

Legal and Regulatory Updates

04/05/2020 – 08/05/2020

Key Highlights:

- This Legal & Regulatory Update covers the week commencing 04/05/2020.
- [PRA](#) publishes a statement on credit risk mitigation eligibility and leverage ratio treatment of loans under the Bounce Back Loan scheme.
- [PRA](#) publishes a statement on its priorities regarding climate change, LIBOR transition, insurance stress testing and stressed VAR in light of Covid-19, which we [summarise below](#) and analyse in more detail at the end of this update.
- [FCA](#) announces updated position limits for certain commodity derivative contracts.
- [FCA](#) extends period to cover absent Senior Managers due to Covid-19.
- [The Financial Services Regulatory Initiatives Forum](#) launches new Regulatory Grid to help financial firms prepare for upcoming regulatory work.
- [ESMA](#) reminds investment firms of conduct of business obligations under MiFID II.
- [EBA](#) proposes a framework for STS synthetic securitisation.
- [ECB](#) publishes the results of its Survey on the Access to Finance of Enterprises.
- [ESAs](#) propose one-year deferral for bilateral margin requirements under EMIR in response to the COVID-19 outbreak.
- [European Commission](#) consults on its new comprehensive approach to further strengthen the EU's fight against money laundering and terrorist financing, which we [summarise below](#) and analyse in more detail at the end of this update.
- [CSSF](#) publishes further guidance on its AML / CFT supervision in the Collective Investment Sector during the Covid-19 situation.
- [FSB](#) consults on its Guidance for assessing the adequacy of financial resources for CCP resolution.
- We analyse some of the most important updates in more detail [at the end of the update](#).

Bank of England (BoE)

04 May 2020: PRA publishes statement on credit risk mitigation eligibility and leverage ratio treatment of loans under the Bounce Back Loan scheme

This [statement](#) sets out the PRA's observations on the risk weighted treatment of exposures under the scheme, particularly eligibility for recognition as unfunded credit risk mitigation (CRM) under the Capital Requirements Regulation (CRR). The BBL guarantee has been provided by the Secretary of State in the context of the Covid-19 pandemic. The PRA considers that the terms of the guarantee provided by the Secretary of State under the scheme do not contain features that would render these guarantees ineligible for recognition as unfunded credit risk protection, and the effects of these guarantees would appear to justify such treatment.

This statement also sets out a change to the UK leverage ratio framework. The PRA is offering a modification by consent for banks subject to the UK Leverage Ratio Part of the PRA Rulebook to exclude loans under this scheme from the leverage ratio total exposure measure, if they choose to do so. It also permits firms to exclude loans made pursuant to schemes of a similar character which are 100% guaranteed by a government, or central bank of an EEA state or the ECB provided that such loans do not exceed €60,000 per loan. The PRA will consider further modifications for substantively similar EEA schemes which do not meet these criteria on a case-by-case basis.

07 May 2020: PRA publishes statement on its priorities regarding climate change, LIBOR transition, insurance stress testing and stressed VAR, in light of Covid-19

This [statement](#) sets out further details of the PRA's plans to help firms maintain their safety and soundness and deliver the critical functions they provide to the economy. The PRA's work, alongside that of the wider Bank, is focused on ensuring that banks and insurers can play their part in supporting the UK economy to respond to the significant impact of Covid-19. The Prudential Regulation Committee (PRC) and the Financial Policy Committee (FPC) have agreed to re-prioritisation in the following areas of the PRA's work:

- Climate change
- LIBOR transition
- Insurance Stress Test 2019
- Stressed VAR

Please read our more in-depth report (Report 1) at the end of this update for a comprehensive summary and analysis of the PRA's statement.

07 May 2020: PRA publishes statement on conversion of Pillar 2A capital requirements from RWA percentage to nominal amount

This [statement](#) provides information on the PRA's decision to alleviate unwarranted pressure on firms by setting all Pillar 2A requirements as a nominal amount, instead of a percentage of total Risk Weighted Assets (RWAs). As well as avoiding an absolute increase in Pillar 2A capital requirements in the current stress, this would reduce Pillar 2A, as well as the threshold at which firms are subject to maximum distributable amount (MDA) restrictions, as a share of a firm's RWAs in the capital stack if RWAs increase.

07 May 2020: PRA & BoE publish statement on resolution measures and Covid-19

In this [statement](#), the BoE & PRA announced changes to resolution measures aimed at alleviating operational burdens on PRA-regulated firms in response to the Covid-19 outbreak. The BoE has also provided an update for firms on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL).

