

A&O SHEARMAN



Regulatory monitoring

NEWSLETTER
JULY 2024

Contents

1. Bank regulation	13
1.1 Prudential regulation	13
a) General	13
BCBS: Consultation on report regarding various technical amendments and FAQs	13
b) Solvency/Own funds issues	13
EC: Commission Delegated Regulation (EU) .../... amending the CRR with regard to the date of application of the own funds requirements for market risk	13
EBA: Peer review on the Guidelines on the application of the definition of default	14
EBA: Statement on the application of CRR III in the area of credit risk for the IRBA	14
EBA: Consultation on draft ITS on amending Commission Implementing Regulation (EU) 2016/100 laying down ITS specifying the joint decision process with regard to the application for certain prudential permissions pursuant to the CRR	15
EBA: Report on stacking orders and capital buffers	15
EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Commission Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of ECAI and the credit quality steps set out in the CRR	16
ESRB: Summary compliance report on assessment of the implementation of the ESRB recommendation on guidance for setting countercyclical buffer rates	16
c) Risk management/SREP/Pillar 2/Outsourcing/NPL	16
BaFin: Supervisory notice regarding the new surcharge classes in SREP 2024 (<i>Aufsichtsmittelung zu den neuen Zuschlagsklassen im SREP 2024</i>)	16
ECB: Report on IFRS 9 overlays and model improvements for novel risks	17
EBA: Final report on Guidelines amending Joint Committee Guidelines on complaints handling for the securities and banking sectors	17
BCBS: Announcement of July 2024 meeting outcomes	17
d) Cyber security	18
EBA: Report on the systemic cyber incident coordination framework	18
e) Remuneration	18
EBA: Report on the application of derogations regarding the pay out of remuneration to identified staff	18
EBA: Report on the review of the application of gender neutral remuneration policies	19

f)	Supervisory reporting	19
	EBA: Final report on draft ITS amending Commission Implementing Regulation (EU) 2021/451 on supervisory reporting referred to in Article 430(7) CRR concerning operational risk	19
g)	Accounting/Prudential filter/Audit	20
	ECB: Report on IFRS 9 overlays and model improvements for novel risks	20
	ESMA: ESEF Reporting Manual in preparation of annual financial reports in ESEF format	20
1.2	Recovery and resolution	21
	BaFin: Guidelines on the recovery plan according to simplified requirements pursuant to Section 19 SAG (<i>Leitfaden zum Sanierungsplan nach vereinfachten Anforderungen gem. § 19 SAG</i>)	21
	BaFin: Guidance Notice regarding external bail-in implementation (<i>Angepasstes Merkblatt zur externen Bail-in-Implementierung</i>)	21
	EBA: Consultation on draft ITS on resolution planning reporting	21
	EBA: Consultation on handbook chapter on independent valuers for resolution	22
	ESMA: Final report on Guidelines on written arrangements and procedures for the functioning of resolution colleges	22
	SRB: Report on resolvability of banking union banks 2023	23
1.3	Stress tests/Macroprudential topics	23
	ECB: Conclusion of cyber resilience stress test	23
	EBA: Informal consultation on drafts for the banking industry on 2025 EU-wide stress test methodology	23
2.	Investment firms regulation	25
	BaFin: English translation on the Investment Firm Remuneration Regulation (<i>Englische Übersetzung der Wertpapierinstituts-Vergütungsverordnung</i>)	25
3.	Market regulation/ Conduct rules	26
3.1	General	26
	EC: Report on Whistleblowing Directive	26
3.2	Benchmarks	26
	ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures	26
	ESMA: Consultation on supervisory expectations for the management body	27
3.3	Credit rating agencies	27

	ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures	27
	ESMA: Consultation on supervisory expectations for the management body	28
3.4	Market abuse	28
	ESMA: Report on suspicious transaction and order reports (STORs)	28
3.5	MiFID/MiFIR	28
	ESMA: Public statement on the transition to the new regime for post-trade transparency of OTC-transactions	28
	EBA: Report on structured deposits	29
	ESMA: Consultation on the technical standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies	29
	ESMA: Updated Q&A on MiFID II	30
	ESMA: Third consultation package on equity transparency, volume cap circuit breakers, SI, the equity CTP and the flags for non-equity transparency	30
	ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures	30
3.6	Packaged retail and insurance-based investment products (PRIIPs)	31
	ESAs: Updated Q&A on PRIIPs KID	31
3.7	Securities financing transactions	31
	EBA: Consultation on draft RTS regarding CVA risk of STFs under Article 382(6) CRR	31
3.8	Transparency requirements/Shareholder requirements	31
	ESMA: Follow-up report to the fast-track peer review on the application of the Guidelines on the enforcement of financial information by BaFin and FREP in the context of Wirecard	31
4.	Market infrastructure	33
4.1	Custody rules	33
	ESMA: Introductory remarks on shortening the settlement cycle	33
	ESMA: Consultation on rules to recalibrate and further clarify the framework	33
4.2	EMIR	34
	ESMA: Public statement on use of collateral by NFCs acting as clearing members	34

	ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures	34
4.3	Clearing, settlement, and CCPs related rules other than in the context of derivatives	35
	ESMA: Introductory remarks on shortening the settlement cycle	35
	ESMA: Final report on fifth ESMA stress test exercise for CCPs	35
	BCBS: Report on the recalibration of shocks in the IRRBB standard	35
5.	Anti-money laundering	37
	BaFin: Circular 08/2024 regarding high-risk countries (<i>Rundschreiben 08/2024 zu Hochrisikostaaten</i>)	37
	BaFin: Information regarding the prevention of ML in connection with loan fronting (<i>Informationen zur Prävention von Geldwäsche in Zusammenhang mit Loan-Fronting</i>)	37
	BaFin: Consultation 06/2024 on interpretative guidance on the German Money Laundering Act pursuant to Section 51(8) GwG (<i>Konsultation 06/2024 über Auslegungs- und Anwendungshinweise zum Geldwäschegesetz gemäß § 51 Absatz 8 GwG</i>)	37
	BuBa: Guidance Notice on compliance with financial sanctions (<i>Merkblatt zur Einhaltung von Finanzsanktionen</i>)	38
	EBA: Final report on Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 ('Travel Rule Guidelines')	38
	FATF: Targeted update on implementation of the FATF standards on VAs and VASPs	38
	FATF: Report on horizontal review of gatekeepers' technical compliance related to corruption	39
	FATF: Consultation on updated Guidance on national ML&TF risk assessment	39
6.	Payments	40
6.1	Payment services/E-money	40
	BaFin: Guidance Notice on remarks regarding the Payment Services Oversight Act (<i>Merkblatt über Hinweise zum Zahlungsdiensteaufsichtsgesetz – ZAG</i>)	40
	EBA: Consultation on draft ITS on uniform reporting templates in relation to level of charges and share of rejected transactions under the SEPA Regulation	40
	EC: Q&As on Instant Payments Regulation implementation	40
	FSB: Consultation on recommendations to promote alignment and interoperability across data frameworks related to cross-border payments	41
6.2	Payment and settlement systems	41

	ECB: Policy on access by non-bank payment service providers to central bank operated payment systems and to central bank accounts	41
7.	Banking union	43
7.1	Single Supervisory Mechanism (SSM)	43
	ECB: Consultation on draft Guide on governance and risk culture	43
8.	Institutional supervisory framework	44
	EBA: Opinion on the 2022 discharges report of the EP	44
	ESAs: Report of the JC SC CPFI workshop on behavioural insights	44
	EBA: Report on the European Supervisory Examination Programme for 2025	44
	EBA: Report on convergence of supervisory practices in 2023	45
9.	Investment funds	46
9.1	Product regulation	46
a)	AIF	46
	BaFin: Supervisory notice on ESMA Guidelines regarding harmonised terms in fund names (<i>Aufsichtsmitteilung zu ESMA-Leitlinien zu Fondsamen</i>)	46
	BaFin: Guidance notice for marketing according to § 320 KAGB (<i>Merkblatt für Anzeigen nach § 320 KAGB</i>)	46
	BaFin: Guidance Notice on the marketing pursuant to Section 329 of the KAGB of foreign AIF or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF (<i>Merkblatt zum Vertrieb gemäß § 329 KAGB</i>)	46
	ESMA: Updated Q&A on the application of the AIFMD	47
	ESMA: Consultation on liquidity management tools for funds	47
b)	UCITS	47
	ESMA: Updated Q&A on the application of the UCITS Directive	47
	ESMA: Consultation on liquidity management tools for funds	48
9.2	Prudential regulation	48
a)	Compliance	48
	Second law on the reform of the Capital investors' test cases act (<i>Zweites Gesetz zur Reform des Kapitalanleger-Musterverfahrensgesetzes</i>)	48
	BaFin: Guidance Notice on the suitability of managing directors pursuant to the Investment Code (<i>Merkblatt zur Eignung von Geschäftsleitern nach dem KAGB</i>)	48
	EC: Commission Delegated Regulation (EU) .../... supplementing the ELTIF Regulation with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF, the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the	

matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure	49
FSB: Progress report on enhancing the resilience of non-bank financial intermediation	49
b) Legislation	50
BMF: Draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (<i>Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung</i>)	50
BMF: Draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (<i>Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur</i>)	50
10. Special topics	51
10.1 FinTech/Digital finance	51
BaFin: Note on the submission of reports of serious ICT-related incidents and significant cyber threats (<i>Hinweis zur Einreichung der Meldung schwerwiegender IKT-bezogener Vorfälle und erheblicher Cyberbedrohungen</i>)	51
BaFin: Supervisory notice on the implementation of DORA (<i>Aufsichtsmitteilung über Umsetzungshinweise zu DORA</i>)	51
ESMA: Opinion on broker models supporting the convergent application of MiCA	52
ESAs: Final report on draft RTS to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) DORA	52
ESAs: Second batch of policy products under DORA	52
EBA: Consultation on draft Guidelines on templates to assist competent authorities in performing their supervisory duties regarding issuers' compliance under Titles III and IV of the MiCA Regulation	53
ESMA: Updated Q&A on the MiCA Regulation	53
ESAs: Consultation on draft Guidelines on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) MiCA Regulation	54
ECB: Report on bank digitalisation assessment criteria and collection of sound practices	54
EBA: Statement on the expectation that issuers and offerors of ARTs and EMTs will comply promptly with the MiCA Regulation	55
ESMA: Second package of final draft technical standards specifying certain requirements of the MiCA Regulation	55
ESAs: FAQs on DORA 2024 dry run exercise on reporting of registers of information	55

	EBA: Final report on Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 ('Travel Rule Guidelines')	56
	FSB: Report on cross-border regulatory and supervisory issues of global stablecoin arrangements in EMDEs	56
	BCBS: Report on disclosure of crypto-asset exposures	56
	BCBS: Report on crypto-asset standard amendments	56
	BCBS: Consultation regarding report on principles for the sound management of third-party risk	57
	BCBS: Announcement of July 2024 meeting outcomes	57
10.2	AI	57
	Regulation (EU) 2024/1689 laying down harmonised rules on AI and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (AI Act)	57
	FSB: Speech on how AI may shape the economy and the financial system	58
10.3	Sustainable finance	58
	BaFin: Supervisory notice on ESMA Guidelines regarding harmonised terms in fund names (<i>Aufsichtsmitteilung zu ESMA-Leitlinien zu Fondsamen</i>)	58
	BReg: Government draft on the Act implementing the CSRD (<i>Regierungsentwurf zum Gesetz zur Umsetzung der CSRD</i>)	58
	ESAs: Update on consolidated Q&As on SFDR	59
	ESMA: Opinion on sustainable investments – facilitating the investor journey	59
	ESMA: Final report on Guidelines on enforcement of sustainability information	59
	Directive (EU) 2024/1760 on corporate sustainability due diligence and amending the Whistleblowing Directive and the ESAP Regulation (CSDDD)	60
	EC: Report on the monitoring of climate-related risk to financial stability	60
	NGFS: Note on improving greenhouse gas emissions data	61
	FSB: Report regarding stocktake on nature-related risks, including supervisory and regulatory approaches and perspectives on financial risk	61
	NGFS: Report on nature-related litigation: emerging trends and lessons learned from climate-related litigation	62
11.	German Omnibus Acts (<i>Artikelgesetze</i>)	63
	BReg: Government draft on the Act implementing the CSRD (<i>Regierungsentwurf zum Gesetz zur Umsetzung der CSRD</i>)	63
	Second law on the reform of the Capital investors' test cases act (<i>Zweites Gesetz zur Reform des Kapitalanleger-Musterverfahrensgesetzes</i>)	63

BMF: Draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (<i>Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung</i>)	63
BMF: Draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (<i>Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur</i>)	63



ECB in focus

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

SOME OF OUR RECENT POSTS

EU court's judgment sheds new light on how the ECB should apply national administrative measures

04 April 2024

The General Court of the European Union recently delivered its judgment on a dispute between an Austrian bank (BAWAG) and the ECB over the imposition of an administrative measure for breaching the large exposure limits. The case raises interesting questions about the competence of the ECB to apply national law provisions and the interpretation of national law implementing EU directives.

[Read more →](#)

Outsourcing on the rise: ECB warns of increased reliance on third party providers

07 March 2024

In its recent Supervisory Newsletter the ECB highlights the jump in the number of outsourcing contracts as banks have increased their reliance on non-EU providers for IT related services.

[Read more →](#)

Culture matters—The ECBs approach to assessing banks' culture and risk behaviour

26 September 2023

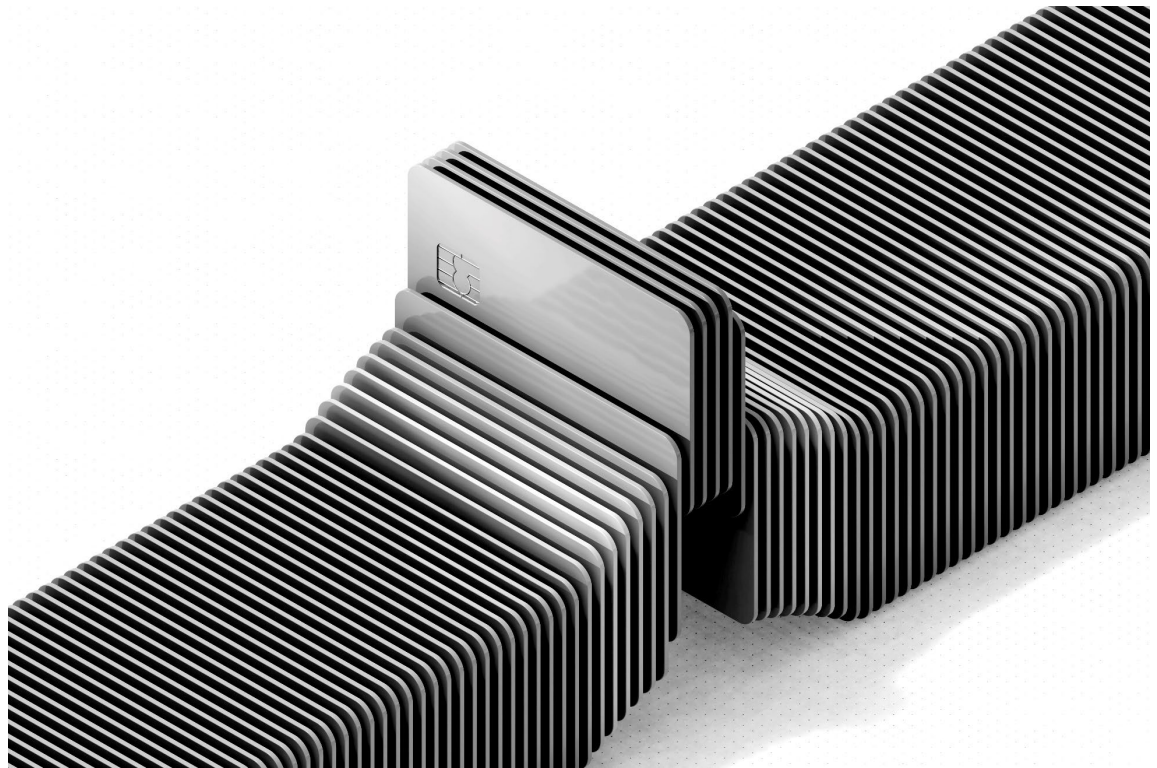
A recent speech by Frank Elderson, Vice-Chair of the ECB Supervisory Board, places culture firmly on the supervisory agenda. Mr Elderson considers how culture can drive risk behaviour in banks and how the ECB goes about assessing banks' culture.

