

NEWSLETTER LUGLIO 2021



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1. EBA PROVIDES CLARIFICATION ON THE IMPLEMENTATION OF THE NEW PRUDENTIAL REGIME FOR INVESTMENT FIRMS

1 luglio 2021

The European Banking Authority (EBA) published today an Opinion to ease the implementation of the Investment Firms Regulation (IFR) and Investment Firms Directive (IFD), which entered into force on June 26. The IFR/IFD classify investment firms according to their business model and size, the latter of which is benchmarked on various threshold. For the vast majority of investment firms, sufficient clarity already exists with regards to the prudential regime, which applies to them. However, in a few cases, especially for investment firms of third country groups, the Opinion provides guidance on the actions to be taken in case of uncertainty on whether these investment firms should apply for an authorisation as a credit institution in the absence of the delegated act establishing the methodology for the calculation of the highest threshold (the EUR 30bn threshold), on which the EBA has currently opened a second public consultation.

<https://www.eba.europa.eu/eba-provides-clarification-implementation-new-prudential-regime-investment-firms>

2. EBA PUBLISHES ITS FINAL GUIDELINES ON INTERNAL GOVERNANCE

2 luglio 2021

The European Banking Authority (EBA) published today its revised Guidelines on internal governance. The update takes into account the amendments introduced by the fifth Capital Requirements Directive (CRD V) and the Investment Firms Directive (IFD) in relation to credit institutions' sound and effective governance arrangements, in particular with regard to gender diversity, money laundering, financing terrorist risk and the management of conflicts of interest, including in the context of loans and other transactions with members of the management body and their related parties. The final revised Guidelines will apply from 31 December 2021.

<https://www.eba.europa.eu/eba-publishes-its-final-guidelines-internal-governance>

3. EBA PUBLISHES ITS FINAL REVISED GUIDELINES ON SOUND REMUNERATION POLICIES

2 luglio 2021

The European Banking Authority (EBA) published today its revised Guidelines on sound remuneration policies. This update takes into account the amendments introduced by the fifth Capital Requirements Directive (CRD V) in relation to institutions' sound remuneration policies and, in particular, the requirement that remuneration policies should be gender neutral. The final Guidelines also consider supervisory practices and clarify some aspects of retention bonuses and severance pays. The revised Guidelines will apply from 31 December 2021.

<https://www.eba.europa.eu/eba-publishes-its-final-revised-guidelines-sound-remuneration-policies>

4. EBA - REPORT ON ASSET ENCUMBRANCE

Luglio 2021

https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Risk%20Assessment%20Reports/2021/1017618/Report%20on%20Asset%20Encumbrance.pdf

5. EBA AND ESMA PUBLISH FINAL GUIDANCE ON FIT AND PROPER REQUIREMENTS

2 luglio 2021

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) published today their revised final joint Guidelines on the assessment of the suitability of members of the management body and key function holders. These Guidelines take into account the amendments introduced by the revised Capital Requirements Directive (CRD V) and the Investment Firms Directive (IFD), and their effect on the assessment of the suitability of members of the management body, in particular with regard to money laundering and financing terrorism risks, and gender diversity. The joint final Guidelines will apply from 31 December 2021.

<https://www.eba.europa.eu/eba-and-esma-publish-final-guidance-fit-and-proper-requirements>

6. THE EBA WELCOMES EUROPEAN COURT OF JUSTICE RULING SUPPORTING EBA GUIDELINES ON PRODUCT OVERSIGHT AND GOVERNANCE

15 luglio 2021

The European Banking Authority (EBA) welcomed today's judgment by the European Court of Justice establishing the validity of its Guidelines on Product Oversight and Governance. This Court ruling supports the EBA's ability to reduce the prudential impact of misconduct for financial institutions and to protect consumers from banking products that are not fit for purpose. The EBA will continue to establish high quality standards for the banking sector and EU citizens.

The Court also confirms that, while EBA guidelines are not legally binding, supervisory authorities and financial institutions must make every effort to comply with them, that supervisory authorities have to give reasons if they intend not to comply, and that national courts are expected to take EBA guidelines into consideration when resolving cases.

