

Financial Services Regulation and Compliance - Banking Dec 2020

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DOMESTIC

CBI issues statement regarding EBA decision to reactivate guidelines on payment moratoria

The Central Bank of Ireland (**CBI**) has issued a statement regarding the European Banking Authority's (**EBA's**) decision to reactivate the guidelines on payment moratoria. The CBI notes in the statement that as no open general payment moratoria scheme is currently operating in Ireland, the EBA's decision has no immediate effect for Irish borrowers.

The CBI also indicated in the statement that the current approach in Ireland is based on supporting borrowers on a case-by-case basis as appropriate to their individual circumstances. The CBI stated that it has outlined its expectations to all lenders on how they should support borrowers who are experiencing financial distress arising from the COVID-19 pandemic, and that it is supervising lenders to ensure these expectations are met.

EUROPEAN

EBA reactivates its guidelines on legislative and non-legislative moratoria

The EBA has reactivated its guidelines on legislative and non-legislative moratoria in light of the impact of the second COVID-19 wave and the related government restrictions in many EU Member States. The reactivated guidelines include two revisions to ensure that the support provided by moratoria is limited to bridging liquidity shortages triggered by new lockdowns and that there are no operational restraints on the continued availability of credit.

These revisions are:

- Only loans that are suspended, postponed or reduced under general payment moratoria for not more than nine months in total, including previously granted payment holidays, can benefit from the application of the revised guidelines.
- Credit institutions are requested to notify their relevant supervisor of their plans for assessing unlikelihood to pay for the exposures subject to the general payment moratoria.

The revised guidelines will apply until 31 March 2021.

EBA finalises guidelines on fraud reporting under PSD2

The EBA has published its finalised guidelines on fraud reporting under the 2nd Payment Services Directive (**PSD2**). The finalised guidelines reflect amendments proposed by the EBA in January 2020 to the reporting templates under the guidelines as a result of clarifications provided by the European Commission on the application of strong customer authentication to certain types of transactions. Those amendments applied to transactions from 1 July 2020.

EBA publishes final draft RTS on the treatment of non-trading book positions subject to foreign exchange risk or commodity risk under the FRTB framework

The EBA has published final draft regulatory technical standards (**RTS**) on the calculation of own funds requirements for foreign-exchange and commodity risk stemming from banking book positions under the Fundamental Review of the Trading Book (**FRTB**) standardised and internal model approaches.

ECB writes to significant institutions regarding credit risk in the context of the COVID-19 pandemic

Andrea Enria, the Chair of the European Central Bank's (**ECB's**) supervisory board, has written to the CEOs of significant institutions to provide additional guidance on credit risk identification and measurement in the context of the COVID-19 pandemic.

The letter sets out the ECB's expectation that significant institutions pay particular attention to what the ECB considers to be sound credit risk management policies and procedures, including:

- ensuring that they have enhanced their procedures so that all contract modifications that qualify as concessions and are provided to distressed borrowers, in line with Article 47b of the Capital Requirements Regulation, are classified as "forborne" in their systems
- performing regular assessments of borrowers' unlikelihood to pay
- identifying and recording any significant increase in credit risk at an early stage
- estimating their provisions using realistic parameters and assumptions which are appropriate for the current environment
- the exercise by management bodies of significant oversight over the critical elements of credit risk management
- forecasting the most likely impact of the crisis in terms of stage allocations, provisioning and capital

EBA issues statement regarding information for customers of UK financial institutions on the end of the Brexit transition period

The EBA has issued a statement to EU consumers regarding certain matters arising from the end of the Brexit transition period on 31 December 2020. The statement covers a range of issues including: the preparedness of UK financial institutions to provide services to EU consumers, changes in cross-border payments between the UK and EU, access to bank accounts held by consumers in UK financial institutions. The statement also notes

that the EBA expects institutions planning to cease to offer services to EU consumers to explain the impact of the discontinuation of services to consumers and the consumer rights available.

EBA updates impact of the Basel III reforms on EU banks' capital

The EBA has published a report on the impact of implementing the final Basel III reforms in the EU. The report finds that the implementation of Basel III in 2028 would result in an average increase of 15.4% on the current Tier 1 minimum required capital of EU banks. The reference date for the report's impact assessment is 1 December 2019, meaning that the impact of the COVID-19 pandemic on participating banks is not reflected.

EBA issues revised list of ITS validation rules

The EBA has issued a revised set of validation rules in its implementing technical standards (ITS) on supervisory reporting. Certain validation rules have been deactivated for incorrectness or for triggering IT issues.

EBA confirms banks' solid capital and liquidity positions but warns about asset quality prospects and structurally low profitability

The EBA has published its annual risk assessment of the European banking system, along with the 2020 EU-wide transparency exercise. The risk assessment concludes that, despite the impact of the COVID-19 pandemic, banks have maintained solid capital and liquidity ratios and have increased their lending to the real economy. However, the risk assessment cautions that economic uncertainty persists, profitability is at record low levels and there are several early signs for deterioration in asset quality.

