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# Strategic Regulatory Foresight Banking Report 2019/2020 Switzerland and Europe

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# Executive summary

Today banks and regulators operate in an environment subject to ever-changing dynamics. Driven by changing economic and legal factors, revolutionary technologies, global networking, competition and consumer demand, the regulatory outlook for 2020 appears to be shifting as regulators around the world are increasingly having to adapt to the passage of time. The regulatory and policy agenda is firmly in review mode. Companies are seeking greater flexibility and resilience. As a result, they are making greater use of advanced data analytics, artificial intelligence and innovative technologies, further adapting risk management and increasing regulatory attention in areas such as safety and consumer protection. Global regulators are reviewing the rules and regulations for potential improvements in terms of proportionality, transparency and the integration of technological innovation. Regulators and industry participants are seeing significant opportunities for developing new tools, improving risk management and efficiency, and increasing safety for companies, markets and consumers.

The Strategic Regulatory Foresight Banking Report highlights the key initiatives in Europe and Switzerland that banks need to have on their regulatory agenda.

This report gives you an easy-to-read but fundamental overview of the upcoming regulations in Europe and Switzerland. It discusses the following key points:

**Regulatory developments in Europe**
- EU Action Plan on Sustainable Finance
- European Market Infrastructures Regulation (EMIR) 2.0
- Anti-Money Laundering Directive 5
- ePrivacy Regulation (ePR)
- Shareholder Rights Directive (SRD II)
- Capital Requirements Regulation (CRR) II, Capital Requirements Directive (CRD) V
- Bank Recovery and Resolution Directive (BRRD) II
- Securitisation Framework
- Securities Financing Transaction Regulation (SFTR)
- Libor replacement
- Brexit
- Directive on Administrative Cooperation in the field of taxation (DAC) 6
- The new EU Blockchain Resolution

**Regulatory developments in Switzerland**
- Revised Swiss Data Protection Act (FADP)
- Financial Services Act (FinSA)/Financial Institutions Act (FinIA))
- Amendments to the Swiss legislative framework for combating money laundering and terrorist financing
- Revision of the Banking Act

Banks and regulators must keep pace with these changes to overcome the risks. It is therefore essential to implement the new regulations as quickly and efficiently as possible.

Best wishes,

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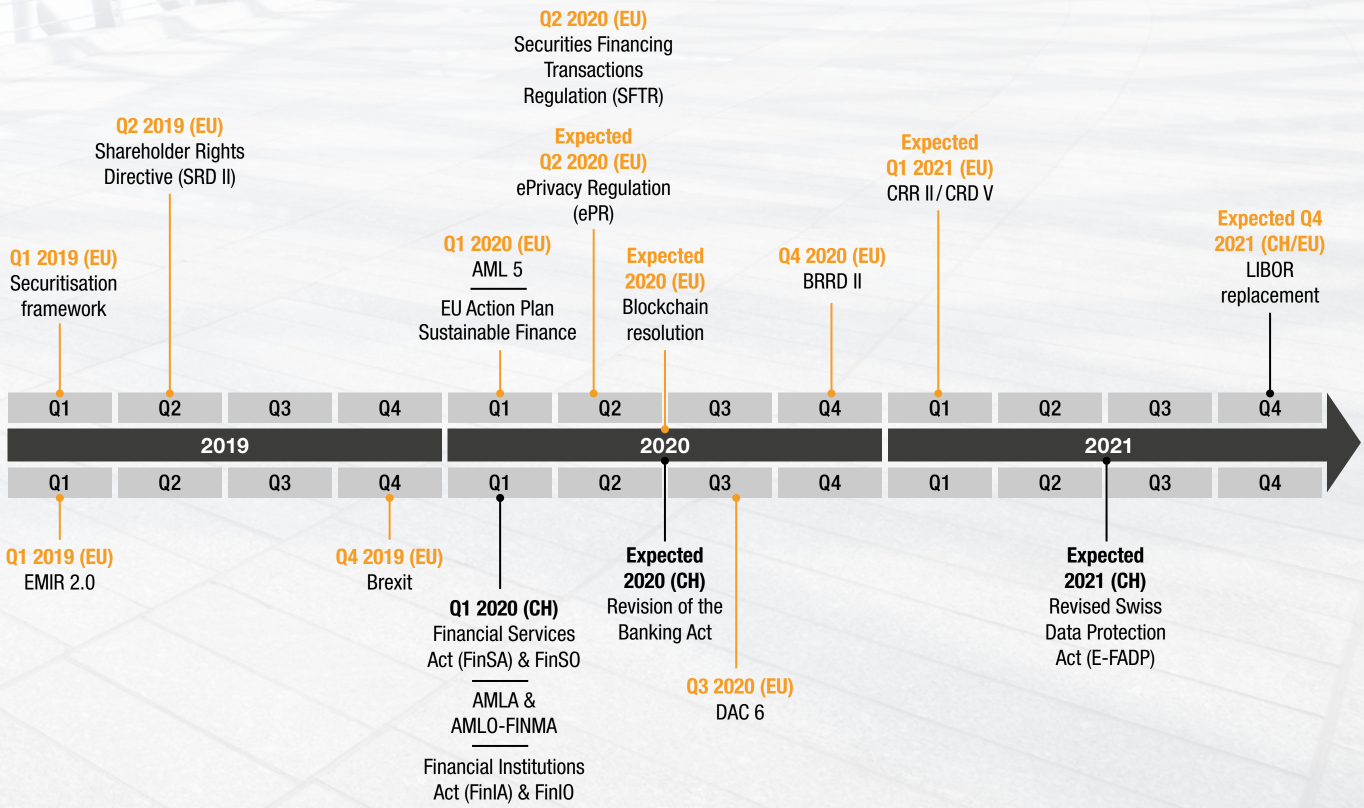
# Regulatory Outlook 2019/2021

» The timeline shows key regulatory initiatives in Switzerland and Europe for 2019, 2020 and certain entry into force dates in 2021.



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# Abbreviation index

| | |
|---|---|
| ABCP | asset-backed commercial paper |
| AEI | Automatic Exchange of Information |
| AIF | alternative investment fund |
| AIFM | alternative investment fund manager |
| AIFMD | Alternative Investment Fund Manager Directive |
| AMLD | Anti-Money Laundering Directive |
| ARR | alternative reference rates |
| AT1 | additional tier 1 |
| BRRD | Bank Recovery and Resolution Directive |
| CC | Swiss Civil Code |
| CCPs | central counterparties |
| CDB | Swiss Banks' Code of Conduct with Regard to Due Diligence |
| CEM | current exposure method |
| CET1 | common equity tier 1 |
| CHF | Swiss francs |
| CID | client identifying data |
| CISA | Collective Investment Schemes Act |
| CO | Swiss Code of Obligations |
| COREP | common reporting |
| CP | consultation paper |
| CPIL | Code of Private International Law |
| CRD | Capital Requirements Directive |
| CRR | Capital Requirements Regulation |
| DAC | Directive on Administrative Cooperation in the field of taxation |
| DJSI | Dow Jones Sustainability Index |
| DLT | distributed ledger technology |
| DPIA | data protection impact assessment |
| EBA | European Bank Authority |
| EC | European Commission |
| ESG | environmental, social and governance |
| EMIR | European Market Infrastructure Regulation |
| EMIR-REFIT | EMIR Regulatory Fitness and Performance Programme |
| ePR | ePrivacy Regulation |
| ESMA | European Securities and Market Authority |
| €STR | euro short-term rate |
| ETD | exchange-traded derivative |
| ETS | Europe Treaty Series |
| EU | European Union |
| EU GBS | EU Green Bond Standard |
| FADP | Swiss Federal Act on Data Protection |

| | |
|---|---|
| FATCA | Foreign Account Tax Compliance Act |
| FATF | Financial Action Task Force on Money Laundering |
| FC | financial counterparty |
| FCA | Financial Conduct Authority |
| FDPIC | Federal Data Protection and Information Commissioner |
| FinIA | Financial Institutions Act |
| FINMA | Swiss Financial Market Supervisory Authority |
| FINREP | financial reporting |
| FinSA | Financial Services Act |
| FMIA | Financial Market Infrastructure Act |
| FRTB | Fundamental Review of the Trading Book |
| FSB | Financial Stability Board |
| FTT | financial transaction taxes |
| GDPR | General Data Protection Regulation |
| GRI | Global Reporting Initiative |
| G-SIBs | global systemically important banks |
| HLEG | high-level expert group |
| HR | human resources |
| IAA | Internal Assessment Approach |
| ICOs | initial coin offerings |
| IDD | Insurance Distribution Directive |
| IoT | Internet of Things |
| IPU | Intermediate Parent Unit |
| ISA | Insurance Supervision Act |
| ITS | implementing technical standards |
| LCR | liquidity coverage ratio |
| LIBOR | London Interbank Offered Rate |
| LR | leverage ratio |
| MiFID | Markets in Financial Instruments Directive |
| MPE | multiple point of entry |
| MREL | minimum requirement for own funds and eligible liabilities |
| NCWO | no creditor worse off |
| NFC | non-financial counterparty |
| NGO | non-governmental organisation |
| NPPR | national private placement regime |
| NPS | non-preferred senior |
| NSFR | net stable funding ratio |
| OECD | Organisation for Economic Co-operation and Development |
| OTC | over the counter |
| OTT | over the top |
| p.m. | post meridiem (after noon) |
| P2G | pillar 2 guidance |
| P2R | pillar 2 requirement |
| PRI | Principles for Responsible Investment |
| PRIIP | packaged retail and insurance-based investment products |
| RTS | regulatory technical standards |
| RWA | risk-weighted assets |
| SA-CCR | standardised approach for measuring counterparty credit risk exposure |
| SARON | Swiss Average Rate Overnight |
| SBA | Swiss Bankers Association |
| SchKG | Swiss Debt Enforcement and Bankruptcy Law |
| SDG | Sustainable Development Goals |
| SEC-ERBA | external ratings-based approach |
| SEC-IRBA | internal ratings-based approach |
| SEC-SA | standard approach |
| sFC | small financial counterparty |
| SFT | securities financing transaction |
| SFTR | Securities Financing Transaction Regulation |
| SIX | Swiss Exchange |
| SM | standard method |
| SMEs | small and medium-sized enterprises |
| SMS | short message service |
| SMSG | Securities and Markets Stakeholder Group |
| SNB | Swiss National Bank |
| SNP | senior non-preferred debt |
| SOFR | Secured Overnight Financing Rate |
| SONIA | Sterling Overnight Index Average |
| SP | senior preferred |
| SPE | single point of entry |
| SRD | Shareholder Rights Directive |
| SSPE | securitisation special purpose entities |
| STS | simple, transparent and standardised |
| TLAC | total loss-absorbing capacity |
| TONAR | Tokyo Overnight Average Rate |
| TR | trade repositories |
| UCITS | undertakings for the collective investment in transferable securities |
| UK | United Kingdom |
| UN | United Nations |
| USD | United States dollar |
| VAT | value-added tax |

# Regulatory developments in Europe

## 1. EU Action Plan Sustainable Finance

Dr Antonios Koumbarakis and Moritz Obst

### 1.1. Background

Current global developments clearly show that climate change is being tackled by establishing binding common commitments for a low-carbon, resource-efficient and climate-resilient economy. Based on the Paris Agreement and the 2030 Agenda, in 2015 the EU acknowledged the importance and core function of the financial system in sustainability as a means of re-orienting investments towards more sustainable technologies and businesses, financing growth in a sustainable manner over the long term, and contributing to the creation of a low-carbon, circular economy. The European Commission (EC) indicated that, to reach these goals, the whole European Economic Area must invest EUR 180 billion annually until 2030.

In 2016, the EC established a High-Level Expert Group (HLEG) on Sustainable Finance. The aim of this group is to develop strategies for the integration of sustainability concepts into EU financial services legislation. The HLEG published its final report in January 2018. Subsequently, the EC published an action plan on sustainable finance in March 2018. This action plan contains a comprehensive strategy for linking sustainability and finance by amending financial regulations and policies and explicitly introducing sustainability aspects. In summary, the action plan introduces additional sustainability and ESG (environment, social and governance) requirements into existing elements of European Union (EU) financial market legislation.

On 24 May 2018, on the basis of the action plan, the EC published a package of measures to implement several key actions announced in its action plan on sustainable growth. In a longer list of possible options for sustainable financing legislation, the following three proposals should be highlighted:

1. The proposal for a regulation on the establishment of a framework to facilitate sustainable investment
2. The proposal for a regulation on disclosure of sustainable investments and sustainability risks and amending Directive (EU) 2016/2341
3. The proposal for a regulation on low-carbon and positive CO2 benchmarks and amending Regulation (EU) 2016/1011

### 1.2. Legislative schedule and details of proposals

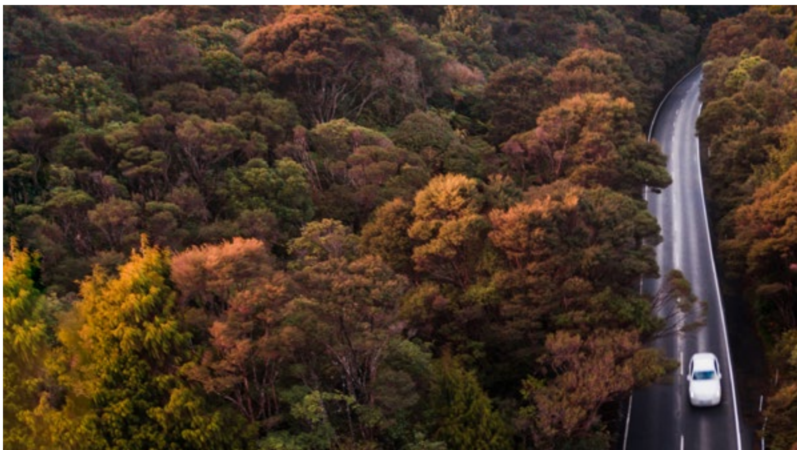
In addition to the package of measures, the EC also advised on important changes to the secondary regulations governing the provision of investment products and services to investors. In addition, the EC has set up a Technical Expert Group (TEG) to assist it in developing legislative proposals.

The series of legislative measures introduced in May 2018 includes:

#### Introduction of a harmonised taxonomy with respect to sustainability

The first proposal for a regulation established a framework for a common taxonomy, describing what kinds of activity can be regarded as an environmentally sustainable economic activity. As market participants have a different understanding of sustainability, the taxonomy provides a harmonised definition of 'sustainability' and hence avoids market fragmentation and obstacles to cross-border capital flows. It thus forms a basis for future standards, labels and reports from companies and financial service providers.

Between December 2018 and January 2019, the TEG collected feedback on the first proposed economic activities that could be considered economically sustainable. Given the EC's current pace, legislative activity is expected by 2020. The same timeframe applies to an EU eco-label for green financial products, which the EC is also currently working on.



**New disclosure requirements for financial services and products**

The second proposal concerns a regulation on disclosure of sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 with the aim of creating consistency and clarity on how financial intermediaries such as asset managers, private bankers, investment bankers, insurance companies, pension funds and financial advisors should integrate ESG factors into their investment decisions. The disclosures to be made cover:

- procedures and conditions for the integration of sustainability risks into investment decisions and advice
- the expected impact of sustainability risks on returns
- the coherence of the remuneration policy with the sustainable investment objective of the financial product and the integration of sustainability risks.

**New categories of benchmarks**

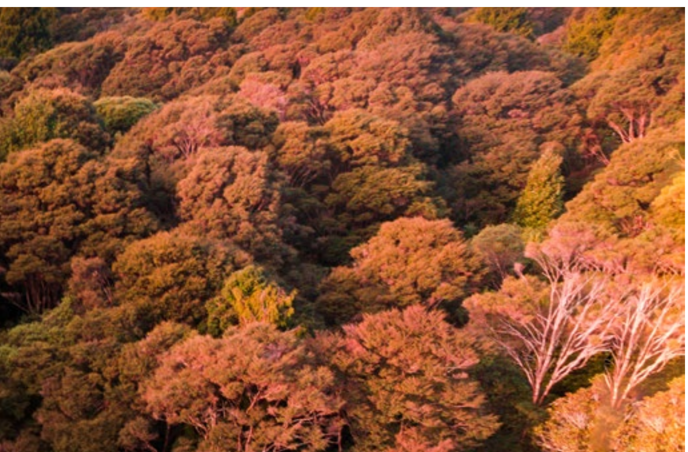
The regulation amending the Benchmark Regulation will now be examined in more detail. The proposed amendment creates a new category of benchmarks. It includes low-carbon and positive carbon impact benchmarks for CO2 emissions, which provide investors with better information on the carbon footprint of their investments. The proposal introduces two new categories of low carbon benchmarks:

1. benchmarking on climate change
2. a specialised benchmark that reconciles investment portfolios with the objective of the Paris Association.

An administrator must publish or provide a statement on how the key elements of the above elements reflect the ESG factors for each benchmark or family of benchmarks that pursue or take into account ESG objectives.

**Client profiling and investment advisory process to integrate ESG client preferences and ESG factors**

The fourth proposal should incorporate ESG considerations into the advice provided by investment firms and insurance distributors to individual clients under the Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD). The proposals would now require suitability tests to take into account the sustainability preferences of a potential investor when recommending products. This means that in the context of underwriting advice, a personal recommendation must now be in line with the ESG preferences of the client or potential client in addition to their investment objectives and risk tolerance.



Furthermore, between December 2018 and February 2019, the European Securities and Markets Authority (ESMA) conducted a public consultation on initiatives for sustainable financing in the area of MiFID II. The EC asked ESMA to provide technical advice by 30 April 2019 on the integration of sustainability risks and factors into the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive, Alternative Investment Fund Manager Directive (AIFMD) and Markets in Financial Instruments Directive (MiFID) II. Consequently, EC legislative measures are expected by Q4/2019 or Q1/2020.

Another initiative on which the EC and the TEG are working is a green bond standard. A green bond differs from a regular bond by virtue of a label denoting the obligation to use the funds raised exclusively to finance or refinance 'green' projects, facilities or business activities.

In March 2019, the TEG published an interim report outlining the status of the work carried out to date. This report outlines a possible design of an EU Green Bond Standard (EU GBS). It also explains its purpose, defines its level of ambition and explains possible incentives to increase the growth of green bond issuance and the links with other sustainable financing instruments in a broader context. This will provide the EC with guidelines for proposed further action on the EU GBS, including possible legislative initiatives or amendments. The guidelines should also feed into the work being launched in parallel by the EC on a possible EU eco-label for green financial products.