<https://www.eba.europa.eu/eba%E2%80%AFwelcomes%C2%A0european-court-justice-ruling%C2%A0supporting%C2%A0eba%C2%A0guidelines%C2%A0product-oversight-and>

7. EBA CONSULTS ON TECHNICAL STANDARDS TO IDENTIFY SHADOW BANKING ENTITIES

26 luglio 2021

The European Banking Authority (EBA) launched today a public consultation on draft regulatory technical standards (RTS) setting out criteria for the identification of shadow banking entities for the purposes of reporting large exposures. The consultation runs until 26 October 2021.

Entities that offer banking services and perform banking activities as defined in the draft RTS but are not regulated and are not being supervised in accordance with any of the acts that form the regulated framework are identified as shadow banking entities.

<https://www.eba.europa.eu/eba-consults-technical-standards-identify-shadow-banking-entities>

8. EBA PUBLISHES THE RESULTS OF ITS 2021 EU-WIDE STRESS TEST

30 luglio 2021

- Under a very severe scenario, the EU banking sector would stay above a CET1 ratio of 10%, with a capital depletion of EUR 265bn against a starting CET1 ratio of 15%.
- Credit losses, like in previous such exercises, would explain most of the capital depletion. The “lower-for-longer” scenario narrative would also result in a significant decrease in the contribution of profits from continuing operations, especially from net interest income.

The European Banking Authority (EBA) published today the results of its 2021 EU-wide stress test, which involved 50 banks from 15 EU and EEA countries, covering 70% of the EU banking sector assets. This exercise allows to assess, in a consistent way, the resilience of EU banks over a three-year horizon under both a baseline and an adverse scenario, which is characterised by severe shocks taking into account the impact of the pandemic. The individual bank results promote market discipline and are an input into the supervisory decision-making process. The adverse scenario has an impact of 485 bps on banks’ CET1 fully loaded capital ratio (497 bps on a transitional basis), leading to a 10.2% CET1 capital ratio at the end of 2023 (10.3% on a transitional basis).

<https://www.eba.europa.eu/eba-publishes-results-its-2021-eu-wide-stress-test>

9. ESMA PUBLISHES METHODOLOGY FOR ASSESSING THIRD COUNTRY CCPS SYSTEMIC IMPORTANCE

13 luglio 2021

The European Securities and Markets Authority (ESMA), the EU’s securities markets regulator, today published a methodology for assessing whether a third country central counterparty (TC-CCP) or some of its clearing services are of such substantial systemic importance that the TC-CCP should not be recognised to provide certain clearing services or activities in the European Union.

<https://www.esma.europa.eu/file/120204/download?token=5FSq8jIL>

10. ESMA PUBLISHES DISCLOSURE AND INVESTOR PROTECTION GUIDANCE ON SPACS

15 luglio 2021

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has today issued a Public Statement on the prospectus disclosure and investor protection issues raised by special purpose acquisition companies (SPACs).

<https://www.esma.europa.eu/file/120226/download?token=s086WS7c>

11. ESMA WARNS FIRMS AND INVESTORS ABOUT RISKS ARISING FROM PAYMENT FOR ORDER FLOW

13 luglio 2021

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, is issuing a public statement to remind firms that the receipt of payment for order flow (PFOF) raises significant investor protection concerns. It also highlights key MiFID II obligations aimed at ensuring firms act in their clients' best interest when executing their orders.

<https://www.esma.europa.eu/press-news/esma-news/esma-warns-firms-and-investors-about-risks-arising-payment-order-flow>

12. ESMA CONSULTS ON AMENDMENTS TO MAR GUIDELINES ON DELAYED DISCLOSURE OF INSIDE INFORMATION

15 luglio 2021

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has today launched a Consultation Paper on the review of its Guidelines on delayed disclosure of inside information under the Market Abuse Regulation (MAR) in relation to its interaction with prudential supervision.

Issuers, under MAR, can delay the disclosure of inside information where immediate disclosure is likely to prejudice an issuer's legitimate interest, the delay of disclosure is not likely to mislead the public and confidentiality is ensured.

<https://www.esma.europa.eu/file/120232/download?token=3N7bZAHv>

13. ESMA CONSULTS ON REMUNERATION REQUIREMENTS UNDER MIFID II

19 luglio 2021

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, today launches a consultation on draft ESMA guidelines on certain aspects of the MiFID II remuneration requirements.

