

Regulatory monitoring

Newsletter

March 2022





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).

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

For enquiries regarding Allen & Overy's ECB in focus blog, please contact us.

Some of our recent posts

ECB PUBLISHES SUPERVISORY PRIORITIES 2022-24

25 February 2022

The ECB has recently published its supervisory priorities for the years 2022 to 2024. While there was no comparable publication last year, the ECB has now stated three key priorities for the years to come which will form the cornerstone of its supervisory activity.

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NEW ECB OPINIONS ON EU ANTI-MONEY LAUNDERING PACKAGE

17 March 2022

The ECB published two new opinions on the upcoming EU AML/CTF legislative package addressing the AMLA Regulation, AML Regulation and AMLD6 of the package. While it welcomes the legislative proposals and strongly supports the strengthening of the AML/CTF regime in the EU, it recommends a number of amendments to the Commission's proposals.

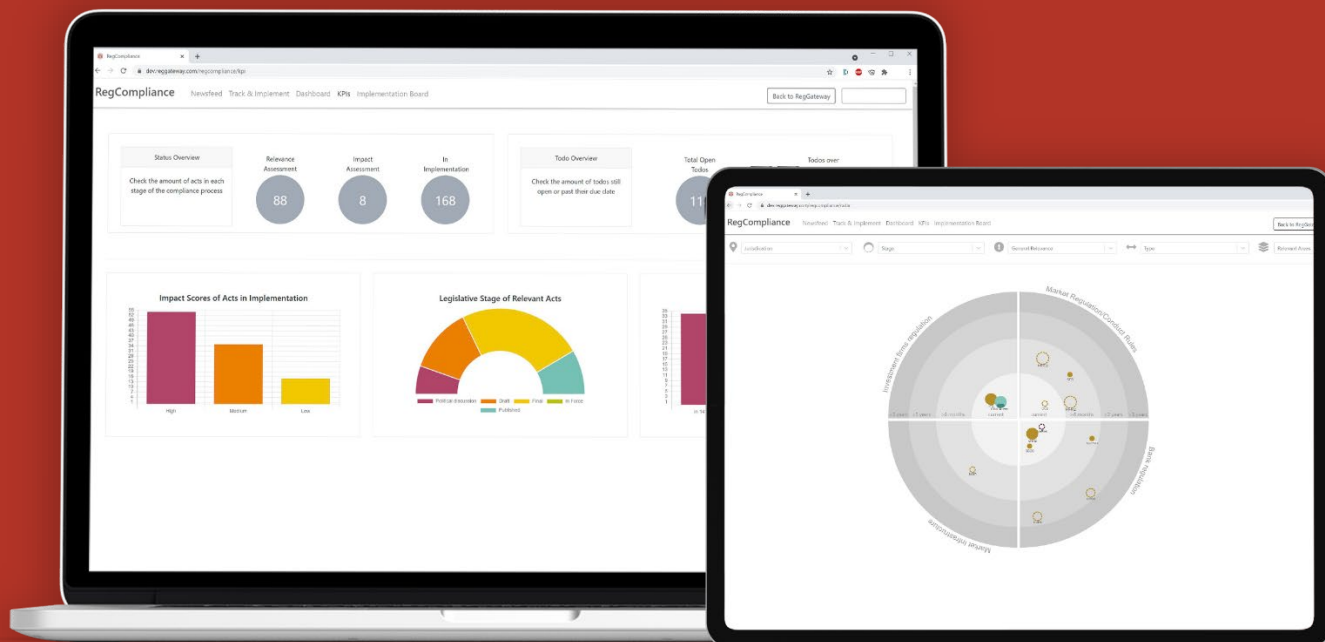
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ECB ENCOURAGES EUROPEAN CROSS-BORDER BANKING INTEGRATION

04 February 2022

The ECB is actively pursuing cross-border banking integration. Both Andrea Enria, chair of the ECB's Supervisory Board, and Édouard Fernandez-Bollo, member of the same Board, have recently been arguing for banks to take European banking integration into their own hands to smooth the path to a complete banking union.

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Features

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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) Solvency/Own funds issues

(i) Germany

BaFin: General Administrative Act establishing a systemic risk buffer pursuant to Section 10e of the German Banking Act (Allgemeinverfügung zur Anordnung eines Kapitalpuffers für systemische Risiken nach § 10e KWG)

Status: Final

BaFin has published a General Administrative Act establishing a systemic risk buffer pursuant to Section 10e of the German Banking Act for the residential real estate sector. Following the notice as of 12 January 2022, BaFin thereby introduces a sectoral systemic risk buffer of 2.0 percent of risk-weighted assets on loans secured by mortgages on residential property. The aim of this buffer is to preventively strengthen the resilience of the German banking system against specific risks from the residential real estate market. This targeted use of the sectoral systemic risk buffer is intended to counteract any threat to financial stability stemming from overvaluations in the market of residential real estate prices and lending. The affected institutions will have until 1 February 2023 to comply with the buffer requirement.

BaFin has also published new [FAQ](#) on this topic of systemic risk buffers.

Date of publication: 30/03/2022

BaFin: General Administrative Act revoking the General Administrative Act on own funds requirements in light of interest rate risks in the investment book (Allgemeinverfügung zum Widerruf der Allgemeinverfügung zur Anordnung von Eigenmittelanforderungen für Zinsänderungsrisiken im Anlagebuch)

Status: Final

BaFin has published a General Administrative Act revoking a General Administrative Act published in 2016 which contained general requirements for institutions on own funds in light of interest rate risks in the investment book. Now, BaFin does no longer deem these requirements necessary, as it has established an individual assessment and capital requirement for all institutions with its supervisory review and evaluation process.

Date of publication: 14/03/2022

(ii) EU

EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with the CRR

Status: Adopted by the EC

The EC has published the text of an Implementing Regulation amending the ITS laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with the CRR. The amended ITS: (i) provide for a new methodology to ensure that the main indices captured comprise instruments that are sufficiently liquid, and therefore can serve as adequate eligible collateral. Experience has demonstrated that the current criteria, defined with respect to the market in which an index is based, are difficult to apply against a main index established in a third country, as they require collecting data for all the shares admitted to trading in that market; (ii) include third country exchanges in Australia, Hong Kong and the US, as the EC has adopted equivalence decisions under MiFID II; and (iii) exclude UK exchanges from the list of recognised

exchanges, as the EC has not adopted an equivalence decision regarding the UK. The ITS will enter into force on the 20th day following publication in the OJ.

Date of publication: 24/03/2022

EBA: Final Report on draft RTS on requirements that an internal methodology or external sources used under the internal default risk model are to fulfil for estimating default probabilities and losses given default under Article 325bp(12) of the CRR

Status: Final

The EBA has finalised its draft RTS on probabilities of default (PDs) and losses given default (LGDs) for default risk model for institutions using the new Internal Model Approach (IMA) under the Fundamental Review of the Trading Book. The final draft RTS specify: (i) the requirements for estimating PDs and LGDs using an institution's internal methodology or external sources. Institutions using the IMA to compute own funds requirements for market risk are required to compute additional own funds requirement using an internal default risk model for their positions in traded debt and equity instruments included in IMA trading desks; (ii) the requirements to be met for estimating PDs and LGDs under the default risk model. An internal methodology used to calculate PDs and LGDs under the default risk model should meet all requirements applicable to the corresponding internal ratings-based (IRB) approach. In addition, they include the possibility for institutions to produce conservative 'fallback' PD and LGD values to be used only where needed; and (iii) the requirements that external sources are to fulfil for their use under the default risk model, ensuring that the methodology employed to derive the PDs and LGDs from these sources is conceptually sound.

Date of publication: 21/03/2022

Commission Delegated Regulation (EU) 2022/439 supplementing the CRR with regard to RTS for the specification of the assessment methodology competent authorities are to follow when assessing the compliance of credit institutions and investment firms with the requirements to use the IRBA

Status: Published in the OJ

Date of entry into force: 07/04/2022

The Commission Delegated Regulation (EU) 2022/439 supplementing the CRR with regard to RTS for the specification of the assessment methodology competent authorities are to follow when assessing the compliance of credit institutions and investment firms with the requirements to use the IRBA has been published in the OJ. The Regulation sets out the methodology a competent authority should follow when an institution applies, specifically: (i) initially to use the IRBA; (ii) to use the IRBA for certain types of exposures in accordance with the sequential implementation plan; (iii) for the implementation of material changes to the IRBA; and (iv) to return to the use of less sophisticated approaches.

Date of publication: 18/03/2022

(b) Securitisation

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on balance sheet synthetic securitisations.

Date of publication: 31/03/2022

EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations

Status: Adopted by the EC

The EC has adopted an Implementing Regulation amending the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on balance sheet synthetic securitisations.

Date of publication: 31/03/2022

EBA: Report on developing a framework for sustainable securitisation

Status: Final

The EBA has published a report on developing a framework for sustainable securitisation. The report considers the following three areas for which regulatory guidance is deemed relevant at this stage, considering that the overarching EU regulations on sustainable finance are still being developed and that the EU sustainable securitisation market is still at an early stage of development: (i) the application of the EU green bond standard (GBS) to securitisation; (ii) the relevance, policy implications and possible design of a dedicated framework for sustainable securitisation products; and (iii) the nature and content of sustainability-related disclosures for securitisation products. The report includes policy recommendations addressed to the EC in each of these areas.

The EBA's analysis shows that it would be premature to establish a dedicated framework for green securitisation. Rather, the EBA is of the view that the upcoming EU GBS regulation should also apply to securitisation, provided that some adjustments are made to the standard. In this regard, the EBA recommends that the EU GBS requirements apply at originator level (instead of at the issuer/securitisation special purpose entity level). This would allow a securitisation that is not backed by a portfolio of green assets to meet the EU GBS requirements, provided that the originator commits to using all the proceeds from the green bond to generate new green assets. The EBA sees the proposed adjustments as an intermediate step to allow the sustainable securitisation market to develop and to play a role in financing the transition towards a greener EU economy. They are also meant to ensure that securitisation is treated in a consistent manner as other types of asset-backed securities. The EBA also recommends that the Securitisation Regulation is amended in order to extend voluntary 'principal adverse impact disclosures' to non-STS securitisations. It also calls for further EBA work on green synthetic securitisation and social securitisation.

