

# International Regulatory Update

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### **PRIIPs: Delegated Regulation setting out RTS on KIDs published in Official Journal**

[Commission Delegated Regulation \(EU\) 2017/653](#) on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) laying down regulatory technical standards (RTS) with regard to the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents has been published in the Official Journal.

In September 2016 the EU Parliament rejected the original RTS adopted by the Commission in June 2016 and returned them to the Commission for revision. The amendments included in the Delegated Regulation concern multi-option PRIIPs, performance scenarios, comprehension alert and presentation of administrative costs in relation to biometric components of insurance-based investment products.

The Delegated Regulation will enter into force on 2 May 2017 and will apply from 1 January 2018.

### **Capital Markets Union: EU Commission consults on conflicts of laws regarding securities and claims**

The EU Commission has launched a [consultation](#) on conflict of laws rules for third party effects of transactions in securities and claims, which is intended to examine the possibility of making conflict of laws rules on securities and claims ownership more consistent across the EU.

The EU Commission's Capital Markets Union (CMU) Action Plan, adopted in September 2015, envisages action on securities ownership rules and third party effects of assignment of claims in order to facilitate cross-border investing. The purpose of the consultation is to gather stakeholders' views on the practical problems and types of risks caused by the current state of harmonisation of the conflict of laws rules on third party effects of transactions in securities and claims and to gather views on possibilities for improving such rules. Responses will feed into the Commission's assessment of legal risks, the problem's scale and possible EU action.

Comments on the consultation are due by 30 June 2017.

Alongside the consultation, the Commission has also established an expert group on conflict of laws regarding securities and claims, which is intended to provide the Commission with specialist advice on private international law and financial markets. An impact assessment on the problems to be addressed and possible solutions was previously published in February 2017.

### **EU Commission Vice President and ESMA Chair discuss Capital Markets Union and highlight implications of Brexit**

EU Commission Vice President Dombrovskis has delivered the [opening remarks](#) at the public hearing on the CMU mid-term review. The remarks were intended to take stock of progress and highlight that more than half of the initially programmed 33 actions have been delivered, including:

- an agreement on the simplification of prospectuses;
- legislative and non-legislative actions on venture capital;
- the Commission's Action Plan on consumer financial services;
- proposals on preventative restructuring; and
- proposals to tackle the bias against equity in national tax systems.

Moreover, the Commission has also been working on legislative proposals to address remaining sources of friction to cross-border passporting of funds. Among other things, Dombrovskis called for the co-legislators to commit to the success of the proposals.

The Vice President also highlighted investment challenges that were not foreseen when the CMU Action Plan was published, in particular the UK Government's intention for London, the EU's largest capital markets hub, to leave the Single Market. Dombrovskis set out his view that particular consideration will need to be paid to market segments where the UK accounts for over 70% of current EU activity. He also called for the European Supervisory Authorities (ESAs) to have powers to deal with observed weaknesses in national enforcement and, through the Commission's consultation on ESAs review, reflect on targeted changes to the powers of the European Securities and Markets Authority (ESMA) in particular. The speech also highlighted responses to the Commission's public consultation on fintech, which the Commission intends to draw on to identify new issues that may need to be integrated into the CMU policy framework.

At the close of the public hearing, the Chair of ESMA, Steven Maijor, delivered the [keynote address](#) which focussed on supervisory convergence. Among other things, Maijor illustrated ESMA's convergence work with the examples of CCPs, contracts for difference (CFDs) and binary options, and the UK exit from the EU.

On Brexit, the speech set out details of ESMA's current work towards developing a convergent position on key

issues to be taken into account when market participants move some of their activities from the UK to the EU27, which ESMA intends will avoid competition on regulatory and supervisory practices between Member States and a possible race to the bottom, which could be detrimental to the CMU. In summer 2017, ESMA intends to publish:

- a general opinion on cross-cutting issues, such as how national competent authorities (NCAs) should ensure ongoing effective supervision of relocated activity, in particular with regard to outsourcing and delegation of certain functions; and
- three specific opinions to address asset management, investment firms and secondary markets, to provide sector specifications on the aspects described in the general opinion.