[Read more →](#)

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

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CHANGE ANALYSIS AND PREVIEW OF RULES

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

1. Bank regulation

1.1 PRUDENTIAL REGULATION

a) General

(i) International

BCBS: Consultation on report regarding various technical amendments and FAQs

Status: Consultation

Deadline for the submission of comments: 19/08/2024

The BCBS has launched a consultation on proposals for certain technical amendments to the Basel framework. The proposed amendments: (i) address an inconsistency in the definition of specialised lending between the standardised and internal ratings-based approaches to credit risk; and (ii) align the formula for aggregating curvature positions for Group 2a crypto-asset exposures with the formula applied to other asset classes under the market risk framework. The BCBS has also published a set of finalised FAQs on certain implementation issues which can be clarified without the need for changes to the standard. The FAQs are set out in the annex to the consultation and will be added to the Basel framework. As they do not change the standards themselves, the FAQs are issued in final form and are not subject to consultation.

Date of publication: 05/07/2024

b) Solvency/Own funds issues

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending the CRR with regard to the date of application of the own funds requirements for market risk

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending the CRR with regard to the date of application of the own funds requirements for market risk. In addition, alongside the Delegated Regulation, the EC has published a related [Q&A document](#). Article 461a of the CRR, as amended by CRR III, requires the EC to monitor the international implementation of the Basel III Fundamental Review of the Trading Book (FRTB) standards across jurisdictions and includes an empowerment to adopt delegated acts to ensure an international level playing field, if there are significant deviations in implementation by third countries. The EC's monitoring of the FRTB's implementation across jurisdictions shows that, while some jurisdictions have recently implemented the standards, other jurisdictions, for which level playing field considerations are very relevant, are behind and significant uncertainty remains about the timelines and possible deviations in implementation. Most significantly, the US has not yet implemented the FRTB standards or been sufficiently clear about when or how it would be ready to do so. The EC's assessment is that given the current regulatory developments in the US, the Basel standard will likely not be implemented by US agencies before 2026. Therefore, the EC has adopted the Delegated Regulation which postpones by one year, until 1 January 2026, the date of application of the FRTB standards for the banks' calculation of their own funds requirements for market risk. Until then, the current market risk requirements,

including the calculation of own funds requirements for market risk, market risk reporting and disclosure requirements, remain applicable.

The Delegated Regulation will now be scrutinised by the EP and Council of the EU for a period of three months. The Delegated Regulation will then enter into force on the day after its publication in the OJ and will apply from 1 January 2025.

Date of publication: 24/07/2024

EBA: Peer review on the Guidelines on the application of the definition of default

Status: Final

The EBA has published a peer review on the Guidelines on the application of the definition of default under the CRR. The report includes findings on the supervision of credit risk of six competent authorities, focusing on application of the definition of default and the EBA Guidelines across three major areas: (i) implementation of the EBA Guidelines in the supervisory framework; (ii) effectiveness of the procedure for the submission of the application; and (iii) effectiveness of the assessment for checking compliance with the definition of default. Overall, the review found that the effectiveness of supervision in this area is good, particularly as regards the monitoring of internal ratings-based approach (IRBA) credit institutions. Supervision of the definition of default of credit institutions using the standardised approach (SA) is also good but more varied, reflecting the more dispersed nature of credit institutions and the relative predominance of IRBA credit institutions in terms of size and assets in different jurisdictions. The report identifies a small number of follow-up measures/recommendations for certain competent authorities as well as best practices that would be of benefit for other competent authorities to adopt. The EBA will conduct a follow-up peer review of the implementation of the measures included in the report in two years.

Date of publication: 22/07/2024

EBA: Statement on the application of CRR III in the area of credit risk for the IRBA

Status: Final

The EBA has published a statement on the application of CRR III in the area of credit risk for the Internal Ratings Based (IRB) Approach. In order to ensure a smooth operational implementation of the latest EU Banking Package, which implements Basel III, the EBA encourages institutions to, among other things, communicate to their competent authorities the targeted model landscape, in particular following the migration of exposures to the foundation approach and standard approach. A key aspect is to ensure that rating systems perform adequately on their scope of application. Institutions should also assess and categorise changes coming from the implementation of the CRR III that impact the performance of a rating system according to the EC's Delegated Regulation on materiality of changes to the IRB approach. On the other hand, changes coming from the implementation of CRR III that do not impact the performance of a rating system should not be considered under the scope of the EC's Delegated Regulation on model change to the IRB approach. Institutions should share with their competent authority an implementation plan on the foreseen modelling updates that are linked to future EBA supervisory products. In this context, modelling updates in relation to credit conversion factor (CCF) parameters (e.g. 12 months fixed horizon reference date) may not need to be prioritised until the date of application of the EBA Guidelines on IRB-CCF.

Date of publication: 17/07/2024

EBA: Consultation on draft ITS on amending Commission Implementing Regulation (EU) 2016/100 laying down ITS specifying the joint decision process with regard to the application for certain prudential permissions pursuant to the CRR

Status: Consultation

Deadline for the submission of comments: 16/10/2024

The EBA has launched a consultation on ITS on amending Commission Implementing Regulation (EU) 2016/100 laying down ITS specifying the joint decision process with regard to the application for certain prudential permissions pursuant to the CRR. The proposed revised ITS incorporate changes to the EU legal framework, including the reduced scope of application for internal models under CRR III and the updated framework on the general functioning of supervisory colleges.

The existing ITS establish the process to help competent authorities work together while performing their assessments and preparing their contributions to the joint decision on institutions' application to use internal models for prudential purposes, including: (i) possible involvement of third-country supervisory authorities; (ii) specification on the procedure for assessing the completeness of application; and (iii) planning of the joint decision process and, more generally, the cooperation between home-host authorities. The novelty of the draft amending ITS is mainly related to the overall revised scope for internal model set out in the CRR III, where the possibility to apply these approaches is no longer in place for operational risk. Therefore, the references to the Advanced Measurement Approach (AMA) have been removed from the scope of the revised ITS.

Date of publication: 16/07/2024

EBA: Report on stacking orders and capital buffers

Status: Final

The EBA has published a report on the stacking orders of capital, leverage and MREL/TLAC requirements and related capital buffers, as well as on reflections about management buffers practices in the EU. The work conducted on stacking orders aims at reaching a better understanding of the interaction between the regulatory stacks and in relation to which stacks management buffers are usually set by institutions. The report describes all regulatory stacks that are relevant for understanding an institution's capital headroom above the requirements. It also presents a high-level overview of the EU framework of currently applicable regulation, together with a description of some other non-EU frameworks. The analysis of institutions' practices on management buffers highlights that many institutions do not have a very clear definition of management buffers, but nearly all of them set a target on the basis of at least one stack. Institutions tend to compare the management buffer to the highest reference point in the relevant regulatory stack on which they have defined a management buffer. In terms of perceived usability of management buffers, most institutions considered management buffers to be more usable than the capital held to meet the Combined Buffer Requirement. Further work of the EBA will include efforts to continue to clarify, where necessary, the interactions of the different stacks. The EBA states that its work will inform other regulatory products, such as the one stemming from the mandate on the interplay between the output floor and Pillar 2 (Art 104a(7) CRD VI), and prepare the ground for the update of the supervisory review and evaluation process Guidelines following the EU Banking Package (CRR III and CRD VI) implementation.

Date of publication: 15/07/2024

EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Commission Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of ECAI and the credit quality steps set out in the CRR

Status: Published in the OJ

Date of entry into force: 25/07/2024

The Commission Implementing Regulation (EU) 2024/1872 amending the ITS laid down in Commission Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions (ECAIs) and the credit quality steps set out in the CRR has been published in the OJ. The mappings of relevant ECAIs are updated to reflect: (i) changes to the quantitative and qualitative factors underpinning the credit assessments of some mappings and the extension of some ECAIs' credit assessments to new market segments, resulting in new rating scales and new credit rating types. The mapping for deregistered ECAIs is removed and changes are made to reflect changes to the names and current symbols of certain ECAIs.

Date of publication: 05/07/2024

ESRB: Summary compliance report on assessment of the implementation of the ESRB recommendation on guidance for setting countercyclical buffer rates

Status: Final

The ESRB has published a report on its second assessment of implementing actions taken, following its recommendation on guidance for setting countercyclical buffer rates. The report assesses compliance with the recommendation, which is addressed to national designated authorities, as well as the ECB, and sets out recommendations for the operationalisation and application of the countercyclical capital buffer. The report concludes that the overall level of compliance remains high, with all addressees graded as either fully or largely compliant, and that the deficiencies in compliance identified are not sufficiently material to diminish the efficiency of macro-prudential policies or the single market.

The next ESRB follow-up assessment is expected to take place in three years' time, starting from the last reporting deadline.

Date of publication: 03/07/2024

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

(i) Germany

BaFin: Supervisory notice regarding the new surcharge classes in SREP 2024 (*Aufsichtsmitteilung zu den neuen Zuschlagsklassen im SREP 2024*)

Status: Final

BaFin has published a supervisory notice regarding the new surcharge classes in SREP 2024. The CRD IV introduced the Pillar II total capital requirement, which is implemented in Sections 6c and 6d of the German Banking Act (*Kreditwesengesetz – KWG*). Since 2016, BaFin has therefore been setting the SREP total capital requirement (Pillar 2 Requirement, P2R) for institutions under national supervision in cooperation with the German central bank (Deutsche Bundesbank). The appropriate institution-specific total capital base is determined using a Pillar 1 “plus” approach. In addition to the risks already covered by Pillar 1, this takes into account all other material risks of the respective institution, which are usually quantified by evaluating the institution's internal risk measurement and

management procedures. The results of the institution's internal procedures for ensuring risk-bearing capacity (RBC concepts; ICAAP) are therefore taken into account to a large extent.

Date of publication: 31/07/2024

(ii) EU

ECB: Report on IFRS 9 overlays and model improvements for novel risks

Status: Final

The ECB has published a report on IFRS 9 overlays and model improvements for novel risks, identifying best practices for capturing novel risks in loan loss provisions. The review has revealed clear progress in banks' identification of novel risks. Only a small number of banks still ignore these risks in their provisioning process. The progress is particularly evident in the area of climate and environmental risks, where the percentage of banks provisioning for those risks has increased from 16% to 55%.

Date of publication: 29/07/2024

EBA: Final report on Guidelines amending Joint Committee Guidelines on complaints handling for the securities and banking sectors

Status: Final

The EBA has published a final report on Guidelines amending Joint Committee Guidelines produced by the ESAs on complaints handling for the securities (ESMA) and banking (EBA) sectors. In this report, the EBA summarises feedback received to its November 2023 consultation on the amending Guidelines. Overall, most respondents supported the proposed approach and welcomed the initiative to extend the applicability of the Guidelines to credit servicers under the Credit Servicers Directive (CSD). However, concerns were raised about the definitions of "firms" and "complaints". The EBA decided to make no changes to the draft Guidelines it consulted on, although it has introduced some non-substantive amendments to keep the complaints handling requirements up to date. The Guidelines amend the Guidelines produced by the ESAs to specify the requirement in relation to credit servicers to establish and maintain effective and transparent procedures for the handling of complaints from borrowers in accordance with Article 24(1) of the CSD, keeping the content identical to the Guidelines produced by the ESAs. The NCAs designated as competent to supervise under the CSD are not included in Article 4(2) of the EBA Regulation. This means that the EBA cannot translate and issue the new Guidelines as it cannot address them to NCAs under the CSD. As such, the new Guidelines do not yet have a fixed application date. Instead, the application date is relative; three months after the entry into force of the Payment Services Regulation and the amendments to the EBA Regulation. The precise application date will be added to the Guidelines in 2025. Until then, credit servicers have extra time to prepare to comply with the Guidelines.

Date of publication: 24/07/2024

(iii) International

BCBS: Announcement of July 2024 meeting outcomes

Status: Final

The BCBS has published a press release summarising the discussions held in its meeting on 2 and 3 July. The initiatives discussed include: (i) crypto-assets – the BCBS approved a final disclosure framework, which includes a standardised set of public tables and templates covering banks' crypto-asset exposures. The framework will be

published later this month, with an implementation date of 1 January 2026. The BCBS also approved a set of targeted revisions to the crypto-asset prudential standard. These revisions aim to further promote a consistent understanding of the standard, particularly regarding the criteria for stablecoins to receive a preferential “Group 1b” regulatory treatment. The updated standard will be published later this month, with an implementation date of 1 January 2026; (ii) interest rate risk in the banking book (IRRBB) – the BCBS approved a set of adjustments to the specified interest rate shocks in the IRRBB standard, consistent with commitments in the standard to periodically update their calibration. The Committee also agreed to make targeted adjustments to the methodology used to calculate these shocks to better capture interest rate changes during periods when rates are close to zero. The updated standard will be published later this month, with an implementation date of 1 January 2026 for the adjustments; (iii) third-party risk – the BCBS agreed to consult on principles for the sound management of third-party risk.

The principles would supersede the current guidance on outsourcing in financial services with respect to the banking system. The updated principles reflect the evolution of a larger and more diverse environment of third-party service providers and would help provide a common baseline for banks and supervisors in managing third-party risks. The consultation will be published later this month; and (iv) climate-related financial risks – the BCBS agreed to continue work on finalising a Pillar 3 disclosure framework for climate-related financial risks.

