

# ALLEN & OVERY

## *Key Regulatory Topics: Weekly Update*

8 November 2019 – 14 November 2019



### UPCOMING SEMINARS

#### **Convergence, divergence and disturbance: What's next for financial regulation in Europe?**

On 19 November, 8.30am to 9.30am, a panel of A&O's European regulatory partners will discuss issues facing their financial services clients including Brexit, the Banking Union, equivalence, financial instability and deregulation. If you would like to register for this seminar, you will first need to create a profile for yourself at [www.aoseminars.com](http://www.aoseminars.com). Once created and approved you will have full access to the site which includes being able to register to attend seminars and download past seminar materials. You will also be automatically signed up for our mailing list. Once approved to register for a seminar you simply need to log in and click on the register to attend button underneath the seminar you wish to attend. You will receive an automated confirmation email to confirm the booking.

### BREXIT

Please see the Insurance section for an update on the PRA's statement on French response to EIOPA Brexit recommendations.

Please see the Markets and Markets Infrastructure section for an update on the Trade associations' letter to EC to extend Brexit temporary equivalence for UK CCPs.

#### **ECB on Brexit: operational risk increases when banks delay action**

On 13 November, the ECB released a publication on banks' preparations for Brexit, following the extension of Article 50 until 31 January 2020. The ECB states that banks that delay the implementation of their Brexit plans may lead to heightened operational risks. As such, the ECB urges banks to: (i) implement effective mitigating actions as soon as possible in order to avoid further delays and continue to reap the benefits of the single market; (ii) take action in all areas of ECB supervisory expectation, including internal governance, business origination and access to financial market infrastructures; and (iii) push forward with the implementation of their Brexit plans to be able to meet the deadlines at the end of 2020.

[Read more](#)

### CAPITAL MARKETS

#### **ICMA to update its buy-in rules to support information of EU CSDR mandatory buy-in provisions**

On 14 November, ICMA announced that it will amend its Buy-in Rules to support the implementation of the EU Central Securities Depositories Regulation (CSDR) mandatory buy-in provisions. The ICMA Buy-in Rules will be updated to reflect the CSDR buy-in provisions, that are due to come into force in September 2020, (although due to technical reasons, this may be delayed until November 2020) which create a mandatory obligation for trading parties to execute buy-ins against counterparties who fail to settle their trades within a

required period. ICMA intends to consult with members in early 2020 on the proposed revisions to its Buy-in Rules.

[Read more](#)

## **CONSUMER/RETAIL**

### **Commission Delegated Regulation amending the PRIIPs Delegated Regulation to align transitional arrangements published in OJ**

On 8 November, Commission Delegated Regulation (EU) 2019/1866 amending the PRIIPs Delegated Regulation to align the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of the PRIIPs Regulation as underlying investment options with the prolonged exemption period under that Article was published in the OJ. The new Delegated Regulation amends Article 18 of the PRIIPs Delegated Regulation, to extend the transitional arrangements by two years, to 31 December 2021. The new Delegated Regulation enters into force on 28 November (20 days after its publication in the OJ).

[Read more](#)

### **EU consumer protection rules to be reinforced**

On 8 November, the Economic and Financial Affairs Council formally adopted at first reading a Directive of the EP and of the Council amending the Unfair Contract Terms Directive, the Price Indication Directive, the Unfair Commercial Practices Directive and the Consumer Rights Directive. The aim of the Directive is to guarantee higher standards of protection for EU consumers when they purchase products and services online. The Directive will now be published in the OJ and will enter into force 20 days later.

[Read more](#)

## **FINANCIAL CRIME**

Please read our Investigations Insight publications on [Employee interviews in internal investigations](#) and [The End of SEC Disgorgement?](#)

Please see the Markets and Markets Infrastructure section for the Council's adoption of SME growth market reform regulation.

### **NCA guidance on the use of SAR glossary codes and reporting routes**

On 11 November, the UK Financial Intelligence Unit (UKFIU) of the National Crime Agency (NCA) published revised guidance on Suspicious Activity Report (SAR) glossary codes and reporting routes, which replaces all previous publications. The revised guidance contains the following key points: (i) the use of the glossary codes is considered good practice; (ii) the SARs regime is not a route to report crime matters relating to immediate risks to others; (iii) when submitting a SAR, the relevant glossary code should be included in the 'reason for suspicion' text space; and (iv) it is acceptable to have a SAR with several codes.

[Read more](#)

### **BCBS consultation on guidelines on interaction and co-operation between prudential and AML/CTF supervision**

On 11 November, the Basel Committee on Banking Supervision (BCBS) published a consultative document on the introduction of guidelines on interaction and co-operation between prudential and AML/CTF supervision. The changes include adding detailed and practical guidelines on the interaction and co-operation between prudential and AML and CTF supervision, and enhance the effectiveness of supervision of banks' money laundering and CTF risk management. The proposed guidelines outline principles and recommendations for information exchange and co-operation in relation to authorisation processes of banks, on-going supervision, enforcement actions and confidentiality treatment. The deadline for comments is 6 February 2020.

