

International Regulatory Update

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

PRIIPs: EU Commission extends application date of Regulation and RTS

The EU Commission has [proposed](#) extending the date of application of the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) by one year to 1 January 2018. The regulation introduces a key information document (KID), which is designed to present the main features of an investment product in a simple and accessible manner.

In September 2016 the EU Parliament rejected the regulatory technical standards (RTS) that underpin the format and methodology used to compile the KID, and along with several Member States, called for a postponement in the entry into application of the Regulation. The Commission believes that the objectives of the PRIIPs Regulation would be better served by having the RTS already in place.

The Commission has now called on the three European Supervisory Authorities (ESAs) to resubmit the RTS and make targeted changes to certain areas such as multi-option products, performance scenarios, comprehension alert and presentation of insurance-related costs. The Commission has also invited the ESAs to develop guidance on the practical application of credit risk mitigation factors under the RTS for insurers.

The ESAs have six weeks to resubmit the revised RTS to the Commission. Once the revised RTS have been adopted by the Commission they will be subject to scrutiny by the Parliament and the Council. The revised PRIIPs framework is expected to be in place during the first half of 2017 and apply as of 1 January 2018.

CSDR: EU Commission adopts delegated act and technical standards

The EU Commission has [adopted](#) a delegated act, three RTS and two implementing technical standards (ITS) to implement specific provisions of the Central Securities Depositories Regulation (CSDR).

The package of measures adopted lays down specific requirements to ensure that central securities depositories are prudentially sound, have high quality risk management and corporate governance standards and meet appropriate capital requirements. The measures also clarify how supervisors should cooperate and exchange information and sets penalties for settlement failures and measures to

ensure the transparency of internalised settlements which take place outside central securities depositories.

Benchmarks Regulation: ESMA publishes final technical advice

The European Securities and Markets Authority (ESMA) has published the [final report](#) on its technical advice to the EU Commission under the Benchmarks Regulation.

This follows a consultation on draft technical advice published in May 2016. In the final report, ESMA provides advice on:

- how benchmarks' reference values can be calculated by using data reporting structures under existing EU rules such as MiFID2 and EMIR;
- some of the criteria for deciding when third country benchmarks can be endorsed for use in the EU; and
- what constitutes making a benchmark figure available to the public.

ESMA aims to publish a second final report on technical standards under the Benchmarks Regulation by 1 April 2017.

The Commission will prepare the final rules for benchmarks, which should enter into force by 1 January 2018.

MiFID2: ESMA consults on transparency rules for package orders

ESMA has published a [consultation](#) on draft RTS on the treatment of package orders under MiFID2 and MiFIR. A pre-trade transparency regime for package orders was introduced under the Regulation.

Package transactions are interlinked financial transactions comprising various instruments which firms execute jointly in order to reduce transaction costs and for risk management purposes. The consultation presents first the treatment of packages for transparency purposes and then discusses the methodology considered by ESMA for determining package orders for which there is a liquid market.

ESMA is required to submit draft RTS to the EU Commission by 28 February 2017. In order to meet the Commission's deadline ESMA has not had time to publish an initial discussion paper but is consulting on a first draft of the RTS based on information received from market participants. ESMA emphasises that the consultation paper and draft RTS reflect ESMA's initial reflections on the topic, given the reduced time available for delivering the draft RTS. ESMA advises that it may significantly amend the

draft RTS in light of feedback before submitting to the Commission.

Comments to the consultation close 3 January 2017.

MAR: ESMA reissues translations of market soundings guidelines

ESMA has [reissued](#) the official translations of its final guidelines on the implementation of the Market Abuse Regulation (MAR) for individuals receiving market soundings. The re-publication is due to a linguistic issue with the Polish translation and does not affect the substance of other guidelines, which remain unchanged. National competent authorities now have until 10 January 2017 to confirm whether or not they intend to comply with the guidelines.

CRD 4: EBA consults on proposed technical standards on the authorisation of credit institutions

The European Banking Authority (EBA) has published a [consultation](#) on draft RTS and ITS on the authorisation of credit institutions under the Capital Requirements Directive (CRD 4).

The draft RTS set out a list of information to be provided in an initial application by undertakings seeking to obtain the authorisation referred to in Article 8(1) of CRD 4, such as the identification details and historical information regarding the applicant credit institution.

