

Regulatory monitoring

Newsletter

October 2023





ECB in focus

ECB in focus is our blog dedicated to the banking supervisory activities of the European Central Bank (ECB). We report on key developments in European banking regulation led by the ECB as part of the Single Supervisory Mechanism (SSM).

Some of our recent posts

ECB 2022 annual report on banking supervision - key topics and implications for banks

22 June 2023

The ECB published its 2022 annual report on banking supervision on 21 March 2023, highlighting the main supervisory activities in the past year. The Annual Report also outlines the supervisory priorities for 2023-2025, which aim to ensure that banks are resilient, well governed, and prepared for emerging risks.

[Read more →](#)

ECB publishes supervisory priorities 2023-25

4 January 2023

The ECB has published its supervisory priorities for 2023-2025. They include three strategic priorities that will form the basis of the ECB's supervisory activity: (1) strengthening resilience to immediate macro-financial and geopolitical shocks; (2) addressing digitalisation challenges and strengthening governance capabilities; and (3) stepping up efforts in addressing climate change.

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ECB warns banks that failure to comply with leveraged lending guidance may result in capital charges

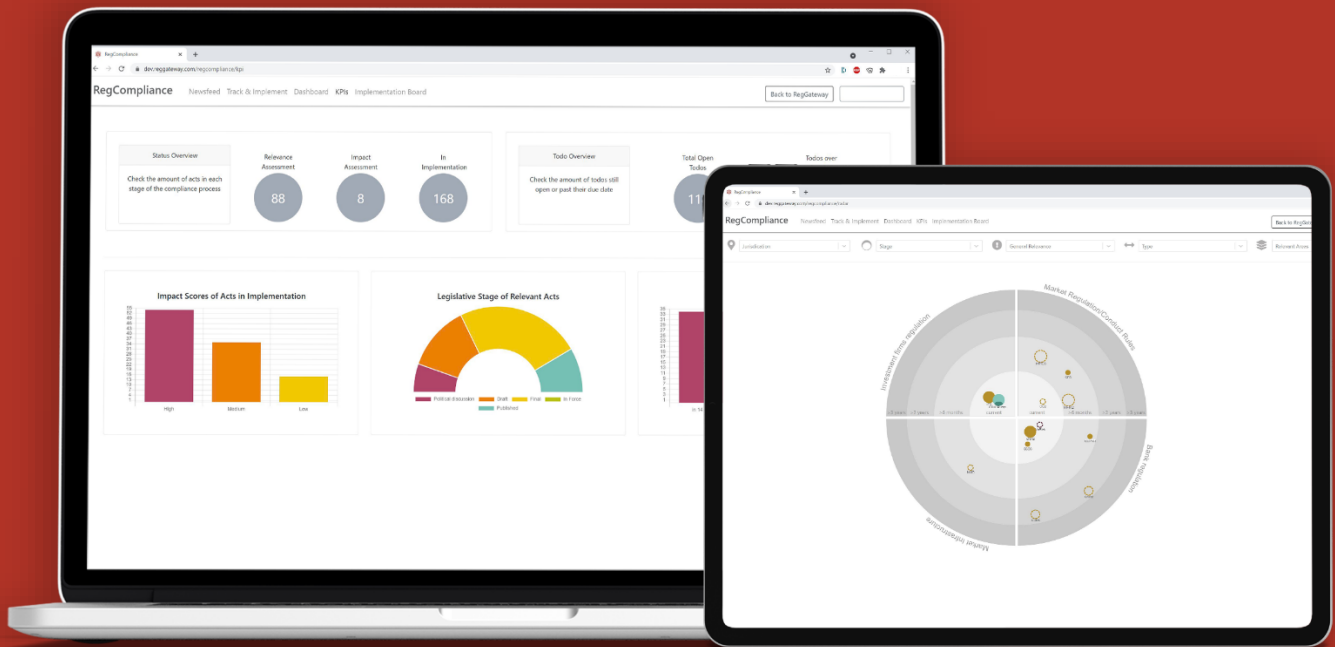
26 October 2022

In her recent speech Elizabeth McCaul, member of the ECB's Supervisory Board, threatened to apply capital charges to significant banks with very high risk exposures to leveraged finance. The extent of banks' exposures to leveraged lending has long been a thorn in the ECB's side.

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The blog features views and commentary from members of Allen & Overy's market-leading German financial services regulation practice.

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Effective implementation (including tailored impact analysis and gap analysis) of new legislation and agile control using our project management tool (including KPIs).

CHANGE ANALYSIS AND PREVIEW OF RULES

Read the future versions of a law early, including the official explanatory memorandum, and identify any legislative changes.

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

EBA: 2024 European supervisory examination programme (ESEP) for prudential supervisors

Status: Final

The EBA has published the European Supervisory Examination Programme (ESEP) for 2024, which identifies key topics for heightened supervisory attention across the EU. The EBA selected three key topics for supervisory attention for 2024 on the basis of its EU-wide risk analysis, its relevant policy work and the practical experience of competent authorities: liquidity and funding risk, interest rate risk and hedging, and recovery operationalisation.

The choice of such topics was supported by structural changes, such as: (i) the end of the abundant liquidity in the system; (ii) the increased interest rate environment; (iii) the implementation of the IRRBB package in the EU; (iv) lessons learned from the spring bank failures; and (v) energy and food markets volatility. The EBA also identifies two priorities of Union-wide relevance for the 2023-2025 period: (a) monitoring and addressing financial stability and sustainability in a context of increased interest rates; and (b) developing an oversight and supervisory capacity for DORA and MiCAR.

Date of publication: 19/10/2023

(ii) International

BCBS: Report on the 2023 banking turmoil

Status: Final

The BCBS has published a report on the 2023 banking turmoil. The report provides an assessment of the causes of the banking turmoil, the regulatory and supervisory responses, the initial lessons learnt, and the regulatory and supervisory takeaways. With regards to supervision, these include: (i) the importance of supervisors analysing banks' business models and identifying outlier banks; (ii) the need to robustly assess banks' governance and risk management; (iii) the merit in reviewing the way in which to oversee liquidity risk in light of the recent turmoil; (iv) the importance of exercising supervisory judgment and reviewing the existing supervisory toolkit; and (v) the need to continue to promote effective cross-border supervisory cooperation.

With regards to regulation, these include: (a) issues relating to the Basel III liquidity standards, the regulatory treatment of interest rate risk in the banking book, the treatment of held-to-maturity assets and role of Additional Tier 1 instruments; and (b) the scope of the Basel framework, including the definition of "internationally active banks", the application of the framework to non-internationally active banks and the level of consolidation of the Basel framework. The BCBS is pursuing a series of follow-up initiatives related to the turmoil, including: (1) prioritising work to strengthen supervisory effectiveness and identify issues that could merit additional guidance at a global level; and (2) pursuing additional follow-up analytical work based on empirical evidence to assess whether specific features of the Basel framework performed as intended during the turmoil, such as liquidity risk and interest rate risk in the banking book, and assessing the need to explore policy options over the medium-term.

Date of publication: 05/10/2023

(b) Solvency/Own funds issues

(i) EU

ECB: Report on sound practices in counterparty credit risk governance and management

Status: Final

The ECB has published its final report on sound practices in counterparty credit risk governance and management. The report presents the findings of the targeted review the ECB performed in the second half of 2022 on how banks govern and manage counterparty credit risk, highlighting sound practices observed in the market and pointing out areas where improvement is needed. Institutions are expected to consider the sound practices discussed in the report when designing their approach to counterparty credit risk management. In addition, the ECB also published a feedback statement providing an overview of the comments received to its consultation on the draft report in June and its assessment of them. The statement emphasises that proportionality is an overarching principle applicable to all sound practices, while considering the different organisational set-ups, areas of activity and risk profiles of the institutions under the ECB's supervision.

Date of publication: 20/10/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on the calculation of the stress scenario risk measure

Status: Adopted by the EC

The EC has adopted a Delegated Regulation on RTS on calculating the stress scenario risk measure under the CRR. The RTS set out two overarching methods to develop the extreme scenarios of future shock for non-modellable risk factors: (i) the direct method, which requires institutions to develop the extreme scenario of future shock for a given non-modellable risk factor by calculating the expected shortfall measure of the losses occurring when varying that risk factor according to its historically observed levels during a stress period; or (ii) the stepwise method, which requires institutions to obtain the extreme scenario of future shock for a given non-modellable risk factor by calculating an expected shortfall measure on the returns observed for that risk factor, and calculating the loss corresponding to the movement in the risk factor identified by that expected shortfall measure. Under both methods, the RTS requires institutions to adjust the extreme scenario of future shock to reflect the statistical uncertainty in determining the extreme scenario of future shock by introducing an uncertainty compensation factor.

The Delegated Regulation will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 20/10/2023

(c) Securitisation

(i) EU

Commission Delegated Regulation (EU) 2023/2175 on supplementing the Securitisation Regulation with regard to RTS specifying in greater detail the risk retention requirements for originators, sponsors, original lenders, and servicers

Status: Published in the OJ

Date of entry into force: 09/11/2023

Commission Delegated Regulation (EU) 2023/2175 supplementing the EU Securitisation Regulation with regard to RTS specifying in greater detail the risk retention requirements for originators, sponsors, original lenders and servicers was published in the OJ. The RTS, in accordance with Article 6(7) of the EU Securitisation Regulation, specify the risk retention requirements and, in particular: (i) requirements on the methods of retaining risk; (ii) the measurement of the level of retention; (iii) the prohibition on hedging or selling the retained interest; (iv) the conditions for retention on a consolidated basis; (v) the conditions for exempting transactions based on a clear, transparent and accessible index; (vi) the methods of retaining risk in case of traditional securitisations of non-performing exposures; and (vii) the impact of fees paid to the retainer on the effective material

net economic interest. When the Delegated Regulation enters into force, Commission Delegated Regulation (EU) 625/2014 is repealed.

Date of publication: 18/10/2023

(d) Risk management/SREP/Pillar 2/Outsourcing/NPL

(i) Germany

BReg: Government draft on the law promoting secondary credit markets (*Regierungsentwurf des Gesetzes zur Förderung geordneter Kreditweitmärkte*)

Status: Draft

The German government has published a draft on the Law promoting secondary credit markets and implementing Directive (EU) 2021/2167 on Credit Servicers and Credit Purchasers (*Gesetz zur Förderung geordneter Kreditweitmärkte und zur Umsetzung der Richtlinie (EU) 2021/2167 über Kreditdienstleister und Kreditkäufer – Kreditweitmärktgesetz*). The Directive is intended to strengthen the European market for non-performing loans (NPL) sales and the options for action for banks, as well as to protect consumers and other borrowers and to harmonise them at European level. Ultimately, this serves to deepen the banking and capital markets union and to reduce risks from NPLs for the stability of the economic system. This law aims to implement the Directive into German law.