Date of publication: 02/03/2022

(ii) Eurozone

ECB: Guide on the notification of securitisation transactions

Status: Final

The ECB has published a guide setting out the notification practices that significant institutions (SIs) acting as originators or sponsors of a securitisation transaction are advised to follow in order to provide the ECB with information needed for the supervision of compliance with Articles 6 to 8 of the Securitisation Regulation (SECR) relating to risk retention, transparency and a ban on resecuritisation. The Guide specifies information that SIs are expected to submit to the ECB, both at origination and during the life of securitisation transactions, if a significant event as defined in Article 7(1)(g) of the SECR occurs relating to the transactions, affecting compliance with Articles 6 to 8. Notifications are expected to be submitted using the notification template published alongside the guide. The ECB recommends that SIs follow the Guide with respect to all securitisation transactions originated after 1 April, although has provided a phase-in implementation period until 1 October. The Guide will be updated from time to time to reflect developments in the regulation and supervision of securitisations.

Date of publication: 18/03/2022

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

(i) EU

ECB: Letter on leveraged transactions regarding supervisory expectations regarding the design and functioning of risk appetite frameworks and high levels of risk taking

Status: Final

The ECB has published a letter addressed to significant institutions to further specify the ECB's expectations regarding their leveraged transactions, particularly as regards the establishment of risk appetite frameworks (RAFs) for leveraged transactions in accordance with the good risk management practices set out in the ECB Guidance on leveraged transactions. The latter defines supervisory expectations regarding the scope, RAFs and organisation of risk management activities for LTs undertaken by SIs supervised by the ECB. Such transactions have a higher than average risk profile and exhibit some unique features in terms of their structure and origination. Consequently, comprehensive and well-designed RAFs for leveraged transactions are necessary to ensure that significant institutions capture all key risks, and that those risks are managed effectively.

Date of publication: 30/03/2022

EBA: Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing under the CRD

Status: Final

The EBA has published final revised guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing. The revisions aim at implementing the amendments brought by CRD V and CRR II. The revised guidelines do not alter the overall SREP framework but affect its main elements, including: (i) business model analysis, (ii) assessment of internal governance and institution-wide control arrangements, (iii) assessment of risks to capital and adequacy of capital to cover these risks, and (iv) assessment of risks to liquidity and funding and adequacy of liquidity resources to cover these risks. The main amendments aim at: (a) better articulating the principle of proportionality, through the categorisation of institutions and the application of the minimum engagement model; (b) fully incorporating the assessment of the ML/TF risks, in line with the EBA Opinion on how to take into account ML/TF risks in the SREP; (c) reviewing the provisions on Pillar 2 capital add-ons and the Pillar 2 guidance, to ensure they reflect a purely micro-prudential perspective and appropriately implement the separate stack of own funds requirements based on the leverage ratio; (d) aligning the assessment of the interest rate risk in the non-trading book, as well as the assessment of liquidity risk and liquidity adequacy with the current regulatory framework; and (e) enhancing the dialogue among institutions and supervisors in relation to the setting of the Pillar 2 requirements. The guidelines will apply from 1 January 2023.

Date of publication: 18/03/2022

(d) Remuneration

(i) Eurozone

ECB Decision (EU) 2022/368 amending Decision (EU) 2015/2218 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile

Status: Published in the OJ

Date of entry into force: 24/03/2022

The ECB Decision (EU) 2022/368 amending Decision (EU) 2015/2218 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile has been published in the OJ. The amended Decision follows Commission Delegated Regulation (EU) 2021/923 which repealed Delegated Regulation (EU) No 604/201. The Decision seeks to ensure legal certainty for credit institutions, which submitted notifications and applications pursuant to Delegated Regulation (EU) No 604/2014 or requests for prior approval pursuant to Delegated Regulation (EU) 2021/923 before the Decision enters into force.

Date of publication: 04/03/2022

(e) Large exposures/Limits to shadow banking entities

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying how to determine the indirect exposures to a client arising from derivatives and credit derivatives contracts where the contract was not directly entered into with the client but the underlying debt or equity instrument was issued by that client

Status: Adopted by the EC

The EC has adopted a draft Delegated Regulation supplementing the CRR with regard to RTS specifying how to determine the indirect exposures to a client arising from derivatives and credit derivatives contracts where the contract was not directly entered into with the client but the underlying debt or equity instrument was issued by that client. These RTS serve the sole purpose of specifying the measurement methods for indirect exposures arising from derivative and credit derivative contracts for institutions to correctly identify and limit their large exposures. The EC emphasises that the RTS do not impact on the calculation of own funds requirements, their valuation or reporting. For large exposures purposes, an institution shall calculate the exposures to a client or group of connected clients by adding the direct and indirect exposures in the trading book and in the non-trading book. In order to ensure consistency through the different pieces of the regulatory framework, the RTS build on the Basel Large Exposures standards with the intention of being consistent with market risk rules for the calculation of exposures from (credit) derivatives, complemented where needed by specificities stemming from the large exposures framework. The RTS therefore differentiate between three categories: (i) options on debt and equity instruments; (ii) credit derivative contracts; and (iii) other derivatives having as underlying asset a debt or equity instrument and which are not included in the other two categories.

The Delegated Regulation will enter into force 20 days following its publication in the OJ.

Date of publication: 10/03/2022

(f) Notifications

(i) Germany

BaFin: Information sheet on the MPV process “Submission of audit reports” (Informationsblatt zum MVP-Fachverfahren „Einreichen von Prüfungsberichten“)

Status: Final

BaFin has published an Information sheet on the process for “Submission of audit reports” via BaFin's reporting and publication platform (*Melde- und Veröffentlichungsplattform – MVP*). This information sheet first explains the registration for the MVP, the application to the specific process on “Submission of audit reports” and the procedure to submit these reports. It also specifies the contact details of the offices for support in questions or problems regarding the submission process. The information sheet closes with an explanation of the effects of using this specialised procedure on reporting obligations to BaFin and the Deutsche Bundesbank.

This document is specifically aimed at auditors and auditing associations.

Date of publication: 09/03/2022

(g) Accounting/Prudential filter/Audit

(i) EU

Commission Delegated Regulation (EU) 2022/352 amending Delegated Regulation (EU) 2019/815 as regards the 2021 update of the taxonomy laid down in the RTS on the single electronic reporting format

Status: Published in the OJ

Date of entry into force: 27/03/2022

The Commission Delegated Regulation (EU) 2022/352 amending Delegated Regulation (EU) 2019/815 as regards the 2021 update of the taxonomy laid down in the RTS on the single electronic reporting format has been published in the OJ. The core taxonomy used for the single electronic reporting format is based on the IFRS Taxonomy, which is updated annually to reflect the issuance of new IFRSs or amendment of existing IFRSs, analyses and various improvements. To reflect these annual updates, it is necessary to annually update the RTS for the single electronic reporting format. On this basis, the new Delegated Regulation updates Delegated Regulation (EU) 2019/815 in light of the March 2021 update to the IFRS Taxonomy.

Date of publication: 07/03/2022

Commission Regulation (EU) 2022/357 amending Regulation (EC) No 1126/2008 adopting certain IASs in accordance with Regulation (EC) No 1606/2002 as regards IAS 1 and 8

Status: Published in the OJ

Date of entry into force: 23/03/2022

The Commission Regulation (EU) 2022/357 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards (IASs) in accordance with Regulation (EC) No 1606/2002 as regards IAS 1 and 8 has been published in the OJ.

Date of publication: 03/03/2022

1.2 Recovery and resolution

(i) Germany

BaFin: Consultation 01/2022 on an expanded Guidance Notice on external bail-in implementation (Konsultation 01/2022 über ein erweitertes Merkblatt zur externen Bail-in-Implementierung)

Status: Consultation

Deadline for the submission of comments: 15/04/2022

BaFin has launched a consultation on an expansion to the Guidance Notice on external bail-in implementation, previously published on 13 April 2021. The document contains specifications on the activities to be carried out by the actors involved, the information to be exchanged, communication channels, timelines and format templates to support an effective and efficient implementation regarding the resolution tools of participation of holders with relevant capital instruments and creditor participation pursuant to Sections 89 and 90 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) (Articles 21 and 27 SRM Regulation).

The main expansion relates to the external bail-in implementation by two international central securities depositories (ICSDs) – Euroclear Bank and Clearstream Banking Luxembourg – or a so-called “ICSD Add-On”. Furthermore, additional exchanges have been included, so that the new version aims to cover the suspension of trading on all relevant exchanges in Germany. In addition, the focus of the instruments issued by the institution in settlement in Germany will be broadened to include percentage-listed structured debt instruments.

The Guidance Notice is aimed at all institutions within the meaning of Section 2(1) SAG and companies within the meaning of Section 1(3) SAG in Germany for which the resolution strategy provides for a bail-in. This also includes institutions within the remit of the Single Resolution Board (SRB) as the resolution authority.

Date of publication: 04/03/2022

(ii) EU**ECB: Opinion on a proposal to amend the CRR on prudential requirements for credit institutions and investment firms with respect to resolution****Status:** Draft

The ECB has published an opinion on a proposal to amend the CRR on prudential requirements for credit institutions and investment firms with respect to resolution, the so-called Daisy Chain proposal. The ECB acknowledges that the proposal consists of technical adjustments with the aim of operationalising substantive legislative decisions implemented by the latest amendments to the BRRD and ensuring better alignment with CRR provisions. It further supports the proposed regulation inasmuch as it ensures better alignment of the regulatory treatment of global systemically important institutions (G-SIIs) with a multiple point of entry (MPE) resolution strategy, including groups with subsidiaries registered in third countries, with the treatment outlined in the TLAC standard. Some minor technical adjustments are proposed in a separate technical working document, with the purpose of clarifying the interpretation of the legal text or to ensure consistency of terminology used in the regulation.

Date of publication: 17/03/2022**Commission Implementing Regulation (EU) 2022/365 amending Implementing Regulation (EU) 2018/1624 laying down ITS with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to the BRRD****Status:** Published in the OJ**Date of entry into force:** 24/03/2022

The Commission Implementing Regulation (EU) 2022/365 amending Implementing Regulation (EU) 2018/1624 laying down ITS with regard to procedures, standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms under Article 11(3) BRRD has been published in the OJ, alongside two annexes. The Regulation updates previous Templates and Annexes of Regulation 2018/1624 to reflect changes to the minimum requirement for own funds and eligible liabilities (MREL) introduced by BRRD II.

