

Regulatory Monthly Newsletter

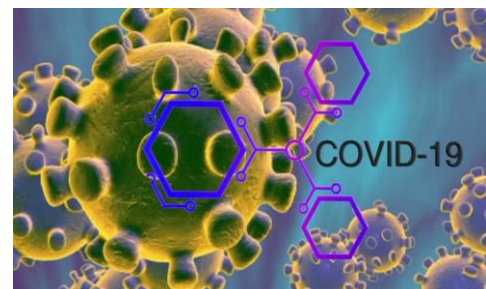
Welcome to the forty first monthly newsletter designed to keep BIIA members informed of the significant developments on the policy dossiers being worked on in Europe and in other geographical territories.



BIIA would like to thank its fellow industry association, ACCIS (the Association of Consumer Credit Information Suppliers), for allowing us to re-use certain information that they have published on regulatory developments within Europe.

SUMMARY

As I am sure our readers would expect our newsletter this month focuses extensively on the COVID 19 pandemic and its impact on the information industry.



Like all industries, our industry is having to respond to an unprecedented situation. As the weeks and months unfold there is no doubt that there will be further changes in terms of policy and industry actions as Regulators and organisations try to manage the impact the pandemic is having and will continue to have on the information industry. Due to the significance of the situation we have created a specific section in the newsletter to cover COVID 19 and changes that are taking place that involve the information industry.

The International Committee on Credit Reporting (ICCR) is currently developing guidance on the treatment of credit data in credit reporting systems in response to the pandemic and BIIA as a member of the Committee is actively engaged in the work.

To gain an understanding of how regulators and policy makers are reacting to the massive disruptions the pandemic is having on credit granting and credit reporting and to support the work of the ICCR, BIIA is seeking feedback from its members on the initiatives that are being undertaken in the regions that members operate in via a brief online survey.

We would encourage readers of this newsletter who are active participants in the credit reporting system in their country (i.e. lenders, credit reporting service providers and regulators) to complete the survey which can be accessed [here](#).

Regulatory Monthly Newsletter

Information provided in the survey will be used to develop an overview at a country level of the practices in place or being considered which will hopefully help shape the ICCR guidance and help regulators, policy makers and credit reporting service providers to work together in developing the most appropriate approach.

With the current situation we even more keen to ensure that we cover as many relevant regulatory developments as we can in this newsletter so if you have any items you feel would be worth incorporating please do get in contact with Neil Munroe, Deputy Managing Director and Editor of the Regulatory Newsletter by email @ munroen@biia.com. We look forward to receiving your contributions.

We are also keen to ensure this newsletter continues to provide value to our readers so please do let us have any feedback. In the meantime as a reminder we also have a wealth of information on regulatory developments on our website in the [Regulatory section](#) so do please click on the link and take a look.

Please keep safe and well in these troubled times.

COVID 19

European Data Protection Board (EDPB) releases Statement on Personal Data and COVID-19

On 20 March 2020, the EDPB released a [statement](#) on the protection of personal data in connection with measures that public authorities and business organizations (including employers) are taking to address the Coronavirus (COVID-19) pandemic.

The statement is an extension of the statement released by the EDPB chair on 16 March 2020, (which can be accessed [here](#)). In its latest statement, the EDPB emphasizes that EU data protection law (in particular, the EU General Data Protection Regulation (“GDPR”)) does not stand in the way of measures adopted to fight against COVID-19 – if these measures are necessary, proportionate and consistent with safeguards required under EU Member State laws.



The EDPB statement also provides useful guidance for organizations to consider when adopting measures to lawfully process personal data during this time. **Click on the highlighted text to access the statements.**

Regulatory Monthly Newsletter

UK Information Commissioners Office (ICO) Data Protection and Coronavirus Information Hub

The ICO has created an [information hub](#) for organizations and individuals with guidance on how to tackle data protection issues in their response to COVID-19. The ICO's main message is that the data protection law will not stop organizations in responding to the crisis.

The hub contains several sections dedicated to organizations, individuals concerned about their personal data, community groups assisting the vulnerable, and healthcare professionals.