Date of publication: 11/10/2023

(e) Disclosure

(i) International

BCBS: Consultation on disclosure of crypto-asset exposures

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The BCBS has launched a consultation on a set of standardised disclosure templates to support banks in meeting the prudential requirements to disclose their exposures to crypto-assets that will apply from 1 January 2025. The consultation proposes a disclosure table for banks to provide a qualitative disclosure for their activities related to crypto-assets and the approach used in assessing the classification conditions. It also includes three templates for banks' crypto-asset exposures covering capital requirements, accounting classification of exposures and liquidity requirements for exposures.

The proposed requirements will apply to internationally active banks at the top consolidated level. The proposed implementation date is 1 January 2025, in line with the new prudential requirements.

Date of publication: 17/10/2023

1.2 Recovery and resolution

(i) Germany

BaFin: Consultation 15/2023 on a Circular regarding the minimum requirements for the feasibility of transfers in resolution (*Konsultation 15/2023 zum Rundschreiben MaStrukturelle Abwicklungsinstrumente*)

Status: Consultation

Deadline for the submission of comments: 01/12/2023

BaFin has launched a consultation on a Circular regarding the minimum requirements for the feasibility of transfers in resolution (*MaStrukturelle Abwicklungsinstrumente*). This is a new draft Circular to operationalise resolution strategies that provide for a transfer: a company sale instrument (asset and share deal), a transfer instrument to a bridge institution (asset and share deal) and a transfer instrument to an asset management company. The draft initially contains a general presentation of the transfers. The requirements differ depending on the type of instrument and if it is an asset or share deal. In addition, the draft contains the structure of a transfer manual for each instrument, which must be created as part of the resolution planning.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutions and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 20/10/2023

BaFin: Consultation 14/2023 on a Circular regarding the minimum requirements for the implementation of a bail-in (*Konsultation 14/2023 zum Rundschreiben MaBail-in*)

Status: Consultation

Deadline for the submission of comments: 01/12/2023

BaFin has launched a consultation on a Circular regarding the minimum requirements for the implementation of a bail-in (MaBail-in). This is an expansion of the previous Circular of the same name published in 2021 (Circular 14/2021). The new version includes the requirement to create a bail-in manual. In addition, the previous data requirements are expanded by adding new data fields. These are used in particular for the external bail-in implementation of structured bonds. Furthermore, descriptions of the data fields have been revised and the appendix to FAQs has been expanded.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutes and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 20/10/2023

BaFin: Consultation 13/2023 on a Circular regarding the minimum requirements for resolution capability in the context of resolution planning (*Konsultation 13/2023 zum Rundschreiben MaAbwicklungsfähigkeit*)

Status: Consultation

Deadline for the submission of comments: 01/12/2023

BaFin has launched a consultation on a Circular 08/2022 regarding the minimum requirements for resolution capability in the context of resolution planning (*MaAbwicklungsfähigkeit*). This is an expansion of the previous Circular of the same name published in 2022 (Circular 08/2022). The new version contains a detailed introduction that is intended to strengthen the

understanding of the affected institutions and the interested public for the resolution planning of less significant institutions in Germany. In particular, it shows the connections between the in-depth circulars and their requirements.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutes and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 20/10/2023

(ii) EU

EBA: Speech on potential reform of EU bank crisis management framework

Status: Final

The EBA has published a speech by José Manuel Campa, EBA Chair, on potential improvements to the EU bank crisis management framework in light of the 2023 banking turmoil. Mr Campa reflects on the themes emerging and lessons learnt from recent crisis cases. He discusses the implications on the EBA's crisis management work and priorities, including: (i) the European Resolution Examination Programme – aspects of liquidity needs in resolution and assessment of resolvability capabilities are crucial areas in need of continued close assessment under future examination cycles; (ii) crisis simulation exercises – the EBA is conducting a stocktake of the testing exercises so far conducted by authorities to identify best practices; and (iii) a review of relevant regulatory products – consensus is emerging on the need to increase the “usability” of the resolution plan in execution, making sure that it is a focused document containing core essential information, it is operational enough to allow swift implementation, and it contains variant strategies to adapt to the crisis events. The EBA is also considering potential revisions to the secondary regulation governing the functioning of resolution colleges to make their work, both during planning and execution, smoother and more effective.

Date of publication: 05/10/2023

ECON: Draft reports on legislative proposals for CMDI framework

Status: Final

ECON has published three draft reports in relation to the legislative proposals for the review of the crisis management and deposit insurance (CMDI) framework: (i) on the proposed Directive amending the DGSD; (ii) on the proposed Regulation amending the SRM Regulation; and (iii) on the proposed Directive amending the BRRD. The reforms aim to increase the protection of depositors in case of a bank failure, to harmonise resolution practices across the EU, and to bring a broader range of small and medium-sized banks under the resolution framework. The draft reports contain draft EP legislative resolutions, the texts of which set out suggested amendments to the proposals.

- [Draft report – DGSD](#)
- [Draft report – SRM](#)
- [Draft report – BRRD](#)

Date of publication: 05/10/2023

(iii) Eurozone

SRB: Small and medium-sized banks: Resolution planning and crisis management report for less significant institutions in 2022 and 2023

Status: Final

The SRB has published a report on resolution planning and crisis management for less significant institutions (LSIs) for the first time. These are banks under the direct responsibility of national resolution authorities (NRAs), while the SRB has an oversight role. The report is based on the information made available to the SRB up until March 2023 and concerns a total of approximately 2000 LSIs. About three quarters of these banks belong to cooperative or savings networks, while the remaining

500 LSIs are characterised by both traditional and special business models, the latter including custodian and investment banks and financial market infrastructures.

Date of publication: 05/10/2023

(iv) International

FSB: 2023 bank failures: preliminary lessons learnt for resolution

Status: Final

The FSB has published a report on the 2023 bank failures and the preliminary lessons learnt from resolution. The report identifies preliminary lessons learnt regarding the FSB Key Attributes' framework for resolving a G-SIB, drawing on an analysis of the Credit Suisse case; and the resolution of systemically important banks more broadly, drawing on the recent bank failure episodes in the US. The review of the Credit Suisse case found that: (i) recent events demonstrate the soundness of the international resolution framework but there are several areas for further analysis and improvements – including the need for an effective temporary public sector liquidity backstop, and operational readiness of banks to access that as a last resort; (ii) firms and authorities need to: (a) address the legal issues identified in the execution of bail-in across borders during resolution planning; (b) better operationalise a range of resolution options such as the transfer and sale of business tools alone or in combination with bail-in; and (c) understand the impact of bail-in on financial markets. In addition, authorities should continue to prioritise testing and simulating effective decision making and execution at domestic and international levels; and (iii) firms and authorities should also extend their communication and coordination efforts outside of the core crisis management group.

In its review of US bank failures, the FSB highlights that banks not identified as G-SIBs can still be systemically significant or critical upon failure. Noting that while the three US regional banks were effectively resolved without bailing out shareholders and unsecured creditors, there were still a number of issues to explore, including: (1) whether the scope of resolution planning requirements and loss-absorbing capacity requirements needs to be expanded; (2) how resolution authorities can be better prepared for the increased speed of bank runs due to, for example, 24/7 payments, mobile banking and the use of social media; and (3) the implications of recent events for the role of deposit insurance in resolution arrangements. Moving forward, the FSB will conduct work to further explore these areas and will continue to coordinate closely with the other standard-setting bodies.

Date of publication: 10/10/2023

1.3 Stress tests/Macroprudential topics

(i) EU

EBA: Decision concerning ad-hoc collection by competent authorities to the EBA of institutions' IRRBB data and amendment of the Annex to EUCLID

Status: Final

The EBA has published the technical package for phase 3 of version 3.3 of its reporting framework. This provides the standard specifications that include the validation rules, the Data Point Model (DPM) and the XBRL taxonomies to support the new reporting on Interest Rate Risk in the Banking Book (IRRBB). This technical package will be used first in the ad-hoc data collection for the banks under the QIS (Quantitative Impact Study) with reference date 31 December 2023. In the future, this technical package will also be used for the ITS on supervisory reporting concerning IRRBB, currently being adopted by the EC. The DPM Query Tool has also been updated to reflect the current release.

Date of publication: 30/10/2023

2. Market regulation/Conduct rules

2.1 General

(i) Germany

BaFin: Information on checking the users of ratings as part of the WpHG audit (*Hinweise zur Prüfung der Verwender von Ratings im Rahmen der WpHG-Prüfung*)

Status: Final

BaFin has published the information on checking the users of ratings as part of the German Securities Act (*Wertpapierhandelsgesetz* – WpHG) audit, including: (i) information on understanding the relevant standards; and (ii) information on the uniform presentation of the results of the audit in the WpHG report.

Date of publication: 13/10/2023

2.2 Benchmarks

(i) EU

Commission Delegated Regulation (EU) 2023/2222 extending the transitional period laid down for third-country benchmarks in Article 51(5) of the Benchmark Regulation

Status: Published in the OJ

Date of entry into force: 27/10/2023

The Delegated Regulation extending the transitional period laid down for third-country benchmarks in Article 51(5) of the Benchmarks Regulation (BMR) has been published in the OJ. In a July report the EC concluded that a majority of third-country benchmark administrators have not taken the necessary steps to prepare for the end of the transition period on 31 December. Therefore, in order to ensure continued access by EU supervised entities to benchmarks provided by an administrator located in a third country, the EC has decided that it is necessary to extend the transitional period by two years, to 31 December 2025. Without this extension the EC believes that market participants in the EU would be at a significant disadvantage in global competition.

Date of publication: 23/10/2023

EC: Proposal for a Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements

Status: Draft

The EC has adopted a proposal for a Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the EU of benchmarks provided by an administrator located in a third-country, and certain reporting requirements. The key elements of the package include: (i) streamlining reporting and the overall regulatory burden by removing the obligation for EU benchmark users to individually verify the regulatory status of indices they wish to use as benchmarks by consulting websites and public registers. Under the proposal, it should suffice to consult the Article 36 register; (ii) recalibrating the scope of the BMR and its rules for the use of non-EU benchmarks. While the substantive rules remain the same, they will apply to smaller number of market participants. This proposal will reduce the burden associated with the registration and related supervision of administrators of non-significant benchmarks; and (iii) for EU supervised entities, such as banks, asset managers and insurance companies using benchmarks, the proposal removes the use restrictions contained in the third-country chapter of the current BMR that were identified as a barrier to the use of many non-EU benchmarks.