ESMA is also working to establish a mechanism whereby NCAs would share live cases at EU level regarding UK market participants seeking authorisation in the EU27, in order that ESMA may coordinate the consideration of key issues in the authorisation procedures for these entities to reach common views on significant relocation files.

The speech also called for a structural upgrade to ESMA's convergence powers and a bolder strategy on financial data.

#### **ECB publishes FAQs on its role in supervising euro area banks**

The European Central Bank (ECB) has [published](#) a set of frequently asked questions (FAQs) about its role in supervising euro area banks. Topics include the ECB's expectations concerning authorisations and banking licences, internal governance and risk management, internal models in banks, and ongoing supervision. The ECB intends to update the FAQs with additional material as appropriate over the coming months.

In the context of Brexit, the ECB is also holding a technical workshop on relocating to the euro area to provide information to banks about the supervisory approach in the euro area and about requirements by ECB Banking Supervision for banks potentially relocating business, regardless of the euro area Member State they may be considering for their operations. The technical workshop is scheduled for 4 May 2017 and will take place at the ECB's premises in Frankfurt.

#### **EMIR: ESMA issues opinion on portfolio margining requirements**

The European Securities and Markets Authority (ESMA) has issued an [opinion](#) on portfolio margining requirements under Article 27 of Commission Delegated Regulation (EU) 153/2013 with regard to RTS on requirements for central counterparties (CCPs).

Paragraph 1 of Article 27 of the RTS allows for a CCP to offset or reduce the required margin across the financial instruments that it clears if the price risk of one financial instrument or a set of financial instruments is significantly and reliably correlated with the price risk of other financial instruments, and specifies the conditions on how much offsets can be allowed, allowing a CCP to apply a reduction of up to 100% of the difference between the sum of the margins for each product calculated on an individual basis and the margin calculated based on a combined estimation of the exposure for the combined portfolio where a CCP is not exposed to any potential risk from the margin reduction.

Under the European Market Infrastructure Regulation (EMIR) and its implementing measures, there is no specific definition of what constitutes the same instrument or product.

ESMA's opinion aims to clarify:

- the cases where margin reductions can be up to 100%; and
- when two contracts can or cannot be considered as the same instrument for the purpose of portfolio margining.

#### **CRR: EBA issues final draft implementing technical standards on supervisory reporting**

The European Banking Authority (EBA) has published its [final draft implementing technical standards](#) (ITS) amending the EU Commission's Implementing Regulation (EU) 680/2014 on supervisory reporting under the Capital Requirements Regulation (CRR). The amended ITS include:

- new information on sovereign exposures;
- changes to operational risk;
- changes to additional monitoring metrics for liquidity; and
- Q&A-based changes and other minor amendments.

The changes will form part of the EBA reporting framework version 2.7, which will be applicable for submissions of data from March 2018.

### EBA outlines plan to update supervisory review and evaluation process framework

The EBA has published a [roadmap](#) outlining its plans to update the common European framework for the supervisory review and evaluation process (SREP) in 2017-2018.

The roadmap explains the multi-stage approach the EBA intends to follow in updating the EU SREP framework in 2017-2018 and beyond, and summarises the ongoing policy initiatives affecting Pillar 2 and SREP that will need to be reflected in the revised EBA guidelines on Pillar 2 topics.

In particular, the roadmap explains the approach that the EBA is planning to take in relation to:

- updating its guidelines on common procedures and methodology for SREP;
- updating its guidelines on technical aspects of the management of interest rate risk arising from non-trading activities in the context of the supervisory review process; and
- finalising its draft guidelines on stress testing and supervisory stress testing following public consultation.

The EBA intends to consult on the first revision of the SREP framework by November 2017, and to implement it by 2018.

### FSB consults on framework for evaluating effects of G20 financial regulatory reforms

The Financial Stability Board (FSB) has launched a [consultation](#) on its proposed framework for post-implementation evaluation of the effects of the G20 financial regulatory reforms. The framework sets out suggested processes and analytical approaches for the evaluation of the reforms, and is intended to assist in, amongst other things, determining whether the reforms are achieving their intended outcomes. The FSB is seeking feedback on the framework's scope, concepts, methodologies and approaches, as well as views on useful empirical tools and the challenges inherent in evaluations.

Comments are due by 11 May 2017.

