

# Regulatory monitoring

Newsletter

February 2023





# ECB in focus

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

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

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

## Some of our recent posts

### ECB PUBLISHES SUPERVISORY PRIORITIES 2023-25

*4 January 2023*

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

[Read more →](#)

### ECB CONSULTS ON GUIDE TO QUALIFYING HOLDING PROCEDURES

*7 November 2022*

On 28 September 2022, the ECB launched a public consultation on its draft guide on qualifying holding procedures. The guide clarifies existing uncertainties in key areas and adds to the existing guidelines that apply across the EU.

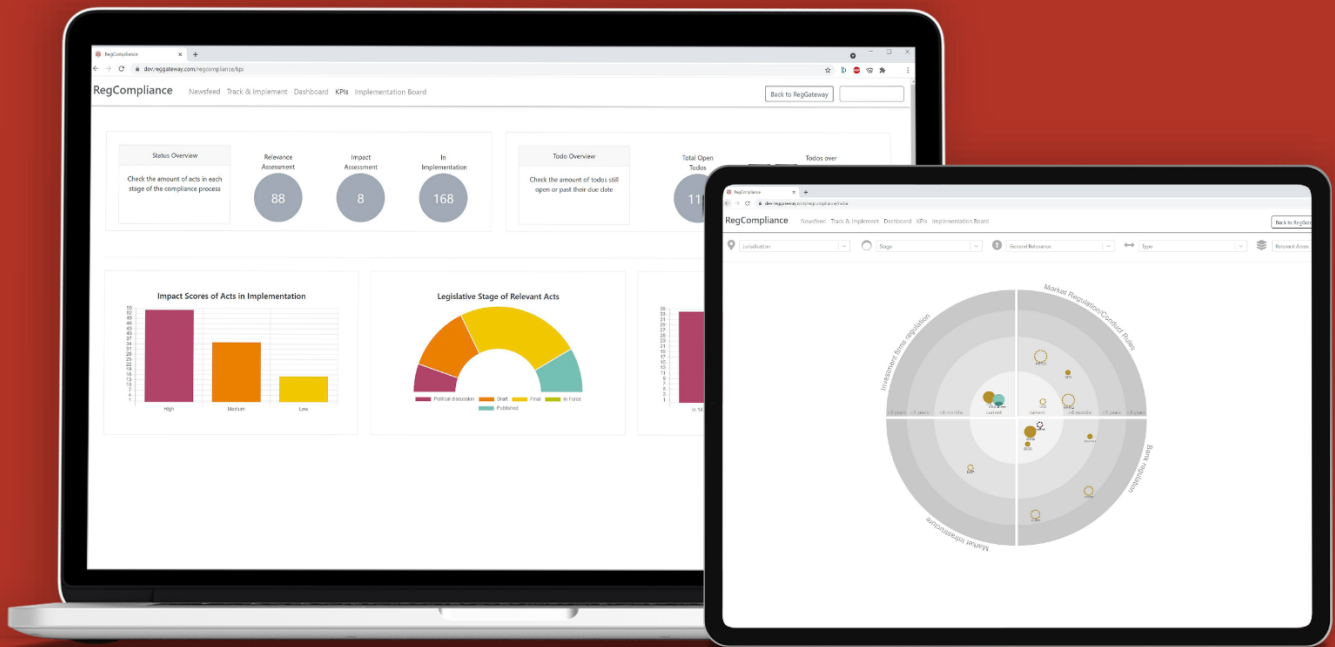
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### ECB WARNS BANKS THAT FAILURE TO COMPLY WITH LEVERAGED LENDING GUIDANCE MAY RESULT IN CAPITAL CHARGES

*26 October 2022*

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

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#### CHANGE ANALYSIS AND PREVIEW OF RULES

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

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# 1. Bank regulation

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## 1.1 Prudential regulation

### (a) General

#### (i) Germany

##### **BaFin: Protocol on the 16th meeting of the expert committee on commercial transactions (*Protokoll der 16. Sitzung des Fachgremiums Handelsgeschäfte*)**

Status: Final

BaFin has published a protocol on the 16th meeting of the expert committee on commercial transactions. In particular, it details discussions on the progress of CRR3 and CRD6, questions from industry representatives regarding the implementation of CRR3 as well as presentations on cryptoasset developments.

Date of publication: 24/02/2023

#### (ii) EU

##### **Publication of two EEA Joint Committee Decisions amending Annex IX (Financial Services) to EEA Agreement**

Status: Published in the OJ

Date of entry into force: 21/03/2020

Two Decisions of the EEA Joint Committee that amend Annex IX (Financial Services) to the EEA Agreement were published in the OJ: (i) Decision No 41/2020, which incorporates Delegated Regulation (EU) 2019/981 amending Delegated Regulation (EU) 2015/35 supplementing the Solvency II Directive. The decision's entry into force date was 21 March 2020, provided that all the notifications under Article 103(1) of the EEA Agreement have been made; and (ii) Decision No 43/2020, which incorporates Implementing Decision (EU) 2019/2211 amending Implementing Decision (EU) 2018/2031 determining, for a limited period of time, that the regulatory framework applicable to CCPs in the UK is equivalent, in accordance with EMIR. The decision's entry into force date was 21 March 2020, provided that all the notifications under Article 103(1) of the EEA Agreement have been made.

- [Decision No. 41/2020](#)
- [Decision No. 43/2020](#)

Date of publication: 23/02/2023

##### **Eight EEA Joint Committee Decisions amending Annex IX (Financial Services) of the EEA Agreement**

Status: Published in the OJ

Date of entry into force: 08/02/2020

Eight decisions of the EEA Joint Committee that amend Annex XI (Financial Services) of the EEA Agreement have been published in the OJ. The decisions incorporate into the EEA Agreement: (i) Commission Implementing Regulation (EU) 2019/1902 laying down technical information for the calculation of technical provisions and basic own funds for reporting; (ii) Regulation (EU) 2019/630 amending the CRR as regards minimum loss coverage for non-performing exposures; (iii) Commission Implementing Regulation (EU) 2019/439, which amends Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions under the CRD IV Directive, as well as Commission Implementing Regulation (EU) 2019/912, which amends Commission Implementing Regulation (EU) 650/2014 containing ITS on supervisory disclosure under the CRD IV Directive and Commission Implementing Decision (EU) 2019/536 on the lists of third countries considered equivalent for the purposes of the treatment of exposures under the CRR; (iv) Commission

Implementing Decision (EU) 2019/684 on the recognition of the legal, supervisory and enforcement arrangements of Japan for derivatives transactions supervised by the JFSA; (v) the ELTIF Regulation and Commission Delegated Regulation (EU) 2018/480 supplementing the ELTIF Regulation with regard to RTS; (vi) Regulation (EU) 2019/2089 amending the BMR as regards EU climate transition benchmarks, EU Paris-aligned benchmarks and sustainability-related disclosures for benchmarks; (vii) Commission Implementing Decisions (EU) 2019/1274 and (EU) 2019/1275 under the BMR on the equivalence of the legal and supervisory framework applicable to benchmarks in Australia and Singapore; and (viii) the MMF Regulation and related ITS.

