

Regulatory monitoring

Newsletter

August 2021





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Features

HORIZON SCANNING / REGULATORY MONITORING

Identify new regulatory developments easily and tailored to the specific type of regulated firm, so that only relevant changes appear.

FINANCIAL REGULATORY LAW SOURCEBOOK

A categorised collection of all laws in the field of financial regulatory law for Europe and Germany (constantly being expanded), which can be compiled as an obligation register and commented on as desired.

IMPLEMENTATION MANAGEMENT

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

ESRB: EU Non-bank Financial Intermediation Risk Monitor 2021

Status: Final

The European Systemic Risk Board (ESRB) has published the EU Non-bank Financial Intermediation Risk Monitor 2021 (NBFI Monitor) as the sixth issue in an annual series monitoring non-bank financial intermediation, an area which has grown in recent years and now accounts for around 40% of the EU financial system. This issue of the NBFI Monitor focuses on data up to end-2020 and includes three special features on the following topics: (a) the vulnerabilities of commercial real estate (CRE) funds, in which context data are used to analyse the leverage and liquidity of real estate funds in view of the outbreak of the coronavirus (Covid-19) pandemic; (b) the role of insurers in credit intermediation, their interconnectedness with funds and the derivatives they hold; and (c) the Gamestop, Greensill and Archegos incidents, which highlight search for yield behaviour, interconnectedness and the use of derivatives to increase leverage positions.

The NBFI Monitor also identifies cyclical risks and structural risks and vulnerabilities affecting the non-bank sector. The identified cyclical risks include: (i) uncertainty about the pace of economic recovery; (ii) rising indebtedness, increased credit risk and risks from associated rating downgrades; (iii) decoupling of the real economy and financial markets; and (iv) the fragile nature of liquidity in some markets. And the key structural risks and vulnerabilities are: (i) excessive risk-taking, liquidity transformation, and risks associated with the use of excessive leverage among some types of investment funds and other non-bank financial institutions; (ii) domestic and cross-border interconnectedness and the risk of contagion across sectors and within the non-bank financial system; and (iii) risks related to the low interest rate environment.

Date of publication: 30/08/2021

(ii) International

BCBS: Survey report on proportionality in banking regulation and supervision

Status: Final

The BCBS and the World Bank published the results of a global survey conducted with bank supervisors and regulators on proportionality in banking regulation and supervision. Besides taking stock of details about the different approaches to proportionate and full implementation of the BCBS standards, the survey enquires about the motivation for proportional and full implementation, any associated challenges and unintended outcomes, and factors that could help jurisdictions to achieve an effective proportionate implementation. Key takeaways from the analysis of survey responses are: (i) proportionate implementation is practised widely, across geographic regions and income groups and the use of proportionality is growing; (ii) proportionality is acknowledged by respondents as promoting banking stability, reducing unnecessary regulatory burden and compliance costs, and making effective use of scarce supervisory resources; (iii) challenges remain for jurisdictions that have adopted or are considering adopting proportionality. These challenges are during the design of proportionate approach (e.g. how to define the tiering criteria, how to maintain a level playing field and how to avoid opportunities for regulatory arbitrage) and after proportionality is implemented (eg how to ensure financial positions are still comparable across banks and how to achieve net reduction in compliance costs and stress on supervisory resources and constraints); and (iv) implementation is motivated by factors other than risk profile or systemic relevance in some cases. For example jurisdictions seeking to obtain or retain correspondent banking relationships, meet the expectation of host jurisdiction supervisors or of rating agencies, regional pressure and peer pressure.

Date of publication: 30/07/2021

(b) Securitisation**(i) EU****Commission Delegated Regulation (EU) 2021/1415 supplementing Regulation (EU) 2017/2402 with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA**

Status: Published in the OJ

Date of entry into force: 19/09/2021

The Commission Delegated Regulation supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between national competent authorities (NCAs) and ESMA, the EBA and EIOPA in the context of securitisation has been published in the OJ. In particular, it sets out details regarding the means and extent for exchange of information and cooperation between NCAs and the relevant European authorities and specifies notification obligations. The Regulation also provides template forms for these exchanges in the annexes.

Date of publication: 30/08/2021

(c) Liquidity**(i) Germany****BaFin: Circular 12/2021 on additional liquidity outflows for other products and services pursuant to Article 23 of the Delegated Regulation (EU) 2015/61 (Rundschreiben 12/2021 über zusätzliche Liquiditätsabflüsse in Zusammenhang mit anderen Produkten und Dienstleistungen gemäß Artikel 23 Delegierte Verordnung (EU) 2015/61)**

Status: Published

Date of entry into force: 01/09/2021

BaFin published the Circular 12/2021 on additional liquidity outflows for other products and services pursuant to Article 23 of the Delegated Regulation (EU) 2015/61, along with the related declaration form for all less significant German institutions. It specifies the supervisory approach with regard to the application of Article 23 of the Delegated Regulation 2015/61 and the corresponding provisions in Delegated Regulation 2021/451 (ITS on Reporting) on the additional liquidity outflows for other products and services that do not fall under the outflow categories of Articles 27 to 31a of Delegated Regulation 2015/61. In this context, the categories of products and services referred to in Article 23 (1) a) to h) are defined in more detail and the liquidity outflows to be allocated to these products and services are specified. Furthermore, the Circular specifies the reports that are required to be made at least annually pursuant to Article 23(2) Delegated Regulation 2015/61 on the products and services covered by Article 23(1) for which the probability and potential size of liquidity outflows are material, and it determined the liquidity outflows to be allocated to these products and services.

Date of publication: 16/08/2021

(d) Authorisation and passporting

(i) Germany

BaFin: Updated Leaflet on deposit business (Änderung des Merkblatts über das Einlagengeschäft)

Status: Final

BaFin published an update on the Leaflet clarifying the term deposit business in the sense of Section 1(1)(2)(1) German Banking Act (*Kreditwesengesetz* – KWG). The initial version has been published on March 11, 2014. In particular, the new version updated and supplemented the chapter regarding the unconditionality of the repayment claim.

Date of publication: 20/08/2021

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

(i) Germany

BaFin: Circular 10/2021 on the sixth amendment to the Minimum Requirements for Risk Management in Banks (Rundschreiben 10/2021 über die Mindestanforderungen an das Risikomanagement – MaRisk)

Status: Final

Date of entry into force: 16/08/2021

BaFin published its sixth amendment to the Minimum Requirements for Risk Management in Banks (*Mindestanforderungen an das Risikomanagement* – MaRisk). In particular, this amendment implements the following EBA Guidelines: the [Guidelines on management of non-performing and forborne exposures \(EBA/GL/2018/06\)](#), the revised [Guidelines on Outsourcing Arrangements \(EBA/GL/2019/02\)](#) and individual requirements from the [Guidelines on ICT and Security Risk Management \(EBA/GL/2019/04\)](#). ICT stands for information and communications technology.

The new version of MaRisk applies immediately upon publication. However, institutions only have to apply the more specific provisions directly. The implementation deadlines for new regulations are set out in BaFin's [cover letter](#). Furthermore, BaFin published the following documents to accompany the new MaRisk amendment:

- [MaRisk Circular 10/2021 – explanatory notes](#)
- [MaRisk Circular 10/2021 – amendments and clarifications](#)
- [MaRisk Circular 10/2021 and explanatory notes – changes compared with the 2017 version](#)

Date of publication: 16/08/2021

BaFin: Update on the Circular 10/2017 on banking supervisory requirements for IT (Änderung des Rundschreibens 10/2017 über die bankaufsichtlichen Anforderungen an die IT – BAIT)

Status: Final

BaFin published an updated version of the Circular 10/2017 on banking supervisory requirements for IT (*Bankaufsichtliche Anforderungen an die IT* – BAIT). This Circular provides a framework for institutions' technical and organisational resources on the basis of section 25a(1) of the German Banking Act (*Kreditwesengesetz* – KWG), in particular for IT resource management and IT risk management. Moreover, it specifies the requirements laid down in section 25b of the KWG (outsourcing of activities and processes).