Date of publication: 17/10/2023

2.3 Consumer protection rules

(i) Germany

BaFin: Circular 08/2023 on product oversight and governance arrangements for retail banking products (Rundschreiben 08/2023 über die Überwachung und Governance von Bankprodukten im Privatkundengeschäft)

Status: Final

BaFin has published a Circular on product oversight and governance arrangements for retail banking products. This Circular aims to implement the [EBA Guidelines](#) on the same topic which were published in 2015 but have not yet been implemented due to doubts regarding the existence of a sufficient legal basis in EU law. Pursuant to the clarification by the Court of Justice of the EU in a [preliminary ruling procedure](#) initiated by the French Conseil d'État that the EBA Guidelines are valid, BaFin has now implemented these Guidelines in a Circular.

Date of publication: 30/10/2023

(ii) EU

Directive (EU) 2023/2225 on credit agreements for consumers and repealing the Consumer Credit Directive

Status: Published in the OJ

Date of entry into force: 20/11/2023

Date of application: 20/11/2026

The Directive (EU) 2023/2225 on credit agreements for consumers, repealing the Consumer Credit Directive, has been published in the OJ. It aims to: (i) ensure that credit information is presented in a clear and understandable manner and is adapted to digital devices; (ii) establish stricter advertising rules to reduce abusive credit to over-indebted consumers and create effective measures against overcharge; (iii) require lenders to assess whether consumers can repay their credit, so that they are protected from over-indebtedness; (iv) enlarge the scope of the directive to loans below EUR 200 and buy-now-pay-later products; and (v) give consumers the right to terminate a credit agreement within 14 days, and give cancer survivors the right to be forgotten.

Date of publication: 30/10/2023

Council of the EU: Adoption of the Directive on financial services contracts concluded at a distance

Status: Adopted by the Council of the EU

The Council of the EU has adopted a Directive concerning financial services contracts concluded at a distance, following the adoption by the EP on 5 October 2023. The Directive repeals the existing legislation from 2002 and introduces new provisions for financial services contracts concluded at a distance as an additional chapter of the consumer rights directive, which protects consumers in all kinds of commercial practices. The final text: (i) clarifies the scope of application and the safety net-feature for financial services; (ii) improves the rules on information disclosure and modernises pre-contractual information obligations; (iii) establishes the right of consumers to request human intervention on sites that display automatic information tools like robo-advice or chatbots; (iv) facilitates the right of withdrawal from contracts concluded at a distance through an easy-to-find 'withdrawal function' in the provider's interface; and (v) introduces additional protection for consumers from dark patterns.

Once the Directive is signed by the President of the EP and the President of the Council, it will be published in the OJ and will enter into force on the twentieth day following its publication.

Date of publication: 23/10/2023

EC: Adoption of a package of measures to review alternative dispute resolution framework

Status: Draft

The EC has adopted a proposal to review the alternative dispute resolution (ADR) framework, which includes: (i) a proposed directive amending the current ADR Directive; (ii) a proposed regulation to repeal the Online Dispute Resolution (ODR) Regulation; and (iii) a recommendation addressed to online marketplaces, EU trade associations having a dispute resolution mechanism, and to Member States. The objectives of the review are to: (a) make the ADR framework fit to the digital markets by covering all categories of disputes concerning EU consumer rights; (b) improve the access to ADR in cross-border disputes through the use of digital tools, assistance to consumers and traders; (c) simplify ADR procedures to all actors; including reducing reporting obligations of ADR entities and information obligations of traders whilst encouraging traders to increase their engagement in ADR claims through the duty to reply; (d) discontinue the ODR platform and replace it by user-friendly digital tools to assist consumers in finding a redress tool to resolve their dispute; and (e) incentivise online marketplaces and EU trade associations having a dispute resolution mechanism to get aligned with the quality criteria in the ADR Directive.

The EC has also published: (1) a joint ADR/ODR application report 2023; (2) an evaluation on the implementation of the ADR Directive; and (3) an impact assessment.

- Directive amending the ADR Directive
- Regulation repealing the ODR Regulation
- Recommendation
- ADR/ODR report
- ADR Directive implementation evaluation
- Impact assessment

Date of publication: 17/10/2023

ECON: Draft report on proposed Directive on retail investment protection

Status: Draft

ECON has published a draft report on the proposed Directive on retail investment protection including the EC's proposed texts with the Rapporteur's proposed amendments. The Rapporteur highlights amendments including in relation to: (i) inducements – the Rapporteur expresses strong views against a full ban on inducements. She remains concerned about the introduction of a partial ban on executive-only services which is not justified and does not seem to address issues of conflict of interest; (ii) best interest test – the Rapporteur clarifies and strengthens the EC's proposal on the "best interest" test under MiFID and the IDD. In MiFID, she proposes to clarify the notion of "cost-efficiency"; (iii) value for money benchmarks – further discussions are needed to find the right and balanced approach. The Rapporteur deletes the benchmarks in the draft report, with a view to continuing discussions on this topic; (iv) supervision and cross-border practices – the Rapporteur introduces an obligation for companies to register in the same Member State where their head office is located, in order to avoid forum-shopping; and (v) influencers – the Rapporteur proposes additional elements, including to impose firms to sign a contract with influencers in order to ensure transparency and determine responsibility.

Date of publication: 05/10/2023

2.4 MiFID/MiFIR

(i) EU

ESMA: TRV risk analysis on the evolution of EEA share market structure since MiFID II

Status: Final

ESMA has published an article on the evolution of the European share market structure from 2019 to 2022, following the implementation of MiFID II. Specific focus is given to the impact of the UK's withdrawal from the EU, given its pivotal role in equity markets. The European market structure has changed in an important manner during the observed period. The important decrease in trading volumes observed after 2021 linked to the impact of the UK withdrawal was accompanied by four main changes: (i) a decrease in the number of trading infrastructures, even though their number remains elevated; (ii) a shift in share

trading distribution, both in terms of market types and countries; (iii) a concentration of trading in a few EU countries and trading venues; and (iv) a relocation of domestic trading activities and a rise in the specialisation of trading venues.

Date of publication: 30/10/2023

ECON: Agreement to amendments to streamline the listing process and make it more proportionate

Status: Adopted by the EP

The EP has announced that its ECON had in three separate votes adopted changes to EU legislation that would enable companies to access funding sources other than bank lending, and to adapt their financing structure when they grow in size. The first text the MEPs agreed upon amends the MiFID rules on provision of investment research by third parties, in order to revitalise this market and make listed companies more visible. The second text amends the Prospectus Regulation, MAR and MiFIR, to reduce the content, introduce a maximum page limit and a standardised format of the EU Follow-on prospectus and the EU Growth prospectus. It also provides Member States the discretion to decide not to require a prospectus where the total aggregated consideration in the EU for the securities offered is less than EUR 5,000,000 per issuer, calculated over a period of 12 months, up to a threshold of EUR 12,000,000. The third text is a new Directive on multiple-vote share structures, which requires SMEs and family-owned companies trading on public markets to have a stock name that ends with the marker 'WVR' (weighted voting rights) to clearly indicate to the public that their shareholder structure and liquidity profile is different to that of traditional companies. In addition, safeguards are proposed to protect the interests of the shareholders who do not hold multiple-vote shares.

ECON is now ready to begin negotiations with the Council of the EU, which has already agreed its mandate on the three texts.

Date of publication: 24/10/2023

EC: Final compromise texts on proposals to improve MiFID II market data access and transparency

Status: Draft

The Council of the EU has set out final compromise texts for the legislative proposals on the: (i) Regulation on amendments to MiFIR; and (ii) Directive on amendments to MiFID II. The amendments relate to enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payments for forwarding client orders. The Council of the EU has also confirmed that its Permanent Representatives Committee has endorsed the final compromised texts. Provided the EP adopts the acts in the form agreed, the Council of the EU will then proceed to adopt the acts.

- Regulation amending MiFIR
- Directive amending MiFID II

Date of publication: 18/10/2023

ESMA: Q&A on MiFID II and MiFIR market structure topics

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR market structure topics. ESMA has added two new Q&A in relation to access to CCPs and trading venues (TVs): (i) on the extent to which a TV can apply different fee schedules to CCPs under Article 36 of MiFIR; and (ii) under what circumstances a TV can charge new fees to a CCP that has already been granted access.

Date of publication: 13/10/2023

ESMA: Supervisory briefing on the calibration of circuit breakers

Status: Final

ESMA has published a supervisory briefing on circuit breakers, which provides a comprehensive overview of supervisory expectations regarding the calibration of circuit breakers implemented by trading venues (TVs). The supervisory briefing outlines several principles that NCAs should enforce to ensure effective circuit breaker implementation, and aims to strengthen convergence among NCAs on circuit breaker calibration methodology, promoting compliance, common understanding and enforcement practices. The guidance comes in the context of the letter ESMA sent to the EC about measures to be

implemented in energy markets. Following on from the briefing, NCAs will now inform the TVs in their jurisdiction and follow up on the compliance of trading venues with the expectations set out in the briefing. It is expected that the calibration of circuit breakers throughout the EU will improve and therefore volatility will be better managed.

Date of publication: 12/10/2023

ESMA: Launch of Common Supervisory Action on MiFID II sustainability requirements

Status: Final

ESMA has announced that it will launch a Common Supervisory Action (CSA) with NCAs on the integration of sustainability in firms' suitability assessment and product governance processes and procedures in 2024. The goal of the CSA will be to assess the progress made by intermediaries in the application of the key sustainability requirements, which entered into application in 2022 following the amendments to the MiFID II Delegated Acts. The CSA will cover: (i) how firms collect information on their clients' "sustainability preferences"; (ii) which arrangements firms have put in place to understand and correctly categorise investment products with sustainability factors for the purpose of the suitability assessment; (iii) how firms ensure the suitability of an investment with respect to sustainability (including the use of a "portfolio approach"); and (iv) how firms specify any sustainability-related objectives a product is compatible with as part of the target market assessment of the investment product.

Date of publication: 03/10/2023

2.5 Packaged retail and insurance-based investment products (PRIIPs)

(i) EU

ECON: Draft report on proposed Regulation amending the PRIIPs Regulation as regards the modernisation of the KID

Status: Draft

ECON has published a draft report on proposed Regulation amending the PRIIPs Regulation, as regards the modernisation of the key information document (KID), including the EC's proposed texts with the Rapporteur's proposed amendments. The Rapporteur sees the need to introduce further adjustments to market practices and certain adaptations to the insurance sector. The Rapporteur suggests erasing a new section in the KID titled "Product at a glance" and will continue to further assess the alignment of the new sustainability section with the relevant existing legislation.