- [Decision No. 15/2020](#)
- [Decision No. 16/2020](#)
- [Decision No. 17/2020](#)
- [Decision No. 18/2020](#)
- [Decision No. 19/2020](#)
- [Decision No. 20/2020](#)
- [Decision No. 21/2020](#)
- [Decision No. 22/2020](#)

Date of publication: 16/02/2023

## **ECON: Reports on the legislative proposals for CRR III and CRD VI**

Status: **Draft**

The ECON has published draft reports on the EC's legislative proposals for CRR III and CRD VI. The first report is on the proposal for a directive amending the CRD IV Directive as regards supervisory powers, sanctions, third-country branches, and ESG risks. The second report is on the proposal for a regulation amending the CRR as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor. Both reports include a draft European Parliament legislative resolution, detailing the suggested amendments to the document. The committee adopted the reports at its meeting on 24 January.

- [Report on CRR III](#)
- [Report on CRD VI](#)

Date of publication: 10/02/2023

## **(iii) International**

### **BCBS: Basel III monitoring report**

Status: **Final**

The BCBS has published its semi-annual Basel III monitoring report, summarising the results based on data as of 30 June 2022. The report shows that after their record high end-2021, initial Basel III capital ratios have decreased to pre-pandemic levels. It also indicates that liquidity ratios have declined but remain above pre-pandemic levels.

Date of publication: 28/02/2023

## (b) Solvency/Own funds issues

### (i) Germany

#### Fourth Amending Regulation on the German Solvency Regulation (*Vierte Verordnung zur Änderung der Solvabilitätsverordnung*)

Status: Published in the Federal Gazette

Date of application: 18/02/2023

The Fourth Amending Regulation on the German Solvency Regulation (*Solvabilitätsverordnung* – SolvV) has been published in the Federal Gazette. This amendment deals with the buffer of the leverage ratio by inserting Section 37a into the SolvV to implement Article 141b(4) to (6) CRD II. This Article provides rules for calculating the maximum distributable amount in relation to the leverage ratio in order to prevent the ratio from falling below the buffer or to ensure the necessary capital maintenance to fulfil the requirements on the buffer of the leverage ratio. Section 10j(3)(5) of the German Banking Act (*Kreditwesengesetz* – KWG) implements this European requirement, but stipulates that further details shall be implemented in a statutory instrument. Since the authorisation provision in Section 10(1)(1)(5)(f) KWG was created first, the CRD II provision had to be implemented by a separate amending regulation.

Date of publication: 17/02/2023

### (ii) EU

#### EBA: Opinion on the application of the provisions relating to the boundary between trading book and banking book, and on the internal risk transfer between books as referred to in Article 3(6) CRR II

Status: Final

The EBA has published an opinion stating that competent authorities should not prioritise any supervisory or enforcement action in relation to the new banking book and trading book boundary provisions in response to the positions recently adopted by the legislators, and to alleviate the operational burden that institutions would face with such a two-step implementation. It has also published a [no-action letter](#) stating that competent authorities should not prioritise any supervisory or enforcement action in relation to the new banking book and trading book boundary provisions.

Date of publication: 27/02/2023

#### EBA: Update on some important Q&As on own funds and eligible liabilities

Status: Final

The EBA has updated some of its existing Q&As on own funds and eligible liabilities to ensure consistency with the revised final draft RTS on own funds and eligible liabilities submitted to the Commission in May 2021. While the RTS have not yet been finally adopted, the EBA deemed it necessary to provide clarity to institutions and market participants on some undisputed aspects related to the RTS that are particularly relevant for their practical implementation of the CRR and the RTS. In particular, the EBA updated Q&A 2017\_3277 on the notion of ‘sufficient certainty’, and extended the scope of the treatment to eligible liabilities instruments. The EBA has updated other Q&As with the aim of extending to eligible liabilities the treatment initially applied to own funds instruments, consistent with the approach of the final RTS on own funds and eligible liabilities.

Date of publication: 14/02/2023

#### Commission Delegated Regulation (EU) 2023/206 supplementing the CRR with regard to RTS specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures

## secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum LGD values for exposures secured by immovable property

Status: Published in the OJ

Date of entry into force: 21/02/2023

The Delegated Regulation supplementing the CRR with regard to RTS specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default (LGD) values for exposures secured by immovable property, was published in the OJ.

Date of publication: 01/02/2023

## (c) Securitisation

### (i) EU

#### ESAs: Q&A relating to the Securitisation Regulation

Status: Final

The ESAs have updated their Q&A on the EU Securitisation Regulation. Eleven new questions have been added in relation to: (i) the inclusion of early amortisation provisions or triggers for termination of the revolving period in the transaction documentation; (ii) existence of different classes of investors; (iii) whether a step-up margin to be paid to investors could apply in the event the securitisation is no longer STS; (iv) whether mortgages secured by non-owner occupied residential and real estate properties can be homogeneous; (v) the application of the homogeneity criteria to branches; (vi) replacement of the liquidity providers; (vii) which reporting templates should apply to a securitisation backed by project finance loan receivables; (viii) securitisation exposures backed by several collaterals; (ix) the application of EMIR to securitisation transactions; (x) institutional investors' reporting obligations; and (xi) use of estimated Energy Performance Certificate values.

Date of publication: 17/02/2023

#### EBA: Final report on draft RTS on the homogeneity of the underlying exposures in STS securitisation under Articles 20(14), 24(21) and 26b(13) of the Securitisation Regulation, as amended by Regulation (EU) 2021/557

Status: Final

The EBA has published its final draft RTS setting out the conditions for the assessment of the homogeneity of the underlying exposures in a pool of a STS on-balance-sheet securitisation. Homogeneity is one of the key simplicity requirements enabling originators and investors to properly assess the underlying risks while facilitating investors due diligence. The draft RTS amends the original RTS on homogeneity for non-ABCP and ABCP securitisation. While extending the scope to include on-balance-sheet securitisations, these draft RTS also establish the same conditions for the homogeneity of the assets for all types of securitisations. They carry over a significant part of the provisions on homogeneity set out in the previous RTS, with some modifications.

The final draft RTS will now be submitted to the Commission for endorsement. Following the submission, these RTS will be subject to scrutiny by the European Parliament and the Council before being published in the OJ.

Date of publication: 14/02/2023

## (d) Remuneration

### (i) Germany

#### Fourth Amending Regulation on the German Institution Remuneration Regulation (*Vierte Verordnung zur Änderung der Institutsvergütungsverordnung*)

Status: Published in the Federal Gazette

Date of application: 18/02/2023

The Fourth Amending Regulation on the Institution Remuneration Regulation (*Institutsvergütungsverordnung* – InstitutsVergV) has been published in the Federal Gazette. This Regulation adds a new letter c in Section 7(1)(3)(2) of the InstitutsVergV on criteria to be observed when determining the total amount of variable remuneration. This change implements the requirements introduced by the Risk Reduction Act with regard to the buffer for the leverage ratio in accordance with the new Section 10j of the German Banking Act (*Kreditwesengesetz* – KWG).