### Islamic Financial Services Board adopts guiding principles on disclosure requirements for Islamic Capital Market products

The Islamic Financial Services Board (IFSB) has approved the [guiding principles](#) on disclosure requirements for Islamic Capital Market (ICM) products, in particular sukuk

and Islamic collective investment schemes (ICIS). The principles, known as 'IFSB-19', form a disclosure framework for participants in the ICM sector, covering:

- the main stages of disclosure (initial, ongoing and point-of-sale);
- requirements for private offerings, government and multilateral issuances, and cross-border issuances with regard to sukuk;
- suggested applications to legal and Shariah-related disclosures, operations-related disclosures and disclosures for specialist ICIS; and
- structure-related disclosures and their liable parties.

IFSB-19 is intended to provide a basis for regulatory and supervisory authorities to set rules and guidance on disclosure requirements, and assess the adequacy of disclosure frameworks set by other organisations. It is also intended to facilitate cross-border offerings by harmonising the ICM sector's regulation and practice.

### FCA and PSR consult on UK implementation of PSD2

The Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR) have published consultations on the UK implementation of the recast Payment Services Directive (PSD2). The majority of PSD2 requirements must be implemented by 13 January 2018 and will be transposed in the UK through the Payment Services Regulations 2017, which will replace the Payment Services Regulations 2009. While the legislative framework is still in the process of being finalised, the FCA is consulting on proposed changes to the FCA Handbook, changes to rules, guidance and directions that apply to payment service providers (PSPs) and e-money issuers, as well as certain other providers of retail banking services, on the basis of HM Treasury draft legislation, draft RTS and guidelines. The PSR is consulting on its approach to monitoring and enforcement of the Regulations for which it has been appointed the competent authority.

The [FCA consultation paper](#) proposes a revised [approach document](#) to cover both the Payment Services Regulations 2017 and the E-money Regulations 2011, which would replace the payment services approach document issued in April 2009 and approach document for the e-money regime. The FCA also proposes certain changes to the FCA Handbook, including changes to the Perimeter Guidance Manual (PERG) and new directions that will apply to providers of excluded services. The FCA intends to publish a further consultation once the EBA has finalised certain guidelines and the final RTS have been published in the

Official Journal, which will include proposed forms, incident reporting and operational risk. The FCA expects to publish the second consultation in mid-2017.

The [PSR consultation](#) covers monitoring and enforcement of the following regulations under the Payment Services Regulations 2017:

- Regulation 61: information on ATM withdrawal charges;
- Regulation 103: prohibition on restrictive rules on access to payment systems;
- Regulation 104: indirect access to designated payment systems; and
- Regulation 105: access to bank accounts.

In order for stakeholders to easily respond to both consultations, the regulators are providing a single response point via the FCA and comments on both consultations are due by 8 June 2017.

Both the FCA and PSR intend to publish their final policy statements in the third quarter of 2017.

#### **Fintech: FCA publishes discussion paper on distributed ledger technology**

The FCA has published a discussion paper ([DP17/3](#)) on the future development of distributed ledger technology (DLT) in the markets that the FCA regulates.

The discussion paper focuses on business models emerging as a result of DLT, and how their potential risks and opportunities operate in the context of the regulatory framework. The FCA invites discussion particularly on:

- risks and opportunities that DLT presents to the FCA's statutory objectives of market integrity, consumer protection and competition; and
- whether any of DLT's characteristics make it challenging to fit DLT solutions into the regulatory framework, despite the FCA's approach of 'technology neutrality'.

Comments are due by 17 July 2017.

Following the publication of the discussion paper, the FCA intends to further engage with the fintech community through public events, supervisory work and various other channels.

#### **FAMR: FCA and HMT publish progress report and FCA consults on implementation**

The FCA and HM Treasury (HMT) have published a [progress report](#) on implementing the recommendations of the Financial Advice Market Review (FAMR). The FAMR

final report was published in March 2016 and set out 28 recommendations. It recommended that the FCA and HMT jointly issue a progress report after twelve months and this report will be the final update on progress before a review of the FAMR outcomes in 2019.

