

Financial Services Regulatory Update – December 2020 Round Up

15 January 2021

<p>Anti-Money Laundering – AML/CTF Colleges</p>	<p>The EBA published its first report on the functioning of anti-money laundering (“AML”) and counter-terrorist financing (“CTF”) colleges (here), on 15 December. The report outlines the progress made by competent authorities in setting up colleges to enhance supervisory cooperation for AML and CTF and provides examples of good and poor practices drawing on the lessons learnt from the first colleges established.</p>
<p>Anti-Money Laundering – Beneficial Ownership</p>	<p>The Central Bank of Ireland (“CBI”) has published updated Beneficial Ownership FAQs (here) which contain:</p> <ul style="list-style-type: none"> • a new section on unit trusts in the FAQs, which deal with the definition of a Beneficial Owner; and • new guidance for unit trusts when completing the submission template for the Central Beneficial Ownership Register.
<p>Anti-Money Laundering – Central Bank of Ireland</p>	<p>The CBI published a Dear CEO letter on compliance by so-called “Schedule 2 firms” with their anti-money laundering obligations (here), on 18 December. The letter provides an overview of findings identified by the CBI in the course of supervisory engagements with registered Schedule 2 Firms since January 2020, and sets out the CBI’s related expectations. The CBI will continue to conduct supervisory engagements with Schedule 2 Firms throughout 2021 and expects that firms will have reviewed the content of the CBI’s letter and retained evidence of any assessment conducted by the firm in relation to the CBI’s findings.</p>
<p>Anti-Money Laundering – MLD4’s interplay with Deposit Guarantee Scheme Directive (DGSD)</p>	<p>The EBA published an opinion on the interplay between MLD4 and the DGSD (here) on 14 December, which covers:</p> <ul style="list-style-type: none"> • the roles and responsibilities of different regulatory authorities in mitigating money laundering and terrorist financing risks, including co-operation between authorities along with information gathering and exchange; • the question of whether depositors should be notified when they are not eligible for a payout in line with existing DGSD provisions or when their payout is deferred or suspended because of money laundering or terrorist financing concerns.
<p>Bank Recovery and Resolution Directive (BRRD) – BRRD2</p>	<p>The legislation transposing Directive 2019/879 (“BRRD2”), which amends the BRRD, was signed into Irish law by the Minister for Finance on 22 December and published in Irish Oifigiúil on 5</p>

	<p>January 2021 in the form of the European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020 (here). The main purpose of BRRD2 is to implement in the EU the Financial Stability Board's total loss absorbing capacity (TLAC) standard including by revising the existing minimum requirement for own funds and eligible liabilities (MREL) regime to align it with the TLAC standard. BRRD2 also makes a number of other amendments to BRRD unrelated to TLAC or MREL.</p>
<p>Bank Recovery and Resolution Directive (BRRD)</p>	<p>A European Commission notice relating to the interpretation of certain legal provisions of the revised bank resolution framework was published in the EU's Official Journal (here) on 2 December. The notice is in reply to questions raised by Member States' authorities on the interpretation of the revised BRRD. It also considers the interaction of certain aspects of the BRRD with the Capital Requirements Regulation and Directive and the Single Resolution Mechanism Regulation.</p>
<p>Benchmarks Regulation (BMR) – Sustainable Finance</p>	<p>Three Commission Delegated Regulations supplementing the BMR on sustainable finance issues were published in the EU's Official Journal (here) on 3 December and entered into force on 23 December. The Delegated Acts set out (i) sustainability criteria in order for a benchmark to qualify as an EU Climate Transition Benchmark or EU Paris-aligned Benchmark, and (ii) the environmental, social, and governance (ESG) disclosure requirements for benchmarks provided in accordance with the BMR.</p>
<p>Brexit – the Trade and Cooperation Agreement (TCA)</p>	<p>The EU-UK TCA, which was announced on 24 December, sets the framework for future relationships between the UK and the EU. However, financial services are not a key focus of the TCA and, since 1 January 2021, EU/UK financial service providers have lost the ability to passport into each other's territories. The ability of financial service providers to provide services into the territory of the other party will now largely depend on unilateral decisions taken in the context of the applicable EU/UK equivalence frameworks. For further information see our briefing here.</p>
<p>Capital Requirements Directive (CRD IV) – CRD V</p>	<p>The legislation transposing Directive 2019/878 (“CRD V”), which amends CRD IV, into Irish law were signed by the Minister for Finance on 22 December, and published in Iris Oifigiúil on 5 January 2021 in the form of the:</p> <ul style="list-style-type: none"> • European Union (Capital Requirements) (Amendment) Regulations 2020 (here); and • European Union (Capital Requirements) (No. 2) (Amendment) Regulations 2020 (here). <p>The amendments to CRD IV relate to exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, and capital conservation measures.</p>