### 1.3. Impact on actors in the financial industry

The ESG standards are a crucial step for the financial industry as a whole, as each sector will be affected by the new obligations to comply with ESG and stricter disclosure requirements. As a logical consequence, the entire investment decision and advisory process needs to be reviewed and adapted. The legislative proposals focus on asset management, insurance and pensions. It will primarily affect the following major financial market participants:

- investment firms offering portfolio management or investment advice
- investment/private/retail banks
- wmanagers of alternative investment funds (AIFMs)
- undertakings for collective investment in transferable securities (UCITS) management companies
- insurance companies
- intermediaries for investment advice
- providers of pension products and institutions for company pensions
- benchmarking of providers and administrators.

Most investment products will also be directly or indirectly affected by the definition of ESG standards. In the past, the idea of sustainable investment was limited to equities,

but today the spectrum is much broader and covers all major asset classes, including structured investments, collective investments, corporate bonds, mortgages, IBIPs, pension plans and corporate loans. Legislation will also affect financial products offered as sustainable, such as UCITS funds, alternative investment funds (AIFs), portfolio management and insurance-based investment and pension products.

### 1.4. Implications for Switzerland

Given the broad dimension of the EC's proposals, it is inevitable that actors from third countries will also be affected. For example, if a financial institution domiciled in Switzerland is already subject to one of these EU policy frameworks as a financial actor providing relevant in-scope services beyond the EU's borders, it must also comply with the necessary EU proposal rules which complement the relevant EU policy with sustainability and ESG aspects. This may be the case, for example, when investment firms domiciled in Switzerland export the following to the EU:

1. investment management services for UCITS or AIFs
2. investment services within the framework of a branch or other EU Member State-specific cross-border third country regime under MiFID II
3. AIFs within the framework of national private placement schemes (NPPRs) or AIFMD.

### 1.5. Way forward

The revolutionary Action Plan on Sustainable seeks to define a new global. So far, no such far-reaching initiatives have been launched. The proposals to amend existing key regulations, as mentioned above, have already been passed or are in the final consultation phase. In view of the EC's decision, further initiatives on sustainability-compliant non-financial reporting and amendments to the Prospectus Regulation for the issuance of green bonds are imminent. The largest and most significant changes are expected from the new taxonomy planned for Q1 2020.

## 2. EMIR 2.0

Dr Antonios Koumbarakis, Sofia Tsankova and Jana Balli

### 2.1. Background

Following the financial market crisis in 2008, the heads of state and government of the leading industrial nations decided to reshape the whole over-the-counter (OTC) derivatives market to make it more transparent and secure. In particular, it was agreed that standardised OTC derivatives would in future be settled via central counterparties (CCPs) and that the derivatives would have to be reported to trade repositories.

In August 2012, the European Market Infrastructure Regulation (EMIR) came into force to implement these objectives and create a single supervisory framework for CCPs. EMIR has now been revised under the EMIR Regulatory Fitness and Performance Programme (EMIR-REFIT). The amendments came into force on 17 June 2019 and apply without a transitional period.

### 2.2. Changes

Key changes include:

- extended definition of financial counterparties (FCs) to capture EU AIFs and their EU AIFMs
- FCs to report derivative transactions on behalf of non-financial counterparties (NFCs)
- exemption from reporting obligations for intragroup transactions where one counterparty is an NFC
- end of backloading and frontloading requirement
- introduction of 'small FCs' which are exempt from the OTC clearing obligations (although still subject to the margin requirements for uncleared OTC)
- extension of the clearing exemption for risk-reducing transactions of pension schemes
- power for ESMA and the EC to suspend the clearing and derivatives trading obligation
- regulators to validate risk management procedures for the exchange of collateral
- obligation to provide clearing services on fair, reasonable, non-discriminatory and transparent terms.

### 2.3. Key changes for Swiss-based counterparties

#### Definition of the term 'financial counterparty'

The new definition includes certain additional categories of counterparties, which might affect Swiss asset managers managing EU AIFs.

Under the new definition, every AIF established in the EU, or managed by an AIFM authorised or registered in the EU under the AIFMD, will be an FC like any AIFM established in the EU of such an AIF.

#### Scope of the clearing requirement

The requirements for the clearing obligation have been amended and a new pro-active notification is required. The clearing obligation applies directly to Swiss-based counterparties to a derivative transaction with an EU-based counterparty. It thus follows an extraterritorial approach.

Under the new regime, both FCs and NFCs have the possibility to benefit from the clearing exemption if they calculate their aggregate average month-end positions for all their OTC derivatives in the last 12 months, every 12 months. The positions are calculated against defined thresholds in five OTC derivatives categories:

- EUR 1 bn for credit derivatives
- EUR 1 bn for equity derivatives
- EUR 3 bn for interest rate derivatives
- EUR 3 bn for foreign exchange derivatives
- EUR 3 bn for commodity derivatives and others.

An FC will only be subject to the clearing requirement if it exceeds any of the defined clearing thresholds or if it fails to calculate its positions (at group level). In case a threshold is exceeded, the clearing requirement is applicable for all OTC asset classes subject to the clearing obligation regardless of which threshold has been crossed. A small FC cannot deduct its hedging transactions.

For NFCs, EMIR-REFIT only requires the clearing of the OTC derivatives in the asset classes, for which the clearing thresholds have been exceeded. There will be no clearing requirement for the other OTC asset classes subject to the clearing obligation. Hedging activities can be deducted from the gross position.

ESMA made it clear in a public statement dated 28 March 2019 under what circumstances the clearing obligation will apply. FCs and NFCs can choose whether or not to calculate their OTC derivatives positions. When they choose not to do so, or where the result of that calculation exceeds the clearing thresholds, then these FCs or NFCs are required to immediately notify ESMA and the competent authority.In addition, they will become subject to the clearing obligation for the OTC derivative contracts entered into, or novated, later than four months following that notification. In the event that an affected FC or NFC does not calculate positions against the clearing threshold and/or does not notify ESMA about it, it will nevertheless be subject to the clearing obligation.

ESMA expects that all FCs and NFCs that are potentially subject to the clearing obligation and choosing to calculate their OTC derivatives positions would need to determine the results of that calculation on the day the REFIT enters into force. Those FCs and NFCs are therefore expected to collect all the necessary data and information for the calculation in the meantime, in order to be ready for the

calculation when the EMIR-REFIT enters into force. From that point on, FC and NFCs taking positions in OTC derivative contracts and choosing to calculate their aggregate month-end average positions are required to perform that calculation every 12 months.

This means, for Swiss banks in particular, a potential change to agreements entered into with their clients regarding compliance with EMIR, and might even result in the need to calculate the aggregate OTC derivative positions on a periodic basis if they have assumed this obligation. It likely also means that banks and other Swiss counterparties will have to re-evaluate the status of counterparties or clients under the EMIR-REFIT.

### Reporting

Additionally, intragroup transactions must no longer be reported if at least one of the two counterparties is an NFC (or would be an NFC if established in the EU). Both parties are subject to consolidation as well as centralised risk management, and the parent undertaking cannot be an FC. Counterparties must notify the competent national authorities of their intention to apply the exemption within three months of the date of notification. The CCP becomes responsible and liable for reporting on behalf of both the trading parties for exchange-traded derivatives (ETDs). Furthermore, the FCs are responsible and liable for reporting the transactions they perform with NFCs that are not subject to the clearing obligation.

In addition, in accordance with the new EMIR requirements, trade repositories (TRs) must have an appropriate procedure in place to check that the data are complete and accurate, and that the data process is properly coordinated.

Moreover, TRs must ensure the secure transfer of data to other TRs if requested by the customer.

# 3. Latest developments related to the 5th EU Anti-Money Laundering Directive

Michèle Hess, Torsten Neuwirth and Marius Rombach

Implementing the increased requirements of the 4th EU Anti-Money Laundering Directive compared with those of the 3rd EU Anti-Money Laundering Directive presented serious challenges for obliged entities. The 5th EU Anti-Money Laundering Directive introduces additional stringent measures and clarifies existing measures in order to more effectively combat money laundering and terrorism financing. The draft act implementing Directive (EU) 2018/843 published by the Federal Ministry of Finance makes it easier to use the transparency register, expands the group of obliged entities and increases the monitoring obligations of those currently subject to the rules. In addition, the due diligence obligations when conducting transactions involving high-risk third countries have been increased. As those subject to the directive are expected to implement its provisions by 10 January 2020, financial institutions and intermediaries should take stock of the new regulations and any resulting adjustments that will need to be made early on.

### 3.1. Overview of the new requirements

Significant changes include, in particular, more stringent due diligence obligations on the part of companies subject to the Anti-Money Laundering Act with regard to their business relationships with high-risk third countries, an expansion of the companies considered obliged entities and an obligation on their part to make risk-based entries concerning beneficial owners and notify the transparency register. The introduction of a European platform to share data about beneficial owners will further enhance the EU-wide network between member states and the transparency register.

### 3.2. Expansion of the group of obliged entities

The introduction of the 5th EU Anti-Money Laundering Directive represents a response by EU member states to the increasing popularity of virtual currencies. While also used as a means of storing value, exchange or investment, these currencies are mainly used as a means of payment – for example, in online casinos. Virtual currencies provide a high level of anonymity. Such currencies are increasingly being used by criminal organisations to place criminal assets into legal circulation while concealing the identity of the parties involved in the transaction.

As a result of 'crypto-assets' being listed as financial instruments in the future, the related brokerage and advisory services must be treated as financial services and the companies offering them categorised as financial services institutions. Thus, commercial providers of crypto storage services in Germany will need approval from the financial supervisory authorities starting from 1 January 2020 – subject to the transitional regulations. The more stringent regulations of the new money laundering directive will result in the establishment of additional monitoring processes to better identify, evaluate and control money laundering risks.

### 3.3. Increased due diligence obligations for business relationships and transactions involving high-risk third countries

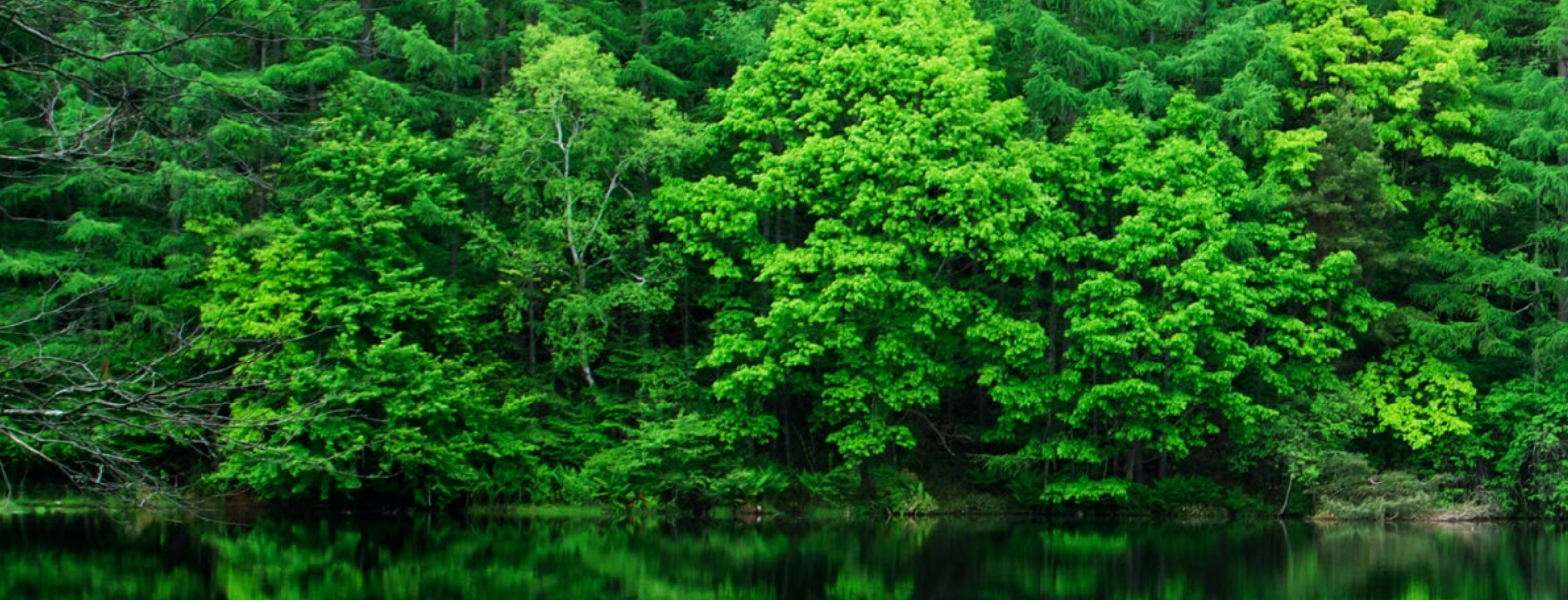
In particular, the 5th EU Anti-Money Laundering Directive provides for significant changes regarding the due diligence obligations of obliged entities in relation to transactions involving high-risk third countries.

In its current version, the Anti-Money Laundering Act (AMLA) governs certain heightened due diligence obligations that must be observed by obliged entities for transactions involving high-risk third countries: establishing or maintaining a business relationship with a business partner connected to a high-risk third country requires the explicit consent of a member of management of the obliged entity. In addition, measures in line with the risk must be implemented to determine the origin of the assets used in the course of the business relationship or a transaction. Finally, the business relationship must be subjected to increased and continuous monitoring and designated accordingly.[1] This alone presents additional technical and staffing challenges for financial services companies. What increased monitoring means and how this needs to be structured in proportion to the risk in order to take account of the assessment by the supervisory authority must be determined on a case-by-case basis.

Even companies that only occasionally deal with high-risk third countries will have to meet these requirements in future: whenever a high-risk third country is involved in a business relationship or transaction, increased due diligence obligations must be applied. The residence of the specific contractual partner or beneficial owner in a high-risk third country will likely cease to be a prerequisite. As a result, if the assets involved in a transaction are in a high-risk third country, this will suffice to trigger the increased due diligence obligations.[2] Therefore, 'additional information' will have to be obtained – specifically, relating to the contractual partner, the beneficial owner and the origin of the assets and the client's assets per se.

With respect to an existing relationship to a high-risk third country, the draft act also provides for the authorisation of the competent supervisory authorities to order further

1 Section 15 AMLA
2 Section 15 para. 3 no. 2 draft AMLA.



risk-mitigating measures.[3] In addition, EU member states with strategic deficiencies in their systems for combating money laundering and terrorism financing in respect of high-risk third countries will have to create legal options for barring obliged entities from high-risk third countries from establishing subsidiaries, branches or representative offices in the respective EU member state under certain conditions.

The classification of countries as high-risk is carried out by the European Commission. Currently, the following countries have been classified as high-risk: Afghanistan, Ethiopia, Bosnia and Herzegovina, Guyana, Iraq, Iran, Yemen, Laos, North Korea, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Uganda and Vanuatu.

Both obtaining information and processing it in the risk systems for combating money laundering and terrorism financing, as well as continuously monitoring and regularly updating this information, present obliged entities with increasingly complex tasks. In particular, monitoring, in accordance with the directive, the "planned use of the assets used in the framework of the transaction or the business relationship" will force obliged entities to consider the use of intelligent software solutions.

### 3.4. The transparency register

The ability to gain access to the transparency register – which contains information about beneficial owners[4] – will be expanded considerably and the concept of the 'public good' widened: A legitimate interest will no longer be required to access the transparency register in future. According to the statements that have been made, "all members of the public" will have the ability to view, at a minimum, the name(s), month and year of birth, country of domicile and nationality of beneficial owners as well as the type and scope of the economic interest. There will continue to be limited access to the information entered in the transparency register regarding the beneficial owners of trusts and similar legal entities. Access will be granted – to natural persons or legal entities – solely if there is a legitimate interest.[5]

However, beneficial owners will be given the option of requesting that access to their personal data be blocked. But the confidentiality of the data also involves substantial requirements. The risk of racketeering and harassment will be added to the existing risks of becoming the victim of fraud, extortionate kidnapping, hostage-taking, extortion or robbery-like extortion, punishable acts threatening life and limb, coercion and threats.

While racketeering already falls under the elements of the offence of extortion under Art. 23, para. 2 AMLA, the term harassment contains elements of the offence of both coercion and threats.

### 3.5. Obligation to obtain an extract from the transparency register to determine identity

According to the AMLA, obliged entities must be identified before a new business relationship is established. The same applies before a transaction is conducted for the contracting partner and, where applicable, those persons who represent them as well as their beneficial owners. Doing so requires determining the identity of the contracting partner and verifying the data. In accordance with the provisions of the 5th EU Money Laundering Directive, obliged entities will in future have to obtain proof of registration in the transparency register or an extract from the transparency register, "where necessary". In addition, the recording obligations will be expanded to include measures to determine the beneficial owner and to review the identity of the notional beneficial owner.

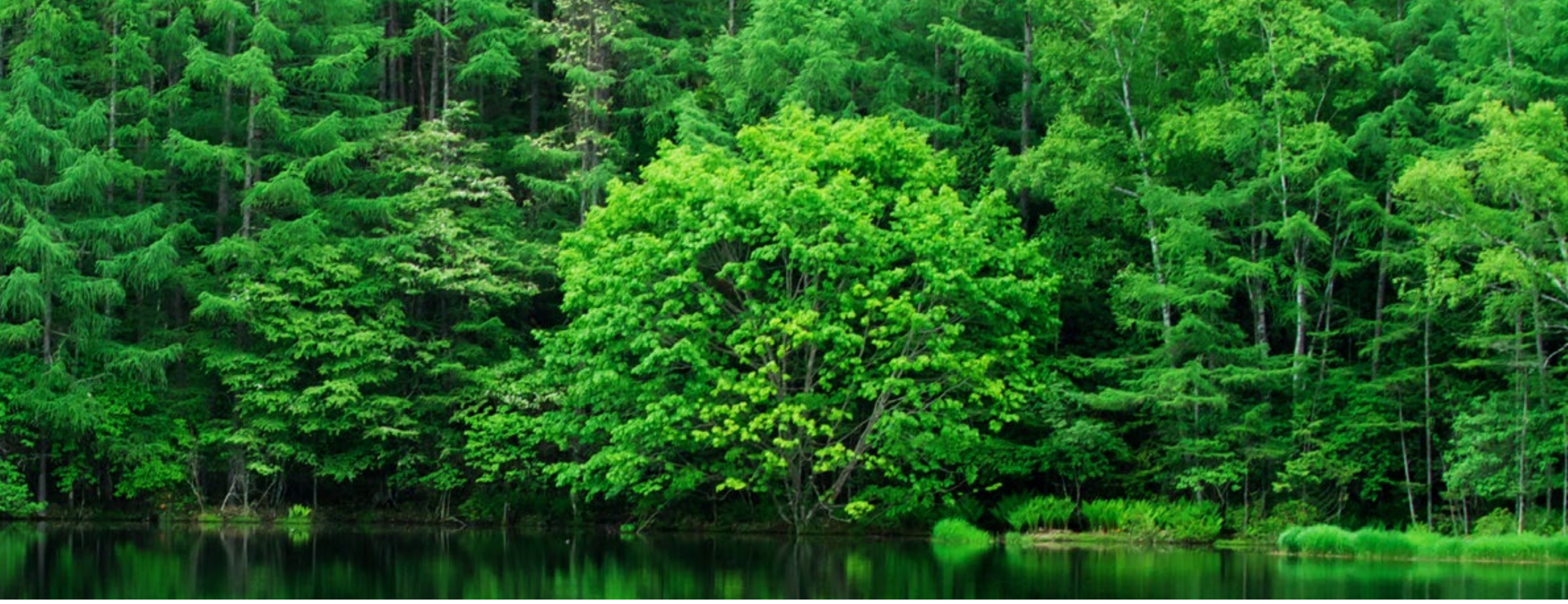
As part of the identification process, third parties involved in carrying out client-related due diligence obligations will in future be able to access information that was collected during a previous identification process.[6] For residence abroad – for example, in Switzerland – German law must be observed.