EBA issues opinion on the interplay between the EU AMLD and the EU Deposit Guarantee Schemes Directive

The EBA has issued an opinion on how to strengthen the connection between the EU legal frameworks on anti-money laundering and terrorist financing, and deposit protection. The opinion is primarily addressed to the European Commission, which is currently conducting a review of the Anti-Money Laundering Directive (AMLD) and the Deposit Protection Schemes Directive. The focus of the EBA's opinion is an assessment of how information about potential money-laundering or terrorist financing risks of depositors is identified and transmitted to deposit guarantee schemes, ahead of them repaying depositors.

EBA issues opinion to the European Commission on the proposed amendments to the EBA final draft RTS on IRB assessment methodology

The EBA has published an opinion on amendments proposed by the European Commission to the EBA's final draft RTS on the internal ratings based (IRB) assessment methodology. The RTS specify the assessment methodology competent authorities are

required to follow when assessing the compliance of credit institutions and investment firms with the requirement to use the IRB approach laid down in the Capital Requirements Regulation.

EBA observes improved cooperation between authorities through newly established AML/CFT colleges

The EBA has published its first report on progress made by competent authorities in the setting up of colleges to enhance cooperation for anti-money laundering and countering of financing of terrorism (AML/CFT) purposes. The report is part of the EBA's new role in leading, coordinating and monitoring the fight against money laundering and terrorist financing in all EU Member States as set out in the EBA Regulation.

EBA and ECB call on banks to apply a conservative approach on dividends and other distributions in light of the COVID-19 pandemic

The EBA has issued a statement urging banks to refrain from distributing capital outside the banking system when deciding on dividends and other distribution policies, including share buybacks, unless extreme caution is applied. In the statement, the EBA notes that the continued application of conservative distribution policies is fundamental to ensuring the preservation of sound capital levels within the European banking sector. The EBA also expects that the variable remuneration of a bank's "material risk takers" should be set at a conservative level.

The ECB has also called on all banks to exercise "extreme prudence" and consider not distributing any cash dividends or conducting share buy-backs, or to limit such distributions, until 30 September 2021.

EBA welcomes European Commission's action plan to tackle NPLs in the aftermath of the COVID-19 pandemic

The EBA has issued a statement welcoming the European Commission's action plan to tackle the expected rise of non-performing loans (NPLs) on banks' balance sheets as a result of the COVID-19 pandemic. The Commission's action plan focuses on secondary markets for distressed assets, asset management companies and insolvency and debt recovery frameworks. As part of the action plan, the EBA will work to improve data quality and comparability, and data infrastructures needed for development of secondary markets for distressed assets.

EBA consults on technical standards to calculate risk weights of collective investment undertakings

The EBA has launched a consultation on RTS on the calculation of risk-weighted exposure amounts of collective investment undertakings under the Capital Requirements Regulation (CRR). The proposed RTS clarify the regulatory treatment for missing inputs when the underlying risk of derivative is unknown and the computation of the exposure value for counterparty credit risk.

The consultation runs until 16 March 2021.

EBA publishes final RTS to ensure effective application of stay powers under the BRRD

The EBA has published its final RTS on the contractual recognition of stay powers under the Bank Recovery and Resolution Directive (**BRRD**). The RTS are part of the EBA's work to implement the BRRD and address the problem of "too-big-to fail" banks.

EBA publishes final draft technical standards on capital requirements of non-modellable risks under the FRTB

The EBA has published its final draft RTS on the capitalisation of non-modellable risk factors for institutions using the Fundamental Review of the Trading Book (**FRTB**) internal model approach as a reporting requirement. The draft RTS are a key aspect of the EBA's work on implementing the FRTB in the EU as part of its roadmap for the new market and counterparty credit risk approaches published in June 2019.

EBA updates its report on liquidity measures and confirms banks' solid liquidity position

The EBA has published an updated report on liquidity measures, which monitors and evaluates the liquidity coverage arrangements currently in place in the EU. The report shows that the liquidity coverage ratio of EU banks stood at around 166% in June 2020, above the minimum threshold of 100%.

ECB issues statement regarding supervisory cooperation on operational resilience

The ECB has published a statement on supervisory cooperation in the area of operational resilience. In the statement, the ECB notes that banks have made progress in enhancing operational resilience in recent years but that more work remains to be done to ensure banks are resilient to potential operational disruptions from all types of hazards. The ECB commented that it is committed to working closely with the US Federal Reserve and the UK Prudential Regulatory Authority to ensure supervisory approaches to operational resilience are well coordinated.

Speech - Elizabeth McCaul: Bank boards and supervisory expectations

The ECB's Elizabeth McCaul recently delivered an address to the Florence School of Banking & Finance in which she addressed the ECB's supervisory expectations of bank boards and board members in ensuring good governance and resilience. In her address, Ms McCaul commented that a bank's resilience and its likelihood to withstand a crisis are ultimately determined by checks and balances at all levels, together with a clear organisational structure with well-defined lines of responsibility and effective risk management practices. Ms McCaul also spoke about the ECB's role in assessing the suitability of a bank's directors, noting that in 2021 the ECB will implement a stricter and more intrusive approach to 'fit and proper' assessments.

