



FIG Bulletin

Recent developments
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Hogan
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General

Sanctions and Anti-Money Laundering Act 2018 (Commencement No 2) Regulations 2020

The Sanctions and Anti-Money Laundering Act 2018 (Commencement No 2) Regulations 2020 ([SI 2020/1535](#)) were made on 14 December 2020. The regulations bring into force several provisions of the Sanctions and Anti-Money Laundering Act 2018 (SAMLA 2018).

SAMLA 2018 is enabling legislation to allow the UK to impose economic and other sanctions, and money laundering regulations, after the end of the Brexit transition period.

Sanctions Regulations (EU Exit) (Commencement) Regulations 2020

The Sanctions Regulations (EU Exit) (Commencement) Regulations 2020 ([SI 2020/1514](#)) were made on 10 December 2020. They bring into force on specified dates the provisions of certain Regulations which have been made under Part 1 of the SAMLA 2018. In particular, SI 2020/1514 brings into force the sanctions Regulations made under section 1 of the SAMLA 2018 to establish sanctions regimes in relation to certain countries or regime Regulations.

UK financial services overseas framework: HM Treasury call for evidence

HM Treasury has published a [call for evidence](#) on the UK framework for financial services firms based overseas. Topics the Treasury seeks feedback on include (but are not limited to):

- the overseas persons exclusion;
- investment services equivalence under Title VIII of the Markets in Financial Instruments Regulation;
- the regime for recognised overseas investment exchanges; and
- the Financial Promotion Order in general, and specifically in relation to the distribution of certain overseas long-term insurance products in the UK.

HM Treasury notes that there are some overlaps between the activities covered by these regimes, and there may be scope for improving consistency and to make the overall framework more transparent and easier to navigate.

The call for evidence is intended to be an information-gathering exercise about how the regimes work in practice and how market participants navigate them and might use them in future. HM Treasury will use this information to assess how the regimes measure up against its principles for cross-border services (set out at paragraph 1.7 of the call for evidence) and fit within the UK's regulatory framework, following the UK's departure from the EU.

The deadline for responses is 11 March 2021.

BoE Financial Stability Report and FPC summary and record

The Bank of England (BoE) has published the [Financial Stability Report](#) for December 2020 and the [financial policy summary and record](#) of the meetings of its Financial Policy Committee (FPC) on 8 December 2020.

In the documents the FPC sets out its view of the outlook for UK financial stability, including its assessment of the resilience of the UK financial system and the main risks to UK financial stability, and the action it is taking to remove or reduce those risks. In particular, it considers the

work undertaken by the UK financial system to support the economy during the COVID-19 pandemic.

SMCR implementation: PRA evaluation

The Prudential Regulation Authority (PRA) has published for comment a [report](#) setting out its findings following an evaluation of the implementation of the Senior Managers and Certification Regime (SM&CR or SMCR) to assess how it is delivering against its original objectives. While the report focuses on dual-regulated firms, the evaluation team benefited from discussions with the Financial Conduct Authority (FCA) on several issues. In considering its next steps following feedback on this report, the PRA will continue to work closely with the FCA.

The PRA's findings confirm that the introduction of the SMCR has helped ensure that senior individuals in dual-regulated firms take greater responsibility for their actions. It has also made it easier for both firms and the PRA to hold individuals to account. Around 95% of the firms surveyed said the SMCR was having a positive effect on individual behaviour. The PRA concludes that the evidence to date does not suggest the need for major changes to the SMCR approach taken.

However, the PRA states that, notwithstanding this broadly positive start, it is keen to continue to embed the regime and stakeholders have pointed to some areas which could benefit from amendment - such as the use of conduct notifications and regulatory references, where it is not yet clear whether the regime is working fully as intended. Therefore, the PRA identifies nine follow-up actions and recommendations to help refine the way in which the regime operates in practice:

- **Conduct and regulatory references:** The PRA will examine the scope for clarifying expectations related to misconduct reporting in notifications and regulatory references. It will also engage with the industry so that regulatory references are used in an appropriate manner.
- **Remuneration:** The PRA will seek feedback on the benefits of further articulating the link between the SMCR and remuneration adjustments. It acknowledges that although this is mentioned in speeches, it could be stated more clearly in policy documents (for example, relevant supervisory statements).
- **Senior manager expectations:** Firms need to underline the responsibility of those holding prescribed responsibilities and the certification regime to ensure they are embedded.
- **Diversity:** The PRA will reaffirm its appetite for diverse skills and experience among senior management teams through policy and expectations, and/or communications. It will also examine options for improving data collection and analysis of diversity among the senior management population.
- **Collective accountability:** The PRA will seek further views on whether board responsibilities and individual accountability are mutually reinforcing.
- **Interim appointments:** The PRA encourages responses to its joint consultation with the FCA on senior managers' long-term leave.
- **Allocation of responsibilities:** The PRA will seek further views on:
 - the usage of the Head of Key Business Area (SMF6) designation at insurers to see why this is used less than at banks;
 - the way in which the designation of certain individuals as Key Function Holders works alongside the SMCR;
 - the case for further guidance in allocating Prescribed Responsibilities; and
 - an option for smaller firms to submit SMCR documentation less frequently.

- **Time-limited and conditional approvals:** The PRA will explore options for making time-limited and conditional approvals more readily used in the appointment of senior managers.
- **New senior manager expectations:** The PRA will consider adding an inventory of guidance and expectations in respect of senior manager responsibility for new and emerging risks to the individual accountability section of the BoE website and limit the growth of such guidance.

The PRA welcomes comments on the findings of the evaluation and its recommendations until 26 February 2021. This will inform the PRA's case for reviewing rules, expectations, or communication relating to the SMCR, and for engaging further with other UK authorities on these points.

FCA appoints new Executive Director of Consumers and Competition

The FCA has [appointed](#) Sheldon Mills as Executive Director, Consumers and Competition with immediate effect. Mr Mills was previously interim Executive Director, Strategy and Competition, following his appointment to that role in March 2020.

The FCA states that the post of Executive Director, Consumers and Competition was created in November 2020 following the announcement that the FCA's two supervision divisions would be brought together and merged with the policy and competition functions. These will form a new, single division led by two executive directors: one focused on the FCA's consumer protection and competition objectives; the other focused on the objective to protect the financial markets. Jonathan Davidson, previously Executive Director of Supervision – Retail and Authorisations, will support Mr Mills through the transition before he leaves the FCA in early 2021.