The draft ITS set out a form to be used by applicants seeking to obtain authorisation under Article 8(1) as well as relevant procedures and requirements relating to the submission of such applications and to the approach to be taken in respect of incomplete applications.

Comments to the consultation close 8 February 2017.

Once the draft technical standards have been finalised they will be submitted to the EU Commission.

EBA reports on counterparty and market risk frameworks

The EBA has published a [report](#) on two international frameworks proposed by the Basel Committee on Banking Supervision (BCBS): the first, a standardised framework for counterparty risk (CCR) and the second, a market risk framework (MKR) known as the fundamental review of the trading book (FRTB). The report focuses on the potential impact of these two frameworks, for both large and small firms, and issues recommendations on their implementation.

The report includes the following recommendations:

- increasing the threshold value for small trading book business below which institutions are able to use the non-trading book approach for the computation of capital requirements;
- introducing a threshold for small derivative businesses below which institutions are allowed to use simple approaches currently used for the computation of CCR capital requirements, subject to recalibration;
- considering additional proportionality solutions for banks outside the traditional scope of the Basel standards that could include, for both CCR and MKR purposes, the use of approaches that are simpler and more conservative than the ones developed in Basel;
- implementing large technical parts of these international standards using delegated acts or mandates for Regulatory Technical Standards (RTS), so as to allow the EBA to reflect key changes in the regulation in a timely fashion; and
- including more granularity in COREP reporting to provide a better overview of institutions' CCR exposures and the information needed to monitor the computation of the different proportionality thresholds included in legislation.

Anti-Money Laundering: EU Council agrees to grant tax authorities access to beneficial ownership information

The EU Council [has agreed](#) on a proposed Directive amending the fourth Anti-Money Laundering Directive (AMLD 4) to grant tax authorities access to information on the beneficial ownership of companies held by authorities responsible for the prevention of money laundering. Granting access to this information is intended to ensure tax authorities are better able to fulfil their monitoring obligations and thereby help prevent tax evasion and fraud. Under the proposed Directive, tax authorities will be able to access information on the beneficial ownership of financial account holders in intermediary structures.

The EU Parliament's Committees on Economic and Monetary Affairs (ECON) and Civil Liberties, Justice and Home Affairs (LIBE) have published a [draft report](#) on the proposed Directive. The draft report sets out a number of proposed amendments to the text of the Directive, but still needs to be voted on by the Parliament.

The Directive will be formally adopted by the Council once the Parliament has given its opinion and will apply from 1 January 2018.

ECON Committee publishes report on retail financial services

The ECON Committee has published a [report](#), dated 17 October 2016, on the EU Commission's December 2015 Green Paper on retail financial services. The report welcomes the Green Paper initiative and includes a draft resolution which, amongst other things:

- highlights the need to develop initiatives and instruments that improve competition and allow consumers to identify and compare safe, sustainable and simple products within the range of products available to them;
- notes shortcomings in the national implementation of MiFID2 which, it argues, have led to labour-intensive reporting requirements for intermediaries that do not effectively enhance consumer protection and go beyond MiFID2 itself, and calls for lessons to be learned from this experience;
- calls on the Commission to address the issue of mis-selling of financial products and services and, in particular, calls on the Commission to monitor closely the implementation of new rules under MiFID2 which ban commission for independent financial advisers and restrict its use for non-independent advisers, and on the basis of that monitoring to consider whether those restrictions should be tightened;
- emphasises that, in order for the single market in retail financial services to be efficient and dynamic, there should be no unnecessary or unfair differences between euro and non-euro Member States, while arguing that the adoption of the single currency by all Member States without exception would make the single market for retail financial services more efficient and coherent;
- calls on the Commission to set up an EU comparison portal covering most or all parts of the retail financial services market;
- calls on the Commission to examine new approaches with the potential to give companies greater regulatory flexibility to experiment and be able to innovate, while maintaining high levels of consumer protection and safety;
- encourages the Commission to monitor the transposition and implementation of the Mortgage Credit Directive (MCD) and to analyse the impact of this legislation on the retail financial services market;

- asks the Commission to conduct, with the Member States, a joint analysis of the implementation and impact of EU legislation on retail financial services; and
- asks the Commission to review the impact of the Credit Ratings Agencies Regulation in terms of products sold to retail consumers.

The draft resolution will now be voted on by the Parliament's plenary session.