<p>Capital Requirements Regulation (CRR) – Software Assets</p>	<p>Regulation (EU) 2019/876 (“CRR 2”) amended the CRR to include new provisions concerning the treatment of certain prudently valued software assets, with a view to supporting the transition to a more digitalised banking sector.</p> <p>Delegated Regulation 2020/2176, which amends Delegated Regulation 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items was published in the EU’s Official Journal (here) on 22 December and entered into force on 23 December. The amending Delegated Regulation specifies the application of the deductions of software assets that are classified as intangible assets for accounting purposes under Article 36(1)(b) of the Capital Requirements Regulation.</p>
<p>Central Securities Depositories</p>	<p>ESMA announced, on 11 December that Euroclear UK & Ireland Limited (“EUI”), the central securities depository (“CSD”) established in the UK, would be recognised as a third country CSD after the end of the UK’s transition from the EU on 31 December 2020 (here), until 30 June 2021.</p>
<p>COVID-19 – Distribution, Dividends and Variable Remuneration</p>	<p>According to a press release published by the ESRB on 18 December (here), at its meeting on 15 December the ESRB’s General Board decided to revise and extend its Recommendation on restriction of distributions. The initial Recommendation asked relevant authorities to request financial institutions to refrain from making distributions for the duration of the COVID-19 pandemic and at least until 1 January 2021. The revised Recommendation will apply until 30 September 2021.</p> <p>The EBA published a press release calling on banks to continue to apply a conservative approach on dividends and other distributions in light of the COVID-19 pandemic (here), on 15 December. The EBA also addressed variable remuneration, stating that, since stressed conditions are likely to continue in 2021, the variable remuneration of material risk takers for the performance year 2020 should be set at a conservative level. Moreover, a larger part of the variable remuneration of material risk takers should be deferred for a longer period and a larger proportion should be paid out in instruments.</p> <p>The ECB published a recommendation on dividend distribution during the COVID-19 pandemic, on 16 December (here). It recommends that banks exercise extreme prudence on dividends and share buy-backs. Banks should consider not distributing any cash dividends or conducting share buy-backs, or to limit such distributions, until 30 September 2021.</p> <p>The ECB also published a letter to banks about remuneration policies in the context of COVID-19 (here). In the letter, the ECB reiterates its expectations that banks adopt extreme moderation in respect of variable remuneration until 30 September 2021,</p>