Date of publication: 03/07/2024

d) Cyber security

(i) EU

EBA: Report on the systemic cyber incident coordination framework

Status: Final

The ESAs have published a document setting out that they aim to establish the EU systemic cyber incident coordination framework (EU-SCICF), following the ESRB’s recommendation, by building on the role under DORA. The EU-SCICF will enable an effective financial sector response to a cyber incident presenting financial stability risks by enhancing the coordination among financial authorities and other relevant bodies in the EU, as well as with key actors at international level. In addition to national authorities, the EU-SCICF will comprise the ESAs, the ECB, the EC, ENISA, the SRB and the ESRB. The participating members will be alerted and will share information on potential systemic cyber incidents or threats. When a systemic risk materialises, the EU-SCICF will serve as a forum for relevant authorities to communicate and coordinate on any needed action and on the use of tools to counter the crisis from a macroprudential perspective.

Date of publication: 17/07/2024

e) Remuneration

(i) EU

EBA: Report on the application of derogations regarding the pay out of remuneration to identified staff

Status: Final

The EBA has published a report on the application of gender-neutral remuneration policies by credit institutions and investment firms. The report shows that the industry faces no major hurdles in adopting and implementing gender-

neutral remuneration policies, but that some entities still have not yet adopted remuneration policies that explicitly contain measures that ensure that remuneration is awarded gender neutrally and that this aspect is monitored over time. While the review focusses on the principle of equal pay, it also looked at the gender pay gap and the monitoring of indicators in the area of equal opportunities and equal pay. 85.0% of institutions but only 62.6% of investment firms monitor the representation of women and 79.9% of credit institutions but only 60.6% of investment firms regularly review the gender pay gap.

The EBA states that this should change as this monitoring is required under the EBA Guidelines; measures to ensure compliance need to be taken. The report finds that a gender pay-gap persists and that monitoring and transparency on those topics could be further improved. According to the EBA, the persistence of a gender pay gap indicates that further work is needed to ensure 'equal opportunities' and that there are biases that require further attention. The EBA states that the low representation of women in more senior positions requires further action. The EBA emphasises the importance of the consistent implementation of gender-neutral remuneration policies across all financial institutions. The EBA has submitted the report to the EC and stands ready to provide further input to the EC's work in this area.

Date of publication: 16/07/2024

EBA: Report on the review of the application of gender neutral remuneration policies

Status: Final

The EBA has published a report on the review of the application of gender neutral remuneration policies by institutions and investment firms. The report is based on the information collected from institutions, investment firms and competent authorities. The report shows that the industry faces no major hurdles in adopting and implementing gender-neutral remuneration policies, but that some entities still have not yet adopted remuneration policies that explicitly contain measures that ensure that remuneration is awarded gender neutrally and that this aspect is monitored over time. While the review focusses on the principle of equal pay, it also looked at the gender pay gap and the monitoring of indicators in the area of equal opportunities and equal pay. Despite some progress made by the industry, it has been observed that a gender pay-gap persists and that monitoring and transparency on those topics could be further improved. The persistence of a gender pay gap indicates that further work is needed to ensure 'equal opportunities' and that there are biases that require further attention. The EBA emphasises the importance of the consistent implementation of gender-neutral remuneration policies across all financial institutions.

Date of publication: 16/07/2024

f) Supervisory reporting

(i) EU

EBA: Final report on draft ITS amending Commission Implementing Regulation (EU) 2021/451 on supervisory reporting referred to in Article 430(7) CRR concerning operational risk

Status: Final

The EBA has published its final draft ITS on supervisory reporting requirements implementing the changes necessary to keep the supervisory reporting framework relevant and meaningful and aligned with CRR III, which came into force on 9 July and will apply for the most part from 1 January 2025, implementing the latest Basel III reforms. The ITS update the EBA supervisory reporting framework by including new or amended CRR III requirements on the output floor, credit risk, market risk, CVA risk, leverage ratio and on the transitional treatment of

exposures to crypto-assets. The ITS will allow supervisors to have sufficient comparable information to monitor compliance by institutions with CRR III requirements, thus further promoting enhanced and consistent supervision. On operational risk, these ITS also include some minimum reporting requirements based on the consultation launched in February, while the more extensive reporting requirements on operational risk will be finalised by the end of this year, together with a new framework for the business indicator for operational risk that was consulted on in parallel.

The ITS will apply from 1 January 2025 and the first reference date will be 31 March 2025. The EBA intends to complement these ITS with the CRR III supervisory reporting requirements that are not directly linked to Basel III implementation in subsequent products. During Q4, the EBA will publish a technical package, including the DPM, validation rules and taxonomy, that will be used by institutions to submit this supervisory reporting information to supervisors.

Date of publication: 09/07/2024

g) Accounting/Prudential filter/Audit

(i) EU

ECB: Report on IFRS 9 overlays and model improvements for novel risks

Status: Final

The ECB has published a report on IFRS 9 overlays and model improvements for novel risks, identifying best practices for capturing novel risks in loan loss provisions. For more information, please see section c) above.

Date of publication: 29/07/2024

ESMA: ESEF Reporting Manual in preparation of annual financial reports in ESEF format

Status: Final

ESMA has published the update of its Reporting Manual on the European Single Electronic Format (ESEF) supporting a harmonised approach for the preparation of annual financial reports. ESMA has also updated Annex II of the Regulatory Technical Standards (RTS) on ESEF. The updated Manual provides technical improvements and guidance to facilitate the analysis and comparison of the data. It intends to promote a harmonised and consistent approach for the preparation of annual financial reports in the format specified in the RTS on ESEF, providing guidance on common issues that may be encountered when creating ESEF documents, and explaining how to address them.

Date of publication: 11/07/2024

1.2 RECOVERY AND RESOLUTION

(i) Germany

BaFin: Guidelines on the recovery plan according to simplified requirements pursuant to Section 19 SAG (*Leitfaden zum Sanierungsplan nach vereinfachten Anforderungen gem. § 19 SAG*)

Status: Final

BaFin has updated its Guidelines on the recovery plan according to simplified requirements pursuant to Section 19 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*). The update mainly consists of editorial adjustments regarding the procedure for institutions to update their submitted recovery plans.

Date of publication: 10/07/2024

BaFin: Guidance Notice regarding external bail-in implementation (*Angepasstes Merkblatt zur externen Bail-in-Implementierung*)

Status: Final

BaFin has published an extended version of its Guidance Notice regarding external bail-in implementation. The Guidance Notice contains specifications for the activities to be carried out by the actors involved, the information to be exchanged, communication channels, timelines and format templates. It thereby supports an effective and efficient implementation of the bail-in resolution tool, i.e. the participation of the holders of relevant capital instruments and the participation of creditors in accordance with Article 21 and 27 SRMR or Sections 89, 90 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*). The updated version aims to implement the [EBA Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic](#). In addition, it includes a uniform concept for the write-down and conversion of structured debt instruments quoted in percentage and unit terms.

The Guidance Notice is directed at all companies within the meaning of Article 2 SRMR and companies within the meaning of Section 1(1) Nos. 1 to 3 SAG based in Germany for which the resolution strategy provides for a bail-in. This also includes institutions within the area of responsibility of the SRB as resolution authority.

Date of publication: 04/07/2024

(ii) EU

EBA: Consultation on draft ITS on resolution planning reporting

Status: Consultation

Deadline for the submission of comments: 30/10/2024

The EBA has launched a consultation on draft ITS Repealing and replacing Regulation (EU) 2018/1624 on the provision of information for the purposes of resolution plans in the context of the BRRD. These draft ITS aim to ensure that resolution authorities have the data they need, thus improving the usability of this reporting framework and enhancing a consistent monitoring of resolution planning. They intend to further harmonise reporting requirements in the EU and avoid duplication of data requests, thus reducing the cost of compliance with resolution planning reporting obligations by institutions. The EBA also sets out that proportionality is a key driver of this regulatory product. Therefore, the streamlining of datapoints to avoid overlaps is based on the size and complexity of institutions. The main proposals in this consultation include bringing forward the submission deadline for reporting from April 30 to March 31, an extension of the scope of entities for which data is collected, and an expansion of the information requested on some topics, in particular organisational structure, granular liability data,

critical functions, financial markets infrastructures data, critical services and critical information systems. The changes reflect some of the information that resolution authorities are already, and separately, collecting from their institutions, notably that collected by the SRB.

Date of publication: 30/07/2024

EBA: Consultation on handbook chapter on independent valuers for resolution

Status: Consultation

Deadline for the submission of comments: 19/09/2024

The EBA has launched a consultation on a handbook chapter on independent valuers for resolution purposes under the BRRD. The draft handbook aims at enhancing convergence by providing best practices, high-quality methodologies and processes for the selection and appointment of independent valuers for resolution purposes, as well as examples on the application of these methodologies under some scenarios. The handbook also identifies some types of safeguards or measures which could be set in place to mitigate the effects of the potential conflict of interest or circumstances hampering the independence of the valuer. The handbook is structured in a chronological order, covering actions before, during and after the appointment of the independent valuer. The preparatory arrangements include actions, such as market research, framework contracts and internal procedures. The handbook includes specific sections dealing with the assessment of the valuer's independence and the application of safeguards. Finally, after the appointment of the independent valuer, the handbook includes aspects such as the maintenance of policies and procedures to identify and manage conflicts of interest. The EBA intends, depending on the feedback received, to publish the final report and version of the handbook before the end of this year.

Date of publication: 19/07/2024

ESMA: Final report on Guidelines on written arrangements and procedures for the functioning of resolution colleges

Status: Final

The ESMA has published a final report on revised Guidelines on written arrangements and procedures for the functioning of resolution colleges. At the request of stakeholders, ESMA published Guidelines on written arrangements and procedures for the functioning of resolution colleges in June 2023. The aim of the Guidelines was to assist in the creation of the resolution colleges by establishing a common basis for the written arrangements in the form of a template. This would support the process of swiftly establishing the resolution colleges to ensure a smooth process to both establish and review the resolution college agreement.

Following the publication of the Guidelines, the template standard written arrangement was used by resolution authorities for the establishment of the resolution colleges. In certain cases, resolution authorities decided to invite third-country authorities to join the resolution college, and thus to sign the written arrangement. During this process, some third-country authorities raised issues with certain clauses of the written arrangements, which would not allow them to participate in resolution colleges as college observers. In particular, these issues concerned the onward sharing of confidential information by college members and college observers and the applicability of EU law to third-country authorities. Therefore, ESMA is proposing to amend the Guidelines, such as the template of the standard written arrangement, in order to address these issues. The final report presents a revised template for the standard written arrangement referred to in the Resolution College Delegated Regulation.

The Guidelines will apply after their publication by ESMA on its website in the official languages of the EU.

Date of publication: 05/07/2024

(iii) Eurozone

SRB: Report on resolvability of banking union banks 2023

Status: Final

The SRB has published the results of its annual resolvability assessment, covering the year 2023. The report takes stock of the progress made by banks in implementing the SRB's expectations for banks and building up their MREL at the end of the transition phase. By the end of 2023, except for specific banks that have a longer transition period, all banks under the SRB's remit met their MREL requirements. Banks have also made progress on the main outstanding gaps on the resolvability conditions, in particular those related to liquidity and funding in resolution, separability and restructuring. The SRB explains that going forward, banks will need to demonstrate that their resolvability capabilities are fit to respond to any type of risks or crisis scenarios. 2024 marks a strategic shift for the SRM and banks with the launch of the SRM Vision 2028 strategy, founded on risk identification, crisis readiness and resilience. As such the SRB is revisiting its resolvability assessment methodology to promote a more risk-based approach, aiming to better capture emerging risks and lessons from past crises. At the same time, the SRB is enhancing its control functions with the development of a comprehensive testing framework, which will span from 2026 to 2028, to assess whether banks' capabilities can operate effectively in practice. The SRB will consult the industry on the new resolvability assessment methodology and testing framework.

Date of publication: 09/07/2024

1.3 STRESS TESTS/MACROPRUDENTIAL TOPICS

(i) EU

ECB: Conclusion of cyber resilience stress test

Status: Final

The ECB has concluded its cyber resilience stress test, which had been launched in January 2024 and featured a fictitious stress test scenario under which all preventive measures failed and a cyberattack severely affected the databases of each bank's core systems. The test gauged how banks would respond to and recover from a severe but plausible cybersecurity incident. Overall, the stress test showed that banks have response and recovery frameworks in place, but areas for improvement remain. The results will feed into the 2024 Supervisory Review and Evaluation Process (SREP) and have helped increase banks' awareness of the strengths and weaknesses of their cyber resilience frameworks.

Date of publication: 26/07/2024

EBA: Informal consultation on drafts for the banking industry on 2025 EU-wide stress test methodology

Status: Final

The EBA has published for informal consultation its draft methodology, templates, and guidance for the 2025 EU-wide stress test. This step marks the beginning of the dialogue with the banking industry and builds upon the methodology used in the 2023 exercise, with improvements reflecting new insights and regulatory changes. Some important changes are introduced, notably the integration of the upcoming CRR III, set to be implemented on 1 January 2025. It also considers the EC's announcement to postpone the application date of the fundamental review of the trading book (FRTB). Other enhancements include the centralisation of net interest income (NII) projections and advancements in the market risk methodology to increase risk sensitivity. 68 banks from the EU

and Norway, including 54 from the euro area, will participate in the exercise, thus covering 75% of the EU banking sector. The expanded geographical reach and incorporation of proportionality features aim to boost efficiency while ensuring the relevance and transparency of the results.

The EBA expects to publish the final methodology at the end of 2024, launch the exercise in January 2025 and release the results by the end of July 2025.

Date of publication: 05/07/2024



2. Investment firms regulation

(i) Germany

BaFin: English translation on the Investment Firm Remuneration Regulation (*Englische Übersetzung der Wertpapierinstituts-Vergütungsverordnung*)

Status: Final

BaFin has published an English convenience translation on the Regulation on the supervisory requirements for the remuneration systems of medium-sized investment firms (*Wertpapierinstituts-Vergütungsverordnung — Wp/VergV*), which has been published in the Federal Gazette on 11 January 2024. It aims to further implement the IFD regarding the specification of remuneration requirements.

Date of publication: 29/07/2024

3. Market regulation/ Conduct rules

3.1 GENERAL

(i) EU

EC: Report on Whistleblowing Directive

Status: Final

The EC has published a report on the implementation and application of the Whistleblowing Directive ((EU) 2019/1937). The Directive aims to guarantee a high level of balanced and effective protection for persons who report information on breaches of EU law in key policy areas where such breaches may cause harm to the public interest. Overall, there was a significant delay in the transposition of the Directive in the Member States. Given the short time of application of the Directive and the absence of meaningful relevant information at the time of publication of the report, the report does not cover the application of the Directive. All Member States have transposed the Directive's main provisions e.g. on the conditions for protection, on the requirements for the set up and the operation of the internal and external reporting channels, on the prohibition of retaliation and the measures of protection and support to reporting persons. A large majority of Member States have extended the Directive's protection regime to other areas of national law.