EBA launches consultation to amend standards on benchmarking of internal models

The EBA has launched a consultation to amend the European Commission's Implementing Regulation on the benchmarking of credit risk, market risk and the IFRS9 models.

The EBA is proposing to include the following new elements as part of the 2022 benchmarking exercise:

- for credit risk, additional information on the level of conservatism embedded in the IRB risk parameters
- for market risk, new sensitivities related to the so-called sensitivities-based method, in line with the new FRTB framework
- for the IFRS9 exercise, updated templates with the collection of additional IFRS 9 parameters

The deadline for submission of comments to the consultation is 15 February 2021.

EBA provides additional clarity on the implementation of selected COVID-19 policies

The EBA has published additional clarifications on the application of the prudential framework in response to issues arising out of the COVID-19 pandemic. The clarifications update the FAQ section of the EBA report published on 7 August and mainly cover the EBA guidelines on moratoria and COVID-19 reporting, operational risk, downturn loss given default estimation and the credit risk mitigation framework.

EBA proposes methodology to calibrate O-SII buffer rates

The EBA has proposed the implementation of an EU-wide floor methodology to calibrate buffer rates of Other Systemically Important Institution (**O-SIIs**). The proposed methodology aims to strengthen the stability of the banking sector and avoid under-calibration of O-SII capital buffer rates. The EBA has also published a user-friendly data visualisation tool that allows stakeholders to better understand and navigate the charts, tables and country-level data and conclusions included in the Report.

EBA monitors the use of proportionality for recovery and resolution planning

The EBA has published its second report on the application of simplified obligations and waivers under the Bank Recovery and Resolution Directive (**BRRD**) across the EU. The report sets out how competent and resolution authorities have applied the principle of proportionality for recovery and resolution planning in their respective jurisdictions. The report also describes the level of convergence among the practices of competent authorities in this area, noting that there is a significantly improved level of harmonisation in the simplified obligations eligibility assessment methodologies applied by competent authorities.

EBA publishes executive summary of its 2019 annual report

The EBA has published an executive summary of its 2019 annual report. The summary sets out the EBA's key achievements in the past year and outlines its key priorities for 2020.

EBA updates reporting framework 3.0 and technical standards on Pillar 3 disclosure

The EBA has published an update to the reporting framework 3.0 and the implementing technical standards (ITS) on institutions' Pillar 3 disclosures.

The updates are the result of:

- the European Commission's recent adoption of the ITS on Supervisory Reporting (v3.0)
- the EBA's publication of the revised version of the mapping between disclosures and reporting
- the release by the EBA of phase 1 of its technical package on the reporting framework (v3.0)

EBA publishes final draft technical standards on reporting of MREL decisions from authorities to EBA

The EBA has published its final draft ITS specifying uniform reporting templates, instructions and methodology for the identification and transmission, by resolution authorities to the EBA, of information on minimum requirements for own funds and eligible liabilities (MREL). These standards form part of the EBA's implementation of the BRRD and seek to address the issue of too-big-to-fail banks. The objective of this reporting between resolution authorities and the EBA is to ensure that the EBA has all the necessary information to understand how MREL is set within Member States.

EBA publishes final draft technical standards on estimation of Pillar 2 and combined buffer requirements for setting MREL

The EBA has published its final draft RTS specifying the methodology to be used by resolution authorities to estimate the Pillar 2 and combined buffer requirements at resolution group level for the purpose of setting the MREL. These standards form part of the EBA's implementation of the BRRD and seek to address the issue of too-big-to-fail banks. The final draft RTS set out a straightforward and proportionate methodology for estimating own fund and combined buffer requirements and provide a framework for communication between resolution groups, competent authorities and resolution authorities with the objective of improving the accuracy of the input for MREL setting.

EBA publishes final draft technical standards on impracticability of contractual recognition under the BRRD framework

The EBA has published its final draft RTS and final draft ITS on impracticability of contractual recognition of bail-in powers under the Bank Recovery and Resolution Directive (**BRRD**). The standards aim to ensure the harmonised application of instances of impracticability of contractual recognition of bail-in powers and are part of the EBA's work to implement the BRRD. The BRRD requires that contracts which are governed by the law of a third country include a contractual recognition term by which the parties acknowledge that the contract may be subject to bail-in powers and agree to be bound by their effect. Contractual recognition of these bail-in powers may be legally or otherwise impracticable in certain situations and the final draft RTS determine the conditions of impracticability, the conditions for the resolution authority to require its inclusion and the timeframe for the resolution authority to require the inclusion of a contractual term. The draft ITS specify the uniform formats and templates for the notification to resolution authorities of determinations of impracticability to achieve contractual recognition.

For more information on these topics please contact any member of A&L Goodbody's [Financial Regulation team](#).

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