The BoE and the PRA have agreed to changes in the following areas:

1) Resolvability Assessment Framework

The dates for the major UK banks and building societies to submit their first reports on their preparations for resolution and publicly disclose a summary of these reports have been extended by a year. These firms will now be required to submit their first reports to the PRA

by October 2021 and make public disclosures by June 2022. The Bank will also make its first public statement on these firms' resolvability by June 2022.

2) Valuation in Resolution

To provide flexibility to firms' core operational teams, the compliance deadline for the Bank's Statement of Policy on valuation capabilities to support resolvability has been extended by three months to 1 April 2021. The deadline for firms to implement the Bank's other Statements of Policy relevant to resolvability remains 1 January 2022.

3) Resolution plan reporting

The Bank and PRA have taken steps to reduce the immediate operational burden of resolution plan reporting. Firms will not be required to submit certain resolution pack information under PRA Supervisory Statement SS19/13 'Resolution Planning' until the end of 2022, unless notified otherwise on an individual basis by the PRA. This is an extension to the existing delay to resolution pack submissions that had been due to expire at the end of 2020 and now applies to a wider range of firms. More information is available in [Supervisory Statement 19/13](#).

4) Minimum Requirement for Own Funds and Eligible Liabilities (MREL)

2021 MRELS will reflect the PRA's policy changes to Pillar 2A capital setting [announced](#) (discussed above). The Bank will also continue to keep MRELS under review and monitor market developments carefully in Q3 of this year to inform its approach in Q4 2020 to setting January 2021 MRELS and indicative January 2022 MRELS. In addition, the Bank intends to exercise its discretion with respect to the transition time firms are given to meet higher MRELS. Firms not currently subject to a leverage-based capital requirement, but which subsequently become subject to one, will be given at least 36 months after that requirement takes effect to meet the higher MREL resulting from it.

07 May 2020: BoE's Market Notice - The Bank's risk management approach to collateral referencing LIBOR for use in the Sterling Monetary Framework

Pursuant to this [Market Notice](#), a haircut add-on will be applied to all LIBOR Linked Collateral. The haircut add-on will be 10 percentage points from 1 April 2021, 40 percentage points from 1 September 2021 and 100 percentage points from 31 December 2021. For the avoidance of doubt, haircuts will be capped at

100 per cent. In respect of Loan Portfolios containing both LIBOR Linked Loans and other loans, Sterling Monetary Framework (SMF) participants may choose to either remove the LIBOR Linked Loans from the Loan Portfolios, or alternatively split these Loan Portfolios subject to them meeting the Bank's standard collateral eligibility requirements.

This Market Notice makes the following changes to the eligibility of LIBOR Linked Collateral:

- From 1st April 2021, all securities issued on or after that date and maturing after 31 December 2021, where the coupon pays a rate of interest calculated by reference to LIBOR, will be ineligible for use in the SMF;
- From 1st April 2021, all securities issued on or after that date and maturing after 31 December 2021, where embedded swap payments are calculated by reference to LIBOR, will be ineligible for use in the SMF;
- From 1st April 2021, all securities issued on or after that date and maturing after 31 December 2021, backed by loans where one or more loans in the portfolio is a LIBOR Linked Loan that was originated after 1st April 2021, will be ineligible for use in the SMF;
- From 1st April 2021, all LIBOR Linked Loans issued on or after that date, will be ineligible for use in the SMF; and
- From 31 December 2021, all LIBOR Linked Collateral, regardless of the issuance or origination date, will be ineligible for use in the SMF.

Except as described above, LIBOR Linked Collateral may otherwise still be requested for eligibility until 31 December 2021.

This Market Notice forms part of the Documentation for the BoE's operations under the SMF and should be read in conjunction with the main SMF Documentation, each as amended from time to time. Please refer to this [list of eligible securities](#) that are impacted by this policy. The Bank's current intention is to update this on a monthly basis.

4 – 8 May 2020: Other publications

During the week, the BoE released the following publications that might be of interest to our readers:

- [Monetary Policy Report and Interim Financial Stability Report - May 2020](#)
- [Monthly Decision Maker Panel data - April 2020](#)

- [Bank of England Weekly Report 6 May 2020](#)
- [Bank Rate maintained at 0.1% - May 2020](#)

Financial Conduct Authority (FCA)

05 May 2020: FCA announces updated position limits for certain commodity derivative contracts

The FCA [announced](#) updated position limits for certain commodity derivative contracts traded on UK trading venues. The limits have been established under the Markets in Financial Instruments Regulations 2017 (MIF1 Regs). The changes reflect changing market conditions and will apply immediately. In these circumstances, a 2,500 lot limit could impair market functioning or growth in the contracts in ways which MiFID II seeks to avoid, and a limit will be announced in due course. These limits are published in advance of the publication of ESMA Opinions on the limits and may change in light of an ESMA opinion, or in the event that the FCA decides it is necessary. This list sets out the affected contracts and the revised limits.