	<p>especially for staff identified as "material risk takers". If they are unable to limit variable remuneration, banks should consider whether a larger part of variable remuneration could be deferred for a longer period of time, and also consider paying variable remuneration in instruments. The appropriateness of institutions' remuneration policies and practices will form part of the ECB's supervisory assessment within the 2021 supervisory review and evaluation process.</p> <p>The Central Bank of Ireland updated its Q&A on the payment of distributions and variable remuneration by MiFID investment firms during the COVID-19 pandemic (here). The CBI particularly notes the publication of the ESRB's amending Recommendation referenced above and states that it is "<i>aligned with the view that financial institutions should continue to apply a conservative approach to dividends and other distributions in light of the continued uncertainty surrounding the COVID-19 pandemic.</i>"</p>
<p>COVID-19 – Legislative and Non-Legislative Moratoria</p>	<p>The EBA announced the reactivation of its Guidelines on legislative and non-legislative moratoria on loan repayments (here), on 2 December. The EBA states that it has decided to re-activate the Guidelines after closely monitoring the developments of the COVID-19 pandemic and, in particular, the impact of the second COVID-19 wave and the related government restrictions taken in many EU countries. The revised Guidelines will apply until 31 March 2021.</p> <p>On 21 December, the EBA published an updated version of its report on the implementation of selected COVID-19 policies (here).</p>
<p>COVID-19 – Net Short Position Holders</p>	<p>On 17 December, ESMA published a decision renewing its decision to temporarily require the holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority ("NCA") if the position exceeds 0.1% of the issued share capital (here). The decision has applied since 19 December and is for a period of three months.</p>
<p>COVID-19 – Non-Performing Loans ("NPLs")</p>	<p>The European Commission published a communication on tackling NPLs in the aftermath of the COVID-19 pandemic (here) along with Q&As (here), on 16 December. The communication contains an action plan intended to address COVID-related NPLs as early as possible and help prevent a renewed build-up of NPLs on banks' balance sheets.</p>
<p>Cybersecurity</p>	<p>On 16 December, the European Commission and High Representative of the Union for Foreign Affairs and Security Policy presented a new EU Cybersecurity Strategy (press release here). The new strategy aims to bolster the EU's collective resilience against cyber threats and help to ensure that all citizens and businesses can fully benefit from trustworthy and reliable services and digital tools. The Commission also published related draft legislative proposals.</p>

Digital Euro	The ECB published a letter to the European Parliament (dated 22 December 2020) on plans for a digital euro (here). A Eurosystem consultation on the design and issues surrounding the possible introduction of a digital euro is open until 12 January 2021 and can be accessed from the ECB's digital euro hub (here).
EMIR – Clearing Obligation	<p>The European Commission adopted the following Delegated Regulations made under EMIR, on 21 December (here and here):</p> <ul style="list-style-type: none"> • Delegated Regulation amending RTS laid down in Commission Delegated Regulation (EU) 2016/2251 as regards to the timing of when certain risk management procedures will start to apply for the purpose of the exchange of collateral • Delegated Regulation amending RTS laid down in Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts <p>The Delegated Regulations must be considered by the Council of the EU and the European Parliament.</p>
EMIR – Pension Scheme Arrangements (“PSAs”)	ESMA published its second report on the clearing solutions for PSAs under EMIR (here), on 17 December. In the report, ESMA suggests that the current time-limited exemption from the clearing obligation for PSAs, which expires on 18 June 2021, be extended by one year. For more information, see our related briefing here .
EMIR – Q&As	ESMA published an updated version of its Q&As on the implementation of EMIR (here), on 21 December. Among other things, the updated Q&As clarify the status of legacy derivative transactions executed on UK markets, following the end of the Brexit transition period. It is relevant for EU counterparties in order to determine applicable EMIR requirements and for position calculations against clearing thresholds.
IBOR Fallbacks and Derivatives	<p>In October 2020 ISDA launched its:</p> <ul style="list-style-type: none"> • IBOR Fallbacks Supplement (here) to its standard definitions for interest rate derivatives to incorporate robust fallbacks for new IBOR derivatives entered into from 25 January 2021 that incorporate those definitions; and • IBOR Fallbacks Protocol (here) to enable two adhering parties to incorporate those fallbacks into their legacy non-cleared derivatives trades. <p>In December 2020 ISDA released a video (here) “Why Should I Update the Fallbacks in My Derivatives Contracts?” addressing some misunderstandings that it had identified regarding those fallbacks.</p>