Date of publication: 04/03/2022**EC: Report on the implementation of the Recovery and Resilience Facility****Status:** Final

The EC has published a report on the implementation of the Recovery and Resilience Facility, established by Regulation (EU) 2021/241 on 19 February 2021. This programme is the centrepiece of “Next Generation EU”, the EU response to emerge stronger from the Covid-19 pandemic. The report on this programme is the first of a series of yearly reports on the implementation of the Facility. It aims to take stock of the implementation of the planned agenda of reforms and investments. In particular, it provides an overview of the current state of its implementation and of the plans adopted, and details the contribution of the Facility to the climate and digital targets, as required by Article 31 of the Regulation. The report then considers the performance of the Facility, taking into account the commitment to investments and reforms embedded in this unique instrument, and discusses the involvement of all relevant stakeholders. It also describes the mechanisms in place for the protection of the Union’s financial interests and the articulation between the Facility and other sources of EU funds to avoid double-funding. In doing so, the report finds that major steps have been accomplished and implementation is firmly underway which can be followed live on a platform, the ‘Recovery and Resilience Scoreboard’, set up by the Commission in December 2021.

Date of publication: 01/03/2022

(iii) Eurozone

SRB: Operational guidance on the identification and mobilisation of collateral in resolution

Status: Final

The Single Resolution Board (SRB) has published its operational guidance on the identification and mobilisation of collateral in resolution. This guidance aims to support banks' capacity to identify and mobilise certain asset classes that could be used as collateral in resolution in a timely way to support financial continuity. The guidance is structured around three objectives: (i) ensuring that banks' collateral governance and management is able to support the resolution scheme and contribute to the financial continuity of the group; (ii) ensuring that banks have capacity to identify collateral, including its amount, location, governing law, currency and overall availability; and (iii) assessing banks' capacity to mobilise collateral, and in particular non-marketable assets and assets not eligible for ordinary central bank funding. The guidance provides a clear understanding of the operational and legal requirements that banks need to anticipate in order to maximise the amount of assets that could be mobilised as collateral in and after resolution. This concept allows the SRB to access the necessary information and analysis from banks to make full use of resolution tools should a bank get into difficulty, and to ensure financial stability of banks in resolution.

Date of publication: 17/03/2022

SRB: Update on the approach to CRR discretion on leverage and MREL calibration

Status: Final

The SRB has updated its approach to calibrating final minimum requirements for own funds and eligible liabilities (MREL) targets in the 2022 resolution planning cycle. As announced by the SRB in December 2021, the decision to temporarily exclude certain exposures to central banks from the calculation of an institution's total exposure measure (leverage amount), under the CRR might affect the calibration of the final MREL targets applicable from 1 January 2024. Since the ECB will not extend the relief measure set up to counter the effects of the Covid-19 pandemic, final MREL targets will be re-calibrated in the 2022 resolution planning cycle based on the leverage amount. The SRB will communicate these notional targets to institutions affected by the relief measure in the context of the 2021 resolution planning cycle, and will use them to monitor the institutions' build-up of MREL resources towards the final MREL targets.

Date of publication: 07/03/2022

SRB: Consultation on 2022 Single Resolution Fund contributions

Status: Consultation

Deadline for the submission of comments: 17/03/2022

The SRB has launched a consultation on the preliminary findings of the SRB for the calculation of ex-ante contributions to the Single Resolution Fund (SRF) for 2022. The consultation is aimed at providing in-scope banks input into the decision-making process for the calculation of ex-ante contributions for the current cycle, thereby enhancing the transparency and the robustness of the decision-making process in general. This will give banks and credit institutions required to pay annual contributions to the SRF the opportunity to view the SRB's preliminary decision on their calculation prior to its adoption and to comment on aspects pertinent to the calculation exercise.

Date of publication: 03/03/2022

(iv) International

FSB: Report on central counterparty financial resources for recovery and resolution

Status: Final

The Financial Stability Board (FSB), together with the Committee on Payments and Market Infrastructures of the Bank for International Settlements (CPMI) and the International Organization of Securities Commissions (IOSCO), has published a

report analysing existing financial resources and tools for central counterparty (CCP) recovery and resolution, which confirmed the need for further work on CCP financial resources.

The organisations gathered evidence and conducted their analysis in two parts: (i) they assessed the current use, composition and amount of financial resources and tools available to cover CCP default and non-default losses in a sample of seven out of 13 CCPs that are considered systemically important in more than one jurisdiction; and (ii) they conducted a quantitative analysis and a qualitative review of the potential financial stability implications that may result from the use of the financial resources and tools covered by the existing CPMI-IOSCO guidance on recovery of FMIs and FSB guidance on CCP resolution. Based on the results and challenges of the evidence gathering and analysis undertaken, they concluded that there is merit to continuing work on CCP financial resources for recovery and resolution. While all the sampled CCPs would have had sufficient prefunded and recovery resources and tools to cover losses in the applied CCP-specific default loss scenarios, the analysis was subject to a number of limitations and assumptions that suggest that the results are to be interpreted cautiously. Moreover, one of the non-default loss scenarios applied would have resulted in the need to use resolution powers in the majority of the CCPs.

Even though at the level of individual bank clearing members the analysis identified only limited impacts on their liquidity and solvency from the use of cash calls and variation margin gains haircutting by an individual CCP, it would be beneficial to enhance as much as possible the understanding of the potential complex system-wide effects of the use of recovery and resolution tools. The FSB will: (a) in Q2 and in collaboration with CPMI-IOSCO, review the sufficiency of the existing toolkit for CCP resolution, focusing in particular on non-default loss scenarios. It will consider the need for, and costs and benefits of, potential alternative financial resources and tools for CCP resolution; and (b) monitor whether resolution authorities have access to an adequate set of resolution tools, through continued efforts to conduct and enhance implementation monitoring of the FSB guidance on CCP resolution. The FSB welcomes stakeholder views as input to its work by 29 April. CPMI-IOSCO are currently analysing CCP non-default losses in resilience and recovery and will continue monitoring the implementation of the Principles for Financial Market Infrastructures, including CCP financial resources and tools for resilience and recovery.

Date of publication: 10/03/2022

1.3 Stress tests/Macroprudential topics

(i) EU

ESRB: Concept note on the review of the EU Macroprudential Framework for the Banking Sector

Status: Final

The General Board of the ESRB has endorsed a Concept Note on the review of the macroprudential framework for the banking sector, which highlights the ESRB's priorities for the next decade. This followed an exchange of views on the future of the macroprudential framework for banks at the regular meeting of the General Board on 24 March 2022, discussing priorities to make the framework fit for the next decade as well as enhancements achievable in the short term.

Date of publication: 31/03/2022

2. Investment firms regulation

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing IFR with regard to RTS for public disclosure of investment policy by investment firms

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing IFR with regard to RTS for public disclosure of investment policy by investment firms. The RTS specify uniform disclosure formats and associated instructions for the requirements on investment policy by investment firms referred to in Article 52(1) of the IFR. The disclosure required includes: (i) information on the proportion of voting rights attached to the shares held directly or indirectly by the investment firms; (ii) information on their voting behaviour; (iii) an explanation of votes and the ratio of proposals put forward and approved; and (iv) information on the use of proxy advisor firms and information on their voting guidelines.

The Delegated Regulation will now be scrutinised by the Council of the EU and the EP, and, if neither object, it will enter into force 20 days after its publication in the OJ.

Date of publication: 11/03/2022

Commission Implementing Regulation (EU) 2022/389 laying down ITS for the application of the IFD with regard to the format, structure, content lists and annual publication date of the information to be disclosed by competent authorities

Status: Published in the OJ

Date of entry into force: 29/03/2022

The Commission Implementing Regulation (EU) 2022/389 laying down ITS for the application of the IFD with regard to the format, structure, content lists and annual publication date of the information to be disclosed by competent authorities in accordance with Article 57(4) of the IFD has been published in the OJ. The ITS contain information on supervisory approaches and aggregate statistical data concerning the new prudential requirements that competent authorities will have to disclose publicly for all types of investment firms authorised under the MiFID II Directive. They aim to ensure that the disclosed information is comprehensive and comparable across all member states.

Date of publication: 09/03/2022

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

ESMA: Work programme for 2022/23 by Working Group on Euro Risk-Free Rates

Status: Final

The ESMA Working Group on Euro Risk-Free Rates (WG) has published its Work Programme for 2022/23. To continue contributing to the reform efforts in the euro area and facilitate coordination between private sector and public sector efforts, the WG will focus among others on: (i) fostering the use of €STR in a diverse range of financial products; (ii) assessing the level of implementation and potential impediments to the timely adoption of EURIBOR fallback provisions by EU supervised entities; (iii) identifying potential issues related to the impact of LIBOR discontinuation in the EU; (iv) coordinating on cross-currency issues with similar working groups in other jurisdictions; and (v) informing, raising awareness and educating users about interest rate reforms in the EU. For each of the above areas of focus, the WG might also consider the publication of corresponding recommendations, best practices, guidance or other types of communications.

Date of publication: 02/03/2022

3.2 Consumer protection rules

(i) Germany

BaFin: Extended consultation on a planned General Administrative Act regarding Futures with additional payment obligations (Verlängerte Anhörung zur geplanten Allgemeinverfügung bezüglich Futures mit Nachschusspflichten)

Status: Consultation

Deadline for the submission of comments: 25/03/2022

BaFin has amended its consultation on a planned General Administrative Act regarding Futures with additional payment obligations by extending the deadline to 25 March 2022. With this document, BaFin aims to restrict marketing, distribution and sale of futures with additional payment obligations to the effect that retail clients will no longer be able to trade in these products. BaFin explains this step by setting out that retail clients in Germany should be protected against losing all of their assets in highly volatile market situations.

Date of publication: 11/03/2022

(ii) EU

ESAs: EU financial regulators warn consumers on the risks of crypto-assets

Status: Final

The European Supervisory Authorities (EBA, ESMA and EIOPA – the ESAs) have published a statement warning consumers that many cryptoassets are highly risky and speculative. The ESAs underline the key risks presented, and set out key steps consumers can take to ensure they make informed decisions. In their warning, the ESAs highlight that these assets are not suited for most retail consumers as an investment or as a means of payment or exchange, as consumers: (i) face the very real possibility of losing all their invested money if they buy these assets; (ii) should be alert to the risks of misleading advertisements, including via social media and influencers; and (iii) should be particularly wary of promised fast or high returns, especially those that look too good to be true. The ESAs also warn consumers that they should be aware of the lack of recourse or protection available to

them, as cryptoassets and related products and services typically fall outside existing protection under current EU financial services rules.