Date of publication: 17/02/2023

#### BaFin: Consultation 04/2023 on a General Administrative Act regarding remuneration notifications (*Konsultation 04/2023 über die Allgemeinverfügung zu Vergütungsanzeigen*)

Status: Consultation

Deadline for the submission of comments: 08/03/2023

BaFin has launched a consultation on a General Administrative Act regarding remuneration notifications. This draft aims to implement the fundamentally revised EBA Guidelines on: (i) the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under CRD IV; and (ii) the data collection exercises regarding high earners under CRD IV and CRD V. Every year, the banks in Germany have to report on their employees that earn more than a million Euros, the so-called high earners, in accordance with Article 75(3) CRD. Pursuant to Article 75(1) CRD, the credit institutions also provide the Bundesbank with annual data for benchmarking remuneration trends and practices. The extension of these reporting requirements by the CRD V is also reflected in this draft.

Date of publication: 08/02/2023

## (e) Deposit protection

### (i) EU

#### EBA: Final report on revised Guidelines on methods for calculating contributions to deposit guarantee schemes under the DGS Directive repealing and replacing Guidelines EBA/GL/2015/10

Status: Final

Date of application: 03/07/2023

The EBA has published its final revised Guidelines on deposit guarantee schemes (DGS) contributions. The Guidelines harmonise the methodology for the DGS to collect contributions from credit institutions in proportion to their riskiness. Following an in-depth review of the application of the existing Guidelines over the period from 2015 to 2021, the EBA decided to revise the Guidelines, with a view to enhancing the link between the riskiness of a credit institution and its contributions to the DGS fund.

The most substantial changes to the existing Guidelines include: (i) setting minimum thresholds for the majority of core risk indicators, in line with the applicable minimum regulatory requirements, and adjusting their minimum weights to better reflect the indicators' performance in measuring the risk to the DGSs; (ii) introducing a technical mathematical improvement to the formula for determining the risk adjustment factor of each member institution that ensures a constant relationship between the riskiness of institutions and their DGS contributions; (iii) specifying how to account for deposits where the DGS coverage is subject to uncertainty; (iv) introducing the possibility for DGSs to use a stock-based approach to raising contributions which incentivises banks to reduce their riskiness even after the DGS fund has reached its target level of contributions; and (v)



clarifying how to raise contributions following the use of DGS funds. Finally, the EBA streamlined and simplified the wording of the Guidelines.

Date of publication: 21/02/2023

## (f) Disclosure

### (i) EU

#### **EBA: Consultation on draft ITS amending Commission Implementing Regulation (EU) No 650/2014 laying down ITS with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with the CRD IV**

Status: Consultation

Deadline for the submission of comments: 09/03/2023

The EBA has published a consultation paper on draft ITS amending Commission Implementing Regulation (EU) No 650/2014, which lays down ITS on supervisory disclosure under the CRD IV. The Implementing Regulation (EU) No 650/2014 sets out the format, structure, contents list, and annual publication date of the information to be disclosed by competent authorities in accordance with Article 143(1) of the CRD IV. The draft ITS put forward by the EBA amend the Implementing Regulation to reflect the changes to the EU legal framework, in particular the changes related to supervisory reporting and investment firms. The EBA believes that the draft ITS will enhance the quality and comparability of the reporting data by supervisors and provide the market with more information, thereby enhancing transparency.

Date of publication: 08/02/2023

## 1.2 Recovery and resolution

### (i) EU

#### **EBA: Final report on Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic**

Status: Final

Date of application: 01/01/2024

The EBA has published a final report on Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic under the BRRD. These Guidelines aim to ensure that a minimum level of harmonised information is made public on how authorities would effectively execute the write-down and conversion of capital instruments and the use of the bail-in tool. To ensure that authorities' approaches are credible and that institutions have the necessary information to prepare, the EBA is asking authorities that have not yet done so to start publishing, from January 2024, a high-level document setting out the key aspects of their favoured approach. In particular, resolution authorities are asked to specify if they intend to make use of interim instruments and to set out a timeline of the bail-in process. Those authorities that have already published information are expected to check if that publication complies with these Guidelines.

Date of publication: 13/02/2023

## 1.3 Stress tests/Macroprudential topics

### (i) EU

#### **Commission Implementing Regulation (EU) 2023/313 amending the ITS laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) of the CRD IV**

Status: Published in the OJ

Date of application: 06/03/2023

The Commission Implementing Regulation (EU) 2023/313 amending the ITS laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) of the CRD IV has been published in the OJ. The Implementing Regulation extends the set of exposure positions included in the market risk benchmarking portfolios.

Date of publication: 14/02/2023

#### **ESRB: Report on advancing macroprudential tools for cyber resilience**

Status: Final

The ESRB has published a report on advancing macroprudential tools for cyber resilience. It has published this report against the backdrop of a substantially heightened cyber threat environment across Europe, noting the need for a step change in enhancing system-wide cyber resilience. The ESRB's three key areas of focus are: (i) encouraging authorities to use the cyber resilience scenario testing (CyRST) approach to pilot system-wide cyber resilience scenario testing; (ii) advocating the use of systemic impact tolerance objectives (SITOs) and continuing the transition from a conceptual approach to a practical basis for implementing them; and (iii) considering which operational policy tools are most effective in responding to a system-wide cyber incident and identifying gaps across operational and financial policy tools. The ESRB also notes that work is needed on the interaction and interdependencies between financial crisis management tools and other operational crisis management tools. Reflecting this, the ESRB will consider which operational policy tools are most effective in responding to a system-wide cyber incident and identify gaps across operational and financial policy tools.

Date of publication: 14/02/2023

## 2. Investment firms regulation

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### (i) Germany

**BaFin: Circular 03/2023 on exemption criteria regarding liquidity requirements pursuant to Article 43(1)(2) IFR (*Rundschreiben 03/2023 über die Kriterien zur Befreiung von Liquiditätsanforderungen nach Artikel 43 Abs. 1 UA 2 IFR*)**

Status: Final

BaFin has published its Circular 03/2023 on exemption criteria regarding liquidity requirements pursuant to Article 43(1)(2) IFR. On this legal basis, BaFin may exempt small investment firms in line with Section 2(16) German investment firms law (*Wertpapierinstitutsgesetz – WpIG*) from the specified liquidity requirements. With this Circular, BaFin aims to implement the [EBA Guidelines](#) on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) IFR.

