

BULLETIN | EU Financial Services and Regulation

April 2014

Welcome to the EU edition of the Financial Services and Regulation Bulletin, featuring a full round-up of the main regulatory and legislative developments in the European financial services sector over the past month.

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PROGRESS OF LEGISLATIVE PROPOSALS

1. EU COUNCIL ADOPTS MAD II

On 14 April 2014, the Council of the European Union (EU Council) formally adopted the MAD II legislative package *i.e.*, the Regulation on Market Abuse (MAR) and the Directive on Criminal Sanctions for Market Abuse (DCSMAD). The revised texts of [MAR](#) and [CSMAD](#) have also been published.

CSMAD prohibits insider dealing and the manipulation of financial instruments that are admitted to trading on regulated markets. MAR extends the scope of those rules to include financial instruments traded on more recently-created venues such as multilateral trading facilities and organised trading facilities, as well as over-the-counter (OTC) traded financial instruments.

The legislation is expected to be published in the EU's Official Journal (OJ) in June 2014. The European Commission will then have a 24 month period in which to adopt the MAR implementing measures. Member States will have the same amount of time to implement CSMAD into national law.

2. EUROPEAN PARLIAMENT APPROVES MiFID II

On 15 April 2014, the European Parliament approved the amendments to the Markets in Financial Instruments Directive (MiFID II) and the new Markets in Financial Instruments Regulation (MiFIR), which will have far reaching consequences for investment firms established in the EU or foreign firms seeking to do business in the EU. Provisional versions of the [MiFID II](#) and [MiFIR](#) texts as well as the European Commission's [FAQs](#) on the MiFID II package are now available.

MiFID II needs to be formally approved by the EU Council – the European Commission expects that the rules will be published in the EU's OJ in the second quarter of 2014 and enter into force 30 months later.

On 23 April 2014, the Commission [requested](#) technical advice from ESMA on implementing acts for MiFID II. The request relates to a range of issues, in particular the exemption for persons providing an investment service in an incidental manner, the definition of derivatives contracts, organisational requirements, product governance, conflicts of interest rules, conduct of business rules, inducements, information on costs and charges, best execution, client order handling rules, position management powers of ESMA, transparency and portfolio compression.

3. EUROPEAN PARLIAMENT APPROVES SINGLE RESOLUTION MECHANISM, BANK RECOVERY AND RESOLUTION DIRECTIVE, AND DEPOSIT GUARANTEE SCHEMES DIRECTIVE

On 15 April 2014, the European Parliament [approved](#) the proposed Regulation on the Single Resolution Mechanism (the SRM Regulation.) The Regulation will complement the Single Supervisory Mechanism (SSM) and allow for the efficient resolution of cross border and national banks. Within the Banking Union, the resolution funds will be collected by the Single Resolution Fund.

The Parliament approved the proposed Bank Restructuring and Resolution Directive (BRRD), which harmonises the provisions for dealing with bank crises across the EU. In line with the BRRD, banks will be required to prepare recovery plans to overcome financial distress, while the competent national authorities will need to lay out plans to resolve failed banks in a way which preserves their most critical functions and avoids taxpayers having to bail them out.

Finally, the Parliament approved the recast Directive on Deposit Guarantee Schemes (DDGS). The Directive guarantees the protection of deposits up to EUR 100,000 (per depositor/per bank).

The European Commission has published a [press release](#), accompanied by a [memo](#) and [FAQs](#) on the new rules.

4. OUTCOME OF THE EUROPEAN PARLIAMENT'S FIRST READING OF PSD2

On 3 April 2014, in plenary, the European Parliament adopted certain amendments to the proposal for the Directive on Payment Services in the Internal Market (PSD2) that were tabled by the Parliament's Economic and Monetary Affairs Committee (ECON.) The Parliament then referred the proposal back to the ECON for further consideration.

5. COMPROMISE PROPOSAL ON REVISED WIRE TRANSFER REGULATION

On 8 April 2014, the EU Council published a [compromise text](#) on the European Commission's proposal to amend Regulation (EC) 1781/2006 on Information on the Payer Accompanying Transfers of Funds (the Wire Transfer Regulation).