Date of publication: 05/10/2023

3. Market infrastructure

3.1 Custody rules

(i) EU

ESMA: Consultation on call for evidence on shortening the settlement cycle

Status: Consultation

Deadline for the submission of comments: 15/12/2023

ESMA has launched a call for evidence on the shortening of the settlement cycle to either T+1 or T+0. ESMA focuses on the following aspects: (i) what would be the impact of the reduction of the settlement cycle on the operations of market players, as well as any other impact that such reduction could be expected to have on trading, liquidity formation or on access to financial markets by investors; (ii) what would be the costs (differentiating between one-off costs linked to operational changes required for operating in accordance with a shorter settlement cycle and ongoing costs linked to a potential increase of settlement fails or securities lending fees) and the benefits that a shorter securities settlement cycle would bring; (iii) if it is concluded that a mandatory shorter settlement cycle should be imposed, how and by when could it be achieved; and (iv) what are the impacts on the EU's capital markets resulting from international developments related to securities settlement, such as the planned shortening of the settlement cycle to T+1 in other jurisdictions, such as the US.

ESMA intends to finalise a feedback report and present it to the EC with its main findings in 2024. ESMA may provide an earlier report to the EC identifying possible regulatory actions to address the impact for EU market participants of the US move to T+1.

Date of publication: 05/10/2023

3.2 EMIR

(i) EU

ESMA: MoU related to ESMA's monitoring of the ongoing compliance with recognition conditions by CCPs established in Indonesia and supervised by the Otoritas Jasa Keuangan

Status: Final

ESMA has signed an MoU with the Indonesia Financial Services Authority and updated its list of recognised third-country central counterparties (TC CCPs) under Article 25 of the EMIR. The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs which are established in Indonesia and authorised or recognised by the Otoritas Jasa Keuangan, the Indonesia Financial Services Authority, and which have applied for EU recognition under EMIR.

Date of publication: 26/10/2023

ESAs: Joint Board of Appeal suspends the decision by ESMA to withdraw the recognition decision of DCCC

Status: Final

The ESA's Joint Board of Appeal has heard the application for suspension brought by Dubai Commodities Clearing Corporation (DCCC) against the ESMA Decision, adopted under Article 25p of EMIR, to withdraw the recognition of DCCC as a Tier 1 third-country CCP. DCCC challenged ESMA's Decision, asking the Board to extend the adaptation period and to suspend the withdrawal Decision until the outcome of the appeal is concluded. The Board found that the appeal case is admissible and suspended the ESMA Decision.

Date of publication: 25/10/2023

Commission Implementing Decision (EU) 2023/2207 amending Implementing Decision (EU) 2016/2272 on the equivalence of financial markets in Australia in accordance with EMIR to take account of recent developments in the financial markets in Australia

Status: Published in the OJ

Date of entry into force: 06/11/2023

An Implementing Decision amending Implementing Decision (EU) 2016/2272 on the equivalence of financial markets in Australia in accordance with EMIR to take account of recent developments in the financial markets in Australia has been published in the OJ. The Implementing Decision updates the names of the three financial markets authorised in Australia that had previously been granted equivalence and adds a fourth financial market. The EC adopted the Implementing Decision on 13 October.

Date of publication: 17/10/2023

ESMA: Opinion on CCP back testing requirements under EMIR

Status: Final

ESMA has published an opinion on CCP back testing requirements under Article 49 of EMIR and Article 49 of Commission Delegated Regulation (EU) 153/2013. This opinion aims to: (i) clarify CCPs back testing practices under EMIR, and in particular where back testing is performed for the purpose of core model back testing for model validation in accordance with Article 47 of the Delegated Regulation or for margin adequacy back testing in accordance with Article 49 of the Delegated Regulation; and (ii) harmonise back testing practices across authorised EU CCPs but does not intend to limit CCPs' freedom of modelling, nor to prescribe a specific margin model.

Date of publication: 16/10/2023

ESMA: Final report on emergency measures on collateral requirements – draft RTS amending Commission Delegated Regulation (RTS) 153/2013

Status: Final

ESMA has published a final report on a draft RTS which extends for a limited period of six months the emergency measures which temporarily expand the pool of eligible collateral for all types of counterparties. Uncollateralised bank guarantees for non-financial counterparties (NFCs) acting as clearing members and public guarantees for all types of counterparties will continue to be temporarily eligible by CCPs in order to avoid potential disruption during the upcoming cold season. The temporary measures were initially adopted during the height of the energy crisis to alleviate the liquidity pressure on NFCs active on gas- and electricity-regulated markets cleared in EU-based CCPs. ESMA is proposing that the measures should now expire on 29 May 2024.

The final draft RTS will be sent to the EC for endorsement and will then be subject to non-objection by the EP and the Council of the EU.

Date of publication: 13/10/2023

ESMA: Consultation on draft technical advice to the EC on fees charged to Tier 1 Third-Country CCPs under EMIR

Status: Consultation

Deadline for the submission of comments: 10/11/2023

ESMA has launched a consultation on the revision of the Delegated Regulation regarding fees charged to Tier 1 third-country central counterparties (TC-CCPs) under EMIR. In the consultation, ESMA is proposing to: (i) allocate the annual fees among all recognised Tier 1 CCPs via a weighting factor which depends on their global turnover; (ii) introduce a basic minimum annual fee of EUR 50,000 per Tier 1 TC-CCP, and a maximum annual fee of EUR 250,000; and (iii) introduce an incentive scheme for Tier 1 TC-CCPs failing to submit annual audited turnover figures. ESMA's proposals aim to ensure that the annual fees charged to Tier 1 TC-CCPs are more proportionate and accurately reflect the differences in size and activity across all Tier 1 TC-CCPs.

Date of publication: 12/10/2023

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the TONA and SOFR benchmarks referenced in certain OTC derivative contracts

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the TONA and SOFR benchmarks referenced in certain OTC derivative contracts. In the explanatory memorandum, the EC explains that there are currently three Delegated Regulations on the clearing obligation. They mandate a range of interest rate and credit derivative classes to be cleared. However, the EC believes that in the light of the benchmark transition there is a need to review the scope of the clearing obligation for the classes and currencies impacted by these changes, namely interest rate derivative classes in JPY and USD. As such, Delegated Regulation (EU) 2015/2205 should be amended to reflect the transition. Article 1 of the amending Regulation modifies Delegated Regulation (EU) 2015/2205 regarding interest rate derivative classes, in the following ways: (i) Article 3(1c) is added to specify the date from which the clearing obligation shall take effect for certain transactions referencing SOFR and TONA; and (ii) the annex is amended to reflect the deletion of old benchmarks and the introduction of new benchmarks. The Delegated Regulation is now with the EP and the Council of the EU for consideration.

Date of publication: 11/10/2023

ECB: Results of the September 2023 survey on credit terms and conditions in euro-denominated securities financing and OTC derivatives markets (SESFOD)

Status: Final

The ECB has published the results of the September 2023 Survey on credit terms and conditions in euro-denominated securities financing and OTC derivatives markets (SESFOD). It discovered that: (i) credit terms and conditions remained unchanged following nine consecutive survey rounds of reported tightening; (ii) maximum maturity of funding secured against government bonds for most-favoured clients increased; and (iii) demand for funding against covered bonds and high-quality corporate bonds increased.

Date of publication: 06/10/2023

ESRB: Letter on active account requirement under EMIR 3.0

Status: Final

The ESRB has published a letter sent to the EC on the proposal to introduce an active account requirement (AAR) in the EMIR 3.0 proposal. The ESRB concludes that, although an AAR can help build clearing capacity, it considers that an AAR on its own would probably not be sufficient to address the risks to financial stability that the ESRB has previously identified. The ESRB believes that if a quantitative AAR were established, its effectiveness in helping to build clearing capacity in the EU would depend on the types of trades that fall within the scope of the AAR and the threshold applied. The analysis performed by the ESRB for euro-denominated interest rate derivatives indicates that if the proposed AAR were limited to new trades and exempted market-making and client clearing, then – even if it were combined with a high threshold – it might have little impact on its own in bringing clearing volumes for these instruments to EU CCPs and building clearing capacity in the EU. In addition, the introduction of the AAR would need to be accompanied by market developments such as an expansion in the range of services offered by EU CCPs. More fundamentally, if the AAR focuses on the number or notional amounts of trades, rather than the exposures associated with the trades, its introduction may not result in a reduction in EU clearing members' and clients' exposures to the clearing services provided by UK CCPs that the ESRB has deemed to be of substantial systemic importance.

Date of publication: 05/10/2023

ESRB: Response to ESMA's final report on extending emergency measures on CCP collateral requirements

Status: Final

The ESRB has responded to ESMA's final report setting out its proposal to extend emergency measures on CCP collateral requirements. The ESRB supports the proposal, based on: (i) the findings for ESMA's recent report, which did not find any evidence that the measures have created unmanageable risks for CCPs and the EU financial system as the risk management safeguards of the CCP and all other applicable collateral requirements continue to apply; (ii) there is a potential increase in

volatility in energy markets in the coming winter months; and (iii) the ongoing negotiations to review the regulatory framework applicable to EU CCPs. The ESRB maintains its views communicated in its previous response when the emergency measures were first implemented, including that it should be a temporary measure.

Date of publication: 02/10/2023

3.3 Clearing, settlement, and CCPs related rules other than in the context of derivatives

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing the CCPRRR with regard to RTS specifying the minimum elements to be included in a business reorganisation plan and the criteria to be fulfilled for its approval by the resolution authority

Status: Draft

The EC has published a Commission Delegated Regulation supplementing the CCPRRR with regard to RTS specifying the minimum elements to be included in a business reorganisation plan and the criteria to be fulfilled for its approval by the resolution authority. This Delegated act sets out the content of the business reorganisation plan submitted by the CCP within one month after the resolution authority applied the write-down and conversion tool in accordance with Article 32 of the CCPRRR.

Date of publication: 26/10/2023

4. Anti-money laundering

(i) Germany

BReg: Government draft on the law improving the fight against financial crime (*Regierungsentwurf des Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität – FKBG*)

Status: Draft

The German government has published a draft on the law improving the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz – FKBG*). The draft law particularly contains the essential regulations for the establishment of the new Federal Office to Combat Financial Crime (*Bundesamt zur Bekämpfung von Finanzkriminalität – BBF*), its tasks and powers, as well as necessary technical legal adjustments on money laundering supervision and sanctions. In addition, the draft contains regulations for the establishment of a real estate transaction register.

