

BIPAR Update

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1. ESMA's new Q&As on investor protection

On 28 May 2021, the European Securities and Markets Authority (ESMA) published another [update](#) of its Questions and Answers (Q&As) regarding the implementation of investor protection and intermediaries topics under MiFID II.

One new question (number 34) has been added to the heading on "Information on costs and charges", on p.100 of the Q&As document.

ESMA answers the question where a firm provides both investment advice and RTO (receive and transmit orders)/execution services to a client relating to the same transaction(s), when the firm should provide ex-ante information on costs and charges.

2. Non-Performing Loans: trilogue agreement on rules regarding the transfer of bad loans from banks to secondary buyers, while protecting borrowers' rights

The European Parliament and the Council of the EU found agreement in trilogue on the proposal for a [Directive](#) on credit servicers and credit purchasers (*Credit servicers are legal persons acting on behalf of credit purchasers and managing rights and obligations under a non-performing credit agreement such as payments collection or renegotiation of terms of the agreement*).

One of the key objectives of this Directive is to improve the access and transparency of secondary markets for Non-Performing Loans (NPLs, commonly defined as loans that are either more than 90 days past due, or are unlikely to be fully repaid), originally issued by banks and qualified as non-performing.

In particular, the Directive creates common reporting requirements for credit purchasers and an obligation to appoint a credit servicer for consumers and third-country investors. In this way, the new rules will create a Single Market for credit purchasers and credit servicers. This will foster competition, raise the average sale price of NPLs and significantly reduce servicing costs for the benefit of borrowers.



In addition, the Directive amends the **Consumer Credit Directive** and **Mortgage Credit Directive**. These amendments ensure that consumers will benefit from forbearance measures, are duly informed when the credit is transferred, and are able to keep the same contractual rights they had with the credit originators. Member States will be able to maintain or introduce stricter rules in order to protect consumers.

The text of the trilogue agreement is not available yet.

Mairead McGuinness, Commissioner responsible for financial services, financial stability and Capital Markets Union said: *“The new rules will strengthen and improve market transparency and consumer protection and help ensure that the current crisis and the potential rise of NPLs will not affect financial stability in the EU.”*

Irene Tinagli (S&D, IT), the ECON Chair and co-rapporteur said: *“With this Directive we make clear that the development of a real, efficient and well-regulated European secondary market for NPLs must go hand in hand with all possible efforts by creditors to make credit performing again, and the highest possible level of protection for borrowers. This is even more important now when we are still bearing the consequences of the COVID-19 pandemic; we cannot risk the recovery being jeopardised by decisions that penalise households and firms”.*



The Parliament, the Council and the Commission are now working on the technical aspects of the text. Thereafter, the agreement must be approved by the Economic and Monetary Affairs Committee and the Parliament as a whole and by Council as well.

3. PEPP - EIOPA Guidelines on supervisory reporting

On 4 June 2021, EIOPA published Guidelines on supervisory reporting regarding the Pan-European Personal Pension Product (PEPP). The Guidelines aim to ensure the common, uniform and consistent application of the PEPP Regulation’s reporting requirements regarding the details of the nature, scope and format of the information to be submitted by the PEPP providers to the competent authorities at predefined intervals and upon occurrence of predefined events.

Furthermore, the Guidelines define the requirements of a ‘PEPP supervisory report’, including the content of the narrative reporting on the PEPP business.

The Guidelines are addressed at competent authorities and PEPP providers (not at PEPP distributors). They complement the PEPP level 2 rules on reporting.

They will be applicable from 22 March 2022 (day of application of the PEPP Regulation).

All language versions of the Guidelines can be found [here](#).



4. Anti-Money Laundering – EBA consults on new Guidelines on supervisory cooperation for credit institutions

The European Banking Authority (EBA) launched a public [consultation on its new Guidelines](#) that set out how prudential supervisors, AML supervisors and financial intelligence units (FIUs) should cooperate and exchange information in relation to AML, in line with provisions laid down in the Capital Requirements Directive (CRD). This consultation runs until 27 August 2021.

In accordance with Article 117(5) of the CRD, prudential supervisors, AML supervisors and financial intelligence units (FIUs) must cooperate closely within their respective competences and provide each other with information relevant for their respective tasks. These EBA Guidelines aim to put in place the practical modalities of cooperation and information exchange among prudential supervisors, AML/CFT supervisors and FIUs, both at the level of Member States, and across the EU's Single Market.