Date of publication: 28/02/2023

### (ii) EU

**EC: Call for advice to EBA and ESMA on investment firms' prudential requirements under IFR/IFD**

Status: Draft

The EC has published a call for advice to the EBA and ESMA to evaluate the prudential framework for investment firms under the IFR and IFD that has been in place since 26 June 2021. The evaluation should: (i) provide information about the structure of the market, distinguishing between investment firms' categories and business models. This should be done to enable the EC to assess whether the objective of proportionality, which underpins the framework, has been met without creating any undue risk to financial stability and regulatory arbitrage opportunities; (ii) reflect on the categorisation of investment firms; (iii) analyse the interactions with the CRR/CRD, particularly with regards to prudential consolidation, liquidity requirements, the scope of K-factors, the implications of the adoption of the Banking Package, and remuneration; (iv) consider the impact of ESG risks, in particular climate-related risks; (v) look at how to future proof the IFR/IFD regime; and (vi) provide a first overview on how the current prudential regime, in particular in the fields of liquidity risk and concentration risk, could be extended to energy firms trading actively on commodity markets. Among other things, the impact on the capital requirements of investment firms resulting from any change proposed to the current legislation should be assessed considering each proposed modification individually, as well as in combination. The EBA and ESMA are asked to deliver their joint report by 31 May 2024.

Date of publication: 20/02/2023

## 3. Market regulation/Conduct rules

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### 3.1 General

#### (i) Germany

**BaFin: Circular 2/2023 on exemption criteria within the scope of the audit exemption pursuant to Section 89(1)(3) WpHG (*Rundschreiben 2/2023 zu Befreiungskriterien im Rahmen der Prüfungsbefreiung gemäß § 89 Abs. 1 S. 3 WpHG*)**

Status: Final

BaFin has published a Circular 02/2023 on exemption criteria within the scope of the audit exemption pursuant to Section 89(1)(3) of the German Securities Act (*Wertpapierhandelsgesetz* – WpHG). Pursuant to this Section, BaFin can, upon application, refrain from the annual WpHG and safe custody audit (with the exception of the audit of compliance with the requirements of Section 84 WpHG), in whole or in part, insofar as this is not possible for special reasons, in particular because of the type and scope of the business conducted. The Circular 02/2023 sets out the criteria that BaFin will use as a basis for its decision on these applications. The Circular also updates the Discretionary Criteria dated 21 January 2009, which are simultaneously being repealed, and takes into account current developments.

The circular applies to all investment services enterprises.

Date of publication: 06/02/2023

### 3.2 Consumer protection rules

#### (i) EU

**Council of the EU: Sixth compromise proposal on new Distance Marketing Directive**

Status: Final

The Council of the EU has published its sixth compromise proposal on the proposed Directive on financial services contracts concluded at a distance. The proposal indicates where changes have been made both to the original EC proposal and the Council's fifth compromise proposal. The proposed Directive will repeal the Distance Marketing Directive and transfer its contents to the Consumer Rights Directive.

Date of publication: 23/02/2023

### 3.3 MiFID/MiFIR

#### (i) EU

**ESMA: Final report on Opinion on the Trading Venue Perimeter**

Status: Final

ESMA has published a final report on the opinion on the trading venue perimeter. The opinion provides guidance on when systems should be considered as multilateral systems and seek authorisation as a trading venue. The opinion builds on the MiFID II definition of multilateral systems and clarifies how to interpret the elements of the definition. It provides information in particular on how to classify a system and how to identify when third-party trading interests interact within a system. ESMA will now work with NCAs to ensure that firms assess their systems against the ESMA opinion and reflect whether they are

operating under the appropriate authorisation. ESMA expects NCAs to require firms to take appropriate action to swiftly apply for authorisation as a trading venue where necessary.

Date of publication: 02/02/2023

### **EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2017/588 as regards the annual application date of the calculations of the average daily number of transactions for shares, depository receipts and exchange-traded funds for the purposes of the tick sizes**

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2017/588 (RTS 11) as regards the annual application date of the calculation of the average daily number of transactions for shares, depository receipts and exchange-traded funds for the purposes of the tick sizes. RTS 11 contains the applicable tick size based on the average daily number of transactions (ADNT). Where currently the calculations of the ADNT apply as of 1 April each year, the Delegated Regulation amends the RTS to ensure that they apply as at the first Monday in April of each year instead. This will align the application date of calculations in RTS 11 with the application date of calculations in RTS 1. The EC has adopted the Delegated Regulation without consultation, as the amendments are technical in nature.

Date of publication: 01/02/2023

## 3.4 Prospectus regulation

### (i) Germany

#### **BaFin: Checklist on the securities information sheet (*Checkliste für das Wertpapier-Informationsblatt*)**

Status: Final

BaFin has updated its checklist on the securities information sheet pursuant to the Securities Prospectus Act (*Wertpapierprospektgesetz* – WpPG). This update particularly reflects the changes made to the WpPG by the Law on Electronic Securities (*Gesetz über elektronische Wertpapiere* – eWpG).

Date of publication: 13/02/2023

### (ii) EU

#### **ESMA: Q&A on the Prospectus Regulation**

Status: Final

ESMA has updated its Q&As on the Prospectus Regulation to include a new question in relation to the Article 1(4)(d) exemption from the requirement to publish a prospectus. ESMA clarifies that the purchase of securities by a joint account can be considered as “one investor” for the purposes of Article 1(4)(d), as there is no condition regarding the mode of payment.

Date of publication: 03/02/2023



## 4. Market infrastructure

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### 4.1 Custody rules

#### (i) EU

##### **ESMA: Peer review report on supervision of CSDs providing cross-border services or participating in interoperable links**

Status: Final

ESMA has published a Peer Review Report on the supervision of CSDs providing cross-border services or participating in interoperable links. The review assesses six NCAs in respect of how they supervise CSDs which make use of the freedom to provide services in another Member State. The report found that NCAs generally have satisfactory initial authorisation processes, using adequate tools and procedures to assess the cross-border links. However, it considers that there is room for improvement in some NCAs' approval processes during passporting procedures when acting in their capacity as host authority. Overall, the report found that NCAs conduct ongoing supervision of CSDs in a holistic way, considering the entire organisation without distinguishing between domestic and cross-border services and that supervisory approaches should follow a risk-based approach and rely on adequate tools to monitor risks. ESMA expects to carry out a follow-up assessment in two years to review the level of improvements achieved based on the findings and recommendations of this peer review.

Date of publication: 15/02/2023

### 4.2 EMIR

#### (i) EU

##### **ESMA: Memorandum of Understanding Related to ESMA's monitoring of the ongoing compliance with recognition conditions by CCPs established in Colombia and supervised by the Superintendencia Financiera de Colombia**

Status: Final

ESMA has published a memorandum of understanding related to its monitoring of the ongoing compliance with recognition conditions by CCPs established in Colombia and supervised by the Superintendencia Financiera de Colombia (SFC). The memorandum affirms SFC and ESMA's willingness to cooperate and exchange information to proportionately fulfil their respective supervisory and regulatory responsibilities with respect to the CCPs established in Colombia that have applied, or that may apply to ESMA for recognition as third-country CCPs, or that are already recognised by ESMA as Covered CCPs.

ESMA has also published an updated [list of third country CCPs](#) recognised to offer services and activities in the Union. The list states that as of 10 February, the Cámara de Riesgo Central de Contraparte de Colombia S.A. was recognised as offering services and activities to the EU.