3 Section 15, para. 5a draft AMLA.

4 Pursuant to Section 3 AMLA.

5 Section 23 para. 1 clause 1, no. 3 draft AMLA.

6 If the prerequisites of the BaFin interpretation and application guidance in accordance with Section 51, para. 8 AMLA have been met (e.g. the data was collected not more than 24 months prior, there is no doubt about the accuracy of the information).



### 3.6. Expansion of liability for fines

A reporting obligation subject to fines will be imposed on obliged entities if inconsistencies are identified between the information about the beneficial owners in the transparency register and the information provided about them. The list of fines will also be expanded to include additional elements of offences – including breaches of the new transparency obligations. A breach of the AMLA will continue to require reckless or non-compliant behaviour; the draft act no longer includes negligence.

### 3.7. Implications for the Swiss financial centre

There are no plans to adopt the 5th EU Anti-Money Laundering Directive into Swiss law, but it will likely affect Swiss companies, especially in their business relationships and transactions with companies in EU member states.

As a result of the recommendations of the country report prepared by the Financial Action Task Force (FATF), the Federal Council passed a dispatch to amend the Anti-Money Laundering Act on 26 June 2019.

Based on the rules issued by FATF, FINMA is also creating a framework for blockchain service providers, such as exchanges, wallet providers and trading platforms, with its regulatory requirements for blockchain payments of 26 August 2019.

### 3.8. Conclusion and impact

The upcoming implementation of the 5th EU Anti-Money Laundering Directive in national law will further expand and clarify the preventive measures to combat money laundering and terrorism financing. A key consideration is the expansion of the scope of application to virtual transactions and thus to future, developing and numerous options for electronic or mobile payments being driven by digitalisation.

For companies – especially small and medium-sized companies and their legal representatives – implementation will result in a substantial amount of red tape. This is also true given that the transparency register is publicly accessible to anyone and given the potential harm to the sensitive personal information of registered beneficial owners. Companies should continue to monitor changes to the law carefully in order to prevent legal consequences for non-compliance with the requirements and to be able to respond in their own interest to required measures in good time.

The 5th EU Anti-Money Laundering Directive will affect a number of companies and lead to increased expenditure, especially for financial institutions and intermediaries. The expansion of the preventive system to combat money laundering and terrorism financing and the new regulatory requirements regarding virtual payment options require a robust and functional compliance management system with money laundering prevention processes. Particularly with a view to the expansion of the group of obliged entities and the increased requirements related to due diligence obligations for transactions connected with high-risk third countries, financial institutions should review early on whether and to what extent their compliance systems need to be adapted to the new requirements. As part of a target vs current comparison, the new legal requirements should be implemented by adjusting and expanding existing processes, guidelines and work instructions in order to be able to deal with business activities in a legally secure manner in the future as well.

Companies are advised to address the implementation of the new EU requirements early on and comprehensively, as violations of anti-money laundering requirements may result in reputational damage, substantial fines and the loss of professional licences.

# 4. ePrivacy Regulation (ePR)

Philipp Rosenauer

## 4.1. Background

The ePrivacy Regulation (ePR) will replace the existing ePrivacy Directive, which was revised in 2009. The new regulation comprises several adjustments to address current trends in digital markets, and its scope has been extended considerably. The key goal of the ePR is to protect the electronic communications of natural and legal persons and to protect the information stored in their terminal equipment.

The cornerstones of the proposed rules on privacy and electronic communications are outlined below.

### All electronic communications must be confidential

Listening to, tapping, intercepting, scanning or storing of, for example, text messages, emails or voice calls will not be allowed without the consent of the user. The newly introduced principle of confidentiality of electronic communications will apply to current and future means of communication – including, for example, all appliances linked to the Internet of Things (IoT).

### Confidentiality of users' online behaviour and devices has to be guaranteed

Consent is required to access information on a user's device – the so-called terminal equipment. Users also need to agree to websites using cookies or other technologies to access information stored on their computers or to track their online behaviour.

### Processing of communications content and metadata is conditional on consent

Privacy is guaranteed for the content of communication as well as metadata – for example, who was called, the timing, location and duration of the call, as well as any websites visited.

### Spam and direct marketing communications require prior consent

Regardless of the technology used (e.g. automated calling machines, SMS or email), users must give their consent before unsolicited commercial communications can be addressed to them. Marketing callers will need to display their phone number or use a special prefix number that indicates a marketing call.

## 4.2. Key requirements of the ePrivacy Regulation

The ePR has an extensive material scope as it includes rules on various aspects of electronic communications. The following are the key requirements outlined in the draft regulation.

### Scope: legal and natural persons in the EU

The regulation applies to both legal and natural persons and covers the provision of e-communication services and the use of such services by such users within the EU. The regulation additionally applies to information related to the terminal equipment of users within the EU.

### Protection of electronic communication

Electronic communication is protected through the principle of confidentiality. Accordingly, the processing of data and metadata related to electronic communications is restricted to what is strictly necessary to provide the communication service, and erasure is required once the data is no longer needed for its original purpose. This will impact, for example, Voice-over-Internet Protocol and instant messaging services (e.g. WhatsApp, Facebook messenger, Gmail, Skype).

### Protection of information stored in terminal equipment

The regulation restricts the processing of data stored in the terminal equipment of users as well as the collection of information related to the user's terminal equipment.

### Privacy settings

Protection of privacy will be strengthened through extended requirements relating to the consent to cookies, such as the need to provide transparent information on privacy settings and to offer possibilities to change privacy settings for all third-party cookies (via the browser settings). According to the current draft, the browser settings will need to allow website visitors to accept or refuse cookies from all websites, as well as other 'identifiers' – which is a change from the current cookie 'pop-ups' that users see on most websites today.

### Extended requirement for user's consent

The ePR will require the user's consent in a number of instances, for example for the processing of e-communication content and related metadata (when such processing is not strictly necessary for the provision of the service) as well as for using information stored in terminal equipment.

### Right of natural and legal persons to control electronic communications

The regulation adds restrictions with respect to calling-line identification and strengthens the provisions for call blocking.

### Restrictions on unsolicited communications

Privacy is further strengthened through extended consent requirements with respect to entries in public directories and unsolicited communications (via email, calls or any other electronic service).

### Transparency on security risk

Providers of electronic communication services have to inform users about the particular risks related to the security of networks and electronic communications.

## 4.3. Key challenges of ePR for banks

To ensure compliance, banks will have to expand the analysis of existing processes they had to complete in relation to the General Data Protection Regulation (GDPR) to all processes involving any kind of electronic communication with their clients, employees and any other type of data subject. The key challenges arising from this increased scope and from the ePR as a whole are listed below.

### Protection of legal persons

Banks exchange a considerable volume of electronic communications (e.g. mails and voice calls) with their clients (natural and legal persons). Under the ePR, all these communications will be subject to stricter requirements, especially when they contain personal or confidential data.

### Protection of electronic communication

The ePR aims to protect all kinds of data processing within electronic communications. Banks may therefore have to develop new security requirements for the transmission of personal and confidential data through electronic means. This may affect existing processes such as fund transfers (where the data of the payer and payee is transferred between banks) or information exchanges related to regulations such as the Automatic Exchange of Information (AEI), the Foreign Account Tax Compliance Act (FATCA) or MiFID. Most notably, this will affect email communications.

### Protection of terminal equipment information

The ePR covers not only the provision and use of electronic communication services, but also the protection of information related to the terminal equipment of end users. Banks will have to consider these requirements, for example, in relation to their applications (such as e-banking apps) where the user stores data such as transaction details.

### Future-proof requirements

In this sense, the ePR covers not only traditional communication services, such as e-mails and voice calls, but also all the 'over-the-top' (OTT) services that have proliferated in recent years and will continue to grow in the future (e.g. WhatsApp, Facebook, etc.), as well as any communications linked to the IoT. Banks started some years ago to build activities around OTT services (e.g. in certain cases, help desks can be contacted via social networks). Any ePR programme would have to review thoroughly the security measures and data processing purposes in relation to such activities.

### Metadata restrictions

The restrictions relating to the processing and/or storage of metadata may affect the ability to use and analyse such data obtained from monitoring the use of bank websites or applications.

### New regulations on cookies

The ePR aims at simplifying the user experience with cookies by allowing the user to set a global requirement for cookies directly in the browser; hence, it will be easier to block all third-party cookies. This may affect banks, as the effectiveness of targeted online advertisements (including in-app ads) will be limited under the new set-up.

### Restrictions on unsolicited communications

Stricter consent requirements (with an 'opt-in clause') will limit the ability to directly access new potential clients using electronic means, including emails and voice calls. This may limit the possibility to generate new business – even in cases when contact details are collected from public directories. Similarly, HR departments may be restricted in their efforts to contact a potential candidate.

# 5. Shareholder Rights Directive (SRD II)

Dr Antonios Koumbarakis and Jana Balli

The European Council published the Shareholder Rights Directive (SRD II) in June 2017 as a legislative response to increasing transparency and accountability requirements and corporate governance scandals around the world (e.g. the Panama Papers). The revised SRD II strengthens share-holder rights and imposes new requirements on intermediaries, institutional investors, asset managers and proxies. It also redefines the remuneration policy for directors. SRD II updates SRD I and adds several requirements. The EU member states must transpose the majority of SRD II into national law by June 2019. Member states have until September 2020 to transpose into national law measures relating to the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights (Articles 3a, 3b and 3c of SRD II). In addition, SRD II also applies to companies from third countries as soon as they provide one of the following services in the EU: custody of EU shares, management of EU shares or holding of securities accounts on behalf of shareholders in the EU.

## 5.1. Scope

The new SRD II will make the identity of shareholders known if they hold more than a given threshold of issued capital. By default, this threshold is set at 0.5% of an issuer's capital. However, there is also the possibility for EU member states to deregister from this threshold under certain conditions. In addition, investors and shareholders now have more rights at general meetings and must, upon request, have access to information on the investment strategy and better insight into the actions of proxies and the way they give instructions.

The following areas will be affected.

Listed companies:

- Identification of shareholders: Issuers have the right to identify shareholders with the aim of contacting the investor directly. Custodian banks and other intermediaries must work together to identify shareholders.
- Remuneration: The discussion of remuneration policy and the vote on remuneration must take place at the general meeting. This will lead to increased scrutiny of directors' remuneration and transactions with related companies.
- General meetings: Meeting announcements will be standardised and confirmation of voting rights will be provided. Shareholders will therefore have more power in the general meeting.
- Approval of transactions: The general meeting must now approve some transactions, including intra-group transactions between a company and its subsidiaries or between two subsidiaries of the same holding company.

Institutional investors and asset managers:

- Investment strategy: Institutional investors such as asset managers, pension funds and insurance companies must define an investment strategy and publish reports on their strategies in a timely manner.
- Analysis: In addition, an in-depth analysis of the remuneration of directors and transactions with related parties must now be carried out.
- Transparency requirements: Transparency requirements have been extended with regard to engagement concepts and guidelines.

Custodians, proxy service providers and other intermediaries:

- Transparency of proxy advisors: Proxy advisors should provide accurate and reliable voting recommendations.
- Report: Proxy advisors must publish a report on compliance with the code of conduct for proxy advisors.
- The role of intermediaries: Information on voting rights must be provided without delay.

## 5.2. Key changes

With the new SRD II, the European Council wants to ensure that shareholder rights are not violated. It is attempting to ensure this through a number of different transparency requirements.

### Disclosure of shareholder information (know your shareholder)

SRD II gives listed companies the right to identify their shareholders. It also requires intermediaries to cooperate with companies in this identification process. This also applies to third country in-term diaries. All communication between intermediaries should take place in

machine-readable and standardised formats. SRD II refers to the provision of data in a standardised format, but does not specify the standards. These standards are provided by the technical standards of the European Commission (Implementing Regulation (EU) 2018/1212 of 3 September 2018).

**Asset managers and institutional investors: transparency and reporting**

Asset managers are obliged by SRD II to align their investments, strategies and decisions with the risk profiles and long-term investment needs of their institutional investor clients. As a result, both institutional investors and asset managers must make their commitments more transparent. In addition, they must disclose voting behaviour and declare significant votes and the use of proxy advisor services. This information must be reported and made available annually (the 'follow or explain' principle).

**Transparency and reporting by the proxy advisor**

In order to ensure a high quality of voting recommendations, research and advice, trustees must disclose details of their methodology, source of information and applicable procedures. In addition, they must report annually on their conflict of interest policies and how they are dealing with (national) market differences.

**Shareholder vote on directors' remuneration and related party transactions**

A further objective of the Directive is to improve the right of shareholders to have a say in decisions on the remuneration policy of the management board and supervisory board. To this end, SRD II stipulates that the remuneration policy, which is defined as the framework for future remuneration, is to be adopted at the annual general meeting. SRD II also requires that any significant transaction – to be defined by each EU member state – between a listed company and a related party be announced and approved by shareholders and the board of directors.

Depending on the national implementation of SRD II, the announcement may also have to be supplemented with additional information. These requirements can place a significant burden on asset managers and institutional investors to manage this flood of information (e.g. related party transactions).

**Information on the annual general meeting and voting**

SRD II stipulates that intermediaries must send shareholders an agenda and voting rights information without delay in a standardised format. Voting information must be transmitted through the potentially long chain of intermediaries, and national law may prescribe a mandatory deadline for the transmission of this information.

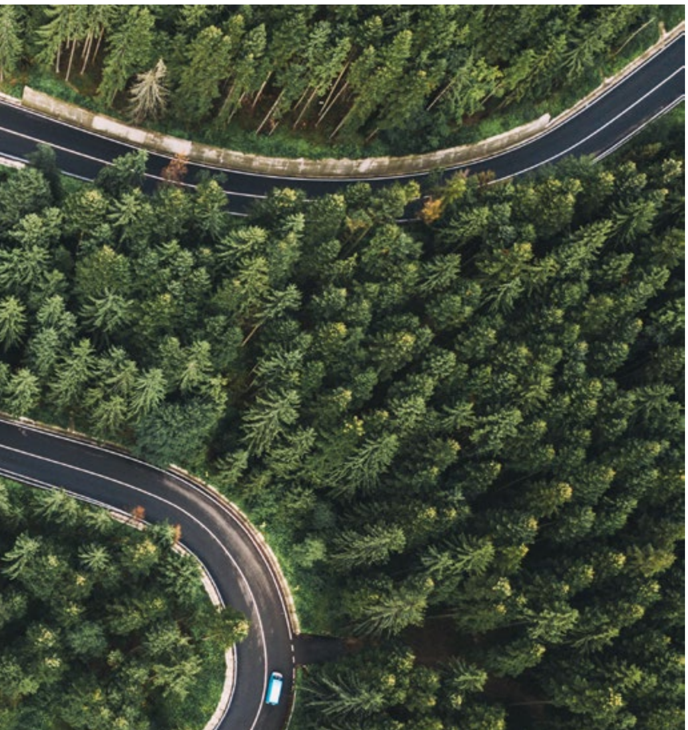
These provisions also apply to intermediaries from third countries.

**Transparency of costs**

According to the revised SRD, all fees charged by an intermediary to shareholders, companies or other intermediaries must not be discriminatory. Fees should be in proportion to the actual cost of providing the service. Differences between the fees charged for exercising the right domestically and across borders are permissible only if they are duly justified and reflect actual costs. This results in intermediaries having to disclose their fees in relation to proxy services. These provisions also apply to intermediaries from third countries.

**Shareholder identification and director remuneration vs data protection law**

The SRD II states in its recitals that it should be applied in accordance with the GDPR and the protection of privacy enshrined in the Charter of Fundamental Rights of the EU.



### 5.3. Impact on Switzerland

With regard to Switzerland, it is important to know that Swiss entities are not directly subject to SRD II. However, as soon as they provide services related to the custody or administration of shares or the maintenance of securities accounts on behalf of shareholders or other persons under SRD II or are themselves established in the EU, they must fulfil the obligations under SRD II.

Agents from third countries who are neither domiciled nor headquartered in the EU may conduct a comprehensive analysis of EU companies. However, as mentioned above, SRD II also applies to agents from third countries who carry out their activities through a branch in the EU, regardless of the form of this branch. Therefore, if a Swiss proxy holder exercises their activity in relation to shares of EU companies through a branch in the EU, regardless of the form of that branch, they must comply with the relevant requirements of SRD II.

# 6. CRR II/CRD V

Dr Antonios Koumbarakis and Gabriela Tsekova

## 6.1. Leverage ratio (LR)

CRR II introduces a binding minimum LR of 3% for all EU banks. As a result, institutions will in future have to back 3% of the total risk measure with core capital (common equity tier 1 (CET1) and additional tier (AT1)). In addition, global systemically important banks (G-SIBs) will receive a premium of 50% of the risk-weighted assets (RWA) based G-SIB buffer.

The LR requirement is particularly detrimental to certain relatively low-risk business models. In order to avoid the extremely negative effects on these banks, promotional loans and government-guaranteed export loans are not included in the LR calculation under certain conditions.

## 6.2. Net stable funding ratio (NSFR)

As with the LR, the 'net stable funding ratio' structural liquidity measure has been subject to mandatory reporting since 2014. However, a binding minimum ratio will only be introduced with CRR II. Similar to the short-term liquidity coverage ratio (LCR), institutions are obliged not only to comply with an NSFR of 100% at all times, but also to monitor it regularly and inform the competent supervisory authority immediately if the minimum ratio is exceeded. The introduction of a minimum ratio should help ensure that institutions have sufficient stable refinancing to cover their financial requirements during a one-year period under both normal and stress conditions.

