of the EC on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.

A targeted evaluation of the three existing legislative texts (BRRD, SRMR, DGSD) will be performed as part of this review. All three legislative texts will have been in force for over 3 years at the time of the review and the evaluation will cover the period since their introduction until the present. However, the experience with the application of the resolution framework remains limited in some areas. The evaluation will focus 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 (e.g. the overall incentive set-up in bank crisis management, the availability of specific tools, the level of depositor protection). The evaluation will be performed back-to-back with the impact assessment and will feed into the problem definition. The evaluation will rely on the following criteria: effectiveness, efficiency, relevance, coherence (in relation to other banking and financial sector legislation), proportionality and incentive compatibility, and EU added value. The feedback period for the review closed on 8 December 2020.

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA consults on the application of supervisory ladder in case of breach of the Solvency Capital Requirement (SCR)

On 25 November, EIOPA launched a consultation on the statement on supervisory practices and expectations in case of breach of the SCR. Capital requirements under the Solvency II Directive are forward-looking and economic, i.e. they are tailored to the specific risks borne by each insurer, allowing an optimal allocation of capital across the EU. They are defined along a two-step ladder, including the SCR and the minimum capital requirements, in order to trigger proportionate and timely supervisory intervention. The statement on the application of the supervisory ladder in case of breach of the SCR aims to promote supervisory convergence in the application of the supervisory ladder, in particular addressing the recovery plan required in case of breach of the SCR.

The consultation runs until 17 February 2021.

Financial Stability Board (FSB)

FSB publishes its 2020 resolution report

On 18 November, the FSB published its 2020 resolution report. The report updates on progress in implementing policy measures to enhance the resolvability of systemically important financial institutions and highlights the need for resolution preparedness. It also discusses lessons learnt from the COVID-19 pandemic, which confirmed the importance of ongoing work on resolvability, including for central counterparties.

Market Stability & Financial Markets Infrastructure

Normative documents

European Commission (EC)

Implementing Decision determining the equivalence of the regulatory framework applicable to central securities depositories (CSDs) of the United Kingdom of Great Britain and Northern Ireland with the central securities depositories Regulation (CSDR)

On 26 November, the Commission Implementing Decision (EU) 2020/1766 of 25 November 2020 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 CSDR was published in the Official Journal of the European Union (OJ). This Decision determines that the three conditions laid down by Article 25(9) of CSDR to determine that the legal and supervisory arrangements of a third country regarding CSDs established therein are equivalent to those laid down in that Regulation are fulfilled. On that basis, the EC concludes that the legal and supervisory arrangements of the United Kingdom which will be applicable to UK CSDs after the end of the transition period referred to in Article 126 of the Withdrawal Agreement meet the conditions laid down in Article 25(9) of CSDR.
This Decision entered into force on 27 November 2020 and will apply from 1 January 2021 and expire on 30 June 2021.

Consultative documents

European Supervisory Authorities (ESAs)

Proposal to adapt the European Market Infrastructure Regulation (EMIR) implementation timelines

On 23 November, the ESAs published its final report on EMIR regulatory technical standards (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. 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 Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) and the progress made in its implementation, as well as the treatment of OTC derivative contracts novated from a counterparty established in the United Kingdom (UK) to a counterparty established in a Member State as a consequence of the withdrawal of the UK from the EU. The proposed amendments are an adaptation of the timelines and rules to facilitate the current implementation of the Commission Delegated Regulation on bilateral margining, and more broadly of the international framework, and each of the proposed amendments are limited in nature.

On the same day, ESMA also published its final report on EMIR RTS on the clearing obligation regarding intragroup transactions as well as on novations from UK to EU counterparties. This report propose to amend the three Commission Delegated Regulations on the clearing obligation under EMIR. The amendments included in these draft RTS propose to extend the temporary exemption for 18 months for intragroup transactions and three years for single-stock equity options or index options (equity options). The draft RTS also allow UK counterparties to be replaced with EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions. Counterparties should start negotiating as soon as possible the novation of their transactions which are in the scope of these amending regulations, given the twelve month timeframe to benefit from this measure.
This Delegated Regulation will apply and enter into force on the day following that of its publication in the OJ.