Date of publication: 17/03/2022

(iii) International

IOSCO: Consultation report on the retail market conduct task force

Status: Consultation

Deadline for the submission of comments: 23/05/2022

The IOSCO has launched a consultation on issues related to the development of a regulatory toolkit for jurisdictions to consider when addressing emerging retail market conduct issues in the rapidly changing retail investment landscape. The report provides an overview of the retail trading landscape based on the responses to a survey carried out by IOSCO's Retail Market Conduct Task Force in Q3 2021. Among other issues, the report considers: (i) the notable recent change in retail behaviour and increase in trading volumes; (ii) the reasons for and regulatory and market implications of increasing gamification, self-directed trading and the influence of social media on retail investor behaviour. Since the onset of the Covid-19 pandemic, IOSCO has observed rising cases of misconduct and reported investor losses, some of them cross-border in nature; (iii) some authorities' strategies in detail, including approaches to disclosure and investor education, and it presents various tools IOSCO members are using in response to the challenges brought by the rapidly changing retail landscape. According to survey responses, such approaches not only include the use of traditional investor protection measures, but also innovative tools that are mainly technology-based, including AI and ML technology, webscraping, and social media scanning tools. To supplement the analysis in the consultation report, IOSCO plans to conduct further direct engagement with consumer groups and other stakeholders at a roundtable in Q1 2022.

Date of publication: 21/03/2022

3.3 MiFID/MiFIR

(i) Germany

BaFin: Update to the FAQ on MiFID II rules of conduct according to sections 63 et seq. of the Securities Trading Act (Anpassung der FAQ zu MiFID II-Wohlverhaltensregeln nach §§ 63 ff. WpHG)

Status: Final

BaFin has updated its FAQ on MiFID II rules of conduct according to Sections 63 et seq. of the Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG). This update introduces a new question informing about requirements on the maximum time to process depot transfers, setting out that this process should generally not exceed three weeks.

Date of publication: 21/03/2022

BaFin: Guidance Notice on notes regarding exemptions for ancillary activities pursuant to Sections 2(1) no. 9, 2(6)(1) no. 11, 32(1a)(3) no. 3 of the German Banking Act (Merkblatt über Hinweise zu den Nebentätigkeitsausnahmen in § 2 Abs. 1 Nr. 9, Abs. 6 Satz 1 Nr. 11 und § 32 Abs. 1a Satz 3 Nr. 3 KWG)

Status: Final

BaFin has published an amended version of the Guidance Notice on notes regarding exemptions for ancillary activities pursuant to Sections 2(1) no. 9, 2(6)(1) no. 11, 32(1a)(3) no. 3 of the German Banking Act (*Kreditwesengesetz* – KWG). The new version has been adjusted to reflect the changes introduced by the implementation of amendments to MiFID II in Article 30(4) of the German Crowdfunding Accompanying Act (*Schwarmfinanzierungs-Begleitgesetz*). These changes have entered into force on 28 November 2021. In particular, the changes include: (i) a shift of the qualification as ancillary activity measured against the main activity from all companies separately to group level; and (ii) softened consequences for failure to notify BaFin of the use of this exemption: previously a transaction based on unnotified use of this exemption would be ipso lege unauthorised and liable under

Section 54 KWG, whereas the new regulation only triggers this consequence in case of failure to comply with a request for information by BaFin.

Date of publication: 28/02/2022

(ii) EU

ESMA: Proposal of amendments on the review of transparency requirements under MiFIR

Status: Final

ESMA has published its proposed amendments to two RTS which specify the MiFIR transparency requirements for equity and non-equity respectively. These amendments aim to clarify, improve and simplify the transparency regime for equity and non-equity instruments.

- Final report on the review of RTS 1 (equity transparency)
- Final Report on the review of RTS 2 (non-equity transparency)

Date of publication: 28/03/2022

Commission Delegated Regulation (EU) 2022/466 supplementing MiFIR by specifying criteria for derogation of the principle that APAs and ARMs are supervised by the ESMA

Status: Published in the OJ

Date of entry into force: 27/03/2022

The Commission Delegated Regulation (EU) 2022/466 supplementing MiFIR by specifying criteria for derogation of the principle that approved publication arrangements (APAs) and approved reporting mechanisms (ARMs) are supervised by ESMA, has been published in the OJ. The ESFS Omnibus Regulation transferred authorisation and supervision powers with regard to the activities of data reporting services providers (DRSPs) in the EU to ESMA. This Delegated Regulation sets out the criteria by which APAs and ARMs are derogated from ESMA supervision and instead remain in scope of national supervision, where their activities are of limited relevance for the internal market.

Date of publication: 24/03/2022

EC: Commission Implementing Regulation (EU) .../... amending Implementing Regulation (EU) 2017/1093 laying down ITS with regard to the format of position reports by investment firms and market operators

Status: Adopted by the EC

The EC has adopted an Implementing Regulation amending Implementing Regulation (EU) 2017/1093 laying down ITS with regard to the format of position reports by investment firms and market operators. The amendments are in accordance with the changes introduced by Directive (EU) 2021/338, as part of the Covid-19 MiFID II recovery package. Position reporting will no longer apply to securities referred to in MiFID II Article 4(1), point 44, point (c), which relate to a commodity or an underlying as referred to in Section C.10 of Annex I.

The amending ITS will enter into force twenty days after publication in the OJ.

Date of publication: 24/03/2022

EC: Commission Delegated Regulation (EU) /... supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues. The EC explains that changes to the MiFID II commodity derivative framework were introduced by amending Directive (EU) 2021/338 as part of the EC's Covid-19 recovery strategy, the Capital Markets Recovery Package. In this context, position management controls are reinforced to mitigate dissimilarities in the way positions are

managed by trading venues across the EU. The RTS: (i) introduce the general monitoring obligations for the exchanges; (ii) specify what an accountability level is, that accountability levels should be set for commodity derivatives made available for trading that are physical settled or can be physically settled and specifies what exchanges have to do when a position exceeds the accountability level; and (iii) require the exchange to assess the adequacy and effectiveness of the accountability levels. It also specifies the reporting requirements of the trading venues to their NCA.

The Council and the EP will next consider the Delegated Regulation. If neither the Council nor the EP object, the Delegated Regulation will be published in the OJ and enter into force twenty days after its publication.

Date of publication: 24/03/2022

ESMA: Guidance on the annex to ESMA opinion determining third-country trading venues for the purpose of transparency under MiFIR

Status: Final

ESMA has published updated guidance on the Annex to its opinion determining third-country trading venues for the purpose of transparency under MiFIR. ESMA specifies that, in the context of the EU sanctions on Russia, trading venues established in Russia are considered inactive from 14 March onwards and until further notice.

Date of publication: 14/03/2022

ESMA: Assessment and recommendations on the EC's MiFIR review proposal

Status: Draft

ESMA has published a letter, dated 9 March, to the Council of the EU and EP on the legislative proposals for amendments to the MiFIR and the MiFID II Directive that the EC adopted on 25 November 2021. In the letter, ESMA shares technical comments on issues including: (i) consolidated tape providers (CTPs). ESMA recommends extending the timetable for the CTP selection process as the current one appears unfeasible both for ESMA as well as potential CTP applicants, while maintaining the overall ambition of the proposal. ESMA supports a staggered approach for appointing CTPs, for instance by running no more than two selection procedures in parallel before launching the selection procedure for the remaining two CTPs. Further, ESMA underlines ambiguities in the drafting of the proposals regarding the authorisation of CTPs. ESMA also shares its concerns on the practicalities of the “fall-back clause”. Lastly, ESMA highlights inconsistencies in the EC's proposal between the scope of the derivatives CTP and the scope of the transparency requirements, which is likely to raise significant practical implementation issues; (ii) equity and non-equity transparency. Overall, ESMA is supportive of the proposals on equity transparency and the general push to streamline the transparency regime for non-equity instruments. Nonetheless, ESMA raises some technical concerns on the proposal to amend the non-equity deferral regime. It is also concerned that the proposal as it currently stands is overly complex and may result in inconsistent calibrations of the pre- and post-trade transparency requirements. ESMA therefore recommends a simpler approach. ESMA also raises concerns about the derivatives trading obligation only including an investment-firm specific suspension; (iii) data reporting. ESMA suggests that co-legislators consider replacing the traded on a trading venue concept with the systematic internaliser approach to avoid gaps in reporting and transparency publications under MiFIR; and (iv) payment for order flow (PFOF). ESMA shares the EC's analysis regarding PFOF.

Date of publication: 11/03/2022

EC: Commission Delegated Regulation (EU) .../... supplementing MiFIR by specifying fees relating to the supervision by the ESMA of data reporting service providers

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing MiFIR by specifying fees relating to the supervision by the ESMA of data reporting service providers (DRSPs). Direct authorisation and supervisory powers were granted to ESMA over certain DRSPs by Regulation (EU) 2019/2175. This Delegated Regulation sets out the fees they will be charged in order to fully cover ESMA's necessary expenditure.

Date of publication: 10/03/2022

ESMA: Peer review report on supervision of cross-border activities of investment firms**Status: Final**

ESMA has published a peer review report on NCAs supervision of investment services that investment firms and credit institutions provide to retail clients on a cross-border basis using a MiFID II passport. This exercise focused on the AFM (Netherlands), BaFin (Germany), CNB (Czech Republic), CSSF (Luxembourg), CySEC (Cyprus) and MFSA (Malta) in light of the significance of their domestic firms' cross-border activities. In particular, the peer review focused on the supervision of cross-border activities by home NCAs across seven key areas of the supervision cycle: (i) authorisations; (ii) passport notifications; (iii) arrangements for ongoing supervision; (iv) day-to-day supervision; (v) investigations and inspections; (vi) exchanges and cooperation with NCAs; and (vii) enforcement / sanctioning. ESMA found that NCAs need to significantly improve their approach.

Key findings include: (i) NCAs did not specifically, adequately and structurally consider firms' cross-border activities in their supervision. In particular, NCAs did not sufficiently identify, assess and monitor the risks related to firms' cross-border activities or take supervisory actions to effectively address those risks; (ii) out of the six jurisdictions, Cyprus had the highest level of outgoing cross-border activities, and by far the highest number of complaints relating to firms' cross-border activities and of requests from other NCAs relating to Cypriot firms' cross-border activities. A large number of Cypriot firms pose a high risk of investor detriment, due to the frequent provision of services involving speculative products, with aggressive marketing behaviour. ESMA identified that CySEC's supervisory activities have overall proven insufficient at addressing the risks posed by Cypriot firms' cross-border services; and (iii) home NCAs appear to have established adequate processes in relation to the passport notifications and, with some areas for improvements, in the context of cooperation. In addition to the peer review recommendations that ESMA has addressed to the NCAs, ESMA has issued, for the first time, two specific recommendations to the Cyprus Securities and Exchange Commission (CySEC) under Article 16 of the ESMA Regulation requiring it to make every effort to comply. CySEC has two months to inform ESMA whether it complies/intends to comply with the recommendations. ESMA expects to carry out a follow-up assessment in two years to review the level of improvements achieved considering the findings and recommendations of the peer review report.