In a section dedicated to data controllers, the ICO has published responses to FAQs reflecting the questions its helpline has received in the past few weeks, including guidance on the following:

- Advice to data controllers on conditions for sharing employee health data – data minimization and necessity principles must apply (avoid naming individuals with Covid-19, if it is not necessary); and
- Advice to apply usual security measures for homeworking to keep personal data safe



In a section dedicated to individuals the ICO advises that response times from organizations to their own requests to exercise rights may be understandably slow. The ICO does not expressly call out these rights, for example a right of access to personal data. However, it is expected that the ICO would be more lenient about deadlines for responding to a request to exercise the right of access and take into account the current situation, where organizations are diverting their resources to tackle other issues. **Click on the highlighted text to access the information hub.**

ICO advice on the use of mobile phone data allowed during coronavirus pandemic



The ICO's Deputy Commissioner, Steve Wood, said in a statement on 28 March: "Generalised location data trend analysis is helping to tackle the coronavirus crisis. Where this data is properly anonymised and aggregated, it does not fall under data protection law because no individual is identified. In these circumstances, privacy laws are not breached as long as the appropriate safeguards are in place."

"The ICO has provided advice about how data protection law can continue to apply flexibly to protect lives and data. The safety and security of the public remains our primary concern. We will continue to work

Regulatory Monthly Newsletter

alongside Government to provide advice about the application of data protection law during these unprecedented times.”

The ICO’s move follows attempts for a coordinated approach at the European level to handle the emergency in the most efficient, effective and compliant way as possible. The European Commission has held talks with telecoms operators, a development supported by the European Data Protection Supervisor, Wojciech Wiewiórowski.

Mortgages and Coronavirus - New Guidance for Consumers and Providers from the UK Financial Conduct Authority (FCA)

On 20 March 2020, the Financial Conduct Authority (FCA) published [guidance](#) for mortgage lenders, mortgage administrators, home purchase providers and home purchase administrators as to how their customers should be treated during exceptional circumstances such as the coronavirus pandemic. What does the guidance say?



Payment Holidays

If a customer is struggling financially, they are entitled to a payment holiday for the next three monthly payments. A payment holiday means you temporarily stop paying all or part of your monthly mortgage payment without being in payment shortfall. This can apply to regulated mortgage contracts or regulated home purchase plans.

Requests for payment holidays should be determined on an individual basis, and so the three-month recommendation period is not fixed. If a customer requires a payment holiday fewer than three months and it is in their interest to do so, this should also be granted.

The FCA's guidance also refers to other assistance measures, such as reducing or waiving interest.

Following a payment holiday offer:

- firms should provide adequate information to the customer in relation to the implications (if any) of the holiday, including changes to the mortgage contract or number of monthly instalments
- customers should not be subject to additional charges or fees in connection with the payment holiday
- there should be no negative impact on the customer's credit score due to the payment holiday (see next article)

Regulatory Monthly Newsletter

Repossession

The FCA has also advised that repossessions during this time of uncertainty may not be in the customers' best interest, and therefore firms should not commence or continue repossession proceedings. In cases where a repossession order has already been obtained, firms are advised against enforcing them. **Click on the highlighted text to access the guidance.**

UK Credit Reference Agencies confirm credit scores will be protected during COVID-19 pandemic

The three major credit reference agencies (CRAs) in the UK, Experian, Equifax and TransUnion confirmed on 31st March that consumer credit scores will be protected when people have agreed 'payment holidays' in place as a result of the COVID-19 pandemic.



Payment holidays refer to a pause agreed between an individual and their lender on regular loan payments. Earlier this month the government announced that homeowners impacted by the crisis can ask their mortgage lender for a payment holiday of up to three months (for both residential and buy-to-let mortgage customers).

To help people applying for payment holidays, CRAs are implementing a special measure called an "emergency payment freeze". This ensures that an individual's current credit score is protected for the duration of an agreed payment holiday.

In addition to the Government guidance on mortgage, lenders may be able to make special arrangements across other forms of credit, which may include a payment holiday, reduced payments, paused payments or increased credit limits. These are all covered by the CRA emergency payment freeze agreement, minimising the impact on an individual's credit score.

CARES Act in the US



On 27th March, the U.S. Congress passed and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ([CARES Act](#)). This law, which provides wide-ranging financial and regulatory relief related to the ongoing COVID-19 public health crisis, represents a response of unprecedented scope and scale.

Regulatory Monthly Newsletter

Sec. 4021 "Credit Protection During COVID-19" amends the Fair Credit Reporting Act to protect the credit history of borrowers who receive loan forbearances from any negative consequences of the way the forbearance is reported to credit bureaus. The provision applies if a creditor agrees to an account forbearance, modified payments or other relief for a consumer affected by COVID-19, and the consumer fulfils the requirements applicable to their account forbearance or other accommodation. Under these circumstances, **if a creditor furnishes information to a credit bureau, the creditor must report the credit obligation as current** (or if the credit obligation was delinquent before the forbearance or accommodation, maintain the pre-existing delinquent status unless the consumer becomes current). The relief applies during a period beginning January 31, 2020, and ending the later of 120 days after the enactment of the legislation or 120 days after the date the national emergency concerning COVID-19 terminates. This reporting requirement does not apply with respect to a credit obligation or account that has been charged off.