Date of publication: 11/10/2023

(ii) International

FATF: Consultation on risk-based Guidance on Recommendation 25

Status: Consultation

Deadline for the submission of comments: 08/12/2023

The FATF has launched a consultation on risk-based Guidance on Recommendation 25, following the adoption of this Recommendation at the February 2023 Plenary. The FATF now welcomes comments to its updated risk-based Guidance to Recommendation 25 on beneficial ownership and transparency of legal arrangements.

Date of publication: 31/10/2023

FATF: Report on crowdfunding for terrorism financing

Status: Final

The FATF has published a report on crowdfunding for terrorism financing, analysing how terrorists misuse crowdfunding platforms. The report, which draws on experiences from the FATF Global Network, industry experts, academia and civil society examines the challenges faced in detecting and preventing terrorist financing through the crowdfunding ecosphere. Challenges include the complexity of crowdfunding operations, the use of anonymising techniques, and lack of training and terrorist financing expertise within the crowdfunding industry to detect suspicious activity. The report highlights good practices, starting with the inclusion of crowdfunding in national terrorist financing risk assessments, outreach to the crowdfunding sector, and strong domestic and international information sharing mechanisms.

Date of publication: 31/10/2023

FATF: High-Risk Jurisdictions subject to a Call for Action

Status: Final

The FATF has published a report on high-risk jurisdictions subject to a Call for Action. They have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the “black list”. Since February 2020, in light of the COVID-19 pandemic, the FATF has paused the review process for Iran and DPRK, given that they are already subject to the FATF’s call for countermeasures. Iran reported

in July 2023 with no material changes in the status of its action plan. Thus, the FATF reiterates its call to apply countermeasures on these high-risk jurisdictions included in its 21 February 2020 statement.

Date of publication: 27/10/2023

FATF: Jurisdictions under increased monitoring

Status: Final

The FATF has published a report on jurisdictions under increased monitoring. The jurisdictions are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the “grey list”.

Date of publication: 27/10/2023



5. Payments

5.1 Payment services/E-money

(i) Germany

BaFin: Consultation 12/23 of a form that payment service providers can use for reporting in accordance with Section 53(2) ZAG (*Konsultation 12/23 eines Formulars, das Zahlungsdienstleister für die Meldung nach § 53 Absatz 2 ZAG nutzen können*)

Status: Consultation

Deadline for the submission of comments: 23/11/2023

BaFin has published a consultation of a form that payment service providers can use for reporting in accordance with Section 53(2) of the German Payment Services Oversight Act (*Zahlungsdienstleistungsaufsichtsgesetz – ZAG*). This Section requires payment service providers to carry out a yearly comprehensive assessment of the operational and security-related risks in connection with the payment services it provides and with regard to the appropriateness of the risk reduction measures and control mechanisms that it has taken to control these risks. The consultation aims to support payment service providers in fulfilling this reporting obligation without containing any new regulatory requirements. For this purpose, the form should be used by payment service providers for the first time by 31 August 2024 and then annually to transmit the required information.

Date of publication: 10/10/2023

(ii) International

CPMI: Report on considerations for the use of stablecoin arrangements in cross-border payments

Status: Final

The BCBS has published a report by the CPMI on considerations for the use of stablecoin arrangements in cross-border payments. The report discusses key features of stablecoin arrangements that are relevant from the perspective of cross-border payments. It also highlights a range of relevant considerations and challenges and analyses how stablecoin arrangements might interact and coexist with other payment methods. The report evaluates the potential impact of their use on the monetary policy, financial stability and payment functions of central banks. Throughout the report it acknowledges the importance of jurisdictional differences regarding regulatory frameworks and macroeconomic conditions.

Date of publication: 31/10/2023

CPMI: Interim report on linking fast payment systems across borders

Status: Consultation

Deadline for the submission of comments: 13/12/2023

The CPMI has published an interim report on linking fast payment systems (FPS) across borders which sets out considerations for governance and oversight. The interim report describes ten initial considerations resulting from a series of workshops with global stakeholders that was undertaken by the CPMI to better understand the sensitivities, complexities, and experiences in this area. The considerations can be grouped into three categories: (i) considerations 1–2 relate to the initial structural conditions that appear to create favourable conditions for effective governance. This includes strategic alignment of the involved jurisdictions and agreement on the objectives and vision of the arrangement; (ii) considerations 3–6 discuss insights related to specific governance design considerations and priorities that stakeholders have viewed as important for the coherence, scalability, business viability and inclusiveness of an FPS interlinking arrangement; and (iii) considerations 7–10 address what the special characteristics of FPS interlinking arrangements imply for the design and conduct of oversight in a multi-jurisdictional context.

The CPMI intends to deliver a final report by end-2024.

Date of publication: 18/10/2023

CPMI: Report on harmonised ISO 20022 data requirements for enhancing cross-border payments

Status: Final

The CPMI has published its report on harmonised data requirements for the use of ISO 20022 messages in cross-border payments. The 12 data requirements are presented as overarching data requirements across a core set of ISO 20022 messages, complementing existing market usage Guidelines, with the aim of ensuring that the benefits of ISO 20022 can be realised to the maximum possible extent for cross-border payments. As such, they represent ISO 20022 data use practices that, when applied consistently, will improve the efficiency (i.e. straight-through processing) of cross-border payments. The CPMI requirements are set for end of 2027 with a two-year transition period between 2025 and 2027 (during which the requirements can be treated as recommendations).

Date of publication: 17/10/2023

FSB: Two annual reports on cross-border payments

Status: Final

The FSB has published its 2023 consolidated report on progress made on priority actions to meet the G20 cross-border payments roadmap targets. The report sets out the key insights from the KPIs monitoring report that was published alongside the progress report. The FSB explains that there are signs of progress, and the KPIs provide some clear indications of where investment and actions by the public and private sector could make the most significant contribution to achieving the targets. The FSB also notes that good progress has been made on structures to encourage and facilitate the necessary action by both the public and private sectors, although the FSB emphasises that there is a considerable distance to go and more needs to be done across all of the key areas for action. In order to achieve the targets, the FSB advises collaboration and engagement between and beyond the G20, believing that if the public and private sectors work together, the roadmap goals can be achieved and the benefits realised.

- [Consolidated progress report 2023 on G20 roadmap for enhancing cross-border payments](#)
- [2023 report on key performance indicators on meeting the targets for cross-border payments](#)

Date of publication: 09/10/2023

6. Institutional supervisory framework

(i) EU

EC: 2024 Work Programme

Status: Final

The EC has published its 2024 Work Programme. The EC sets out a number of proposals (many of which we cover elsewhere in this update) to rationalise reporting requirements that it has either adopted with the work programme or will adopt subsequently, including: (i) a Regulation to facilitate data sharing and re-use by financial sector authorities; (ii) a Regulation amending the BMR as regards its scope, the use of third-country benchmarks and certain reporting requirements; (iii) a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and certain third-country undertakings; (iv) a Delegated Directive adjusting the size criteria for companies under the Accounting Directive; and (v) a Directive amending the Alternative Dispute Resolution Directive to reduce current reporting requirements.

The EC sets out the most significant REFIT evaluations and fitness checks that it will undertake in 2024, including a fitness check of EU consumer law on digital fairness which will: (a) evaluate the Unfair Commercial Practices Directive, the Consumer Rights Directive, and the Unfair Contracts Terms Directive; and (b) examine the adequacy of the existing EU rules in dealing with consumer protection issues such as, but not limited to, online consumer vulnerabilities, dark patterns, personalisation practices, influencer marketing, and subscription contracts. The EC also sets out a number of pending proposals on which it wants the Council of the EU and the EP to reach an agreement.

Date of publication: 17/10/2023

EC: Proposal for a Regulation amending ESAs and ESRB Regulations to facilitate data sharing and re-use by financial sector authorities

Status: Draft

The EC has adopted a proposed Regulation amending the ESRB Regulation, EBA Regulation, EIOPA Regulation, ESMA Regulation and InvestEU Regulation as regards certain reporting requirements and investment support. The proposal aims to: (i) facilitate the sharing of reported data between national and EU authorities where both authorities already have the right to collect the data. This is done in order to avoid duplicative requests to reporting entities and also to facilitate the sharing of clean or processed versions of such data; (ii) explicitly require authorities to regularly review reporting requirements, remove any redundant or obsolete ones, and keep the reporting burden to a minimum, as well as to consider reusing existing data before introducing new requirements; and (iii) allow, under strict confidentiality and data protection conditions, the sharing of data held by authorities with financial institutions, researchers, and other entities, for research and innovation purposes.

The proposed Regulation will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 17/10/2023

ESAs: 2024 Work Programme

Status: Final

The Joint Committee of the ESAs has published its 2024 Work Programme. The Joint Committee's priority areas include: (i) financial stability – the Joint Committee will continue to develop cross-sectoral Risk Reports and provide updates of its assessment to the Financial Stability Table of the Economic and Financial Committee in spring and autumn 2024; (ii) sustainable finance – the Joint Committee may be required to contribute more guidance, including through Q&As, for sustainability disclosures under the SFDR and the Taxonomy Regulation. The ESAs may also take up their optional empowerment to develop draft ITS on marketing information under Article 13 of the SFDR. The ESAs will carry out a one-off system-wide climate risk stress test and develop Guidelines for supervisors on ESG stress testing. By May 2024, the ESAs will deliver their final reports on greenwashing to the EC; and (iii) DORA – the ESAs will strive to deliver DORA-related policy mandates in January and July 2024. The ESAs will work together on various provisions of DORA for which they will have responsibilities, to be ready for the implementation of the new framework by 2025: the EU-wide Oversight Framework of ICT Critical Third-Party Providers,

potential cooperation mechanisms (e.g. development of an EU systemic cyber incident coordination framework and promoting supervisory convergence). The ESAs will develop the necessary IT systems, in particular to support the direct DORA oversight tasks.

Date of publication: 04/10/2023

EBA: Work Programme 2024

Status: Final

The EBA has published its annual work programme for 2024. The ongoing implementation of the EU banking package (CRR III / CRD VI) will represent an important part of the EBA's work. Quantifying and assessing evolving risks in the financial sector will also require running regular analyses and refining key risk metrics and tools, for instance through advanced stress-testing approaches. In that regard, the impact on the European financial sector of a tightening of financial conditions and of rising geopolitical tensions observed since 2022 will require special attention. Finally, contributing to an orderly environmental transition and embedding innovation in the financial sector will be no less demanding. The EBA will continue to prepare for structural changes to its role: (i) with EIOPA and ESMA, it will keep devising a joint oversight regime for critical third-party IT service providers which should enter into force in January 2025 under DORA; (ii) it will build up capacity to be in a position to supervise significant crypto-asset providers by the same time horizon under MiCA; and (iii) it will complete its work in the area of AML-CFT and support the transition to a new EU framework and authority (AMLA).