Date of publication: 10/03/2022

ESMA: Recommendations to the Cyprus Securities and Exchange Commission on the supervision of cross-border activities of investment firms**Status: Final**

ESMA has published two specific recommendations to the Cyprus Securities and Exchange Commission (CySEC) on the supervision of cross-border activities of investment firms under Article 16 of the ESMA Regulation requiring it to make every effort to comply. They apply in relation to the supervision of the cross-border activities targeting retail clients carried out by firms under the freedom to provide investment services and activities in accordance with Article 34 of MiFID II. In particular, they aim to increase the human resources dedicated to the supervision of cross-border services of Cypriot investment firms, and to strengthen CySEC's supervisory activities to effectively monitor, promote and enforce compliance by authorised firms. Following the Article 16 recommendations, CySEC has two months to inform ESMA whether it complies/intends to comply with the recommendations. In addition, the recommendations foresee ad-hoc and periodic updates that CySEC should provide to ESMA to assess that the recommendations are effectively addressed.

Date of publication: 10/03/2022

3.4 Prospectus regulation

(i) Germany

BaFin: Consultation on the draft amendment to the Guidance Notice on the prohibition of blind pool constructions within the German Investment Act (Konsultation 02/2022 zum Entwurf der Neufassung des Merkblattes zum Verbot von Blindpool-Konstruktionen im Vermögensanlagengesetz)

Status: Consultation

Deadline for the submission of comments: 14/04/2022

BaFin has launched a consultation on the draft amendment to the Guidance Notice on the prohibition of blind pool constructions in the asset investment segment. Blind pools have been prohibited since the Investor Protection Strengthening Act (*Anlegerschutzstärkungsgesetz* – AnlSchStG). Accordingly, asset investments for which the investment object is not specifically determined at the time of the preparation of the sales prospectus or the asset investment information sheets in the cases of Section 2a of the German Investment Act (*Vermögensanlagengesetz* – VermAnlG) may not be offered to the public.

The new version takes into account the experience BaFin has gained since the prohibition came into force. The revised Guidance Notice therefore contains, among other things, new categories of investment objects resulting from examination practice and which require uniform application. Examples are the introduction of a category for movable assets, such as packing stations or online trading for small goods, but also the increasingly differentiated approach of issuers in renewable energies. For existing investment objects, individual criteria were also adjusted to facilitate legal application. With the revision of the information sheet, BaFin is also reacting to the fact that some providers are trying to circumvent the blind pool ban.

Date of publication: 31/03/2022

3.5 Securities financing transactions

(i) EU

ESMA: Follow-up report to the peer review on the guidelines on the enforcement of financial information

Status: Final

ESMA has published a follow-up report to the peer review on the guidelines on the enforcement of financial information (GLEFI). The report analysed the progress made by seven National Competent Authorities (NCAs) and found that most of them made improvements, although some are still experiencing staffing difficulties.

Date of publication: 31/03/2022

ESMA: Final report on Guidelines on transfer of data between Trade Repositories under EMIR and SFTR

Status: Final

ESMA has published a final report on Guidelines on transfer of data between Trade Repositories under EMIR and SFTR. Regarding the Guidelines under EMIR, this Final report introduces certain amendments and clarifications to the existing Guidelines on transfer of data between Trade Repositories in order to maintain and strengthen the existing framework to port records from one Trade Repository to another under EMIR. The Guidelines under SFTR are new Guidelines regarding SFTR reporting requirements in the context of porting to set up a framework to enable market participants to safely transfer data from one TR to another under SFTR.

Date of publication: 25/03/2022

4. Market infrastructure

4.1 Custody rules

(i) EU

EC: Proposal for a Regulation amending the CSDR as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country CSDs

Status: Draft

The EC has published a proposal for a Regulation amending the Central Securities Depositories Regulation (CSDR) as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories (CSDs). The proposal aims to make securities settlement in the EU safer and more efficient by ensuring more proportionate and effective rules to reduce compliance costs and regulatory burdens for CSDs, as well as facilitating their ability to offer a broader range of services cross-border, and improving their cross-border supervision. More specifically, changes are proposed in the following areas: (i) settlement discipline. A 'two-step approach' is introduced under which mandatory buy-ins could become applicable if the penalties regime alone does not improve settlement fails in the EU; (ii) banking-type ancillary services. The proposal would improve conditions under which CSDs can access banking services by amending the threshold for such services and broadening the range of service providers; (iii) passporting. The proposal simplifies passporting requirements for CSDs, through which they can operate across the EU with one single license, by removing costly and duplicative procedures facilitating the cross-border provision of services and competition; (iv) cooperation between supervisory authorities. Cooperation is improved between supervisors by requiring the establishment of colleges of supervisors for certain CSDs to increase consistent and convergent supervision; and (v) oversight of the activities of third-country CSDs. The proposal ends the grandfathering clause and introduces a notification requirement to ensure that ESMA and national supervisors have better information about the activities of third-country CSDs in the EU.

The proposal is now submitted to the EP and the Council of the EU for their consideration.

Date of publication: 16/03/2022

4.2 EMIR

(i) EU

ESMA: Final report on Guidelines on transfer of data between Trade Repositories under EMIR and SFTR

Status: Final

ESMA has published a final report on Guidelines on transfer of data between Trade Repositories under EMIR and SFTR. For more information, please see section 3.5 above.

Date of publication: 25/03/2022

ESMA: Public statement on updates of third-country CCP recognition decisions

Status: Final

ESMA has published a public statement announcing a series of updates in relation to the recognition of central counterparties established in third countries (TC-CCPs) under EMIR. The updates include the review of recognitions of TC-CCPs that were already previously recognised, the conclusion of revised Memoranda of Understanding (MoUs) with relevant third country authorities, as well as the first-time recognition of the National Securities Clearing Corporation (NSCC).

Date of publication: 25/03/2022

ESRB: Response to the EC consultation on the review of the central clearing framework in the EU

Status: Final

The ESRB has published its response to the EC's February targeted consultation on a review of the EU central clearing framework. The ESRB welcomes the initiative to consult on measures to improve the competitiveness of EU CCPs and clearing activities and to ensure that their risks are appropriately managed and supervised. It notes that its response builds on its earlier response to ESMA's consultation on determining the degree of systemic importance of LCH Ltd and ICE Clear Europe or some of their clearing services in December. The ESRB proposed in its earlier response to ESMA that any extension of the recognition of the two UK Tier 2 CCPs should be temporary and should go hand in hand with measures designed to reduce risks to financial stability. The ESRB: (i) welcomes the fact that the plans of the EC reflect the proposals the ESRB set out in its response to ESMA. In particular, the ESRB notes that in the course of 2022, the EC plans to put forward proposals to build domestic capacity and strengthen supervision; (ii) would be in favour, provided that the forthcoming proposals by the EC ultimately succeed in addressing the risks to financial stability identified (and provided that the UK regulatory regime for CCPs continues to be deemed equivalent), – from a financial stability perspective – of allowing the two UK Tier 2 CCPs to continue offering clearing services in the EU beyond the end of the temporary equivalence period on 30 June 2025. The ESRB would also see a need to increase the level of cooperation with UK authorities in important areas of CCP supervision such as liquidity management, as well as with respect to recovery and resolution; (iii) considers that the proposals by the EC should be embedded in a framework applicable to any other CCP that might be classified as Tier 2 in the future; and (iv) states that macroprudential measures, which would be aimed at aligning the incentives of all market participants, using the substantial systemic clearing services with the reduction of systemic risk, should be seen as complementary to voluntary, market-based solutions. The ESRB outlines a number of considerations to help the EC develop its proposals to build capacity and strengthen supervision. It sets out its answers to specific questions from the EC in the appendix.

Please also see the entry below on the extended deadline of this consultation.

Date of publication: 22/03/2022

ESMA: Translation of Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR

Status: Final

ESMA has published translations into all official EU languages of its final report on the Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR, which has initially been published on 24 February 2021.

Date of publication: 10/03/2022

EC: Consultation on Commission Implementing Decision (EU) .../... on the equivalence of the regulatory framework for central counterparties in Malaysia to the requirements of EMIR

Status: Consultation

Deadline for the submission of comments: 04/04/2022

The EU Commission has launched a consultation on draft Commission Implementing Decision on the equivalence of the regulatory framework for central counterparties in Malaysia to the requirements of EMIR. The procedure for recognition of central counterparties (CCPs) established in third countries set out in Article 25 EMIR aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the EU. In accordance with the EC's view, this draft considers the regulatory framework for CCPs in Malaysia to be equivalent to the requirements under EMIR.

The assessment whether the legal and supervisory arrangements of Malaysia are equivalent to those of the Union should not only be based on a comparative analysis of the legally binding requirements applicable to CCPs in Malaysia, but also on an assessment of the outcome of those requirements, and their adequacy to mitigate the risks that clearing members and trading venues established in the Union may be exposed to, taking into account the size of financial market in which CCPs in Malaysia operate. Overall, the Commission concludes that the legal and supervisory arrangements of Malaysia provide for an effective equivalent system for the recognition of third-country CCPs.

The draft Implementing Decision will enter into force 20 days following its publication in the OJ.

Date of publication: 07/03/2022

EC: Extended deadline for consultation on the review of the central clearing framework in the EU**Status:** Consultation**Deadline for the submission of comments:** 22/03/2022

The EC has extended the deadline for comments on the consultation on the review of the central clearing framework in the EU, initially launched on 8 February 2022. This consultation seeks feedback on possible measures, legislative and/or non-legislative, to improve the competitiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised. This is part of the way forward for the central clearing announced by Commissioner McGuinness on 10 November 2021 and takes into account the reflections made by the European Commission over the last months on the risks associated with over-reliance on third country infrastructures and the need to increase clearing capacity in the EU.

The consultation is directed, in particular, at stakeholders participating in central clearing, including central counterparties, banks and other financial institutions, insurance companies, investment and pension funds, corporates.

Please also see the entry above on the ESRB response to this consultation.