The FAMR recommendations focussed on advice on saving into a pension, taking income in retirement and investing, and envisaged action in three main areas:

- affordability, in particular ensuring mass-market advice is more cost-effective and engaging with automated technologies;
- accessibility, including proposals to help consumers engage more effectively with advice and guidance; and
- liabilities and consumer redress, with recommendations to make it clearer how the Financial Ombudsman Service (FOS) deals with consumer complaints and in relation to the funding of the Financial Services Compensation Scheme (FSCS).

Alongside the progress report, the FCA has also published the recommendations of the Financial Advice Working Group (FAWG), established in June 2016, which has conducted a significant amount of consumer research and has published three reports.

Alongside the report, the FCA has launched its first of two guidance consultations ([GC17/4](#)) on the implementation of FAMR recommendations, relating to:

- guidance to support firms offering non-advised services (FAMR Recommendation 3);
- guidance to support firms offering 'streamlined advice' on a limited range of consumer needs (FAMR Recommendation 4);
- standard types of information required as part of the fact find process (FAMR Recommendation 10); and
- a factsheet to set out what help employers and trustees can provide on financial matters without being subject to regulation (FAMR Recommendation 11).

The FCA intends to publish its feedback on the consultation in September 2017. It will issue a second guidance consultation in June 2017 and is expected to publish the complete package of measures in time to take effect in January 2018 in line with the Handbook changes implementing MiFID2 and the changes to the Regulated Activities Order (RAO). Comments on section four of the guidance consultation are due by 23 May 2017 and comments on the other sections are due by 11 July 2017.

### PRA publishes supervisory statement on remuneration

The Prudential Regulation Authority (PRA) has published a policy statement ([PS7/17](#)) and supervisory statement ([SS2/17](#)) on its expectations of firms regarding remuneration.

PS7/17 provides feedback on responses received to an earlier consultation (CP33/16) on the PRA's expectations on remuneration. As a result of the feedback received the PRA made minor changes to the supervisory statement.

SS2/17 sets out the PRA's expectations on how firms should comply with the requirements of the Remuneration Part of the PRA Rulebook, particularly in relation to:

- proportionality;
- material risk takers (MRTs);
- application of malus and clawback to variable remuneration;
- governing body and remuneration committees;
- risk management and control functions;
- remuneration and capital;
- risk adjustment (including long-term incentive plans);
- personal investment strategies;
- remuneration structures (including guaranteed variable remuneration, buy-outs and retention awards);
- deferral; and
- breaches of the remuneration rules.

SS2/17 replaces a number of remuneration policy documents and letters to firms.

### Polish Financial Supervision Authority adopts resolution on EBA guidelines on product oversight and governance arrangements for retail banking products

In connection with the guidelines of the EBA issued on 22 March 2016 on product oversight and governance arrangements for retail banking products, the Polish Financial Supervision Authority (PFSA) has [adopted](#) a resolution in which it advises credit and savings unions, national payment institutions and national electronic money institutions to apply the EBA guidelines with respect to new or significantly changed products, and to ensure that the guidelines are followed by the distributors of these products. The PFSA notes that the necessity to apply the guidelines by banks themselves directly results from EU law. The PFSA further sets out its expectation that the guidelines will also be applied by branches of credit institutions in Poland.

### Belgian Parliament adopts new law on regulation of payment systems

The Belgian Parliament has adopted a [new law](#) on payment systems. The law provides for a body of rules applicable to payment operations processors and for the supervision of the activities of a payment operations processor by the National Bank of Belgium. A payment operations processor is a person providing services that relate to the implementation of technical processes which are necessary, and specifically designed, for the execution of a payment operation.

The law applies to all payment operations processors (whether or not they are established in Belgium) involved in payments transactions where both the payment services provider of the payee and the payment services provider of the payer are operating in Belgium.

The law only regulates processors that are systemically important, being those that provide services for the processing of at least 125 million payment operations over the course of a year.

The rules set out in the new law on the regulation of payment systems relate to outsourcing, corporate reorganisations, and governance. The law does not, however, impose a licensing obligation for processors, nor does it contain own funds requirements.

The law will enter into force on the date of its publication in the *Moniteur belge* / *Belgische Staatblad*, which should occur in the coming weeks.