Date of publication: 03/10/2023

(ii) International

Joint EU-UK Financial Regulatory Forum publishes joint statement

Status: Final

The Joint EU-UK Financial Regulatory Forum has published a policy paper setting out a joint statement from HMT and the EC on what was covered at the first EU-UK Financial Regulatory Forum held on 19 October. The forum was established following the signing of the UK-EU Memorandum of Understanding on Financial Services Cooperation on 27 June (MoU). As it was the forum's first meeting, participants provided views on the organisational aspects and practical arrangements for the future of regulatory cooperation under the MoU, including how the forum could be used to exchange views on subjects including: financial stability risks; implementation of relevant international regulatory standards in the financial services sector; regulatory developments in financial services; and the respective policies, rules and processes concerning deference regimes, such as equivalence, or other tools used to address cross-border issues; and efforts to prevent and combat money laundering and terrorist financing.

Other topics of discussion include: (i) addressing vulnerabilities in NBFIs, participants agreed that in order to address vulnerabilities in NBFIs and enhance the resilience of the sector, it is critical to finalise and implement international reforms. Participants shared their respective positions on the ongoing FSB work aiming to promote the implementation of the FSB MMFs policy proposals and addressing structural liquidity mismatches in OEFs; (ii) digital finance, the UK and EU provided updates on developments concerning crypto-assets, stablecoins, and retail CBDCs in particular on their respective legal and regulatory frameworks. Participants noted the importance of jurisdictions implementing the FSB's high-level recommendations on crypto-asset activities and stablecoins; and (iii) sustainable finance, participants discussed how best to progress multilateral efforts to support an orderly transition to net zero, including participation in the G20 Sustainable Finance Working Group, among other fora. The next meeting of the forum is expected to take place in spring 2024.

Date of publication: 23/10/2023

FSB: Annual report on promoting global financial stability 2023

Status: Final

The FSB has published its annual report describing its work to promote global financial stability. The report looks back at the banking turmoil in March, and notes that decisive actions taken by the relevant authorities and the implemented Basel III reforms helped shield the sector and real economy from a more severe crisis. The report also provides an overview of the FSB's work on current and emerging vulnerabilities, including: (i) the finalisation of a global regulatory framework for crypto-assets; (ii) work to address systemic risk in non-bank financial intermediation; (iii) the development of a global standard for financial

resources and tools to support resolution of systemically important central counterparties; (iv) work under the FSB Roadmap for Addressing Climate-related Financial Risks; (v) work to achieve greater convergence in cyber incident reporting and the development of a policy toolkit for authorities, financial institutions and service providers for their third-party risk management and oversight; and (vi) work to enhance cross-border payments through practical projects, including strengthened partnerships with the private sector. The report finds that progress in implementing the G20 reforms continues but remains uneven. It emphasises that developments over the past year reinforce the importance of global regulatory cooperation, including the completion of the post-crisis reform agenda with G20 support. The FSB and standard-setting bodies will continue to promote approaches to deepen international cooperation, coordination, and information sharing.

Date of publication: 11/10/2023

BCBS: October 2023 meeting

Status: Final

The BCBS has summarised the topics discussed at its meeting on 4-5 October to take stock of recent market developments and risks to the global banking system, and to discuss a range of policy and supervisory initiatives: (i) risks and vulnerabilities to the global banking system – the BCBS will publish a supervisory newsletter in due course on the adoption of its Principles for operational resilience and Principles for the sound management of operational risk; (ii) report on 2023 banking turmoil (we cover this report in a separate item below); (iii) global systemically important banks – the BCBS approved the results of the 2023 annual assessment which will be submitted to the FSB before the list is published; (iv) climate-related financial risks – the BCBS will consult on a Pillar 3 disclosure framework for bank exposures to climate-related financial risks by November; (v) crypto-assets – the BCBS will soon consult on a set of disclosure requirements related to banks' crypto-asset exposures; and (vi) digitalisation of finance – by mid-2024, the BCBS will publish a report on developments in the digitalisation of finance and their implications for banks and supervisors.

Date of publication: 05/10/2023

7. Special topics

7.1 FinTech/Digital finance

(i) Germany

BMF: Draft law on the digitalisation of the financial market (*Entwurf eines Gesetzes über die Digitalisierung des Finanzmarktes – FinmadiG*)

Status: Final

The German Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft law on the digitalisation of the financial market (*Finanzmarktdigitalisierungsgesetz* – FinmadiG). The draft law is intended to incorporate the MiCA Regulation, the new version of the Transfer of Funds Regulation and carry out or implement the DORA package summarised in a FinmadiG. The MiCA Regulation establishes an independent and innovative European regulatory framework for markets for crypto-assets, which replaces the previous national framework for the regulation of crypto-assets. The draft law stipulates that the MiCA regulation can be implemented in Germany by means of a new Crypto Market Supervision Act (*Kryptomärkteaufsichtsgesetz* – KMAG). It bundles the supervisory powers of BaFin over crypto-assets and crypto-asset service providers in one law.

We can provide you with Delta Views/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide Delta Views of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 23/10/2023

BaFin: Website monitoring FAQ on DORA

Status: Final

BaFin has launched a website compiling and monitoring FAQ on the Digital Operational Resilience Act (DORA). This Regulation aims to harmonise rules on cybersecurity, information and communications technology (ICT) risks and digital operational resilience across the financial sector, thus contributing significantly to strengthening the European financial market against cyber risks and ICT incidents. The website includes an overview of DORA as well as updates on the current state of consultations conducted by the ESAs relating to DORA.

Date of publication: 12/10/2023

(ii) EU

EBA/ESMA: Consultation on draft Guidelines on the suitability assessment of members of management body of issuers of ARTs and CASPs, and of shareholders and members, whether direct or indirect, with qualifying holdings in issuers of ARTs and CASPs

Status: Consultation

Deadline for the submission of comments: 22/01/2024

The EBA and ESMA have launched a consultation on two draft Joint Guidelines covering a suitability assessment of members of the management body, and the suitability of shareholders and members with qualifying holdings of issuers of asset-referenced tokens (ARTs) and of crypto-asset service providers (CASPs). The Guidelines aim to provide clarity and harmonisation with respect to the criteria used to assess the suitability of the management body, the shareholders and members with qualifying holdings, in turn reducing the risk of arbitrage in the application of the rules. ESMA and the EBA explain that in order to foster and protect the integrity of the market in crypto-assets and related services and to promote trust, it is important to ensure that the members of the management body of issuers of ARTs and CASPs as well as the persons that hold or wish to acquire qualifying holdings in them are suitable. The draft joint Guidelines on the suitability assessment of the members of the management body of issuers of ARTs and CASPs provide common criteria to assess the appropriate knowledge, skills and experience of members of the management body as well as their good reputation, honesty and integrity and if they are able to

commit sufficient time to perform their duties. The draft Joint Guidelines on the suitability assessment of shareholders or members, whether direct or indirect, with qualifying holdings in issuers of ARTs or CASPs, provide competent authorities with a common methodology to assess the suitability of the shareholders and members with direct or indirect qualifying holdings for purposes of granting authorisation as issuers of ARTs or CASPs, and for carrying out the prudential assessment of proposed acquisitions.

Date of publication: 20/10/2023

EBA: Consultation on Guidelines and RTS under MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 22/01/2024

The EBA has launched a consultation on a set of Guidelines and two RTS under the MiCA Regulation: (i) a draft RTS on the minimum content of the governance arrangements on the remuneration policy – sets out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy's elements that should be adopted; (ii) draft Guidelines on the minimum content of the governance arrangements for issuers of the asset-referenced tokens (ARTs) – it covers: (a) the tasks and responsibilities of the management body as well as the organisation of issuers of ARTs; (b) how issuers of ARTs should identify sources of operational risk and minimise those risks through the development of appropriate systems, controls, and procedures; (c) the arrangements to be put in place when relying on third-party entities for operating the reserve of assets, for the investment of the reserve assets, the custody of the reserve assets and, where applicable, the distribution of the ARTs to the public; and (d) the establishment of business continuity plans; and (iii) a draft RTS on the approval process for white papers of ARTs issued by credit institutions – it covers: (1) the submission of an application for approval of a crypto-asset white paper; (2) the acknowledgment of the receipt and processing for approval of a white paper; (3) the assessment of completeness of the white paper and request for missing information in the white paper; (4) the information exchange between the competent authority and the ECB or other central bank, where applicable; (5) the assessment in the absence of the ECB's or another central bank's opinion and request for changes in the white paper; and (6) the approval of the white paper.

- [Consultation on draft Guidelines on the minimum content of the governance arrangements for issuers of ARTs](#)
- [Consultation on draft RTS the minimum content of the governance arrangements on the remuneration policy under Article 45 MiCA Regulation](#)
- [Consultation on draft RTS on the approval process for white papers for ARTs issued by credit institutions under Article 17\(8\) MiCA Regulation](#)

Date of publication: 20/10/2023

ECB: Launch of the preparation phase of the Digital Euro Project

Status: Final

The ECB has published its decision to launch the preparation phase of the Digital Euro Project. This decision follows the completion of the investigation phase launched by the Eurosystem in October 2021 to explore possible design and distribution models for a digital euro. Based on the findings from this phase, detailed in a report published today, the ECB has designed a digital euro that would be widely accessible to citizens and businesses through distribution by supervised intermediaries, such as banks.

Date of publication: 18/10/2023

ESMA: Letter on effective application of the MiCA Regulation

Status: Final

ESMA has published a letter, addressed to the Economic and Financial Affairs Council (ECOFIN), calling on Member States to, among other things: (i) designate without delay the NCAs responsible for carrying out the functions and duties provided for under MiCAR; (ii) establish as early as possible their supervisory procedures related to the authorisation regimes set out in MiCAR, including simplified authorisation procedures for entities already authorised to provide crypto-asset services under national law; and (iii) consider limiting the optional grand-fathering period to 12 months for entities already providing crypto-asset services, should they choose to offer it in their jurisdictions.

Date of publication: 17/10/2023

ESMA: Statement on timeline for MiCA and encouragement of market participants and NCAs to start preparing for the transition

Status: Final

ESMA has published a statement, addressed to entities providing crypto-asset services and the NCAs that will be responsible for their supervision, setting out some expectations for each entity from now until the end of the MiCAR transitional period. Points of interest include: (a) ESMA highlights the importance for holders of crypto-assets and current or prospective clients of crypto-asset services in the EU being aware that in addition to the risks inherent to crypto-assets, MiCAR rules on the provision of crypto-asset services will not enter into application until December 2024; (b) NCAs are encouraged to dedicate resources and align their supervisory practices with those of their counterparts across the EU to begin effective supervision from day one; (c) market participants are encouraged to begin planning towards a smooth transition and to clarify to clients the regulatory status of their 'grand-fathered' crypto-asset offerings; and (d) ESMA emphasises that the reverse solicitation exemption in MiCAR is to be understood as very narrowly framed and cannot be used to circumvent MiCAR.