## 6.3. Counterparty risks from derivatives (SA-CCR)

The banking package provides for a new standard approach to counterparty default risk (SA-CCR) to calculate the position value of derivatives. The new SA-CCR can be used for both collateralised and unsecured derivatives, as well as for centrally cleared and bilateral derivatives. It significantly improves risk sensitivity in the calculation of the position value and contributes to harmonisation within the EU by minimising the discretion of national supervisory authorities.

The new SA-CCR replaces the currently permitted market valuation method (current exposure method (CEM)) and standard method (SM). The maturity method will therefore continue to be applied. However, it is subject to revision.

Although the new standardised approach is more risk-sensitive and adapted to take better account of collateral agreements, it is at the same time more complex than the methods currently used by institutions. Against this background and on the basis of the principle of proportionality, CRR II provides for the possibility of using less complex calculation methods for the counterparty default risk of derivative financial products. If the derivatives business accounts for less than 10% of total assets and EUR 300 million, institutions are permitted to use the simplified SA-CCR. Provided that the derivative business does not exceed the relative or absolute threshold value of 5% of total assets or EUR 100 million, institutions may calculate the capital requirements for counterparty default risk using the revised maturity method.

## 6.4. Revision of market risks

One of the most intensively discussed issues during the negotiation phase of the new banking package was the fundamental review of the trading book (FRTB). In line with the Basel requirements, the system for assigning transactions to the trading book or investment book will be specified. In individual cases, these additions and clarifications could lead to certain transactions having to be reclassified. Non-trading book institutions can thus become trading book institutions.

The new regulations for market price risk will initially be implemented as additional reporting requirements based on the new risk-sensitive standard approach. However, the previous procedures remain decisive for the calculation of capital requirements for market risks. It is planned to develop the new reporting formats by mid-2020 and to bring them into force in the second half of the year via a delegated ordinance. The reporting formats will therefore not be applied for the first time until 2021 at the earliest.

As with the introduction of the SA-CCR, the European Commission is also sticking to the principle of proportionality in the introduction of the FRTB framework. The reporting requirements must only be complied with if the volume of balance sheet and off-balance sheet transactions subject to market risks amounts to at least 10% of the balance sheet total or EUR 500 million.

## 6.5. Shares in investment funds

The new banking package introduces stricter requirements for the management company and for the content of the prospectus, and defines criteria for the allocation of fund units to the investment or trading book. In addition, the fund definition will be expanded, i.e. there will no longer be a distinction between UCITS funds and funds with particularly high risks.

CRR II postulates that the risk weight for units in collective investment undertakings (UCIs) should be determined using the transparency approach or the mandate approach. A combination of the two approaches is also permitted. Institutions may, under certain conditions, entrust third parties with the task of calculating a risk weight for the UCI. However, the result is to be multiplied by a factor of 1.2.

### 6.6. Large loans (LE framework)

CRR II also introduces significant tightening in the area of large exposures. The aim is to improve institutions' loss absorption capacity and reduce cluster risks.

In future, only core capital (CET1 and AT1) may be used as the capital base for calculating the upper limit for large credit spreads. For institutions that currently have a higher proportion of supplementary capital when determining the capital base, the amendment could lead to a significantly lower large exposure ceiling. In principle, the upper limit remains at 25%. For receivables between G-SIBs, however, the upper limit will be reduced to 15%.

In addition, CRR II stipulates that the measurement basis for financial derivatives is to be determined using the new SA-CCR. Adjustments will also be made with regard to the reporting requirements. On the one hand, in addition to large exposures according to the CRR II definition, institutions must also report all risk positions exceeding EUR 300 million. On the other hand, the ten largest loans to institutions and the ten largest loans to shadow banks must also be reported.

### 6.7. Disclosure requirements

The principle of proportionality is also anchored in the disclosure requirements for institutions and is reflected in an amendment to the scope and frequency of disclosure. To this end, CRR II defines three classes of institutions: large, small and other.

CRR II defines institutions as 'small' if their average balance sheet total for the four reporting periods prior to the current reporting period does not exceed EUR 1.5 billion and their derivatives portfolios and trading book activities are below certain thresholds. All systemically important institutions, as well as the three largest institutions in each EU member state and those with total assets under management of at least EUR 30 billion, are classified as 'large'. Institutions that do not meet the criteria for either large or small institutions are classified as 'other'. For each of the three classes, different disclosure volumes and frequencies apply.

In addition, new disclosure regulations, e.g. on total loss-absorbing capacity (TLAC) and minimum requirement for own funds and eligible liabilities (MREL), will be introduced. In addition, the existing disclosure requirements will be made more precise to bring them into line with the Basel regulations.

### 6.8. Reporting system

The idea of proportionality can also be clearly seen in the area of regulatory reporting. As a result, CRR II provides for easier reporting frequency for smaller institutions. In future, they will only have to submit common reporting (COREP) and financial reporting (FINREP) reports once a year.

However, the CRD V gives the supervisory authorities the authority to request additional reporting content under certain conditions.

### 6.9. SME factor

In order to take account of the fact that small and medium-sized enterprises (SMEs) are the backbone of the European economy, SMEs are privileged in terms of the requirements.

The new banking package extends the privilege even further. In future, loans to SMEs with a total volume of up to EUR 2.5 million (currently EUR 1.5 million) will receive a privilege of 23.81% (i.e. an SME factor of 0.7619). In addition to the increase in the amount limit, a privilege of 15% (i.e. an SME factor of 0.85) will also be introduced above this limit. As a result, banks specialising in lending to SMEs can expect a significant reduction in capital requirements.

### 6.10. Intermediate Parent Unit

The new banking package will result in significant changes in the supervision of banking groups domiciled in third countries outside the EU. In future, all groups with a balance sheet volume, including the assets of subsidiaries and branches, of at least EUR 40 billion in the EU, a so-called EU Intermediate Parent Unit (IPU). The IPU can be either a financial holding company subject to CRR and CRD requirements, or an EU credit institution. All relevant institutions in the EU belonging to the same third-country group must be consolidated under the IPU. A dual IPU structure is possible in order to ensure that the new requirement does not violate the rules of the home country, e.g. with regard to functional separation.

The main objective of this requirement is to facilitate the implementation of internationally agreed standards on internal loss absorption capacity and to improve group supervision.

### 6.11. Impact on Switzerland

Even though the new banking package is not directly legally binding in Switzerland and is not applied, there are still significant indirect effects. All EU-based subsidiaries of Swiss banks must comply with the requirements of CRR II and SRMR II, as well as the respective national implementation regulations of CRD V and BRRD II. The new regulations directly affect bank management and the business models of the institutions and entail significant strategic decisions with regard to risk appetite, refinancing structure and portfolio management.

From a Swiss perspective, the obligation to set up an IPU is particularly important. This has a significant influence on the overall management and control of the company.

# 7. Bank Recovery and Resolution Directive (BRRD II)

Dr Antonios Kumbarakis and Vanessa Dutzi

On 27 June 2019, the European Parliament and the European Council adopted the proposed Banking Package, which transposes Basel III and parts of Basel IV into EU law and autonomous EU regulations.

## 7.1. Background and incorporation of TLAC into BRRD II

BRRD II implements the international FSB standard on total loss-absorbing capacity (TLAC) of 9 November 2015 (FSB TLAC Term Sheet) through adaption of the eligibility of instruments in CRR II. TLAC requirements are also integrated into the minimum requirements for own funds and eligible liabilities (MREL) of BRRD II, because MREL already corresponds to TLAC conceptually. Hence, these two will now share a single common framework ensuring that institutions and entities have sufficient loss-absorbing and recapitalisation capacity. Additionally, MREL is closely aligned to the TLAC minimum requirements to ensure a level playing field globally for institutions and entities in the EU. This is important, because MREL will now close the existing gap to TLAC, as TLAC requirements are only imposed on G-SIBs.

BRRD II interprets and manifests the concept of resolution entity and resolution group and acknowledges the single point of entry (SPE) as well as the multiple point of entry (MPE) resolution strategy.

In addition, there are new requirements for banks and institutions: as of 1 January 2019, EU G-SIBs must meet a weighted TLAC requirement of ≥16% of risk-weighted assets (RWA) (18% from 1 January 2022 onwards) and an unweighted TLAC requirement of ≥6% (6.75% from 1 January 2022) expressed on the same denominator as the leverage ratio (LR).

## 7.2. Stricter MREL requirements are essential for BRRD II

BRRD II makes the prior MREL requirements stricter. For example, the settlement authority determines MREL individually for each bank that is a subsidiary of a resolution entity on the basis of the settlement plan. This means that a bank will need to meet its MREL requirements through the funds and subordinated liabilities. Debt instruments with derivative futures, such as structured notes, could under certain circumstances count towards MREL. Additionally, material subsidiaries of non-EU G-SIBs must comply with an internal MREL requirement of 90% of the EU G-SIB's (external) P1-MREL requirement. In order to count towards the P1-MREL, the P1-MREL requires G-SIBs and top tier banks to subordinate their eligible liabilities to liabilities excluded from MREL either structurally, contractually or by the law governing the liabilities. To count towards the pillar 2 MREL (P2-MREL), subordination may be required by resolution authorities on a case-by-case basis, as eligible liabilities are not automatically required to be subordinated to liabilities excluded from MREL.

To protect retail investors in MREL instruments, sellers have to perform and document a suitability test prior to the sale. Additionally, the following will be required of investors:

- an investment capacity of less than EUR 500,000
- investment of at least EUR 10,000 in one or more liabilities (provided they meet the eligibility and expediency requirements)
- the retail investor is allowed to invest an amount in liabilities that is up to 10% of his/her financial instruments portfolio.

Alternatively, EU member states will introduce a minimum denomination of EUR 50,000. Implementing this portfolio consideration will require additional cross-institutional customer information and knowledge ('know your customer').

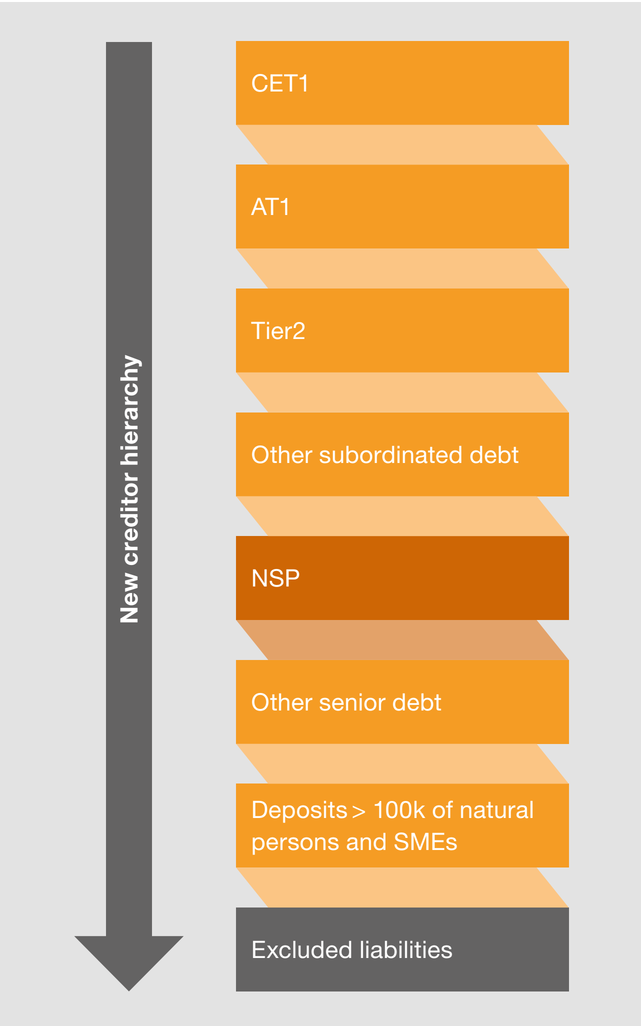
The RWA and LR exposure will serve as reference values for determination and measurement, instead of total liabilities. Both components should not be higher than the minimum capital requirements, including a possible pillar 2 requirement. In addition, the settlement authority may set an additional target (guidance) for the absorption of additional feared losses or the restoration of market confidence. The respective amounts should not exceed the pillar 2 guidance or the combined capital buffer (excluding the anti-cyclical buffer).

Now, institutions and entities will have to report MREL to their competent authority at least once a year. They must also disclose their MREL to the public, with effect from 1 January 2024, in terms of the amount of eligible and guaranteed liabilities and other 'bail-in-able' liabilities, their composition, including their maturity profile, ranking in normal insolvency proceedings, and whether laws of third countries govern the liabilities.

There will be a new distinction between G-SIBs, non-G-SIB resolution groups with a balance sheet total of more than EUR 100 billion. Top tier banks are to meet a MREL subordinated debt requirement of 8% of their total liabilities and own funds.

## 7.3. Non-preferred senior bonds

Article 108 BRRD was already changed earlier by Directive (EU) 2017/2399 in a fast-track process before BRRD II was passed. It stipulates a new class of financial instrument called non-preferred senior (NPS/tier 3) in the order of insolvency. Within this new creditor order, greater transparency for investors and operational improvements are achieved through better data availability and simpler evaluation. NPSs consist of bonds and other transferable debt instruments. They are unconditional, senior and unsecured liabilities. They are senior to equity instruments and subordinated to other unsecured exposures. The original contractual term is at least one year. In addition, for this financial instrument, explicit reference must be made to the lower ranking of unsecured receivables in the relevant contractual documents and, if applicable, in the issue prospectus. The purchase is only permitted for qualified investors, as it is riskier than traditional senior liabilities.




### 7.4. Requirements of third countries

BRRD II deals with the proportionality of deposit regulations and revises them. Accordingly, banks must include a clause in contracts governed by the law of a third country, by which the creditor recognises the deposit obligation of the EU dissolution authorities. This is intended to promote equal treatment of creditors from the EU and third countries and to ensure the effectiveness of the guarantee instrument in the event of a cross-border solution.

### 7.5. Central counterparties

CCPs now also fall under the scope of BRRD II, as well as their definitions and concepts, which were previously found in EMIR. However, regarding authorities' powers to suspend payment and delivery obligations and the duty to include the contract clauses, BRRD II is not applicable for authorised CCPs or ESMA-recognised CCPs of third countries. The reason for this is the safety insurance provided via Directive 98/26/EC, which already reduces the risks associated with participation in payment and securities settlement systems. Nonetheless, obligations of the aforementioned CCPs are taken into account when excluding certain liabilities of institutions and entities from the application of the bail-in instrument and when exercising the power to suspend certain payment and delivery obligations.

### 7.6. Impact assessment

Implementation of BRRD II affects Swiss banks with subsidiaries located in the EU and all banks that include a clause in their contract governed by third country law, a respective third country law governing clause in their contracts, by which creditors recognise the deposit obligation of the EU dissolution authorities. Prompt implementation of the new regulations is therefore more than advisable.

The market's ability to absorb the volume of bonds that banks will have to issue in the next few years in order to meet these new requirements for loss-absorption capacity is viewed critically. It is not clear whether the market will be able to absorb the volume.

BRRD II is in accordance with the international FSB standard when viewing the TLAC-covered minimum loss-absorbing capacity that already conceptually corresponds to MREL. The rules for MREL will be much stricter because it sets additional, new requirements, e.g. material subsidiaries of non-EU G-SIBs must comply with an internal MREL requirement of 90% of the G-SIB's (external) P1-MREL requirement. Attention should be paid to the fact that MREL may be issued through entities that are in the same third country or the EU. Additionally, there is a P1-MREL requirement for EU G-SIBs and top tier banks to subordinate either structurally, contractually or under the law governing the liabilities.

The duty of explicitly referring to the lower ranking of unsecured receivables in the relevant contractual documents and, if applicable, in the issue prospectus is already resulting in fewer buyers than expected, as they are more expensive. Also, their subordination leads to higher spreads and to them not being ECB-capable. Furthermore, in a weak market, NPS spreads widen further than those of senior preferred (SP/senior unsecured) bonds.

# 8. Securitisation framework

Dr Antonios Koumbarakis and Gabriela Tsekova

On 1 January 2019, the new framework for European securitisations became applicable in all EU member states. The framework, which consists of Regulation (EU) 2017/2402 (Securitisation Regulation) and Regulation (EU) 2017/2401 (Securitisation Prudential Regulation or SPR) covering targeted amendments of the Capital Requirements Regulation (CRR), aims to revive and grow a sound and secure securitisation market in the EU. The objective of the EU securitisation framework is to promote a safe, structured, liquid and robust market for securitisations, thus allowing effective and efficient risk transfers to a broader set of investors and providing businesses with more diversified funding sources. The introduction of the simple, transparent and standardised (STS) framework is designed to offer new investment opportunities for investors and reinforce the resilience of the financial system.

## 8.1. Securitisation Regulation

In its first part, the Securitisation Regulation provides provisions applicable to all securitisations. In addition to harmonised definitions of key concepts, it establishes due-diligence, risk-retention and transparency requirements for the parties involved in a securitisation, as well as criteria for granting credit and requirements for selling securitisation. Furthermore, it bans resecuritisations and and defines the obligations of originators, sponsors, original lenders, institutional investors and securitisation special purpose entities (SSPEs).

The second part of the regulation introduces a specific framework for STS securitisations and sets out the criteria for these transactions, distinguishing between asset-backed commercial papers (ABCPs) and non-asset-backed commercial papers (non-ABCPs) or all other securitisations. The Securitisation Regulation enables certain securitisations to be designated as STS securitisations if they comply with specific eligibility criteria with respect to the three dimensions of simplicity, transparency and standardisation. In particular, the STS criteria are designed to ensure that securitisations are not unduly complex in structure. All aspects relevant to the risk assessment of investors should be clearly defined and all necessary information should be provided in a timely manner. Consequently, investors should be able to better analyse the risks involved in a securitisation transaction and could benefit from the preferential capital requirements when investing in STS transactions.

In order to ensure harmonised interpretation and application of the STS criteria, the European Banking Authority (EBA) has developed guidelines and recommendations providing a consistent interpretation and common understanding of the STS requirements. The EBA Guidelines describe the objectives and rationale of each criteria and clarify any potential ambiguity. They provide detailed definitions of terms used in the Securitisation Regulation and requirements that should be fulfilled in order to ensure compliance with the STS criteria. The guidelines should officially apply from 15 May 2019 on a cross-sectoral basis throughout the EU, and will thus play a crucial role in the revival of the European securitisation market.

Under the Securitisation Regulation, originators and sponsors wishing to designate a securitisation as an STS should jointly notify the European Securities and Markets Authority (ESMA) for compliance with the STS requirements. The notification must include an explanation of how the STS criteria are met, which will be published on the ESMA website. The Regulation allows for an authorised third party to verify compliance with the STS criteria. However, the inclusion of a third party does not affect the legal obligations and potential liability of the originator, sponsor and SSPE. In the event of false designation as an STS securitisation, the competent authorities may apply sanctions of up to 10% of the total annual turnover on a consolidated basis.