Our colleagues from the Consumer Credit Information Association have put together a [COVID-19 response page](#) that includes a [fact sheet](#) that summarizes the credit bureaus' support for consumers during the public health crisis and an [announcement](#) to help lenders and creditors ("data furnishers") report data to credit bureaus (1) for accounts affected by natural and declared disasters, or (2) accounts in forbearance from a natural or declared disaster, or for other reasons. When a consumer is placed into a forbearance plan, a deferred payment plan, or some other special abatement program, credit reporting codes have been created by the credit bureaus to make sure that the consumer's credit is not treated negatively. **Click on the highlighted text to access the web pages, fact sheet and announcement.**

Consumer Finance Protection Board (CFPB) issues Policy Statement on Credit Reporting and Compliance with CARES Act



On April 1, the CFPB issued a policy statement addressing the responsibility of furnishers under the CARES Act and describing the flexible approach the Bureau intends to take with respect to supervision and enforcement of the Fair Credit Reporting Act (FCRA) and Regulation V during the COVID-19 pandemic.

In the [policy statement](#), the Bureau notes that the CARES Act partially amends the FCRA and requires furnishers to report as current certain credit obligations for which consumers affected by COVID-19 have sought accommodation.

Regulatory Monthly Newsletter

The Bureau expects furnishers to comply with the CARES Act and the Bureau will assist furnishers as needed. The Bureau also encourages furnishers to work with consumers, either voluntarily or as required by the CARES Act, to provide payment relief; and the Bureau states that it does not intend to cite in examinations or bring enforcement actions against furnishers who furnish credit information that accurately reflects the payment relief provided to consumers.

Addressing the duty to timely investigate disputes, the Bureau recognizes that a number of CRAs and furnishers are working through significant operation disruptions that might affect their ability to investigate disputes within the timeframes required by the FCRA.

The Bureau says that it will consider the unique challenges faced by each CRA and furnisher in evaluating whether to cite in an examination or bring an enforcement action; and the Bureau does not intend to cite or bring an action against any entity that made a good faith effort to investigate a dispute as quickly as possible. The Bureau also reminds CRAs and furnishers that there is no requirement to investigate disputes submitted by credit repair organizations or disputes that the CRA or furnisher reasonably determines to be frivolous or irrelevant.

In looking at whether a CRA or furnisher made a reasonable determination that a dispute was frivolous or irrelevant, the Bureau will consider the constraints affecting the CRA's or the furnisher's time, information, and other resources. **Click on the highlighted text to access the policy statement.**

IN EUROPE

PRIVACY

European Data Protection Board (EDPB) on GDPR evaluation

The EDPB and the individual EEA Supervisory Authorities (SAs) have [contributed](#) to the evaluation and review of the GDPR for the upcoming European Commission 2020 report.

The EDPB is of the opinion that the application of the GDPR in the first 20 months has been successful. The EDPB is examining possible solutions to overcome some remaining challenges and to improve existing cooperation procedures. It also calls upon the European Commission to check if national procedures impact the effectiveness of the cooperation procedures and considers that, eventually, legislators may also have a role to play in ensuring further harmonisation.

Regulatory Monthly Newsletter

In its assessment, the EDPB also addresses issues such as international transfer tools, impact on SMEs, SA resources and development of new technologies. The EDPB concludes that it is premature to revise the GDPR at this point in time. **Click on the highlighted text to access the contribution.**

European Commission ePrivacy Regulation

As regular readers of this newsletter will know the EU draft ePrivacy Regulation (the 'Regulation') was first introduced by the European Commission in 2017 to reinforce 'trust and security in the Digital Single Market'. The Regulation is designed to replace the Privacy and Electronic Communications Directive (Directive 2002/58/EC) to form a key part of the EU's modernisation of the existing privacy framework which began with the adoption of the General Data Protection Regulation ('GDPR').



Last year, proposals of the Regulation were rejected by the EU's Transport, Telecommunications and Energy Council. It therefore fell on the incoming Croatian Presidency of the Council to present a revised proposal of the Regulation.

On 21 February 2020, the revised text of the Regulation was [published](#) by the Council and will be discussed during the Working Party on Telecommunications and Information Society meeting in March.

The proposed Regulation focuses on ensuring the privacy and security of all data transferred via electronic means. The subject matter of the Regulation is thus much wider than GDPR. It will govern all 'electronic communications data' which encompasses:

- any information concerning the content transmitted
- information exchanged for the purpose of transmitting, distributing or enabling the exchange of electronic communications content, including geographical location data and electronic communications metadata.