While the EC recognises the efforts made by Member States so far, it regrets the overall very late transposition of the Directive. As recognised by the EU Court of Justice, the lack of adoption of the provisions necessary to ensure the complete and precise transposition of this Directive is particularly serious, given its importance for safeguarding the public interest. In March 2023, the EC referred six Member States to the EU Court of Justice for failure to transpose the Directive. As of the date of the report, further to the five cases still pending before the EU Court of Justice, infringement proceedings are ongoing for six Member States. The report shows that the transposition of the Directive needs to be improved on certain key areas, such as the material scope, the conditions for protection and the measures of protection against retaliation, in particular the exemptions from liability and the penalties. By 2026, the EC will assess the functioning of the Directive and consider the need for additional measures, including amendments with a view to extending its scope to further EU acts or areas.

Date of publication: 03/07/2024

3.2 BENCHMARKS

(i) EU

ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on Guidelines on the submission of periodic information to ESMA by benchmark administrators, CRAs and market transparency infrastructures. The document sets out the information ESMA

expects to receive and a timeline for supervised entities to provide the required information. The objective of the draft Guidelines is to ensure consistency in cross-sectoral reporting. The proposed Guidelines aim to: (i) ensure a harmonised approach to periodic reporting; (ii) increase consistency and usability of the reported information; (iii) establish proportionate reporting based on the risk profile of the supervised entity; and (iv) reduce the reporting burden by tailoring reporting frequencies to a risk-based supervisory approach.

ESMA will consider the feedback it receives to the consultation with a view to finalising the proposed Guidelines and publishing a final report in Q1 2025.

Date of publication: 08/07/2024

ESMA: Consultation on supervisory expectations for the management body

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on supervisory expectations for the management bodies of firms directly supervised by ESMA, namely credit rating agencies, benchmark administrators of EU critical benchmarks and third-country recognised benchmarks, third-country Tier 2 (i.e., systemically important) CCPs, data reporting service providers, securitisation repositories and trade repositories. The consultation paper sets out ESMA's supervisory expectations in relation to good practice in governance arrangements, such as on the role, operation, and effectiveness of the management bodies of these entities. The expectations set out in this consultation paper are intended to provide all of ESMA's supervised entities with the same reference point for ESMA's expectations regarding governance arrangements. ESMA believes that the publication of these expectations will ensure that all ESMA supervised entities are equally aware of ESMA's expectations in this area. It will also increase transparency for any potential applicant or future supervised entities as to what ESMA expects in this area. The deadline for comments is 18 October. ESMA will consider the feedback it receives to the consultation with a view to finalising its supervisory expectations in Q1 2025.

Date of publication: 08/07/2024

3.3 CREDIT RATING AGENCIES

(i) EU

ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on Guidelines on the submission of periodic information to ESMA by benchmark administrators, CRAs and market transparency infrastructures. For more information, please see section 3.2 above.

Date of publication: 08/07/2024

ESMA: Consultation on supervisory expectations for the management body

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on supervisory expectations for the management bodies of firms directly supervised by ESMA, namely credit rating agencies, benchmark administrators of EU critical benchmarks and third-country recognised benchmarks, third-country Tier 2 (i.e., systemically important) CCPs, data reporting service providers, securitisation repositories and trade repositories. For more information, please see section 3.2 above.

Date of publication: 08/07/2024

3.4 MARKET ABUSE

(i) EU

ESMA: Report on suspicious transaction and order reports (STORs)

Status: Final

ESMA has published a report on suspicious transaction and order reports (STORs) under MAR. While the report focusses on the year 2023, a number of statistics presented in the report include data and comparisons with previous years. ESMA notes that the figures are fairly consistent, and there are no significant changes compared to previous years. The number of notifications received from NCAs has only slightly increased. Other indicators, such as the type of reporting entities, the type of instrument and types of violation despite some minor discrepancies, illustrate very similar results. A slight majority of notifications covered cases of alleged insider trading which accounted for 51% of the total in 2023. This represents a slight change compared to previous years where in most cases reports were sent for cases of alleged market manipulation (52% across the last four years).

Date of publication: 17/07/2024

3.5 MIFID/MIFIR

(i) EU

ESMA: Public statement on the transition to the new regime for post-trade transparency of OTC-transactions

Status: Final

ESMA has published a public statement on the transition to the new regime for post-trade transparency of OTC-transactions in the light of MiFIR II. According to Article 21a of MiFIR II, Designated Publishing Entities (DPEs), when they are party to a transaction, are responsible for making the transaction public through an approved publication arrangement (APA). MiFIR II requires ESMA to establish by 29 September 2024 a public register of all DPEs, specifying their identity and the classes of financial instruments for which they act as DPEs. MiFIR II does not provide for a transitional provision for the application of the DPE regime for post-trade transparency.

Considering the need to ensure an orderly transition to the DPE regime, ESMA and NCAs have agreed on a two-steps approach: (i) ESMA starts publishing the DPE register on 29 September; and (ii) the new DPE regime for post-trade transparency becomes fully operational on 3 February 2025. Therefore, ESMA expects that as of 3 February 2025, registered DPEs, which are party to a transaction, will make the transaction public through an APA. At the same time, ESMA expects that the current approach relying on SIs to make transactions public through an APA

should stop applying as of this date. Investment firms intending to become DPEs are encouraged to register with their NCA, indicating the classes of financial instruments for which they wish to take up this function, along with other identifying information requested by the NCAs. NCAs will transmit the information regarding the DPEs for specific classes of financial instruments to ESMA so that the information is included in the future DPE public register. The granting of the DPE status can start anytime from now on. ESMA will publish at the end of September the list of DPEs based on the information received by that time from NCAs. The DPE register will be initially made available on ESMA's website in XLSX format and should allow market participants to prepare for the effective start of the application of the DPE regime. The XLSX register will be updated regularly.

Date of publication: 22/07/2024

EBA: Report on structured deposits

Status: Final

The EBA has published a report on structured deposits, under the Markets for Financial Instruments Regulation (MiFIR) to monitor this particular market segment. The report finds that in more than half of the 27 national markets in the EU, structured deposits do not exist, and that the EU market remains very small at an aggregate level, with only €16.7 billion of structured deposits sold between 1 January and 30 September 2023 – the reference period of the Report – and 95% of which was concentrated in only four EU Member States.

Date of publication: 19/07/2024

ESMA: Consultation on the technical standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies

Status: Consultation

Deadline for the submission of comments: 16/10/2024

ESMA has launched a consultation on draft technical standards specifying the criteria for how investment firms establish and assess the effectiveness of their order execution policies, accounting for whether the orders are executed on behalf of retail or professional clients. These proposals arise out of the MiFID Review, and the resulting changes to the Markets in Financial Instruments Regulation and Directive, which were published in March (read our update [here](#)). We discuss these in our bulletin, "MiFID II: the EU's latest adaptations" The MiFID II best execution requirements oblige investment firms to obtain the best possible result for their clients when executing client orders, and require execution venues and investment firms to make data relating to the quality of execution of transactions publicly available. ESMA is seeking stakeholder input on: (i) a proposed requirement for an investment firm's order execution policy to include the classification of financial instruments in which firms execute client orders and the initial selection of trading venues for order execution; (ii) the investment firm's procedures to monitor and regularly assess the effectiveness of its order execution arrangements and order execution policy; (iii) the investment firm's execution of client orders through own account dealing; and (iv) how an investment firm should deal with client instructions.

ESMA expects to publish a final report and submit the draft RTS to the EC for endorsement by 29 December.

Date of publication: 16/07/2024

ESMA: Updated Q&A on MiFID II

Status: Final

ESMA has updated its Q&A on MiFID II regarding the question on the interpretation of “emission allowances” under Annex I, section C(4).

Date of publication: 12/07/2024

ESMA: Third consultation package on equity transparency, volume cap circuit breakers, SI, the equity CTP and the flags for non-equity transparency

Status: Consultation

Deadline for the submission of comments: 15/09/2024

ESMA has launched a new package of consultations with the objective of increasing transparency and system resilience in financial markets, reducing the reporting burden and promoting convergence in the supervisory approach. This package includes: (i) amendments to rules on the liquidity assessment for equity instruments, on equity transparency and on the volume cap; (ii) a draft of the new Implementing Technical Standard (ITS) on systematic internalisers (SIs); (iii) a section on the equity Consolidated Tape Provider (CTP) in relation to the input/output data, to ensure full alignment between the transparency requirements and the CTP specifications; (iv) a section on flags to be used in the post-trade transparency reports for non-equity instruments which was missing in the previous consultation; and (v) new rules specifying organisational requirements of trading venues, adding new provisions on circuit breakers and with targeted amendments to adapt to the DORA framework.

Once these standards are approved, they will facilitate the implementation of the Consolidated Tape Provider (CTP) in the EU as well as contribute to a more informative pre-trade and post-trade transparency regime. The new rules also aim to foster efficiency and competitiveness in European financial markets, thanks to streamlined reporting requirements.

ESMA will prepare a final report and submit to the EC the technical advice and the draft technical standards for RTS 1, the whole input and output data RTS and RTS 2 in December, and the remaining mandates in March 2025.

Date of publication: 10/07/2024

ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on Guidelines on the submission of periodic information to ESMA by benchmark administrators, CRAs and market transparency infrastructures. For more information, please see section 3.2 above.

Date of publication: 08/07/2024

3.6 PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

(i) EU

ESAs: Updated Q&A on PRIIPs KID

Status: Final

The ESAs have updated their Q&As on the PRIIPs Key Information Document (KID). A new Q&A has been added, under the heading “General topics”, on whether foreign exchange forwards fall within the scope of the PRIIPs Regulation.

Date of publication: 28/06/2024

3.7 SECURITIES FINANCING TRANSACTIONS

(i) EU

EBA: Consultation on draft RTS regarding CVA risk of SFTs under Article 382(6) CRR

Status: Consultation

Deadline for the submission of comments: 08/10/2024

The EBA has published a consultation on draft RTS to specify the conditions and the criteria to assess whether the credit valuation adjustment (CVA) risk exposures arising from fair-valued securities financing transactions are material, as well as the frequency of that assessment. The RTS support the revised framework for the determination of own funds requirements for CVA risk introduced under CRR 3, which provides that firms should include SFTs in the calculation where the SFTs are fair valued and the firm’s CVA risk exposures arising from those transactions are material. The concept of materiality set out in the draft RTS will therefore determine whether fair-valued securities financing transactions can be exempted from own funds requirements for CVA risk. The draft RTS included in this consultation paper propose to employ a quantitative approach for the determination of the materiality of such CVA risk exposures. In particular, they propose to perform the assessment on the basis of a ratio that quantifies the amount of CVA risk arising from fair valued SFTs relative to the CVA risk of transactions in scope of the own funds requirements for CVA risk. The draft RTS propose to conduct this assessment on a quarterly basis, to ensure consistency with the regular calculation and reporting cycle of own funds requirements by institutions.

Date of publication: 08/07/2024

3.8 TRANSPARENCY REQUIREMENTS/SHAREHOLDER REQUIREMENTS

(i) EU

ESMA: Follow-up report to the fast-track peer review on the application of the Guidelines on the enforcement of financial information by BaFin and FREP in the context of Wirecard

Status: Final

ESMA has published a follow-up report to the fast-track peer review on the application of the Guidelines on the enforcement of financial information by BaFin and FREP in the context of Wirecard. This report follows up on the implementation of the recommendations made in the previous Wirecard Fast Track Peer Review Report. Among the key findings, ESMA highlights the following: (i) Germany’s supervisory system in financial reporting was substantially revised and strengthened, discontinuing the two-tier system and entrusting all supervision to BaFin;

(ii) BaFin's independence from issuers and government improved with the set-up of a framework for managing conflicts of interests applicable to all staff and principles of cooperation formalised between BaFin and the Government; (iii) the selection model and examination procedure are improved; (iv) the investigative powers, cooperation and exchange of information are expanded; and (v) BaFin now fully complies with the Guidelines on Enforcement of Financial Information (GLEFI).

Date of publication: 18/07/2024



4. Market infrastructure

4.1 CUSTODY RULES

(i) EU

ESMA: Introductory remarks on shortening the settlement cycle

Status: Final

ESMA has published the introductory remarks of Verena Ross, ESMA Chair at the public hearing on shortening the settlement cycle to T+1 on 10 July. Ms Ross' remarks include: (i) shortening the settlement cycle represents a significant change to the way in which markets operate today and this applies at all levels of the value chain. All actors along the trading and post-trading chain will have to adapt in order to meet tighter deadlines not only in relation to trading but also for other more complex activities, such as securities lending, repos and FX trading; (ii) the compression of the settlement cycle will imply a reduction of the risk in the system, which should translate into lower margin requirements; (iii) as some jurisdictions, such as the US, have already moved to T+1 stakeholders are now having to deal with misaligned settlement cycles. The EU will have to consider alignment with its European neighbours in Switzerland and the UK when considering an implementation date (the UK have announced that they will move by the end of 2027); and (iv) changes will likely be required to CSDR and the existing Level 2 regulations and potentially further regulatory guidance. ESMA will submit its report on T+1 to the EP and the Council at the latest by mid-January 2025, as required by CSDR Refit.

Date of publication: 15/07/2024

ESMA: Consultation on rules to recalibrate and further clarify the framework

Status: Consultation

Deadline for the submission of comments: 09/09/2024

ESMA has launched consultations on different aspects of the CSDR Refit. The proposed rules relate to the information to be provided by European CSDs to their national competent authorities (NCAs) for the review and evaluation, the information to be notified to ESMA by third-country CSDs, and the scope of settlement discipline. The draft rules are set out in three separate consultation papers, covering: (i) the review and evaluation process of EU CSDs, suggesting a harmonisation of the information to be shared by CSDs on their cross-border activities and the risks to be considered by the relevant authorities for the purpose of feeding the overall assessment of the competent authorities; (ii) third country CSDs, where ESMA is proposing to streamline the information to be notified, aiming for an accurate understanding of the provision of notary, central maintenance and settlement services in the Union, limiting the reporting burden; and (iii) the scope of settlement discipline, covering ESMA's proposals on the underlying cause of settlement fails that are considered as not attributable to the participants in the transaction, and the circumstances in which operations are not considered as trading. The CSDR Refit aims to fine-tune and further clarify the CSDR framework.

All the policy mandates under consultation will contribute towards the effective recalibration of the CSDR regime. Following the consultation, the responses will be assessed to finalise the respective proposals, before submission to the EC in Q1 2025. ESMA also states that other consultations about other aspects of CSDR will follow in the coming months.

- ♦ **Consultation on draft RTS on the information notified by third-country CSDs under Art. 25(13) and 69(4a) CSDR**

- ♦ Consultation on technical advice on the Scope of CSDR Settlement Discipline
- ♦ Consultation on draft technical standards amending Delegated Regulation (EU) 2017/392 and Implementing Regulation (EU) 2017/394 under CSDR on review and evaluation

Date of publication: 09/07/2024

4.2 EMIR

(i) EU

ESMA: Public statement on use of collateral by NFCs acting as clearing members

Status: Final

ESMA has published a public statement on deprioritising supervisory actions linked to the eligibility of uncollateralised public guarantees, public bank guarantees, and commercial bank guarantees for Non-Financial Counterparties (NFCs) acting as clearing members, pending the entry into force of EMIR 3, which is anticipated to be in Q4 2024. The agreed EMIR 3 text includes a provision in relation to the eligibility of public guarantees, public bank guarantees or commercial bank guarantees as collateral by CCPs. This enables CCPs to accept fully uncollateralised bank guarantees to cover their initial and ongoing exposures to NFCs acting as clearing members and clients, under certain conditions. The provisions would effectively make permanent the main features of the temporary amendments to Regulation (EU) No 153/20133 regarding CCP requirements adopted during the energy crisis which expanded the eligible pool of collateral to alleviate certain liquidity concerns, in particular for NFCs. These temporary measures are due to expire on 7 September.