06 May 2020: FCA extends period to cover absent Senior Managers due to Covid-19

The FCA [has extended](#) the maximum period firms can arrange cover for a Senior Manager without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period. The [modification by consent to rule SUP10.3.13R](#) is available to all solo regulated firms. It aims to provide flexibility to firms managing their governance arrangements during the coronavirus pandemic. It also allows firms to allocate an absent Senior Manager's prescribed responsibilities to the individual covering the role ([a modification to SYSC 24.1.2](#)). Firms can use the modification by consent if, for example, a Senior Manager is absent because of coronavirus, or recruitment to replace a Senior Manager is delayed due to the coronavirus pandemic. Firms can apply for the modification by consent as a precautionary measure, in advance of actually needing it. The modification by consent will take effect from the date the firm applies for it and will end on 30 April 2021.

4 – 8 May 2020: Speeches, Letters & Other Publications
During the week, the FCA released the following publications that might be of interest to our readers:

- [FCA gives speech on its national and international response to coronavirus \(Covid-19\) and Brexit](#)
- [FCA letter to the Financial Ombudsman Service regarding the Government's Coronavirus Business Interruption Loan Scheme and the Bounce Back Loan Scheme](#)
- [Monthly PPI refunds and compensation](#)

- [FCA letter to Financial Ombudsman Service regarding complaints handling during coronavirus pandemic](#)
- [FCA Board Minutes: 26 March 2020](#)
- [FCA Board Minutes: 1 April 2020](#)

The Financial Services Regulatory Initiatives Forum

07 May 2020: The Financial Services Regulatory Initiatives Forum launches Grid to help financial firms prepare for upcoming regulatory work

The Financial Services Regulatory Initiatives Forum [announced](#) that it has a new initiative to help financial firms prepare for upcoming regulatory work - the [Regulatory Initiatives Grid](#). The Forum is comprised of the BoE, PRA, FCA, Payment Systems Regulator and CMA, with HM Treasury attending as an observer member. The introduction of the Grid – announced by Chancellor of the Exchequer Rishi Sunak in March's Budget – has been brought forward by the Forum to help firms stretched by the impact of coronavirus (Covid-19). The grid lays out the planned timetable for major initiatives - including the transition from LIBOR and the introduction of financial services legislation to prepare for the end of the EU withdrawal transition period. The grid also highlights initiatives that have been cancelled or delayed to ease the burden on financial services firms during the crisis – including the Bank of England's 2020 annual stress test and a number of consultations.

ESMA

06 May 2020: ESMA reminds firms of conduct of business obligations under MiFID II

ESMA issued a [public statement](#) on the risks for retail investors when trading under the highly uncertain market circumstances due to the COVID-19 pandemic. ESMA is also reminding investment firms of the key conduct of business obligations under MiFID when providing services to retail investors. According to ESMA, several National Competent Authorities (NCAs) have recently noticed a significant increase in retail clients' trading activity. The financial market turmoil following the COVID-19 pandemic has led to high market volatility and an increase in market, credit and liquidity risks. In this statement, ESMA highlights the risks to retail investors when trading under these unprecedented market circumstances.

Furthermore, ESMA states that firms in the current environment have even greater duties when providing investment or ancillary services to investors, especially

when these investors are new to the market, or have limited investment knowledge or experience. ESMA therefore reminds firms of their obligation to act in accordance with the best interests of their clients, and points to the most relevant conduct of business obligations under MiFID II, namely product governance, information disclosure, suitability and appropriateness. ESMA, in coordination with NCAs, will continue to monitor retail clients' involvement in the financial markets, and firms' compliance with the conduct of business requirements. ESMA said it remains prepared to use its powers to ensure financial stability, orderly functioning of EU markets and investor protection.

06 May 2020: ESMA consults on SME growth markets

ESMA launched a [consultation](#) on the functioning of the Small and Medium-sized enterprises (SME) Growth Market regime in the European Union (EU) and on two draft technical standards, introduced by the amendments to the Market Abuse Regulation (MAR) for the promotion of the use of SME Growth Markets.

ESMA aims to promote and facilitate access to capital markets for SMEs, acknowledging their key role in the economic growth of the EU. In the context of the MiFID II review on the functioning of SME Growth Markets in the EU, ESMA seeks stakeholders views on proposed amendments to the regime which aim to further improve it. ESMA is seeking stakeholders' view on one draft technical standard on liquidity contracts and one on the insider list for SME Growth Markets issuers which aim to alleviate the administrative burdens of trading on public markets for SMEs, while at the same time safeguarding market integrity.