## 8.2. Securitisation Prudential Regulation

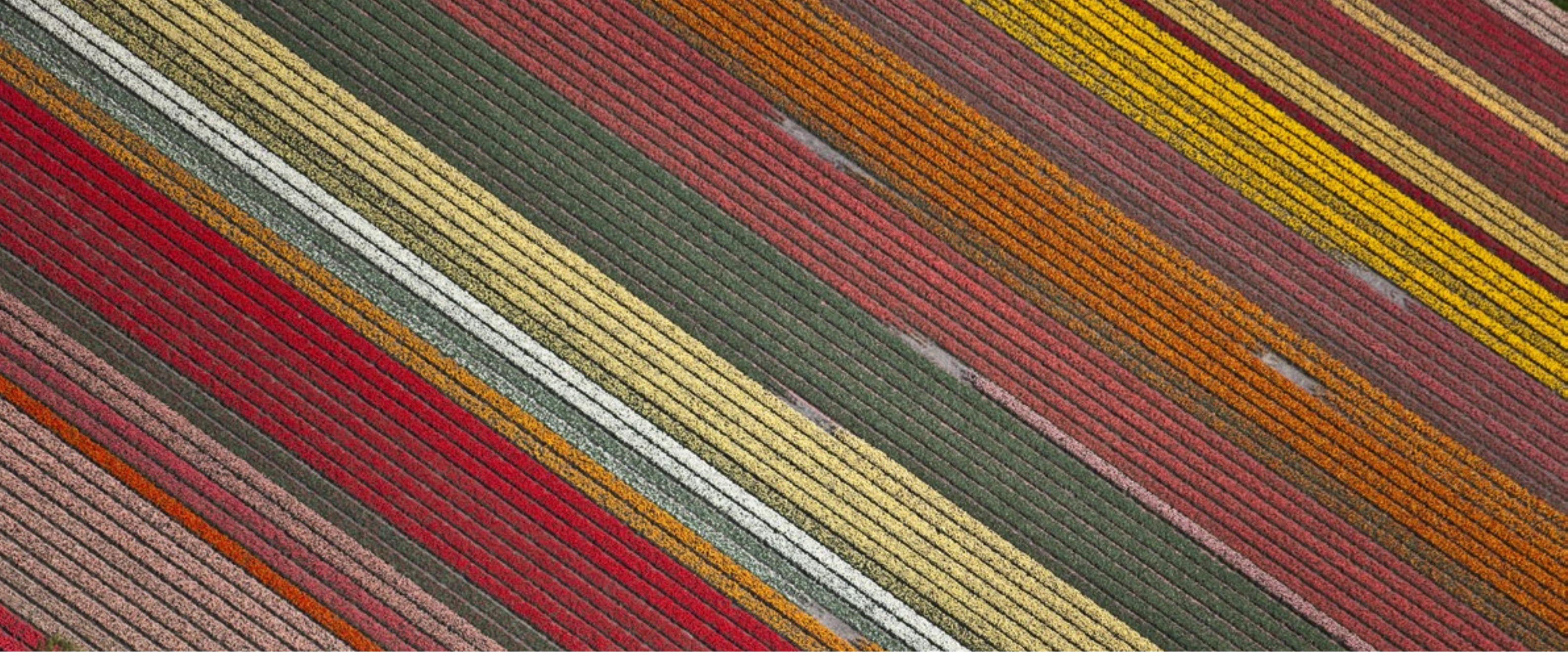
The introduction of the Securitisation Regulation, and in particular of the STS framework, resulted in changes to the existing CRR rules to allow banks and financial firms to benefit from the privileged regulatory capital treatment of STS securitisation exposures. Furthermore, the amendments aim to eliminate the deficiencies (such as insufficient risk sensitivity and mechanistic reliance on external ratings) identified during the financial crisis. The CRR amendments became applicable on 1 January 2019. However, transitional provisions for securitisations issued before 1 January 2019 allow institutions to continue to apply the currently applicable requirements until the end of 2019.

The most significant change concerns the hierarchy of methods to calculate risk-weighted exposures. The new hierarchy postulates that, in order to reduce any form of mechanistic reliance on external ratings, institutions use the internal ratings-based approach (SEC-IRBA) in the first instance. If the application of SEC-IRBA is not permitted or possible, then the standard approach (SEC-SA) should be applied before the external ratings-based approach (SEC-ERBA). The internal assessment approach (IAA) may still be applied for the calculation of risk-weighted exposures in relation to unrated ABCP securitisation exposures. If none of the approaches can be used, then a risk weight of 1,250% should be applied to all securitisation exposures. However, due to the significantly higher risk weights calculated by means of SEC-SA for some securitisations compared to the risk weights calculated by means of SEC-ERBA, the Regulation allows the application of SEC-ERBA instead of SEC-SA for rated securitisation positions or if an external rating can be derived. This adjustment in the hierarchy is only permissible if the application of SEC-SA will lead to a risk weight that is more than 25% higher for

STS securitisations or if the application of SEC-ERBA will lead to a risk weight that is higher than 75% for non-STS securitisations. SEC-ERBA may also be used prior to the SEC-SA in the case of securitisation transactions backed by pools of auto loans, auto leases and equipment leases.

The amendments in the CRR enable more risk-sensitive treatment of securitisations qualified as STS. Thus, for securitisation positions that meet the STS criteria and the requirements of the CRR for privileged treatment, lower risk weights should be applied due to the lower loss expectations. Furthermore, the risk weight floor for STS securitisations is also reduced from 15% to 10%.

The new securitisation framework significantly changes the securitisation market and poses a number of challenges to all market participants. Considering the possible sanctions in the event of non-compliance with the requirements of the Securitisation Regulation (e.g. up to 10% of the total annual turnover on a consolidated basis for false designation as an STS securitisation), it is important for all parties involved in a securitisation transaction to analyse their obligations.



# 9. Securities Financing Transaction Regulation (SFTR)

Dr Antonios Koumbarakis

## 9.1. Background

The Regulation on the Reporting of Securities Financing Transactions (SFTR) is intended to bring more transparency to the market for securities financing transactions (SFTs). The background is that the transfer of collateral received can create complex links between traditional banks and the shadow banking sector. The SFTR will make it easier for the regulator to identify relevant and high-volume counterparties and to monitor any concentration of risk.

The new requirements apply, if not explicitly limited, to all market participants operating in the European market who make SFTs or repledge collateral. SFT essentially refers to the following transactions:

- repurchase agreements
- securities and commodities lending business
- 'buy/sell-back' and 'sell/buy-back' transactions
- margin lending transactions.

## 9.2. Overlap with EMIR and MiFID II?

Compliance with the SFTR reporting requirement will necessitate only a limited update of the systems developed under EMIR.

ESMA further commented on the interaction between the reporting systems under MiFID II/MiFIR, EMIR and SFTR.

Although MiFID II and MiFIR have different objectives from SFTR and EMIR, efforts were made to ensure the standardisation of rules and similar requirements under these three reporting systems. Nevertheless, the data fields which need to be reported under SFTR, EMIR and MiFID are not identical. ESMA aimed to ensure that this would allow the relevant stakeholders to reuse components across the three legal acts and benefit from existing processes and systems.

In practice, this means that these three reporting frameworks do not overlap.

ESMA's guidelines for transaction reporting, order recording and clock synchronisation under MiFID II of 10 October 2016 (ESMA/2016/1452) provide a practical example of two investment firms entering into a repurchase agreement (repo) in respect of a government bond, where one of the investment firms reports the transaction under the SFTR.

ESMA has unequivocally decided that in this case there is no MiFID II transaction reporting requirement for any of the investment firms, as this transaction was reported under the SFTR.

## 9.3. Reporting obligation

The reporting obligation for SFTs is defined in Article 4 of the SFTR. Regulatory technical standards (RTS) and implementing technical standards (ITS) specify the exact content, format and frequency of reporting. The drafts of the RTS and ITS were developed by ESMA and submitted to the European Commission for adoption in March 2017. The fact that the final RTS and ITS were published in the EU Official Journal with a longer delay was due to a difference of opinion between the EC and ESMA.

Investment firms, credit institutions, UCITS, AIFs managed by AIFMs, institutions for occupational retirement provision, central securities and third-country entities which would require authorisation or registration are also subject to the reporting requirement.

If a financial counterparty enters into an SFT with an NFC, the FC is obliged to report the transaction

With the regulation on reporting SFTs to a trade repository, the scope of reporting fields has reached a new dimension. In the final RTS, there is a total of 153 fields that can be transmitted. If only the number of possible fields is considered, the SFTR stands out clearly in comparison to the money market statistics, the MiFID II and the EMIR. The scope of reporting varies with the products traded. However, no product requires the complete number of fields to be delivered.

### 9.4. Timeline

The final technical standards (RTS and ITS) on the SFTR reporting requirement were published in the EU Official Journal in March 2019.

For asset managers, the reporting obligation begins in Q4 2020.

With the publication of the technical standards for the SFTR reporting obligation in the EU Official Journal, the concrete requirements and application dates have now been determined. The technical standards came into force on 11 April 2019.

Application dates for various market participants are as follows.

- Credit institutions and investment firms: 11 April 2020
- Central counterparties and central securities depositories: 11 July 2020
- Funds (UCITS/AIFM) and insurance companies: 11 October 2020
- NFCs: 11 January 2021

## 10. LIBOR replacement

Dr Antonios Koumbarakis

### 10.1. Background

The UK Financial Conduct Authority (FCA), which is responsible for monitoring the London Interbank Offered Rate (LIBOR) reference rate, announced on 27 July 2017 its intention not to use the LIBOR from 2021 onwards. The FCA's decision rested on the fact that LIBOR is based on inadequately executed transactions and is also susceptible to manipulation.

LIBOR, used as the basis for interest rates all over the world for more than 30 years, will be discontinued at the end of 2021. With an estimated USD 260 trillion in outstanding contracts for loans and other financial instruments tied to

LIBOR benchmark rates, the implications are staggering. Massive disruption to business and the markets can only be avoided if companies manage their contracts intelligently to negotiate the transition from LIBOR. The new risk-free rates will affect all industries that use or have investments in interest-rate-linked products, and will also affect a comprehensive set of financial instruments including fixed-income securities, loans and mortgages, and derivatives.

### 10.2. Impact on Switzerland

LIBOR is deeply embedded in today's financial markets – and in Switzerland, CHF LIBOR is even one of three elements of the Swiss National Bank's monetary policy, which sets a target range for the three-month CHF LIBOR.

For Switzerland, the National Working Group on Swiss Franc Reference Rates is the central body proposing reforms to replace LIBOR. The introduction of the Swiss Average Rate Overnight (SARON) is already an important basis for a replacement of CHF LIBOR.

As part of its supervisory activities, FINMA has identified three main risk areas in connection with the possible replacement of LIBOR, which Switzerland's national working group is also dealing with. These three areas include legal risks, valuation risks and risks in ensuring operational readiness.

#### 1. Dealing with legal risks

Numerous contracts for financial products referencing LIBOR have a final maturity after 2021. Supplementing these contracts with practicable clauses could help to minimise possible legal risks. It is important to actively manage exposures under LIBOR-based contracts and to prepare for a shift to contracts with alternative reference interest rates. The transition requires, however, that the alternative reference interest rates have a sufficient trading volume.

#### 2. Dealing with valuation risks

The high volume of receivables and liabilities in the derivatives and credit area that refer to LIBOR constitutes valuation and basis risks. For example, the alternative reference interest rates proposed as part of national efforts are based solely on overnight money rates. However, the definition of the maturity structure remains open to some extent. Accordingly, it is currently not possible to reliably estimate the effects of a LIBOR replacement on the valuation of LIBOR-based contracts and on any hedging transactions. However, a quantitative analysis can be used to limit this uncertainty.

### 3. Ensuring operational readiness

Another key factor in a possible replacement of LIBOR is to ensure operationally that products based on new reference interest rates can be used. A timely assessment of one's own operational readiness helps to make the transition to alternative reference interest rates easier. The ability to adequately assess, price and manage risk in relation to alternative reference rates is central. This requires, however, that both the technical infrastructure and data management processes are ready for a potential replacement.

## 10.3. Alternative reference rates

Various working groups are currently evaluating different alternative reference rates to replace LIBOR, but they currently still lack homogeneity with regard to collateralisation. The aim is to form reference rates that are more robust and abuse-proof. As these discussions are still ongoing, uncertainty persists with respect to the LIBOR transition.

- Switzerland: the Swiss Average Rate Overnight (SARON)
- EU: the Euro Short-Term Rate (€STR)
- US: the Secured Overnight Financing Rate (SOFR)
- UK: the Sterling Overnight Index Average (SONIA)
- Japan: the Tokyo Overnight Average Rate (TONAR)

### SARON

In Switzerland the National Working Group on Swiss Franc Reference Rates proposed the SARON as the new reference rate for CHF-denominated lending. SARON originally dates back to 2009, when it replaced the previously used repo overnight index.

This rate is determined on the basis of historic overnight transactions in the SIX Repo trading platform, but in contrast to LIBOR is an entirely risk-free rate with a one-day term only. The SARON is calculated on the basis of completed transactions and tradable prices (quotes). It is continually calculated in real time and published every ten minutes. In addition, fixing is conducted three times a day: at 12pm, 4pm and 6pm. The 6pm fixing serves as the main daily reference for subsequent usage, e.g. for derivative payments or the valuation of financial assets. Only standardised, CHF-denominated repurchase agreements with fixed-income securities eligible for SNB repo transactions (general collateral) are used to calculate the reference rates and indices. On an annual average, these are approximately 110 interest rates per day.

The working group came to the conclusion that a robust derivatives-based term rate is unlikely to be feasible given the limited liquidity in Swiss derivatives markets. A forward-looking term rate based on derivatives referencing SARON is not expected to be as robust as the reference rate itself. If this changes in the future, the use of a derivatives-based term rate as a fallback rate might be reassessed. The working group therefore opted for a backward-looking calculation method based on the average of daily SARON rates over a given period. Wherever possible, a compounded SARON should thus be used as the term rate. Using a backward-looking compounded term rate can lead to cash flow uncertainty. However, there are options for mitigating this uncertainty which can be explored, and further work needs to be done to find out how these could work in practice and regarding potential legal challenges.

In March 2019, SIX started to publish rolling, compounded SARON rates with different time windows for illustrative purposes. The working group is continuing to develop solutions as to how uncertainty about cash flows can be addressed best under a given backward-looking approach

### SARON vs €STR and SONIA

| Country | Name | Abbreviation | Collateral security | Data source | Working group | Availability |
|---|---|---|---|---|---|---|
| **Switzerland** | Swiss Average Rate Overnight | SARON | Secured | SIX Repo trading platform | National Working Group on Swiss Franc Reference Rates | Available |
| **United Kingdom** | Sterling Overnight Index Average | SONIA | Unsecured | Sterling Money Market Data Collection Reporting | Working Group on Sterling Risk-Free Reference Rates | Available |
| **European Union** | Euro Short-Term Rate | €STR | Unsecured | Money Market Statistical Reporting | Working group on euro risk-free interest rates | Oct 2019 |

Source: PwC (2019)

# 11. Brexit

Dr Antonios Koumbarakis and Moritz Obst

## 11.1. Background

Ever since the UK voted to leave the EU, financial markets have been struggling to keep up with changing political conditions. With London being Europe's financial services hub, the financial industry is particularly affected by the UK's withdrawal. The majority of firms are currently in the process of finalising their Brexit strategy, including location, booking model, resources, business model, permissions and market access scenarios. The key issue or almost all actors is the ongoing uncertainty: how will the political negotiations end, and what will this mean for business? Uncertainty surrounding the Brexit transition period and final outcome is significantly affecting – and will continue to affect – business circles, investment decisions and licensing procedures in the decade ahead.

## 11.2. Possible scenarios (hard/soft Brexit)

Initially, the Brexit date was scheduled for the end of March 2019. However, the date was eventually pushed back to 31 October 2019 at the latest. The United Kingdom was granted the right to adopt the draft agreement by 31 October 2019. Otherwise, as of 31 October 2019, the United Kingdom will leave the EU without a withdrawal agreement. However, at the time of writing, it is not clear whether this date is adhered to, or whether there will be a further extension.

Even though all possible Brexit scenarios pose substantial challenges to the financial industry, there is a spectrum of potential outcomes which are more beneficial for the financial industry than others. Given the political uncertainty surrounding the draft withdrawal agreement and political pressure within the UK, it is difficult to predict the outcome of the Brexit negotiations as regards timing and exact arrangements. Various exit options are still on the table. Four potential models are summarised below.

### 1. Soft Brexit

A soft Brexit is usually taken to refer to one that keeps the UK closely aligned with the EU. The objective is to minimise the disruption to trade, supply chains and business in general that would be created by diverging from the EU's regulations and standards. In practice, a soft Brexit means staying within both the EU's single market and its customs union. However, UK banks would nevertheless have to conform to EU regulations (and be deemed 'equivalent'), with little influence over setting regulations, in order to retain passporting rights.

### 2. A withdrawal agreement that offers full passporting rights and equivalence for financial services

If the EU and the UK reach agreement, financial institutions from the UK could be offered full passporting rights across the breadth of financial services. Posing only very limited disruption to the current delivery of services, such an agreement is also likely to be underpinned by the principles of regulatory equivalence and reciprocal access to UK markets.

### 3. Access to third country passports (where they currently exist)

If the UK does not agree any access arrangements with the EU, it is likely that market access will be assessed on the basis of the EU's existing third country regimes. This means that the UK could be granted 'third country' passports for certain services. For example, the introduction of the third country entity passport under MiFID II/MiFIR would enable non-EU financial institutions to provide cross-border investment and asset management services within the scope of MiFID II to eligible counterparties and professional clients, without having to establish a branch in the EU. Financial institutions may avail themselves of the third country passport as long as it is registered with ESMA, which is subject to the UK having an equivalent and reciprocal regulatory regime.

Similarly, UK-based CCPs would also have to operate to the same standards as EU CCPs in order to obtain equivalence and thus market access under EMIR.

This option would still cause some disruption because it would not cover core banking activities for which a third country entity passport is not currently envisaged. This includes lending and deposit-taking, payments and other regulated markets, as well as the sale and marketing of UCITS funds.

Many of the EU's third country regimes that enable market access are contingent on regulatory equivalence and reciprocal access to UK markets. Therefore, if the UK wishes to enable UK banks and investment companies to continue accessing EU markets, it will need to ensure that it has an equivalent regulatory environment to that of the EU's, without having any say over the latter.

Another disadvantage of this scenario is the uncertainty of the time required for an equivalence assessment, as previous experience suggests this is likely to be a lengthy process. Equivalence could also potentially be easily revoked on technical grounds and with limited notice.