UK Investment Firms Prudential Regime: FCA CP20/24

The FCA has published its first of three consultation papers, [CP20/24](#), on the implementation of the UK Investment Firms Prudential Regime (IFPR). It has also published the [proposed template](#) for the new reporting to support the IFPR and the [guidance for completing this template](#).

In CP20/24, the FCA sets out its proposals for aspects of the IFPR relating to, among other things:

- the categorisation of investment firms;
- prudential consolidation;
- own funds and own funds requirements; and
- reporting requirements.

The FCA intends to establish a new prudential sourcebook relating to the IFPR: the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU).

The deadline for responses to CP20/24 and the proposed template/guidance is 5 February 2021.

The FCA intends to publish two further consultations in 2021. The second consultation paper will cover issues including liquidity, risk management and governance and remuneration requirements; and the third consultation paper will cover consequential amendments to the FCA Handbook, and any gaps or issues identified through the consultation process.

The FCA will not publish final rules until the Financial Services Bill 2019-21 (which sets out the proposed legislative framework for the IFPR) has passed through Parliament. Subject to the progress of the FS Bill, the FCA aims for the IFPR to be implemented on 1 January 2022.

FCA Handbook Notice 83

The FCA has published [Handbook Notice 83](#), which sets out changes to the FCA Handbook made by the FCA board on 7 and 10 December 2020. The Handbook Notice reflects changes made to the Handbook by the following instruments:

- Conduct of Business (Speculative Illiquid Securities) Instrument 2020 (FCA 2020/74);
- Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2020 (FCA 2020/86);
- Technical Standards (Miscellaneous Amendments) (EU Exit) Instrument 2020 (FCA 2020/87);
- Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020 (FCA 2020/78);
- Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020 (FCA 2020/79);
- Technical Standards (Specifying the Information and Details of a Securitisation to be Made Available by the Originator, Sponsor and SSPE) (EU Exit) Instrument 2020 (FCA 2020/80);
- Technical Standards (Specifying the Information to be Provided to Comply with the STS Notification Requirements) (EU Exit) Instrument 2020 (FCA 2020/81);
- Technical Standards (Format of Applications for Registration of Securitisation Repositories) Instrument 2020 (FCA 2020/82);
- Technical Standards (Information to be Provided in the Application for Registration of a Securitisation Repository) Instrument 2020 (FCA 2020/83);
- Technical Standards (Securitisation Repository Operational Standards for Data Collection, Aggregation, Comparison, Access and Verification of Completeness and Consistency) Instrument 2020 (FCA 2020/84); and
- Technical Standards (Supplementing EMIR with regard to the Clearing Obligation) (EU Exit) Instrument 2020 (FCA 2020/85).

FCA complaints data for first half of 2020

The FCA has published a webpage summarising its latest [complaints data](#) relating to the first half of 2020 and linking to its more detailed firm specific data for individual firms and aggregate figures for the industry.

FOS consults on plans and budget for 2021/22

The Financial Ombudsman Service (FOS) has published a [consultation paper](#) on its proposed plans and budget for 2021/22. In the consultation, the FOS seeks views on, among other things:

- its projections for the volumes of complaints it will receive and resolve, and its perspective on identified trends;
- its proposed budget and funding arrangements; and
- how it intends to take forward the first year of its new strategic priorities.

The deadline for responses is 31 January 2021. The FOS will adopt its final budget and publish its plans for 2021/22 by 31 March 2021.

FOS Ombudsman News 156

The FOS has published [issue 156](#) of its Ombudsman News. Items of interest in this edition include:

- the consultation on the FOS' proposed plan and budget for 2021/22, which was published on 16 December 2020 (see above);
- information on how to contact the FOS with enquiries or complaints over the Christmas and New Year period;
- the FOS' [annual report and accounts 2019/20](#); and
- links to previous FOS consultations and feedback statements, together with responses by the FOS to other organisations' consultations.

Pensions dashboards: Data Standards Guide

The Pensions Dashboard Programme (PDP) has published a [Data Standards Guide](#), containing the key data standards which will underpin the initial technology for pensions dashboards. It includes definitions of the overall process, the high level data elements and a technical breakdown of each data element, plus examples of how the data elements should work, using example data.

The PDP, set up by the Money and Pensions Service, has responsibility for designing and implementing the digital ecosystem which ensures that the pensions dashboards will work as effectively as possible.

IFD: EBA consults on draft guidelines on internal governance

The European Banking Authority (EBA) has published a [consultation paper](#) on internal governance under Article 26(4) of the Investment Firms Directive (IFD), specifying the governance provisions that class 2 investment firms should comply with.

The guidelines consider the principle of proportionality and specify:

- the tasks, responsibilities and organisation of the management body;
- the organisation of investment firms, including the need to create transparent structures that allow for supervision of all their activities; and
- requirements aimed at ensuring the sound management of risks across all three lines of defence, in particular, setting out detailed requirements for the second line of defence (the independent risk management and compliance function) and the third line of defence (the internal audit function).

The EBA states that the guidelines are consistent with the guidelines on internal governance for credit institutions and with international standards. To ensure that investment firms groups take a holistic approach to their risk management, the draft guidelines apply at both individual and consolidated level.

The consultation closes on 17 March 2021. The EBA will hold a public hearing on the draft guidelines on 17 February 2021. The EBA expects that the guidelines will apply from 26 June 2021.

IFD: EBA consults on draft guidelines on sound remuneration policies

The EBA has published a [consultation paper](#) on draft guidelines on sound remuneration policies under the IFD. The draft guidelines specify the remuneration provisions that class 2 investment firms should comply with, considering the proportionality principle. They apply at both individual and consolidated level.

The consultation runs until 17 March 2021. There will be a [public hearing](#) on the draft guidelines on 17 February 2021. The EBA expects to publish a final version of the guidelines before the end of June 2021.