ESMA will consider all comments received by 15 July 2020 and will develop the final reports under MiFID II and MAR, taking into consideration the feedback received to this consultation paper. ESMA intends to submit the MiFID II final report to the European Commission by the end of the year and the MAR final report in the autumn. 08 May 2020: ESMA issues latest Double Volume Cap data

ESMA updated its public register with the latest set of double volume cap (DVC) data under the Markets in Financial Instruments Directive (MiFID II). The updates include DVC data and calculations for the period 1 April 2019 to 31 March 2020 as well as updates to already published DVC periods.

European Insurance & Occupational Pensions Authority (EIOPA)

06 May 2020: EIOPA publishes monthly technical information for Solvency II relevant risk free interest rate term structures – end-April 2020

EIOPA published its monthly [technical information](#) on the relevant risk free interest rate term structures (RFR) with reference to the end of April 2020. Technical information relating to risk-free interest rate (RFR) term structures is used for the calculation of the technical provisions for (re)insurance obligations. With this publication, EIOPA ensures consistent calculation of technical provisions across Europe.

06 May 2020: EIOPA publishes monthly update of the symmetric adjustment of the equity capital charge for Solvency II – end-April 2020

EIOPA [published](#) its monthly technical information on the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of April 2020.

European Banking Authority (EBA)

04 May 2020: EBA publishes final draft technical standards on specific reporting requirements for market risk

The EBA [published](#) its final draft Implementing Technical Standards (ITS) on specific reporting requirements for market risk. These ITS introduce the first elements of the Fundamental Review of the Trading Book (FRTB) into the EU prudential framework by means of a reporting requirement. The ITS are expected to apply from September 2021.

The specific reporting requirements for market risk include a thresholds template, providing insights into the size of institutions' trading books and the volume of their business subject to market risk, and a summary template, reflecting the own funds requirements under the alternative standardised approach for market risk (MKR-ASA). At a later stage, and in line with the mandate of Article 430b of the amended Capital Requirements Regulation (CRR), these reporting requirements will be complemented with details on the own funds requirements under the MKR-ASA and the alternative internal model approach.

04 May 2020: EBA publishes final Guidelines on the methodology to determine the weighted average maturity of contractual payments due under the tranche of a securitisation transaction

The EBA [published](#) its final Guidelines on the

determination of the weighted average maturity (WAM) of the contractual payments due under the tranche of a securitisation transaction, as laid down in the Capital Requirements Regulation (CRR). These Guidelines aim at ensuring that the methodology applicable for the determination of the WAM for regulatory purposes is sufficiently transparent and harmonised in order to increase consistency and comparability in the own funds held by institutions. In finalising the Guidelines, the EBA considered that the methodology applicable for the determination of the WAM for regulatory purposes should be sufficiently harmonised, to allow even less sophisticated institutions to use it, conservative to maintain a sufficient level of prudence, and simple to facilitate the supervision by competent authorities.

The main areas covered by the guidelines are the following:

- Meaning of contractual payments due under the tranche;
- Data and information requirements;
- Methodologies for determining the contractual payments of the securitised exposures due under the tranche both for traditional and synthetic securitisations;
- Implementation and use of the WAM model.

04 May 2020: EBA launches additional EU-wide transparency exercise

The EBA [launched](#) an additional EU-wide transparency exercise to provide market participants with updated information on the financial conditions of EU banks as of December 31, 2019, prior to the start of the COVID-19 pandemic. The 2020 Spring EU-wide transparency exercise is exclusively based on supervisory reporting data. EBA expects to publish the results of this exercise at the beginning of June. Through this transparency exercise, similarly to the annual transparency exercises EBA performed in the past, the EBA will release about one million data points, on average more than 7,500 for about 125 participating banks. The data, with reference date as of December 2019, will cover banks' capital positions, financial assets, financial liabilities, risk exposure amounts, sovereign exposures and asset quality. The EBA considers that the provision to market participants of continuous information on banks' exposures and asset quality is crucial, particularly in moments of increased uncertainty.

04 May 2020: EBA publishes updated ITS package for 2021 benchmarking exercise, which includes the IFRS9 template

The EBA [published](#) an update to its Implementing Technical Standards (ITS) on benchmarking of internal approaches. The updated ITS include all benchmarking portfolios that will be used for the 2021 exercise. The main novelty is the inclusion of the IFRS9 template. The benchmarking exercise is an essential supervisory tool to enhance the quality of internal models, which is particularly important in a stressed economic situation. 06 May 2020: EBA publishes final Guidelines on Credit Risk Mitigation for institutions applying the IRB approach with own estimates of LGDs

The EBA published its final Guidelines on credit risk mitigation (CRM) in the context of the advanced internal ratings-based (A-IRB) approach. These Guidelines, which are part of the EBA's regulatory review of the IRB approach, aim to eliminate the remaining significant differences in approaches in the area of CRM, which are due to either different supervisory practices or bank-specific choices. These Guidelines complement the EBA Report on CRM, which focuses on the standardised approach (SA) and the foundation-IRB approach (F-IRB).