**4. Hard Brexit**

With no deal, the UK would have to fall back on WTO rules and would therefore be classed a 'third country'. This would be the most disruptive outcome among the four potential models.

Under this arrangement, the UK would have highly limited access to the EU as a result of losing its existing EU passports and not being given third country passports. This would severely limit the ability of banks authorised in the UK to offer products and services in a number of key areas for EU clients, and there is a risk that this scenario would result in loss of access to EU market infrastructure from the UK, and vice versa.

Such an arrangement would mean that in order to continue providing services to EU clients, firms might have to establish a presence in the EU and be authorised by each member state in which their clients are based. In the case of UK-headquartered financial institutions which currently operate via branches in EU member states, they may be required to convert their branches into subsidiaries and/or face additional regulatory requirements by the host regulator in order to address local systemic risks, such as capital, liquidity and reporting requirements that currently apply to non-EU banking entities. The reverse applies to EU-headquartered financial institutions seeking continued access to the UK markets.

Alternatively, firms may choose to relocate their European headquarters from the UK to another EU member state and become authorised by the competent authority in that member state in order to retain their passport. In so doing, they will be able to retain the benefits of operating across the EU from a single hub, which will enable banks and other financial institutions to comply with one set of rules rather than separate ones for every EU member state in which they operate. However, this will still require a separate subsidiary for continued provision of financial services in the UK.

Given the range of potential outcomes, banks are focusing their planning efforts on a 'hard Brexit' scenario. Financial institutions cannot assume in their planning that the current market access arrangement will continue as before, because should a hard Brexit scenario unfold, they will be at risk of regulatory breach and significant business disruption.

Regardless of how Brexit will eventually unfold, severing of existing market access arrangements will force financial market actors with cross-border activity to reorganise their activities in order to continue providing services to their existing clients.

### 11.3. Equivalence and passporting arrangements

When assessing the impact of Brexit by product and business line, financial institutions have to consider the extent to which their current products and services are reliant on permissions to undertake EU27 product and investment activities from the UK and vice versa.

Crucial for cross-border activity is the passport regime covering banking services such as deposit-taking and lending, insurance, investment services, managing and providing UCITS, alternative investment funds and payment services.

Passporting rights are covered in eight directives:

- Capital Requirements Directive (CRD IV) (2013/36/EU)
- Solvency II Directive (2009/138/EC)
- Insurance Mediation Directive (2002/92/EC)
- Markets in Financial Instruments Directive (MiFID) (2004/39/EC)
- Undertaking Collective Investment Scheme (UCITS) Directive (85/611/EEC)
- Payment Services Directive (PSD) (2007/64/EC)
- Second Electronic Money Directive (2009/110/EC)
- Alternative Investment Fund Managers Directive (AIFMD) (2011/61/EU)

Based on the withdrawal scenarios, the UK has several options going forward for retaining some form of enhanced market access beyond what the current equivalence framework makes possible.

In the event of the aforementioned soft Brexit, the passporting rights of financial institutions would be maintained but would presumably come at the cost of accepting all relevant EU rules and regulations (including the jurisdiction of the European Court of Justice).

Alternatively, the EU and the UK could aim for regulatory equivalence, which is often cited as the main fallback option should UK-headquartered financial firms lose their passporting rights. However, equivalence regimes cover only a subset of the activities that currently benefit from passports for EU firms. Therefore, unless the final trade agreement between the EU and the UK includes arrangements for UK firms to continue to benefit from all EU passports (which, politically, seems unlikely), Brexit will result in EU27-UK cross-border business being limited or restricted.

Secondly, and linked to the previous point, some EU regulations offer no equivalence at all.

Optimally, both sides would develop a more comprehensive equivalence approach that addresses some of its limitations. This is a significant challenge, but not impossible. Given that UK regulation and supervision is currently compatible with (and partially constituted by) EU law, it is arguable that, on Brexit day, they should be considered equivalent where an equivalence regime is available. The challenges would be to broaden the range of financial services for which equivalency can be agreed, to establish a uniform and transparent process for determining equivalence and to obtain commitments on how and in which circumstances such determinations could be withdrawn.

**Table 1. The potential availability of equivalence for UK financial services products**

| Industry | EU law | Importance of EU passport to UK financial services | Is equivalence available? | Does equivalence permit passporting? |
|---|---|---|---|---|
| Banking | Market in Financial Instruments Directive II/ Regulation | High: portfolio management, investment advice | Yes | Yes |
| Banking | Capital Requirements Directive (CRD IV) | High: wholesale and retail banking services such as deposit-taking, commercial lending and payment services | No | No |
| Asset management | Alternative Investment Fund Managers Directive (professional clients) | Medium: marketing and management of investment funds across borders to professional clients | No, but there is trade precedent for indirect portfolio management | No, but in the absence of a deal, individual member states may permit it |
| Asset management | Undertakings for Collective Investment in Transferable Securities Directive | Medium: as above but to retail clients | No | No |
| Insurance | Solvency II Directive | Low: cross-border reinsurance | Yes (reinsurance) | Yes |
| Insurance | Solvency II Directive | Low: cross-border direct insurance; most insurers which operate cross-border have established independent subsidiaries in other member states | No (direct insurance) | No |

Source: https://openeurope.org.uk/today/blog/understanding-regulatory-equivalence-an-effective-fall-back-option-for-uk-financial-services-after-brexit /

### 11.4. Impact on Swiss financial institutions

The current relations between Switzerland and the UK are largely based on the bilateral agreements between Switzerland and the EU. Following the UK's withdrawal from the EU, these agreements will cease to apply to the relationship between Switzerland and the UK and will in the longer term have to be replaced by new agreements. Given the EU's focus on Brexit, and to avoid similar requests from the UK, the EU is not expected to make significant concessions to Switzerland in terms of resources for renegotiation or additional market access rights.

For Swiss financial institutions, it is unlikely that much will change in the asset and wealth management segments for institutional customers because EU legislation contains equivalence provisions in these areas (AIFMD and MiFIR among others). On the condition that these are recognised in a timely manner by the EU following Brexit, the UK can meet these provisions. The marketing of financial services to private customers, however, is at risk.

The lasting uncertainty increases the difficulty for Swiss institutions to adapt to the post-Brexit landscape. Potential transformation activities range from structuring legal entities, connecting to new market infrastructure providers, designing new ways of operating and transacting, gaining regulatory approvals, and moving staff into new premises and drawing up new contractual arrangements with suppliers and clients.

# 12. DAC6/EU mandatory disclosure rules and their impact on Swiss financial institutions

Bruno Hollenstein

### 12.1. Introduction

The sixth amendment of the Directive on Administrative Cooperation in the field of Taxation (DAC6) was adopted by the Council of the European Union on 25 May 2018 and published on 5 June 2018. The purpose of this Directive is to establish an automatic reporting system for cross-border tax planning arrangements, and requires intermediaries and, in certain cases, taxpayers to report those arrangements to their local tax authority. Cross-border tax arrangements will be disclosed under DAC6 if they meet one or more of the hallmarks defined in the Directive and which involve either more than one EU member state or an EU member state and a third country.

The EU's aim is to strengthen tax transparency and combat aggressive cross-border tax planning arrangements. Although the rules do not apply in Switzerland, a Swiss intermediary, although not required to report under the Directive, may be indirectly affected where, for example, it advises taxpayers resident in EU member states. This would mean that a Swiss financial institution must consider the possibility that the Directive might have an impact on its business (including those of its EU-resident subsidiaries and branches), and that relevant analysis should be considered to comply with the Directive. Also, an EU subsidiary or branch of a Swiss financial institution might have reporting obligations in its role as an intermediary (because of the products or services they provide) or they will be reported by other intermediaries because of services they receive.

### 12.2. Which cross border arrangements are reportable?

Arrangements which affect two EU member states or an EU member state and a third country are within the scope of the Directive. Furthermore, the arrangement must fulfil at least one of the hallmarks listed in the Directive that are potentially indicative of aggressive tax planning. Around half of the hallmarks only result in a reporting obligation where an arrangement meets the main benefit test, which is the case when one of the main benefits which one can reasonably expect from the arrangement is a tax advantage. Nonetheless, certain hallmarks are not linked to the main benefit test and are reportable regardless of whether the arrangement results in tax advantage or not.

### 12.3. Who is required to report?

In the first instance, the reporting obligation under DAC6 lies with the intermediary. An intermediary is defined as any natural or legal person who designs, markets, organises, makes available for implementation or manages a reportable cross-border arrangement. It can also include any person who provides services such as aid, assistance or advice on reportable cross-border arrangements.

The definition of the intermediary according to the Directive is very broad and can include tax advisors, accountants, lawyers, banks and any professional that provides tax-related advisory services. In order to be an intermediary, the person must have a connection to an EU member state (e.g. reside in, have a permanent establishment in, be incorporated in, or be registered with a professional body in a member state).

In the absence of an intermediary that is obliged to report, the EU resident taxpayer must report to the local authority. This could arise where, for example,

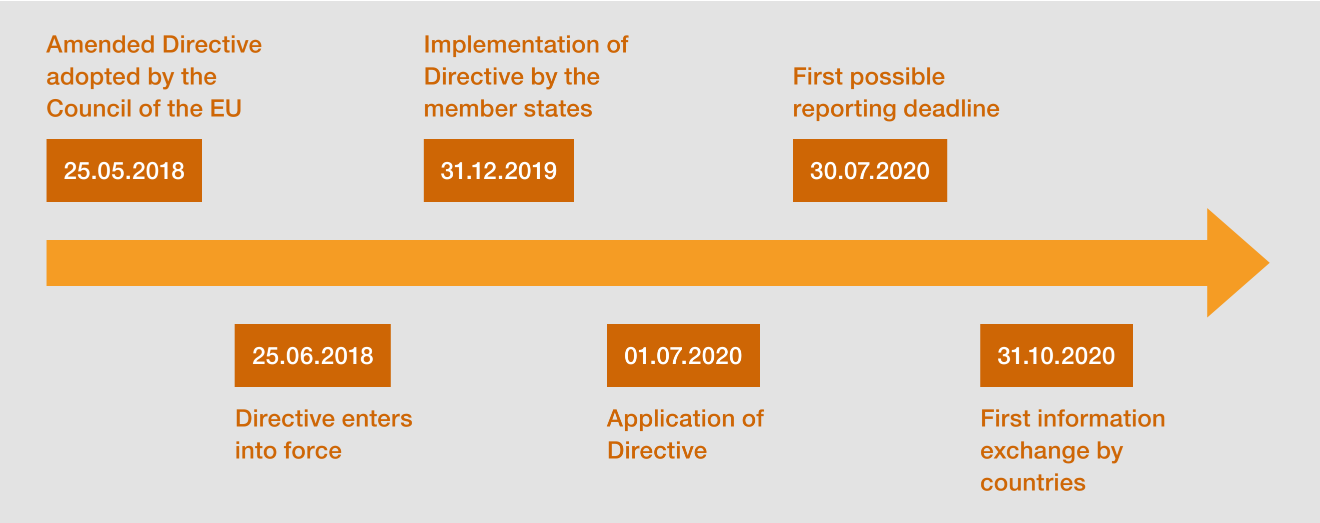
1. the intermediary is resident outside the EU
2. the cross-border arrangement is devised by the taxpayers themselves
3. the intermediary is subject to legal professional privilege.

### 12.4. When and how to report

DAC6 requires all EU member states to introduce into their national law the mandatory disclosure rules for reportable cross-border arrangements. The corresponding transposition of the Directive into national law by the member states must take place by 31 December 2019 at the latest. The local law in each country must be effective by 1 July 2020. The first mandatory reporting is due by July 2020. The Directive also applies to all arrangements whose first step was implemented during the transition period from 25 June 2018 to 30 June 2020. Reportable cross-border arrangements need to be disclosed to the local tax authority within 30 days of the start of implementation. All tax authorities in the member states will share the reported tax arrangements on a quarterly basis. Non-compliance by taxpayers or intermediaries may result in dissuasive penalties (e.g. in Germany EUR 25,000 per arrangement not reported, or EUR 850,000 in the Netherlands), which will vary depending on the implementation of the Directive into local law. Poland has already implemented the directive in local law one year early (1 January 2019); it has extended the scope to certain domestic transactions and includes value-added tax (VAT).

### 12.5. Impact on Swiss financial institutions

Financial institutions domiciled in Switzerland are not subject to the reporting obligations under DAC6. However,




if Swiss financial institutions have subsidiaries in a member state, they may be affected by the Directive. Firstly, they need to consider internal tax planning arrangements that involve entities in EU member states. Secondly, such banks should review the products and services provided to their clients in the EU to determine whether any of them feature any of the hallmarks that result in a reporting obligation. Financial institutions may also wish to consider their approach to communicating with their advisors (i.e. intermediaries) to ensure consistent and accurate reporting takes place.

## 13. The new EU Blockchain Resolution

Dr Günther Dobrauz and Dr Antonios Koumbarakis

### 13.1. Background

Blockchain is considered to be one of the most revolutionary technologies of our time and undoubtedly has great potential to drive simplicity and efficiency through new infrastructures and processes. For financial service providers and start-up companies in particular, the new technology creates completely new business and financing opportunities.

With a view to updating the legal framework, regulators and international standard-setters are currently analysing the economic and legal/regulatory treatment of initial coin offerings (ICOs), cryptocurrencies and trading platforms

In Switzerland, only a few banks and securities dealers offer blockchain services such as trading in cryptocurrencies. Around 10 to 15 medium-sized and small banks are working on a blockchain solution for their customers. Five new, well-capitalised blockchain institutions are also applying for a banking or securities dealer licence from FINMA. The first FINMA-licensed provider is expected to roll out blockchain offerings in the course of this year.

#### What is blockchain?

Blockchain is a technology that enables large groups of people and organisations to agree on information and record it permanently without a central authority. It is a common peer-to-peer database that is a specific subspecies of distributed ledger technology (DLT). DLT is used to record and share data across multiple data stores (referred to as 'ledgers'). Exactly the same data sets are managed and controlled by a distributed network of computer servers (referred to as 'nodes'). Blockchain is a mechanism that uses an encryption method known as cryptography and specific mathematical algorithms to create and verify a continuously growing data structure. In addition, data can be added, but existing data cannot be removed or modified. This data structure takes the form of a chain of 'transaction blocks' that acts as a distributed ledger. Hence the name blockchain. In practice, blockchain is a technology with many 'faces'. It can have several functions and covers a wide range of systems, from fully open and unauthorised to authorised.

This allows a large number of individuals or companies to reach a consensus on information and store this agreed truth record unalterably. For this reason, the blockchain is sometimes referred to as a 'trust machine'.

#### What are cryptocurrencies?

Establishing a definition of cryptocurrencies is no easy task. Much like blockchain, cryptocurrency has become a buzzword referring to a wide array of technological developments that utilise a technique better known as cryptography. In simple terms, cryptography is the technique of protecting information by transforming it (i.e. encrypting it) into an unreadable format that can only be decrypted by someone who possesses a secret key. Cryptocurrencies such as bitcoin are secured via this technique using an ingenious system of public and private digital keys.

### What are ICOs?

ICOs are a way for blockchain projects to raise funds. Issuers aim to issue and sell their own crypto asset, either to investors or to potential future users of the new platform or product of the project. In return for the financing, the investor receives a token which may be linked to the right to receive, for example, a dividend, voting right, licence, right of ownership or right to participate in the future development of the issuer.

ICOs are seen by many as an exciting and important new way to raise capital directly through tokenisation and as an extension or even replacement of the venture capital model. By 'democratising' venture capital, ICOs can offer more interesting investment opportunities to a wider range of investors, including small investors, than is possible today. On the other hand, as with blockchain technology, ICOs are largely unregulated. This can make it difficult to properly assess investment opportunities and distinguish serious projects from fraud. ICOs raise important legal, tax, regulatory and consumer protection issues, many of which have not yet been resolved. Without a strong regulatory framework, investing in ICOs can entail significant risks.

## 13.2. New opportunities, new risks

Blockchain offers revolutionary opportunities, but there are just as many challenges associated with it. When creating new rules, it's important to keep the following four risk areas in mind.

- Elimination of financial control by peer-to-peer: There is no need for financial control by an intermediary because assets are transferred digitally to the next owner without the intermediary. This digital peer-to-peer transfer of assets increases the risk of money laundering without the need for appropriate compensation controls.
- Security risks in asset custody: Assets in digital wallets are created flexibly and quickly. However, the values are not linked to the person who owns the assets, but only to the wallet. If the account key to this wallet is lost, the assets are often also lost. In addition, different security levels for safekeeping are technically complex and, if the solution for safekeeping has not been correctly implemented or understood, this represents additional risks, especially for those with limited IT knowledge.
- Faulty smart contracts: Smart contracts are software components that map contracts and digitise and automate processes such as terms of a contract. Logically, when making automated decisions, smart contracts are only as good as the information on which they are based (referred to as 'oracles'). Furthermore, practice has shown that smart contracts can have security gaps caused by careless programming, and these can be exploited by hackers.
- Overestimation: Security tokens will make debt financing cheaper and more flexible. This will require a framework in which these forms of financing do not raise false hopes or expectations and, in the worst case, lead to lawsuits.

## 13.3. Legal framework

### Switzerland

In Switzerland the Federal Council is currently working on a reform of the law to solve the current legal problems linked to decentralised account books (also known as DLT – the basic principle according to which every blockchain system is structured). At the centre of these efforts are the electronic registration of uncertificated securities and the possibility of separation in the event of bankruptcy. At the regulatory level, little has been done internationally. There are still no clear rules on either accounting treatment or capital adequacy, even though the latter is of central importance for financial institutions.

At the end of 2018, the Federal Council adopted a report on the legal framework for blockchain and DLT in the financial sector. The report shows that the Swiss legal framework is well suited to dealing with new technologies, including blockchain. Nevertheless, the Federal Council is of the view that there is a need for selective adjustments. It has instructed the Federal Department of Finance and the Federal Department of Justice and Police to prepare a consultation draft in the first quarter of 2019. In particular, laws and ordinances in the areas of CC/CO, CPIL, SchKG (debt prosecution and bankruptcy) and FMIA are to be adapted.

At its meeting of 22 March 2019, the Federal Council opened the consultation on the adaptation of federal law to technological developments in distributed electronic registers. The aim is to increase legal certainty, remove obstacles to applications based on DLT and limit the risk of misuse. The draft serves to further improve the regulatory framework for DLT in Switzerland, in particular in the financial sector.

### European Union

The EC has a holistic approach to blockchain technologies and DLT aimed at positioning Europe at the forefront of blockchain innovation and uptake. In this rapidly evolving context, the EU is relying on the following main initiatives to enable globally inclusive governance, reinforce cooperation in deploying blockchain/DLT-based applications, support international standard-setting and facilitate dialogue between industry stakeholders and regulators, notably for a regulatory framework that builds on the EU acquis. The European Blockchain Partnership, created in April 2018, joins at a political level all EU member states and some EEA members (Norway and Liechtenstein). It is a joint public sector endeavour designed to reap the benefits of blockchain and DLT. The Partnership is building a European Blockchain Services Infrastructure that will support the delivery of cross-border digital public services, with the highest standards of security and privacy, by 2020.