The remuneration of staff involved in the provision of investment and ancillary services and activities, or in selling or advising on structured deposits to clients is a crucial investor protection issue. Therefore, ESMA has developed draft guidelines that aim to clarify and foster convergence in the implementation of certain aspects of the new MiFID II remuneration requirements, replacing the existing ESMA guidelines on the same topic, issued in 2013.

https://www.esma.europa.eu/file/120258/download?token=FA-F_uYA

14. ESMA HIGHLIGHTS AREAS FOR IMPROVEMENT IN COMPLIANCE WITH MIFID II SUITABILITY REQUIREMENTS

21 luglio 2021

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, today publishes the results of the 2020 Common Supervisory Action (CSA) on MiFID II suitability requirements.

The 2020 CSA has shown that firms overall comply with key elements of the suitability requirements that were already regulated under MiFID I, such as the understanding of products and clients and their processes and procedures to ensure the suitability of investments. However, shortcomings and areas of improvement have emerged about some of the new requirements introduced by MiFID II, notably the requirement to consider the cost and complexity of equivalent products, the costs and benefits of switching investments and suitability reports.

This exercise was launched in February 2020. Its purpose was for all NCAs to conduct coordinated supervisory activities to assess the application of MiFID II suitability rules across the EU. The CSA was also an opportunity to strengthen the ongoing exchange of supervisory knowledge and experience among NCAs.

https://www.esma.europa.eu/file/120277/download?token=J_7leFf-

15. FATF-GAFI GUIDANCE ON PROLIFERATION FINANCING RISK ASSESSMENT AND MITIGATION

1 luglio 2021

The FATF recently revised its Standards (R.1 and INR.1) to require countries, financial institutions, designated non-financial businesses and professions (DNFBPs) and virtual asset service providers (VASPs) to identify, assess, understand and mitigate their proliferation financing risks.

The FATF Guidance on Proliferation Financing Risk Assessment and Mitigation will help countries, financial institutions, DNFBPs and VASPs effectively implement these new FATF requirements, introduced in October 2020.

The Guidance, which builds on earlier engagement with stakeholders since 2018 and reflects the input from a public consultation in March 2021, explains how both public and private sectors should conduct risk assessments in the context of proliferation financing, and how they can mitigate the risks they identify. It provides an updated list of indicators of the potential breach, non-implementation or evasion of proliferation financing targeted financial sanctions.

<https://www.fatf-gafi.org/publications/financingofproliferation/documents/proliferation-financing-risk-assessment-mitigation.html>

16. FATF-GAFI MONEY LAUNDERING FROM ENVIRONMENTAL CRIME

1 luglio 2021

Environmental crime – such as forestry crime, illegal mining and waste trafficking - is an extremely profitable criminal enterprise, generating billions in criminal gains each year. It fuels corruption, and converges with many other serious and organised crimes, such as tax fraud, drug trafficking and forced labour.

This FATF Report identifies methods that criminals use to launder proceeds from environmental crime, but also tools that governments and private sector can apply to disrupt this activity. When properly implemented, the FATF Recommendations provide effective tools to go after these illicit financial flows.

Environmental crime is a 'low risk, high reward' crime. Across many countries, light sanctions for environmental crimes alongside limited efforts to follow and remove the profits, make this a lucrative but safe source of income for criminals. The FATF therefore conducted this study to increase understanding of the scale and nature of money laundering threats from environmental crime and to strengthen the response across public and private sectors. The G20 Finance Ministers and Central Bank Governors have similarly recognized the need to strengthen action, and the importance of FATF's role in supporting biodiversity aims.

[https://www.fatf-gafi.org/publications/environmentalcrime/documents/money-laundering-from-environmental-crime.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/environmentalcrime/documents/money-laundering-from-environmental-crime.html?hf=10&b=0&s=desc(fatf_releasedate))

17. ANAC - LINEE GUIDA IN MATERIA DI TUTELA DEGLI AUTORI DI SEGNALAZIONI DI REATI O IRREGOLARITÀ DI CUI SIANO VENUTI A CONOSCENZA IN RAGIONE DI UN RAPPORTO DI LAVORO, AI SENSI DELL'ART. 54-BIS, DEL D.LGS. 165/2001 (C.D. WHISTLEBLOWING)