6. SHAREHOLDER RIGHTS DIRECTIVE: COMMISSION PROPOSAL FOR AMENDING DIRECTIVE

On 9 April 2014, the European Commission published a [proposal](#) to amend the Shareholder Rights Directive. The proposal includes the following provisions:

- Companies would disclose both their general remuneration policy and the individual remuneration of their directors. Shareholders would have the right to approve the remuneration policy and vote on the directors' remuneration.
- Shareholders would have the right to approve related party transactions representing more than 5% of company assets, or transactions which could have a significant impact on profits or turnover. Smaller related party transactions representing more than 1% of assets would be publicly announced at the time of conclusion, with the publication of an independent third party report.
- Proxy advisors would be obliged to guarantee that their voting recommendations are accurate and reliable, and unaffected by conflicts of interest or business relationships. In addition, they would have to disclose certain information relating to their voting recommendation either to the public or to their clients and the companies concerned.
- Intermediaries could be obliged to identify shareholders and facilitate the exercise of shareholder rights.
- Institutional investors and asset managers could be obliged to disclose their voting and engagement policies and certain aspects of asset management arrangements.

7. EUROPEAN COMMISSION CONSULTS ON FX FINANCIAL INSTRUMENTS

On 10 April 2014, the European Commission [published](#) a Consultation Paper seeking views on the definition of spot foreign exchange (FX) financial instruments. When an FX contract is considered as a financial instrument for the purposes of the Markets in Financial Instruments Directive (MiFID), then any activities carried on by a firm involving that instrument may give rise to specific obligations under that legislation including authorisation. Moreover, since the definition of financial instrument in MiFID is used in a wide variety of other legislation, the classification of contracts as financial

instruments will bring them within the ambit of that legislation, in particular the Regulation on OTC derivatives, CCPs and trade repositories (EMIR) and its reporting obligations.

The consultation closes to responses on 9 May 2014.

8. JOINT COMMITTEE OF ESAs CONSULTS ON DRAFT RTS ON RISK MITIGATION TECHNIQUES FOR OTC DERIVATIVE CONTRACTS NOT CLEARED BY CCP UNDER EMIR

On 14 April 2014, the Joint Committee of the European Supervisory Authorities (ESAs) (that is, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA)) published a [joint consultation](#) on draft regulatory technical standards (RTS) relating to risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty (CCP) under EMIR.

Through the consultation, which closes to [responses](#) on 14 July 2014, the Joint Committee aims to ensure that margin requirements are implemented in a proportionate manner, to allow counterparties time to phase in the requirements. There will be a [public hearing](#) on the draft RTS on 2 June 2014. The Joint Committee expects to finalise the RTS and submit them to the European Commission before the end of 2014.

9. EUROPEAN PARLIAMENT ADOPTS UCITS V

On 15 April 2014, the European Parliament [voted](#) at its first reading to adopt the compromise amendment on the proposed UCITS V Directive (UCITS stands for Undertakings for Collective Investment in Transferable Securities). The Parliament's position reflects a previous inter-institutional agreement. As a result, the EU Council should be in a position to approve the Parliament's position without amendments.

10. EUROPEAN PARLIAMENT ADOPTS PRIIPS KID REGULATION

On 15 April 2014, the European Parliament [voted](#) after its first reading to adopt the amendments to the Regulation on Information Documents for Investment Products. The Parliament's position reflects a previous inter-institutional agreement. As a result, the EU Council should be in a position to approve the Parliament's position without amendments.

11. EUROPEAN PARLIAMENT ADOPTS THE PAYMENT ACCOUNTS DIRECTIVE

On 15 April 2014, the European Parliament [adopted](#) after its first reading the Directive on the Comparability of Fees related to Payment Accounts, Payment Account Switching and Access to Payment Accounts with Basic Features (Payment Accounts Directive or "PAD"). The European Commission published [FAQs](#) accompanying the adoption of the PAD.

Due to the fact that the Parliament's first reading position reflects an inter-institutional agreement reached earlier, the EU Council should be in a position to approve the Parliament's position without amendments.