IFR and IFD: EBA final report on draft RTS on prudential requirements

Following its June 2020 consultation, the EBA has published a [final report](#) setting out the following seven draft regulatory technical standards (RTS) relating to the prudential treatment of investment firms:

- draft RTS (under Article 8a(6), point (a) of the Capital Requirements Directive on the information to be provided for the authorisation of credit institutions as defined in point (1)(b) of Article 4(1) of the Capital Requirements Regulation;
- draft RTS to specify the calculation of the fixed overheads requirement and define the notion of a material change (Article 13(4) of the IFR);
- draft RTS to specify the methods for measuring the K-factors (Article 15(5)(a) of the IFR);
- draft RTS to specify the notion of segregated accounts (Article 15(5)(b) of the IFR);
- draft RTS to specify adjustments to the K-DTF coefficients (Article 15(5)(c) of the IFR);
- draft RTS to specify the amount of total margin for the calculation of K-CMG (Article 23(3) of the IFR); and
- draft RTS on the criteria for subjecting certain investment firms to the CRR (threshold of EUR5 billion) (Article 5(6) of the IFD).

These final draft RTS are part of the phase 1 mandates of the EBA's June 2020 roadmap for investment firms and aim to ensure a proportionate implementation of the new prudential framework for investment firms considering the different activities, sizes and complexity of investments firms.

Each of the RTS will come into force on the twentieth day after its publication in the Official Journal of the EU and will apply from 26 June 2021.

Cybersecurity: European Commission Cybersecurity Strategy and proposed revised NIS Directive and Directive on resilience of critical entities

The European Commission has adopted a new [EU Cybersecurity Strategy](#) which aims to bolster the EU's collective resilience against cyber threats and help to ensure that all citizens and businesses can fully benefit from trustworthy and reliable services and digital tools. It has also published accompanying [Q&As](#). In addition, the Commission has adopted:

- a proposal for a [Directive on measures for high common level of cybersecurity across the Union](#) (NIS 2 Directive);
- a proposal for a [Directive on the resilience of critical entities](#); and
- a [Report](#) on the impact of the Commission Recommendation on the Cybersecurity of 5G Networks.

The proposal for a Directive on the resilience of critical entities expands the scope of the existing [Directive 2008/114/EC](#) on critical infrastructure to cover ten sectors: energy, transport, banking, financial market infrastructures, health, drinking water, waste water, digital infrastructure, public administration, and space. Existing EU rules only applied to the energy and transport sectors.

The Commission and the High Representative of the Union for Foreign Affairs and Security Policy are committed to implementing the new Cybersecurity Strategy in the coming months. The European Parliament and the Council now need to examine and adopt the legislative proposals on a NIS 2 Directive and a Critical Entities Resilience Directive. Once the proposals are agreed and consequently adopted, member states would have to transpose them within 18 months of their entry into force.

Functioning of AML and CTF colleges: EBA report

The EBA has published its first [report](#) on the functioning of anti-money laundering (AML) and counter-terrorist financing (CTF) colleges. In the report, the EBA outlines the progress made by national competent authorities (NCAs) on setting up colleges to enhance supervisory cooperation for AML and CTF purposes. The EBA also recognises that NCAs have until 10 January 2022 to set up colleges.

The EBA identifies areas that may require more focus from NCAs when setting up future colleges and provides examples of good and poor practices identified from the first ten colleges. NCAs are encouraged to make use of the report when establishing or participating in AML and CTF colleges, adjusting their approach where necessary. The EBA will continue to monitor and support NCAs in this area.

Non-bank financial intermediation: FSB 2020 report

The Financial Stability Board (FSB) has published its [global monitoring report](#) on non-bank financial intermediation for 2020, which sets out the results of its annual monitoring exercise that assesses global trends and risks from non-bank financial intermediation.

Network for Greening the Financial System publications

The Network for Greening the Financial System (NGFS) has [announced](#) the publication of a [report](#) on the implementation of sustainable and responsible investment practices in central banks' portfolio management and a [report](#) following its survey on monetary policy operations and climate change. It has also announced that the US Federal Reserve System has joined as a new member.

The NGFS is a group of central banks and supervisors that share best practices and contribute to the development of environment and climate risk management in the financial sector.

Banking and Finance

UK SRR code of practice

HM Treasury has published a [revised version](#) of the Banking Act 2009 special resolution regime (SRR) code of practice which applies to the use of the SRR after the end of Brexit transition period. The previous March 2017 version applies to the use of the SRR before the end of transition period.

COVID-19: PRA statement on capital distributions by large UK banks

The UK Prudential Regulation Authority (PRA) has published a [statement](#) on capital distributions by large UK banks.

In July, the PRA announced that in the Q4 2020 it would undertake an assessment of large UK banks' distribution plans for 2020. This assessment would be based on: the current and projected capital positions of the banks; the level of uncertainty on the future path of the economy; market conditions; and capital trajectories prevailing at that time. The PRA has now completed that assessment.

The PRA concludes that an extension of the exceptional and precautionary action taken in March due to the potential impact of COVID-19 is not necessary. Therefore, there is scope for banks to recommence some distributions should their boards choose to do so, within an appropriately prudent framework.

The PRA states that any distributions should be prudent, reflecting the still elevated levels of economic uncertainty and the need for banks to continue to support households and businesses through the continuing economic disruption. As a stepping stone back towards its standard approach to capital-setting and shareholder distributions, the PRA asks boards, when making their decisions for 2020 distributions, to operate within a framework of temporary "guardrails". The PRA is publishing that framework now in order to give bank boards time to take it into account as they approach those decisions in coming months.

In relation to full-year 2020 results, distributions to ordinary shareholders by large UK banks should not exceed the higher of 20 basis points of risk-weighted assets as at end-2020 or 25% of cumulative eight-quarter profits covering 2019 and 2020 after deducting prior shareholder distributions over that period. The PRA expects banks to satisfy it that any distributions would not create excess vulnerabilities to stress for a given bank or impede its ability or willingness to support households and businesses. If any firm wishes to make shareholder distributions in excess of these guardrails, it should engage with its supervisors and expect a high bar for justifying any exceptions.

The PRA has also updated its expectations on the payment of cash bonuses to senior staff, including all material risk takers. Firms should exercise a high degree of caution and prudence when determining the size of any cash bonuses granted to senior staff given the uncertain outlook and the need for banks to deploy capital to support the wider economy.

