

ADOPTION OF THE BANKING PACKAGE: REVISED RULES ON CAPITAL REQUIREMENTS (CRR II/CRD V)

On 7 June 2019, there was published in the Official Journal of the EU:

- the Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) 2013/575 (the "**Capital Requirements Regulation**" or "**CRR**") as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements ("**CRR II**"); and
- the Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive (EU) 2013/36 (the "**Capital Requirements Directive**" or "**CRD IV**") as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, capital conservation measures ("**CRD V**").

These measures represents an important step towards the completion of the European post-crisis regulatory reforms with the aim to allow further progress in completing the so called "Banking Union" and reflect the standards agreed at international level by the Basel Committee on Banking Supervision and the Financial Stability Board ("**FSB**").

CRR II will apply from 28 June 2021 but certain provisions listed at Article 3 will be applicable starting from 27 June 2019. On the other hand, CRD V must be transposed by 28 December 2020.

Key measures of the new package include, *inter alia*:

- **Leverage Ratio requirement ("LR")**: a binding LR for all institutions aimed at preventing from excessively increasing leverage, e.g. to compensate for low profitability. The LR is set at 3% of Tier 1 capital and institutions must meet in addition to/in parallel with their risk-based capital requirements;
- **Net Stable Funding Ratio ("NSFR")**: CRR II rolls out a harmonised binding NSFR, set at a minimum level of 100%. The NSFR is calculated as a percentage between the available stable funding (ASF) held by an institution and the required stable funding (RSF) that an institution needs over a one-year horizon;
- **Total Loss-Absorbing Capacity ("TLAC") requirement for global systemically important institutions ("G-SIIs")**: in line with the indication provided by the FSB since 2015, the TLAC requires G-SIIs to have a sufficient amount of highly loss absorbing – bail-inable – liabilities to ensure smooth and fast absorption of losses and recapitalisation in resolution. The TLAC should be considered alongside the Minimum Requirement for own funds and Eligible Liabilities ("**MREL**") governed by the Directive 2014/59/EU ('BRRD'). TLAC and MREL are, therefore, two minimum requirements that arise at different times and in different contexts, but which have the same objective: to ensure the solvability of a bank by avoiding recourse to public funds;
- **Sustainable Finance**: new provisions are added in Part Eight of CRR to provide for a more proportionate disclosure regime that takes into account the relative size and complexity of institutions. In particular, CRR II requires large institutions to publicly disclose information on environmental, social and governance ("**ESG**") related risks they are exposed to. This green finance measure aims at integrating ESG risks into financial services, and at supporting sustainable economic growth. It also aims at increasing financial actor's awareness and

Newsletter

JUNE 2019

transparency about the need to mitigate ESG risks through a sound and prudent management, considering the longer-term nature of such risks and the uncertainty on their valuation. As to the prudential treatment of the exposures related to environmental and/or social objectives, CRR II requires EBA to explore the opportunity to introduce a “**green supporting factor**” related to assets or activities associated substantially with environmental and/or social objectives in the EU prudential rules for banks, by assessing methodologies and criteria to be used in the risk's assessment and the potential effects. Furthermore, CRD V includes the assessment of ESG factors within the supervisory and review process, which may lead to the exercise of the supervisory powers, including the power to increase the capital requirements;

- **Exempted Entities:** CRD V tailors the so called “exemption regime” as set forth by the CRD IV. In particular, certain EU public development banks and credit unions are currently exempted from the CRD IV/CRR framework. To ensure one level playing field, CRD V provides for an additional exemption for similar institutions in other Member States. The criteria take account of the features of entities on the list of entities exempted from CRD / CRR, *i.e.* promotional and development banks without cross-border activities and not exceeding the significance threshold in size set by the Single Supervisory Mechanism (SSM); as well as limited size credit unions without cross-border activities.

The Regulatory Department of Legance is available to provide any clarifications, also in respect of specific issues, which may be of your interest.

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Newsletter

JUNE 2019

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