[Read more](#)

## **FUND REGULATION**

Please see the Prudential Regulation section for an update on the Council of the EU's adoption of legislation regarding investment firms.

### **IA good practice guide: operational and enterprise risk principles for asset managers**

On 11 November, the Investment Association (IA) published guidance on operational and enterprise risk principles for asset managers. The guidance has been produced to assist member firms when implementing or reviewing their enterprise risk management (ERM) programme, which includes a well-resourced operational risk function and helps to ensure continued financial strength and durability. The guidance contains chapters on governance, culture, operational risk scenarios and stress test scenario analyses.

[Read more](#)

## **INSURANCE**

### **Commission Implementing Regulation on calculation of technical provisions and basic own funds for reporting under Solvency II published in OJ**

On 14 November, Commission Implementing Regulation (EU) 2019/1902 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December in accordance with the Solvency II Directive of the EP and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance was published in the OJ. The Regulation will apply from the first reporting reference date to which this Regulation applies.

[Read more](#)

### **IAIS adopts first global frameworks for supervision of insurance groups and mitigation of systemic risk**

On 14 November, the International Association of Insurance Supervisors (IAIS) adopted a set of reforms designed to enable effective cross-border supervision of insurance groups and contribute to global financial stability. The adopted reforms include: (i) the Common Framework (ComFrame) – this establishes supervisory standards and guidance focusing on the effective group-wide supervision of internationally-active insurance groups (IAIGs); (ii) the Insurance Capital Standard – this is being developed with the purpose of creating a common language for supervisory discussions of group solvency of IAIGs to enhance global convergence among group capital standards; and (iii) the holistic framework for the assessment and mitigation of systemic risk in the insurance sector.

[Read more](#)

### **PRA policy statement on maintenance of transitional measures on technical provisions**

On 14 November, the PRA published a policy statement on the maintenance of transitional measures on technical provisions (TMTPs) under Solvency II (PS25/19). In addition, the PRA has also published its final updated supervisory statement (SS6/16) on maintenance of the transitional measure on technical provisions under Solvency II. The final policy is intended to give further clarity on the consistency on Solvency I and Solvency II methodologies and to provide additional guidance for firms seeking to simplify the recalculation methodology of the TMTPs. The expectations set out in SS6/16 come into effect on 14 November.

[Policy Statement](#)

[Supervisory Statement](#)

### **PRA statement on French response to EIOPA Brexit recommendations**

On 12 November, the PRA published a statement following comments made by the French regulator, ACPR, in response to EIOPA's recommendations for insurers with regard to cross-border services in the EU in the event of a hard Brexit. The ACPR has indicated in its response that it does not intend to comply with recommendation 6, which relates to insurance policies originally sold in the UK by UK insurers to policyholders now resident, or established, in France. As per the ACPR statement, to make use of the French run-off ordinance, UK insurers must have appropriate passports to carry out business in France in place on exit day. The PRA and the FCA encourage firms to seek legal advice and consider any risk arising from the ACPR approach to affected policyholders as soon as possible. This should include consideration of whether firms may wish to have any passports to carry out business in France in place before exit day to enable the use of the French Run-Off Ordinance.

[Read more](#)

## **MARKETS AND MARKETS INFRASTRUCTURE**

### **Trade associations letter to EC to extend Brexit temporary equivalence for UK CCPs**

On 12 November, AFME published a letter, sent jointly with 13 other trade associations to the EC regarding temporary equivalence and recognition in relation to UK CCPs. In the letter, the joint associations call on the EC to: (i) extend the temporary recognition for UK CCPs until ESMA has completed its scheduled review of recognition decisions in existence as at entry into force of the EMIR 2.2 Regulation; and (ii) extend the

temporary equivalence for UK CCPs until three months after that date to allow UK CCPs to serve termination notices to EU clearing members if their recognition is withdrawn following this review. Without confirmation, UK CCPs will need to start serving members termination notices in December in order to comply with the three-month notice period requirements in time for 30 March 2020.

[Read more](#)

### **Working group on euro risk-free rates recommends fallback arrangements for users of €STR**

On 12 November, the working group on euro risk-free rates published its report on fallback arrangements for the euro short-term rate (€STR). The working group recommends market participants to consider existing methodological review procedures of €STR and the policies and procedures in case of the possible cessation of the €STR, along with fallback provisions provided in the EONIA to €STR Legal Action Plan, as sufficient contingency to serve as fallback measures for €STR.