Stakeholders have expressed concerns regarding the risks of letting the emergency measures lapse, temporarily reducing the pool of eligible collateral for NFCs as clearing members, before the new provisions apply and the expansion of CCP eligible collateral for NFCs is made permanent with the entry into force of EMIR 3. Therefore, ESMA has stated that it expects NCAs not to prioritise their supervisory actions in relation to the eligibility of uncollateralised public guarantees, public bank guarantees and commercial bank guarantees for NFCs acting as clearing members. They should generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

Date of publication: 10/07/2024

ESMA: Consultation on Guidelines on the submission of periodic information to ESMA by Benchmark Administrators, Credit Rating Agencies and Market Transparency Infrastructures

Status: Consultation

Deadline for the submission of comments: 18/10/2024

ESMA has launched a consultation on Guidelines on the submission of periodic information to ESMA by benchmark administrators, CRAs and market transparency infrastructures. For more information, please see section 3.2 above.

Date of publication: 08/07/2024

4.3 CLEARING, SETTLEMENT, AND CCPS RELATED RULES OTHER THAN IN THE CONTEXT OF DERIVATIVES

(i) EU

ESMA: Introductory remarks on shortening the settlement cycle

Status: Final

ESMA has published the introductory remarks of Verena Ross, ESMA Chair at the public hearing on shortening the settlement cycle to T+1 on 10 July. For more information, please see section 4.1 above.

Date of publication: 15/07/2024

ESMA: Final report on fifth ESMA stress test exercise for CCPs

Status: Final

ESMA has published its final report on the results of the fifth ESMA stress test exercise for CCPs. The exercise assessed the resilience of 16 CCPs, including all 14 authorised EU CCPs as of May 2023 and the two third-country Tier 2 CCPs. A new addition to this year's stress test was the exploratory analysis of climate risk, which aims to explore climate risks and their impact on CCPs from four different angles but does not aim to provide any quantitative impact (e.g., in terms of margin or consumption of financial resources). The test also included additional market stress scenarios, enhanced model risk assessments for concentration, and extended reverse stress tests for credit and liquidity. The results confirm the overall resilience of EU CCPs, as well as third-country Tier 2 CCPs, to core credit and liquidity financial risks under the tested scenarios.

ESMA makes the following observations: (i) CCPs have robust lines of defence to withstand significant market shocks in combination with the default of the two clearing member groups with the largest exposures; (ii) CCPs are also resilient to substantial liquidity stress events, while CCPs' clearing and investment activities play a key role in the results; (iii) some gaps persist in the coverage of concentration risk across CCPs and across asset classes, notably for commodity derivative positions; (iv) for climate risk, CCPs' exposures depend on whether the markets they clear are directly exposed to transition risk, such as commodities and energy. The majority of sampled CCPs have started to integrate climate risk into their stress testing framework; and (v) the ecosystem analysis provided insights into the CCPs' and clearing members' resources and showed that the total amount of required margin increased by 56% compared to the last exercise.

Date of publication: 09/07/2024

(ii) International

BCBS: Report on the recalibration of shocks in the IRRBB standard

Status: Final

The BCBS has published its finalised targeted adjustments to its standard on interest rate risk in the banking book (IRRBB). It has made targeted adjustments to the specified interest rate shocks in the IRRBB standard, consistent with commitments in the standard to periodically update their calibration. It has also incorporated targeted adjustments to the current methodology used to calculate the shocks, including: (i) expansion of the time series used in the calibration from December 2015 to December 2023; (ii) replacement of the global shock factors with local shock factors calculated directly for each currency using the averages of absolute changes in interest rates calculated over a rolling six-month period; (iii) move from a 99th percentile value in determining the shock factor to a

99.9th percentile value, to maintain sufficient conservatism in the proposed recalibration; and (iv) reducing the rounding of the interest rate shocks from a multiple of 50 basis points to a multiple of 25 basis points. These targeted changes have been implemented to address problems with how the current methodology captures interest rate changes during periods when rates are close to zero.

The revised standard should be implemented by 1 January 2026. This means that banks whose financial year ends on 31 December would have to provide the relevant disclosure in 2026, based on information as of 31 December 2025.

Date of publication: 16/07/2024



5. Anti-money laundering

(i) Germany

BaFin: Circular 08/2024 regarding high-risk countries (*Rundschreiben 08/2024 zu Hochrisikostaaten*)

Status: Final

BaFin has published a Circular 08/2024 to provide information about 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: 29/07/2024

BaFin: Information regarding the prevention of ML in connection with loan fronting (*Informationen zur Prävention von Geldwäsche in Zusammenhang mit Loan-Fronting*)

Status: Final

BaFin has published information regarding the prevention of ML in connection with loan fronting, that is, when a credit institution grants loans on behalf of third parties. In some cases, these funds do not come from the bank itself, but from investors. As the risk of ML/TF is particularly high in non-transparent structures, it increases when the investors or the origin of the loan collateral are unknown. It is also problematic if the institution does not receive sufficient information about the investor's business model or when it does not know where the funds used for repayment of the loan originate from.

Date of publication: 19/07/2024

BaFin: Consultation 06/2024 on interpretative guidance on the German Money Laundering Act pursuant to Section 51(8) GwG (*Konsultation 06/2024 über Auslegungs- und Anwendungshinweise zum Geldwäschegesetz gemäß § 51 Absatz 8 GwG*)

Status: Consultation

Deadline for the submission of comments: 09/08/2024

BaFin has launched a consultation on an interpretative guidance on the German Money Laundering Act (*Geldwäschegesetz – GwG*) pursuant to Section 51(8) GwG, which aims to replace the previous interpretative guidance of the same name. With this update, BaFin is fulfilling its legal mandate under Section 51 (8) GwG. The information applies to all obliged entities under the GwG that are under BaFin's supervision. This draft contains wording that refers to draft legislation amending the GwG, the Financial Markets Digitalisation Act (*Finanzmarktdigitalisierungsgesetz – FinmadiG*) and the Combating Financial Crimes Act (*Finanzkriminalitätsbekämpfungsgesetz – FKBG*). The final content of the interpretative guidance depends on how the legislative process of these drafts continues. The update includes various clarifications as well as adjustments, for example to the update deadlines within the meaning of Section 10(1)(5) GwG.

Date of publication: 09/07/2024

BuBa: Guidance Notice on compliance with financial sanctions (*Merkblatt zur Einhaltung von Finanzsanktionen*)

Status: Final

The German Central Bank (*Bundesbank* – BuBa) has published a corrected version of its recently updated Guidance Notice on compliance with financial sanctions. This document aims to provide individuals and companies in the financial sector with guidance on how the requirements of the financial sanctions applicable in Germany can be met and what measures are expected from those obliged to comply in the financial sector in order to effectively prevent violations of financial sanctions.

Date of publication: 05/07/2024

(ii) EU

EBA: Final report on Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 ('Travel Rule Guidelines')

Status: Final

The EBA has published new Guidelines on information requirements in relation to transfers of funds and certain crypto-asset transfers under the recast revised WTR, also known as the 'travel rule' Guidelines. The Guidelines specify which information should accompany a transfer of funds or crypto-assets and also list the steps that payment service providers (PSPs), intermediary PSPs, crypto-asset service providers (CASPs) and intermediary CASPs should take to detect missing or incomplete information, and what they should do if a transfer of funds or a transfer of crypto-assets lacks the required information. The Guidelines repeal with effect from 30 December the 'Joint Guidelines under Article 25 WTR on the measures PSPs should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information'.

The deadline for competent authorities to report whether they comply with the new Guidelines will be two months after the publication of the translations into the official EU languages. The new Guidelines will apply from 30 December.

Date of publication: 04/07/2024

(iii) International

FATF: Targeted update on implementation of the FATF standards on VAs and VASPs

Status: Final

The FATF has published a targeted update on the implementation of FATF standards on virtual assets (VAs) and virtual asset service providers (VASPs). The report provides the fifth update on jurisdictions' compliance with FATF's recommendation 15 (R. 15), which applies AML/CTF measures to VAs and VASPs, and its interpretative note. The report also provides updates on emerging risks and market developments relating to the use of VAs for money laundering, terrorist financing and proliferation financing. 75% of jurisdictions are only partially or not compliant with FATF's requirements, which shows negligible improvement since 2023. Jurisdictions continue to struggle with the implementation of the fundamental requirements of R.15, particularly undertaking a risk assessment and conducting supervisory inspections. Some progress has been made since 2023, such as the number of jurisdictions which have registered or licensed VASPs in practice. Insufficient progress has been made in implementing the travel rule, with nearly one-third of the survey respondents not yet passing legislation for its implementation, including some that assess VAs/VASPs as high risk. Supervision and enforcement of the travel rule

remains low among those jurisdictions that have implemented it. Some positive developments are identified in the VA sector, such as increases in VA transaction volume using travel rule compliance tools and in VASPs considering travel rule obligations in their operations. FATF calls on all jurisdictions to rapidly implement FATF's Standards on VAs and VASPs, including the travel rule. In line with the roadmap to improve implementation of R.15 and to address the findings of this report, FATF will continue to: (i) facilitate outreach and provide assistance to lower-capacity jurisdictions including those materially important VASP activities; (ii) facilitate sharing of best practices and challenges, including in relation to DeFi, stablecoins, unhosted wallets, and P2P and monitor market trends that may necessitate further FATF work; and (iii) engage with FATF member countries, the global network, technical assistance providers and the private sector on progress and challenges.

Date of publication: 09/07/2024

FATF: Report on horizontal review of gatekeepers' technical compliance related to corruption

Status: Final

The FATF has published the results of its horizontal review, aiming to assess the current state of play and identify areas that FATF members must prioritise for further improvement. On the surface, this review shows positive results - over half of FATF members have scores over 80%. However, these results are less promising when one considers the context and materiality of the seven FATF members falling below the score of 50%. These jurisdictions represent more than half of the world's GDP. Although it is a common perception that the legal profession is subject to fewer AML/CFT rules than other gatekeeper sectors, the Horizontal Review found little difference in coverage scores of the four gatekeeper sectors under the scope of the review - lawyers, accountants, trust and company service providers, and real estate agents. Finally, this review found that some cornerstone obligations of the FATF Recommendations fall behind the compliance levels of other obligations. These requirements – conducting customer due diligence, implementing internal controls, and providing a supervisor with adequate powers to conduct risk-based supervision – are essential requirements to address the vulnerability of gatekeepers to money laundering and corruption threats.

Date of publication: 08/07/2024

FATF: Consultation on updated Guidance on national ML&TF risk assessment

Status: Consultation

Deadline for the submission of comments: 22/07/2024

The FATF has launched a consultation in order to update its guidance on National Risk Assessments (NRA), in particular concerning Money Laundering NRAs. The goal is to update the NRA guidance to make it more effective, comprehensive and useful for all stakeholders involved. We invite contributions from the private sector, civil society and academia to ensure the guidance is aligned with their experiences. At this stage, the FATF has not finalised the draft NRA Guidance and will consider the views received to revise the text before its proposal for adoption at the FATF October 2023 Plenary.

Date of publication: 01/07/2024

6. Payments

6.1 PAYMENT SERVICES/E-MONEY

(i) Germany

BaFin: Guidance Notice on remarks regarding the Payment Services Oversight Act (*Merkblatt über Hinweise zum Zahlungsdiensteaufsichtsgesetz – ZAG*)

Status: Final

BaFin has updated its Guidance Notice on remarks regarding the German Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). It includes the following two amendments: (i) the section on the so-called “Zweckkarte” has been adjusted to be in line with a statement by the Federal Ministry of Finance (*Bundesfinanzministerium – BFM*) dated 15 March 2022 on the distinction between cash payments and benefits in kind; and (ii) the contact addresses for questions on these matters have been amended.

Date of publication: 05/07/2024

(ii) EU

EBA: Consultation on draft ITS on uniform reporting templates in relation to level of charges and share of rejected transactions under the SEPA Regulation

Status: Consultation

Deadline for the submission of comments: 31/10/2024

The EBA has launched a consultation on draft ITS on uniform reporting templates in relation to the level of charges and share of rejected transactions under the SEPA Regulation. These templates aim to standardise reporting from Payment Service Providers (PSPs) to their National Competent Authorities (NCAs). With such standardisation, the European Commission will be able to monitor the effects of changes to Single Euro Payments Area (SEPA) Regulation on the fees paid by customers of PSPs for payment accounts, as well as instant and non-instant credit transfers.

Date of publication: 31/07/2024

EC: Q&As on Instant Payments Regulation implementation

Status: Final

The EC has published Q&As clarifying the requirements of the Instant Payments Regulation (IPR). The IPR entered into force on 8 April and a first set of obligations for payment service providers (PSPs) will have to be complied with as of 9 January 2025. To facilitate a common understanding of the provisions of the IPR and to assist PSPs and public authorities of Member States in their implementation efforts, the EC Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) held two online implementation workshops in April and May. During these workshops, oral clarifications were provided to over 200 questions that had been collected from stakeholders in advance.

The Q&As reflect those clarifications, covering the following topics: (i) scope; (ii) payee verification; (iii) sanctions screening; (iv) instant credit transfer charges; and (v) penalties and reports. The EC notes that the Q&As do not

purport to express in law, or prejudice, its position on the interpretation or application of the IPR or any other EU law and are without prejudice to the interpretation that the ECJ may give to the IPR.

Date of publication: 23/07/2024

(iii) International

FSB: Consultation on recommendations to promote alignment and interoperability across data frameworks related to cross-border payments

Status: Consultation

Deadline for the submission of comments: 09/09/2024

The FSB has launched two consultations; the first on proposed recommendations to promote greater alignment in data frameworks related to cross-border payments and the second on consistency in the regulation and supervision of bank and non-bank payment service providers. First, in relation to data frameworks, the FSB's recommendations aim to address identified frictions that pose significant challenges to improving the cost, speed, transparency and accessibility of cross-border payments, while maintaining their safety and security and upholding the objective of protecting the privacy of individuals. These frictions include the misalignment of data in payments that interferes with the smooth processing of cross-border payments, restrictions on data sharing that impede the ability to safely process cross-border payments, and increased costs due to data storage and handling requirements. To take forward these recommendations in a coordinated manner and to identify emerging issues that should be addressed, the FSB proposes the establishment of a forum comprised of public-sector stakeholders covering payments, AML/CFT, sanctions, and data privacy and protection. Secondly, on strengthening regulatory and supervisory consistency, the FSB's recommendations aim to ensure quality and consistency in the legal, regulatory and supervisory regimes for PSPs and to promote greater alignment between those applicable to banks and non-banks in their cross-border payment activities. This approach reduces the likelihood of regulatory arbitrage by establishing a level playing field for both banks and non-bank PSPs, despite differences in business models and risk profiles.