Date of publication: 14/02/2023

##### **Commission Delegated Regulation (EU) 2023/315 amending the RTS laid down in Delegated Regulations (EU) 2015/2205, (EU) No 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts**

Status: Published in the OJ

Date of entry into force: 14/02/2023

The Commission Delegated Regulation (EU) 2023/315 amending the RTS laid down in Delegated Regulations (EU) 2015/2205, (EU) No 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of

contracts has been published in the OJ. It extends the deferred date of application of the clearing obligation for intragroup transactions set out in the three Delegated Regulations to 30 June 2025.

Date of publication: 13/02/2023

### **Commission Delegated Regulation (EU) 2023/314 amending the RTS laid down in Delegated Regulation (EU) 2016/2251 as regards the date of application of certain risk management procedures for the exchange of collateral**

Status: Published in the OJ

Date of entry into force: 14/02/2023

The Commission Delegated Regulation (EU) 2023/314 amending the RTS laid down in Delegated Regulation (EU) 2016/2251 as regards the date of application of certain risk management procedures for the exchange of collateral has been published in the OJ. It extends the deferred date of application of the margin requirements for intragroup transactions set in the margin RTS to 30 June 2025.

Date of publication: 13/02/2023

### **ESMA: Final report on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition**

Status: Final

ESMA has published its final report on the clearing obligation (CO) and derivative trading obligation (DTO) to accompany the benchmark transition. The report includes the proposed draft RTS amending the scope of the CO and DTO for OTC interest rate derivatives denominated in EUR, GBP, JYP and USD. The draft RTS relate to the benchmark transition away from EONIA and LIBOR and onto new Risk-Free Rates (RFR). The draft RTS have been submitted to the EC for endorsement.

Date of publication: 01/02/2023

## **(ii) International**

### **FSB: Report on the financial stability aspects of commodities markets**

Status: Final

The FSB has published a report on the financial stability aspects of commodities markets. The report explains how the commodities ecosystem has adapted to the February 2022 shock resulting from Russia's invasion of Ukraine and concludes with learnings and policy implications. A number of the vulnerabilities and channels of contagion discussed in this report – including leverage, the impact of large margin calls on liquidity demand and market opacity – are not unique to commodities markets.

Date of publication: 20/02/2023

### **IOSCO: Stocktake of industry progress on auctions**

Status: Final

The Committee on Payments and Markets Infrastructures (CPMI) and IOSCO have published a press release on industry progress relating to CCP default management auction processes. In a report published in June 2020, CPMI-IOSCO encouraged the industry to undertake work to advance the development of effective auction practices and procedures. Since the report, CPMI-IOSCO considers that the industry has made good progress on the issues that needed to be addressed. In particular, the report highlights that: (i) there has been a broad consensus to support the development of auction terminology and certain operational aspects of auction procedures; (ii) there is a need for further substantive discussion regarding the governance of CCP's default management process, use of traders in default management groups, and the scope of client participation in an auction; and (iii) the industry is encouraged to study potential nascent and emerging practices that may require further coordination and harmonisation among the default management processes of multiple CCPs.

Date of publication: 14/02/2023

## IOSCO: Final report on principles for the regulation and supervision of commodity derivatives markets

Status: Final

IOSCO has published a revised version of its 2011 principles for the regulation and supervision of commodity derivatives markets. The 24 revised principles seek to support the physical commodity derivatives markets in providing their fundamental price discovery and hedging functions, while operating free from manipulation and abusive trading schemes. When revising its principles, IOSCO focused on market surveillance, transparency, price discovery, the correlation with physical markets, addressing disorderly markets, responding to market abuse, and strengthening the enforcement powers of trading venues against end-user behaviours. The new principle 16 on Unexpected Disruptions aims to guide regulators in restoring orderly markets in the case of an unexpected disruption and ensure that market participants have a process and adequate plans to address these events. IOSCO believes that relevant market authorities should review their policies and regulations to ensure the principles are put into effect.

Date of publication: 31/01/2023



## 5. Anti-money laundering

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### (i) EU

#### **ECON: Report on proposed European Single Access Point Regulation**

**Status: Draft**

The ECON has published its report on the EC's legislative proposal for a Regulation establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability. The report includes a draft EP legislative resolution, setting out suggested amendments to the proposed Regulation, as well as the text of opinions from the Committees on Legal Affairs (JURI) and on Civil Liberties, Justice and Home Affairs (LIBE).

Date of publication: 07/02/2023

# 6. Payments

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## 6.1 Payment services/E-money

### (i) Germany

#### **BaFin: Guidance Notice on notes regarding the Payment Services Oversight Act (*Merkblatt über Hinweise zum Zahlungsdiensteaufsichtsgesetz*)**

Status: Final

BaFin has updated its Guidance Notice on notes regarding the Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). The update includes a revision of section G on notification requirements for payment systems pursuant to Sections 2(1)(10)(a)-(b) and 2(1)(11) ZAG, as set out in Section 2(2)-(3) ZAG, and on publication in the register and notification of the EBA pursuant to Section 2(4) ZAG. In particular, relevant changes affect topics on payment instruments, account information services, limited network and limited range exemption, e-money and notification obligations. It is important to note that BaFin now clarifies that granting a power of attorney over an account is not to be classified as money remittance business if certain conditions are met.

Date of publication: 14/02/2023

### (ii) EU

#### **EPC: Guidance on the migration to the 2019 version of the ISO 20022-based XML messaging standard**

Status: Final

The EPC has published version 3.0 of the Guidance for SEPA payment scheme participants and payment service users on how to prepare themselves for and to handle the change-over to the 2019 version of ISO 20022 by 19 November 2023. This migration results from a decision taken by the EPC back in September 2020. The Guidance determines the concrete impact of such ISO version migration on the various SEPA payment scheme processes for the SEPA payment scheme participants and payment service users concerned. It also gives guidance to SEPA payment scheme participants and payment service users on how they can deal with the SEPA payment initiation, acceptance and processing aspects affected by the ISO version migration.

Date of publication: 16/02/2023

#### **EPC: Clarification paper on the use of slashes in references, identifications and identifiers**

Status: Final

The EPC has published a clarification paper on the use of slashes in references, identifications and identifiers. The implementation Guidelines of the SEPA payment scheme rulebooks contain a rule which stipulates that the content of ‘references, identifications and identifiers’ must not start or end with a ‘/’ (single slash) nor should it contain ‘//’ (double slashes). The purpose of the document is to clarify the impact of the abovementioned rule on ‘references, identifications and identifiers’ related ISO 20022 data elements used in pain.001, pain.007 and pain.008 messages of the SEPA (Instant) Credit Transfer and SEPA Direct Debit Core/Business-to-Business implementation Guidelines. The version of 2015 has been updated to be in line with various changes (e.g., attribute renumbering and migration to the 2019 message version of ISO 20022) made in the 2023 SEPA payment scheme rulebooks and related implementation Guidelines.