Date of publication: 02/03/2022

(ii) Eurozone**ECB: Speech on building a robust and diversified clearing ecosystem****Status:** Final

The ECB has published a speech by Fabio Panetta, ECB Executive Board member, on building a robust and diversified clearing system. Mr Panetta discusses: (i) fostering the resilience of CCPs – the emphasis on close cooperation, transparency and timely information sharing since the start of Russian aggression against Ukraine, has been particularly crucial to ensure that banks are prepared for increased margin calls, trading suspensions or the implementation of sanctions. The ECB will continue to closely monitor the volatility in cleared markets, especially in sectors with significant exposures to Russia, such as energy and commodity markets, but also linked to the wider macroeconomic and financial effects of the current geopolitical situation. Mr Panetta also warns of the heightened threat of cyberattacks. He states that the cyber information and intelligence sharing initiative launched by the Euro Cyber Resilience Board for pan-European Financial Infrastructures provides a suitable platform to foster preparedness and resilience to potential cyberattacks; (ii) how the EU can contribute to a robust and diversified global clearing ecosystem – the global clearing ecosystem could benefit from more clearing options and alternatives to ensure banks and the real economy have continuous access to safe and efficient clearing solutions. Considering the size of the European economy, the importance of European market participants and the relevance of the euro as an international currency, there is ample room for the EU to expand the availability of clearing options. A dynamic and robust European clearing ecosystem can increase the overall attractiveness of central clearing and further reduce systemic risk, to the benefit of global financial markets; and (iii) developments in the field of clearing and the associated challenges – the evolution of clearing markets brings with it new product offerings, risk profiles and approaches to risk management. To make sure that this happens in a safe way and that it contributes to the reduction of systemic risk, it is important to understand what could endanger or disrupt the operation of clearing systems. Mr Panetta highlights in particular the need to understand new risks stemming from climate change and to carefully and critically assess the role of CCPs in relation to crypto-assets. Subjecting crypto-assets and clearing activities in that space to sound regulation, oversight and supervision is the minimum that must be done. The risk of misuse of crypto-assets to circumvent the sanctions against Russia is an important reminder that these markets must be required to comply with the strictest standards.

Date of publication: 22/03/2022

4.3 Stock exchanges

(i) International**BCBS: 2022 Triennial Central Bank Survey of Foreign Exchange and OTC Derivatives Markets****Status:** Final

The BCBS has announced that it will launch the 13th Triennial Central Bank Survey of Foreign Exchange and Over-The-Counter (OTC) Derivatives Markets on 1 April 2022. More than 1,200 financial institutions in 52 reporting jurisdictions will

contribute to this survey. Data on turnover in foreign exchange and OTC interest rate derivatives markets will be collected from financial institutions in April 2022. Data on the outstanding notional amounts and gross market values of foreign exchange, interest rate, equity, commodity, credit and other OTC derivatives will be collected at the end of June 2022. Preliminary results for turnover will be published by the BIS in September 2022, and for OTC derivatives outstanding in November 2022. The final results will be published in December 2022.

Date of publication: 30/03/2022



5. Anti-money laundering

(i) Germany

BaFin: Circular 04/2022 regarding high-risk countries (Rundschreiben 04/2022 (GW) betreffend Hochrisikostaaten)

Status: Final

BaFin has published Circular 04/2022 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 Germany.

Date of publication: 24/03/2022

BaFin: Supervisory statement on the identification of refugees from the Ukrainian war zone (Aufsichtsmitteilung zur Identifikation von Flüchtlingen aus dem ukrainischen Kriegsgebiet)

Status: Final

BaFin has announced in a supervisory statement that – in support of the current humanitarian efforts to accept refugees from the Ukrainian war zone – credit institutions subject to its supervision will not face any legal consequences under supervisory law when a valid Ukrainian identity card is used to validate the data collected under Section 11(4) no. 1 of the German Money Laundering Act (*Geldwäschegesetz* – GwG) when a basic payment account is opened.

Date of publication: 11/03/2022

(ii) EU

EBA: Issues on the AML/CFT legislative package

Status: Final

The EBA has published a letter in which it sets out agreed views on technical points on cooperation and on the selection criteria for direct supervision by the new Anti-Money Laundering Authority in the EC's proposed AML/CFT package, that were discussed by the AML/CFT Standing Committee (AMLSC). In particular, the EBA highlights: (i) the changes experts think may be needed to ensure that the proposed EU AML Authority (AMLA) can exercise its powers effectively, and to ensure that it will supervise directly those cross-border groups that expose the EU single market to the highest levels of ML/TF risks; and (ii) the importance experts place on strengthening the cooperation provisions in the current drafts to ensure that the AMLA will be able to cooperate effectively also with those financial services supervisors that do not have a direct AML/CFT remit, and with the three ESAs so that rules that apply to financial institutions and their supervisors in the EU are consistent and workable. The EBA emphasises that ML/TF cannot be fought effectively in isolation, and it will be important that the EU continues to build on the synergies that exist between the AML/CFT, prudential and conduct frameworks to safeguard a holistic approach to protect the EU from financial crime. The AML/CTF experts' views and a number of proposals for the co-legislators and the EC to consider, to clarify and make adjustments to the package are set out at the end of the letter.

Date of publication: 24/03/2022

EBA: Report on competent authorities' approaches to the AML and CFT supervision of banks

Status: Final

The EBA has published the findings from the second round of ongoing reviews of competent authorities' approaches to the AML/CFT supervision of banks. The EBA found that most competent authorities in its sample were committed to strengthening their approach to AML/CFT supervision. Several competent authorities took steps to put in place a holistic approach to tackling ML/TF risks in their banking sector and changes introduced after the recent transposition of relevant EU

legislation, such as greater enforcement powers, have started to make a difference. Furthermore, AML/CFT teams in almost all competent authorities that the EBA reviewed have grown significantly and are set to expand further, and cooperation with prudential supervisors and other EU AML/CFT supervisors has become a clear priority for all, in line with the EBA's regulatory framework. Among the common challenges that supervisors face, the EBA highlights difficulties in: (i) identifying ML/TF risks in the banking sector and in individual banks; (ii) translating ML/TF risk assessments into risk-based supervisory strategies; (iii) using available resources effectively, including by ensuring sufficiently intrusive onsite and offsite supervision; and (iv) taking proportionate and sufficiently dissuasive enforcement measures to correct AML/CFT compliance weaknesses. The EBA also found that cooperation with Financial Intelligence Units was not always systematic and often ineffective. These challenges have hampered the implementation of an effective risk-based approach to AML/CFT supervision. Round three of the implementation reviews is now underway. The EBA is following up with competent authorities that were part of the first and second round of reviews to understand the steps they have taken since the review to strengthen their approaches to AML/CFT supervision.

Date of publication: 22/03/2022

(iii) International

FATF: Recommendations on international standards on combating money laundering and the financing of Terrorism and Proliferation

Status: Final

The Financial Action Task Force (FATF) has updated its Recommendations on international standards on combating money laundering and the financing of Terrorism and Proliferation. These recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The FATF Recommendations, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances. In particular, the updated version includes changes to Recommendation 24 on transparency and beneficial ownership of legal persons and to the respective interpretive note.

Date of publication: 14/03/2022

FATF: Consultation on update to risk-based guidance for real estate sector

Status: Consultation

Deadline for the submission of comments: 22/04/2022

The FATF has launched a consultation on proposals to update its risk-based guidance for the real estate sector. The FATF notes that of particular interest are: (i) the details and specific guidance to practitioners, as well as additional aspects of guidance that may merit consideration and are not currently addressed; (ii) specific business-cases of real estate sector ML/TF risks and threats, and measures put in place by the private sector to address them so that the guidance could be more helpful and practical; and (iii) terrorist financing threats as identified by the sector practitioners.

Date of publication: 07/03/2022

FATF: Amendments to Recommendation 24 on prevention of misuse of legal persons

Status: Final

The FATF has adopted amendments to Recommendation 24, which requires countries to prevent the misuse of legal persons for ML/TF and to ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons. The amendments explicitly require a multi-pronged approach for the collection of beneficial ownership information, to ensure it is available to competent authorities in a timely manner. The FATF will also analyse the growing practical experience of implementing beneficial ownership registries, with a view to identifying best practices and supporting implementation by countries. The FATF is, in parallel, reviewing recommendation 25 on beneficial ownership of legal

arrangements, with a view to ensuring consistent and appropriately tailored beneficial ownership standards and smooth implementation.

Date of publication: 04/03/2022



6. Payments

6.1 Payment services/E-money

(i) Germany

BaFin: Circular 03/2022 (BA) on the reporting of major payments security incidents pursuant to Section 54(1) of the German Payment Services Supervision Act (Rundschreiben 03/2022 (BA) zur Meldung schwerwiegender Zahlungssicherheitsvorfälle gemäß § 54 Abs. 1 ZAG)

Status: Final

Date of entry into force: 01/10/2022

BaFin has published Circular 03/2022 on the reporting of major payments security incidents pursuant to Section 54(1) of the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). When entering into force, this Circular will replace Circular 08/2018 (BA) of 7 June 2018. The new circular implements the requirements of the [EBA Guidelines on major incident reporting under the PSD2](#), which were revised last year, and thus specifies the requirements of Section 54(1)(1) of the ZAG.

The most important changes for payment service providers to the previous Guidelines include: (i) an adjustment of the criteria for a reportable operational or security incident by introducing a new eighth criterion “Breach of security of network or information systems”, and an adjustment to the quantitative criteria so that insignificant incidents that are less relevant for supervision are less likely to be subject to mandatory reporting; (ii) a thorough revision of the standard forms to be used by payment service providers to submit a report: Questions that have not proven useful in the past have been deleted, while important aspects are treated in a more differentiated manner; and (iii) an adjustment of the deadlines for the classification of an incident and for the submission of the initial, interim and final reports: In the future, the classification of the incident must be made within 24 hours of its detection at the latest. The initial report must be submitted within 4 hours of classification (previously: 4 hours after detection). The obligation for payment service providers to submit interim reports on a regular basis (every 3 days) until the final report is submitted, even if there are no new developments, is eliminated. The deadline for submitting the final reports has been extended from 14 to 20 days (after regular operations have been restored).

In addition to the Circular, BaFin has published a [template of the form](#) used for reporting major payments security incidents.

Date of publication: 09/03/2022

(ii) EU

EPC: Guidelines on cryptographic algorithms usage and key management

Status: Final

The European Payments Council (EPC) has published a new version of its Guidelines on cryptographic algorithms usage and key management. Its purpose is to provide guidance to the European payment industry in the field of cryptographic algorithms and related key management issues. In this version, updates related to symmetric encryption were made. Also, the sections on quantum computing considerations and key distribution have been reviewed and updated as needed. As the research and developments in cryptology are constantly evolving, the plans to annually review and update this document to reflect the state of the art in light of major new developments.