The PRA intends to transition back to its standard approach to capital-setting and shareholder distributions through 2021. For 2021 dividends the PRA is content for appropriately prudent dividends to be accrued but not paid out. It aims to provide a further update ahead of the large UK banks' 2021 half-year results.

2021 priorities for supervising UK deposit-takers: PRA Dear CEO letter

The PRA has published a [Dear CEO letter](#) sent to UK deposit-takers setting out its 2021 supervisory priorities. The priorities covered in the letter fall under the following headings:

- financial resilience;
- credit risk;
- operational risk and resilience;
- transition from LIBOR to alternative risk-free rate;
- competition and future regulatory frameworks; and
- financial risks arising from climate change.

In addition to the priorities set out in the letter, the PRA continues to see strong governance at firms as being key to underpinning progress in meeting its expectations.

2021 priorities for supervising international banks: PRA Dear CEO letter

The PRA has published a [Dear CEO letter](#) sent to PRA-regulated international banks setting out its 2021 supervisory priorities. The PRA's priorities relate to:

- financial resilience;
- operational risk and resilience;
- transition from LIBOR to alternative risk-free rate; and
- financial risks arising from climate change.

In addition to the four priorities set out in the letter, the PRA continues to see strong governance at firms as being key to underpinning progress in meeting its expectations.

CRD V: FCA finalised guidance on remuneration requirements

Following its consultation in CP20/14, the Financial Conduct Authority (FCA) has published a policy statement, [PS20/16](#), setting out its final rules on remuneration for dual-regulated firms and feedback to the consultation responses. PS20/16 should be read in conjunction with the following finalised guidance updating the FCA's Dual-regulated firms Remuneration Code to reflect the fifth Capital Requirements Directive (CRD V):

- [General guidance on proportionality: The Dual-regulated firms Remuneration Code \(SYSC 19D\)](#) (FG20/4);
- [Dual-regulated firms Remuneration Code \(SYSC 19D\) – Frequently asked questions on remuneration](#) (FG20/5); and
- [IFPRU investment firms Remuneration Code \(SYSC 19A\) – Frequently asked questions on remuneration](#) (FG20/6).

The new Handbook rules and guidance come into force on 29 December 2020. Firms are required to apply the new rules and guidance from the next performance year starting on or after 29 December 2020.

CRR: European Commission adopts Delegated Regulation on specialised lending exposures

The European Commission has adopted a [Delegated Regulation](#) in respect of regulatory technical standards (RTS) for assigning risk weights to specialised lending exposures under Article 153(9) of the Capital Requirements Regulation (CRR). The draft RTS specify how institutions should

take into account the factors of financial strength, political and legal environment, transaction and asset characteristics, strength of the sponsor and developer, and security package when assigning risk weights to specialised lending exposures in respect of which an institution is not able to estimate probabilities of default (PDs) or the institutions' PD estimates do not meet the requirements set out in Section 6 of Chapter 3 (Internal Ratings Based (IRB) Approach) of Title II of Part Three of the CRR.

The next step is for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither the Council nor the Parliament object, the Delegated Regulation will be published in the Official Journal of the EU (OJ) and enter into force on the twentieth day following its publication in the OJ.

COVID-19: European Commission communication on NPLs

The European Commission has published a [communication](#) on tackling non-performing loans (NPLs) in the aftermath of the COVID-19 pandemic, together with [Q&As](#). In the communication, the Commission sets out an action plan intended to address COVID-19-related NPLs as early as possible and to prevent a renewed build-up of NPLs on banks' balance sheets. Initiatives announced by the Commission relating to financial regulation include:

- mandating the European Banking Authority (EBA) in early 2021 to review its NPL data templates developed in 2017 and to conduct a consultation on the templates with market participants during 2021;
- consulting stakeholders in the first half of 2021 on reviewing Pillar 3 disclosure requirements under the CRR;
- developing with the EBA in early 2021 a suitable approach to reduce the risk weight on purchased defaulted assets required under the standardised approach for credit risk set out in Article 127 of the CRR; and
- developing guidance by Q3 2021 for sellers of NPLs, including guidance on what constitutes a "best execution" sales process for transactions on the secondary markets.

The Commission also:

- considers the interaction between the COVID-19 crisis and the assessment under the Bank Recovery and Resolution Directive (BRRD) as to whether an institution is failing or likely to fail; and
- calls for the Council of the EU and the European Parliament to reach an agreement quickly on the proposed Directive on credit servicers and credit purchasers.

COVID-19: ECB letter on banks' remuneration policies

On 15 December 2020, the European Central Bank (ECB) published a [letter](#) to banks about remuneration policies in the context of COVID-19. The ECB last wrote to banks on this topic in [July 2020](#).

The ECB emphasises that banks should continue to focus primarily on maintaining a suitable amount of capital to absorb potential losses and to support the real economy. The ECB states that banks should adopt extreme moderation in respect of variable remuneration until 30 September 2021, especially for staff identified as material risk takers. When doing so, institutions should consider the need to preserve or rebuild a sound capital base in the light of the possible consequences of the pandemic.

If they are unable to limit variable remuneration, banks should consider whether a larger part of variable remuneration could be deferred for a longer period of time, and also consider paying it in instruments. The ECB's expectations are not intended to apply where a bank is subject to a legal obligation to pay the variable remuneration.

Banks should not adopt measures that compensate staff for the reduction or loss of variable remuneration, as this would circumvent the relevant regulatory provisions and the ECB's supervisory expectations.

The appropriateness of institutions' remuneration policies and practices will form part of the ECB's supervisory assessment within the 2021 supervisory review and evaluation process. In addition, the ECB will continue to assess the implementation of these supervisory expectations and requests that institutions keep their supervisory team informed of any decisions relating to their remuneration policy. It may also issue stricter supervisory measures based on institution-specific analyses.

At the end of September 2021, in the absence of materially adverse developments, the ECB intends to return to assessing banks' remuneration policies and practices in the context of the normal supervisory cycle.

COVID-19: ECB recommendation on bank dividend distributions

On 16 December 2020, the ECB published a [recommendation](#) to credit institutions on dividend distributions during the COVID-19 pandemic and repealing its previous recommendation on this topic. In brief, the ECB recommends that banks exercise extreme prudence on dividends and share buy-backs. They should consider not distributing any cash dividends or conducting share buy-backs, or limiting such distributions, until 30 September 2021.