The Guidelines cover the cooperation and information exchange throughout the supervisory life cycle including authorisations of new institutions, on-going supervision and risk assessment, and, where relevant, the imposition of supervisory measures and sanctions. In particular, the Guidelines cover which information to exchange with whom and at what stage.

These Guidelines complement the [ESAs' AML/CFT Colleges Guidelines](#), which were published in 2019 and form part of the EBA's wider work to strengthen the link between prudential and AML/CFT supervision.

5. Taxation - EU co-legislators reached agreement on corporate tax transparency

The European Parliament and the Council of the EU reached on March 2021 a political agreement on proposed Directive on the disclosure of income tax information by certain undertakings and branches, commonly referred to as the public country-by-country reporting (CBCR) Directive.

The Directive requires multinational enterprises or standalone undertakings with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years, whether headquartered in the EU or outside, to disclose publicly in a specific report the income tax they pay in each member state, as well as in each third country (listed in Annex I of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes - black list- or listed for two consecutive years in Annex II of these Council conclusions -grey list), and other tax-relevant information. Such reporting shall take place by means of a common EU template and in machine readable electronic formats.

Banks are exempted from the CBCR Directive as they are obliged to disclose similar information under another Directive.

The reporting will have to take place within 12 months from the date of the balance sheet of the financial year in question. The Directive sets out the conditions under which a company may obtain the deferral of such disclosure for a maximum of six years. It also stipulates who bears the actual responsibility for ensuring compliance with the reporting obligation.

Member States will have two years to transpose the Directive into national law.



The provisionally agreed text will now be submitted to the relevant bodies of the Council and of the European Parliament for political endorsement. If such endorsement takes place, the Council will adopt its position at first reading on the basis of the agreed text. The European Parliament should then approve that Council's position and the Directive will be deemed to have been officially adopted. It will then be published in the EU Official Journal.

6. European Parliament and Commission discuss the state of the SMEs Union

On 7 June, the European Parliament discussed during its Plenary session the “State of the SMEs Union” with the European Commission.

The Commission gave an introduction on the work carried out over the past year and the plans ahead. Commissioner for Jobs and Social Rights, Nicolas Schmit, referred here to the “[SME strategy for a sustainable and digital Europe](#)” and touched amongst others upon regulatory burden. The Commission’s Better Regulation Communication reinforces the commitment to evidence-based policymaking through improved consultations with stakeholders, better analysis of impacts, and a strong attention to efficient regulation. The ‘one-in-one-out’ principle allows the Commission to better address cumulative burden (*approach to minimise burdens for citizens and businesses by paying special attention to the implications and costs of applying legislation, especially for small and medium-sized enterprises. This principle ensures that any newly introduced burdens are offset by removing equivalent burdens in the same policy area*).

The Commission also stated that SMEs need a strong voice in EU policymaking. The pandemic has hit SMEs across the industrial ecosystems in an unprecedented way. At the same time, SMEs will be the key to green and digital recovery. That is why the Commission will reflect further on how to best design the mandate and role of the next [European SME Envoy](#) and how to structure the work of the network of the National SME Envoys to make sure actions are anchored locally and respond to the realities and needs of small businesses.

Several MEPs stressed that the Commission’s one-in, one-out’ principle should be applied to all upcoming EU rules and that it is actually not sufficient. The burden on SMEs needs to be better tested before introducing new rules. Several called for more action to tackle SME resilience as SMEs were severely hit by the pandemic and are still not getting the attention they deserve.

Commissioner Schmit concluded in this respect that: *“Many of you are calling to reduce the administrative burden on SMEs. Rightly so. The Commission is firmly committed to further cutting red tape, to reducing and simplifying regulations, and to making them as cost-efficient as possible for SMEs where they cannot be abolished. We will systematically apply an SME test in our impact assessments and look at further improvements. We need transparency in these processes. We also have to focus on the broader issue of quality legislation (...)”*.

7. UK extends PRIIPs exemption for UCITS until 2026

The UK Treasury has [announced](#) that it will extend the exemption -which currently exists in the EU- for UCITS funds from the requirements of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation by five years, to 31 December 2026. Until that date, providers of UCITS funds must produce a UCITS Key Investor Information Document (KIID) instead of a PRIIPs Key Information Document (KID).

The current rules in the EU foresee that the exemption expires on 31 December 2021. The European Commission is believed to extend the exemption within the EU one more time, until mid-2022.