Date of publication: 17/10/2023

ESMA: Speech on being ready for the digital age

Status: Final

ESMA has published a speech by Verena Ross, ESMA Chair, on ESMA's strategic initiatives in the technology and data domain. Points of interest include: (i) data-driven supervision – ESMA wishes to further strengthen its cooperation with and amongst NCAs, with common tools and methodologies. It is starting two AI-related projects with NCAs in relation to monitoring market abuse and using Natural Language Processing tools to scan investment funds' public disclosures to spot potential bad practices such as greenwashing. ESMA also intends to share its Data Platform with NCAs; (ii) MiCAR and DLT Pilot Regime – these developments provide the opportunity to explore more efficient ways to monitor markets. ESMA has launched two studies to support NCAs: one to understand the specificities of different DLT and blockchain solutions, and another, in the context of MiCAR, to explore further integrating monitoring of crypto markets at EU level. Due to MiCAR specificities and the different technologies underpinning crypto markets, the method for accessing and analysing data for market monitoring differs from the current approach under MiFIR and MAR. Therefore, NCAs will not be able to rely on existing processes and a new approach should be developed for the monitoring of crypto-assets under MiCAR; and (iii) shortening the EU settlement cycle – Ms Ross highlights two considerations that must be balanced as the work in this area develops: that EU markets remain stable and that they remain efficient and competitive globally.

Date of publication: 17/10/2023

ESMA: Two articles on decentralised finance

Status: Final

The ESMA has published two articles on decentralised finance (DeFi), highlighting important risks to consumers, new forms of market abuse, and possible vulnerabilities to financial stability. The article on developments and risks in the EU market shows that DeFi raises serious risks to investor protection, because of the highly speculative nature of many DeFi arrangements and important operational and security vulnerabilities. Risks to financial stability are not meaningful at this point owing to DeFi's small size but they require monitoring. In addition, DeFi's unique features have led to new market manipulation issues that need to be addressed.

The article on a methodology for the categorisation of smart contracts introduces a methodology for the categorisation of smart contracts which leverages on the latter's source code and on topic modelling. It explores the rate of deployment of smart contracts belonging to the identified categories over time, contributing to an enhanced and nuanced understanding of DeFi and also to identifying related significant risks.

- [Developments and risks](#)
- [A categorisation of smart contracts](#)

Date of publication: 11/10/2023

ESMA: Two reports on the DLT Pilot Regime

Status: Final

ESMA has published two reports on the DLT Pilot Regime with regard to transaction reporting. The study on extraction of transaction data looks at approaches to extract data from the three DLTs analysed. The report outlines potential architectural designs for extraction of all relevant details of financial instrument transactions processed by DLT market infrastructures to provide regulators with all required details. It therefore explores the file-based approach, the API-based approach and the approach in where regulators obtain native access to each DLT and DLT network.

The study on how financial instrument transactions are registered in various DLTs outlines the necessary background regarding the DLTs, considering certain specificities and appropriate use cases. The report dives into what constitutes a transaction on a DLT and bridges the gap to the definition of a transaction under Article 2, Paragraphs 2(a) and 3(a) of the RTS 22. It also explores the native fields produced as part of a DLT transaction, based on which a gap analysis is conducted. The gap analysis is made between the natively present fields of a DLT transaction and those fields to be reported under Article 26 of MiFIR. Lastly, suggestions are made regarding DLT transaction fields that could be of relevance to a regulator and are not yet captured by the RTS 22 transaction reporting schema.

- [Study on extraction of transaction data](#)
- [Study on how financial instrument transactions are registered in various DLTs](#)

Date of publication: 05/10/2023

ESMA: Consultation on technical standards specifying certain requirements of MiCA

Status: Consultation

Deadline for the submission of comments: 14/12/2023

ESMA has launched a consultation on the second package of technical standards supplementing MiCA, which includes six draft RTS and two draft ITS on: (i) content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment (RTS); (ii) measures that crypto-asset service providers must take to ensure continuity and regularity in the performance of services (RTS); (iii) pre- and post-trade transparency data to be made public (RTS); (iv) content and format of order book records (RTS); (v) record-keeping by crypto-asset service providers (RTS); (vi) data necessary for the classification of white papers (RTS); (vii) standard forms and templates for the crypto-asset white paper (ITS); and (viii) technical means for appropriate public disclosure of inside information (ITS). The deadline for comments is 14 December. ESMA then expects to publish a final report and submit the draft technical standards to the EC for endorsement by June 2024. In order to allow market participants to familiarise themselves with Inline XBRL, ESMA has made available a Proof of Concept illustrating a concrete application of the proposed format requirements included in the draft ITS on forms, formats and templates for the crypto-asset white papers. ESMA will publish a third consultation package with the remaining 18-month mandates in Q1 2024.

Date of publication: 05/10/2023

EC: Commission Delegated Regulation (EU) .../... supplementing Regulation (EU) 2020/1503 with regard to RTS specifying requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing the Crowdfunding Regulation with regard to RTS specifying requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures. The RTS specifies: (i) the information that crowdfunding service providers must disclose to investors about the methods used to calculate the credit score for crowdfunding projects and to suggest the price for crowdfunding offers; (ii) the factors that crowdfunding service providers must consider to ensure fair and appropriate pricing of the loans they facilitate on their platforms; (iii) the governance arrangements that crowdfunding service providers must have in place to support information disclosure to investors, credit risk assessment and loan valuation and the risk management framework; and (iv) the information and factors that crowdfunding service providers must consider when: (a) assessing the credit risk for a crowdfunding project or project owner; and (b) conducting a loan valuation at different points in the life cycle of the loan.

Date of publication: 29/09/2023

(iii) International

BCBS: Consultation on disclosure of crypto-asset exposures

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The BCBS has launched a consultation on a set of standardised disclosure templates to support banks in meeting the prudential requirements to disclose their exposures to crypto-assets that will apply from 1 January 2025. For more information, please see section 1.1(e) above.

Date of publication: 17/10/2023

7.2 AI

(i) EU

EC: G7 leaders' agreement on guiding principles and a code of conduct on AI

Status: Final

The EC has published an agreement by G7 leaders on International Guiding Principles on AI and a voluntary Code of Conduct for AI developers under the Hiroshima AI process. These principles and the voluntary Code of Conduct will complement, at an international level, the legally binding rules that the EU co-legislators are currently finalising under the EU AI Act.

- [G7 Leaders' Statement on the Hiroshima AI Process](#)
- [Hiroshima Process International Guiding Principles for Advanced AI system](#)
- [Hiroshima Process International Code of Conduct for Advanced AI Systems](#)

Date of publication: 30/10/2023

7.3 Sustainable finance

(i) EU

ESMA: Report on disclosures of climate-related matters in the financial statements

Status: Final

ESMA has published a report on disclosures of climate-related matters in financial statements. The report aims to assist and to enhance the ability of issuers to provide more robust disclosures and create more consistency in how climate-related matters are accounted for in financial statements drawn up in accordance with IFRS. However, ESMA points out that the report does not set out best practices or prescribe the way in which the disclosure of climate-related matters should be made in the financial statements. The first three sections of the report outline the background, objectives as well as the scope and methodology. The report then focuses on topics for which it is likely that climate-related matters have a higher impact. In doing so, ESMA highlights, in each example, key aspects and provides insights that explain why such disclosures may be useful to users of financial statements. Finally, each section includes ESMA's observations on areas of continued focus. ESMA expects issuers and auditors to consider the illustrative examples of this report when considering how to assess and disclose the degree to which climate-related matters play a role in the preparation and auditing of IFRS financial statements. ESMA also stresses that the guidance addressing climate impacts is not exhaustive and is developing at a fast pace. Issuers should closely follow the developments of standard setters in this area, and their connection with sustainability reporting.

Date of publication: 25/10/2023

ESMA: Summary of findings from a fact-finding exercise on corporate reporting practices under the Taxonomy Regulation

Status: Final

ESMA has published a summary of findings from its fact-finding exercise on corporate reporting practices under the Taxonomy Regulation. As part of its objective to coordinate European supervision and enforcement activities related to disclosures under the Taxonomy Regulation, ESMA has collected information from national enforcers with respect to the Fiscal Year 2022 non-financial statements published by European non-financial undertakings listed in regulated markets. The focus of this fact-finding exercise was to evaluate the quality of the disclosures with which issuers have responded to the new requirements. Key findings include: (i) almost all issuers, selected by the national enforcers from those active in the four main sectors covered by the Taxonomy Climate Delegated Act, disclosed the required Taxonomy alignment KPIs; (ii) the reporting templates have generally been used, but for 30% of the sample they were either modified or not fully completed, which may impact comparability and make access to the data more difficult for users; and (iii) at least some of the mandatory qualitative information regarding the issuers' assessment of their compliance with transparency requirements in relation to the nature of their activities, the technical screening criteria, the Do No Significant Harm criteria, and the minimum safeguards, was missing or insufficient for more than 40% of the assessed issuers. In addition, only 40% of the sample provided comments on their eligibility or alignment rates.

Going forward, ESMA may conduct further analysis on the areas of the reporting for which more clarity is necessary or for which material incorrect application has been identified.

Date of publication: 25/10/2023

Council of the EU: Adoption of a new regulation to promote sustainable finance

Status: Adopted by the Council of the EU

The Council of the EU has announced that it has adopted a regulation creating a European green bond standard. The regulation lays down uniform requirements for issuers of bonds that wish to use the designation 'European green bond' or 'EuGB'. European green bonds will be aligned with the EU taxonomy for sustainable activities and made available to investors globally. The Council explains that the regulation is a further step in implementing the EU's strategy on financing sustainable growth and the transition to a climate-neutral, resource-efficient economy. It believes that the new standard will foster consistency and comparability in the green bond market, benefitting both issuers and investors of green bonds, as the regulation establishes a registration system and supervisory framework for external reviewers of European green bonds. In the hope of preventing greenwashing in the green bonds market in general, the regulation also provides for some voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU.

The regulation was adopted by the EP on 5 October, it will now be signed and published in the OJ, entering into force on the twentieth day following its publication. It will start applying 12 months after its entry into force.