Date of publication: 08/03/2022

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

ECB: Clarification on common approach to policy choices offered by European banking rules

Status: Final

The ECB has updated its policies outlining how it exercises options and discretions when supervising banks. Clarifying how the ECB exercises the options and discretions introduced by recent changes to EU banking rules ensures consistent and transparent implementation of the rules applied to banks. Harmonising these policies throughout the banking union creates a level playing field and promotes a more integrated European banking market.

Date of publication: 28/03/2022



8. Institutional supervisory framework

(i) Germany

BaFin: Report on risks in BaFin's Focus (Report zu Risiken im Fokus der BaFin)

Status: Final

BaFin has published a report identifying six key risks to the German financial industry on which it will primarily focus in 2022. In its report, which will be published now on an annual basis, BaFin outlines its assessment of the current risk situation and explains the steps it is planning to take to mitigate the risks to the financial markets as far as possible. In doing so, it intends to make progress towards the medium-term objectives it has set for itself for the period from 2022 to 2025.

Date of publication: 02/03/2022

(ii) EU

ESMA: Coordination of regulatory response to the war in Ukraine and its impact on EU financial markets

Status: Final

ESMA has published an overview on its coordination of regulatory response to the war in Ukraine and its impact on EU financial markets to ensure that stakeholders are adequately informed. It is closely monitoring the impact of the Ukraine crisis on financial markets and is prepared to use its relevant tools to ensure the orderly functioning of markets, financial stability and investor protection. The overview includes outlines on specific supervisory and coordination activity, as well as recommendations to financial market participants.

Date of publication: 14/03/2022

EC: DG FISMA 2022 management plan

Status: Final

The EC has published the Directorate-General for Financial Stability, Financial Services and Capital Markets Union's (DG FISMA) 2022 management plan. The plan describes the main outputs that DG FISMA should achieve in 2022 together with target dates and how these contribute to reaching the objectives set in the strategic plan. DG FISMA's outputs to deliver on the EC's main priorities include: (i) a new legislative initiative (Listing Act) intended to further simplify the listing rules for all companies and, in particular, SMEs; (ii) to adopt a number of RTS and ITS that will help to ensure the smooth functioning of the framework for crowdfunding services; (iii) to report on the functioning of the Securitisation Regulation; (iv) to continue developing Level 2 measures in relation to the banking package, to IFR and the IFD; (v) an in-depth review of the macroprudential framework (Art. 513 CRR) for the banking sector; (vi) a report on the overall implementation of 5AMLD; (v) to adopt RTS on the CCP Recovery and Resolution framework; (vi) measures to build the EU's capacity for clearing; (vii) a consultation on the Mortgage Credit Directive; (viii) a report and a consultation on the application of the Payment Accounts Directive; (ix) a delegated act under the Corporate Sustainability Reporting Directive, setting out the sustainability standards; (x) an initiative on instant payments with the aim of accelerating the full roll-out of instant payments in the EU; and (xi) to continue to review the application and impact of the PSD2. DG FISMA will launch a consultation and present a report to the co-legislators in Q4.

Date of publication: 07/03/2022

(iii) Eurozone**SRB: Speech on the 2022-23 workplan****Status: Final**

The SRB has published a speech, given by Sebastiano Laviola, SRB Board Member on, among other topics, its 2022/23 workplan. In the next month, the SRB will publish targeted amendments to the MREL Policy, including, among others: (i) the implementation of the modifications to the CRR related to resolution (indirect holdings of subsidiaries in a chain, or daisy chains, and clarification about the treatment of multiple point of entry strategies); (ii) the refinement of the methodology to address “No Creditor Worse Off” risks; and (iii) the widening of the scope of material non resolution entities subject to internal MREL. The SRB notes that it has provided banks with common and individual working priorities for this year, with a particular focus on separability and reorganisation plans. The SRB will also continue to focus on banks’ capabilities in managing liquidity and funding in resolution and wishes to see further improvement in capabilities of the Management Information Systems (MIS) of banks. It notes that a timely resolution requires timely availability of resolution data, and this is not possible in case of less-than-optimal MIS capabilities. It therefore expects banks to prioritise the management of IT systems for resolution.

Date of publication: 21/03/2022

(iv) International**FSB: Work Programme for 2022****Status: Final**

The FSB has published its work programme for 2022. Priority areas of work and new initiatives, including key deliverables to the G20 Indonesian Presidency, are: (i) supporting international cooperation and coordination on current financial stability issues; (ii) enhancing the resilience of non-bank financial intermediation (NBFI); (iii) enhancing cross-border payments; (iv) harnessing the benefits of digital innovation while containing its risks; and (v) addressing financial risks from climate change.

Date of publication: 31/03/2022

9. Investment funds

9.1 Product regulation

(a) AIF

(i) EU

ESRB: Response to proposals for amendments to AIFMD and UCITS Directive

Status: Final

The ESRB has published its response, sent to the Council and the EP, on the EC's proposed amendments to AIFMD and the UCITS Directive. The ESRB note that the proposals reflect most of the considerations that were presented by the ESRB in its response to the EC's consultation on the AIFMD review and its 2017 recommendation. The ESRB in particular welcomes the proposal to increase the availability of liquidity management tools for fund managers, helping them to deal with redemption pressures when market liquidity becomes stressed, and the proposal to establish a harmonised reporting framework for UCITS and UCITS management companies. The ESRB highlight three areas, which have not yet been addressed and where EU co-legislators could take the opportunity to further enhance the proposal made: (i) addressing liquidity mismatches in open-ended AIFs remains a priority – the ESRB proposes that ESMA be given the power to draw up a list of inherently less liquid assets. The ESRB also proposes that managers of open-ended AIFs investing in such assets be required to demonstrate that they can follow their investment strategy in all foreseeable market conditions; (ii) access to data for monitoring systemic risk is needed in order to enhance the work of macro prudential authorities – the ESRB proposes establishing data-sharing arrangements, as well as high-frequency reporting in crisis situations, for the benefit of all authorities with macro prudential mandates; and (iii) more guidance is needed on the use of macro prudential leverage limits – while ESMA has published guidance on addressing leverage risks in the AIF sector and in addition to the proposals presented by the EC, the ESRB calls for further clarification regarding the operationalisation of leverage limits.

- [Response to the Council](#)
- [Response to the EP](#)

Date of publication: 24/03/2022

(b) UCITS

(i) EU

ESMA: Report on fund performance during market stress – the Corona experience

Status: Final

ESMA has published the outcome of a study analysing the performance of actively managed equity UCITS relative to their prospectus and market benchmark indices during market stress, between 19 February 2020 and the end of June 2020. The results shed light on equity fund performance by type of management, especially during a period of stress such as the first wave of the pandemic. ESMA concludes that actively managed funds did not consistently outperform passive during this period. The strong market downturn at the beginning of the period followed by a fast recovery and then stabilisation offered a real-life opportunity to test the accepted hypothesis that active equity UCITS outperform their benchmarks during stressed market conditions.

Date of publication: 28/03/2022

ESRB: Response to proposals for amendments to AIFMD and UCITS Directive**Status: Final**

The ESRB has published its response, sent to the Council and the EP, on the EC's proposed amendments to AIFMD and the UCITS Directive. For more information, please see section 9.1 (a) above.

Date of publication: 24/03/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2017/653 as regards the extension of the transitional arrangement laid down in Article 14(2) of that Regulation and amending the RTS laid down in Delegated Regulation (EU) 2021/2268 as regards the date of application of that Regulation**Status: Adopted by the EC**

The EC has adopted a Delegated Regulation amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/653 as regards the extension of the transitional arrangement laid down in Article 14(2) of that Regulation and amending the regulatory technical standards laid down in Delegated Regulation (EU) 2021/2268 as regards the date of application of that Regulation.

Date of publication: 17/03/2022

9.2 Prudential regulation

(a) Compliance

(i) EU

ESMA: Report on the ESRB recommendation on liquidity risk in investment funds**Status: Final**

ESMA has published a report on the ESRB recommendation on liquidity risk in investment funds. Together with National Competent Authorities (NCAs), it has carried out a supervisory engagement with investment funds. The exercise focused on liquidity risk in corporate debt and real estate funds, with the results showing that the funds included in the scope of the analysis do not pose any substantial risk for financial stability.

Date of publication: 30/03/2022

10. Special topics

10.1 Covid-19

(a) Prudential regulation

(i) Germany

BaFin: Supervisory notice on the termination of most emergency measures in light of the Covid-19 pandemic as of 30 June 2022 (Aufsichtsmitteilung zur Beendigung der meisten Krisenmaßnahmen bezüglich der Covid-19-Pandemie im Juni 2022)

Status: Final

BaFin has published a supervisory notice stating that it will terminate most emergency measures which had been introduced as a reaction to the Covid-19 pandemic as of 30 June 2022. This step is based on the results of an evaluation conducted by BaFin, which it interprets to show that there is now no longer any reason for the current emergency measures, as the effects of the Covid-19 pandemic on the supervised entities and financial stability can now be dealt with. BaFin states that it is informing market participants about the expiry of the relief in order to provide them with clarity and sufficient planning certainty.

Date of publication: 18/03/2022

10.2 FinTech/Digital finance

(i) EU

EP: Adoption of the Regulation on pilot regime for market infrastructures based on DLT at first reading

Status: Adopted by the EP

The EP has adopted its first reading position on the EC's legislative proposal for a Regulation on a pilot regime for market infrastructures based on DLT. Amendments to the EC's proposal among other things, limit the financial instruments admitted to trading on, or settled by, a DLT market infrastructure, mainly in terms of market capitalisation (shares), issuance size (bonds) or issuance volume (exchange-traded funds, ETFs). The EP, in a background information document published on 21 March state that whilst its amendments set lower thresholds for financial instruments admitted to trading on, or settlement by, a DLT market infrastructure, the limits set in the provisional political agreement reached between the Council and Parliament on 24 November 2021 are more munificent. The Council will now need to adopt the proposed Regulation, which will enter into force 20 days after it is published in the OJ and will apply nine months after the date it has entered into force.

