

Financial Services

December 2015

Newsletter

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AIFMD

Questions and answers on the application of the AIFMD

The ESMA has published an updated version of its questions and answers on the application of the AIFMD. The update aims at including new questions and answers on reporting to national competent authorities.



AML/CTF

Terrorist financing in the digital era

In November the G20 leaders have received a report from the FATF on global Counter-Terrorist-Financing (“CTF”) measures bringing CTF controls on top of the agenda for global banks. This report represents an update of the 2008 «Terrorist Financing» report.

It expresses the concern of the FATF that many countries do not implement financial sanctions fast enough. Therefore the risk-based approach to combat terrorist financing shall remain high on the international agenda.

In addition the report concentrates on seven new specific terrorist financing methods and examines the changing nature of terrorist financing risks deriving from social media and from new payment methods.

Joint Supervisory Committee consultation on AML/CTF

EBA, ESMA and EIOPA launched a public consultation on two guidelines on AML and CTF. The guidelines define how a risk-based approach should be applied and the factors that should be considered by financial institutions.

Money laundering risks in citizenship deals

Banks need to take extra care to establish beneficial ownership due to the present risk of money laundering and terrorist financing in citizenship deals and investment schemes offering residency.

Also under the 4th Money Laundering Directive the threshold of beneficial ownership will remain a shareholding of 25% plus 1 share.

But with the risk-based approach risks must always be adjusted. There is no “one-size-fits-all” methodology.

Increased AML controls on crowdfunding needed

Current regulatory gaps make the use of crowdfunding vulnerable for criminal purposes such as money laundering and financing of terrorism.

Therefore, EBA and ESMA have provided guidance to national authorities on the risks inherent to equity crowdfunding via opinions and a Q&A.

Could new compliance technology improve the AML monitoring?

More advanced forms of compliance and risk technology (“RegTech”) could increase the efficiency of financial crime risk monitoring and anti-money laundering, FCA officials said.

Software innovation would allow accounting and compliance tools to interact directly with regulatory reporting systems, and therefore reducing the cost of compliance.

EU strengthens controls on anonymous payment methods

The EU steps up controls on payment methods that may be conducted anonymously and could be used by terrorist organisations such as pre-paid cards, money remittances, cash-carriers and bitcoin.

The European Commission is currently conducting risk assessments on several payment methods that might be used for terrorism financing and money laundering.



Automation in Financial Advice

Automation in Financial Advice

The Joint Committee formed by EBA, EIOPA & ESMA have issued a discussion paper to assess necessary requirements to leverage on the potential benefits as well as to mitigate the risks of automated, robotic financial advice.



Basel III

Impact analysis of the revision of the market risk framework

The Basel Committee's analysis shows a 4,7 % increase in Banks minimum capital requirements after changing the market risk capital charges.

Anyway, when excluding the largest bank in terms of risk-weighted assets from the sample, the total increase in Basel III minimum capital requirements will stay at 2,3 %.

Banks' internal risk models are on their way out

Basel signals departure from reliance on banks' internal risk models.

Basel III will shift from a focus on internal models to reliance on multiple regulatory constraints. These could provide more safeguards against the risk of a defect in any single element of the Basel III framework, said Stefan Ingves chairman of the Basel Committee on Banking Supervision.

The impact of the Basel III leverage ratio on risk-taking and bank stability

ECB has issued the November 2015 edition of its Financial Stability Review.

The Review contains a special feature presenting theoretical considerations and empirical evidences for EU banks, demonstrating how a leverage ratio requirement should only lead to limited additional risk-taking relative to the induced benefits of increasing loss-absorbing capacity, thus resulting in more stable banks.

BEPS

Cracking down on tax evasion

The world's twenty most developed economies have endorsed standards on how to fight tax evasion with an all-on-equal-footing framework by beginning of next year (BEPS).

The G20 leaders committed to the implementation of BEPS and the automatic exchange of information as early as 2017 and by 2018 at the latest. Progress will be monitored by the OECD.



Blockchain

The new backbone for financial services compliance?

Experts are in the opinion that Blockchain could create enormous benefits in regulatory compliance and cyber security.

The ability to provide visibility into every step of a payment transaction could be a huge advantage for banks and their compliance teams.