1 luglio 2021

In Italia l'istituto giuridico del Whistleblowing è stato introdotto dalla legge 6 novembre 2012, n. 190 «Disposizioni per la prevenzione e la repressione della corruzione e dell'illegalità nella pubblica amministrazione», adottata in ottemperanza a raccomandazioni e obblighi convenzionali che promanano dal contesto ONU, OCSE, Consiglio d'Europa e Unione europea. In particolare, l'art. 1, co. 51, della richiamata legge ha inserito l'art. 54-bis all'interno del d.lgs. 30 marzo 2001 n. 165 «Norme generali sull'ordinamento del lavoro alle dipendenze delle

amministrazioni pubbliche». Tale norma prevede un regime di tutela del dipendente pubblico che segnala condotte illecite di cui sia venuto a conoscenza in ragione del rapporto di lavoro.

La disciplina è stata integrata dal decreto legge 24 giugno 2014, n. 90, convertito nella legge 11 agosto 2014, n. 114, «Misure urgenti per la semplificazione e la trasparenza amministrativa e per l'efficienza degli uffici giudiziari», che ha modificato l'art. 54-bis introducendo anche ANAC quale soggetto destinatario delle segnalazioni di whistleblowing.

Da allora ANAC è chiamata a gestire le segnalazioni provenienti, oltre che dal proprio interno, anche da altre amministrazioni pubbliche.

https://www.anticorruzione.it/-/delibera-numero-469-del-9-giugno-2021-e-linee-guida?inheritRedirect=true&redirect=%2Fconsulta-i-documenti%3Fq%3D%26year%3D2295812%26category%3D119152%26sort%3Dddm_Dataclu0_String_sortable-

18. BANCA D'ITALIA – CARTA DEGLI INVESTIMENTI SOSTENIBILI

Luglio 2021

I rischi per la sostenibilità, in particolare quelli climatici, possono avere effetti negativi sulla solidità dei singoli intermediari e sulla stabilità del sistema finanziario; possono interferire con i canali di trasmissione della politica monetaria fino a compromettere il raggiungimento dell'obiettivo della stabilità dei prezzi; possono infine riflettersi sulla solidità patrimoniale della Banca d'Italia, presupposto cardine per il mantenimento dell'indipendenza da condizionamenti politici o amministrativi e per lo svolgimento delle funzioni istituzionali.

L'Istituto, nel quadro dei compiti che l'ordinamento gli affida, considera le implicazioni di questi rischi nelle proprie analisi e nelle strategie di investimento. Con la Carta degli investimenti sostenibili la Banca definisce la propria visione della finanza sostenibile, assume impegni per promuoverla ed esplicita – in qualità di investitore di lungo periodo – i principi cui è ispirata l'attività di investimento del portafoglio finanziario e delle riserve valutarie.

https://www.bancaditalia.it/compiti/riserve-portafoglio-rischi/cis/CIS-ita.pdf?pk_campaign=EmailAlertBdi&pk_kwd=it

19. BANCA D'ITALIA – CONSOB ORIENTAMENTI DI VIGILANZA IN MATERIA DI SOCIETÀ DI INVESTIMENTO SEMPLICE (SIS)

6 Luglio 2021

https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/regolamenti/20120508/Orientamenti-vigilanza-SIS_Final_20210609_clean_FIRME.pdf?pk_campaign=EmailAlertBdi&pk_kwd=it

20. BIS - EARLY LESSONS FROM THE COVID-19 PANDEMIC ON THE BASEL REFORMS

Luglio 2021

<https://www.bis.org/bcbs/publ/d521.htm>

21. CONSOB - AVVISO IN MERITO AL RECEPIMENTO DEGLI ORIENTAMENTI EMANATI DALL'ESMA SU ALCUNI ASPETTI DEI REQUISITI DELLA MIFID II RELATIVI ALLA FUNZIONE DI CONTROLLO DI CONFORMITÀ ALLE NORME

7 Luglio 2021

https://www.consob.it/documents/46180/46181/avviso_20210707.pdf/64385248-2e25-42f5-ada6-55207c41dc06