- ♦ Consultation on Recommendations to promote alignment and interoperability across data frameworks related to cross-border payments
- ♦ Consultation on Recommendations for regulating and supervising bank and non-bank payment service providers offering cross-border payment services

Date of publication: 16/07/2024

6.2 PAYMENT AND SETTLEMENT SYSTEMS

(i) EU

ECB: Policy on access by non-bank payment service providers to central bank operated payment systems and to central bank accounts

Status: Final

The ECB has published a policy developed by the Eurosystem on access by non-bank payment service providers (PSPs) to central bank-operated payment systems and to central bank accounts, including TARGET. Non-bank PSPs include PIs and EMIs, which are defined under PSD2 and EMD2 respectively. The document outlines the Eurosystem policy for all systems. In addition, the ECB plans to publish a related ECB legal act in the coming months. The proposed changes as regards TARGET will be incorporated into the TARGET Guidelines. The new

policy follows the enactment of the Instant Payments Regulation on 8 April, which amended, among others, the Settlement Finality Directive to broaden the scope of entities eligible to participate in designated payment systems to include non-bank PSPs. The broader access criteria for TARGET are aimed at enhancing the efficiency of the European retail payments market, fostering competition and innovation in the European payments landscape, and supporting the uptake of instant payments in the EU. The Eurosystem will monitor the implementation of this policy and may clarify/review it based on experience.

Date of publication: 19/07/2024



7. Banking union

7.1 SINGLE SUPERVISORY MECHANISM (SSM)

(i) EU

ECB: Consultation on draft Guide on governance and risk culture

Status: Consultation

Deadline for the submission of comments: 16/10/2024

The ECB has published a consultation on a draft Guide on governance and risk culture. The Guide reflects the ECB's focus on diverse and effective management bodies, which is a supervisory priority of the SSM and sets out supervisory expectations regarding the governance and risk culture of supervised banks. The main purpose of the guide is to set out key ECB supervisory expectations when assessing the governance and risk culture of supervised entities based on the ECB's interpretation of the current regulatory framework. In particular, the Guide: (i) clarifies supervisors' expectations regarding how management bodies and committees should be composed and how they should function; (ii) spells out the roles and responsibilities of the internal control functions; (iii) emphasises the importance of risk culture; and (iv) outlines expectations regarding the risk appetite frameworks of banks. While the guide is intended for the internal use of the various supervisory teams, with the aim of ensuring a common and consistent approach, the ECB also recommends that NCAs align with the expectations and practices set out in this guide when assessing the governance of less significant institutions. The guide is intended as a practical tool and is not a substitute for the analysis of individual situations and the exercise of supervisory judgement. ECB Banking Supervision will continue to develop its supervisory approach towards addressing governance and risk culture-related risks. Therefore, the expectations set out in this guide may be adapted over time.

As part of the consultation process, the ECB will organise a stakeholder meeting on 26 September, bringing together relevant experts from supervised institutions and other interested parties.

Date of publication: 24/07/2024

8. Institutional supervisory framework

(i) EU

EBA: Opinion on the 2022 discharges report of the EP

Status: Final

The EBA has published an Opinion in response to the observations made by the European Parliament in its 2022 Discharge Report. Out of 29 observations, which cover the areas of budget and financial management, performance, efficiency and gains, staff policy, prevention and management of conflicts of interest and transparency, procurement, internal control, and other comments, the EBA considers that the vast majority (21) have already been addressed or do not require follow-up action. For a smaller number of observations (8) follow-up action is deemed to be an ongoing or continuous effort.

Date of publication: 24/07/2024

ESAs: Report of the JC SC CPFI workshop on behavioural insights

Status: Final

The ESAs have published a joint report following their workshop on the use of behavioural insights by supervisory authorities in their day-to-day oversight and policy work. The report provides a high-level overview of the main topics discussed during the workshop held on 14 and 15 February 2024 for national supervisors and other competent authorities, where participants explored the added value of behavioural insights in their work by exchanging their experiences and discussing the challenges they face. The report includes a catalogue of various studies carried out at both the European and national levels on the use of behavioural insights in supervisory and policy work. Behavioural insights are instrumental in helping financial markets deliver better products and services to consumers while also mitigating potential detriments they might face. Leveraging behavioural science and evidence-based practices when designing and implementing policies can further strengthen supervision and improve outcomes for consumers. The workshop and the subsequent report have been developed in accordance with the tasks defined in the Joint Committee Work Programme for 2024.

Date of publication: 11/07/2024

EBA: Report on the European Supervisory Examination Programme for 2025

Status: Final

The EBA has published the European Supervisory Examination Programme (ESEP) for 2025, which identifies key topics for heightened supervisory attention across the EU. The ESEP is aimed at driving supervisory convergence by providing competent authorities with a single set of priorities for implementation in 2025. The topics identified as key for 2025 include: (i) testing and adjusting to increasing economic and financial uncertainties, informed by a series of intertwined dynamics that intensify volatility in global markets and drive structural changes in the geopolitical landscape, impacting risks attached to financial activities; (ii) digital challenges, in particular ICT risk management and building operational resilience towards the digital transformation, informed by the general increase of ICT/cyber risk, the upcoming implementation of the DORA framework for all EU financial entities, and the persisting challenges in the design and execution of banks' digital transformation strategies; and (iii)

transitioning towards Basel III and the EU banking package implementation by ensuring institutions' information systems and capital planning are able to support the revised prudential metrics and corresponding robustness. Competent authorities are expected to reflect these topics in their priority setting and implement them in their day-to-day supervisory activities to ensure that their concerted efforts lead to the identification, assessment and management of the relevant risks across the EU. The EBA will follow up on how these key topics are embedded in competent authorities' priorities for 2025, and how they form part of their supervisory activities throughout the year.

Date of publication: 08/07/2024

EBA: Report on convergence of supervisory practices in 2023

Status: Final

The EBA has published its annual Report on convergence of supervisory practices for 2023. It confirms that the key topics identified for supervisory attention in 2023 were adequately included by most competent authorities, but there is still disparity in the implementation of risk areas like ESG and data aggregation capabilities in the supervisory processes. These topics included: (i) macroeconomic and geopolitical risks; (ii) operational and financial resilience; (iii) transition risks; and (iv) money laundering/terrorism financing (ML/TF) risks in the Supervisory Review and Evaluation Process (SREP) and internal controls and governance. Regarding the convergence of supervisory practices in the context of Pillar 2 and liquidity measures, the analysis shows that there is still room for further consistency in the identification and treatment of risks covered by Pillar 2 requirements across the EU. Lastly, the EBA's monitoring of supervisory colleges has confirmed that the annual college cycle is functioning well.

Date of publication: 08/07/2024

9. Investment funds

9.1 PRODUCT REGULATION

- a) AIF
- (i) Germany

BaFin: Supervisory notice on ESMA Guidelines regarding harmonised terms in fund names **(Aufsichtsmittteilung zu ESMA-Leitlinien zu Fondsamen)**

Status: Final

BaFin has published a supervisory notice on the ESMA Guidelines establishing harmonised criteria for use of ESG and sustainability terms in fund names, published on 14 May 2024. This is the first time that there are uniform requirements in this field across Europe. BaFin will take the ESMA Guidelines into account in its administrative practice. These will completely replace BaFin's previous administrative practice on sustainable investment funds.

The name of a fund gives a first impression of the product's investment strategy and investment objectives and influences investors' decisions. Fund managers must ensure that the information regarding their products is correct, fair and clear and does not convey a misleading or confusing message that would wrongly influence investors.

Date of publication: 25/07/2024

BaFin: Guidance notice for marketing according to § 320 KAGB (Merkblatt für Anzeigen nach § 320 KAGB)

Status: Final

BaFin has published an English convenience translation on the Guidance notice for marketing according to § 320 the German Investment Code (*Kapitalanlagegesetz – KAGB*). It aims to explain the requirements applicable in case of a sale of shares of a European or foreign AIF to consumers located in Germany.

Date of publication: 25/07/2024

BaFin: Guidance Notice on the marketing pursuant to Section 329 of the KAGB of foreign AIF or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF **(Merkblatt zum Vertrieb gemäß § 329 KAGB)**

Status: Final

BaFin has published an English convenience translation of the Guidance Notice on the marketing pursuant to Section 329 of the German Investment Code (*Kapitalanlagegesetz – KAGB*) of foreign AIF or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF. This document presents the main features of the notification procedure pursuant to Section 329 of the KAGB and explains the requirements for the marketing of units or shares in domestic special feeder AIFs or EU feeder AIFs managed by an EU AIF management company or an AIF capital management company, whose respective master AIF is not an EU AIF or domestic AIF

managed by an EU AIF management company or AIF capital management company, or foreign AIFs to semi-professional and professional investors in Germany.

Date of publication: 25/07/2024

(ii) EU

ESMA: Updated Q&A on the application of the AIFMD

Status: Final

ESMA has updated its Q&A on the application of the AIFMD, in particular the following questions: (i) initial capital and additional own funds; and (ii) notification upon establishment of a branch.

Date of publication: 12/07/2024

ESMA: Consultation on liquidity management tools for funds

Status: Consultation

Deadline for the submission of comments: 08/10/2024

ESMA has launched two consultations on draft Guidelines and technical standards under the revised AIFMD and the UCITS Directive. Both Directives aim to mitigate potential financial stability risks and promote harmonisation of liquidity risk management in the investment funds sector. The RTS will apply to AIFMs managing open-ended AIFs and UCITS. In the draft RTS ESMA defines the constituting elements of each liquidity management tool (LMT), such as calculation methodologies and activation mechanisms. ESMA is also consulting on Guidelines on LMTs of UCITS and open-ended AIFs, which provide guidance on how managers should select and calibrate LMTs in the light of their investment strategy, their liquidity profile and the redemption policy of the fund. The draft RTS and Guidelines are designed to promote convergent application of the Directives for both UCITS and open-ended AIFs and make EU fund managers better equipped to manage the liquidity of their funds, in preparation for market stress situations. They also intend to clarify the functioning of specific LMTs, such as the use of side pockets, a practice that currently varies significantly across the EU.

ESMA aims to deliver the final RTS and Guidelines by 16 April 2025.

- ♦ Consultation on draft RTS on liquidity management tools under the AIFMD and UCITS Directive
- ♦ Consultation on Guidelines on liquidity management tools of UCITS and open-ended AIFs

Date of publication: 08/07/2024

b) UCITS

(i) EU

ESMA: Updated Q&A on the application of the UCITS Directive

Status: Final

ESMA has updated its Q&A on the application of the UCITS Directive, in particular the question of derogation for newly authorised UCITS.

Date of publication: 12/07/2024

ESMA: Consultation on liquidity management tools for funds

Status: Consultation

Deadline for the submission of comments: 08/10/2024

ESMA has launched two consultations on draft Guidelines and technical standards under the revised AIFMD and the UCITS Directive. For more information, please see section a) above.

Date of publication: 08/07/2024

9.2 PRUDENTIAL REGULATION

a) Compliance

(i) Germany

Second law on the reform of the Capital investors' test cases act (*Zweites Gesetz zur Reform des Kapitalanleger-Musterverfahrensgesetzes*)

Status: Published in the Federal Gazette

Date of entry into force: 20/07/2024

The Second law on the reform of the Capital Market Model Cases Act (*Kapitalanleger-Musterverfahrensgesetz – KapMuG*) has been published in the Federal Gazette. The KapMuG provides a special civil model case procedure before the higher regional courts, in particular for claims based on false, misleading or omitted public capital market information. Questions of fact or law that arise equally in several individual proceedings before the regional courts are submitted to the Higher Regional Court (*Oberlandesgericht*) and are heard and decided in a single procedure if parties in at least ten of these individual proceedings so request. Following the model decision, the individual proceedings before the regional courts are brought to a conclusion on the basis of this decision. This law is to be retained as a special code of procedure with its current scope of application. While keeping its basic procedural structures, it will be further developed into an effective instrument for both the judiciary and individual legal protection in dealing with mass proceedings relating to capital market law and established as such on a permanent basis.

Date of publication: 19/07/2024

BaFin: Guidance Notice on the suitability of managing directors pursuant to the Investment Code (*Merkblatt zur Eignung von Geschäftsleitern nach dem KAGB*)

Status: Published

Date of entry into force: 01/08/2024

BaFin has published a Guidance Notice on the suitability of managing directors pursuant to the German Investment Code (*Kapitalanlagegesetzbuch – KAGB*). It is directed at all capital management companies that are subject to supervision by the BaFin under the KAGB. The Notice explains the professional and personal requirements for persons who are appointed as managing directors under the KAGB. It provides an overview of the associated reporting obligations, including the submission of documents. With the entry into force of this Notice, the [Guidance Notice on managing directors pursuant to the KWG, ZAG and KAGB](#) (*Merkblatt zu Geschäftsleitern gemäß KWG, ZAG und KAGB*) will cease to apply in respect of references made to the KAGB.

Date of publication: 19/07/2024

(ii) EU

EC: Commission Delegated Regulation (EU) .../... supplementing the ELTIF Regulation with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF, the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation supplementing the ELTIF Regulation with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF, the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure.

Among other things, the legislation sets out the: (i) circumstances in which the use of financial derivative instruments for hedging purposes is considered as solely serving the purpose of hedging the risks inherent to the investments of the ELTIF; (ii) circumstances in which the life of an ELTIF is to be considered compatible with the life-cycles of each of its individual assets; (iii) criteria to be used by the ELTIF managers to determine the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of the ELTIF Regulation; (iv) minimum content requirements to the full or partial matching of transfer requests of units or shares of the ELTIF by exiting and new investors where an ELTIF provides for that possibility under Article 19(2a) of the ELTIF Regulation; and (v) criteria for the assessment of the market for potential buyers.

Date of publication: 19/07/2024

(iii) International

FSB: Progress report on enhancing the resilience of non-bank financial intermediation

Status: Final

The FSB has published a progress report to the G20 on enhancing the resilience of non-bank financial intermediation (NBFI). The aim of policies by the FSB to enhance NBFI resilience has been to reduce excessive spikes in the demand for liquidity, enhance the resilience of liquidity supply in stress, and enhance risk monitoring and the preparedness of authorities and market participants. The report sets out the recent and ongoing work by the FSB, in collaboration with standard-setting bodies (SSBs), to enhance the resilience of the NBFI sector. The FSB notes that the design and implementation of NBFI policies continues to advance, albeit at an uneven pace across jurisdictions. The report includes a table which provides an overview of the FSB's medium-term NBFI work programme. The report concludes by outlining further work to assess and address systemic risk in NBFI that the FSB, in collaboration with the SSBs, will carry out. The work is structured in three main areas: (i) in-depth assessment and ongoing monitoring of vulnerabilities in NBFI; (ii) the development of policies to enhance NBFI resilience; and (iii) the monitoring of the implementation and assessment of the effects of NBFI reforms. The FSB explains that this work will help it to determine whether collectively the reforms have sufficiently addressed systemic risk in NBFI, including whether to develop additional tools for use by authorities. The FSB expects to publish by the end of 2024 a consultation report with proposed policy approaches for authorities. The FSB has also published a letter to the G20 which calls for further progress on implementing NBFI reforms. It also highlights the FSB's recent stocktake report on regulatory and supervisory initiatives on the identification and assessment of

nature-related financial risks. One issue the report considers is the perception of central banks and supervisors on whether nature degradation is a relevant financial risk.