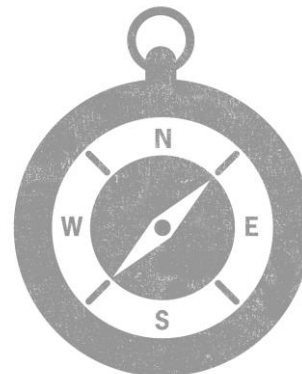
Global banks are currently exploring the potential application of Blockchain technology in KYC and AML registries and surveillance in order to improve the efficiency of operational and reporting processes and to meet regulatory requirements.

The role of banks and the new distributed ledger technology

The Bank of International Settlements said in a report that Blockchain technology could reduce the need for intermediaries such as banks and settlement houses. The technology is also on top of the agenda of some banks as it could improve speed, transparency and efficiency of their operations.

Patent for new cryptocurrency

Goldman Sachs is driving towards a Blockchain based industry solution in the clearing and settlement process that could save the industry billions and therefore seeking a patent for a new cryptocurrency called "SETLcoin".



BRRD

ECB opinion on the recovery and resolution of credit institutions and investment firms and for deposit guarantee and compensation schemes

ECB has published an opinion on a draft law on measures for the resolution, reorganisation and winding up of credit institutions and certain investment firms as well as on deposit guarantee schemes and compensation schemes for investors.

The main purpose of the draft law is to implement the BRRD into Luxembourg law, thereby providing a legal framework for the recovery and resolution of certain types of entities active in financial markets, including credit institutions, investment firms, and financial holding companies that have their head office in Luxembourg.



Guidelines specifying the conditions for group financial support

The EBA has issued the official translations of its guidelines specifying the conditions for group financial support under Article 23 of the Bank Recovery and Resolution Directive.

The deadline for compliance with the guidelines is 8 February 2016.

Cloud Computing

Recommendations report on cloud services

ENISA has published a report including a number of recommendations for the secure adoption of cloud computing in the banking sector at the EU level.

The initial workshop was hosted together with EBA to discuss opportunities and challenges of using the cloud in the banking sector.

Consultations on use of cloud computing services

The Financial Conduct Authority (FCA) has issued draft guidance on the use of cloud computing and other third-party IT services, which should remove uncertainty over how the use of such services will be compliant with the regulations.

The proposed guidance lists a series of issues that firms should take into consideration in relation to outsourcing.



CRR / CRD IV

Joint final draft implementing technical standards

The Joint Committee of the European Supervisory Authorities (ESMA, EBA and EIOPA) published two Draft Implementing Technical Standards (ITS) on credit assessments by External Credit Assessment Institutions (ECAIs).

These draft ITS specify an approach establishing the correspondence ('mapping') between credit quality steps defined in the CRR and the credit ratings as well as the factors and benchmarks that should be taken into consideration. Only credit ratings issued by External Credit Assessment Institutions ("ECAIs") can be used for the calculation of capital requirements.

Consultation paper related to the liquidity coverage ratio for credit institutions

EBA has published a consultation on draft Regulatory Technical Standards (RTS) related to liquidity requirements for cross-border intragroup financial support under stress conditions.

EBA report on banks' transparency

The EBA has published a report on its assessment of the 2014 Pillar 3 reports of a sample of European banks considering banks' compliance with the disclosure requirements established by the CRR and aspects previously identified by the EBA as needing improvement.

Adoption of Commission Implementing Regulation (EU) 2015/2197

The European Commission has adopted Commission Implementing

Regulation (EU) 2015/2197 laying down implementing technical standards with regard to closely correlated currencies in accordance with CRR.

Proposal for a regulation amending the CRR

The Council of the European Union has published a proposal laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending the CRR.

Report on the publication of administrative penalties on an anonymous basis

The EBA has published a report reviewing on an anonymous basis the publication of administrative penalties imposed by competent authorities for breach of the national provisions transposing the CRD or the CRR.

Cybersecurity

Improving cybersecurity

The Luxembourg presidency of the council and the European Parliament has reached an agreement on common rules to improve information security within the EU. The proposed directive will include cybersecurity obligations for operators and digital services providers.

