




Draft RTS on criteria for the identification of shadow banking entities under Article 394(4) of Regulation (EU) No 575/2013

Public hearing

Paris – 29 September 2020

Suggestions for an efficient session

- Should you need **assistance** or would like to **intervene**:
 1. **write on WebEx chat** to any of the hosts or publicly;
 2. or, **raise your hand on WebEx**.
- **To avoid background noise**, please **stay muted**  unless you take the floor.
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Background and rationale (1)



- Regulation (EU) No 2019/876 amending the CRR has modified slightly the reporting obligation of Article 394(2) of the CRR, requiring:

“[...] institutions shall report the following information to their competent authorities in relation to [...] their 10 largest exposures to shadow banking entities which carry out banking activities outside the regulated framework on a consolidated basis [...].”
- Moreover, the new paragraph 4 of Article 394 mandates the EBA to:

“[...] develop draft regulatory technical standards to specify the criteria for the identification of shadow banking entities referred to in paragraph 2.”
- In developing these RTS, the EBA:

“[...] shall take into account international developments and internationally agreed standards on shadow banking and shall consider whether:

 - a) *the relation with an individual entity or a group of entities may carry risks to the institution's solvency or liquidity position;*
 - b) *entities that are subject to solvency or liquidity requirements similar to those imposed by this Regulation and Directive 2013/36/EU should be entirely or partially excluded [...].”*

Background and rationale (2)



- In 2015, the EBA published guidelines with the objective of setting specific large exposure (LE) limits to shadow banking entities under Pillar 2 in view of the risks that such entities pose to the financial system.
- Given:
 - i. The continued relevance of the guidelines on limits on exposures to shadow banking in the Union's LE framework;
 - ii. The fact that the mandate in Article 395(2) of the CRR remains unaltered;
 - iii. That institutions have already developed systems to meet the obligations under these guidelines;
 - iv. The ultimate prudential objective of ensuring consistency of the implementation of the single rulebook on LE to institutions in the Union.
- These draft RTS rely to a great extent on the work undertaken for the EBA guidelines on limits on exposures to shadow banking.
- According the EBA roadmap, which defines a timetable for regulatory deliverables resulting from Regulation (EU) No 2019/876 amending the CRR, the EBA should submit these draft RTS to the Commission by December 2021.

Identification of shadow banking entities for regulatory reporting

Approach followed



- EBA's intention has been to build these draft RTS on:
 - i. Existing EBA guidelines on limits to shadow banking entities;
 - ii. International developments and other work in the area of shadow banking, such as that of the ESRB and the FSB;
 - iii. Any other rules or regulatory frameworks that provide for solvency or liquidity requirements similar to those imposed by the CRR and the CRD.
- According the mandate in Article 394(4), only entities that carry out banking activities out of the scope an adequate prudential framework should be treated as shadow banking entities.
- As for the EBA guidelines, these draft RTS identify shadow banking entities by exclusion, capturing entities not subject to appropriate prudential regulation and supervision, therefore posing the greatest risks.
- These RTS also assess risks associated with money market funds (MMFs) since they have not been fully addressed by prudential requirements in the Union, and because MMFs have faced severe liquidity issues during the Covid-19 crisis.

Identification of shadow banking entities for regulatory reporting

Banking services and activities



- Although **shadow banking entities** are not EU-wide regulated like institutions, their **operations encompass** various forms of **banking services and activities, such as:**
 - i. **Activities/services of Annex 1 of Directive 2013/36/EU, namely:**
 - Taking deposits and other repayable funds (point 1); lending (2); financial leasing (3), guarantees and commitments (6), trading for own account or for account of customers in specified forms of financial instrument (7), participation in securities issues and the provision of services relating to such issues (8); and money broking (10).
 - ii. However, the **list in (i) is not exhaustive** but an indication of specific cases of banking activities/services. Thus, any other service or activity involving maturity transformation, liquidity transformation, leverage or credit risk transfer shall be regarded as banking services and activities.
- According **Article 1(1) of these RTS, entities not subject to any of the legal acts referred to in Annex I of these RTS, which provide banking activities and services as per (i) and/or (ii) shall be considered shadow banking entities.**

Identification of shadow banking entities for regulatory reporting

The regulated framework

Criteria for identifying shadow banking entities subject to any of the legal acts in Annex I of these RTS