12. EUROPEAN PARLIAMENT ADOPTS THE CSD REGULATION

On 15 April 2014, the European Parliament adopted the proposed Regulation on improving Securities Settlement and Central Securities Depositories (CSDR) and, subsequently, published a provisional [text](#) of the Regulation. The Parliament's position reflects what had been previously

agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position without amendments.

The Regulation harmonises the timing and conduct of securities settlement in Europe and the rules governing Central Securities Depositories (CSDs) which operate the infrastructures enabling settlement. Further information on the CSDR can be found in the European Commission's [FAQs](#).

13. AMENDMENTS TO THE ELTIF REGULATION

On 17 April 2014, the European Parliament adopted [the amendments](#) to the proposed Regulation on European Long-Term Investment Funds (ELTIF Regulation) and [referred](#) the proposal back to ECON for reconsideration.

Subsequently, on 24 April 2014, the EU Council published a [compromise proposal](#) on the proposed ELTIF Regulation. The additions and changes to the proposed ELTIF Regulation are denoted in the document by bold underlining and deletions by strikethroughs.

NEW REGULATIONS

1. DELEGATED REGULATION ON APPLYING FICOD CAPITAL ADEQUACY CALCULATION METHODS PUBLISHED IN THE OJ

On 3 April 2014, the OJ [published](#) the European Commission's Delegated Regulation which supplements the Financial Conglomerates Directive (FICOD) and the Capital Requirements Regulation (CRR) with regard to regulatory technical standards (RTS) for the application of the calculation methods of capital adequacy requirements for financial conglomerates. The Delegated Regulation will enter into force 20 days after the date of its publication in the OJ with the exception of articles 5, 6(2), 8, 9(1), and 14(5) and (9). These provisions apply from the date of application referred to in article 309(1) of the Solvency II Directive.

2. DELEGATED REGULATION ON SUPPLEMENTARY PROSPECTUSES PUBLISHED IN THE OJ

On 15 April 2014, the European Commission published its [Delegated Regulation](#) setting out RTS for the publication of supplementary prospectuses has been published in the OJ. The Regulation will enter into force on 5 May 2014.

3. ECB PUBLISHES THE SSM FRAMEWORK REGULATION

On 25 April 2014, the ECB published its [Regulation](#) of 16 April 2014 establishing the framework for co-operation within the SSM between the ECB and national competent authorities (NCAs) and with national designated authorities (SSM Framework Regulation).

The SSM Framework Regulation lays down the basis for the work of the SSM when it takes over as supervisor of banks in the Euro Zone on 4 November 2014. Publication of the SSM Framework Regulation follows a February 2014 consultation by the ECB. The ECB received 36 responses to its consultation, which can be viewed on the following [webpage](#). A [feedback statement](#) published by the ECB provides an overview of the comments received and explains what amendments have been made to the SSM Framework Regulation as a result of the consultation.

The ECB will identify the significant banks that will be subject to direct supervision by the ECB in September 2014.

NEW GUIDANCE

1. EBA CONSULTS ON REVISED GUIDELINES REGARDING DATA COLLECTION ON REMUNERATION PRACTICES UNDER CRD IV

On 7 April 2014, the EBA published:

- A [consultation paper](#) on draft guidelines on the remuneration benchmarking exercise. Article 75(1) of the Capital Requirements Directive (CRD IV) requires competent authorities to collect information to enable the EBA to benchmark remuneration trends. The guidelines provide details about (i) the information that should be submitted to the EBA and (ii) the benchmarking of remuneration trends and practices at the EU level.
- A [consultation paper](#) on draft guidelines on the data collection exercise regarding high earners under CRD IV. Article 75(3) of the Directive requires competent authorities to collect information on the number of individuals per firm that are paid more than EUR 1 million. This data has to be passed to the EBA, who will disclose it in a common reporting format. The guidelines are intended to assist the collection of data under Article 75(3) and ensure that the collected information is consistent.

The proposed guidelines update guidelines issued by the EBA in July 2012. The deadline for responses to both consultations is 7 May 2014 and the EBA expects to finalise both sets of guidelines by 30 June 2014. The new reporting formats will apply for the collection of data as from the financial year 2013.

UNITED KINGDOM DEVELOPMENTS

Please see our [United Kingdom Bulletin](#) for more information on developments in the United Kingdom.

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