The ECB [explains](#) that due to continuing uncertainty over the economic impact of COVID-19, it expects dividends and share buy-backs to remain below 15% of the cumulated profit for 2019-20 and not higher than 20 basis points of the common equity tier 1 (CET1) ratio, whichever is lower. Banks that intend to pay dividends or to buy back shares need to be profitable and have robust capital trajectories. They should contact their joint supervisory team to discuss whether the level of intended distribution is prudent. Banks should refrain from distributing interim dividends out of their 2021 profits.

At the end of September 2021, in the absence of materially adverse developments, the ECB intends to repeal the recommendation and return to assessing banks' capital and distribution plans based on the outcome of the normal supervisory cycle.

Banks should continue to use their capital and liquidity buffers for lending purposes and loss absorption. The ECB will not require banks to start replenishing their capital buffers before the peak in capital depletion is reached.

The ECB has published further details of supervisory measures it has taken in response to the COVID-19 pandemic in a set of [FAQs](#).

COVID-19: EBA statement on bank dividends and other distributions

On 16 December 2020, the [EBA](#) also called on EU banks to apply a conservative approach to dividends and other distributions in light of the COVID-19 pandemic. Although EU banks have been able to continue supporting businesses and have mostly remained with strong levels of capitalisation, the EBA believes banks should refrain from distributing capital outside the banking system when deciding on dividends and other distribution policies, including share

buybacks, unless they apply extreme caution. This is because the impact of the COVID-19 crisis on the economy is likely to continue, with possible further deterioration of asset quality metrics over the next quarters.

The EBA advises that the supervisory dialogue with banks on this issue should consider, in particular, banks' capacity to generate income based on prudent projections, to ensure that they retain sufficient resources to withstand further deterioration of asset quality while continuing to support the economic recovery and the financing of households and corporates.

The EBA also states that since the stressed conditions are likely to continue in 2021, the variable remuneration of material risk takers for the performance year 2020 should be set at a conservative level. A larger part of the variable remuneration of material risk takers should be deferred for a longer period and a larger proportion should be paid out in instruments. Competent authorities should continue to monitor banks' remuneration policies, to ensure that they are consistent with an effective risk management and long-term interest of the bank.

COVID-19: EBA updates impact study for final Basel III reforms

In light of COVID-19, on 15 December 2020, the EBA published an updated version of its [impact study](#) on the implementation of the final Basel III reforms. The EBA concludes that the policy recommendations set out in its previous advice remain appropriate despite the COVID-19 crisis. It considers that the positive effects of the final Basel III reforms remain unchanged, while the capital impact has decreased overall.

MLD4 and DGSD: EBA opinion on interplay

The EBA has published an [opinion](#) on the interplay between the Fourth Money Laundering Directive (MLD4) and the Deposit Guarantee Schemes Directive (DGSD). The proposals set out in the EBA's opinion are addressed to the European Commission and aim at informing the Commission's ongoing reviews of MLD4 and the DGSD. The opinion is also addressed to EU national authorities, to implement some changes already under the current legal framework and ahead of the potential future revisions of MLD4 and the DGSD.

CRR: EBA opinion on European Commission amendments to draft RTS on assessment methodology for IRB approach

The EBA has published an [opinion](#) on the European Commission's proposal to amend draft RTS submitted by the EBA on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use the internal ratings based (IRB) approach in accordance with Articles 144(2), 173(3) and 180(3)(b) of the CRR. The EBA submitted the draft RTS to the Commission in July 2016. In July 2020, the Commission informed the EBA of its intention to endorse the draft RTS with amendments.

In the opinion, the EBA rejects several the Commission's amendments and highlights concerns about some of the other changes introduced "in an attempt to" provide additional clarity to the RTS.

The EBA sets out in an Annex to the opinion a revised version of the Commission's version of the RTS, changing the proposed drafting where it considers that the Commission's amendments do not reflect agreed policy. It also includes other non-substantive changes.

CRR: EBA report on EU banks' compliance with liquidity measures

The EBA has published a [report](#) on liquidity measures under Article 509(1) of the CRR. The objective of the report is to monitor EU banks' short-term liquidity risk profiles. It provides an update of EU banks' compliance with the liquidity coverage ratio, defined as the stock of high-quality liquid assets over the net liquidity outflows arising during a 30-calendar-day stress period. The analysis is based on common reporting (COREP). The EBA published its previous report in October 2019.

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

The EBA is [consulting](#) on draft RTS on the calculation of risk-weighted exposure amounts of collective investment undertakings (CIUs) under Article 132a(4) of the CRR. The draft RTS clarify the steps to be taken for calculating the exposure value of CIU's derivatives exposures where the underlying risk of derivatives is unknown. They also provide for cases where the calculation of the exposure amount to counterparty credit risk of a netting set of CIU's derivative exposures is needed.

The consultation closes on 16 March 2020.

CRR: EBA final report on draft RTS on calculation of stress scenario risk measure

The EBA has published a [final report](#) setting out draft RTS on the calculation of the stress scenario risk measure under Article 325bk(3) of the CRR.

The final Basel III standard on market risk, which was implemented in part by CRR II, reflects the Basel Committee on Banking Supervision's Fundamental Review of the Trading Book (FRTB). Under the FRTB, risk factors that are included in the risk measurement model of an institution are classified as modellable or non-modellable. Institutions must calculate a separate stress scenario risk measure for each non-modellable risk factor (or non-modellable bucket).

The final draft RTS set out:

- the methodologies that institutions are required to use for the purpose of determining the extreme scenario of future shock that, when applied to the non-modellable risk factor, provides the stress scenario risk measure; and
- a regulatory extreme scenario of future shock, how stress scenario risk measures are calculated, and the formula that institutions should use where aggregating the stress scenario risk measures.

EBA Regulation: EBA methodology for carrying out risk assessments under Article 9a

The EBA has published a [report](#) setting out its methodology for carrying out risk assessments under Article 9a of the revised EBA Regulation. Article 9a(5) of the EBA Regulation empowers the EBA to perform risk assessments of the strategies, capacities and resources of competent authorities to address the most important emerging risks related to money laundering (ML) and terrorist financing (TF) at EU level, as identified in the supranational risk assessment. This work should inform the EBA's wider work on anti-money laundering and countering financing of terrorism, including the publication of the opinion on ML and TF risks under the MLD4. The EBA is also required under Article 9a(5) to develop a methodology for the risk assessments to ensure an objective assessment.