22. BANCA D'ITALIA - AGGIORNAMENTO DEL 7 LUGLIO 2021 DELLE F.A.Q. LEVERAGE RATIO E LARGE EXPOSURES

7 Luglio 2021

Si segnala che, in data 7 luglio 2021, la Banca d'Italia (BdI) ha aggiornato le F.A.Q. relative al Leverage ratio e alle Large Exposure reperibili ai seguenti link:

https://www.bancaditalia.it/statistiche/raccolta-dati/segnalazioni/eba-its/F.A.Q.-LEVC-LEVI.pdf?pk_campaign=EmailAlertBdi&pk_kwd=it

https://www.bancaditalia.it/statistiche/raccolta-dati/segnalazioni/eba-its/F.A.Q.-Large-Exposures.pdf?pk_campaign=EmailAlertBdi&pk_kwd=it

23. CONSOB - AVVISO IN MERITO AGLI ORIENTAMENTI EMANATI DALL'ESMA IN MATERIA DI ESTERNALIZZAZIONE A FORNITORI DI SERVIZI CLOUD

13 Luglio 2021

https://www.consob.it/documents/46180/46181/avviso_20210713.pdf/1f095866-a623-459b-ad6b-cebfa5f3a800

24. CONSOB- BANCA D'ITALIA – IVASS- MEF AL VIA IL COMITATO FINTECH E LA SANDBOX REGOLAMENTARE PER LA DIGITALIZZAZIONE DEI SERVIZI FINANZIARI DEL PAESE

17 Luglio 2021

https://www.bancaditalia.it/media/comunicati/documenti/2021-02/CS_Congiunto_BI_CONSOB_IVASS_MEF_Sandbox.pdf?pk_campaign=EmailAlertBdi&pk_kwd=it

25. BANCA D'ITALIA - CIRCOLARE N. 285 DEL 17 DICEMBRE 2013 «DISPOSIZIONI DI VIGILANZA PER LE BANCHE» - 36° AGGIORNAMENTO – ATTUAZIONE DI ORIENTAMENTI EBA

20 luglio 2021

Si segnala che, in data 20 luglio 2021, Banca d'Italia ha pubblicato **l'Aggiornamento n. 4 del 20 luglio 2021 della Circolare n. 288 del 3 aprile 2015 - Disposizioni di vigilanza per gli intermediari finanziari e l'Aggiornamento n. 36 del 20 luglio 2021 della Circolare n. 285 del 17 dicembre 2013 - Disposizioni di vigilanza per le banche.**

Gli Aggiornamenti possono essere visionati ai seguenti link:

<https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c288/Aggiornamento-n-4-del-20-luglio-2021-circ-288.pdf>

<https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c285/aggiornamenti/Aggiornamento-n-36-del-20-luglio-2021-circ-285.pdf>

Con il presente aggiornamento viene modificato il Capitolo 3 “Il sistema dei controlli interni” della Parte I, Titolo IV della Circolare 285/13, per tener conto di quanto previsto dagli Orientamenti dell'EBA in materia di concessione e monitoraggio dei prestiti (Guidelines on loan origination and monitoring, EBA/GL/2020/06), che vengono attuati come orientamenti di vigilanza .

Gli interventi assicurano il raccordo tra le previsioni in materia di governo societario, sistema dei controlli interni e processo per la gestione del rischio di credito contenute nella Circolare 285 e quelle degli Orientamenti, che specificano aspetti della governance interna degli intermediari relativi alla fase di concessione del credito e durante l'intero ciclo di vita dei crediti.

26. ASSONIME - L'ORGANISMO DI VIGILANZA NELLA PRASSI DELLE IMPRESE A VENT'ANNI DAL D.LGS. 231/2001

21 Luglio 2021

Si segnala che, in data 21 luglio 2021, l'Associazione fra le società italiane per azioni (Assonime), ha pubblicato una Nota dal titolo "L'Organismo di Vigilanza nella prassi delle imprese a vent'anni dal d.lgs. 231/2001".

Assonime ha pubblicato i risultati di un'indagine sullo stato di attuazione della disciplina della responsabilità amministrativa degli enti, a vent'anni dall'entrata in vigore del d.lgs 231/2001.

L'indagine si rivolge al campione delle società emittenti titoli quotati sul mercato regolamentato gestito da Borsa italiana e si concentra sui profili della disciplina relativi alla figura dell'Organismo di vigilanza e al ruolo da questo assunto nel sistema dei controlli societari.

http://www.assonime.it/attivita-editoriale/studi/Pagine/Note-e-studi-10_2021.aspx

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