Date of publication: 16/02/2023



## **EPC: Recommendation on ISO 20022 customer reporting of SCTs and SDDs**

**Status: Final**

The EPC has published a Recommendation on ISO 20022 customer reporting of SCTs and SDDs issues implementation. This document aims to present a mapping of the SEPA rulebook requirements vis-à-vis the 'Transaction Details' message elements of the ISO 20022 reporting messages. The Recommendation has been amended to be in line with various changes (e.g., attribute renumbering and migration to the 2019 message version of the ISO 20022 standard) made in the 2023 SEPA payment scheme rulebooks and related implementation Guidelines.

Date of publication: 16/02/2023

## **ECB: Opinion on a proposal for a Regulation amending SEPA as regards instant credit transfers in euro**

**Status: Final**

The ECB published an opinion on the proposed Regulation amending the SEPA Regulation and the Cross-Border Payments Regulation as regards instant credit transfer in euro. The ECB strongly welcomes the EC's initiative to promote the provision and uptake of instant payments (IPs), as the initiative ties in well with the Eurosystem's retail payments strategy. In order to promote the smooth operation of payment systems, the ECB notes that it is essential to address fragmentation issues across the Single Euro Payments Area (SEPA). Currently, the provision of IPs is not available in all SEPA jurisdictions on an equal footing. Therefore, measures that further harmonise the provision of IPs across SEPA jurisdictions would increase consumer choice and foster innovation, safety and open strategic autonomy in European payments. In addition, the ECB believes that measures that promote efficiency across SEPA should be supported, and continues to encourage market participants to implement IPs on a pan-European basis and to support end user take-up as soon as possible. The ECB notes the exclusion of electronic money institutions (EMIs) and payments institutions (PIs), which would otherwise be required to offer all of their payment services users (PSUs) a payment service for sending and receiving IPs, as they cannot participate in the settlement systems designated under the Settlement Finality Directive. The ECB understands that if the scope of the Settlement Finality Directive is extended so as to include EMIs and PIs, these PSPs should then also comply with the requirement to offer all of their PSUs a payment service for sending and receiving IPs. The ECB supports the requirement for the affected payment service providers (PSPs) to offer IPs at the same cost as non-IPs, and welcomes the introduction of a simplified sanction screening process to overcome the current transaction-based model, without lowering the effectiveness of sanctions screening. It also supports the proposed introduction of a service for detecting discrepancies between the payee's international bank account number (IBAN) and name.

Date of publication: 07/02/2023

### **(iii) International**

## **FSB: G20 roadmap for enhancing cross-border payments: priority actions for achieving the G20 targets**

**Status: Final**

The FSB has set out its priority actions for achieving the G20 targets for enhancing cross-border payments. In October 2022, the FSB published a prioritisation plan and engagement model for taking the cross-border payments roadmap forward. The plan reflects that the roadmap has reached an inflection point and needs to move to implementing practical projects to enhance cross-border payment arrangements to achieve the quantitative targets that have been established. Drawing from the analyses to date and the feedback received from stakeholders, the FSB, the CPMI and partner bodies have identified three interrelated themes for orienting and focusing on the next phase: (i) payment system interoperability and extension; (ii) legal, regulatory and supervisory frameworks; and (iii) cross-border data exchange and message standards. This report details the specific actions that will be taken under the priority themes to move the roadmap forward and achieve the targets by the 2027 target date. The FSB notes that successfully implementing the requisite changes will require ongoing close collaboration and coordination among the FSB and its partner bodies tasked with taking forward the roadmap, the private sector, and authorities from jurisdictions beyond the G20.

Date of publication: 23/02/2023

## BCBS: Report on the operational and technical considerations for extending and aligning payment system operating hours for cross-border payments

Status: Final

The BCBS has published a report on the operational and technical considerations for extending and aligning payment system operating hours for cross-border payments. Inter alia, it sets out that an extension and alignment of payment system operating hours across jurisdictions could help to speed up cross-border payments, especially between jurisdictions with significant time zone differences. It could also improve liquidity management, reduce settlement risk and enhance the performance of cross-border payment arrangements.

The BCBS has also published [an invitation for market stakeholders](#) to join a cross-border payments interoperability and extension task force. Therein, it invites stakeholders to submit expressions of interest in the task force or inquiries by 10 March 2023.

Date of publication: 17/02/2023



## 7. Institutional supervisory framework

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### (i) International

#### FSB: Letter on the FSB work priorities for 2023

Status: Final

The FSB has published a letter sent to G20 finance leaders and central bank governors ahead of their February 2023 summit. The FSB sets out its work programme priorities for 2023, which in relation to non-bank financial intermediation (NBFi) include: (i) addressing vulnerabilities in the non-bank sector. The FSB's report on the financial stability aspects of commodity markets identifies a number of vulnerabilities and notes that some of the issues are addressed in its work programme to enhance NBFi resilience; (ii) an in-depth study of forms of leverage that are not always apparent in supervisory and regulatory data; (iii) work to address liquidity mismatch in open-ended funds and promote greater and more consistent use of funds' liquidity management tools; (iv) work to enhance market participants' liquidity preparedness for margin and collateral calls, which were important factors in the March 2020 market turmoil, and to identify data gaps in regulatory reporting; and (v) in conjunction with IOSCO, a peer review of money market mutual fund policy reform measures, to take stock of members' progress in implementation of reforms designed to make this sector more resilient.

In relation to cryptoassets and decentralised finance, the FSB's priorities include: (a) finalising its recommendations for the regulation, supervision and oversight of cryptoassets and markets and its recommendations targeted at global stablecoin arrangements; (b) a joint paper with the IMF that synthesises the policy findings from the IMF's work on macroeconomic and monetary issues and FSB work on supervisory and regulatory issues associated with cryptoassets; and (c) in-depth analysis of the large cryptoasset intermediaries that provide a wide range of services to the ecosystem. In relation to cyber and operational resilience, the FSB intends to deliver in April a revised report to the G20 on achieving greater convergence in cyber incident reporting that incorporates public feedback and to deliver a consultative document to the G20 aimed at strengthening financial institutions' ability to manage third party and outsourcing risk. In relation to enhancing cross-border payments, the FSB is setting up two new taskforces to work in partnership with the private sector. The FSB states that it continues to coordinate work to address climate-related financial risks through its climate roadmap, and will provide an update later in the year on further progress in climate disclosures and reporting.

Date of publication: 20/02/2023

## 8. Investment funds

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### 8.1 Product regulation

#### (a) AIF

##### (i) EU

###### **ECON: Report on proposed amendments to the AIFMD and UCTIS Directive**

Status: Draft

The ECON has published a report it has adopted on the EC's legislative proposal for a Directive amending the AIFMD and the UCTIS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds. The report includes a draft EP legislative resolution which sets out suggested amendments to the proposed Directive.

Date of publication: 07/02/2023

#### (b) UCITS

##### (i) Germany

###### **BaFin: Note concerning fund-related attestations (*Hinweis zu fondsbezogenen Bescheinigungen*)**

Status: Final

BaFin has published a note stating that it issues fund-related attestations (e.g. so-called UCITS attestations) that are to be submitted to domestic or foreign authorities, companies or other institutions in digital form only. It explains that such attestations are no longer signed, sealed or stamped.