European Deposit Insurance Scheme: ECON Committee publishes draft report

The ECON Committee has published its [draft report](#) on the EU Commission's proposal for a regulation establishing a European Deposit Insurance Scheme (EDIS). The draft report highlights the need to achieve a balance in three key areas in order to reach an agreement on EDIS – content, timing and conditionality – and sets out proposed amendments to the text of the regulation.

CPMI reports on fast payments services

The Committee on Payments and Market Infrastructures (CPMI) has published a [report](#) on the development and importance of fast payments services.

The report sets out key characteristics of fast payments, takes stock of different initiatives in CPMI jurisdictions, analyses supply and demand factors that may foster or hinder their development, sets out their benefits and risks and analyses potential implications for different stakeholders, with a particular focus on central banks.

The CPMI suggests that central banks should consider their role and determine what support is needed in order to foster the development of safe and efficient fast payments, including potential changes in their operational services.

Credit rating agencies: IOSCO consults on other products

The International Organization of Securities Commissions (IOSCO) has published a [consultation report](#) on credit rating agencies (CRAs), investigating how market participants use non-traditional products or services such as private ratings, indicative ratings, credit default swap spreads, portfolio assessment tools etc., offered by CRAs. The consultation report aims to clarify information provided by respondents to two IOSCO questionnaires on CRA products published in 2015. The consultation report also asks for comments on IOSCO's current understanding of these CRA products and services and how they differ from the traditional issuer-paid or subscriber-paid credit ratings.

Comments are due by 5 December 2016.

Bank of England sets out approach to setting MREL

The Bank of England has published its [policy](#) on setting the Minimum Requirement for own funds and Eligible Liabilities (MREL) under the EU Bank Recovery and Resolution Directive (BRRD).

The Bank will set MREL for individual institutions by reference to three broad resolution strategies, reflecting its legal obligations, judgement of risk over the potential disruption to critical economic functions, and the need to apply a proportionate approach:

- modified insolvency process – for small firms, which are assessed as not providing services of a scale considered critical, a pay-out by the Financial Services Compensation Scheme (FSCS) of covered depositors would meet the Bank’s resolution objectives, and these institutions will meet their MREL simply by meeting their existing capital requirements;
- partial transfer – where firms are considered to be too large for a modified insolvency process, MREL will be set at a level which permits a transfer of critical parts of the business to take place; and
- bail-in – the largest and most complex firms will be required to maintain sufficient MREL to absorb losses and, in the event of their failure, be recapitalised so that they continue to meet the Prudential Regulation Authority (PRA) conditions for authorisation, with the aim that the firm is able to operate without public support.

The Bank will set MREL in two phases:

- interim requirements by 2020 (with a 2019 requirement for G-SIBs); and
- end-state requirements by 2022, subject to a review by the end of 2020.

The Bank has indicated that it will provide more detail to firms on the MREL policy that applies to them by the end of 2016.

From 1 January 2019, UK G-SIBs will be required to meet the minimum requirements set out in the Financial Stability Board’s standard for Total Loss-Absorbing Capacity (TLAC) of the higher of 16% of risk weighted assets (RWAs) or 6% of leverage exposures.

From 1 January 2020:

- UK G-SIBs and D-SIBs (which have bail-in resolution strategies) will be required to meet an interim MREL equivalent to the higher of:
 - two times their Pillar 1 capital requirements and one times their Pillar 2A capital requirements, i.e. (2 x Pillar 1) plus (1 x Pillar 2A); or
 - 6% leverage exposures.
- Other bail-in / partial transfer institutions will be required to meet an MREL of 18% RWA.

From 1 January 2022, and subject to review before the end of 2020:

- UK G-SIBs will be required to meet an end-state MREL equivalent to the higher of:
 - two times the sum of Pillar 1 and Pillar 2A, i.e. 2 x (Pillar 1 plus Pillar 2A); or
 - the higher of two times the applicable leverage ratio requirement or 6.75% of leverage exposures (in line with the TLAC standard);
- D-SIBs and any other bail-in/transfer institutions will be required to meet an end-state MREL equivalent to the higher of:
 - two times the sum of Pillar 1 and Pillar 2A, i.e. 2 x (Pillar 1 plus Pillar 2A); or
 - if subject to a leverage ratio requirement, two times the applicable requirement (e.g. 6% if the leverage ratio is 3%).