Insurance – Climate Change	<p>EIOPA published a report containing its sensitivity analysis of climate change related transition risks in the investment portfolio of European insurers (here), on 15 December. EIOPA considers this report as a contribution towards the assessment and understanding of transition risks at the European level, rather than a final, conclusive assessment.</p>
Insurance – Differential Pricing	<p>The CBI published its Interim Report on its Review of Differential Pricing Practices in the Irish Private Car and Home Insurance Markets (here), on 14 December. The report provides a progress update on the Review along with insights from the CBI’s consumer research and ongoing market analysis. See our related briefing here.</p>
Insurance – Plan for Reform of Insurance Sector	<p>The Government published its Action Plan for Insurance Reform, on 8 December (here). Section 2 of the Action Plan lists the Programme for Government commitments relating to insurance reform, and identifies the actions being led by Ministers and their Departments or bodies along with implementation timelines.</p>
Insurance – Solvency II	<p>EIOPA published an opinion on the 2020 review of Solvency II (here), on 17 December. According to EIOPA, the Solvency II framework overall is working well but it needs a number of adjustments to ensure that the framework continues as a well-functioning risk-based regime.</p>
Investment Funds – Leverage Risks under AIFMD	<p>ESMA published its final report containing guidelines under Article 25 of AIFMD (here), on 17 December, which provide national competent authorities with a set of indicators to consider when performing their risk assessment and a set of principles that they should take into account when calibrating and imposing leverage limits.</p>
Investment Limited Partnerships	<p>The new regulatory framework amending the Investment Limited Partnership Act 1994 has been adopted by the Irish Parliament. The updates to the 1994 Act in the new framework reflect changes in the global private funds market in recent years, both in terms of the modernisation of the Irish ILP structure and in terms of applicable EU legislation. The new framework also amends the legislative frameworks applicable to ICAVs and common contractual funds. See our related briefing here.</p>
Issuers – Disclosures on Climate Change Strategy – Debt Capital Markets	<p>ICMA announced (here), on 9 December, that the market community behind the Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles has launched a Climate Transition Finance Handbook which contains guidelines on the disclosures that should be made by issuers on their climate change strategy when raising funds in debt capital markets. ICMA has also published a related Q&A (here).</p>
MiFID II – Investor Protection	<p>ESMA published an updated version of its Q&As on the implementation of investor protection topics under MiFID II and MiFIR (here), on 22 December. The updated Q&A include a new Q&A on information on costs and charges that sets out how firms</p>

	can present ex-post costs and charges information to clients in a fair, clear and not misleading manner.
MiFIR – Derivatives Trading Venues	Commission Implementing Decision (EU) 2020/2127 was published in the EU’s Official Journal, on 17 December (here) and entered into force on 20 December. It amends Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore under the Markets in Financial Instruments Regulation, to include additional approved exchanges and recognised market operators that have been established and authorised in Singapore since the original Implementing Decision was adopted.
MiFIR – Pre-Trade Transparency Waivers	ESMA published an updated version of its opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments under MiFIR (here), on 23 December. The updated opinion provides additional guidance on: <ul style="list-style-type: none"> • Request for quote systems • How trading venues should apply for a waiver to their NCA • Frequently encountered issues when assessing waiver notifications
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Money Market Funds	ESMA published a final report on guidelines for stress test scenarios under Article 28 of the Regulation on money market funds (here), on 16 December. The updates take account of the recent experience of money market funds during March 2020, particularly in relation to redemption scenarios.
Outsourcing – Cloud Service Providers	ESMA has published a final report on its guidelines on outsourcing to cloud service providers (“CSPs”) (here). The purpose of the guidelines is to help firms identify, address and monitor the risks arising from cloud outsourcing arrangements. The guidelines will apply from 31 July 2021 to all cloud outsourcing arrangements entered into, renewed or amended on or after this date. ESMA states that firms should review and amend accordingly existing cloud outsourcing arrangements with a view to ensuring that they take into account the guidelines by 31 December 2022.
Pan-European Personal Pension Product (PEPP)	On 18 December, the European Commission adopted a delegated regulation supplementing the PEPP Regulation with regard to regulatory technical standards specifying the requirements on information documents, on the costs and fees included in the cost cap, and on risk mitigation techniques for the PEPP (here). The next step is for the Council of the EU and the European Parliament to consider the Delegated Regulation.
Sanctions	ISDA published a guidance note for addressing sanctions issues in ISDA documentation (here), on 15 December. The guidance note