The Guidelines clarify the application of the CRM provisions currently laid down in the Capital Requirements Regulation (CRR) applicable to institutions using the A-IRB Approach. In particular, they clarify the eligibility requirements for different CRM techniques, namely funded and unfunded credit protection (e.g. collateral and guarantees), available to institutions. The Guidelines also clarify how institutions may recognise the effects of different CRM techniques for capital requirement purposes. In particular, for unfunded credit protection they clarify the set of compliant approaches that are available to institutions to recognise the effects of the credit protection by adjusting their risk parameter estimates. Moreover, the Guidelines clarify how to recognise the effects of funded credit protection based on netting.

06 May 2020: EBA publishes updated calculation tool of liquidity coverage ratio

The EBA [published](#) its updated calculation tool of the liquidity coverage ratio (LCR) with the aim to provide additional support for reporting institutions. This excel-based tool takes into account the amendments in the liquidity coverage requirement introduced by Commission Delegated Regulation (EU) 2018/1620 that applies from 30 April 2020. This tool is provided for information purposes only and has no legal value.

06 May 2020: EBA proposes framework for STS synthetic securitisation

The EBA published its proposals for developing a simple, transparent and standardised (STS) framework for synthetic securitisation. This proposal, which is limited to balance-sheet securitisation, includes a list of criteria to be considered when labelling the synthetic securitisation as 'STS' and provides the pros and cons of a potential differentiated capital treatment for this type of securitisation.

The Report examines the rationale behind the STS synthetic product and assesses the positive and negative implications of its possible introduction. Based on this assessment, the EBA recommends to establish a cross-sectoral framework for STS synthetic securitisation that is limited to balance-sheet securitisation. Among the proposed STS criteria are requirements on simplicity, standardisation and transparency similar to those applied to traditional securitisation. In addition, the Report includes other relevant criteria for synthetic transactions, such as those for mitigating counterparty credit risk or for addressing various structural features of synthetic securitisation. Finally, the Report provides conclusions on the prudential treatment of STS securitisation, and in particular, the pros and cons of a potentially differentiated capital treatment for this type of securitisation to inform the European Commission's future legislative proposal for a STS synthetic securitisation.

European Supervisory Authorities ESAs

04 May 2020: ESAs propose one-year deferral for bilateral margin requirements under EMIR in response to the COVID-19 outbreak

The European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs), in response to the COVID-19 outbreak have published joint draft [Regulatory Technical Standards](#) (RTS) to amend the Delegated Regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining), under the European Markets Infrastructure Regulation (EMIR), to incorporate a one-year deferral of the two implementation phases of the bilateral margining requirements agreed by the BCBS and IOSCO.

These amending draft RTS were developed to facilitate further an internationally coordinated approach on how to adapt the implementation of the bilateral margin requirements. These changes would result in covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €50 billion becoming subject to the requirement to exchange initial margin from 1 September 2021, while covered counterparties with an aggregate average notional

amount of non-centrally cleared derivatives above €8 billion becoming subject to the requirement from 1 September 2022.

European Central Bank (ECB)

04 May 2020: ECB publishes results of the Q2 2020 ECB Survey of Professional Forecasters

The ECB [published](#) the results of its Q2 2020 survey of professional forecasters. Key results from the survey include:

- Expected effects of the coronavirus (COVID-19) pandemic and subsequent mitigation measures have a significant impact on inflation, growth and unemployment rate forecasts;
- HICP inflation expectations for shorter horizons revised sharply down, while average longer-term inflation expectations unchanged;
- Real GDP growth expectations for current and next year revised significantly – down and up respectively; and
- Unemployment rate expectations revised up sharply for 2020 with only a gradual unwinding thereafter.

07 May 2020: ECB publishes its 2019 Annual Report

The [Annual Report](#) describes the tasks and activities of the European System of Central Banks (ESCB) and reports on the Eurosystem's monetary policy. It is usually published in April of the following year and is presented by one of the ECB's Executive Board members to the European Parliament at a public hearing. The Annual Report includes the Annual Accounts of the ECB.

08 May 2020: ECB publishes results of its Survey on the Access to Finance of Enterprises

According to the latest [ECB Survey on the Access to Finance of Enterprises](#) (SAFE), Euro area SMEs reported a decline in turnover (in net terms -2%, from 20% in the previous six months). This was the first such decline reported in the twice-yearly survey since early 2014. They also reported a sharp deterioration in profits (in net terms -15%, down from -1% in the previous survey), which was widespread across countries and sectors. The survey covered the period from October 2019 to March 2020.