The report explains the EBA's methodology for identifying emerging ML and TF risks, and how it will carry out the risk assessment. It also explains the review and publication process of the outcome of each risk assessment.

The EBA will use this methodology to assess whether the use of its powers under Article 9a is warranted.

BRRD: EBA final report on draft RTS on contractual recognition of stay powers

The EBA has published a [final report](#) on draft RTS on the contractual recognition of stay powers under Article 71a(5) of the BRRD which was inserted by BRRD II. In the draft RTS, the EBA sets out a list of mandatory components that must be present in the contractual term required in the financial contracts.

SRB standardised valuation data set

Following an earlier consultation, the Single Resolution Board (SRB) has published a [feedback statement](#) and the final version of a standardised valuation data set that banks will, in principle, need to provide to the SRB and an independent valuer to perform a valuation for the purposes of the BRRD and the Single Resolution Mechanism (SRM) Regulation Regulation.

The SRB publications comprise:

- the [SRB Valuation Data Set instructions document](#), developing the SRB Valuation Data Set and establishing clear expectations in relation to data needs; and
- an [explanatory note](#) aiming to provide guidance to the banks regarding their management information systems capabilities to produce information that is as up to date and complete as possible and of adequate quality to carry out a fair, prudent and realistic valuation.

Bank resolution preparation: European Court of Auditors report

The European Court of Auditors (ECA) has published a [report](#) about the preparation for resolution of medium-sized and small banks in the euro area. The report was prepared by the EU Contact Committee Task Force on Banking Union and is based on the findings of a parallel audit on banking resolution carried out by the Supreme Audit Institutions (SAIs) of Austria, Estonia, Finland, Germany, the Netherlands, Portugal and Spain in their respective Member States.

The task force found that preparation for resolution activities of medium-sized and small banks is under way, but the process and substance of resolution planning for medium-sized and small banks differ among the countries.

Key findings and recommendations include:

- data held by national resolution authorities (NRAs) does not distinguish between the size of banks. NRAs should document the resources (in terms of budget and staff) allocated to resolution planning. This exercise should be done separately for large, medium-sized and small banks;
- NRAs perceived a lack of specific guidance from the SRB for resolution planning related to medium-sized and small banks. The NRAs, together with the SRB, should therefore develop common resolution planning guidance for these banks; and
- due to conditions set by the SRB, internal SRB guidance for resolution planning related to medium sized and small banks could not be fully considered by SAIs.

The Contact Committee calls on all actors in charge at European and national level to strengthen the independent external audit of banking resolution, in particular by making sure that the SAIs have unlimited access to the information they deem relevant for their audit work.

In January 2021, the ECA will publish a special audit report on the state of preparedness of the SRM. The ECA's report is expected to cover the SRB's policy framework, the preparation of resolution plans for large, medium and small banks as well as the organisational set-up of the SRM.

Securities and Markets

UK Short Selling Regulation: notification threshold

HM Treasury has [announced](#) that it intends to lay a statutory instrument under the retained EU law version of the Short Selling Regulation (UK SSR) amending the initial notification threshold under Article 5(2) for the reporting of certain net short positions to the UK Financial Conduct Authority (FCA). The threshold is in relation to the issued share capital of a company that has shares admitted to trading on a trading venue and it will change from 0.2% to 0.1%. The change will come into force on 1 February 2021.

The FCA has updated its [webpage](#) on the notification and disclosure of net short positions to reflect the change. It also explains that from the end of the Brexit transition period until the statutory instrument comes into effect, the notification threshold for issued share capital of a company that has shares admitted to trading on a UK trading venue (UK regulated markets and UK MTFs) will be 0.2%. However, during this period, position holders will continue to be able to make notifications to the FCA at the lower 0.1% threshold if they wish to do so.

See below for details of the decision of the European Securities and Markets Authority (ESMA) to extend the 0.1% temporary threshold.

EU SRR: ESMA COVID-19 temporary notification threshold

On 17 December 2020, ESMA published a [decision](#) (dated 16 December 2020) renewing the temporary requirement for the holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority if the position reaches or exceeds 0.1% of the issued share capital.

In accordance with Article 28(10) of the EU Short Selling Regulation (EU SRR), ESMA is required to review the requirement, which was originally imposed in a decision published in March 2020 and subsequently renewed in June 2020 and September 2020. Following its review, ESMA has decided to renew the measure for an additional three months – from 19 December 2020 until 19 March 2021.

Mass-marketing of speculative illiquid securities: FCA PS20/15 confirms permanent ban

Following its consultation in CP20/8, the FCA has published a policy statement, [PS20/15](#), confirming that it plans to make its temporary ban on the mass-marketing of speculative illiquid securities (including speculative mini-bonds) permanent and extend its scope. PS20/15 summarises the feedback the FCA received on CP20/8 and sets out its final policy position and Handbook rules.

Having considered the consultation feedback, which was mostly supportive, the FCA is confirming the rules as consulted on. It has made some minor changes and clarifications to ensure the final rules give effect to the policy intention explained in CP20/8. These changes are mainly clarifications on the scope of the intervention.

The new rules will take effect from 1 January 2021. The FCA states it will evaluate the success of the rules through its supervisory and monitoring activities.

Cryptoasset businesses: FCA temporary registration regime

The FCA has established a [temporary registration regime](#) for certain existing cryptoasset businesses that have applied to it for registration under the Money Laundering Regulations 2017, where the applications are still being assessed by the FCA. This is to enable those businesses to continue to trade after 9 January 2021 until 9 July 2021, pending the FCA's determination of their application.

According to the FCA, the delay in its assessment and registration is due to the complexity and standard of the applications it received, and restrictions on its ability to visit firms as planned due to the COVID-19 pandemic.

Firms that failed to apply by 15 December 2020 are ineligible for the temporary registration regime. They must return cryptoassets to customers and stop trading by 10 January 2021. If they fail to cease trading by that date, they risk being subject to the FCA's criminal and civil enforcement powers. The FCA advises customers of these firms to withdraw their cryptoassets or money before 10 January 2021, and provides a link to a [list](#) of firms that hold a temporary registration.