[Read more](#)

### **Securitisation Regulation RTS specifying information to be provided for STS notification requirements**

On 12 November, the EC published a Delegated Regulation supplementing the Securitisation Regulation in relation to regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements. The Delegated Regulation will enter into force 20 days after publication in the OJ.

[Read more](#)

### **ESMA publishes final reports on tiering, comparable compliance and fees for TC-CCPs under EMIR 2.2**

On 11 November, ESMA published the following final reports relating to EMIR 2.2: (i) final report on criteria for tiering under Article 25(2a) of EMIR 2.2 - this final report contains ESMA's technical advice to the EC on how to further specify the criteria for tiering; (ii) final report on comparable compliance under Article 25a of EMIR 2.2 – tier 2 TC-CCPs will have to show how compliance with the requirements applicable in their home country also satisfies the requirements under EMIR 2.2; and (iii) final report on ESMA fees for TC-CCPs under EMIR 2.2 – this report details the fees that ESMA will charge for each category of TC-CCPs, as well as the payments and reimbursement conditions.

[Final Report on Criteria for Tiering](#)

[Final Report on Comparable Compliance](#)

[Final Report on fees](#)

### **Council adoption of SME growth market reform regulation**

On 8 November, the Council of the EU announced that it had adopted the proposal for a regulation to amend MiFID II, MAR and the Prospectus Regulation with regards to the promotion of the use of SME growth markets. The text of the amending Regulation is in the same form as that adopted by the EP on 18 April, subject to the amendments made by a corrigendum approved by the EP on 21 October. The adopted text will be signed in the week commencing 25 November, following which it will be published in the OJ.

[Read more](#)

### **Council of EU adopts covered bond legislative reform package**

On 8 November, the Council of the EU adopted a set of new rules on harmonised product requirements and supervision of covered bonds, in order to ensure a high level of investor protection. The framework specifies a common definition for receiving an EU covered bond label and benefit from preferential capital treatment. The texts of the covered bond reform package comprises a Directive on the issue of covered bonds and covered bond supervision, and a Regulation amending the Capital Requirements Regulation regarding covered bond exposures. The texts will be signed in Strasbourg during the week of 25 November and then published in the OJ.

[Covered Bonds Directive](#)

[Covered Bonds Regulation](#)

### **Delegated Regulation to align the auctioning of allowances with the EU ETS rules**

On 8 November, Commission Delegated Regulation (EU) 2019/1868 of 28 August amending Regulation (EU) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the EP and of the Council was published in the OJ. The Delegated Regulation makes changes to take account of: (i) the new rules for Phase IV (2021-30) introduced by the EU ETS Phase IV Directive 2018; and (ii) the fact

that the emissions allowances (EUAs) have been classified as financial instruments under MiFID II since the beginning of 2018. The Delegated Regulation will enter into force on 28 November.

[Read more](#)

## **PRUDENTIAL REGULATION**

Please see the Markets and Markets Infrastructure section for an update on the Council of the EU's adoption of covered bond legislative reform package.

### **BCBS consultation on revisions to market risk disclosure requirements**

On 14 November, the BCBS published a consultative document on proposed revisions to market risk disclosure requirements. In the consultative document, the BCBS is proposing to introduce a "traffic light" approach for capital requirements as a consequence of the outcome of the profit and loss attribution (PLA) test for banks that use the internal models approach. The result of failing the PLA test has been revised from the former binary pass-or-fail outcome to a three-tiered "traffic light" approach with an intermediate "amber zone." Another significant change that the BCBS proposes to introduce is the simplified standardised approach as an alternative to calculate capital requirements for market risk. The deadline for comments on the proposals is 14 February 2020.

[Read more](#)

### **BCBS consultation on voluntary disclosure of sovereign exposures**

On 14 November, the BCBS published a consultative document on voluntary disclosure templates of banks' sovereign exposures. The templates in the consultative document build upon the ideas outlined in the BCBS' 2017 discussion paper. However, there are some important changes made to the templates, such as: (i) the classification into types of sovereign exposures used in the templates proposed in this chapter are consistent with the credit risk framework, not with the specific classification proposed by the 2017 discussion paper; (ii) the market risk definitions used for the trading book sovereign exposures have been aligned with the January revised market risk standard; and (iii) currency denomination breakdown no longer require disclosure of exposure amounts before the application of credit conversion factors or credit risk mitigation, which should prevent the unwarranted disclosure of central bank liquidity assistance. The deadline for comments is 14 February 2020.