Date of publication: 24/10/2023

EC: Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objectives

Status: Published in the OJ

The interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objectives have been published in the OJ. The notice contains responses to FAQs relating to the Taxonomy Regulation.

Date of publication: 20/10/2023

EC: Notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets

Status: Published in the OJ

The interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets has been published in the OJ. The notice contains responses to FAQs relating to the Taxonomy Regulation.

Date of publication: 20/10/2023

EC: Commission Delegated Directive (EU) .../... amending the Accounting Directive as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups

Status: Adoption by the EC

The EC has adopted a Delegated Directive amending the Accounting Directive as regards the adjustments of the size criteria for micro, small, medium-sized and large companies. The Delegated Directive aims to rationalise the reporting obligations by adjusting the monetary thresholds for the categorisation of companies by 25% to take account of inflation. Member States are expected to apply the new thresholds at the latest from financial year 2024, with the possibility to opt for early application for financial year 2023.

The proposed Directive will enter into force three days after its publication in the OJ.

Date of publication: 17/10/2023

EC: Adoption of a proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings

Status: Adopted by the EC

The EC has adopted a proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings. The Accounting Directive as amended by the Corporate Sustainability Reporting Directive requires in-scope companies to disclose information on a broad range of sustainability matters relevant to their businesses, which must be reported in accordance with European sustainability reporting standards (ESRS). The Accounting Directive currently sets the adoption date of the sector specific ESRS by 30 June 2024. This proposal seeks to delay this date by two years, to allow companies to focus on the implementation of the first set of ESRS that are sector-agnostic. It also, as a result, seeks to delay the date for the ESRS to be used by certain non-EU companies by two years.

The proposed decision will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 17/10/2023

EC/Platform on Sustainable Finance: Launch of stakeholder request mechanism under EU taxonomy

Status: Consultation

Deadline for the submission of comments: 15/12/2023

The EC and the Platform on Sustainable Finance has launched the stakeholder request mechanism relating to the EU Taxonomy Regulation. The mechanism allows stakeholders to submit suggestions based on scientific and/or technical evidence on new economic activities that could be added to the EU taxonomy or on potential revisions of technical screening criteria of existing activities. The stakeholder request mechanism will be continuously running, allowing respondents to submit their input at any given time. On 15 December, all requests will be processed by the Platform's Technical Working Group. After 15 December, the tool will continue to run, and a second cut-off date will be communicated as soon as possible. The EC and the Platform on Sustainable Finance will regularly monitor the tool.

Date of publication: 17/10/2023

EBA: Report on the role of environmental and social risks in the prudential framework

Status: Final

The EBA has published a report on the role of environmental and social risks in the prudential framework. The report recommends targeted enhancements to accelerate the integration of such risks across the Pillar 1 framework. The aim is to support the transition towards a more sustainable economy while ensuring that the banking sector remains resilient. The report also develops considerations on the potential use of macro-prudential tools. The EBA explains that due to challenges in terms of design, calibration, and complex interaction with the existing Pillar 1 framework, it does not support the introduction of a green supporting factor or a brown penalising factor. As such, the EBA puts forward recommendations for short-term actions to be taken over the next three years as part of the implementation of CRR3 and CRD6. In particular, the EBA is proposing to: (i) include environmental risks as part of stress-testing programmes under both the IRB and the IMA under the Fundamental Review of the Trading Book; (ii) encourage inclusion of environmental and social factors as part of external credit assessments by credit rating agencies; and (iii) require institutions to identify whether environmental and social factors constitute triggers of operational risk losses. The report also presents possible revisions of the Pillar 1 framework reflecting the growing importance of environmental and social risks.

Date of publication: 12/10/2023

EC: Speech on the SFDR

Status: Final

The EC has published a speech by Mairead McGuinness, European Commissioner for financial stability, financial services, and the capital markets union, on the SFDR. In her speech, Ms McGuinness explains that the EU has in place the core building blocks of its sustainable finance framework and is now monitoring how these tools are being used and where some adjustments may be necessary. Ms McGuinness notes that sustainable finance is a relatively new area and, as such, the EU is learning by doing. The EC can see that there are many positives to how the SFDR is working, however some problems still remain. For example, Ms McGuinness points to how the Regulation was designed in the interests of transparency, but in practice it is being used as a labelling scheme. A further issue is how the Regulation links to other parts of the sustainable finance framework and EU financial regulation as a whole. Ms McGuinness explains that this is why the EC decided to launch a comprehensive assessment of the SFDR on 14 September. Stakeholders should respond to those consultations so that the EC can create a representative picture of how the SFDR is working in practice.

Date of publication: 10/10/2023

ECON: Draft report on the proposal for a regulation on the transparency and integrity of ESG rating activities

Status: Draft

The ECON has published a draft report on the proposal for a regulation on the transparency and integrity of ESG rating activities. The report sets out ECON's proposed amendments to the EP's draft legislative resolution, as well as an explanatory statement setting out its views on the proposed regulation. Suggested amendments include: (i) making the disclosure requirements more stringent and instructive, so that it is clear at all times what types of materiality are considered and whether the rating is referring to absolute or relative performance; (ii) strengthening provisions regarding conflicts of interest and authorisation and use of ratings from third countries; and (iii) improving the reliability of ESG ratings activities.

Date of publication: 10/10/2023

ESMA: Speech on ESAs work on financial education

Status: Final

ESMA has published a speech on financial education given by Verena Ross, ESMA Chair, at the joint ESA 2023 Consumer Protection Day. In the speech, Ms Ross explained that the ESAs have joined forces on the important consumer protection topic of financial education and have developed interactive factsheets directed to the consumers to educate them on the two key themes of inflation/rising interest rates and sustainable finance. Further, Ms Ross announced that in November, the ESAs, together with NCAs, will publish an interactive factsheet to contribute to financial education input on sustainable finance. The

factsheets will be available in all EU languages and will be proactively promoted at a national level. Ms Ross concluded her speech by noting that cross-selling, crypto-assets and greenwashing remain areas that consumers also need education on.

Date of publication: 09/10/2023

EP: Approval for the draft Regulation on an EU standard for 'green bonds'

Status: Draft

The EP has approved the EC proposal of a Regulation to create European Green Bonds. With this proposal, the EU aims to implement its strategy on financing sustainable growth and the transition to a climate-neutral, resource-efficient economy. In particular, it lays down uniform requirements for issuers of bonds that wish to use the designation 'European Green Bond' or 'EuGB' for their environmentally sustainable bonds made available to investors in the Union, and establishes a registration system and supervisory framework for external reviewers of European green bonds. Environmentally sustainable bonds are one of the main instruments for financing investments related to green technologies, energy efficiency and resource efficiency as well as sustainable transport infrastructure and research infrastructure.

Date of publication: 05/10/2023

ESMA: TRV Risk Analysis on ESG names and claims in the EU fund industry

Status: Final

ESMA has published a report on exploring the use of language related to ESG factors in EU investment fund names and documentation. ESMA constructed a comprehensive list of ESG words and phrases, against which the ESG-related language used by funds can be measured and compared. It then applied natural language processing techniques to several large text and numerical datasets spanning funds across the EU. The findings include that: (i) more and more funds include ESG terms in their names and, of the ESG terms included, funds prefer to include broad ESG terms; (ii) since mid-2017, numerous investment funds have changed their name to add ESG words; (iii) there is high and consistent investor appetite for funds with an ESG-related term in their name, relative to funds without any ESG words in their name; (iv) funds with ESG-related language in their name provide more extensive ESG disclosures (using additional words beyond the ones included in their name) in their investment strategy and key information document than other funds; and (v) funds that target retail investors appear to make additional ESG claims in the documents created specifically to enhance retail investors' understanding of the funds, but do not make particular efforts (relative to institutional funds) in documents that are not standardised and regulated. This suggests that fund managers adapt their communication strategies to the expected types of readers, highlighting the importance of ensuring consistency across different types of documentation. ESMA is holding a public webinar on the report and its findings on 18 October.

Date of publication: 02/10/2023

(ii) International

TCFD: 2023 financial status report

Status: Final

The TCFD has published its sixth and final status report. The report highlights steady momentum in companies disclosing TCFD-aligned information, but emphasises more progress is needed with disclosure levels still falling short. Other key findings include: (i) 97 of the 100 largest companies in the world have declared support for the TCFD, report in line with the TCFD recommendations, or both; (ii) disclosure of climate-related financial information in financial filings is limited; (iii) the majority of jurisdictions with final or proposed climate-related disclosure requirements specify that such disclosures be reported in financial filings or annual reports; and (iv) over 80% of the largest asset managers and 50% of the largest asset owners reported in line with at least one of the 11 recommended disclosures, while nearly 70% of the top 50 asset managers and 36% of the top 50 asset owners disclosed in line with at least five of the recommended disclosures.

The report also highlights areas that warrant continued focus or further work by the ISSB or other appropriate bodies, including: (a) ensuring interoperability of the ISSB Standards with jurisdictional frameworks to support consistent and non-duplicative reporting across jurisdictions; (b) developing implementation guidance on topics such as climate-related physical risk assessment and adaptation planning, climate-related scenario analysis, and Scope 3 GHG emissions measurement; (c) disclosure of companies' resilience strategies for different climate-related scenarios; (d) decision-useful disclosures on other sustainability

topics and the link between climate-related and other sustainability issues; and (e) continued focus on developing a consistent climate-related financial disclosure framework for use by different jurisdictions. The ISSB will monitor progress on the state of climate-related financial disclosures by companies as of next year and support effective implementation of its standards.

Date of publication: 12/10/2023

FSB: 2023 progress report on climate-related disclosures

Status: Final

The FSB has published its annual progress report on climate-related disclosures. In the report, the FSB welcomed the publication of the ISSB Standards, which will serve as a global framework for sustainability disclosures and, when implemented, will enable disclosures by different companies around the world to be made on a common basis. The FSB will work with the ISSB, IOSCO and other relevant bodies to promote the timely and wide use of the standards. Interoperability of the ISSB standards with jurisdictional disclosure frameworks is necessary in order to achieve global comparability of climate-related disclosures. The report also outlines progress made by jurisdictions in promoting climate-related disclosures. It notes that all FSB jurisdictions either have requirements, guidance, or expectations in respect of climate-related disclosures currently in place, or have taken steps to do so.

Date of publication: 12/10/2023



8. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

BMF: Draft law on the digitalisation of the financial market (*Entwurf eines Gesetzes über die Digitalisierung des Finanzmarktes – FinmadiG*)

Status: Final

The German Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft law on the digitalisation of the financial market (*Finanzmarktdigitalisierungsgesetz* – FinmadiG). For more information, please see section 7.1 above.

Date of publication: 23/10/2023

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