	<p>considers when parties may wish to include specific provisions addressing sanctions issues in ISDA documentation, sets out the purpose of those provisions, as well as providing example provisions that can be adapted by parties for use in their negotiated agreements.</p> <p>In a letter to the UK's EU Security and Justice Sub-Committee, the UK Foreign Secretary, Dominic Raab confirmed that that the UK and the EU will "pursue independent sanctions policies" following the end of the Brexit transition period on 31 December 2020 (here).</p>
<p>Single Resolution Board (SRB)</p>	<p>The SRB published a press release outlining its expectations for how banks engaging in mergers and acquisitions can ensure resolvability (here), on 7 December. The paper builds on best practice contained in the SRB's Expectations for Banks document. The SRB also published a communication on the SRB permission regime on the reduction of eligible assets, on 18 December (here).</p>
<p>Selected Consultations, Discussion Papers, Speeches and Reports Published</p>	<ul style="list-style-type: none"> • CBI – Consultation Paper 133 on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulation (here). The consultation is open until 10 March 2021. • CBI – Consultation Paper 134 on Central Bank performance fee guidance for UCITS and certain types of retail AIFs (here). The consultation is open until 10 March 2021. • EBA – Consultation on guidelines on remuneration policies for investment firms (here). The consultation is open until 17 March 2021. • EBA – Consultation on guidelines on internal governance for investment firms (here). The consultation is open until 17 March 2021. • EIOPA – Discussion paper on non-life underwriting and pricing in light of climate change (here). The consultation is open until 26 February 2021. • EIOPA – Report on administrative sanctions under the Insurance Distribution Directive (16 December 2020) (here). • ESMA – Consultation on the impact of requirements under MiFID II/MiFIR regarding algorithmic trading (here). The consultation is open until 12 March 2021. • ESMA – Speech given by Verena Ross, ESMA Executive Director on the current challenges of the Capital Markets Union project and some of the initiatives within the European Commission’s action plan that are of particular importance to ESMA (2 December 2020)(here). • ESMA – Speech given by Steven Maijoor, ESMA Chair entitled “A new standard for a new capitalism: accelerating corporate responsibility through non-financial information” (8 December 2020) (here).

	<ul style="list-style-type: none"> • ESMA – Speech given by Steven Maijoor, ESMA Chair entitled “A supervisory perspective on the interest rate benchmarks reform” (14 December 2020) (here). • ESMA – Third annual report on the application of accepted market practices under the Market Abuse Regulation (22 December 2020)(here). • ESMA – Third annual report on administrative and criminal sanctions as well as other administrative measures issued by national competent authorities under the Market Abuse Regulation (21 December 2020)(here). • European Commission – Speech given by Executive Vice President and Commissioner in charge of competition policy, Margrethe Vestager entitled “The Interchange Fee Regulation in a rapidly evolving payment landscape: Impact and way forward” (7 December 2020) (here). • FATF – Updated report on COVID-19: Money Laundering and Terrorist Financing – Risks and Policy Responses (16 December 2020) (here). • FSB – Report on the implementation of OTC derivatives reforms (3 December 2020) (here). • IOSCO – Report on impact of COVID-19 on retail market conduct (22 December 2020)(here). • United Nations Environment Programme Finance Initiative – Draft guidance document designed to support signatories of the Principles for Responsible Banking (“PRB”) with reporting on their implementation of the principles (here). The consultation is open until 29 January 2021.
<p>You may also be interested in---</p>	<p>McCann FitzGerald regularly publishes briefings on topics relevant to financial services regulation, among others. You may be interested in the following briefings:</p> <ul style="list-style-type: none"> • Financial Services Regulatory Update – November 2020 Round Up (here) • Overhaul of Discovery Procedures Recommended (here) • Review Group Report sets out the Path for Extensive Reform of Civil Justice in Ireland (here) • Disputes – Investigations and White Collar Crime: Hamilton Report Published with Recommendations (here) • Taxonomy Regulation – Consultation Launched on Draft Technical Screening Criteria (here) • PSD2 Customer Authentication Requirements and the GDPR (here) • Debt Proceedings Struck Out where Bank Delayed to Allow Economic Recovery (here) • Pension Schemes and EMIR Clearing: Not Yet in the Clear (here)