[Read more](#)

### **EBA report on NPLs**

On 8 November, the EBA published a report on progress made and challenges ahead in relation to non-performing loans (NPLs). The EBA found, among other things, that: (i) asset quality has improved significantly since 2015; (ii) NPL volumes have decreased by 50% since 2015, but country dispersion remains wide; (iii) SMEs and CREs remain the riskiest lending segments, despite significant reductions in NPL ratios; (iv) coverage ratios have largely remained constant in the last 4 years, with high dispersion between countries and across banks; and (v) legacy assets are still material, and ongoing monitoring is required in light of a weakening economic environment.

[Read more](#)

### **Council of EU adopts legislation on investment firms**

On 8 November, the Council of the EU adopted two new texts in relation to prudential requirements and supervisory arrangements for investment firms. The reform adapts the requirements to the firms' risk profiles and business models while preserving financial stability. The largest firms that are considered systemic will be required to comply with the full banking prudential regime and will be supervised as credit institutions, whilst smaller firms will be governed by a new bespoke regime with dedicated prudential requirements. The texts will be signed in Strasbourg during the week of 25 November, after which they will be published in the OJ.

[Text of the Investment Firms' Regulation](#)

[Text of the Investment Firms' Directive](#)

## **RECOVERY AND RESOLUTION**

### **FSB's eighth report on implementation of resolution reforms**

On 14 November, the FSB published its eighth report on the implementation of its resolution reforms. The report sets out its findings in relation to: (i) CCPs – further strengthening the resilience and resolvability of CCPs has become an FSB policy priority, which has been driven by OTC derivative market reforms. The

work will lead to the development of further guidance, on which the FSB will consult publicly in the first half of 2020; (ii) banks – G-SIBs have been made more resolvable through TLAC and other measures, however, challenges remain to determine the appropriate group-internal distribution of TLAC and management of non-pre-positioned resources; and (iii) insurers – the FSB’s resolvability monitoring exercise for the insurance sector highlighted challenges in funding in resolution and in resolution planning stemming from internal interconnectedness in particular. Ongoing work on resolution planning focuses on intragroup funding, intragroup reinsurance, centralised cash pooling, intragroup guarantees, and operational interconnections. The FSB concludes that strengthening resolvability remains necessary across all sectors.

[Read more](#)

## **SUSTAINABLE FINANCE**

### **Council of EU adopts legislation on sustainable finance**

On 8 November, the Council of the EU adopted two sustainable finance regulations aimed at making finance greener and aligning it with the objectives of the Paris agreement on climate change. The first reform introduces disclosure obligations regarding how companies incorporate economic, social and governance factors in their investment decisions. The second reform creates new benchmarks with the intention of giving greater information and clarity on an investment portfolio’s carbon footprint. The texts will be signed in Strasbourg during the week of 25 November, after which they will be published in the OJ.

[Disclosure Regulation](#)

[Low Carbon Benchmarks Regulation](#)

## **TAXES/LEVIES**

### **FCA consultation on regulatory fees and levies for 2020/21**

On 13 November, the FCA published a consultation paper (CP19/30) on regulatory fees and levies for 2020/21. The FCA proposes, among other things: (i) a new charge of £5,000 per year for proxy advisors; (ii) to use income as the basis for calculating periodic fees for MTFs, OTFs and ROIEs; and (iii) changes to special project fees, designated professional bodies, the illegal money lending levy and persons registered under the MLRs 2017. The deadline for comments is 13 January 2020.

[Read more](#)

## **OTHER DEVELOPMENTS**

### **EBA consultation on amended RTS and ITS on passport notification**

On 14 November, the EBA published a consultation paper on draft technical standards and implementing technical standards on passport notifications under the Capital Requirements Directive. The EBA states that the two Commission Regulations have significantly contributed to the convergence of supervisory practices across the EU, smoothening passport notifications by credit institutions and deepening the internal market. However, practice has shown the need for clarification as to the information to be provided by credit institutions in order to allow a better assessment of the passport notification and the credit institution’s arrangements to carry on the planned activities. The proposed amendments relate to both the information requirements set out in Regulation 1154/2014 and to the forms and templates contained in the Annexes to Commission Implementing Regulation (EU) No 926/2014. The deadline for comments is 13 February 2020.

[Read more](#)

### **EFDI guidance paper on deposit guarantee schemes’ alternative measures to pay-out**

On 14 November, the European Forum of Deposit Insurers (EFDI) published a state of play and non-binding guidance paper on deposit guarantee schemes’ (DGSs) alternative measures to pay-out. The aim of the paper is to highlight the benefit of measures taken under Articles 11(3) and (6) of the Deposit Guarantee Schemes Directive (DGSD) and to identify the legal and technical burdens for the application of alternative measures to pay-outs. The paper also outlines recommendations for the implementation of measures under Articles 11(3) and (6) in a banking crisis in relation to, among other things: (i) evaluating the cost-effectiveness of alternative measures; and (ii) assessing whether the costs borne by the DGS do not exceed the net amount of compensating covered depositors at the credit institution concerned;

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