In the amended BAIT, BaFin describes the framework conditions it now expects for secure information processing and information technology. The amendment applies immediately upon publication. There are no transitional periods, as BaFin states it has not imposed any fundamentally new requirements, but has specified existing requirements in more detail. One of the reasons for the BAIT amendment were the [EBA Guidelines on ICT and Security Risk Management \(EBA/GL/2019/04\)](#). ICT stands for information and communications technology.

Date of publication: 16/08/2021

(f) Remuneration**(i) EU****EBA: Report on high earners for 2019****Status: Final**

The EBA published its report on high earners for 2019 in accordance with Article 75(3) of Directive 2013/36/EU. The report includes data reported by UK institutions for high earners, as during the transitional period, UK institutions continued reporting data on high earners at EU consolidation level, covering all subsidiaries and branches established in EU Member States. The analysis shows that in 2019, 4963 individuals working for EU banks received a remuneration of more than EUR 1 million, which is broadly the same as in 2018. The average ratio between the variable and fixed remuneration for high earners decreased from 139% in 2018 to 129% in 2019. In 2019, the largest share of high earners of 3 519 (71% of the total number of high earners), was located in the UK. Most of the Member States across the EU registered a slight increase in the number of high earners, particularly Germany, France, and Italy. The increase of high earners resulted mostly from the impact of the relocation of staff from the UK to EU27 as part of Brexit preparations. In addition, for some institutions, the overall good financial results, particularly in corporate banking, and the ongoing restructuring and consolidations, which led to higher than usual severance payments, played an important role in the overall increase of high earners.

Date of publication: 18/08/2021

(g) Qualifying holdings**(i) EU****EBA: Peer review on the prudential assessment of qualifying holdings****Status: Final**

The EBA published a peer review on the prudential assessment of qualifying holdings, aimed at assessing competent authorities' application of the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings. Overall, the review found that competent authorities have largely or fully applied the ESAs Guidelines, which have therefore significantly contributed to the convergence of assessment practices of proposed acquisition or increase of qualifying holdings across the EU. The review also provides early indications as to the areas in which the ESAs Guidelines could provide additional guidance to the competent authorities, with a view to fostering convergence of practices including: (i) review and enhancement of guidance on the fifth assessment criterion relating to ML/TF risk; (ii) additional guidance on the assessment of large and complex acquisitions, so as to achieve a more proportionate and efficient assessment; (iii) review of the guidance on the application of the proportionality principle; and (iv) additional guidance on the content of documents and information to be provided with an application, in order to better explain supervisory expectations and speed up the pre-application phase.

Date of publication: 24/08/2021

(h) Supervisory reporting**(i) EU****EC: Draft Implementing Decision on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with the CRR****Status: Consultation****Deadline for the submission of comments: 03/09/2021**

The EC began consulting on a draft Implementing Decision on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with the CRR. The proposal: (i) adds Bosnia and North Macedonia to the list of 'equivalent third countries' as regards supervisory and regulatory

arrangements for credit institutions in those countries; and (ii) establishes a new list of equivalent third countries for the large exposure framework.

Date of publication: 06/08/2021

(ii) Eurozone

ECB: Decision (EU) 2021/1396 of the ECB amending Decision ECB/2014/29 on the provision to the ECB of supervisory data reported to the national competent authorities by the supervised entities pursuant to Commission Implementing Regulations (EU) No 680/2014 and (EU) 2016/2070 (ECB/2021/39)

Status: Published in the OJ

The Decision (EU) 2021/1396 of the ECB amending Decision ECB/2014/29 on the provision to the ECB of supervisory data reported to the national competent authorities (NCAs) by the supervised entities pursuant to Commission Implementing Regulations (EU) No 680/2014 and (EU) 2016/2070 was published in the OJ. It updates the Decision ECB/2014/29 to reflect the changes introduced by [Implementing Regulation \(EU\) 2021/451](#) laying down ITS for the application of the CRR with regard to supervisory reporting of institutions and [Implementing Regulation \(EU\) 2021/453](#) laying down ITS for the application of the CRR with regard to the specific reporting requirements for market risk. The changes particularly relate to the process for timely submission of the relevant data by the NCAs to the ECB and onwards to the EBA, within their obligations under the SSM.

The Decision will apply from the day of its notification to the addressees, i.e. the national competent authorities of the participating Member States.

Date of publication: 24/08/2021

(i) Disclosure

(i) EU

EBA: Updated mapping tool for the mapping between the ITS on Pillar 3 disclosures and the ITS on supervisory reporting

Status: Final

The EBA updated its tool, which specifies the mapping between quantitative disclosure data points and the relevant supervisory reporting data points. This tool aims at facilitating institutions' compliance with disclosure requirements and improving the consistency and quality of the information disclosed. The updated mapping tool applies to the reporting framework 3.0 and the implementing technical standards (ITS) on institutions' Pillar 3 public disclosures. The EBA explains that the updates included in this version are mainly driven by changes during the adoption process of the ITS on supervisory reporting and the ITS on public disclosures.

Date of publication: 06/08/2021

(j) Accounting/Prudential filter/Audit

(i) EU

Commission Regulation (EU) 2021/1421 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 as regards IFRS 16

Status: Published in the OJ

Date of entry into force: 01/09/2021

Commission Regulation (EU) 2021/1421 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards

International Financial Reporting Standard (IFRS) 16 has been published in the OJ. It amends the annex to Regulation (EC) No 1126/2008 on IFRS 16 by specifying Covid-19-related rent concessions that are applicable beyond 30 June 2021.

Date of publication: 31/08/2021

1.2 Recovery and resolution

(i) EU

EBA: 2020 annual report on resolution colleges

Status: Final

The EBA published its annual report on resolution colleges for 2020. The report sets out the EBA's observations on the functioning of colleges during the year and the progress achieved in key areas of resolution planning. Key findings highlighted by the EBA include: (i) the enforced change to a virtual format of discussion on account of the Covid-19 pandemic was broadly successful and reflected well on contingency planning measures. However, the EBA notes there are some areas for improvement to ensure that information exchange and coordination between members remains robust; (ii) discussions in colleges continued to focus on operational aspects of resolution plans; (iii) there was no evidence of an acceleration or reprioritisation of actions or consideration of alternative resolution strategies in response to the pandemic. The EBA believes that the uncertainty of the impact of the pandemic may explain this; and (iv) progress in some areas of resolution planning was less than anticipated, as banks' resources were devoted to responding to the day-to-day effects of the pandemic.

For the 2021 cycle of resolution college meetings, the EBA intends to continue to monitor the same issues as set out in the 2019 report. The passage of time means that as the effects of the pandemic have become clearer, the impact in each of the four areas is more open to considered analysis: (a) the credibility and feasibility of the preferred resolution strategy in the current environment and the analysis of alternative resolution strategies; (b) the extent to which supervisory authorities, finance ministries and administrators of deposit guarantee schemes are actively involved in consideration of their respective roles; (c) analysis of the suitability of written arrangements underpinning colleges; and (d) the extent to which colleges undertake reviews of 'Business Reorganisation Plans' to assess if changes are required in response to the economic effects of Covid-19.

Date of publication: 17/08/2021

Commission Delegated Regulation (EU) 2021/1340 supplementing the BRRD with regard to RTS determining the content of the contractual terms on recognition of resolution stay powers

Status: Published in the OJ

Date of entry into force: 05/09/2021

Commission Delegated Regulation (EU) 2021/1340, which contains RTS determining the content of the contractual terms on the recognition of resolution stay powers under the BRRD was published in the OJ. Where financial contracts are governed by the law of a third country, BRRD II requires the inclusion of a contractual recognition term by which the parties acknowledge that the contract may be subject to the exercise of powers to suspend or restrict rights and obligations by the exercise of those powers by a member state resolution authority. The RTS set out a list of mandatory components that must be present in the contractual term including: (i) provisions specifying the acknowledgement and acceptance that the contract may be subject to the exercise of the powers by the resolution authority; (ii) a description of the powers in question and the parties' recognition that they are bound by those powers to suspend certain obligations and restrict some rights and that they are bound by the requirements of Article 68 of the BRRD; and (iii) that the parties must acknowledge that no other contractual term impairs the effectiveness and enforceability of this clause.