The key issue that needs to be addressed to adequately capture cryptocurrencies and cryptocurrency players, particularly users, in legislation is to remove their anonymity, which varies from complete anonymity to pseudo-anonymity. This is the biggest hurdle to combating money laundering and countering terrorist financing: anonymity prevents cryptocurrency transactions from being adequately monitored, allowing shady transactions to occur outside the regulatory perimeter and enabling criminal organisations to use cryptocurrencies to obtain easy access to 'clean cash' (cash both in and out).

In addition to anonymity, the intrinsically cross-border nature of cryptocurrencies, crypto markets and crypto players is a major challenge for regulators. One of the issues is, for example, that crypto markets and crypto players can be located in jurisdictions that do not have effective money laundering and terrorist financing controls in place. The cross-border nature of cryptocurrencies, crypto markets and crypto players probably means that rules will only be adequate when they are taken at a sufficiently international level.

Another important factor impeding the fight against money laundering, terrorist financing and tax evasion is that there is often no central intermediary, such as an issuer, that would normally be the local point of regulation. Therefore, an important question is – in the absence of a central intermediary – which players in the crypto market should be subject to regulation.

Generally, the European tide is changing. New European rules on money laundering and terrorist financing are in the final phase of being adopted. These rules include measures to pull cryptocurrencies and (some) crypto players out of the regulatory dark. The regulatory approach taken by the EU is therefore to address cryptocurrencies and crypto players via the rules on money laundering and terrorist financing.

# Regulatory developments in Switzerland

## 1. Revised Swiss Data Protection Act (E-FADP)

Susanne Hofmann and Jeanne-Françoise Weber

### 1.1. Background

**What is it about?**

Owing to rapid technological and social developments, the Federal Act on Data Protection (FADP) is no longer up to date. For this reason it is currently being revised. The intention is to adapt it to the changed scientific and public requirements, improve the transparency of data processing and strengthen the self-determination of data subjects. The revision will simultaneously enable the ratification of the revised ETS 108 data protection convention of the Council of Europe and the adoption of Directive (EU) 680/2016 on data protection in the area of criminal prosecution. The revised FADP (E-FADP) also addresses the requirements of GDPR overall. This alignment and ratification are crucial to ensure that Switzerland continues to be recognised by the EU as a third country with an adequate level of data protection and that cross-border data transfers remain possible to the same extent as today.

**What has happened so far and where are we now?**

At the end of 2011, the Federal Council commissioned the Federal Department of Justice and Police to examine measures to strengthen data protection and to submit proposals for further action. At the end of 2016, a corresponding preliminary draft was submitted for consultation. In September 2017, the Federal Council adopted the dispatch on the total revision of the Data Protection Act. On 1 March 2019, the data protection provisions for the Schengen cooperation in criminal matters came into force. However, the total revision is still pending. We expect the revised FADP to enter into force in 2021 at the earliest.

**Who is affected by the revision of the FADP?**

The E-FADP applies to all companies, including banks, insurers and asset managers, that process personal data (such as client-identifying data or employee data). Processing includes, for example, the collection, storage, use and modification of data. Owing to the wide scope of application of the E-FADP, very few companies will not be affected.

### 1.2. What are the main changes?[7]

**a) General**

The revision of the FADP includes amendments that are similar to the requirements of the GDPR; however, nothing changes in terms of the basic notion of data protection in Switzerland. The processing of personal data is still basically permitted, unless it is forbidden because the personality or a provision is violated. This concept stands in contrast to the GDPR, which considers data processing to be unlawful in principle and contains a corresponding permission provision.

**b) Scope**

No changes have been made concerning the territorial scope of application of the E-FADP. With the revision, the data of legal persons will no longer be covered by the E-FADP. The category of sensitive personal data will be extended to include genetic and biometric data that uniquely identify a natural person (e.g. fingerprints).

**c) Transparency**

The duty to provide information explicitly obliges the controller to provide data subjects with information about the processing. The duty will now be extended to the procurement of data that is not sensitive, and exists regardless of whether the data were obtained from data subjects or third parties. It should be noted that the wording is broad. The data subject must be provided with all the information required to exercise his or her individual rights, and transparent data processing must be guaranteed. This may require greater effort when onboarding a new client or processing data for new purposes, including the use of data analytics.

**d) Adaptation to the GDPR**

The E-FADP adapts to the GDPR in the following points in particular.

- **Profiling:** The term ‘personality profile’ will be replaced by ‘profiling’, covering the automated analysis of personal data in order to evaluate the characteristics of

7 The statements made in this article are based on the draft FADP (E-FADP) of September 2017 and take into account parliamentary discussions until 22 October 2019.

a person on the basis of this analysis, including in an automated manner. The current FADP already prohibits credit agencies from processing personality profiles. With the change in terminology, they will also be prohibited from profiling in the future. A person's credit score is not yet considered to be part of a personality profile, but its calculation constitutes profiling. This would mean that credit agencies could no longer carry out their current activities. It remains to be seen whether this will be clarified.
- **Extraterritorial scope:** The E-FADP will apply to foreign companies that offer services or goods in Switzerland. Under certain circumstances, those companies in the role of data controllers will have to appoint a representative in Switzerland, when they process data of persons in Switzerland.
- **Sub-processors:** The engagement of sub-processors must be approved by the controlling company. This approval may also be given implicitly (as under the GPDR).
- **Data protection impact assessment (DPIA):** Under the E-FADP, there is now the explicit obligation to carry out a DPIA in advance, if processing might entail a high risk to the personality or fundamental rights of the data subject. Especially in private banking, where close client relationships are key and a huge amount of personal data is processed, it is advisable to check whether a DPIA will be necessary. Note that profiling will no longer be considered a high risk in general, therefore not every case of profiling will require a DPIA.
- **Data breach notifications:** In the event of a data breach, there is a new obligation to notify the Federal Data Protection and Information Commissioner (FDPIC) and, under certain circumstances, the affected persons. However, only violations that are likely to lead to a high risk must be reported as quickly as possible.
- **Record of processing activities:** Similar to the GDPR, the E-FADP also requires that a record of processing activities is kept (for companies with at least 250 employees). Since banks and insurance companies often already have such registers, existing records may only need to be updated and managed. This may help when it comes to obtaining an overview of the relevant business activities to optimise and streamline processes.
- **Data protection advisor:** In contrast to the GDPR there is no duty to nominate a data protection advisor. However, appointing one might make things somewhat easier in relation to DPIAs, and could be of benefit for banks.
- **Principle of storage limitation:** The E-FADP stipulates an explicit principle of storage limitation, which has already resulted from the principle of proportionality under the FADP.
- **Principle of privacy by design and default:** A new obligation is being introduced to implement appropriate measures to reduce the risk of data breaches in advance and strengthen the autonomy and privacy of data subjects.
- **Data Portability:** The right to data portability will be introduced. Affected persons may require a service provider to provide them with their personal data in a common format (e.g. electronically) and for free.
- **FDPIC:** The revision will strengthen and expand the position and powers of the FDPIC, which will be subject to the administrative procedure. Although the FDPIC cannot impose fines, he/she can oblige companies to take certain actions (for example, to interrupt certain processing or delete specific data).

### 1.3. What is FINMA's role?

FINMA recently clarified the relationship between supervisory, civil and criminal law and strictly delimited the requirements of financial market law from those of other public law and private law, in particular the FADP.[8] The previous provisions of the circular on outsourcing with data protection content, in particular the former principle 6 (customer orientation), have been repealed in order to avoid any duplication, divergence and difficulties in distinguishing between the supervisory provisions of the circular and the legal provisions on data protection.

### 1.4. Need for action

Even though not all the changes are clearly evident yet and the parliamentary debate is still pending, the revision will presumably create a need for the following action in particular.

- The record of processing activity must be kept clean and in order, and updated regularly.
- Procedures and instructions have to be implemented in compliance with the duty to provide information.
- An analysis must be done of whether and in which cases a DPIA must be carried out.
- An evaluation must be done at an early stage to determine whether existing contract processing agreements need to be adapted accordingly.

8 FINMA Circular 2018/3 "Outsourcing – banks and insurers", report on the hearing from 6 December 2016 to 31 January 2017 on the draft circular, 21 September 2017, p. 31 ff.

## 2. Financial Services Act (FinSA)/ Financial Institutions Act (FinIA)

Dr Jean-Claude Spillmann

### 2.1. Background

In summer 2014 the consultation process began, and at the beginning of November 2015 the Federal Council adopted the dispatch on the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA). On 15 June 2018, Parliament adopted the FinSA and FinIA bills, which will enter into force on 1 January 2020.

FinSA and FinIA are often mentioned in the same breath as the EU's MiFID II. In principle, MiFID II pursues similar goals to FinSA and FinIA, but both FinSA and FinIA deal with many topics that are either found in another EU legal standard or are completely new or complementary.

### 2.2. Which topics are covered in FinSA?

The aim of FinSA is to provide a high level of protection to investors. This will primarily be achieved through standardised regulations on transparency and the general avoidance of conflicts of interest, as well as on compliance with due diligence obligations customary in the profession. In addition, both FinSA and FinIA pursue the goal of creating appropriate organisational structures so that financial intermediaries can implement these principles in their internal processes.

#### Customer classifications

Customers are now divided into the three following classifications.

1. Professional clients
   These include financial intermediaries under the Banking Act, FinIA and Collective Investment Schemes Act (CISA), insurance undertakings under the Insurance Supervision Act (ISA), foreign clients subject to prudential supervision, central banks, public corporations with professional treasury, pension funds and institutions which, according to their purpose, provide occupational benefits, companies with professional treasury, large companies and private investment structures set up for wealthy private clients with professional treasury.
2. Private clients
   This covers all clients who are not professional clients.
3. Institutional clients
   These are all professional clients who wish to voluntarily declare themselves as institutional clients (opting in), as well as national and supranational public-sector entities with professional treasury operations.

Wealthy or particularly experienced clients have the right to opt out and to be classified not as private clients but as professional clients. Customers can achieve this if they either:

- have, by virtue of their personal education and professional experience or comparable experience in the financial sector, the knowledge necessary to understand the risks of the investments and have assets of at least CHF 500,000; or
- have assets of at least CHF 2 million.

#### Duty to provide information and documentation

FinSA brings greater clarity through simplifications for transactions with institutional and professional clients, as the information requirements generally do not apply to transactions with institutional clients.

In the case of transactions with professional clients, the obligation to provide information may be waived bilaterally. This waiver must, however, take place explicitly and should not be anchored in the general terms and conditions.

The following essential information must be communicated to the customer before the contract is concluded or the service provided.

- General information:
  - name and address
  - field of activity, supervisory status
  - general risks in connection with financial instruments and support in disputes by ombudsmen

- Business-related information:
  - information on personal recommendations and related specific risks
  - information on the economic ties to third parties and on any conflicts of interest
  - the product universe taken into account when selecting financial instruments and product-specific information (product-specific information contained in the basic information sheet must be provided to private clients in the context of investment advice).

#### Documentation obligation

The obligations with regard to documentation do not differ significantly from current practice. It should be noted, however, that a copy of the client dossier must be made available to the client on request.

### Adequacy and suitability of financial services

Similar to MiFID II and the information requirement above, there is no need to conduct an assessment of the appropriateness and suitability of financial services for institutional clients. In principle, however, financial service providers that provide investment advisory and asset management services are required to carry out adequacy and suitability tests depending on the classification of their clients.

The client's knowledge and experience have to be tested and their financial situation and investment objectives must be reviewed.

The examination of the necessary knowledge and experience in the field of asset management and investment advice in the portfolio context must always be related to the service provided and not to the respective financial instrument. The financial institution has the possibility of compensating for the client's lack of knowledge and experience by providing information.

### Best execution

Each financial service provider must ensure that, when executing its clients' orders, the best possible result is achieved in terms of the:

- financial aspects (price, costs, third-party compensation)
- timing of execution
- quality of execution.

### Prospectus obligation and basic information sheet

As mentioned, a central objective of FinSA is to increase transparency and thus investor protection. The obligation to publish a prospectus or a basic information sheet and to make it available to investors in advance strengthens equivalence with the European market, as EU regulations already existing in this context contain very similar requirements – in particular, the Prospectus and Packaged Retail Investment and Insurance-based Products (PRIIP) regulations applicable in the EU. Both document types are to be handed over exclusively to private clients or created for products which are accessible to private clients. Before offering or admitting securities or collective investment schemes to a Swiss stock exchange, a prospectus must be drawn up and published. FinSA defines securities as all standardised securities, book-entry securities, derivatives and intermediated securities suitable for mass trading. Before a financial instrument is sold via an advisory mandate, the client must be provided with the basic information sheet.

### Advisory register

As soon as the law comes into force, natural persons who provide financial services on a professional basis in Switzerland or for clients in Switzerland must register and be entered in an advisory register. Client advisors of financial service providers who are not supervised under the FINMA Act are affected. This means that the financial service provider in question does not require a licence, recognition, authorisation or registration under the FINMA Act. The same requirements also apply to foreign financial service providers who advise clients in Switzerland. Under certain circumstances, however, the Federal Council may grant an exception for client advisors of foreign financial service providers who serve professional and institutional clients exclusively. In general, however, all foreign advisors must be entered in the advisory register.

### Governance

The requirements for internal governance serve to ensure that the prescribed obligations with regard to investor protection and transparency vis-à-vis the client can be carefully and sustainably implemented and practised in the company. The regulations are based on those of MiFID II and regulate the internal implementation of the topics listed below. These requirements are not new, but run consistently through all regulations from the legislator, with the declared aim that companies take the new requirements into account in their internal rules and regulations on a sustainable basis, and are able to manage the corresponding risks.

## 2.3. Which topics are covered in FinIA?

FinIA regulates the requirements for the activities of financial institutions and aims to establish a broad and uniform standard in the Swiss financial market through the now very broadly required approval period. FinIA primarily regulates the licensing requirement and the associated requirements for the respective institutions. The definition of these institutions is not based on the legal form itself, but on the activities performed, which open up the scope of application.

The principle of the licensing cascade is used to assess whether a licence is required for the activity performed, and if so which one. This means that a more extensively regulated company such as a bank within the meaning of the Banking Act may provide more services and does not require a new licence. An asset manager, on the other hand, may only provide asset management, portfolio advice, investment advice and execution-only services.

# 3. Amendments to the Swiss legislative framework for combating money laundering and terrorist financing

Michèle Hess, Martin Zuan and Robert Iliev

### 3.1. Background

Money laundering legislation in Switzerland, which has been a member of the FATF since 1990, was last reviewed in 2016. In its report, the FATF found that Switzerland's money laundering policy was partially compliant with nine of the 40 FATF recommendations, and that its implementation was therefore not adequate overall. Since then, Switzerland has been in the FATF's 'enhanced follow-up' process, under which it must regularly inform the FATF about the progress made in remedying the shortcomings of its anti-money laundering system until this is next reviewed in 2021. In order to be able to exit this enhanced follow-up process, Switzerland has taken various legal measures and proposed the following central adjustments in the area of combating money laundering, which were originally due to come into force on 1 January 2020.

#### I. AMLA obligations for advisors

The draft Anti-Money Laundering Act (AMLA) provides for the legal scope of application for financial intermediaries and traders to be extended to include a new group: advisors.

#### II. Verifying the identity of the beneficial owner

Art. 4 para. 1 sentence 1 of the draft AMLA now provides that financial intermediaries must not only establish the identity of the beneficial owner(s), but must also verify that identity. As such, financial intermediaries will be required to take steps under a risk-based approach to satisfy themselves that the information on the beneficial owner is plausible. This is not a wholly new obligation; rather, it explicitly anchors in law the general obligation to perform systematic and material examinations of beneficial owners, with a level of care commensurate with the circumstances.

#### III. Updating client information

When the amendments contained in the draft AMLA enter into force, financial intermediaries will be required to periodically review the necessary supporting documents for a business relationship to ensure that they are still accurate and to update them if necessary. The frequency, scope and type of updates will depend on the risks associated with each business relationship. All newly obtained information must be documented and stored in such a way that competent third parties can form a reliable opinion on compliance with the provisions of AMLA.

#### IV. Lower threshold for cash payments when trading in precious metals and precious gems

Under Art. 8a para. 4bis of the draft AMLA, traders in precious metals and precious gems will now be required to comply with the due diligence requirements of AMLA for cash payments of CHF 15,000 or above. The previous threshold of CHF 100,000 was lowered in line with the FATF's recommendation. The Federal Council will need to define the terms 'precious metals' and 'precious gems' in the Anti-Money Laundering Ordinance (AMLO). In doing so, it will be guided by existing legal definitions in the Precious Metals Control Act (PMCA), Precious Metals Control Ordinance (PMCO) and the customs tariff, so gold, silver, platinum and palladium in the form of semi-finished products, melt products or melt material, as well as rubies, sapphires, emeralds and diamonds that are not in a strung, assembled or set form, should fall under this heading.

#### V. Introduction of a system of checks on purchases of scrap precious metals

Although the FATF did not make an explicit recommendation in its report on the 2016 country re-view, it was of the opinion that the unregulated trade in scrap precious metals (mainly used gold) poses risks in relation to money laundering, particularly because of the ease with which they can be converted into money. To close this gap in the law, lawmakers have decided, in accordance with Art. 31a of the draft PMCA, to subject commercial purchases of precious metals to the due diligence (identification of the seller, clarification of the lawful origin of the goods and notification of suspicious transactions) and documentation obligations that apply to holders of melters' licences pursuant to Art. 168a et seq. PMCO. Furthermore, pursuant to Art. 31a para. 2 of the draft PMCA, professional purchasers of scrap precious metals that are not registered in the Swiss Commercial Register must obtain a purchase licence from the Central Office for Precious Metals Control of the Federal Customs Administration. If purchasers of precious metals are entered in the Swiss Commercial Register, they are not subject to licensing requirements. However, they must register with the above-mentioned Central Office.

#### VI. Central Office is the AMLA supervisory authority for banking precious metal dealers

Trade assayers that themselves or through a group company trade professionally in banking metals will in future be supervised and controlled at their own request by the Central Office for Precious Metals Control of the Swiss Federal Customs Administration for compliance with the obligations under chapter 2 of the AMLA, rather than by a supervisory organisation within the meaning of FinIA. The Federal Customs Administration will lay down the principles of supervision and the checks to be carried out.