### SGX and SPDB sign MOU to enhance capital market ties between Singapore and China

The Singapore Exchange (SGX) and the Shanghai Pudong Development Bank (SPDB) have [entered into](#) a memorandum of understanding (MOU) at the 3rd Singapore-Shanghai Financial Forum, to strengthen capital market ties between Singapore and Shanghai. Under the MOU, SGX and the SPDB will work closely as strategic partners to raise the profile of Singapore's capital market. The MOU outlines several areas for closer collaboration with a focus on leveraging the international fund raising platform of the SGX. This includes SPDB recommending to Chinese enterprises to raise funds through initial public offers, listing of Real Estate Investment Trusts and Business Trusts, and issuance of Offshore Renminbi Bonds, including depositing their bonds where applicable, in the Central Depository of SGX.

The MOU will touch on financial and commodity markets, with the SPDB exploring opportunities in gold futures on SGX, and both parties exploring cooperation in other areas such as bulk commodities, freight, foreign exchange as well as derivatives and bond trading.

#### **ASIC Enforcement Review Taskforce consults on self-reporting of contraventions by financial services and credit licensees**

The Australian Government's ASIC Enforcement Review Taskforce has developed 12 [preliminary positions](#) on a set of reforms aimed at enhancing the effectiveness of the existing self-reporting regime for Australian Financial Services (AFS) licensees.

The paper proposes reforms that will:

- amend the 'significance test' which is used in deciding whether a breach is significant to warrant being reported to ASIC so that significance is to be determined by reference to an objective standard;
- reduce ambiguity as to when the time for reporting commences by modifying the trigger for reporting so that it is based on an objective assessment;
- extend an AFS licensees' reporting obligations to include significant breaches or other significant misconduct by an employee or representative; and
- provide ASIC greater flexibility to impose penalties for a failure to report breaches by introducing new and/or increased penalties for such failures to report.

The Taskforce also proposes that an equivalent self-reporting regime be introduced for credit licensees as legislation governing credit licensees does not currently have a regime for breach reporting.

Comments on these preliminary positions from interested parties are due by 12 May 2017.

## **CLIFFORD CHANCE BRIEFINGS**

### **Serious Fraud Office concludes deferred prosecution agreement with Tesco Stores Limited**

On 10 April 2017, a deferred prosecution agreement (DPA) agreed between the UK Serious Fraud Office (SFO) and

Tesco Stores Limited (TSL) was approved by the Court. This is the fourth DPA to be concluded since their introduction in February 2014. At this stage, only a few details may be reported in order to avoid prejudicing ongoing proceedings against three individuals.

This briefing paper discusses the case.

[https://www.cliffordchance.com/briefings/2017/04/serious\\_fraud\\_officeconcludesdeferre.html](https://www.cliffordchance.com/briefings/2017/04/serious_fraud_officeconcludesdeferre.html)

### **Implementation of CRD 4 – new rules on variable remuneration in banks**

On 1 May 2017 the regulation implementing the provisions of the Capital Requirements Directive (CRD 4) in Poland comes into force. Among other things, it introduces new restrictions on the granting and payment of variable remuneration in banks.

This briefing paper discusses the new rules on variable remuneration in banks.

[https://www.cliffordchance.com/briefings/2017/04/implementation\\_ofcrdivnewrulesonvariabl.html](https://www.cliffordchance.com/briefings/2017/04/implementation_ofcrdivnewrulesonvariabl.html)

### **Key changes to Australian competition laws in response to Harper Review are now on the table**

The Competition and Consumer Amendment (Competition Policy Review) Bill 2017 was tabled before Parliament on 30 March 2017. Together with the bill amending the misuse of market provisions tabled at the end of 2016, these two bills reflect the results of Government's consultation on the wide ranging competition law reforms proposed by the 2014 Harper Review and the subsequent exposure draft bill released on 5 September 2016.

This briefing paper identifies the proposed reforms which have survived the consultation process and those which have been scrapped or amended as a result of concerns raised, as well as briefly summarising the key implications of each for businesses operating in Australia.

[https://www.cliffordchance.com/briefings/2017/04/key\\_changes\\_to\\_australiancompetitionlawsi.html](https://www.cliffordchance.com/briefings/2017/04/key_changes_to_australiancompetitionlawsi.html)

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