Date of publication: 16/08/2021

EBA: Draft ITS amending the ITS on resolution planning reporting

Status: Final

The EBA published draft implementing technical standards (ITS) amending the ITS on the provision of information for the purpose of resolution plans. The EBA explains that the amendments are minimal and aim at re-aligning the standards with the provisions of the BRRD, following the changes to the minimum requirement for own funds and eligible liabilities introduced in

the revised BRRD II, as well as to remove some identified obstacles, at the technical level, that hamper compliance with the requirements specified in these ITS.

The amended ITS will be submitted to the EC for endorsement before being published in the OJ. The amended ITS are envisaged to apply for the first time with the reference date of 31 December.

Date of publication: 03/08/2021

(ii) International

FSB: Continuity of access to FMI services (FMI intermediaries) for firms in resolution

Status: Final

The FSB published a framework to help financial market infrastructure (FMI) intermediaries better understand what information clients and their resolution authorities (RAs) may need from them to prepare their resolution plans. The framework provides a checklist of baseline information that clients of FMI intermediaries should at a minimum cover in their contingency planning and that they may need to obtain from, or bilaterally discuss with, their critical FMI intermediaries. The framework thus does not set new requirements – it merely clarifies the topics that would typically be part of information requests from clients and/or from clients' RAs. This could potentially allow them to identify opportunities to streamline their response process, reducing the resources required to provide this information.

The framework covers: (i) the FMI services provided by the FMI intermediary; (ii) the conditions governing suspension or termination; (iii) the phase prior to resolution, during signs of distress at the client; (iv) the resolution phase; and (v) the case that the FMI intermediary itself is in resolution. The onus is on the client (FMI service user) and/or its RA to request any information and clarifications it may need from FMI service providers. The FSB emphasises that FMI intermediaries should be prepared to respond to such information requests within reasonable deadlines as mutually agreed.

The FSB will organise an outreach webinar for stakeholders on this Framework on 16 September. The first experience with this Framework will be evaluated in the course of 2022. FMI service providers and FMI service users (clients), as well as other stakeholders, will then have the opportunity to provide feedback and suggestions on the framework itself and the process. The FSB has also updated its questionnaire that aims to streamline information collection to support resolution planning. It covers general information on the FMI and its legal structure; the rulebook/contractual provisions regarding termination; and arrangements and operational processes to facilitate continued access in resolution. It is designed to reduce the burden of duplicative information-gathering efforts by streamlining the collection of certain baseline information relevant to continuity of access in resolution.

Date of publication: 20/08/2021

ISDA: Article 55 BRRD Bail-In Amendment Agreements

Status: Final

ISDA published two amendment agreements to enable financial institutions in those EEA jurisdictions which have implemented Article 55 BRRD to amend their existing non-EEA law governed master agreements to include contractual recognition of bail-in language. There is a version for use when the institution is acting as a principal and a version for use where an agent is acting on behalf of one or more underlying clients.

Date of publication: 16/08/2021

1.3 Stress tests/Macroprudential topics

(i) EU

ESRB: Decision of the ESRB amending Decision ESRB/2015/4 on a coordination framework for the notification of national macroprudential policy measures by relevant authorities, the issuing of opinions and recommendations by the ESRB, and repealing Decision ESRB/2014/2

Status: Final

The European Systemic Risk Board (ESRB) has published a Decision amending Decision ESRB/2015/4 on a coordination framework for the notification of national macroprudential policy measures by relevant authorities, the issuing of opinions and recommendations by the ESRB, and repealing Decision ESRB/2014/2. It amends the Decision ESRB/2015/4 by way of (i) changing provisions on the issuing of opinions and recommendations to reflect the amendments in CRR II and CRD V; (ii) aligning provisions on the composition of the ESRB assessment team with changes in Regulation (EU) 2019/2176 amending the Regulation that established the ESRB; and (iii) addressing several issues regarding insufficiently clear or overly burdensome provisions.

Date of publication: 27/08/2021

EBA: Results of 2021 EU-wide stress test

Status: Final

The EBA published the results of its 2021 EU-wide stress test. The stress test assesses the resilience of EU banks over a three-year horizon under both a baseline and an adverse scenario, which is characterised by severe shocks taking into account the impact of the pandemic. This stress test found that banks have continued building up their capital base, and at the beginning of the exercise (ie end-2020), had a CET1 ratio of 15% on a fully loaded basis (15.3% on a transitional basis), the highest since the EBA has been performing stress tests. The stress test was initially scheduled for 2020 but postponed by one year as part of the temporary relief measures decided by the EBA due to the pandemic.

The EBA has also published [FAQs](#) on this test.

Date of publication: 30/07/2021

(ii) Eurozone

ECB: EU-wide stress test results shows euro area banking system resilient under challenging macroeconomic scenario

Status: Final

The ECB published the results of its 2021 EU-wide stress test, which assesses the resilience of EU banks over a three-year horizon under both a baseline and an adverse scenario, which is characterised by severe shocks taking into account the impact of the pandemic. It looked at data from 38 banks in the EBA sample and a further 51 medium-sized ECB supervised banks. It is the first time the ECB has published individual information for banks that are not part of the EBA exercise. The ECB stress test is not a pass or fail exercise and no threshold is set to define the failure or success of banks for the purpose of the exercise. Instead, the findings of the ECB stress test will be part of the ongoing supervisory dialogue. The ECB stress test found that the main drivers of capital depletion were credit risk, market risk and income-generation capacity.

The ECB has also published [FAQs](#) on its test.

Date of publication: 30/07/2021

2. Investment firms regulation

(i) EU

EC: Draft Commission Delegated Regulation supplementing the IFD with regard to RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration

Status: Adopted by the EC

The EC adopted a Delegated Regulation supplementing the IFD with regard to RTS to specify the instruments, namely classes of additional Tier 1, Tier 2 and Other Instruments, that are appropriate to be used for variable remuneration, as well as to specify possible alternative arrangements for the pay out of variable remuneration where investment firms do not issue any of the instruments referred to within Article 32(1)(j) of the IFD.

The Council of the EU and the EP will now scrutinise the Delegated Regulation. If neither object, the Delegated Regulation will enter into force on and apply from the fifth day following its publication in the OJ.

Date of publication: 13/08/2021

EC: Draft Commission Delegated Regulation supplementing the IFD with regard to RTS specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages

Status: Adopted by the EC

The EC adopted a Delegated Regulation supplementing the IFD with regard to RTS to set out criteria to identify all categories of staff whose professional activities have a material impact on the investment firms' risk profile ("risk takers"). The identification process is based on a combination of qualitative and quantitative criteria.

The Council of the EU and the EP will now scrutinise the Delegated Regulation. If neither object, the Delegated Regulation will enter into force on and apply from the fifth day following its publication in the OJ.

Date of publication: 13/08/2021



3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

Commission Delegated Regulations supplementing the EU Benchmark Regulation

Status: Published in the OJ

Date of entry into force: 02/09/2021

Date of application: 01/01/2022

Five Commission Delegated Regulations supplementing the BMR were published in the OJ: (i) Commission Delegated Regulation (EU) 2021/1348 supplementing the BMR with regard to regulatory technical standards (RTS) specifying the criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks; (ii) Commission Delegated Regulation (EU) 2021/1349 supplementing the BMR with regard to RTS specifying the criteria for the competent authorities' compliance assessment regarding the mandatory administration of a critical benchmark; (iii) Commission Delegated Regulation (EU) 2021/1350 supplementing the BMR with regard to RTS specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust; (iv) Commission Delegated Regulation (EU) 2021/1351 supplementing the BMR with regard to RTS specifying the characteristics of the systems and controls for the identification and reporting of any conduct that may involve manipulation or attempted manipulation of a benchmark; and (v) Commission Delegated Regulation (EU) 2021/1352 supplementing the BMR with regard to RTS specifying the conditions to ensure that the methodology for determining a benchmark complies with the quality requirements.