Cyber attacks become significant for corporate credit risk analysis

Moody's said that in the corporate credit risk analysis cyber attacks on the private sector are becoming a more important risk factor.

Following this, cyber defence, detection, prevention and response shall be a higher priority in credit assessments using stress-testing scenarios.



Data protection

Privacy violations: higher fines

The EU is currently negotiating a data protection law. The member states have accepted a Luxembourg proposal to raise the sanction ceiling to 4%. Companies operating within the EU could be fined up to a 4% of their annual revenue for violating data protection regulation. But this ceiling may still change in negotiations with the European Parliament.



Deposit Guarantee Law

EU introduce stepwise deposit guarantees-draft

A draft document has been published recently by EU leaders introducing a European plan to guarantee all euro zone bank deposits of up to 100.000€. In the past any reference to the European deposit guarantee plan was blocked by Germany.

10 EU countries to transpose deposit guarantee law

Luxembourg and additional 9 EU countries have been asked by the European Commission to transpose the Deposit Guarantee Schemes Directive into national law. This formal request is the first step in the common legal procedure.



Electronic Payment Directive

Council adopts updated rules on Electronic Payment Services

The directive on payment services has been adopted recently by the Council of the European Union.

The directive incorporates and repeals the directive 2007/64/EC, adapting the rules to cater for emerging and

innovative payment services, including internet and mobile payments. The intention of the directive is to ensure a more secure environment for payments, in particular for those using remote channels.

EU member states will have two years to transpose the directive into their national laws and regulations.



EMIR

OTC derivatives and clearing obligation

ESMA has issued additional draft regulatory technical standards (RTS) in relation to the central clearing of Interest Rate Swaps.

This draft RTS, that are submitted to the European Commission for endorsement, propose a clearing obligation for fixed-to-float interest rate swaps and forward rate agreements denominated in NOK, PLN and SEK.

The European Commission has three months to endorse them.



Review of the Regulatory and Implementing Technical Standards on reporting

ESMA has published its final report on the update of existing technical standards regarding data reporting requirements under the EMIR.

ESMA will not exempt the collateralisation of bank guarantees for energy derivatives under EMIR

ESMA has decided not to further extend the existing grace period of three years for the non-financial firms' use of non-collateralised bank guarantees to cover transactions in energy derivatives cleared by European central counterparties (CCPs).

EU clearing of interest rate swaps to start in June 2016

The first so-called "clearing obligation" will come into force in the EU with the aim to increase transparency in interest rate swaps.

Therefore, derivative trades known as off-exchange interest rate swaps must be cleared by banks starting June 2016.

Public Register for the Clearing Obligation under EMIR

The ESMA has issued in December an updated version of its Public Register for the Clearing Obligation under EMIR.

EU Stress Tests

EBA announces details of 2016 EU-wide stress test

The EBA has published its 2016 EU-wide stress test draft methodology for discussion.

The stress test will be formally launched in the first quarter of 2016 and will cover over 70% of the EU banking sector assessing EU banks' ability to meet relevant supervisory capital ratios during an adverse economic shock.

Consultation on Guidelines on stress tests for deposit guarantee schemes

EBA has launched a public consultation on its draft Guidelines on stress tests of Deposit Guarantee Schemes.

The proposed Guidelines will provide a methodology to assess whether the operational and funding capabilities of Deposit Guarantee Schemes are sufficient to ensure in the event of a bank failure a protection of deposits.

Consultation on draft Guidelines on stress testing

EBA has launched a consultation on its draft Guidelines on stress testing.

These Guidelines set out expectations for institutions' stress testing programmes and seek improvements by drawing on lessons from previous stress test exercises.

FINREP / IFRS 9

EBA Consultation paper on supervisory reporting of institutions

The EBA has launched a consultation paper on supervisory reporting of institutions with regard to FINREP following the changes in the International Accounting Standards (IFRS 9).

The aim is to collect early industry views on changes that IFRS 9 would trigger in the FINREP.

The consultation will run until March 2016.

Bank loans provisioning rule close to EU approval

The delayed accounting rule that forces banks to book losses on loans much earlier will be soon approved by the EU. After the EU endorsement, the IFRS 9 rule will become mandatory across the Member states.