The original proposal was that the Regulation would align and work in tandem with GDPR where personal data is processed. Matters concerning the processing of personal data not specifically addressed by the Regulation will be covered by GDPR.

The draft Regulation includes proposals to:

- harmonize e-privacy rules throughout the Digital Single Market
- provide greater protection for both the content and metadata of electronic communications

Regulatory Monthly Newsletter

- ensure 'over-the-top' services such as WhatsApp, Skype and Facebook Messenger subscribe to the same standards as traditional telecoms providers
- simplify and strengthen rules on cookie data
- protect citizens against unsolicited electronic communications
- strengthen regulators' enforcement powers

The latest text published by the Croatian Presidency further introduced the possibility to justify the processing of metadata for the provision of electronic communications services if requested by end-users or on grounds of legitimate interests. **Click on the highlighted text to access the proposed revised text of the Regulation.**

DATA

European Central Bank (ECB) sets out feedback loop framework

Following the recent approval and publication of [Guideline 2020/381](#) (21.02 and 06.03, respectively), the ECB has established a framework for feedback loop activity. This framework sets out, among others:

- the National Central Banks (NCBs) that will participate in the feedback loop framework, together with the date from which they start participating.
- the obligations of the ECB and of the NCBs that participate in the feedback loop, including the testing period prior to the date the individual NCBs start participating
- the scope of data to be provided for feedback loop purposes – see Annex III of the Guideline

As expected, the secondary feedback loops will only become possible from 1st July 2021. For the moment, only six NCBs have qualified as participating NCBs. This means that access to AnaCredit data is likely to be uneven across the euro-area. This situation will be exacerbated by the possibility to “switch off” the exchange of certain attributes.



Guideline 2020/381 reiterate the prohibition for reporting agenda to share feedback loop data with commercial providers such as CRAs, except when this is permitted by Article 11 of the AnaCredit regulation. **Click on the highlighted text to access the Guideline.**

Regulatory Monthly Newsletter

FINANCIAL SERVICES

Report on CMU



The European Commission's High-Level Forum on the Capital Markets Union (HLFCMU) has published an [interim report](#) setting out its vision for the future of European capital markets. The HLFCMU was established in November 2019 and consists of experienced industry executives and international experts who are working together to propose policy recommendations designed to contribute to the CMU.

The interim report identifies the following as key aims of the CMU:

- Embracing new opportunities in the rapidly changing financial system;
- Giving European citizens a better financial future by offering better opportunities to cater for long-term financial needs, better access to investment products and promoting entrepreneurship;
- Leading capital markets globally, by making the EU a more attractive marketplace for businesses and investors; and
- Building on the existing strengths of the EU, which include the ability of EU firms to sell products across EU borders using financial services passports and the role of the European Supervisory Authorities in integrating and developing EU capital markets.

Going forward, the forum intends to focus on the more challenging aspects of the EU's CMU Action Plan. These include tackling the challenges facing the following areas:

- Financing for business: proposed measures include enhancing transparency and comparability of company data and supporting long-term investment vehicles and institutional investor participation;
- Market infrastructure: proposed measures include improving the integration and efficiency of trading and post-trading; and
- Retail investment: proposed measures include enhancing the engagement of retail investors through adequate occupational and personal pension products and developing retail investors' financial literacy.

The final High-Level Forum report will be published in May 2020. **Click on the highlighted text to access the interim report.**

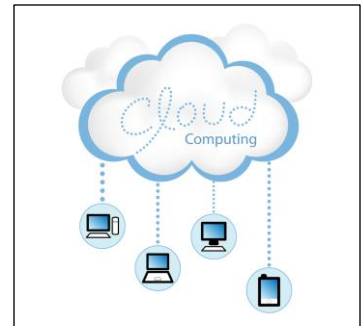
Regulatory Monthly Newsletter

European Banks and American clouds

In a recent Bloomberg survey of Europe's top banks, 22 of 22 respondents said their primary cloud services are American. The U.S. companies servers' support the sophisticated numbers crunching for tasks like risk management and increasingly house such sensitive data as borrowers' personal information. While some lenders say they also work with European cloud companies, it's usually in a secondary role.

There's no legal requirement for banks to keep data in the European Union, but the bloc's regulators have nudged them in that direction. German and French government officials are now in talks with leaders in telecommunications, technology, and finance to create a competitive continental cloud service run by local tech companies.

You can access the full story on Bloomberg by clicking [here](#).