- Commission Delegated Regulation (EU) 2021/1348 – criteria for compliance statements of non-significant benchmarks
- Commission Delegated Regulation (EU) 2021/1349 – criteria for compliance assessment regarding critical benchmarks
- Commission Delegated Regulation (EU) 2021/1350 – ensuring robust governance arrangements
- Commission Delegated Regulation (EU) 2021/1351 – controls for identifying and reporting manipulation of benchmarks
- Commission Delegated Regulation (EU) 2021/1352 – compliance of methodology with quality requirements

Date of publication: 13/08/2021

EC: Consultation on the designation of a statutory replacement rate for the EONIA benchmark

Status: Consultation

Deadline for the submission of comments: 31/08/2021

The EC is currently consulting on draft Implementing Regulations designating the statutory replacement rate for EONIA. The EC explains that the designated rate will replace contractual references to EONIA in the EU on 3 January 2022.

Date of publication: 03/08/2021

EC: Consultation on the designation of a statutory replacement rate for CHF LIBOR (Benchmarks)

Status: Consultation

Deadline for the submission of comments: 31/08/2021

The EC is consulting on draft Implementing Regulations designating the statutory replacement rate for Swiss franc LIBOR (CHF LIBOR). The EC explains that the designated rate will replace contractual references to CHF LIBOR on 1 January 2022.

Date of publication: 03/08/2021

EC: Consultation on draft Delegated Regulation specifying fees and fines for ESMA's supervision of critical benchmark administrators

Status: Consultation

Deadline for the submission of comments: 27/08/2021

The EC is consulting on a draft Delegated Regulation supplementing the BMR, specifying fees and rules of procedure for measures applicable to the supervision by ESMA of certain benchmark administrators. The explanatory memorandum explains that Regulation (EU) 2019/2175, amended the BMR, granting new supervisory powers to ESMA in relation to benchmark administrators – ESMA will be the competent authority for administrators of a critical benchmark and third country administrators of benchmarks under the BMR's recognition regime. The draft Delegated Regulation sets out provisions on fines, fees and penalties based on Article 48i(10) and Article 48l(3) of the BMR.

The EC expects to adopt the draft Delegated Regulation in Q3 2021.

Date of publication: 30/07/2021

3.2 Consumer protection rules

(i) EU

EC: Call for advice to ESMA regarding certain aspects relating to retail investor protection

Status: Final

ESMA published a call for advice from the EC on its strategy for retail investments in the EU. The EC invites ESMA to provide advice on: (i) addressing and enhancing investor engagement with disclosures – identification of any significant overlaps, gaps, redundancies and inconsistencies across investor protection legislation that might have a detrimental effect on investors (ie which might confuse or hamper decision-making or comparability), how the different legal frameworks fit together and options as to how to remedy any identified shortcomings. The EC invites ESMA to reflect on whether the rules have fully attained the objective of ensuring that consumers can make informed choices and adequately reflect behavioural insights, avoid information overload and overly complex information, and the specific challenges for different types of products; (ii) drawing out the benefits of digital disclosures – an assessment of how regulatory disclosures and communications can work best for consumers in a digital, and in particular smartphone, age, and proposed options as to how existing rules might be adapted, such as allowing layered information; (iii) the risks and opportunities presented by new digital tools & channels – an assessment of both risks and opportunities with respect to retail investing stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation, in particular via online trading platforms and robo advisers. It would consider in particular whether the existing regulatory requirements continue to be appropriate given these new risks, with a focus on the efficiency of safeguards such as best execution requirements and risk warnings provided to clients (eg as in the GameStop case).

The EC requests ESMA to deliver the report by 30 April 2022. In parallel to this call for advice, the EC has sent a call for advice to EIOPA.

Date of publication: 02/08/2021

3.3 Market abuse

(i) EU

ESMA: Updated Q&As on the MAR

Status: Final

ESMA updated its Q&As on MAR, adding three new Q&As regarding the disclosure of inside information: (i) the interaction between MAR and the CRA Regulation (ii) disclosing credit ratings to the public and inside information; and (iii) the distribution of subscription ratings and disclosure of inside information.

Date of publication: 06/08/2021

3.4 MiFID/MiFIR

(i) EU

ESMA: Consultation on suitability assessments of DRSP management body members

Status: Consultation

Deadline for the submission of comments: 24/09/2021

ESMA began consulting on draft regulatory technical standards (RTS) under MiFIR regarding suitability assessments of Data Reporting Service Provider (DRSP) management body members. ESMA proposes to introduce requirements covering the following areas: (i) good repute, honesty and integrity; (ii) sufficient time commitment; (iii) knowledge, skills and experience; (iv) independence; (v) induction and training; (vi) diversity; and (vii) record-keeping. The consultation builds on the existing ESMA Guidelines regarding the management body of market operators and DRSPs, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between management body members and users of the Approved Publication Arrangement, Consolidated Tape Provider or Approved Reporting Mechanism.

ESMA expects to finalise and submit its draft RTS to the EC by Q1 of 2022.

Date of entry into force: 24/08/2021

ESMA: Final Guidelines on the MiFID II/MiFIR obligations on market data

Status: Final

Date of entry into force: 01/01/2022

ESMA published the translated versions of the Final Guidelines on the MiFID II/MiFIR obligations on market data, which have previously been published in their final version on 1 June 2021.

Date of publication: 18/08/2021

Commission Delegated Directive (EU) 2021/1269 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 22/11/2022

The Commission Delegated Directive (EU) 2021/1269 has been published in the OJ. It amends the Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations. This amendment is necessary in order to implement the Action Plan 'Financing Sustainable Growth' set out by the Commission which encourages investors' demand for sustainable investments. Therefore, the aspects, which investment firms manufacturing and distributing financial instruments should consider, need to be extended to include sustainability factors and sustainability-related objectives.

Member States shall implement these amendments in national legislation by 21 August 2022.

Date of publication: 02/08/2021

Commission Delegated Regulation (EU) 2021/1253 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 02/08/2022

The Commission Delegated Regulation (EU) 2021/1253 has been published in the OJ. This Delegated Regulation amends Delegated Regulation (EU) 2017/565 (which supplements MiFID II) as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms. In line with the Action Plan

'Financing Sustainable Growth' set out by the Commission, investment firms should provide the possibility to identify their clients' or potential clients' sustainability preferences and take into account those types of conflicts of interest that stem from the integration of the identified sustainability preferences. They should also be able to recommend suitable financial instruments on this basis and explain the distinction between financial instruments with different degrees of sustainability-related ambition.

Date of publication: 02/08/2021

EC: Consultation on draft Delegated Regulation regarding supervisory fees, fines/penalties & derogation criteria for data reporting service providers

Status: Consultation

Deadline for the submission of comments: 27/08/2021

The EC is currently consulting on a draft Delegated Regulation supplementing MiFIR, specifying fees, rules of procedure for measures and criteria for derogation relating to the supervision by ESMA of data reporting service providers (DRSPs). The explanatory memorandum explains that Regulation (EU) 2019/2175 amended MiFIR transferring the supervision of DRSPs from national competent authorities to ESMA from January 2022. This draft Delegated Regulation establishes: (i) the derogation criteria for DRSPs that will continue to fall under national supervision instead of ESMA supervision; (ii) the fees that DRSPs need to pay ESMA for supervision; and (iii) the procedure ESMA needs to follow to impose fines or penalties on DRSPs under its supervision.

The draft Delegated Regulation follows the measures proposed by ESMA in its [technical advice](#).

Date of publication: 30/07/2021

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

(i) EU

EC: Call for advice to the Joint Committee of the ESAs regarding the PRIIPs Regulation

Status: Final

ESMA published a call for advice from the EC, sent to the Joint Committee of the ESAs, to request advice on the PRIIPs Regulation as part of the EC's retail investments strategy. The EC invites the ESAs to provide: (i) a general survey on the use of the PRIIPs KID across the EU; (ii) a general survey on the operation of the comprehension alert, taking into account any guidance developed by competent authorities; (iii) a survey of the practical application of the rules laid down in the PRIIPs Regulation, taking due account of developments in the market for retail investment products; (iv) an assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation; (v) an assessment of the extent to which the PRIIPs regulation is adapted to digital media; and (vi) an examination of questions concerning the scope of the PRIIPs Regulation including whether it should be extended to additional financial products.

The EC requests that the ESAs deliver the report by 30 April 2022.