Regarding access to finance, the net percentage of SMEs reporting an improvement in the availability of bank loans remained positive but declined to 5% (down from 10%). This was attributed to the willingness

of banks to provide credit (11%, down from 14%). However, for the first time since September 2014, euro area SMEs perceived their own financial situations as a factor impeding their access to finance (-18%, down from 5%). In addition, the general economic outlook was reported to be having a strong negative impact (-30%, down from -13%), a net percentage not seen since March 2013. SMEs' responses on the expected availability of external finance are useful in gauging the possible impact of the coronavirus (COVID-19) pandemic in the immediate future. On balance, they show that expectations about the availability of bank loans were falling significantly in the euro area (-11%, down from 4%), with the level of deterioration varying across countries.

This survey round introduced two additional questions: one on the most important factors affecting price-setting and the other on the expected impact of those factors on the prices of goods and services produced by SMEs over the next 12 months. Euro area SMEs reported expected demand for their own products and labour costs as the most important factors, followed by other input prices, competitors' prices and market shares. Looking ahead, they expect price pressures to remain subdued.

4 – 8 May 2020: ECB Blogs & Other Publications

During the week, the ECB published the following blogs & publications that might be of interest to our readers:

- [The ECB takes note of the judgment by the German Federal Constitutional Court regarding the Public Sector Purchase Programme \(PSPP\)](#)
- [A regulatory and financial stability perspective on global stablecoins](#)
- [Endogenous TFP, business cycle persistence and the productivity slowdown in the euro area](#)
- [Heterogeneity in corporate debt structures and the transmission of monetary policy](#)
- [Political referenda and investment: evidence from Scotland](#)
- [Climate change and the role of central banks](#)

European Commission

07 May 2020: European Commission steps up fight against money laundering and terrorist financing

The European Commission [announced](#) a comprehensive approach to further strengthen the EU's fight against money laundering and terrorist financing (ML & TF). The Commission has published an ambitious and multifaceted Action Plan, which sets

out concrete measures that the Commission will take over the next 12 months to better enforce, supervise and coordinate the EU's rules on combating ML & TF. The aim of this new, comprehensive approach is to shut down any remaining loopholes and remove any weak links in the EU's rules. To ensure inclusive discussions on the development of these policies, the Commission launched a public consultation on the Action Plan. Authorities, stakeholders and citizens will have until 29 July to provide their feedback.

The Commission also published a more transparent, refined methodology to identify high-risk third countries that have strategic deficiencies in their anti-money laundering and countering terrorist financing regimes that pose significant threats to the EU's financial system. This will enhance the Commission's engagement with third countries and ensure greater cooperation with the Financial Action Task Force (FATF). Finally, the Commission has also adopted a new list of third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing frameworks. Please read our more in-depth report (Report 2) at the end of this update for a comprehensive summary and analysis of the Commission's new comprehensive approach.

The Swiss Financial Market Supervisory Authority (FINMA)

04 May 2020: FINMA launches consultation on partial revision of "Liquidity risks – banks" Circular

In November 2019, the Federal Council decided to introduce a net stable funding ratio (NSFR) for banks by mid-2021 and to make the corresponding adjustments to the Liquidity Ordinance. Minor adjustments to FINMA's "Liquidity risks – banks" Circular are necessary as a result of this. FINMA is conducting a [consultation](#) exercise on the adjustments up to 13 July 2020. The present consultation therefore only concerns a number of clarifications and editing changes. The amendments are due to enter into force on 1 July 2021, subject to the Federal Council's timetable.

Commission de Surveillance du Secteur Financier (CSSF)

04 May 2020: CSSF publishes further guidance on its AML / CFT supervision in the Collective Investment Sector during the Covid-19 situation

On the 10th of April 2020, the CSSF published Circular [CSSF 20/740](#) to provide Luxembourg professionals with information particularly relevant for their activities

and to provide guidance on how to abide by AML/CFT professional obligations during this crisis. In that context, the Expert Working Group AML OPC chaired by the CSSF and composed of representatives of ALFI, ALCO, ABBL, LPEA, LUXREAL, IRE, Le Barreau and The Financial Intelligence Unit decided to convene a special meeting to further detail the impacts of Covid-19 in the Collective Investment Sector to complement the aforementioned circular. The Expert Working Group OPC released a [presentation](#) that is designed to provide sector specific details to the CSSF circular 20/740.