UK MiFIR transparency regime: FCA update for end of transition period

The FCA has updated the [webpage](#) on its supervisory statement on the operation of the transparency regime under the retained EU law version of the Markets in Financial Instruments Regulation (UK MiFIR) at the end of the transition period, and published a new version of the [supervisory statement](#).

The FCA explains that the statement is part of its necessary preparations for the possibility that at the end of the transition period there is no free trade agreement (FTA) between the UK and EU and no mutual equivalence decisions in areas relevant to the MiFID markets regime. Accordingly, the statement may be subject to change in the event an FTA is reached and mutual equivalence decisions are taken. The FCA may also revise its approach as market conditions develop.

The areas covered by the statement include:

- the FCA's financial instruments reference database (FIRDS), the FCA's financial instruments transparency reference system (FITRS), the investment firms register, the trading venues register, and the systematic internalisers register;
- the concept of "traded on a trading venue" (TToV);
- the double volume cap (DVC);
- transparency waivers and deferrals;
- equity transparency, bond transparency, derivatives and other non-equity instruments transparency; and
- trade reporting, tick sizes and commodity position limits.

MiFIR: Implementing Decision amending earlier Decision recognising certain Singapore derivatives trading venues

[Commission Implementing Decision \(EU\) 2020/2127](#) amending Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore under the EU Markets in Financial Instruments Regulation (MiFIR) has been published in the Official Journal of the EU (OJ).

Implementing Decision (EU) 2019/541 relates to Article 28(1) of MiFIR. It recognises the approved exchanges and recognised market operators that are authorised by the Monetary Authority of Singapore (MAS) as eligible for compliance with the EU trading obligation for derivatives. Implementing Decision (EU) 2020/2127 amends Implementing Decision 2019/541 to include additional approved exchanges and recognised market operators that have been established in Singapore and authorised by MAS after the original Implementing Decision was adopted.

Implementing Decision (EU) 2020/2127 will come into force on 20 December 2020.

MiFID: European Commission adopts Delegated Regulation on thresholds for weekly position reporting

The European Commission has adopted a [Delegated Regulation](#) amending Delegated Regulation (EU) 2017/565 as regards the thresholds for weekly position reporting under the Markets in Financial Instruments Directive (MiFID).

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulation. The Delegated Regulation will enter into force on the third day following its publication in the OJ.

Draft Regulation on recovery and resolution of CCPs: Council of the EU publishes text

The Council of the EU has published the [text](#) of the proposed Regulation on the recovery and resolution of central counterparties (CCPs). The European Parliament adopted the Regulation at second reading on 14 December 2020 in accordance with the Council of the EU's first reading position.

The Regulation will enter into force twenty days after its publication in the OJ.

CSDR: ESMA to recognise Euroclear UK & Ireland Limited as a third country CSD

ESMA has [announced](#) that Euroclear UK & Ireland Limited, the central securities depository (CSD) established in the UK, will be recognised as a third-country CSD for a limited period, until 30 June 2021, after the end of the Brexit transition period. The announcement follows publication of European Commission Implementing Decision (EU) 2020/1766 on the temporary equivalence of the UK's regulatory framework for CSDs under the Central Securities Depositories Regulation (CSDR).

ESMA scheduled IT maintenance on databases and systems at end of Brexit transition period

ESMA has published a [reminder](#) of the operations planned on its databases and systems during a planned maintenance window starting on 31 December 2020 at 21:30 CET until 7 January 2021 at 12:00 CET (noon) at the end of the Brexit transition period.

ESMA reminds users that it will continue receiving files but will not produce feedback files during the maintenance window for its FIRDS, FITRS and DVC. During the maintenance window, reporting entities should continue sending data to their national competent authorities and to ESMA. The backlog of files submitted to ESMA will be processed after completion of the operations.

If ESMA completes the operations earlier than 7 January 2021, it may reopen the system earlier to minimise the downtime. Therefore, market participants should monitor, from 5 January 2021, potential communication in this respect on ESMA's website and publication of FIRDS data by ESMA.

ESMA will also carry out manual updates of databases and registers published directly on the ESMA website (for example, the registers relating to benchmarks, credit rating agencies and money market funds). It has published a new [webpage](#) and the status of the individual files will be indicated in the update column on this webpage.

CRAs: ESMA 2020 report on market share calculation

ESMA has published a [report](#) setting out its annual market share calculation for EU credit rating agencies (CRAs), as required by Article 8d of the CRA Regulation. The aim of the report is to provide a guide on the requirements of Article 8d of the CRA Regulation, which states that issuers or related third parties are required to consider appointing a CRA with no more than 10% total market share whenever they intend to appoint one or more CRAs to rate an issuance or entity.

ESMA welcomes feedback on the information in the report.

MMF Regulation: ESMA updates guidelines on stress tests

ESMA has published a [final report](#) on guidelines on stress test scenarios produced under Article 28 of the Regulation on money market funds (MMF Regulation).

The Annex to the report contains the text of the updated guidelines and the calibration of scenarios for 2020. ESMA notes that applying 2019 scenarios in the current market environment generally leads to absolute levels of stress (with some scenarios being exceeded because of extreme market movements). This is because the COVID-19 pandemic has increased risks for MMFs and the money market instruments in which they invest, and has led to significant liquidity and redemption issues. The risk parameters have therefore been modified to reflect market developments. ESMA, in calibrating the new risk parameters, has worked with the European Systemic Risk Board and the European Central Bank.

MMFs and their managers are expected to measure the impact of the common reference stress scenarios specified in the guidelines. On the basis of the measurements, the reporting template referred to in Article 37 of the MMF Regulation should be completed and sent with quarterly reports to the relevant national competent authority. The new 2020 parameters will have to be used for the purpose of the first reporting period following the start of the application of the updated guidelines.

The guidelines will now be translated. They will become applicable two months after the publication of the translations. The guidelines need to be updated at least every year to take into account the latest market developments.

FICC Market Standards Board draft standards

The Fixed Income, Currencies and Commodities (FICC) Markets Standards Board (FMSB) has published for consultation a draft [standard](#) for sharing investor allocation information in the fixed income primary markets. The standard aims to promote consistent baseline industry practices and provide issuers and investors with control on how their allocation information is used.