European Securities and Markets Authority (ESMA)

Consultation on MiFID II/MiFIR obligations on market data

On 6 November, ESMA launched a consultation paper on guidelines on the MiFID II/MiFIR obligations on market data. The proposed guidelines are built on the assessments and recommendations from the 2019 ESMA report on market data. They provide guidance on the requirement to publish market data on a reasonable commercial basis and the requirement to make market data available free of charge 15 minutes after publication.
The consultation runs until 11 January 2021.

Update of double volume cap (DVC) data under MiFID II

On 9 November, ESMA updated its public register with the latest set of DVC data under MiFID II. This update includes DVC data and calculations for the period 1 October 2019 to 30 September 2020 as well as updates to already published DVC periods.

Update on Brexit statements for the end of UK transition period

On 10 November, ESMA updated three statements which address the impact on reporting under EMIR and Securities Financing Transactions Regulation (SFTR) and on the operation of ESMA databases and IT systems after 31 December 2020, the end of the UK's transition from the EU. Previously published in preparation for a no-deal Brexit scenario in 2019, the following statements have now been updated:

- statement on 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;
- statement on 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
- statement on ESMA's data operational plan covering actions related to the Financial Instruments Reference Database System (FIRDS), the Financial Instruments Transparency System (FITRS), the DVC, transaction reporting systems, and ESMA's registers and data.

Consultation on derogation criteria for data reporting services providers (DRSP)

On 20 November, ESMA launched a public consultation on criteria to identify Authorised Reporting Mechanisms (ARMs) and Approved Publications Arrangements (APAs) subject to authorisation and supervision by a competent authority of a EU Member States from January 2022. Following the ESAs' review, authorisation and supervision of DRSP will move from competent authorities to ESMA. The revised Regulation envisages that certain ARMs and APAs may be exempted from direct EU supervision due to their limited relevance for the internal market. The aim of this consultation is to provide technical advice to the EC on such derogation criteria.
The consultation runs until 4 January 2021.

Final view on the derivatives trading obligation (DTO)

On 25 November, ESMA released a public statement that clarifies the application of the EU DTO following the end of the UK's transition from the EU on 31 December 2020. 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.

Financial Stability Board (FSB)

Guidance on financial resources to support central counterparty (CCP) resolution and on the treatment of CCP equity in resolution

On 16 November, the FSB published a final report on guidance on financial resources to support CCP resolution and on the treatment of CCP equity in resolution. Resolution authorities should conduct such assessment in cooperation with the CCP's oversight and/or supervisory authorities. For CCPs that are systemically important in more than one jurisdiction, such assessment should be reviewed and updated on an annual basis and the results of such review/update be discussed within the firms' crisis management groups:

- part I of the guidance proposes five steps to guide the authorities in assessing the adequacy of a CCP's financial resources and the potential financial stability implications of their use; and
- part II of the guidance addresses the treatment of CCP equity in resolution. It provides a framework for resolution authorities to evaluate the exposure of CCP equity to losses in recovery, liquidation and resolution and how (where it is possible) the treatment of CCP equity in resolution could be adjusted.

European Fund and Asset Management Association (EFAMA)

Statement on EU Consolidated Tape (CT)

On 3 November, the EFAMA published a statement on how an appropriately constructed CT could help build deeper and more open capital markets in Europe. EFAMA and EFSA welcome the publication of a Market Structure Partners study on the creation of an EU CT which addresses the challenges, demand, benefits and proposed architecture for consolidating European financial market data. The EFAMA believes that an appropriately constructed CT could help to build deeper and more open capital markets in Europe. In line with the EC's vision for the Capital Markets Union, a key aim should be to democratise access across European markets to provide all investors regardless of resources or sophistication with a comprehensive and standardised view of European trading. The EFAMA's members do not believe that a CT is the solution to the concerning issue of increasing market data costs. The two issues are nevertheless connected as the commercial viability of the consolidated tape provider will be closely connected to the price at which it obtains input data from trading venues and APAs as well.

European Payments Council (EPC)

2021 Single Euro Payments Area (SEPA) payment scheme rulebooks

On 26 November, the EPC published the 2021 SEPA payment scheme rulebooks and the related Implementation guidelines (IGs).
All 2021 SEPA payment scheme rulebooks will enter into force on 21 November 2021.

Regulatory Perimeter

Normative documents

No relevant texts.

Consultative documents

No relevant texts.

Technology & Innovation

Normative documents

No relevant texts.

Consultative documents

No relevant texts.

Supervision

Normative documents

No relevant texts.

Consultative documents

No relevant texts.