International Capital Market Association (ICMA)

4 – 8 May 2020: ICMA Podcasts

During the week, ICMA released the following podcasts that might be of interest to our readers:

1. [COVID-19: ICMA Future Leaders legal working group perspectives](#)

Capital markets lawyers and ICMA Future Leaders legal working group members Tom Capon (Chair of the working group) and Moeen Qayum speak with Charlotte Bellamy of ICMA to delve further into practical legal implications for European primary debt capital markets of the current COVID-19 pandemic, following on from last week's podcast with Amanda Thomas and Jen Cresswell of A&O.

2. [State of the European Repo Market](#)

ICMA Chief Executive Martin Scheck and Andy Hill, Senior Director, Market Practice and Regulatory Policy, ICMA discuss how the European repo market has mostly held up well during the market turbulence stemming from the global COVID-19 pandemic. However, this has not been without some strains. In particular, as the demand for repo has increased, banks' capacity to intermediate has remained constrained. Meanwhile, the market has had to deal with the disruption of operating remotely, with implications for both the supply of collateral and operational efficiency.

3. [COVID-19: ICMA Asset Management & Investors Council weekly market update](#)

Robert Parker, Chairman of ICMA Asset Management and Investors Council, reviews the market events of the last week in the context of the COVID-19 pandemic, with a specific focus on the meaning of the German Constitutional Court ruling for the ECB asset purchase programs, the state of the economic recovery in Asia and the resurgence of the Brexit topic for investors.

Financial Stability Board (FSB)

04 May 2020: FSB consults on its Guidance for assessing the adequacy of financial resources for CCP resolution

The Financial Stability Board (FSB) published a public consultation report entitled "[Guidance on financial resources to support CCP resolution and on the treatment of CCP equity in resolution](#)". The guidance will assist central counterparty (CCP) resolution authorities. 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. The authorities should:

- Step 1: identify hypothetical default and non-default loss scenarios (and a combination of them) that may lead to a resolution of a CCP;
- Step 2: conduct a qualitative and quantitative evaluation of existing resources and tools available in the resolution of the CCP;
- Step 3: assess potential resolution costs;
- Step 4: compare existing resources and tools to resolution costs and identify any gaps; and
- Step 5: evaluate the availability, costs and benefits of potential means of addressing any identified gaps.

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.

The FSB is [inviting](#) comments on this consultation report. Responses should be sent to fsb@fsb.org with "CCP consultation" in the subject line by 31 July 2020.

Report 1. Summary of the Prudential Regulation Authority's statement on prioritisation in light of Covid-19 – 7th of May 2020

Further to the [joint announcement](#) on Friday 20 March 2020 from the BoE and the PRA, setting out a number of measures aimed at alleviating operational burdens on PRA-regulated firms, the PRA [announced](#) further details of its plans to support firms and enable them, and the PRA, to focus their resources on the highest priority work. The Prudential Regulation Committee (PRC) and the Financial Policy Committee (FPC) have agreed to re-prioritisation in the following areas of the PRA's work:

1) Climate change

The PRC and FPC have agreed to postpone the launch of the Climate Biennial Exploratory Scenario until at least mid-2021. This delay reflects a desire to maintain the ambitious scope of the exercise, whilst giving firms enough time to invest sufficiently in their capabilities to allow them to deliver to a high standard. Whilst Covid-19 represents a present risk, the authorities believe that minimising the future risks from climate change requires action now.

As such, the Bank will continue its work to better understand and mitigate these risks. This includes:

- Continued support for firms' enhancements of their climate risk capabilities. To aid this, this summer the PRA will issue follow-on guidance on the PRA's 2019 Supervisory Statement on enhancing firms' approaches to managing the financial risks from climate change. Furthermore, the outputs from the Climate Financial Risk Forum will be published in the summer.
- Continuation of the Bank's international engagement on climate issues. This includes working with other central banks within the Network for Greening the Financial System, through which guides on key issues like supervision and scenario analysis will shortly be published. The Bank will also assist the Government with its preparations for COP 26; and
- Continued focus on embedding climate disclosure across the financial system, including through the Bank's own disclosures.

2) LIBOR transition

Due to Covid 19, the PRA and FCA suspended transition data reporting at the end of Q1 and cancelled some Q1 firm meetings. In light of the developments since, the PRA and FCA have decided to resume full supervisory engagement on LIBOR from 1 June 2020, including data reporting at the end of Q2.

3) Insurance Stress Test 2019

The PRA has decided to pause further work on the Insurance Stress Test, given other pressures on firms and the need to focus on Covid-19 specific stresses. The PRA will therefore not be publishing the results of last year's test (IST2019) and will postpone the next Insurance Stress Test to 2022, with a view to seeking feedback from firms on the proposed design during Q4 2021.