From 2018 onwards IFRS 9 will require banks to already make a provision on the first day of a loan.



ELTIF

ELTIF application

The CSSF has issued its online application form for the authorization as European Long-Term Investment Fund (ELTIF) and for the

authorization to manage the ELTIF. The regulation on ELTIF entered into force on 9 December 2015.



MiFID II

Responses to Consultation Paper

At the beginning of November ESMA has issued responses to its Consultation Paper on draft implementing technical standards under MiFID II.

MiFID II transposition

Before transposing the MiFID II directive into local law, National legislators will have to wait for ESMA to provide more clarity on the level 2 of the Directive. As there is still a lot of uncertainty around some aspects national authorities are at danger to go beyond the level intended by ESMA.

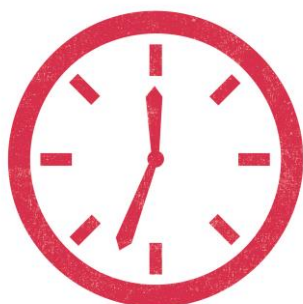
Update on ESMA's work relating to MiFID II

Steven Maijoor, chair of the ESMA, has provided an update to the Economic and Monetary Affairs Committee on ESMA's work relating to MiFID II.

Maijoor explained how ESMA's final draft Regulatory Technical Standards (RTS) addressed the issues of non-equity transparency, position limits, and ancillary activity within MiFID II.

Pan-EU data on suspensions and removals from trading

The ESMA has launched a database that provides information about suspensions and removals from trading as well as restoration details that national authorities have to notify under MiFID.



MiFID II delay

Early November ESMA's board of supervisors supported a delay to the implementation of MiFID II of between six and 12 months.

According to ESMA, delays to the wholesale market parts of MiFID II, MIFIR and sections relevant to the Market Abuse Regulation will be necessary. Especially meeting a number of the IT and data requirements creates some difficulties. IT systems needed for the execution of certain elements of MiFID II will not be ready in January 2017, Maijoor said. A letter sent by Steven Maijoor to the European Commission, says that a certain number of technical elements envisaged by MiFID II will not be ready by the time MiFID II will start to be applicable.

Furthermore, the majority of supervisors favour delaying the whole directive.

The Commission shares ESMA's concerns about the difficulties implementing parts of MiFID II.

The European Parliament, the European Commission and the European Council have agreed that a delay may be necessary as it won't be possible to implement certain aspects of the directive by January 2017. But they still have to agree if delaying only parts or the complete directive is required.

The implementation of the MiFID II and MIFIR should be delayed up to one year to assure a smoothly and effectively implementation, senior European Commission officials said.

Also regulators like the FCA are in the opinion that the current implementation timetable will be difficult to achieve for both market participants and regulators.

The ESMA has released a note summarising its reasons for a delay on the implementation of the level 2 of the Directive. On the note, the ESMA said: "in some cases, the possibility of a delay is already a certainty".

A one-year delay in the implementation of the MiFID II (to 2018), would be enough to allow all the participants (regulators and the industry), to build and implement all the systems needed and, also, to not repeating the delay again.

Delay in MiFID II still not official

Discussions between the Commission, the Parliament and the ESMA are still ongoing in order to decide if a delay on MiFID II is necessary or not. The Commission is analysing and understanding along with the Parliament and the Member States of the EU that possibility.

Within the main causes of delay we can find the reporting requirements for fixed-income transactions. The reason why, is that they imply significant IT challenges and, also, the transparency needed to be shown through it.

The FCA doubts about publishing its 2nd consultation paper in March 2016 as planned. This is due to the possible delay in the implementation of the MiFID II Directive, that could turn into a nonsense (or at least less meaningful), the publication of the Consultation.

Guidelines on complex debt instruments and structured deposits

The ESMA has released a Final Report on the matter; a PDF version of ESMA/2015/1783 is available on the official website.

Critical reference data project

ESMA's Financial Instrument Reference Data System ("FIRDS") that is needed for the MiFID II transaction reporting will not be ready before the 3rd quarter of 2017. The time needed to complete the FIRDS is one of the main reasons why ESMA is arguing for a delay.