Date of publication: 24/03/2022

ECON: Adoption of report on Markets in Cryptoassets Regulation (MiCA)

Status: Adopted by the EP

The Economic and Monetary Affairs Committee (ECON) of the EP has adopted its negotiating position on the proposed Markets in Cryptoassets Regulation (MiCA). Key provisions agreed for those issuing and trading cryptoassets cover transparency, disclosure, authorisation and supervision of transactions. The agreed text also includes measures against market manipulation and to prevent money laundering, terrorist financing and other criminal activities. ECON focuses on: (i) climate change. To reduce the high carbon footprint of crypto-currencies, ECON asks the EC to present a legislative proposal to include in the EU taxonomy for sustainable activities any cryptoasset mining activities that contribute substantially to climate change, by 1 January 2025. ECON also calls on the EC to work on legislation addressing issues arising from other sectors that consume energy resources that are not climate-friendly, such as the video games and entertainment industry, as well as data

centres; and (ii) supervision. ECON wants ESMA to supervise the issuance of asset-referenced tokens, whereas the EBA would be in charge of supervising electronic money tokens.

In a next step, the EP will enter into negotiations with EU governments on the final shape of the bill.

Date of publication: 14/03/2022

(ii) International

FSB: FinTech and market structure in the Covid-19 pandemic – implications for financial stability

Status: Final

The FSB has published a report examining the impact of the Covid-19 pandemic on FinTech and market structure and its implications for financial stability. In the report the FSB, among other things: (i) discusses benefits from accelerated digitalisation of financial services during the pandemic, and whether those observed changes may be structural or revert back to pre-pandemic levels once conditions normalise; (ii) considers the financial stability implications of this accelerated trend towards digitalisation, such as potential market dominance of certain players, and the related concerns around incumbent financial institutions that may be digital laggards; and (iii) outlines parallel international work on third-party dependencies of the financial sector, for instance in cloud computing.

The FSB's findings include that: (a) the Covid-19 pandemic has accelerated the trend toward digitalisation of retail financial services. BigTechs in particular have further expanded their footprint in financial services; (b) in several jurisdictions, authorities have taken regulatory actions during the pandemic that may impact market structure. In particular, many authorities are enacting specific entity-based rules on BigTechs that tackle issues of financial stability, competition and data governance. The report stresses the importance of cooperation between regulatory and supervisory authorities, including those charged with overseeing the bank and non-bank sectors, and where relevant, with competition and data protection authorities; and (c) in relation to BigTechs and larger FinTech expansion: (1) there are issues around their potential systemic importance, the complexity and opacity of partnership activities, and the incentives for risk-taking by incumbent financial institutions impacted by these developments to preserve profitability; (2) consumer protection risks could arise from greater dependency on technology and potential data protection issues; (3) the limited number of providers of cloud services could magnify the impact of any operational vulnerability; and (4) their expansion into financial services can bring benefits such as improved cost efficiencies and wider financial inclusion for previously underserved groups.

Date of publication: 21/03/2022

BCBS: Newsletter on artificial intelligence and machine learning

Status: Final

The Basel Committee on Banking Supervision (BCBS) has published a newsletter on artificial intelligence and machine learning, to provide greater detail on its internal discussions. The BCBS states that banks are increasingly exploring opportunities for using artificial intelligence (AI), including machine learning (ML), which presents significant opportunities but can also heighten certain risks and challenges. The BCBS explains that it is analysing banks' use of AI/ML and potential implications for bank supervision. The BCBS has identified several areas for continued analysis by supervisors: (i) AI/ML models may be more difficult to manage than traditional models as they can be more complex. The BCBS notes that banks still maintain the responsibility and accountability for appropriate due diligence and oversight for AI/ML models; (ii) as AI/ML deployment often involves the use of large data sets, interconnectivity with third parties, and the use of cloud technologies, it can also create multiple possible points of cyber risk. The volume and complexity of data sources commonly used to support AI/ML models may also present greater data governance challenges in ensuring data quality, relevance, security and confidentiality; and (iii) AI/ML models can reflect biases and inaccuracies in the data they are trained on, and potentially result in unethical outcomes if not properly managed. In continuing its work on the supervisory implications of the use of AI/ML, the BCBS will focus on three areas: (a) the extent and degree to which the outcomes of models can be understood and explained; (b) AI/ML model governance structures, including responsibilities and accountability for AI/ML-driven decisions; and (c) the potential implications of broader usage of AI/ML models for the resilience of individual banks and more broadly, for financial stability. The BCBS believes that the rapid evolution and use of AI/ML by banks warrant more discussions on the supervisory implications, which will be facilitated by continued sharing of experiences among supervisors, industry and subject matter experts.

Date of publication: 16/03/2022

10.3 Sustainable finance

(i) EU

ESMA: Final report on emission allowances and associated derivatives

Status: Final

ESMA has published its Final report on the EU carbon market. In its analysis, ESMA did not find any current major deficiencies in the functioning of the EU carbon market based on the data available. However, ESMA's analysis of the market has led it to put forward a number of policy recommendations to improve market transparency and monitoring.

Date of publication: 28/03/2022

ESAs: Updated joint ESA supervisory statement on the application of the SFDR

Status: Final

The European Supervisory Authorities (ESAs) have published a supervisory statement seeking to mitigate the risk of divergent application of the Sustainable Finance Disclosure Regulation (SFDR) and Article 5 and 6 of the Taxonomy Regulation. The overall objective of this statement is to achieve an effective and consistent application and national supervision of the SFDR, promoting a level playing field and the protection of investors.

Date of publication: 24/03/2022

EP: Companies to be more accountable for their social and environmental impact

Status: Adopted by the EP

The Legal Affairs Committee of the EP has adopted its position on the Corporate Sustainability Reporting Directive (CSRD). If agreed with EU governments in a next step, the bill will make businesses more accountable for their impact on people and the planet, while giving investors and the public access to comparable, reliable and easily accessible information on sustainability.

Date of publication: 15/03/2022

ECB: Supervisory assessment of institutions' climate-related and environmental risks disclosures

Status: Final

The ECB has published a report on the supervisory assessment of banks' climate-related and environmental (C&E) risks disclosures. The report provides an updated assessment of the progress European banks have made on disclosing C&E risks as set out in the ECB's November 2020 guide. Although there have been improvements since the ECB's first assessment in late 2020, no bank fully meets the supervisory expectations. The ECB has therefore sent individual feedback letters to the banks under its supervision setting out key gaps in their disclosures and expects them to take decisive action to ensure they convey their risk profile comprehensively. With regard to the transparency of the materiality of risks and methodologies, the supervisory review demonstrated that one-third of institutions do not yet transparently disclose that they are materially exposed to C&E risks in line with their internal materiality assessments. Overall, institutions still scarcely substantiate their C&E metrics and targets. The ECB will conduct a full review of banks' preparedness to manage C&E risks in the first half of 2022. It also plans to gradually integrate C&E risks into its methodology for the supervisory review and evaluation process, which will influence Pillar 2 capital requirements, as well as its on-site inspection methodology.

The ECB will review banks' climate and environmental disclosures again at the end of 2022.

Date of publication: 14/03/2022

EC: Study on feasibility, minimum standards and transparency requirements of ESG benchmark label

Status: Final

The EC has started a study exploring the possibility of introducing a new EU ESG benchmark label. The EC hopes that the study will provide an extensive view of the existing ESG-related benchmarks market, highlighting shortfalls and best practices.

The study will inform the EC about possible features for a new EU ESG benchmark label that would become a key lever to align investments with long-term sustainability considerations. The EC has published three surveys: for administrators of ESG-related benchmarks, benchmark constituents and benchmark institutional investors / asset managers.

Date of publication: 04/03/2022

EBA: Report on developing a framework for sustainable securitisation

Status: Final

The EBA has published a report on developing a framework for sustainable securitisation. For more information, please see section 1.1(b) above.

Date of publication: 02/03/2022

EC: Communication on the path towards a green, digital and resilient economy

Status: Final

The EC has published a Communication on the path towards a green, digital and resilient economy, aiming to contribute to the leaders' informal discussions on the economic growth model in the EU. It underlines the importance of full implementation of measures agreed at EU level, coordinated action by all relevant actors, including the EU, Member States and the private sector, as well as promotion of key investments and reforms which are required for long-term sustainable growth and wellbeing for all EU citizens. Given the global nature of the challenges ahead, this communication concludes that action at EU and international level by Member States and private actors will be essential.

Date of publication: 02/03/2022

Platform on Sustainable Finance: Final report on social taxonomy

Status: Final

The EU Platform on Sustainable Finance, an advisory body subject to the EC's horizontal rules for expert groups, has published its final report by Subgroup 4 on social taxonomy. Concerns have been expressed that social matters are regulated at Member State level and between social partners, not at EU level and that a social taxonomy would overburden companies, especially small companies, with additional reporting requirements. The report proposes a structure for a social taxonomy within the present EU legislative environment on sustainable finance and sustainable governance. Subgroup 4 of the platform was also asked to: (i) consider the relationship between the social and environmental taxonomies; and (ii) reflect on other sustainability objectives like governance and the regulatory environment.

The suggested structure of the social taxonomy employs the following structural aspects of the environmental taxonomy: (a) the development of social objectives; (b) types of substantial contributions; (c) 'do no significant harm' criteria; and (d) minimum safeguards. However, the social taxonomy deviates from the environmental taxonomy by containing sub-objectives which spell out different aspects of the following three social objectives: (1) decent work (including for value-chain workers); (2) adequate living standards and wellbeing for end-users; and (3) inclusive and sustainable communities and societies. The sub-objectives to these three objectives focus on health and safety, healthcare, housing, wages, non-discrimination, consumer health and communities' livelihoods. Lastly, the report presents some requirements for future social criteria and indicators within this framework alongside ideas about the next steps for developing a social taxonomy.

Date of publication: 01/03/2022

(ii) International

IOSCO: Adoption of a 2022 Sustainable Finance work plan

Status: Final

IOSCO has adopted a 2022 Sustainable Finance work plan that strengthens the organisation's commitment to mitigating greenwashing and increasing transparency on sustainability impacts for investors. In 2022, IOSCO will: (i) conduct a review of the IFRS International Sustainability Standards Board (ISSB) exposure drafts of proposed climate and general sustainability

disclosure requirements, as well as the final standards when they are produced. If IOSCO determines that the IFRS Sustainability Standards are fit for purpose, its decision will provide its members the basis to decide how they might adopt, apply or be informed by the ISSB standards; (ii) push forward work to develop assurance standards, with a special focus on independent assurance of the quality of corporate reporting of sustainability information; (iii) conduct an in-depth review of carbon markets to identify the vulnerabilities in nascent voluntary carbon markets, as well as the transparency and integrity in the functioning of carbon markets from the perspective of financial regulation; and (iv) step up its engagement with both national regulators and market participants to push for the implementation of its recommendations addressed to asset management and ESG ratings and data providers.

Date of publication: 14/03/2022

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