4) Stressed VAR

The PRA does not expect firms to update their SVAR 12-month period during the current period of financial market stress, other than if a firm's current period no longer represents a significant period of stress for the firm's portfolio (e.g. due to a material change in risk profile). The CRR requires firms to review the choice of historical data at least annually and, although in normal circumstances the PRA has set an expectation of quarterly reviews, in the current circumstances the PRA will permit firms to delay this review until December 2020, in line with EBA guidance.

The Bank and the PRA have also announced [changes to resolution measures](#) (discussed above) aimed at alleviating operational burdens on PRA-regulated firms. In addition to these specific areas the PRA is continuing to make other adjustments and review ongoing plans, to support firms while ensuring their safety and soundness is maintained. This includes postponing or scaling back planned reviews, consultations and policy announcements where suitable; wide-ranging reprioritisation of the PRA's internal initiatives and development workstreams; and deferring governance decisions on some less critical matters, where possible.

Report 2. Summary of the European Commission's new approach to further strengthen the EU's fight against money laundering and terrorist financing – 7th of May 2020

As explained above, the European Commission [announced](#) a comprehensive approach to further strengthen the EU's fight against money laundering and terrorist financing (ML & TF). This package includes:

- An ambitious and multifaceted Action Plan, which sets out concrete measures that the Commission will take over the next 12 months to better enforce, supervise and coordinate the EU's rules on combating ML & TF;
- A more transparent, refined methodology to identify high-risk third countries that have strategic deficiencies in their anti-money laundering and countering terrorist financing regimes that pose significant threats to the EU's financial system; and
- A new list of third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing frameworks.

We now turn to discuss each of these elements in more detail.

Action Plan

The Action Plan is built on six pillars, each of which is aimed at improving the EU's overall fight against ML & TF, as well as strengthening the EU's global role in this area. When combined, these six pillars will ensure that EU rules are more harmonised and therefore more effective. The rules will be better supervised and there will be better coordination between Member State authorities.

The six pillars are as follows:

1. **Effective application of EU rules:** The Action Plan encourages the EBA to make full use of its new powers to tackle ML & TF.
2. **A single EU rulebook:** While current EU rules are far-reaching and effective, Member States tend to apply them in a wide variety of different manners. Diverging interpretations of the rules therefore lead to loopholes in our system, which can be exploited by criminals. To combat this, the Commission will propose a more harmonised set of rules in the first quarter of 2021.
3. **EU-level supervision:** Currently it is up to each Member State to individually supervise EU rules in this area and as a result, gaps can develop in how the rules are supervised. In the first quarter of 2021, the Commission will propose to set up an EU-level supervisor.
4. **A coordination and support mechanism for Member State Financial Intelligence Units:** In the first quarter of 2021, the Commission will propose to establish an EU mechanism to help further coordinate and support the work of these bodies.
5. **Enforcing EU-level criminal law provisions and information exchange:** Judicial and police cooperation, on the basis of EU instruments and institutional arrangements, is essential to ensure the proper exchange of information. The private sector can also play a role in fighting ML & TF. The Commission will issue guidance on the role of public-private partnerships to clarify and enhance data sharing.
6. **The EU's global role:** The EU will need to adjust its approach to third countries with deficiencies in their regime regarding anti-money laundering and countering terrorist financing that put the Single Market at risk. The new methodology (discussed below) issued alongside this Action Plan provides the EU with the necessary tools to do so. Pending the application of the revised methodology, the updated EU list (discussed below) ensures better alignment with the latest FATF list.

To ensure inclusive discussions on the development of these policies, the Commission launched a public consultation on the Action Plan. Authorities, stakeholders and citizens will have until 29 July to provide their feedback.

Refined methodology

The Commission published a new methodology to identify high-risk third countries that have strategic deficiencies in their national anti-money laundering and countering terrorist financing regimes, which pose significant threats to the EU's financial system. The aim of this new methodology is to provide more clarity and transparency in the process of identifying these third countries. The key new elements concern: (i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with third countries; and (iii) reinforced consultation of Member States experts. The European Parliament and the Council will have access to all relevant information at the different stages of the procedures, subject to appropriate handling requirements.

Updated List

Under the Anti-Money Laundering Directive (AMLD), the Commission has a legal obligation to identify high-risk third countries with strategic deficiencies in their regime regarding anti-money laundering and countering terrorist financing. Pending the application of the above-mentioned refined methodology, the Commission revised its list, taking into account developments at international level since 2018. The new list is now better aligned with the lists published by the FATF.

Regulators & Associations Monitored

1. FCA
2. BoE
3. The Pensions Regulator
4. ESMA
5. EBA
6. EIOPA
7. ECB
8. European Commission
9. CSSF
10. FINMA
11. CBI
12. ICMA
13. IOSCO
14. FSB

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