Transaction Reporting Exchange Mechanism ("TREM") also has to be changed, and ESMA officials confirm that work on FIRDS and TREM is being done but a date for completion cannot be assured at this stage. This will depend on the timing and content of the publication of MiFID II in the Official Journal.

If MiFID II is delayed, firms will continue with MiFID I transaction reporting.

ESMA is working on a detailed guidance on transaction reporting, which could form an European Transaction Reporting User Pack.

The ISO 20022 reporting standard is another critical element to make

transaction reporting compliant. For instance, MiFIR requirements are not supported by the ISO 20022 standard.

Work on how to issue ISIN's has begun. Almost all type of instruments are covered by ISINs. For new instruments, the industry has to find a way to assign ISINs to them. Another important thing with ISINs is ensuring that they can be made available in particular for derivatives and that they are comparable across different trading venues.

Concerns about the double volume cap effectiveness

One of the main objectives of MiFID II was to increase transparency for equities and non-equities.

The initial idea of the double volume cap under MiFID II is to limit the volume that can be traded on dark pools under the reference price waiver and the negotiated price waiver to 4 percent per trading venue and 8 percent overall across the EU.

ESMA will publish monthly updates on both caps which will be measured against a rolling 12-month period. Breach in the caps will follow a ban for the respective waivers from trading for the following six months.

However, there are some concerns if the system is designed in a smart and workable way.

Final Report on guidelines for the assessment of knowledge and competence

ESMA has issued its final report on guidelines specifying the criteria for the assessment of the necessary knowledge and competence requirements of investment firms' staff. These guidelines are intended to enhance investor protection by increasing the knowledge and competence of natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of investment firms.

PRIIPs

Study on a possible new format & content for PRIIPs

The European Commission has released a study report on the potential new format of PRIIPs. The study gathered information about the consumers' preferences and how presentations helped to create a good understanding of the PRIIPs features.



Consultation on PRIIPs key information for EU retail investors

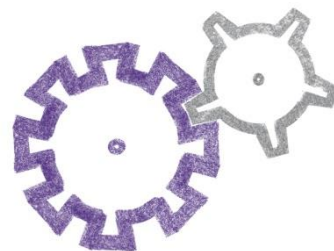
The Joint Committee of the European Supervisory Authorities (ESMA, EBA and EIOPA) has issued a Joint Consultation Paper on PRIIPs Key Information Documents (KID) to collect stakeholder's views on proposed rules on the content, presentation, review and provision of the KID.

The consultation paper sets out details on the proposed requirements to be included in the KID.

The aim of the finalised KID will be

the provision of EU retail investors with consumer-friendly information enabling them to understand and compare packaged retail and insurance-based investment products.

Closing date for stakeholder input is 29 January 2016.



Regulation on Benchmarks

European Commission welcomes agreement on new rules to prevent manipulation

European Commission has welcomed the agreement between the European Parliament and the Council of the EU on a Regulation of financial benchmarks.

The proposed regulation will now be subject to a vote by the European Parliament.

Final text for the proposed regulation on benchmarks published

The Council of the EU has published the final text for the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts.

The objective of the initial proposal was to improve the functioning and governance of benchmarks and to

ensure that benchmarks produced and used in the EU are robust, reliable, and representative and fit for purpose and that they are not subject to manipulation.



Savings Taxation

Savings taxation directive repealed

Directive 2003/48/EC on the taxation of savings income has been repealed by the Council of the European Union due to the strengthening of measures to prevent tax evasion.

This repeal eliminates the significant overlapping that new measures initially had created.



Virtual Currencies

G7 plan to tighten the regulation of digital currencies

G7 suspects virtual currencies such as bitcoin to be used by terrorists, as they exist only in digital form and can be used to move money around the world

anonymously without third-party verification. Therefore, the “fintech” sector will be subject to stricter regulations according to a recently issued paper by the European Commission.



Basel Committee

Lenders & rating agencies

The Basel committee on Banking Supervision made a U-turn from one of its previous proposals. Finally, lenders will not be stopped from using rating agencies to measure the credit riskiness of some assets.

The Basel Committee puts forward cutting capital charges on top quality pooled debt

Banks which originate high quality securitised debt would face lower capital charges under proposals from global regulators.