Date of publication: 02/08/2021

3.6 Prospectus regulation

(i) Germany

j BaFin: Updated template cross-checklist for investment prospectuses (Änderung des Musters der Überkreuz-Checkliste für Vermögensanlagen-Verkaufsprospekte)

Status: Final

BaFin has published an update on the template cross-checklist for investment prospectuses in line with the German Investment Prospectus Regulation (*Vermögensanlagen-Verkaufsprospektverordnung – VermVerkProspV*). The update reflects the changes made to this Regulation by the new Regulation amending Regulations under the German Capital Investment Act (*Verordnung zur Änderung von Verordnungen nach dem Vermögensanlagengesetz*) (see entry below).

Date of publication: 31/08/2021

Regulation amending Regulations under the German Capital Investment Act (Verordnung zur Änderung von Verordnungen nach dem Vermögensanlagengesetz)

Status: Published in the Federal Gazette

Date of entry into force: 31/08/2021

The Regulation amending Regulations under the German Capital Investment Act (*Verordnung zur Änderung von Verordnungen nach dem Vermögensanlagengesetz*) has been published in the Federal Gazette. These amendments have been made necessary by the introduction of the [Law to further strengthen investor protection](#) (*Gesetz zur weiteren Stärkung des Anlegerschutzes – AnlSchStG*), which added a number of investor-protection regulations to the German Capital Investment Act.

In particular, this Regulation includes new provisions on the prohibition of blind pools, on the distribution of investments by supervised investment advisers or financial investment intermediaries and on the control of the use of funds in the respective provisions of the sales prospectus. In addition, it comprises individual further investor-protection regulations as well as editorial corrections.

Date of publication: 30/08/2021

BaFin: Leaflet on the scrutiny of securities prospectuses for comprehensibility (Merkblatt zur Prüfung von Wertpapierprospekten auf Verständlichkeit)

Status: Final

BaFin published the English translation to the Leaflet on the scrutiny of securities prospectuses for comprehensibility. This notice aims to provide market participants with information on how the European requirements on scrutinising the comprehensibility of securities prospectuses are applied in practice, thereby supporting market participants in drawing up prospectuses and facilitating the application of the new rules. The background is the prospectus regime that came into force on 21 July 2019 together with the EU Prospectus Regulation, and that potentially requires modifications to be made to the language and structure of prospectuses compared to the format previously used by issuers. The [German version](#) of this Leaflet was last amended on 16 September 2019.

Date of publication: 17/08/2021

BaFin: Leaflet on the prohibition of blind pools in the German Capital Investment Act (Merkblatt zum Verbot von Blindpool-Konstruktionen im Vermögensanlagengesetz)

Status: Final

Date of entry into force: 17/08/2021

BaFin published a Leaflet on the prohibition of blind pools pursuant to Section 5b(2) of the German Capital Investment Act (*Vermögensanlagengesetz – VermAnlG*). The investment object must hence be specifically determined for capital investments at the

time of the preparation of the capital investment sales prospectus or, in cases where Sections 2a, b VermAnlG apply, at the time of the preparation of the capital investment information sheet (*Vermögensanlagen-Informationsblatt* – VIB).

The Leaflet provides explanations on this matter in detail. It applies since 17 August 2021, since Section 5b(2) VermAnlG entered into force.

Date of publication: 11/08/2021

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Report on the use of FinTech by CSDs

Status: Final

ESMA published a report on the use of FinTech by CSDs. The EC requested ESMA to prepare a report with the objective of informing the EC's ongoing review of CSDR. ESMA concluded that as CSDR is intended to be technology-neutral it should be able to accommodate the use of new technologies. Some aspects would benefit from additional clarifications in order to provide legal certainty regarding the use of DLT by CSDs. ESMA considers that most of these aspects could first be clarified through Q&As and, following further experience gained through the EU pilot regime, it could then be assessed if amendments to CSDR may be needed.

ESMA put forward recommendations to the EC mainly with regard to: (i) issues related to securities accounts, credits, debits, segregation requirements and reconciliation requirements – the contextualisation of a series of CSDR definitions in a DLT environment seems necessary to provide comfort to CSDs deploying this type of technology. ESMA recommends clarifying several aspects through Q&As; (ii) operational requirements – to amend Article 35 of CSDR to allow CSDs to deploy DLT solutions using other communication standards or protocols if international open communication procedures and standards are not available for this specific type of technology; (iii) settlement of securities and of cash in a DLT environment – issues have been raised with regard to the definition of settlement in CSDR, which could be initially clarified through a Q&A. Following the experience from the EU pilot regime, it can then be assessed if this should also be reflected as an amendment to CSDR; and (iv) settlement finality – several concerns have been raised with regard to the application of the Settlement Finality Directive (SFD) in a DLT environment, which should be assessed through the SFD review.

Date of publication: 06/08/2021

4.2 EMIR

(i) Germany

BaFin: Application of ESMA Guidelines regarding CCP colleges (Anwendung von ESMA-Leitlinien zu den CCP-Kollegien)

BaFin published a statement to clarify that it agrees with the [ESMA Guidelines on written agreements between members of CCP colleges](#), which have been published in translation on 1 July 2021, and that it will apply these Guidelines in their entirety. The Guidelines aim to ensure a common, uniform and consistent application of Articles 18 and 19 of EMIR and Delegated Regulation (EU) 876/2013 on CCP colleges. In particular, they propose a standard written agreement to ensure the timely establishment and smooth functioning of a CCP college.

The Guidelines are relevant for CCPs only. Also, the focus of the Guidelines is on cooperation between regulatory bodies, and thus there is no direct need for implementation.

Date of publication: 24/08/2021

4.3 Stock exchanges

(i) Germany

BR: Draft law amending the Stock Exchange Act (Entwurf eines Gesetzes zur Änderung des Börsengesetzes)

Status: Draft

The Bundesrat has published a draft law amending the German Stock Exchange Act (*Börsengesetz* – BörsG). This law aims to amend Article 10 BörsG regarding the duty of confidentiality in light of the Cum-Ex scandal, in particular by deleting Article 10(3) BörsG and expanding Section 10(1) BörsG. This leads to a significant lowering of the material hurdles for access to information by the financial authorities, especially stock exchanges and stock exchange supervisory authorities.

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: 04/08/2021

(ii) International

GFXC: Guidance paper on 'last look' trading within the FX market

Status: Final

The Global Foreign Exchange Committee (GFXC) published a guidance paper on the use of “last look” within FX markets. The FX Global Code sets out principles of good practice for last look and also provides illustrative examples. The new guidance paper provides further clarity to market participants about the appropriate usage of last look and is intended to be read alongside the Code. The three main recommendations are to: (i) ensure a fair and effective last look process; (ii) enhance ex-ante disclosures; and (iii) ensure information is available to regularly evaluate the handling of trade requests.

The GFXC is also strongly encouraging liquidity providers and platforms to provide information on their trading practices and operations, including for last look, by completing a disclosure cover sheet. The GFXC has published [disclosure cover sheets](#) for liquidity providers and multi-dealer platforms, together with instructions. Cover sheets are meant to act as good foundations upon which market participants can have additional bilateral discussions where greater clarity or detail on a firm's disclosures is required. The GFXC cautions that cover sheets should not be used in place of more detailed disclosures and do not introduce disclosure requirements over and above what is in the Code. The GFXC is working with operators of public registers to allow market participants to publish a completed cover sheet alongside their statement of commitment. It is anticipated that market participants will be able to publish cover sheets onto public registers by end-2021.

Date of publication: 18/08/2021

5. Anti-money laundering

(i) Germany

BaFin: Circular 13/2021 regarding high-risk countries (Rundschreiben 13/2021 betreffend Hochrisikostaaten)

Status: Final

BaFin published the Circular 13/2021 to inform on third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing systems that pose significant risks to the international financial system (high-risk countries).

The circular is addressed to all obliged parties under BaFin supervision in accordance with the German Anti-Money Laundering Act (*Geldwäschegesetz* – GwG) in the Federal Republic of Germany.