The PRA has published a policy statement ([PS30/16](#)), which provides feedback on responses to consultation paper CP44/15 and sets out the final supervisory statement ([SS16/16](#)) on the relationship between MREL and buffers, and MREL and threshold conditions. SS16/16 sets out the PRA’s expectations on the relationship between MREL and both capital and leverage ratio buffers, as well as the implications that a breach of MREL would have for the PRA’s consideration of whether a firm is failing, or likely to fail, to satisfy the threshold conditions.

Bank of Italy publishes new provisions on deposit taking activity undertaken by entities other than credit institutions and on social lending business

The Bank of Italy has [published](#) new measures concerning deposit taking activity undertaken by entities other than credit institutions and on social lending business. This new set of provisions is intended to enhance the level of protection of the general public.

The provisions replace Chapter 2, Title IX of the Bank of Italy's Circular no. 229 of 21 April 1999 (Supervisory Instructions for banks) and focus on:

- deposit taking activity undertaken by financial and non-financial companies through the issue of financial instruments;
- deposit taking activity undertaken by cooperative companies from the relevant shareholders; and
- social lending (or lending based crowd-funding) activities.

The provisions come into force from 1 January 2017.

Italian Government approves legislative decree transposing SSM Regulation

The Italian Government has published a [press release](#) stating that the final version of a legislative decree intended to amend the Italian legal framework in light of Regulation (EU) 1024/2013 conferring specific tasks on the European Central Bank (ECB) concerning policies relating to the prudential supervision of credit institutions has been approved.

In particular, Regulation (EU) 1024/2013 established the Single Supervisory Mechanism (SSM), granting the ECB a supervisory role to monitor the financial stability of EU credit institutions.

Although the SSM Regulation is directly applicable, the Italian Government has decided to produce this piece of legislation to clarify the new distribution of supervisory powers and functions between the Bank of Italy and the ECB and to delete those provisions which were no longer consistent with the Regulation.

The text of the decree will be made available shortly with its publication in the Official Gazette.

Italian Government approves legislative decree implementing PRIIPs Regulation

The Italian Government has published a [press release](#) stating that the final version of a legislative decree intended to implement the EU PRIIPs Regulation has been approved.

The PRIIPs Regulation is aimed at providing a better understanding and comparability of certain investment and insurance products and the related risk profiles for retail investors.

The decree identifies CONSOB (the Italian Securities Regulator) and IVASS (the Italian Insurance Regulator) as the national authorities which shall ensure compliance with

this new set of obligations. Moreover, it also sets out rules on 'internal control systems' which regulated entities must enhance to allow their employees to notify breaches (whistleblowing) and maximum and minimum thresholds for pecuniary sanctions applicable in case of breach of the PRIIPs Regulation, with different amounts depending on whether they are committed by legal or natural persons.

The text of the decree will be made available shortly with its publication in the Official Gazette.

RECENT CLIFFORD CHANCE BRIEFINGS

Brexit – Trade and Treaties

After the historic vote to leave the EU, the UK must now reconsider its trading relationships with countries around the world. Here, Clifford Chance experts together with Professor Jim Rollo of the University of Sussex, consider how companies should prepare themselves for the changes that are to come, specifically analysing what free trade agreements encompass; what the WTO is and how it works; and what third-state agreements might involve.

https://www.cliffordchance.com/briefings/2016/11/brexit_-_trade_andtreaties.html

Broad international recognition afforded to BRRD resolution measures

Whether assets have or have not been transferred to a bridge bank under the BRRD depends primarily upon the law governing the resolution measures. In order to achieve the objectives of the BRRD, the Court of Appeal has given a generous interpretation to what constitute resolution measures and to English law's obligation to recognise those measures.

This briefing paper discusses the judgment.

https://www.cliffordchance.com/briefings/2016/11/broad_internationalrecognitionaffordedtobrr.html

Companies in Russia are to collect information on their ultimate beneficial owners starting end of December 2016

Federal Law dated 23 June 2016 #215-FZ amended Russian AML legislation with effect from 21 December 2016. From that date, legal entities will be obliged to collect and maintain information on their ultimate beneficial owners (UBOs). No grandfathering or transitional provisions are contemplated.

This briefing paper discusses the law.

https://www.cliffordchance.com/briefings/2016/11/companies_in_russiaaretocollectinformationo.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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