Date of publication: 28/02/2023

##### (ii) EU

###### **ECON: Report on proposed amendments to the AIFMD and UCTIS Directive**

Status: Draft

The ECON has published a report it has adopted on the EC's legislative proposal for a Directive amending the AIFMD and the UCTIS Directive. For more information, please see section 8.1(a) above.

Date of publication: 07/02/2023

###### **ESMA: Q&A on the application of the UCITS Directive**

Status: Final

ESMA has updated its Q&As on the application of the UCITS Directive to add a new question in relation to issuer concentration. The Q&A clarifies that the term 'body' in Article 52(1)(b) of the UCITS Directive means a credit institution as mentioned in Article 50(1)(f) of the UCITS Directive, and does not also include any other counterparty which is not a credit institution.

Date of publication: 03/02/2023

## 8.2 Prudential regulation

### (a) Compliance

#### (i) EU

##### Council of the EU: Publication of the text of proposed ELTIF Amending Regulation

Status: Draft

The Council of the EU has published the text of the proposed Regulation amending the Regulation as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (ELTIF Regulation). The Council states in an information note that it should now be in a position to approve the text, which also reflects the EP's position, as adopted on 15 February 2023.

The Council is expected to adopt the Amending Regulation on 7 March 2023. It will then enter into force 20 days after its publication in the OJ and will apply nine months after that date.

Date of publication: 22/02/2023

# 9. Special rules for real estate financing and covered bonds

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## 9.1 Mortgage credits

**(i) EU**

### **EBA: Industry survey on green loans and mortgages**

Status: Consultation

Deadline for the submission of comments: 07/04/2023

The EBA announced that it had launched an industry survey to receive input from credit institutions on their green loans and mortgages, as well as market practices related to these loans. The purpose of the survey is to collect both quantitative and qualitative information that the EBA can use to advise the European Commission. The work is part of the Commission's strategy for financing the transition to a sustainable economy. Institutions that would like to take part in the survey need to contact their NCA to receive the survey templates as well as information on the process.

Date of publication: 13/02/2023





## 10. Special topics

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### 10.1 Brexit

#### (i) EU

##### **ECON: Study on recent trends in UK financial sector regulation and possible implications for the EU**

Status: Final

The ECON has published a study on recent trends in UK financial sector regulation and possible implications for the EU, including its approach to equivalence. ECON commissioned the study, carried out by the Policy Department for Economic, Scientific and Quality of Life Policies, thanks to Brexit posing a unique challenge for policy makers in the EU, due to the most important financial centre in Europe now being outside its regulatory framework. The study summarises and discusses recent trends in financial sector legislation and regulation in the UK, divergence between the EU and the UK, and threats from this divergence for financial stability in the EU. It explores the possible scenarios of divergence; low, medium and high, and predicts 'aggressive divergence' in areas where UK authorities see growth opportunities and feel less constrained by international fora and cooperation initiatives, such as crypto. It also assesses the equivalence policy and strategy of the EU towards the UK and options to deepen regulatory cooperation while ensuring financial stability, market integrity and competitiveness. The study elaborates on the types of equivalence and potential scenarios for future equivalence granted to the UK. It generally considers the granting of equivalence to the UK likely and feasible for only few financial sector segments and thinks it will be critically dependent on the broader political relationship between the EU and the UK, noting that regulatory autonomy for both sides may be difficult to achieve in the current political climate.

Date of publication: 09/02/2023

### 10.2 FinTech/Digital finance

#### (i) EU

##### **EC: Launch of the European Blockchain Regulatory Sandbox**

Status: Final

The Commission has launched the European Regulatory Sandbox for Blockchain. This Sandbox aims to provide legal certainty for decentralised technology solutions, including blockchain, by identifying obstacles to their deployment from a legal and regulatory perspective and providing legal advice, regulatory experience and guidance in a safe and confidential environment. The Sandbox should also allow regulators and supervisors to enhance their knowledge of cutting-edge blockchain technologies and share best practices through dialogues. It will run from 2023 to 2026, and will support 20 projects annually, including public sector use cases on the European Blockchain Services Infrastructure (EBSI). The first call for applications will be open until 14 April 2023.

Date of publication: 14/02/2023

##### **ESMA: SMSG advice on potential practical challenges regarding the implementation of DORA**

Status: Final

ESMA has published advice it has received from its securities and markets stakeholder group (SMSG) on potential practical challenges regarding the implementation of DORA. Ultimately, the SMSG welcomes the introduction of the DORA framework, and is looking forward to supporting ESMA in the exercise of its mandate. However, SMSG also makes a number of recommendations regarding DORA's implementation, which include: (i) formal arrangements between authorities implementing DORA, the Directive on Network and Information Security (NIS 2) and the Directive on the Resilience of Critical Entities (CER), frameworks to create permanent structures. The SMSG notes that there are significant overlaps between these legislative frameworks, which could dilute their effectiveness unless their respective scopes of application are clearly delineated and criteria



and definitions aligned as closely as practicable; (ii) the risk assessment recommended under recital 31 of DORA should be made in a balanced way, bearing in mind that the potential benefits of tighter control of in-house units sometimes fail to materialise. The SMSG suggest that this balance should also be addressed, and incorporated into regulatory standards and guidance, where appropriate; (iii) guidance from the ESAs and the EDPB to align and integrate the process for issuing notifications under Art. 19(3) DORA and Art. 34 GDPR in all cases when both provisions apply; and (iv) the SMSG also consider it of critical importance to align criteria for the designation of CTPPs under DORA with the definition of ‘essential’ and/or ‘important entities’ under NIS 2 and CER. Overall, the SMSG stresses the importance of not creating overly cumbersome or costly rules and that the principle of proportionality should be applied by the ESAs when drafting standards or Guidelines.

Date of publication: 14/02/2023

### **EBA: Speech on embedding responsible innovation: Culture, conduct and communication**

**Status: Final**

The EBA has published a speech by José Manuel Campa, EBA Chair, on embedding responsible innovation through culture, conduct and communication. In his speech, Mr Campa notes that, now the implementation phase for many of the initiatives under the EC’s Digital Finance Strategy are underway, it is important to reflect on three additional inter-related elements that are essential in fostering innovation: culture, conduct and communication. He believes that financial institutions should have a culture that encourages a positive attitude towards the application of innovative technologies but with a risk mitigation approach front-and-centre. Mr Campa stresses that responsible innovation requires a forward-looking, proactive ‘compliance by design’ approach: building processes, systems, products and services that take account of regulatory requirements that apply today but also those that are expected to apply tomorrow. Equally, every responsible innovation must rely on an approach that takes account of consumer facing considerations. Furthermore, Mr Campa strongly encourages financial institutions to engage in an open dialogue with their supervisors to understand any supervisory expectations toward the deployment of an innovative technology. Supervisors should also take a proactive approach to enhancing knowledge about financial innovations and building skills to supervise effectively the use of innovative technologies in the financial sector. Looking forward, much of the EBA’s focus in 2023 will be on activities relating to DORA and MiCA. The EBA has commenced work with the other ESAs on the policy mandates and broad parameters of the DORA oversight framework for critical ICT third-party service providers. With MiCA’s entry into force expected to be in late-Spring, the EBA anticipates the consultation phase on most of its technical standards and guidelines under MiCA to begin in October.