Date of publication: 26/08/2021

BaFin: Draft interpretative guidance on the German Money Laundering Act pursuant to Section 51(8) GwG (Entwurf der Auslegungs- und Anwendungshinweise zum Geldwäschegesetz gemäß § 51 Abs. 8 GwG)

Status: Consultation

Deadline for the submission of comments: 15/09/2021

The BaFin published draft interpretative guidance on the German Money Laundering Act (*Geldwäschegesetz* – GwG) pursuant to Section 51(8) GwG. This draft guidance will amend the previous version of the interpretative guidance on the GwG to reflect the changes made to the GwG mainly by the Law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 (*Transparenz-Finanzinformationsgesetz Geldwäsche* – TraFinG Gw). The latest of these changes are applicable since 1 August 2021. The interpretative guidance applies to all obliged parties under the GwG who are under the supervision of the BaFin pursuant to Section 50 No. 1 GwG.

Date of publication: 18/08/2021

(ii) EU

EC: Extended consultation on AML/CFT legislative proposals

Status: Consultation

Deadline for the submission of comments: 07/10/2021

The EC extended its consultations on its legislative proposals to strengthen the EU AML/CFT rules: (i) a Regulation on the prevention of the use of the financial system for the purposes of ML/TF (AML Regulation); (ii) a Regulation establishing the AML/CFT Authority (AMLA); (iii) a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing MLD4 (MLD6); and (iv) a recast of the revised Wire Transfer Regulation (WTR), expanding traceability requirements to crypto-assets (recast WTR).

- Consultation on the AML Regulation proposal
- Consultation on the AML Authority Regulation proposal
- Consultation on the MLD6 proposal
- Consultation on the recast WTR proposal

Date of publication: 11/08/2021

EBA: Consultation on new guidelines on the role of AML/CFT compliance officers

Status: Consultation

Deadline for the submission of comments: 02/11/2021

The EBA is consulting on new guidelines on the role, task and responsibilities of AML/CFT compliance officers. The EBA explains that the draft guidelines address the whole AML/CFT governance set-up: (i) they set expectations of the role, tasks and responsibilities of the AML/CFT compliance officer and the management body and how they interact, including at group level. AML/CFT compliance officers need to have a sufficient level of seniority, which entails the powers to propose, on their own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function; (ii) they specify the tasks and role of the member of the management board, or the senior manager where no management board exists, who are in charge of AML/CFT overall, and on the role of group AML/CFT compliance officers; and (iii) they set out which information should be at least included in the activity report of the AML/CFT compliance officer to the management body. Provisions in the draft guidelines are designed to be applied in a proportionate manner, taking into account the diversity of financial sector operators that are within the scope of the AML Directive.

Date of publication: 02/08/2021

6. Payments

6.1 Payment services/E-money

(i) Germany

BaFin: Circular 11/2021 on the payment services supervisory requirements for the IT payment and e-money institutions (Rundschreiben 11/2021 über die zahlungsdienstaufsichtlichen Anforderungen an die IT von Zahlungs- und E-Geld-Instituten – ZAIT)

Status: Final

Date of application: 16/08/2021

BaFin published Circular 11/2021 on the payment services supervisory requirements for the IT (*Zahlungsdienstaufsichtliche Anforderungen an die IT – ZAIT*). In the ZAIT BaFin sets out the supervisory requirements for a proper business organisation payment and e-money institutions must observe with regard to the use of information technology and cyber security. The circular is very closely based on the MaRisk and the BAIT, which stipulate, among others, prudential requirements for the IT of banks. In particular, it includes the requirements from the [EBA Guidelines on ICT and Security Risk Management \(EBA/GL/2019/04\)](#) and the [EBA Guidelines on Outsourcing Arrangements \(EBA/GL/2019/02\)](#).

The ZAIT will apply immediately upon publication. A general transition period is not required because the ZAIT interpret already existing supervisory requirements in a supplementary manner. Nevertheless, the transition periods from the above-mentioned EBA guidelines apply accordingly.

BaFin also published a [cover letter](#) along with the Circular.

Date of publication: 16/08/2021

BaFin: Consultation 15/2021 on a Guidance Notice on granting an exemption from the provision of an emergency mechanism pursuant to Article 33(6) of Delegated Regulation (EU) 2018/389 (Konsultation 15/2021 über ein Merkblatt zur Erteilung einer Ausnahme von der Bereitstellung eines Notfallmechanismus nach Artikel 33 Absatz 6 der Delegierten Verordnung (EU) 2018/389)

Status: Consultation

Deadline for the submission of comments: 30/09/2021

BaFin published a draft Guidance Notice setting out the key criteria that must be met by account servicing payment service providers in order to obtain an exemption from the obligation to set up the contingency mechanism pursuant to Article 33(6) of Delegated Regulation (EU) 2018/389. The draft Guidance Notice codifies BaFin's administrative practice with regard to the assessment of dedicated interfaces and the decision on individual exemption requests. The draft Guidance Notice thus does not contain any new regulatory requirements. Rather, the publication is intended to create transparency for market participants and the public.

Date of publication: 05/08/2021

(ii) EU

Regulation on cross-border payments in the Union (codification)

Status: Published in the OJ

Date of entry into force: 19/08/2021

The Regulation (EU) 2021/1230 on cross-border payments in the EU has been published in the OJ. The Regulation lays down rules on cross-border payments and on the transparency of currency conversion charges in the EU. It codifies and replaces the existing Regulation on cross-border payments (924/2009).

Date of publication: 30/07/2021

(iii) International

BCBS: Committee on Payments and Market Infrastructures publishes work programme for 2021-22

Status: Final

The BIS' Committee on Payments and Market Infrastructures (CPMI) has published its work programme for the first time as part of the CPMI's commitment to increased transparency. The 2021–22 work programme focuses on shaping the future of payments and addressing risks in financial market infrastructures. The work programme outlines the strategic priorities for its monitoring and analysis, policy, and standard-setting and implementation activities, under these two overarching themes: (i) shaping the future of payments will include enhancing cross-border payments and addressing policy issues arising from digital innovations in payments (such as central bank digital currencies and stablecoins), while monitoring changing trends in payments; and (ii) evaluating and addressing risks in financial market infrastructures will work on issues related to central clearing and others that emerged or were accentuated over the course of the Covid-19 pandemic.

Date of publication: 05/08/2021

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) Eurozone

ECB: ECB and U.S. SEC sign MoU on security-based swap entities

Status: Final

The ECB and the U.S. Securities and Exchange Commission (SEC) signed an MoU to prepare for the registration of ECB-supervised entities as security-based swap dealers or major security-based swap participants in the U.S. U.S. regulation requires non-U.S. security-based swap dealers and major security-based swap participants with significant business in the U.S. to register with the SEC by 1 November and 1 December, respectively. The SEC may permit such entities to satisfy certain U.S. requirements by complying with comparable EU and national requirements. To make this possible, the SEC and the relevant supervisory and market authorities need to sign cooperation agreements. The ECB and the SEC will communicate and exchange information on the security-based swap activities that ECB-supervised entities conduct in the U.S. This cooperation will provide a basis for relevant euro area entities to minimise duplication of compliance efforts and to continue focusing on compliance with EU requirements, while ensuring compliance with U.S. requirements.

Date of publication: 16/08/2021

8. Investment funds

8.1 Product regulation

(a) AIF

(i) Germany

BaFin: Updated Leaflet on the marketing of AIFs pursuant to Section 331 of the German Investment Code (Änderung des Merkblatts zum Vertrieb von EU-AIF oder inländischen AIF in der EU oder im EWR gemäß § 331 KAGB)

Status: Final

BaFin published an updated Leaflet on the marketing of AIFs pursuant to Section 331 of the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). This Leaflet has first been published in 2013. This update amends the marketing requirements as necessary on the basis of the new Article 32a of the Directive 2011/61/EU on Alternative Investment Fund Managers, which has been introduced by Article 2 of the Regulation (EU) 2019/1156. In particular, it amends the instructions for filling in the notification letters required for each AIF which is intended to be marketed as well as introducing new information on a revocation procedure.