The Basel Committee of banking supervisors has offered a proposal to decrease capital charges on so-called simple, transparent and comparable pooled-debt from a minimum of 15 percent to 10-12 percent.



BCL

Introduction of a statistical data collection for insurance corporations

The BCL has developed a data collection system in order to comply with the ECB's Regulation ECB/2014/50 concerning statistical reporting requirements for insurance corporations.

This circular sets out the objectives of the data collection system and provides key definitions and information

relating to the form and submission of the required data, which is mandatory from 2016 onward.



Decisions of the Systemic Risk Committee

BCL has published the decisions made by the Systemic Risk Committee at the last meeting in November.

Following this, a recommendation and two notices were issued to the attention of the CSSF related to the implementation and fixing of the countercyclical buffer rate for credit institutions and investment firms other than SMEs.

Capital Markets Union

Building the Capital Markets Union

EU Commissioner Jonathan Hill has released an update on the work of the

European Commission on building a Capital Markets Union. The next initiatives will be a Green-Paper initiative on Retail Financial Services and one on crowdfunding. The paper

on Retail Financial Services invites for comments on best measures to improve choice, transparency and competition in retail financial services for consumers and businesses.

CSSF Newsletter

The CSSF has released in November its 178th newsletter.

CSSF Circular 15/624

The CSSF has published Circular 15/624 that introduces the electronic submission of documents to the CSSF via the secure channels E-file or SoFiE.

The circular provides also with a list of documents that can be submitted and details about specific format requirements.

The circular enters into force 31 December 2015.

CSSF Circular 15/625

The CSSF has issued Circular 15/625 providing Luxembourg CRR institutions with background information and guidance on the way to calculate their institution-specific countercyclical capital buffer (CCyB) under Basel III and CRD IV. The CCyB regime is fully applicable in Luxembourg as of 1 January 2016, and the circular enters into force with immediate effect.

CSSF Circular 15/626

The CSSF has issued Circular 15/626 for the attention of all credit institutions under Luxembourg law following a request for information by the Single Resolution Board for the calculation of the 2016 contribution according to articles 4 and 14 of the Commission Delegated Regulation (EU) 2015/63. The circular draws attention to the required template and provides information on how and when to submit the information.

CSSF Circular 15/627

The CSSF has issued Circular 15/627 which implements a new monthly reporting to the CSSF known as "U 1.1 reporting". The monthly information to be submitted by UCITS, UCIs subject to part II of the UCI law, SIFs and SICARs will be used by the CSSF for statistical and supervisory purposes. The aim of the circular is mainly to extend the scope of the existing monthly reporting to SICARs, to enhance the content of the reporting in terms of financial, functional and descriptive information and to change the format to Extensible Markup Language (XML).

The circular enters into force with immediate effect.

CSSF Regulation No. 15-03

The CSSF has issued Regulation 15-03 that sets out rules for the application of Article 46 of the law of 12 July 2013 on AIFM regarding the marketing of foreign alternative investment funds to retail investors in Luxembourg.

This regulation enters into force on the first day of the month following its publication in the Memorial.

CSSF Regulation No. 15-04

The CSSF has issued Regulation 15-04 which sets the countercyclical buffer rate at 0% from 1 January 2016.

CSSF Regulation No. 15-05

The CSSF has published Regulation 15-05 on the exemption of investment firms that qualify as small and medium-sized enterprises from the requirements of countercyclical capital buffer and capital conservation buffer.

The regulation shall enter into force on 1 January 2016.

FAQs on the law of 17 December 2010

The CSSF has published FAQs on the Law of 17 December 2010 relating to UCIs.



The purpose of the draft law is to establish an electronic information

system containing bank account numbers, the names of the account holders, the names of the persons authorised to manage these accounts and the names of persons with rental contracts for bank safe deposit boxes.

ECB has published a new Guideline amending the General Documentation Guideline on the implementation of the Eurosystem's monetary policy and a new Guideline on the Eurosystem's valuation haircuts.

The new Guidelines introduce changes to the monetary policy implementation framework.

The guidelines are expected to be published in January 2016.

ECB will create a new bank stress test framework including conduct risk.

This tighter supervision is needed since there is a misalignment with business and risk culture objectives, ECBs chief bank supervisor said.



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