Yes

Shadow banking entity

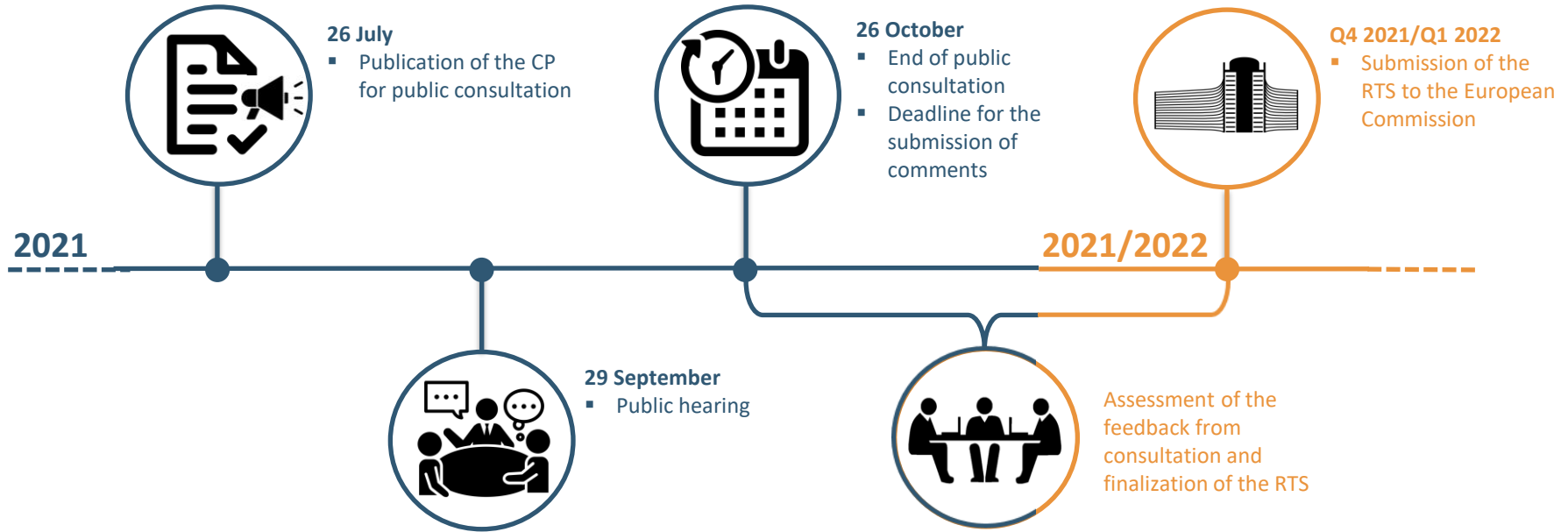
No

- Undertakings for the Collective Investment in Transferable Securities authorized as MMFs under Regulation (EU) No 2017/1131.
- Alternative investment funds (Directive 2011/61/EU), when:
 - Authorized as MMFs under Regulation (EU) No 2017/1131; or
 - employing substantial leverage as set out in Article 111(1) of Commission Delegated Regulation (EU) 231/2013; or
 - originating exposures in the ordinary course of their business or purchasing third-party exposures for their own account.
- Entities that carry out banking activities or services and have been authorized and are supervised in accordance with the regulatory framework consisting of any of the legal acts referred to in Annex I of these draft RTS.
- Entities that are exempted or excluded from the application of some of those legal acts, notably the CRR, the CRD, EMIR and Solvency II.

Criteria for excluding entities established in third countries from being deemed as shadow banking entities

- Banks shall not be identified as shadow banking entities when authorized and supervised by a supervisory authority that applies banking regulation and supervision based on at least the Basel core principles for effective banking supervision.
- Other entities shall not be identified as shadow banking entities when subject to a regulatory regime recognized as equivalent to the one applied in the Union for such entities in accordance with the equivalence provisions of the relevant Union legal act.

Next steps



Overview of questions for consultation (1)

Article	Question
1	<p>Q1: Do you agree with the conditions of Article 1 paragraph 2 for identifying an entity as a non-shadow banking entity? Please provide reasons if you do not agree with any of the conditions or have comments with regard to any of them.</p> <p>Q2: Have you got any comments regarding the list of entities that, being exempted or optionally excluded from those four legal acts in Annex I, should not be considered as shadow banking entities?</p> <p>Q3: Conversely, what are your views concerning other entities exempted or optionally excluded from the other legal acts in Annex I and that would be identified as shadow banking entities? Please provide reasons in case you view that any of those entities should fall under the exemption in Article 1 paragraph 3 and therefore not be treated as shadow banking entities.</p> <p>Q4: Have you got any other comments with regard to the content of Article 1 of the draft RTS? In your view, is it clear and easy to implement for the purposes of the reporting obligation of Article 394(2) of Regulation (EU) No 575/2013?</p> <p>Q5: In general, what are your views on the treatment of funds in these draft RTS? Do you agree with the approach adopted in these draft RTS, that follows the approach in the EBA Guidelines on limits on exposures to shadow banking entities, or alternatively should it be extended to capture those funds as shadow banking entities?</p> <p>Q6: What would be the advantages and disadvantages of taking a broader approach with respect to the scope of funds included as shadow banking entities?</p> <p>Q7: What are your views with regard to the consideration of money market funds as shadow banking entities?</p> <p>Q8: Do you face any difficulties identifying whether an alternative investment fund (AIF) should be considered as a shadow banking entity?</p> <p>Q9: Have you got any specific comments with regard to AIFs and in particular, with points (b) and (c) of Article 1 paragraph 5?</p>
2	<p>Q10: Do you agree with the description of banking services and activities as included in Article 2 of the draft RTS? Have you got any specific comments regarding any of the points included?</p>

Overview of questions for consultation (2)



Article	Question
3	Q11: Do you agree with the possibility granted under paragraph 1 of Article 3 to prevent the identification of a bank in a third country as a shadow banking entity in the absence of an equivalence decision under Article 391 of the CRR?
	Q12: Have you got any comments regarding the approach set out in paragraph 2 of Article 3 for other entities established in third countries to prevent their identification as shadow banking entities?
ANNEX I	Q13: Do you agree with the list of legal acts included in Annex I?
	Q14: Is there any other legal act that should be included in Annex I? If yes, please mention the act and legal reference, and provide reasons to support it based on the criteria included in Article 394(4) of Regulation (EU) No 575/2013.

EBA mandates on large exposures



- The EBA is currently working on the following mandates on large exposures:
 - i. Report on the quantitative impact of the removal of, or the setting of a limit to, some exemptions to the large exposures framework
 - The EBA expects submit this report to the Commission by December 2021.
 - ii. Regulatory technical standards on connected clients
 - The work related to this mandate has started. The EBA expects to submit the Final RTS to the Commission by December 2022.
 - iii. Guidelines on large exposures breaches and time and measures to return to compliance
 - The EBA published the final Guidelines to assess breaches of the large exposure limits on September 15, 2021.



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