Date of publication: 07/02/2023

### **EBA: Q&A on the implementation of the DLT Pilot Regime Regulation**

**Status: Final**

The ESMA has updated its Q&As on the DLT Pilot Regime Regulation to add new questions in relation to the following: (i) transaction reporting – specifically on reporting on behalf of natural persons that are not subject to Article 26 of MiFIR; (ii) financial instruments reference data – specifically in relation to what data should be used to identify the issuer or operator of the trading venue identifier for DLT financial instruments that are the digital representation of a previously issued financial instrument and those that are directly issued using DLT; and (iii) transparency – specifically regarding which identification codes should be provided for the purpose of the post-trade transparency obligations under RTS 1 and RTS 2 in the context of DLT instruments.

Date of publication: 03/02/2023

## **(ii) International**

### **FSB: Report on the financial stability risks of decentralised finance**

**Status: Final**

The FSB has published a report on the financial stability risks of decentralised finance (DeFi). DeFi is an umbrella term commonly used to describe a variety of services in crypto-asset markets that aim to replicate some functions of the traditional financial system (TradFi) while seemingly disintermediating their provision and decentralising their governance. The report considers the risks that can arise as a result of DeFi, and the specific risks related to the crypto-assets underpinning much of DeFi. The report: (i) describes the DeFi ecosystem, its key elements and players, as well as the main products; (ii) discusses

financial vulnerabilities of DeFi, including those stemming from its specific features; (iii) sketches possible scenarios for DeFi and the implications for financial stability; and (iv) sets out additional work to analyse, monitor and address vulnerabilities in the DeFi ecosystem.

While the report notes that current interlinkages are limited, should the DeFi ecosystem grow significantly there is the potential for the stress originating from DeFi to spill over to TradFi and the real economy. Looking forward, the FSB will be analysing the financial vulnerabilities of the DeFi ecosystem as part of its regular monitoring of the wider crypto-asset markets, as well as in collaboration with SSBs and regulatory authorities, exploring approaches to measure and monitor such interconnectedness. The FSB also aims to explore the extent to which its proposed policy recommendations for the international regulation of crypto-asset activities may need to be enhanced to take account of DeFi-specific risks and facilitate the enforcement of rules. In coordination with the SSBs, the FSB will also be assessing the regulatory perimeter across jurisdictions to determine which DeFi activities and entities fall or should fall within that perimeter or outside of it.

Date of publication: 16/02/2023

### **UKJT: Legal statement on the issuance and transfer of digital securities under English private law**

Status: Final

The UK Jurisdiction Taskforce of LawtechUK (UKJT) has published a legal statement on the issuance and transfer of digital securities under English private law. This statement focuses on the aspects of digital securities, including blockchain- and DLT-based systems, that are potentially novel and distinctive, and discusses the extent to which general legal principles apply in this area. In particular, it considers the following legal challenges: (i) protection of the rights and duties of the holder and issuer of digital securities; (ii) compliance of digital equity securities with the share transfer and registration requirements imposed on companies; and (iii) conformity with requirements resulting from digital securities linked to proprietary rights. Although the scope of the statement is limited to considerations under English private law, some of the approaches presented can be applied more generally to other jurisdictions.

Date of publication: 09/02/2023

## 10.3 Sustainable finance

### **(i) EU**

#### **ESMA: SMSG advice to ESMA on its consultation on Guidelines on funds' names using ESG or sustainability-related terms**

Status: Final

ESMA has published the advice submitted by the SMSG to ESMA on its consultation on Guidelines on funds' names using ESG or sustainability-related terms, the so-called naming consultation. In particular, the SMSG points out the close link of this consultation to the greenwashing consultation, despite having a different scope and timelines. It approves of ESMA's approach to initiate discussions on the product names as it deems them to be a powerful marketing tool. However, the SMSG is not convinced by the proposed quantitative threshold approach as this might increasingly confuse investors and fall short of improving the sustainable finance framework. Instead, the SMSG suggests a two-step approach, with a qualitative first and a quantitative second stage. It also differs on the proposed requirement of Paris aligned benchmark (PAB) exclusions to all investments of ESG-named funds, stating that not all ESG funds follow a PAB objective and the exclusion of the energy sector would undermine the goal of incentivising carbon reduction. It does agree, however, that temporary passive breaches should be corrected in the best interests of the unitholders.

Date of publication: 21/02/2023

#### **Commission Delegated Regulation (EU) 2023/363 amending and correcting the RTS laid down in Delegated Regulation (EU) 2022/1288 as regards the content and presentation of information in relation to**

## disclosures in pre-contractual documents and periodic reports for financial products investing in environmentally sustainable economic activities

Status: Published in the OJ

Date of application: 20/02/2023

The Commission Delegated Regulation (EU) 2023/363 amending and correcting the RTS laid down in Delegated Regulation (EU) 2022/1288 as regards the content and presentation of information in relation to disclosures in pre-contractual documents and periodic reports for financial products investing in environmentally sustainable economic activities has been published in the OJ. The Delegated Regulation: (i) incorporates nuclear and gas disclosures into the SFDR RTS; (ii) clarifies the applicability of Article 6 of the SFDR; and (iii) corrects errors in the cross-references in the periodic disclosures.

Date of publication: 17/02/2023

### (ii) International

## NGFS: User feedback survey on climate scenarios

Status: Consultation

Deadline for the submission of comments: 27/02/2023

The Network for Greening the Financial System (NGFS) published a user feedback survey on the NGFS climate scenarios. Questions relate to: (i) how the NGFS scenarios are used, including the objectives and scope of climate scenario analysis and what modelling approaches are used; and (ii) what users consider the NGFS should prioritise and the key obstacles they face when using the scenarios. The NGFS plans to publish the key findings in the Spring, and considers that this will serve as an important input for the scenario development work plan.

Date of publication: 06/02/2023

# 11. German Omnibus Acts (*Artikelgesetze*)

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## (i) Germany

### Fourth Amending Regulation on the German Institution Remuneration Regulation (*Vierte Verordnung zur Änderung der Institutsvergütungsverordnung*)

Status: Published in the Federal Gazette

Date of application: 18/02/2023

The Fourth Amending Regulation on the Institution Remuneration Regulation (*Institutsvergütungsverordnung* – InstitutsVergV) has been published in the Federal Gazette. For more information, please see section 1.1(d) above.

Date of publication: 17/02/2023

### Fourth Amending Regulation on the German Solvency Regulation (*Vierte Verordnung zur Änderung der Solvabilitätsverordnung*)

Status: Published in the Federal Gazette

Date of application: 18/02/2023

The Fourth Amending Regulation on the German Solvency Regulation (*Solvabilitätsverordnung* – SolvV) has been published in the Federal Gazette. For more information, please see section 1.1(b) above.

Date of publication: 17/02/2023

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