In a related development, the FMSB published for consultation a draft [standard](#) relating to the execution of large trades in the wholesale FICC markets. It sets out expected behaviours for participants in the secondary FICC markets in relation to large trades across asset classes, in particular with the aim of reducing information asymmetries, clarifying the principles governing pre-hedging, establishing expectations relating to client confidentiality and ensuring transparency of communication between clients and traders.

FMSB members and other interested parties are invited to comment on the proposed standards by 16 March 2021.

Insurance

2021 priorities for supervising insurance firms: PRA Dear CEO letter

The UK Prudential Regulation Authority (PRA) has published a [Dear CEO letter](#) it has sent to insurance firms setting out its supervisory priorities for 2021. The priorities set out in the PRA's letter fall under the following headings:

- financial resilience and credit risk;
- LIBOR transition;
- operational resilience;
- financial risks arising from climate change; and
- changes in PRA responsibilities following end of EU withdrawal transition period.

In addition, the PRA continues to see strong governance at firms as underpinning progress in meeting its expectations.

Solvency II: PRA delays approach for external auditors on matching adjustment

The PRA has updated its [webpage](#) on its consultation paper on Solvency II and its expectations for the work of external auditors on the matching adjustment (CP11/20) to announce a delay to the proposed effective date set out in paragraph 1.12 of CP11/20. The PRA confirms that any finalised approach will not be effective for audits of the Solvency and Financial Condition Reports (SFCRs) with a 31 December 2020 reporting date.

CP11/20 closed on 30 October 2020 and the delay to the proposed effective date considers feedback from respondents, including in relation to the impact of COVID-19. The PRA is notifying firms of the delay to provide clarity and certainty for auditors and firms in relation to the audits of December year-end SFCRs.

COVID-19: FCA update on business interruption insurance test case

On 15 December 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) on the business interruption (BI) insurance test case to advise that the Supreme Court has informed the FCA that it will not be able to hand down judgment before January 2021.

COVID-19: FCA consults on guidance on proving presence of COVID-19 in BI insurance claims

On 11 December 2020, the FCA published for consultation [draft guidance](#) on proving the presence of COVID-19 BI insurance claims.

This guidance is intended for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries. It relates to proving the presence of COVID-19 in relation to non-damage BI losses arising from UK government action in response to the pandemic for the purpose of making a claim under an insurance contract that was in force during those events and that requires the policyholder to prove the presence of COVID-19 within a particular area around their premises. The guidance is based on the High Court's judgment and declarations and in the context of insurers' obligations under the FCA's rules to handle claims fairly. It sets out types of evidence and methodologies that policyholders may use, together with links to further useful information for policyholders.

The deadline for responses to the consultation is 18 January 2021. The FCA intends for the guidance to have effect as soon as it is issued in final form and to cease to have effect on 31 December 2021, as the FCA expects that all claims to which the guidance could be relevant would have been resolved by that date.

The FCA states that if the Supreme Court judgment on the BI insurance test case affects the contents of the draft guidance, it will amend the guidance accordingly.

Lloyd's ESG report

Lloyd's has published its first environmental, social and governance (ESG) [report](#), which details its ambitions to fully integrate sustainability into all of Lloyd's business activities. The report builds on Lloyd's existing ESG work and highlights ongoing work to drive culture change across the Lloyd's market.

IDD: EIOPA report on NCA administrative sanctions and other measures

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [report](#) which provides an overview of the administrative sanctions and other measures imposed by national competent authorities under the Insurance Distribution Directive (IDD). EIOPA is required to publish the report annually under Article 36(2) of the IDD, and this first report covers the period from the application of the IDD on 1 October 2018 until the end of 2019.

Solvency II 2020 review: EIOPA opinion

EIOPA has published an [opinion](#) it has submitted to the European Commission on the 2020 review of the Solvency II Directive. From a prudential perspective, EIOPA's view is that overall the Solvency II framework is working well. However, it identifies some areas of concern which the review should address and which EIOPA details in its report.

Alongside the opinion, EIOPA has published a [factsheet](#), [background analysis](#) and [annex](#), and [impact assessment](#). In addition, to complement the proposals set out in the opinion, EIOPA has published a [report](#) and [annex](#) covering the individual quantitative reporting templates at solo and group level, to give stakeholders a full view of the future reporting and disclosure requirements.

Climate-change related transition risks: EIOPA sensitivity analysis

EIOPA has published a [report](#) containing its sensitivity analysis of climate-change related transition risks in the investment portfolio of European insurers. The report outlines current holdings of corporate bonds and equity that can be related to key climate-policy relevant sectors such as fossil fuel extraction, carbon-intensive industries, vehicle production and the power sector. It also quantifies potential climate-change related transition risks and presents information about possible impacts on these investments as economies transition away from fossil fuel-dependent energy production and carbon-intensive production.

While the overall impact on the balance sheets of the insurance sector is counter-balanced both by investments in renewable energy and the fact that insurers' portfolios are generally well diversified, EIOPA is working with national supervisors and expects insurers to follow up on the risks identified.

COVID-19: IAIS 2020 global insurance market report

The International Association of Insurance Supervisors (IAIS) has published its 2020 [global insurance market report](#), which discusses the impact of the COVID-19 pandemic on the global insurance sector from a supervisory perspective.

Funds and Asset Management

AIFMD: ESMA final report on guidelines addressing leverage risks

The European Securities and Markets Authority (ESMA) has published its [final report](#) containing guidelines under Article 25 of the Alternative Investment Fund Managers Directive (AIFMD). Article 25 provides for national competent authorities (NCAs) to identify the extent to which the use of leverage in the alternative investment fund sector contributes to the build-up of systemic risk in the financial system, risks of disorderly markets, or risks to the long-term growth of the economy.

The guidelines provide NCAs with a set of indicators to consider when performing their risk assessment and a set of principles that they should consider when calibrating and imposing leverage limits. They follow the two-step approach introduced by the International Organization of Securities Commissions and translate this approach into the EU framework.

The guidelines will now be translated into the official EU languages and published on ESMA's website. They will apply two months after the publication of the translations.

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