Date of publication: 17/08/2021

BaFin: Consultation 16/2021 on the draft of amended FAQ regarding the distribution and acquisition of investment funds in accordance with the KAGB (Konsultation 16/2021 zum Entwurf einer Überarbeitung des FAQ zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB)

Status: Consultation

Deadline for the submission of comments: 13/09/2021

BaFin has published a draft of amended FAQ regarding the distribution and acquisition of investment funds in accordance with the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB) for consultation. In this way, BaFin intends to reflect changes made by the German Fund Jurisdiction Act (*Fondsstandortgesetz* – FoStoG).

Date of publication: 12/08/2021

BaFin: Consultation 13/2021 on draft Guidelines for sustainable investment funds (Konsultation 13/2021 über eine Richtlinie für nachhaltige Investmentvermögen)

Status: Consultation

Deadline for the submission of comments: 06/09/2021

BaFin has published draft Guidelines for sustainable investment funds. The guidelines contain requirements on how capital management companies must structure public investment funds in the future that they designate as sustainable or market as explicitly sustainable. They can choose between three variants: minimum investment ratio; sustainable investment strategy; or sustainable index.

The required minimum investment ratio in sustainable assets shall be 75%. These assets must contribute significantly to achieving environmental or social goals. In addition, there are maximum limits, for example, a maximum of 10% may come from energy production or other use of fossil fuels. As an alternative to the minimum investment quota, funds can also pursue a sustainable investment strategy, for example in the form of a best-in-class approach. For example, assets that are particularly

advantageous from a sustainability point of view are selected from an investment universe or given a higher weighting. Finally, it is also possible to set up a sustainable investment fund by replicating a sustainable index.

The Guidelines are aimed at the fund industry.

Date of publication: 02/08/2021

BaFin: Update of the Leaflet on the distribution pursuant to section 323 of the KAGB (Änderung des Merkblatts zum Vertrieb gemäß § 323 KAGB)

Status: Final

BaFin has updated the Leaflet on the distribution of units or shares in EU AIFs or domestic special AIFs managed by an EU AIF management company to semi-professional and professional investors in the Federal Republic of Germany pursuant to section 323 of the German Capital Investment Code (*Kapitalanlagegesetzbuch* – KAGB). This Leaflet has first been published in 2013. The update includes the specification of information on a contact person which needs to be provided in a notification letter in line with Article 9(2) Regulation (EU) 2019/1156. Furthermore, the Leaflet has been updated with regard to the notification procedures for a revocation pursuant to section 295a(6)(1) KAGB.

Date of publication: 05/08/2021

(ii) EU

Commission Delegated Regulation (EU) 2021/1255 amending Delegated Regulation (EU) No 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by Alternative Investment Fund Managers

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 02/08/2022

The Commission Delegated Regulation (EU) 2021/1255 has been published in the OJ. It amends Delegated Regulation (EU) 231/2013 (which supplements AIFMD) as regards the sustainability risks and sustainability factors to be taken into account by alternative investment fund managers. In line with the Action Plan ‘Financing Sustainable Growth’ set out by the Commission, AIFMs should, when identifying the types of conflicts of interest the existence of which may damage the interests of an AIF, include conflicts of interest that may arise as a result of the integration of sustainability risks in their processes, systems and internal controls.

Date of publication: 02/08/2021

ESMA: Official translations of guidelines on marketing communications under the Regulation on cross-border distribution of funds

Status: Final

ESMA published the official translations of its guidelines for funds' marketing communications under Article 4 of the Regulation on the cross-border distribution of collective investment undertakings. The guidelines establish common principles on the identification of marketing communications, the description of risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and the fair, clear and not-misleading character of marketing communications, taking into account online aspects of such marketing communications. However, the guidelines do not intend to replace existing national requirements on the information to be included in marketing communications (such as those relating to the fiscal treatment of the investment in the promoted fund) to the extent these are compatible with any existing harmonised EU rules (eg rules on disclosure of costs or performance in the KIID should not be contradicted or diminished by different national disclosure requirements on costs or performance in marketing communications).

The guidelines will apply from February 2022 (six months after the date of the publication of the translations).

Date of publication: 02/08/2021

(b) UCITS

(i) Germany

BaFin: Updated Leaflet on marketing of EU UCITS in Germany (Änderung des Merkblatts zum Vertrieb von EU-OGAW gemäß § 310 KAGB)

Status: Final

BaFin has updated the Leaflet on marketing of EU UCITS in Germany pursuant to Section 310 of the German Capital Investment Code (*Kapitalanlagegesetzbuch* – KAGB). This Leaflet has first been published in 2013. The update amends the specifications of the notification letter required for marketing EU UCITS by updating the specific German requirements and taking into account new requirements set out in Directive (EU) 2019/1160 on the cross-border distribution of collective investment undertakings. The updated Leaflet also includes revised references to further resources.

Date of publication: 17/08/2021

(ii) EU

Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 02/08/2022

The Commission Delegated Directive (EU) 2021/1270 has been published in the OJ. This Delegated Directive amends Directive 2010/43/EU (which supplements the UCITS Directive) as regards the sustainability risks and sustainability factors to be taken into account for UCITS. This law aims to maintain a high standard of investor protection in line with the goals set out in the Action Plan ‘Financing Sustainable Growth’ set out by the Commission. Accordingly, investment companies that conduct the management of UCITS will be expected to consider conflicts of interests that may arise as a result of the integration of sustainability risks in their processes, systems and internal controls.

Member States shall implement these amendments in national legislation by 31 July 2022.

Date of publication: 02/08/2021

EC: Consultation on the draft amendment to the UCITS Directive regarding the use of KID

Status: Consultation

Deadline for the submission of comments: 09/09/2021

The EC is consulting on a proposal for a Directive amending the UCITS Directive as regards the use of key information documents (KID) by management companies of UCITS. The date by which firms would be required to provide a KID was originally set as 31 December 2021, however the EC has separately proposed to extend the temporary exemption period from the requirement until 30 June 2022.

With this extension, as of 1 July 2022 retail investors in UCITS would receive both a KID in accordance with the PRIIPs Regulation and key investor information in accordance with the UCITS Directive. The EC explains in the proposal that it is desirable to avoid a situation where retail investors receive two different pre-contractual disclosure documents in respect of the same UCITS. This Directive proposal therefore inserts a new Article 82a in the UCITS Directive to ensure that a KID drawn up, provided, revised and translated for a given UCITS in accordance with the PRIIPs Regulation is considered as satisfying the key investor information requirements of the UCITS Directive.

Date of publication: 05/08/2021

8.2 Prudential regulation

(a) Authorisation

(i) Germany

BaFin: Updated Leaflet on the exemption for capital management companies (Änderung des Merkblatts über die Ausnahme für Kapitalverwaltungsgesellschaften)

Status: Final

BaFin published an updated version of the Leaflet on the exemption for capital management companies, which has initially been published in 2013. This Leaflet specifies the range of exemptions for capital management companies which have been inserted in the German Banking Act (*Kreditwesengesetz* – KWG) pursuant to the introduction of the German Capital Investment Code (*Kapitalanlagegesetzbuch* – KAGB) in 2013. The latest update reflects minor changes introduced by the [German Fund Jurisdiction Act](#) (*Fondsstandortgesetz* – FoStoG) to these exemptions in the KWG, as applicable since 2 August 2021.

Date of publication: 30/08/2021

(b) Compliance

(i) EU

Commission Delegated Regulation (EU) 2021/1383 amending Delegated Regulation (EU) 2018/990 with regard to requirements for assets received by money market funds as part of reverse repurchase agreements

Status: Published in the OJ

Date of entry into force: 12/09/2021

The Commission Delegated Regulation (EU) 2021/1383 amending Delegated Regulation (EU) 2018/990 with regard to requirements for assets received by money market funds (MMFs) as part of reverse repurchase agreements was published in the OJ. In accordance with Article 2 of Commission Delegated Regulation (EU) 2018/990 eligible investments in reverse repurchase agreements by managers of MMFs are subject to supplementary qualitative and quantitative requirements, including a specific adjustment to the value of an asset. However, those requirements do not apply to transactions entered into with credit institutions, investment firms and insurance undertakings that are established in the EU or that are covered by an equivalence decision. The amending Regulation specifies the relevant provisions in the CRR, MiFID II and Solvency II on which equivalence decisions should be adopted for the exemption to be applied in relation to these entities.