Date of publication: 22/07/2024

b) Legislation

(i) Germany

BMF: Draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (*Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung*)

Status: Draft

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (*Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung* – 2. Betriebsrentenstärkungsgesetz). The law is intended to improve the availability of good occupational pensions and make them even more widespread. To this end, the framework for their continued voluntary establishment and expansion are to be improved in particular as regards in labour, financial supervision and tax law.

Date of publication: 24/06/2024

BMF: Draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (*Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur*)

Status: Draft

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (*Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur* – InfrastrukturFörderGesetz). The proposed law is intended to expand investment opportunities for investment funds and special investment funds and create a robust legal framework for these investments. This is intended to mobilise more private funds for the investment needs in the expansion of renewable energies and the maintenance and expansion of infrastructure.

Date of publication: 21/05/2024

10. Special topics

10.1 FINTECH/DIGITAL FINANCE

(i) Germany

BaFin: Note on the submission of reports of serious ICT-related incidents and significant cyber threats (*Hinweis zur Einreichung der Meldung schwerwiegender IKT-bezogener Vorfälle und erheblicher Cyberbedrohungen*)

Status: Final

BaFin has announced that reports of ICT-related incidents and significant cyber threats will be submitted via BaFin's MVP portal. It sets out that in a first step, it will provide forms that can be filled out via the MVP portal. In this step, submission via the SOAP web service interface and file upload will not be possible. BaFin will provide separate information regarding registration for the corresponding specialist procedure at a later date. In a second step, submission via SOAP web service interface and file upload will be activated. In addition to submission using the MVP form, this will enable submission via a structured data format. BaFin informs stakeholders that these functionalities will not yet be available on 17 January 2025.

Date of publication: 31/07/2024

BaFin: Supervisory notice on the implementation of DORA (*Aufsichtsmitteilung über Umsetzungshinweise zu DORA*)

Status: Final

BaFin has published a supervisory notice on the implementation of DORA regarding ICT risk management and ICT third-party risk management. Currently, the companies in the banking and insurance sectors supervised by BaFin apply the banking and insurance supervisory requirements for IT (BAIT and VAIT respectively). From 17 January 2025, most of these companies will have to apply the regular risk management framework of the DORA. They must therefore manage their information and communications technology (ICT) risks in accordance with the requirements set up by DORA. The implementation instructions in the supervisory notice are aimed at these companies. The supervisory notice is a non-binding aid. It is intended to support companies in implementing the requirements of DORA, taking into account the relevant technical regulatory standards. It also contains an overview of the minimum contractual contents that supervised companies must agree with ICT third-party service providers.

The supervisory notice only refers to the BAIT and the VAIT. However, the requirements considered are often comparable to the supervisory requirements for capital management companies (KAIT) and for payment and e-money institutions (ZAIT). The guidance can therefore generally be regarded as equally applicable.

Date of publication: 08/07/2024

(ii) EU

ESMA: Opinion on broker models supporting the convergent application of MiCA

Status: Final

ESMA has published an Opinion to address the risks presented by global crypto firms seeking authorisation under the MiCA Regulation for part of their activities (crypto brokerage) while keeping a substantial part of their group activities (intra-group execution venues) outside the EU regulatory scope. It recognises risks associated with global crypto firms' complex structures where execution venues fall outside of the scope of MiCA. Such structures may include the involvement of an EU-authorised broker effectively routing orders to an intra-group execution venue based outside the EU, potentially leading to diminished consumer protection and to an unlevel playing field with EU-authorised execution venues. Considering these risks, ESMA recommends NCAs to be vigilant during the authorisation process and to assess business structures of global firms to ensure that they do not bypass obligations established in MiCA, to protect consumers and ensure transparent and orderly functioning of crypto markets.

Date of publication: 31/07/2024

ESAs: Final report on draft RTS to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) DORA

Status: Final

The ESAs have published a final report on draft RTS to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) DORA. The draft RTS set out requirements when the use of subcontracted ICT services supporting critical or important functions or material parts thereof by ICT third-party service providers is permitted by financial entities and set out the conditions applying to such subcontracting. In particular, the draft RTS require financial entities to assess the risks associated with subcontracting during the precontractual phase, which includes the due diligence process. The draft RTS also set out requirements regarding the implementation, monitoring, and management of contractual arrangements regarding the subcontracting conditions for the use of ICT services supporting critical or important functions or material parts thereof ensuring that financial entities are able to monitor the entire ICT subcontracting chain of ICT services supporting critical or important functions. The ESAs will now submit the draft RTS to the EC for adoption.

Date of publication: 26/07/2024

ESAs: Second batch of policy products under DORA

Status: Final

Date of application: 17/01/2025

The ESAs have published the second batch of policy products under the DORA. This batch consists of four final draft RTS, one set of ITS and two Guidelines, all of which aim at enhancing the digital operational resilience of the EU's financial sector. The package focuses on the reporting framework for ICT-related incidents (reporting clarity, templates) and threat-led penetration testing while also introducing some requirements on the design of the

oversight framework, which enhance the digital operational resilience of the EU financial sector, thus also ensuring continuous and uninterrupted provision of financial services to customers and safety of their data.

The final draft technical standards have been submitted to the EC for adoption. The ESAs advise that the remaining RTS on subcontracting will be published in due course. The ESAs are publishing the following final draft technical standards and Guidelines:

- ♦ RTS and ITS on the content, format, templates and timelines for reporting major ICT-related incidents and significant cyber threats
- ♦ RTS on the harmonisation of conditions enabling the conduct of the oversight activities
- ♦ RTS specifying the criteria for determining the composition of the joint examination team (JET)
- ♦ RTS on threat-led penetration testing (TLPT)
- ♦ Guidelines on the estimation of aggregated costs/losses caused by major ICT-related incidents
- ♦ Guidelines on oversight cooperation

Date of publication: 17/07/2024

EBA: Consultation on draft Guidelines on templates to assist competent authorities in performing their supervisory duties regarding issuers' compliance under Titles III and IV of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 15/10/2024

The EBA has launched a consultation on draft Guidelines on reporting requirements to assist competent authorities and the EBA in performing their duties under the MiCA Regulation. This Regulation sets out specific regimes for issuers of asset-referenced tokens (ARTs), e-money tokens (EMTs) and other crypto-assets, and for crypto-asset service providers. Issuers of ARTs are required to report specific information under Article 22 MiCA Regulation for each ART issued with an issue value that is higher than EUR 100,000,000. According to the EBA, the data provided by the issuers is not enough to allow competent authorities and the EBA to discharge their supervisory tasks, in particular, by ensuring compliance by issuers with the own funds and liquidity requirements. The EBA is also concerned that it would not have sufficient data to properly carry out its significance assessment tasks under the MiCA Regulation. ARTs and EMTs that are classified as significant by the EBA are subject to additional requirements. The EBA has identified these data gaps and is consulting on draft Guidelines specifying common templates and instructions for issuers of ARTs and EMTs to provide the EBA and competent authorities with the necessary information to cover these gaps. In addition, these Guidelines include common templates and instructions that issuers should use to collect the data they need from the relevant crypto-asset service providers.

The draft Guidelines are expected to apply two months after the publication of their translation in all official EU languages.

Date of publication: 15/07/2024

ESMA: Updated Q&A on the MiCA Regulation

Status: Final

ESMA has updated its Q&A on the MiCA Regulation by amending the following questions: (i) treatment of staking services in MiCA; (ii) grandfathering clause and applicable AML laws; (iii) interaction between Article 60 notifications and the CASP transitional phase; (iv) simplified authorisation procedures; (v) crypto-asset transfers as component of another crypto-asset service or as a separate crypto-asset transfer service; (vi) entities not authorised as CASPs

by the end of the transition period; and (vii) entities who have not applied for, or whose application for authorisation as CASPs has been refused by the end of the transition period.

Date of publication: 12/07/2024

ESAs: Consultation on draft Guidelines on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 12/10/2024

The ESAs have launched a consultation on Guidelines on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) MiCA Regulation. The draft Guidelines propose a standardised test, as well as templates for explanations and legal opinions that provide descriptions of the regulatory classification of crypto-assets in the following cases: (i) asset-referenced tokens (ARTs) – the white paper for the issuance of ARTs, which contains comprehensive information about the crypto-asset, must be accompanied by a legal opinion that explains the classification of the crypto-asset, in particular, the fact it is not an e-money token (EMT) nor a crypto-asset that could be considered excluded from the scope of the MiCA Regulation; and (ii) crypto-assets that are not ARTs or EMTs under the MiCA Regulation – the white paper for the crypto-asset must be accompanied by an explanation of the classification of the crypto-asset, in particular, the fact it is not an EMT, ART or crypto-asset excluded from the scope of the MiCA Regulation. The proposed standardised test acknowledges that the regulatory classification of a crypto-asset requires case-by-case assessment, taking account of applicable EU and national law, decisions of the Court of Justice of the EU, decisions of the national court, and any regulatory measures or guidance applicable at the national level.

The draft Guidelines are expected to apply two months after the publication of its translation in all official languages of the EU.

Date of publication: 12/07/2024

ECB: Report on bank digitalisation assessment criteria and collection of sound practices

Status: Final

The ECB has published a report defining bank digitalisation assessment criteria and collection of sound practices. Understanding bank digitalisation and the management of related risks is a key priority of the ECB and the criteria are intended to assess how banks shape, steer and implement their digitalisation strategies, focusing closely on risk identification and mitigation. The criteria and sound practices are grouped into three areas: (i) business model; (ii) governance; and (iii) risk management. The report also outlines the sound practices the ECB has observed in the digital context. The ECB found that banks demonstrating sound practices assess both the opportunities and risks related to their digital strategy, based on a granular assessment of their business environment. The most advanced digital strategies are those embedded in business or IT strategies, translated into digital initiatives driven by business use cases and technological developments which are then consistently evaluated for efficacy during the execution phase. While most banks have adopted digital solutions to transform their back and front office operations, many have not defined sufficiently granular KPIs, including those assessing the impact of their digital strategies on profit and loss. This means they cannot determine the effectiveness of their strategies and whether they have met their objectives. The ECB states that it will expand the focus of its supervisory work to include reviewing the use of specific technologies more broadly, including the deployment of AI and related business use cases.

Date of publication: 11/07/2024

EBA: Statement on the expectation that issuers and offerors of ARTs and EMTs will comply promptly with the MiCA Regulation

Status: Final

The EBA has published a statement on the application of the MiCA Regulation to issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs), aiming to promote the timely and consistent application of the MiCA Regulation. This ART/EMT regime has applied since 30 June 2024. The EBA reminds persons who are issuing, or intend to issue, to the public, to offer to the public, or to seek admission to trading ARTs and EMTs of the new requirements under MiCAR and draws attention to the technical standards and Guidelines available on its website. The EBA goes on to highlight the factors consumers can check before deciding whether to acquire an ART, EMT or other type of crypto-asset and reminds consumers of the risks of acquiring crypto-assets that have not been issued in accordance with the applicable provisions of the MiCA Regulation. The EBA's document on supervisory priorities shares with the competent authorities' priorities for implementation in 2024/2025 in the following four areas: (i) internal governance and risk management; (ii) financial resilience (including, where applicable, own funds requirements and reserve of assets); (iii) technology risk management; and (iv) financial crime risk management. A high level of holder protection and financial stability remain as overarching objectives to consider for all priority areas. The EBA also sets out **key topics for supervisory attention** across the EU for issuers of ARTs/EMTs in 2024/2025. Both documents are intended to promote the timely and consistent application of the MiCA Regulation.

Date of publication: 05/07/2024

ESMA: Second package of final draft technical standards specifying certain requirements of the MiCA Regulation

Status: Final

ESMA has published its second package of final draft technical standards under MiCAR, including six draft RTS and two draft ITS. The technical standards relate to: (i) sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts – RTS; (ii) business continuity measures for crypto-asset service providers (CASPs) – RTS; (iii) trade transparency for CASPs operating a trading platform for crypto-assets – RTS; (iv) record-keeping requirements for CASPs – two RTS; (v) crypto-asset white paper formats and the data necessary for the classification of crypto-asset white papers and the practical arrangements to ensure that such data is machine-readable – ITS and RTS; and (vi) public disclosure of inside information – ITS. The technical standards will be submitted to the EC, which will have three months to decide whether to adopt them.

Date of publication: 04/07/2024

ESAs: FAQs on DORA 2024 dry run exercise on reporting of registers of information

Status: Final

The ESAs have published a thorough update on the FAQs regarding the DORA 2024 dry run exercise on reporting of registers of information of contractual arrangements with the ICT third-party providers. The answers focus on the questions regarding the practical nature of the reporting exercise, including filling the templates, preparation of the reporting files, their submission and use of the tools for the dry run provided by the ESAs. The dry run exercise is based on the Final Report on draft Implementing Technical Standards on registers of information developed by the ESAs as sent to the EU Commission for endorsement in January 2024. The steady-state reporting will be done on the basis of the ITS as adopted by the EU Commission that may change compared to the current version.

Date of publication: 04/07/2024

EBA: Final report on Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 ('Travel Rule Guidelines')

Status: Final

The EBA has published new Guidelines on information requirements in relation to transfers of funds and certain crypto-asset transfers under the recast revised WTR, also known as the 'travel rule' Guidelines. For more information, please see section 5 above.

Date of publication: 04/07/2024

(iii) International

FSB: Report on cross-border regulatory and supervisory issues of global stablecoin arrangements in EMDEs

Status: Final

The FSB has published a report on cross-border regulatory and supervisory issues of global stablecoin (GSC) arrangements in emerging market and developing economies (EMDEs). The report explores potential factors driving the higher level of activities related to foreign currency-pegged stablecoins in EMDEs, their associated financial stability risks and regulatory challenges, and provides considerations to address them.

Date of publication: 23/07/2024

BCBS: Report on disclosure of crypto-asset exposures

Status: Final

Date of application: 01/01/2026

The BCBS has published a final report on disclosure of crypto-asset exposures. This framework, which is based on the disclosure requirements in the final prudential standard on banks' crypto-asset exposures, includes a standardised table and templates covering banks' crypto-asset exposures. These require banks to disclose qualitative information on their crypto-asset-related activities and quantitative information on the capital and liquidity requirements for their crypto-asset exposures.

Date of publication: 17/07/2024

BCBS: Report on crypto-asset standard amendments

Status: Final

Date of application: 01/01/2026

The BCBS has published a final report on crypto-asset prudential standard amendments. These targeted amendments to the crypto-asset prudential standard aim to further promote a consistent understanding of the standard, particularly regarding the criteria for stablecoins to receive a preferential "Group 1b" regulatory treatment. Various other technical amendments clarify other aspects of the standard.