European Commission SME strategy for the EU

Earlier in March, the European Commission presented its EU [SME Strategy](#) for sustainable and digital Europe.

The SME Strategy supports European SMEs through strengthening their capacities to adapt to climate neutrality challenges, help them to reap the benefits of digitalisation, reduce the regulatory burden that SMEs face, and improve their opportunities to access finance.



The strategy opens up access to finance to cover the investment needed for the ecological and digital transition. Concretely, it announces the creation of:

- an SME Initial Public Offering (IPO) Fund with investments channelled through a new private-public fund setup under the InvestEU programme and launching a gender-smart finance initiative to stimulate funding for female-led companies and funds.
- the ESCALAR initiative, a mechanism to boost the size of venture capital funds and attract more private investment, to help high-potential enterprises to grow.

Click on the highlighted text to access the strategy.

Regulatory Monthly Newsletter

UK Financial Conduct Authority on Credit Information and Open Finance

The UK's FCA has [announced](#) that, as a result of the significant resources focused on their response to the COVID-19 pandemic, they have decided to delay the publication of their interim report on the Credit Information Market Study. The report was due to publish in spring. No new date has been provided but it is likely to be after 30 June. Their call for input on Open Finance has also been delayed until 1 October. **Click on the highlighted text to access the announcement.**

TECHNOLOGY



European Commission study on block chain

DG Communications Networks, Content & Technology at the European Commission has published a [study](#) on Block chains looking at legal, governance, and interoperability aspects. The overall objective of the study is to provide evidence and support for policy approaches and concrete actions within the European block chain initiative and to contribute to the building of an EU strategy in light

of block chain developments.

The study analyses and assesses the legal framework in the EU with regard to block chain technology and presents policy options where a need for adjustment or clarification is required. Additionally, the study assesses what the impacts of block chain and the proposed policy options could be on the economy and society with a view to considering future block chain policy developments. **Click on the highlighted text to access the study.**

Upcoming consultation on Digital Finance Strategy

As previously reported, the European Commission is working on a new digital finance strategy, to ensure that the EU can make the most of FinTech and compete globally. This is part of the European Commission's 2020 Work Programme. The strategy will be presented in Q3.

To feed into the strategy, the Commission has [confirmed](#) that it is organising a public consultation.

The Commission has set out some questions that it would like to ask:

Regulatory Monthly Newsletter

- What benefits can digital finance bring?
- How can consumers and businesses be protected?
- How can innovative technologies be regulated without being stifled?
- How can a level playing field between banks, FinTechs and BigTechs be ensured?

The consultation will be launched imminently (a matter of days) and will likely make a reference to the need to reinforce digital finance in a post-COVID-19 scenario. **Click on the highlighted text to access the communication.**

THE REST OF THE WORLD

Stricter data localisation and security rules for financial and insurance data in China

The People's Bank of China has released new guidelines on the collection and processing of personal financial information (PFI Guidelines), which provide much-needed clarity on how personal financial information in China should be processed, secured, and transferred. While the PFI Guidelines do not impose an outright ban on personal financial information leaving China, mandatory compliance steps (including consent and impact assessments) must be taken.

The PFI Guidelines will apply to regulated banks, financial institutions and insurance companies.

Personal financial information (PFI) is widely defined. It includes (personal and non-personal) information which is collected, processed, generated and secured through the provision of financial products or services within China. The PFI Guidelines provide a non-exhaustive list of PFI and classifies them into three categories depending on sensitivity and impact to data subjects in the event of a data leakage incident, namely:

- Class 1 (C1 Information) – least impact to data subjects if leaked
- Class 2 (C2 Information) – a certain level of impact to data subjects if leaked
- Class 3 (C3 Information) – severe impact on data subjects if leaked



Regulatory Monthly Newsletter

China publishes new specification on personal data security

On 7 March 2020, China published an updated version of the “Information security technology – Personal information security specification” (“**New Specification**”), which will take effect on 1 October 2020 and substitute the currently effective 2017 version (“**Current Specification**”).



While both versions are by nature suggested technical standards rather than mandatory regulations, they are considered best practice in China and their detailed suggestions are almost always taken into consideration during enforcement actions by authorities.

Compared with the Current Specification, the New Specification includes the following changes:

- Adding new requirements to prevent excessive collection of personal data
- Adding new requirements concerning user profiling and personalized
- Adding new requirements concerning third-party plugins
- Adjusting requirements on organizational measures
- Adding new requirements concerning personal biometric data

More information on the latest regulatory developments from across the globe is available on the BIIA website in the [Regulatory section](#)