Date of publication: 23/08/2021

9. Special rules for real estate financing and covered bonds

9.1 Mortgage credits

(i) Eurozone

ECB: Opinion on a draft law on mortgage banks and covered bonds and related laws

Status: Final

The ECB published an opinion on a Finnish draft law on mortgage banks and covered bonds and related laws in reaction to a request by the request from the Finnish Ministry of Finance. The purpose of the respective draft law is to replace the current Finnish Law on mortgage banks. It implements Directive (EU) 2019/2162 in Finnish law. In addition, the draft law contains certain provisions that are not required in order to implement Directive (EU) 2019/2162 but are designed to promote competition and harmonise the regulation of this area in view of the pronounced international and Nordic dimension of the covered bonds market. In a general observation, the ECB is of the opinion that the vast majority of the draft law's provisions do not exceed the scope of Directive (EU) 2019/2162 with respect to the ECB's fields of competence.

Date of publication: 11/08/2021

10. Special topics

10.1 Covid-19

(i) International

IOSCO: Public report on the examination of ETF behaviour during COVID-19 induced market stresses

Status: Final

The IOSCO has published a thematic note that examines the behaviour of exchange traded funds (ETFs) during the Covid-19 induced market stresses, drawing on market data and observations gathered over the course of the first half of 2020. The report reviews the operation and activities of the primary and secondary markets of ETFs during this period. In particular, it explores the impact of the stress on the ETF structure and functioning and the causes of the pricing differences between some fixed income ETFs' secondary market prices and their net asset values (NAVs). It also outlines some challenging circumstances for some derivatives-based ETFs.

Overall, available evidence has not indicated any significant risks or fragilities in the ETF structure, although a subset of ETFs temporarily experienced unusual trading behaviours. The analysis could prove instructive when IOSCO considers future enhancements to ETF regulation and guidance.

Date of publication: 12/08/2021

10.2 FinTech/Digital finance

(i) Germany

BMF/BMJV: Draft regulation on the requirements for electronic securities (Entwurf einer Verordnung über Anforderungen an elektronische Wertpapiere – eWpRV)

Status: Draft

This joint draft regulation of the Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) and the Federal Ministry of Justice (*Bundesjustizministerium* – BMJV) specifies the requirements for the maintenance of electronic securities registers in accordance with the Electronic Securities Act (*Gesetz über elektronische Wertpapiere* – eWpG), which came into force on 10 June 2021. The draft was prepared on the basis of sections 15 and 23 of the eWpG.

The eWpG makes it possible to dispense with the previously required securities certificate when issuing bonds and investment fund share certificates and to issue the securities instead via their entry in an electronic securities register. The new draft regulation aims to create the most legally secure framework possible for entities keeping the register, while at the same time ensuring a high level of investor protection. Against this background, the draft regulation specified key aspects of the maintenance of electronic securities registers.

Date of publication: 05/08/2021

(ii) EU

ECON: Report on the market infrastructure DLT pilot proposal

Status: Final

The EP's ECON published its report on the proposed Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The report sets out the EP's amendments to the EC's legislative proposal. The EP procedure file for the proposed Regulation states that the report has been tabled for first reading at plenary.

Date of publication: 17/08/2021

(iii) Eurozone

ECB: Opinion of the ECB on a proposal for a Regulation on digital operational resilience for the financial sector

Status: Final

The Opinion of the ECB on a proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector was published in the OJ. It sets out that the ECB welcomes the proposal, in particular the aim to improve the internal market for financial services by harmonising rules regarding information and communication technology (ICT) risk management, reporting testing and ICT third-party risk. The ECB further recommends increased reflection on the interplay with the Network and Information Security (NIS) Directive and the proposed NIS2 Directive to avoid inconsistencies that would stall harmonisation. It also suggests clarification on the relationship with RTS supplementing the Central Securities Depositories Regulation (CSDR) to avoid conflicting requirements. In addition, the ECB states that the requirements related to ICT in several pieces of EU legislation and soft law instruments as well as the new proposal should be aligned to avoid contradictions.

Date of publication: 26/08/2021

10.3 Sustainable finance

(i) EU

EC: Final study on the development of tools and mechanisms for the integration of ESG factors into the EU banking prudential framework and into banks' business strategies and investment policies

Status: Final

This study, conducted on behalf of the European Commission, explores the integration of ESG factors into banks' risk management processes, business strategies and investment policies, as well as into prudential supervision. It provides a comprehensive overview of current practices and identifies a range of best practices for the integration of ESG risks within banks' risk management processes and prudential supervision. It outlines challenges and enabling factors associated with the development of a well-functioning EU market for green finance and sustainable investment.

The study is based on the collection and aggregation of information from a wide range of representative stakeholders, in order to reflect a full spectrum of views. Findings show that ESG integration is at an early stage, and the pace of implementation needs to be accelerated in order to achieve effective ESG integration into banks' risk management and business strategies, as well as prudential supervision. To support this acceleration, enhancements are particularly required on ESG definitions, measurement methodologies, and associated quantitative indicators. A lack of adequate data and common standards remain key challenges to be overcome to drive ESG integration. Cross-stakeholder collaboration, as well as supervisory initiatives and guidance, will be critical in tackling this global and pervasive topic.

Date of publication: 27/08/2021

Platform on Sustainable Finance: Call for feedback on preliminary recommendations for technical screening criteria for the EU taxonomy

Status: Consultation

Deadline for the submission of comments: 24/09/2021

The Platform on Sustainable Finance (an advisory body subject to the EC's horizontal rules for expert groups) published a draft report and call for feedback on preliminary recommendations for technical screening criteria for the six environmental objectives set out in the EU taxonomy. The draft report focuses primarily on presenting a first set of priority economic activities and draft recommendations for associated substantial contribution and "do no significant harm" technical screening criteria in relation to the four non-climate environmental objectives: water, circular economy, pollution prevention, and biodiversity & ecosystems. A small number of economic activities and corresponding draft recommendations for technical screening criteria related to the climate mitigation and adaptation objectives have also been included. Based on the resources, workload and time available, the Platform addressed a first set of economic activities per environmental objective in its first phase of the work, setting out the

proposed methodology for the selection and prioritisation of the activities in the draft report. The Platform highlights that the draft criteria presented in the report are working documents and do not represent a final view of the Platform. It notes that an activity that is not included in this first batch of activities for the remaining four environmental objectives, for which the Platform will develop recommendations for technical screening criteria, may still be addressed as part of a second batch.

It is likely that the recommendations for additional activities and criteria included in that second batch would be addressed in a later update of the delegated act by the EC. After considering the stakeholder input, the Platform will submit its report to the EC in November.

Date of publication: 03/08/2021

Commission Delegated Directive (EU) 2021/1269 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 22/11/2022

The Commission Delegated Directive (EU) 2021/1269 has been published in the OJ. For more information please see section 3.4.

Date of publication: 02/08/2021

Commission Delegated Regulation (EU) 2021/1253 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms

Status: Published in the OJ

Date of entry into force: 22/08/2021

Date of application: 02/08/2022

The Commission Delegated Regulation (EU) 2021/1253 has been published in the OJ. For more information please see section 3.4.

Date of publication: 02/08/2021

(ii) International

BCBS: BIS Innovation Hub and HKMA investigate how tokenized green bonds can improve sustainable investment

Status: Final

The Bank for International Settlements (BIS) Innovation Hub Hong Kong Centre and the Hong Kong Monetary Authority joined forces with the tech industry with the aim to build a prototype digital infrastructure that can enable green investments and help issuers and governments to meet environmental and sustainability goals. This work is guided by a panel of experts from public and private sector, civil society, and international community.

Date of publication: 24/08/2021

12. German Omnibus Acts (*Artikelgesetze*)

(i) **Germany**

BR: Draft law to amend the Stock Exchange Act (Entwurf eines Gesetzes zur Änderung des Börsengesetzes)

Status: Draft

The Bundesrat has published the draft law to amend the Stock Exchange Act. For more information, please see section 4.3 **Error! Reference source not found.**

Date of publication: 04/08/2021

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