Date of publication: 17/07/2024

BCBS: Consultation regarding report on principles for the sound management of third-party risk

Status: Consultation

Deadline for the submission of comments: 09/10/2024

The BCBS has launched a consultation on principles for the sound management of third-party risk in the banking sector. The principles address banks' increasing reliance on third-party service providers due to the ongoing digitalisation and rapid growth in financial technology, establishing a common baseline for banks and supervisors for the risk management of these arrangements. The consultation consists of 12 high-level principles offering guidance to banks and supervisors on effectively managing and supervising risks from third-party arrangements. The principles introduce the concept of a third-party life cycle and emphasise overarching concepts such as criticality and proportionality. They also address supply chain risk and concentration risk and highlight the importance of supervisory coordination and dialogue across sectors and borders. While primarily directed at large internationally active banks and their prudential supervisors, the principles also offer benefits to smaller banks and authorities in all jurisdictions. They establish a common baseline for banks and supervisors for the risk management of third parties, while providing the necessary flexibility to accommodate evolving practices and regulatory frameworks across jurisdictions.

Date of publication: 09/07/2024

BCBS: Announcement of July 2024 meeting outcomes

Status: Final

The BCBS has published a press release summarising the discussions held in its meeting on 2 and 3 July. For more information, please see section 1.1c) above.

Date of publication: 03/07/2024

10.2 AI

(i) EU

Regulation (EU) 2024/1689 laying down harmonised rules on AI and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (AI Act)

Status: Published in the OJ

Date of entry into force: 01/08/2024

Date of application: 02/08/2026

The Regulation (EU) 2024/1689 laying down harmonised rules on AI (AI Act) has been published in the OJ. It aims to protect fundamental rights, democracy, the rule of law and environmental sustainability from high-risk AI, while boosting innovation and establishing Europe as a leader in the field. The AI Act defines four main players in the AI sector – deployers, providers, importers and distributors and establishes obligations for AI systems based on their potential risks and level of impact.

Aside from the general application date, some rules will apply earlier: (i) prohibited AI systems will be banned from 2 February 2025; and (ii) penalties and the rules on general-purpose AI models will apply from 2 August 2025.

Date of publication: 12/07/2024

(ii) International

FSB: Speech on how AI may shape the economy and the financial system

Status: Final

The FSB chair Klaas Knot has given a speech on how AI may shape the economy and the financial system. Mr Knot considers that regulators and policymakers should maintain a healthy balance between harnessing the benefits of innovation while mitigating the risks. He warns against stifling AI-driven innovation and is more supportive of an 'American' regulatory environment that's more flexible and conducive to business innovation. This year the FSB is updating its paper on the financial stability implications of AI, originally published in 2017. Mr Knot states that the emerging consensus is that the risks identified in the earlier report are still there: concentration risk, third-party risks, possible increases in herding behaviour, and model risk, including challenges with regard to explainability. Mr Knot highlights that while many of the potential risks of AI may seem new, they are strikingly similar to traditional financial risks. However, he warns of potential new forms of interconnectedness in the financial system that may emerge.

Date of publication: 11/07/2024

10.3 SUSTAINABLE FINANCE

(i) Germany

BaFin: Supervisory notice on ESMA Guidelines regarding harmonised terms in fund names (*Aufsichtsmitteilung zu ESMA-Leitlinien zu Fondsnamen*)

Status: Final

BaFin has published a supervisory notice on the ESMA Guidelines establishing harmonised criteria for use of ESG and sustainability terms in fund names, published on 14 May 2024. For more information, please see section 9.1a) above.

Date of publication: 25/07/2024

BReg: Government draft on the Act implementing the CSRD (*Regierungsentwurf zum Gesetz zur Umsetzung der CSRD*)

Status: Draft

The German Federal Government (*Bundesregierung* – BReg) has published a government draft on the Act implementing the CSRD (*Gesetzes zur Umsetzung der CSRD zur Änderung der Verordnung (EU) Nr. 537/2014 und der Richtlinien 2004/109/EG, 2006/43/EG und 2013/34/EU hinsichtlich der Nachhaltigkeitsberichterstattung von Unternehmen*). The CSRD requires Member States to introduce sustainability reporting for companies defined as large, small or medium-sized capital market-oriented companies under accounting law, and to audit the corresponding sustainability reports by 6 July 2024.

Date of publication: 24/07/2024

(ii) EU

ESAs: Update on consolidated Q&As on SFDR

Status: Final

The ESAs have published an updated version of its consolidated Q&As on the SFDR and the SFDR Delegated Regulation. These Q&As were first published in May 2023. The new answers added relate to, among others: (i) establishing a website to comply with Article 10 of the SFDR; (ii) the calculation of principal adverse impact (PAI) indicators being performed on a pass/fail basis; (iii) how to calculate the share of sustainable investment that qualifies as environmentally sustainable and its disclosure; (iv) a table showing how the calculations of sustainable investment can be done either at the economic activity or the investment level for financial products; and (v) whether sustainable investment can be made by investing in another financial product, such as a UCITS fund.

Date of publication: 25/07/2024

ESMA: Opinion on sustainable investments – facilitating the investor journey

Status: Final

ESMA has published an Opinion on the sustainable finance regulatory framework, setting out possible long-term improvements. ESMA acknowledges that while the EU sustainable finance framework is already well developed and includes safeguards against greenwashing, it does believe that, in the longer-term, the framework could further evolve to facilitate investors' access to sustainable investments and support the effective functioning of the sustainable investment value chain. ESMA's main recommendations to the EC are as follows: (i) the EU taxonomy should become the sole, common reference point for the assessment of sustainability and should be embedded in all sustainable finance legislation; (ii) the EU taxonomy should be completed for all activities that can substantially contribute to environmental sustainability and a social taxonomy developed; (iii) a definition of transition investments should be incorporated into the framework to provide legal clarity and support the creation of transition-related products; (iv) all financial products should disclose some minimum basic sustainability information, covering environmental and social characteristics; (v) a product categorisation system should be introduced catering to sustainability and transition, based on a set of clear eligibility criteria and binding transparency obligations; (vi) ESG data products should be brought into the regulatory perimeter, the consistency of ESG metrics continue to be improved, reliability of estimates ensured; and (vii) consumer and industry testing should be carried out before implementing policy solutions to ensure their feasibility and appropriateness for retail investors. The Opinion builds on ESMA's progress report on greenwashing and the joint Opinion of the ESAs on the review of the SFDR. The Opinion also represents the last component of ESMA's reply to the EC's request for input related to greenwashing, next to the final report on greenwashing.

Date of publication: 24/07/2024

ESMA: Final report on Guidelines on enforcement of sustainability information

Status: Final

ESMA has published a final report on the Guidelines on enforcement of sustainability information (GLESi) in order to provide guidance to build convergence on supervisory practices on sustainability reporting. In addition, it has also published a [Public statement on the first application of the European sustainability reporting standards \(ESRS\)](#). The documents aim to support the consistent application and supervision of sustainability reporting requirements introduced under the EU Corporate Sustainability Reporting Directive. The GLESi were mandated under the EU Transparency Directive as amended by CSRD and are designed to build convergence on supervisory practices on sustainability reporting. ESMA has aimed to align them with the existing Guidelines on Enforcement of Financial

Information, to ensure that enforcement of sustainability information is consistent with enforcement of financial information and is held to be on a par with such information. The ESRS specify the information that firms subject to the EU Accounting Directive, as amended by CSRD, should report in accordance with sustainability reporting requirements. Through the public statement on the first-time application of the ESRS, ESMA intends to support large issuers with the implementation of these new reporting requirements. ESMA will continue to monitor the sustainability reporting practices in 2025 as well as the application of the GLESI. ESMA will translate the GLESI into all EU languages and make these translations available on its website. In addition, ESMA will release in Q4 recommendations in relation to the sustainability statements of listed companies in its public statement on the 2024 European Common Enforcement Priorities.

Date of publication: 05/07/2024

Directive (EU) 2024/1760 on corporate sustainability due diligence and amending the Whistleblowing Directive and the ESAP Regulation (CSDDD)

Status: Published in the OJ

Date of entry into force: 25/07/2024

Date of application: 26/07/2027

The Directive (EU) 2024/1760 on corporate sustainability due diligence and amending the Whistleblowing Directive and the ESAP Regulation (CSDDD) has been published in the OJ. It imposes obligations on companies to address human rights and environmental due diligence in their value chains by introducing, among others, the following aspects: (i) requiring companies to carry out due diligence to identify, address and remedy their impact on human rights (including social, trade union and labour rights), the environment (contributing to climate change or deforestation, for example), and good governance (such as corruption and bribery) throughout their value chain; (ii) sanctions for non-compliance and legal support for victims of corporations in third countries, unless companies can prove that they have acted in line with due diligence obligations and taken measures to prevent such harm; (iii) a ban on imports of products linked to severe human rights violations such as forced or child labour; and (iv) that the rules apply to companies operating in the EU internal market, including those from outside the EU.

The framework will apply to all large undertakings, including publicly listed SMEs and high-risk SMEs, which should receive technical assistance to comply with the requirements.

Date of publication: 05/07/2024

EC: Report on the monitoring of climate-related risk to financial stability

Status: Final

The EC has published a report on the monitoring of climate-related risk to financial stability. It takes stock of analytical work and policy responses carried out by the EU so far. The report is part of an ongoing learning process by regulators, supervisors and industry. The EC is considering to build on this report's findings and ongoing work such as the Fit-For-55 exercise to assess possible further improvements to the micro and macroprudential frameworks for banks and non-bank financial intermediaries.

Date of publication: 01/07/2024

(iii) International

NGFS: Note on improving greenhouse gas emissions data

Status: Final

The NGFS has published an information note on improving greenhouse gas (GHG) emissions data. The note highlights several issues that should be addressed to improve GHG emission data, and therefore reduce the climate data gap for different use-cases in the financial system. The NGFS consider that central banks, supervisors and regulators need to accelerate data collection of financed emissions by financial institutions, while regulatory authorities could provide information through their websites to disseminate information as a way to increase supervised entities' awareness of the importance of sustainability indicators. The NGFS recommends that supervisors may want to coordinate with governmental agencies on the collection and dissemination of emission data, to facilitate the transition toward a net-zero economy. Public availability of comprehensive, consistent, and comparable emission data and financial indicators is needed to facilitate both disclosure and harmonisation.

The NGFS propose several measures that could enhance the granularity and comparability of emissions data, including: (i) harmonising the metrics in reporting standards; (ii) encouraging coordination between supervisors and government agencies in the collection and dissemination of emissions data; and (iii) intensifying collaboration across public bodies, financial institutions, and businesses to address the challenges of emissions data.

Date of publication: 16/07/2024

FSB: Report regarding stocktake on nature-related risks, including supervisory and regulatory approaches and perspectives on financial risk

Status: Final

The FSB has published a report regarding a stocktake of regulatory and supervisory initiatives associated with the identification and assessment of nature-related financial risks, including the perception of central banks and supervisors regarding whether nature degradation, such as biodiversity loss, is a relevant financial risk. The stocktake, which will be delivered at the 25-26 July meeting of G20 Finance Ministers and Central Bank Governors, describes both supervisory and regulatory initiatives, and also central banks' and supervisors' analytical work on whether and how nature degradation, including loss of biodiversity, is a financial risk. The findings include: (i) financial authorities are at different stages of evaluating the relevance of biodiversity loss and other nature-related risks as a financial risk, with approaches varying, in part due to differing mandates; (ii) financial authorities categorise nature-related risks into the same two types of risks typically used in climate-related financial risk analysis: physical and transition risks. However, analytical work faces major data and modelling challenges. Authorities' work to date indicates that financial institutions face large exposures to physical risk via their investments and financing activities, but that analytical work needs to be further developed to better translate estimates of financial exposures into measures of risk. Authorities recognise the strong connections between climate risk and nature, and that more needs to be done to develop a more holistic approach that considers interdependencies between climate- and nature-related financial risks; and (iii) regulatory and supervisory work is also at an early stage globally, and approaches differ considerably across jurisdictions and institutions. The stocktake highlights examples of approaches taken by international organisations and authorities. There is a general recognition that more expertise is needed in the supervisory community, in central banks, and in the private sector to understand and, where needed, address nature-related risks.

Date of publication: 18/07/2024

NGFS: Report on nature-related litigation: emerging trends and lessons learned from climate-related litigation

Status: Final

The Network for Greening the Financial System (NGFS) has published two complementary reports on nature-related risks. The first report is the final version of the Conceptual Framework for nature-related financial risks, which aims to guide policies and action by central banks and financial supervisors. The aim of the framework is to create a common science-based understanding of, and language for, nature-related financial risks among NGFS members that provides greater clarity on the meaning of key concepts and the way these interrelate. The report includes two illustrative cases, which demonstrate how this framework can be applied in practice. The NGFS encourages central banks and supervisors to identify, assess and, where relevant, act on material economic and financial risks stemming from dependencies and impacts on nature and their nexus with climate change.

The second report outlines the key emerging trends related to nature-related litigation, including cases concerning biodiversity loss, deforestation, ocean degradation, carbon sinks and plastic pollution. This report argues that nature-related legal actions will likely evolve and grow, taking inspiration from successful climate-related litigation cases, and benefiting from an increasing awareness of the nature crisis. The NGFS considers that, in the coming years, two key categories of nature-related litigation might be expected to develop in particular: (i) an increase in the number of rights-based nature cases against states and public entities; and (ii) an increase in the number of cases based on corporate responsibility. The NGFS encourages central banks, supervisors and financial institutions to closely monitor developments in nature-related litigation.

Date of publication: 02/07/2024

11. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

BReg: Government draft on the Act implementing the CSRD (*Regierungsentwurf zum Gesetz zur Umsetzung der CSRD*)

Status: Draft

The German Federal Government (*Bundesregierung* – BReg) has published a government draft on the Act implementing the CSRD. For more information, please see section 10.3 above.

Date of publication: 24/07/2024

Second law on the reform of the Capital investors' test cases act (*Zweites Gesetz zur Reform des Kapitalanleger-Musterverfahrensgesetzes*)

Status: Published in the Federal Gazette

Date of entry into force: 20/07/2024

The Second law on the reform of the Capital Market Model Cases Act (*Kapitalanleger-Musterverfahrensgesetz* – KapMuG) has been published in the Federal Gazette. For more information, please see section 9.2a) above.

Date of publication: 19/07/2024

BMF: Draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (*Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung*)

Status: Draft

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft bill on the Second Law on the Strengthening of Occupational Pensions Schemes (*Zweites Gesetz zur Stärkung der betrieblichen Altersversorgung* – 2. Betriebsrentenstärkungsgesetz). For more information, please see section 9.2b) above.

Date of publication: 24/06/2024

BMF: Draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (*Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur*)

Status: Draft

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a draft bill on a Law Supporting Investments of Funds in Renewable Energies and Infrastructure (*Gesetz zur Förderung von Investitionen von Fonds in erneuerbare Energien und Infrastruktur* – InfrastrukturFörderGesetz). For more information, please see section 9.2b) above.

Date of publication: 21/05/2024

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