#### VII. Transparency of associations at heightened risk of misuse for terrorist financing

Both the FATF and the Coordinating Group on Combating Money Laundering and Financing of Terrorism conclude that associations in Switzerland are at risk of misuse for terrorist financing due to low state control and a lack of

transparency. Lawmakers therefore decided in Art. 61 para. 2 no. 3 of the draft Civil Code to require associations at heightened risk of misuse to be entered in the commercial register in future. An association is assumed to be at such risk if it mainly gathers or distributes in other countries assets that are intended for charitable, religious, cultural, education-al, social or similar purposes. To further increase the transparency of associations requiring entry in the commercial register, they will in future be required to keep a register of the first and last names or company names and the addresses of all their individual members. Such associations must en-sure that the membership register in Switzerland can be accessed at any time and that the documentation on former members is kept for ten years after departure. In addition, associations requiring entry in the commercial register must now designate a natural person resident in Switzerland as a representative.

#### VIII. System for reporting to the Money Laundering Reporting Office (MROS)

1. Maintenance of the right to report

In a change from the proposal in the consultation procedure, the right to report pursuant to Art. 305ter para. 2 of the Criminal Code is not to be abolished. However, in order to comply with the FATF recommendation, the distinction between the right to report and the duty to report under Art. 9 AMLA needs clarifying. The Federal Council is to define more precisely the concept of 'well-founded suspicion' for the purposes of the AMLO, as pertaining to the duty to report.

2. Removal of the processing period vs. period for termination of a business relationship

Under Art. 23 para. 5 AMLA, the MROS was previously required to inform financial intermediaries within 20 working days of whether or not it was forwarding the report pursuant to Art. 9 para. 1 lit. a AMLA to a criminal prosecution authority. This processing period is abolished in the draft AMLA. However, in Art. 9b of the draft AMLA, legislators now provide for a period of 40 days during which a financial intermediary may terminate the business relationship after exercising the right to report or the duty to report and ensuring that the paper trail is in place, where the MROS does not forward a dismissed report to a criminal prosecution authority.

### 3.2. Effects on Switzerland as a financial centre

What still lies ahead once the legislative process has been completed for the changes published in the new draft AMLA? One thing that is clear is the international trend towards more transparency, more documentation and more scrutiny. Anyone hoping that this trend will reverse or disappear risks not being ready in time. If Parliament agrees with the Federal Council's stance that Switzerland should exit the 'enhanced follow-up' process as quickly as possible, the far-reaching changes in the draft AMLA should also be applied to financial intermediaries in Switzerland as quickly as possible. There is no sign of a reversal in the international trends.

It therefore makes sense to prepare the groundwork now, and all financial intermediaries should start making an inventory of their processes and internal rules. These should be scrutinised and reviewed with a view to the upcoming changes and with a focus on making efficient use of information and data. Financial intermediaries already have information from third-party sources and in their own customer documentation, but do not yet make best use of it. Missing or incorrect data can be supplemented or corrected already, and more generally the processes for collecting the necessary information can be strengthened now. There is no doubt that this process might not be painless, depending on the state of the financial intermediary and the current quality of its data. Those who ask themselves these questions at this stage, however, are likely to have a critical advantage if the innovations and trends in foreign countries are fully replicated in the Swiss financial centre too.

# 4. Revision of the Banking Act

Dr Antonios Koumbarakis and Moritz Obst

### 4.1. Background

On 8 March 2019, the Federal Council commenced the consultation on a partial revision of the Banking Act (BA) with a view to improving overall legal certainty and strengthening Switzerland as a centre of finance. In addition to the Banking Act, the Mortgage Bonds Act and the Intermediated Securities Act would be particularly affected by the adjustments.

In the explanatory report on the consultation, the Federal Council proposes amendments in three areas:

- **Banking insolvency:** The insolvency provisions for banks are being revised, primarily to increase the legal certainty of provisions interfering with constitutionally protected legal positions.
- **Deposit protection:** To strengthen bank deposit protection, payout periods will be adapted, the method of financing is being changed to an obligation to deposit securities and the maximum financial obligation is being increased.
- **Segregation:** The amendment to the Intermediated Securities Act will introduce the obligation for all custodians of intermediated securities to separate their own and their clients' portfolios.

### 4.2. Insolvency law

Aimed at banks, private bankers and savings banks, the main principles of banking insolvency law are laid down in the Banking Act (Art. 25-37). The FINMA Banking Insolvency Ordinance (BIO-FINMA) specifies these articles. BIO-FINMA also regulates bankruptcy and recovery proceedings for banks, securities dealers and bonds institutions.

In connection with recovery measures that intervene with constitutionally protected legal positions –primarily the satisfaction of creditors' claims – on various occasions in the past there has been criticism that BIO-FINMA does not constitute a sufficient legal basis. This criticism was taken up by the Federal Council when drafting the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) of 4 November 2015, with a proposal in the annex of FinIA to elevate the ordinance provisions to statute level, i.e. the Banking Act. Parliament referred these adjustments back to the Federal Council, instructing it to conduct a consultation on the issue.

In response to the criticism, the rules on bank insolvency are to be changed to improve the legal certainty of provisions currently regulated in BIO-FINMA. To better protect the constitutional rights of bank owners and creditors bank, it is proposed to transpose the fundamental clauses of BIO-FINMA into the Banking Act and thus give them a higher legitimation. This concerns capital measures in bank restructuring (such as bail-in and debt reduction). Alongside this, the Mortgage Bond Act is to be amended to give the Swiss mortgage bond system greater stability.

### 4.3. Deposit protection

With regard to deposit protection, the Federal Council identified the need for action in three areas:

**1. Payout period:** According to experience thus far, the disbursement of depositors' funds can take several months, leading to uncertainty and a lack of trust. To remedy this, two new deadlines are to be introduced: Firstly, the payment from the deposit guarantee scheme to the investigator or the appointed liquidator must be made within seven days. Secondly, the investigator or appointed liquidator has a seven-day deadline for disbursement to the depositors.

**2. Method of financing:** Prospectively, banks have to deposit half of their payment obligations in easily realisable securities of high quality or Swiss francs in cash at a suitable third-party custodian. Alternatively, it should be equally possible to deposit cash loans in favour of the deposit guarantee scheme (primarily relevant for smaller institutions).

**3. Maximum payment obligation:** The total amount of secured deposits has increased in recent years, while the obligatory contributions of banks remained constant with a maximum payment obligation of CHF 6 billion. The Federal Council's proposal now stipulates that the minimum payment obligation is increased to CHF 6 billion, with the maximum obligation being capped at 1,6 % of the total sum of secured deposits.

### 4.4. Segregation of own holdings and client holdings

To enable client holdings to be separated in the event of bankruptcy, banks need to keep these deposit items separate both from their own holdings and from the assets of other clients (segregation). Given that there are still gaps in the obligation for banks to keep their own and client assets separate, the Book Entry Securities Act requires corresponding adjustment.

The proposed changes introduce the obligation for all custodians of intermediated securities to separate their own and their clients' portfolios. If the custody chain leads abroad, the last Swiss custodian has to take measures to protect the intermediated securities booked with the foreign custodian. In this context, a duty to inform customers is being introduced.

### 4.5. Impact on Switzerland as a centre of finance

Bank clients' confidence of bank in a financial centre depends to a large extent on the services, security and certainty it offers. In this regard, and considering the fact that the impact is comparatively modest, the proposed changes have the potential to improve the position of Switzerland as an attractive location for foreign funds. Whereas the planned strengthening of depositor and investor protection would contribute to increased legal certainty and competitiveness overall, the proposed measures would have hardly any impact on the competitive situation among financial institutions in Switzerland. Furthermore, any bank in need of reorganisation has a strong interest in cleaning up the past as quickly as possible and creating legal certainty for the reoriented institution.

# Public tax transparency

## Public tax transparency: a new trend on the horizon

**Dr Christian Ulbrich and Charalambos Antoniou**

At the end of this 2020 Strategic Banking Regulatory Outlook, we would like to draw your attention to a new trend that is currently gaining momentum: public tax transparency. It is a trend that we are convinced will become increasingly important for the banking sector in the near future.

On 27 March 2019, the European Parliament adopted its position at first reading on a 'proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches', originally proposed by the EC in 2016. A first reading position of the Council is not expected soon, given the current lack of political momentum. Nevertheless, this proposal is an expression of a fundamental shift in paradigm towards more extensive public tax transparency, which is also driven by other stakeholders.

Important investors are picking up on this topic. Norges Bank Investment Management (responsible for managing Norway's Government Pension Fund Global, with assets of about USD 1 trillion) and Ethos Engagement Pool Switzerland (pooling 135 pension funds managing total assets of CHF 223 billion), for example, have started to explicitly set expectations in terms of the transparent tax behaviour of their investment targets. An element of public tax transparency has become a mandatory section for major sustainability indices such as the Dow Jones Sustainability Index (DJSI) and the FTSE4Good Index Series. Influential initiatives such as the UN-supported Principles for Responsible Investment (PRIs) and the Global Reporting Initiative (GRI) include, or propose to include, tax transparency in their frameworks. Industry-owned action groups such as The B Team Responsible Tax Principles are also pushing the topic.

More importantly, tax has now been tied to the sustainability topic and has been identified as a component in achieving the UN's Sustainable Development Goals (SDGs). Public tax reporting is no flash in the pan – quite the contrary – and that is why it is likely to go beyond the aforementioned directives; ESG frameworks are already a hot topic among many board members, and public tax transparency is now joining the party.

This means that developing a strategic position on how to respond to the increasing demand for public tax transparency should now be placed firmly on the agenda of the banking industry. One option could be for a company to independently decide to become publicly tax transparent, without pressure from the outside, so to speak, and to communicate its own positive financial impact on societies. It could enable multinational banking enterprises to positively inform the debate and set a good example, which again may help shape the way potentially mandatory public tax disclosures are designed in the future.

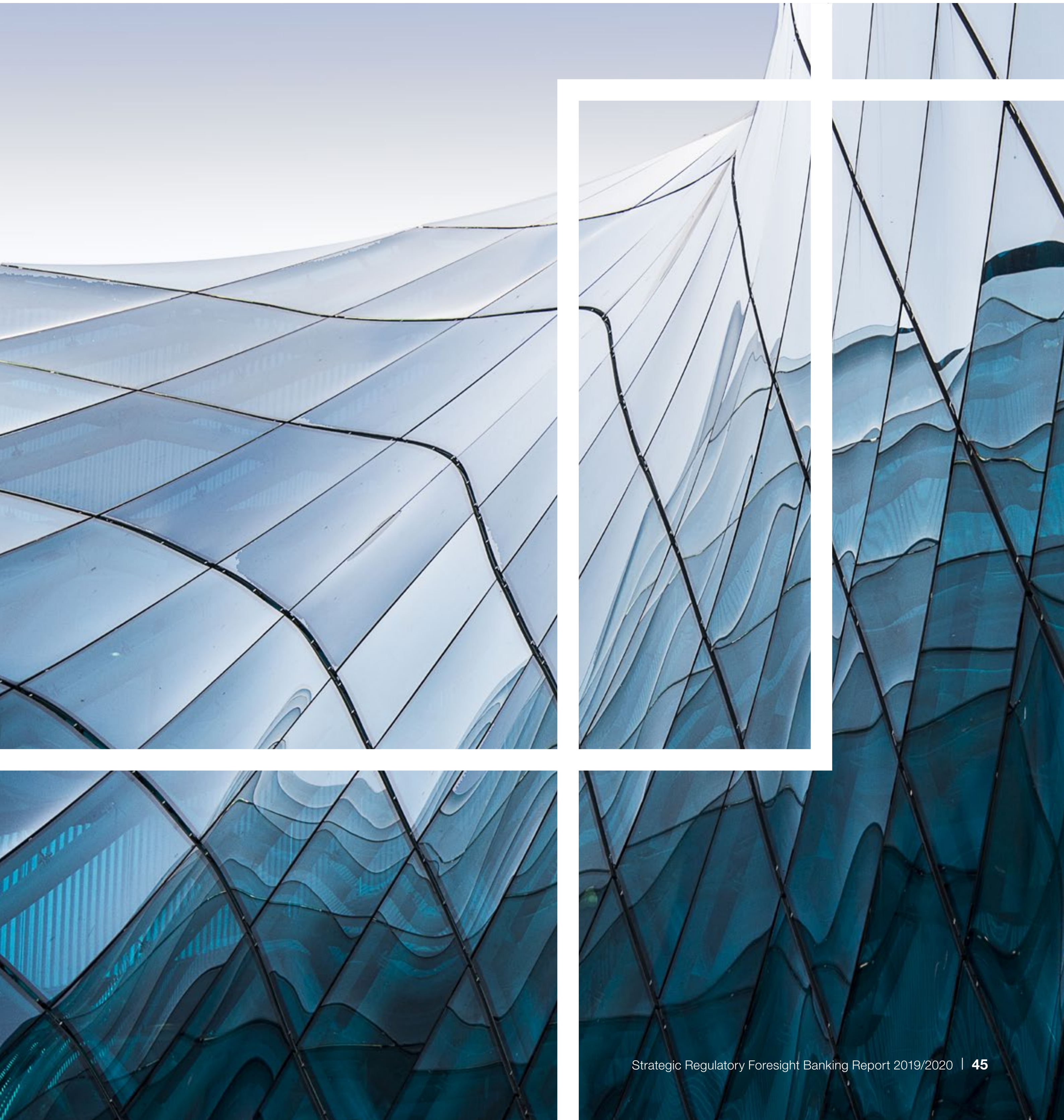
What exactly is meant by public tax transparency and how does a company communicate its positive financial impact?

Public tax transparency can be described as presenting easily understandable information on the broader economic contributions a taxpayer makes by paying or collecting taxes in the environment in which it operates.

It is crucial to understand that public tax transparency is not just about publicly disclosing how and where a company pays taxes. It is about putting this information in the right context. Large banks do not only contribute by way of corporate income taxes, but also through other income and non-income-related taxes (such as VAT, financial transaction taxes (FTTs), employment taxes, etc.). Other payments to governments such as duties, levies and royalties may also be regarded as contributions. Companies also collect and administrate taxes related to their employees, customers and suppliers on behalf of governments. Beyond that, the concept of public tax transparency may be broadened to include additional economic contributions. For example, organisations also contribute to every local economy in which they operate by way of local wages, local investments and payments to local suppliers. In general, public tax transparency might include a company disclosing its total tax contribution(s), a sound tax strategy, its approach to technical and non-technical tax risk, and information on a country-by-country basis.

To conclude, it should be emphasised that public tax transparency is not only a necessity – it can in fact be very beneficial for a banking group. Communicating an organisation's contribution to the society in which it operates is one important way of building long-term trust and credibility – particularly important for banks – with the public (people on the street, customers and media), other stakeholders (employees, the board, suppliers and other business partners, NGOs, lawmakers and supranational bodies such as the OECD) and tax administrations. It might be helpful to actively participate in the design of new transparency standards, as it gives an organisation a credible and powerful voice in the debate on what mandatory public tax disclosures should cover and how they should be structured.

Of course, the specific extent of benefits arising from increased public tax transparency depends on the respective profile of an organisation. Some banking groups are in very different positions from others. Before taking action, every company should assess the benefit that increased public tax transparency might bring. We acknowledge that for some companies this assessment may result in negligible value, thus making an insufficient business case for public tax transparency. But for others, it may result in public tax transparency becoming an absolute top priority. One way or another, this is a topic that is now on the agenda of most banks' stakeholders.

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# PwC Legal's Regulatory Radar

Since the global financial crisis, regulatory reform has topped the agendas of financial institutions. Recent years have seen an explosion in the number and scope of financial market regulation – not just in Switzerland, but also in the EU and the rest of the world. The legislator and national supervisory authorities are publishing and updating increasingly intense and comprehensive regulatory changes.

For international financial corporations with cross-border business activities, the task is particularly daunting, as they have to comply with a set of overlapping and at times contradictory rules and international standards. Yet, it is essential that all financial institutions are informed in a timely manner about regulatory updates in order to avoid missing out on critical topics (e.g. EU Action Plan on Sustainable Finance, EBA Outsourcing, FinSA, SRD II) or taking the required action too late.

Regulations have and will continue to radically change the banking landscape. Therefore, keeping things in perspective and not losing sight of the overall regulatory initiatives is key to remaining on the road to success.

## Our digital solution to ensure that you are fully informed

Our response to the regulatory avalanche is the Regulatory Radar, a web-based, cost-efficient all-round solution to take care of your regulatory foresight on various banking and financial services topics. You will receive a tailor-made solution that summarises and analyses regulatory initiatives and draws your attention to potential action. Based on your concrete corporate structure, the Regulatory Radar indicates the affected entities and locations in order to ensure that you can respond with timely and adequate measures.

PwC monitors through its national and international network all legal updates and ensures a detailed overview of the latest regulatory developments concerning the financial markets in more than 40 jurisdictions around the globe. Among others, depending on your geographic scope, the following jurisdictions will be covered:

- US
- Cayman Islands
- BVI
- European Union
- Switzerland
- Asia Region (Australia, Japan, New Zealand, Singapore, Thailand, Philippines, South Korea)
- United Kingdom

## Why use our tool?

You get a very high degree of customisation in terms of your regulatory updates and repository (e.g. geographic scope, regulatory authorities, regulations and regulatory sources). PwC offers a tailor-made solution replicating your specific organisational structure and focusing particularly on the following business areas:

- Asset and Wealth Management
- Banking
- Hedge Funds

Furthermore the application is web-based with 24-hour access. It is easy and efficient to use and enables you to prioritise clearly. The regulations are structurally updated and the database also includes past and present initiatives.

PwC's Regulatory Radar provides a high-level impact analysis for each of your jurisdictions, client types and product types, plus a target-oriented analysis of the relevant regulatory initiatives and recommended actions.

## Your benefits

- Regular and frequent regulatory updates (including a forward-looking tool and a regulatory repository for each country)
- Easy-to-use web-based tool
- Increased business success through early identification and regulatory analysis
- Yearly regulatory outlook brochure
- Ad-hoc support with relevant regulatory topics
- Consolidated supervision of regulatory initiatives
- Clear prioritisation of regulatory updates
- Structured summary of updates for each regulation, easy to extend country by country and regulation by regulation
- Quarterly high-level impact assessment for selected regulations
- Assignment of tasks and responsibilities

**Please contact Dr Antonios Koumbarakis for further information.**

**The Regulatory Radar is available at: www.pwc.ch/en/industry-sectors/financial-services/fs-regulations/regulatoryradar.html**

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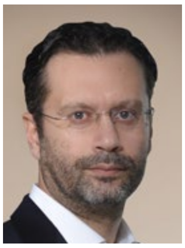

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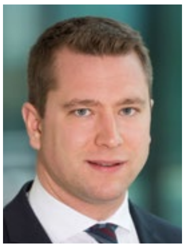

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