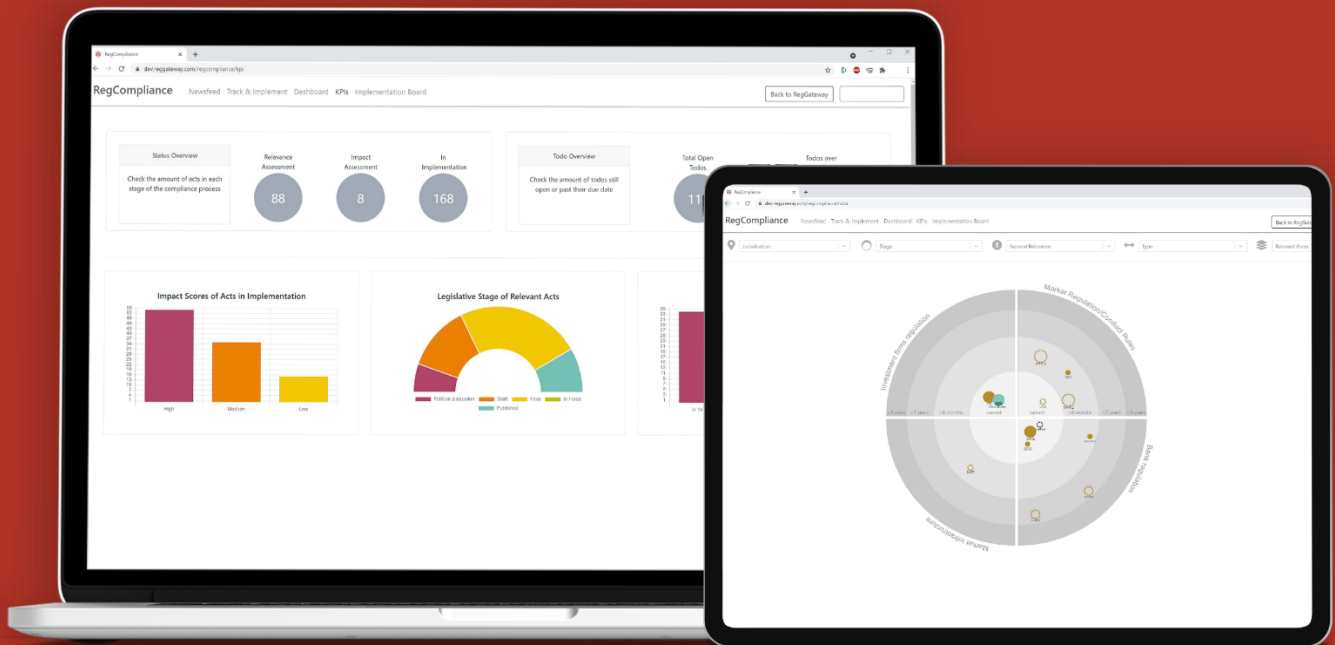


# Regulatory monitoring

Newsletter

October 2021





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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

## 1.1 Prudential regulation

### (a) General

#### (i) EU

##### EC: Adoption of the Banking Package 2021 containing legislative proposals to amend the CRR and CRD IV

Status: Draft

The EC has adopted a review of the CRR and CRD IV. The published package consists of three legislative proposals: to amend the CRR and CRD IV, and a separate proposal to amend the CRR in the area of resolution (the so-called “daisy chain” proposal). The EC explains that the package: (i) implements the outstanding elements of the Basel III reform in the EU, while taking into account EU specificities and avoiding significant increases in capital requirements. It also increases proportionality, notably by reducing compliance costs, in particular for smaller banks, without loosening prudential standards; (ii) introduces explicit rules on the management and supervision of ESG risks. This includes regular climate stress testing by both supervisors and banks. The proposal extends the scope of ESG disclosures to all institutions, empowers supervisory authorities to incorporate ESG in the Supervisory Review and Evaluation Process and in stress testing by authorities, and requests stress testing of ESG risks by banks; and (iii) increases harmonisation of certain supervisory powers and tools. Supervisors will be given more powers to check if transactions are sound and bank managers are fit and proper. They will have enhanced sanctioning powers to enforce rules, while also having better oversight of complex banking groups, including FinTechs. The proposal also introduces minimum standards for the regulation and supervision of branches of third-country banks in the EU.

The EC proposes to give banks and supervisors additional time to properly implement the reform in their processes, systems and practices, and start applying the new rules from 1 January 2025. The legislative package will now be discussed by the EP and the Council.

- 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
- Proposal for a Directive amending the CRD IV as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending the BRRD
- Proposal for a Regulation amending the CRR and BRRD as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the MREL

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

Date of publication: 27/10/2021

#### (ii) International

##### FSB: Annual report on the work to promote global financial stability

Status: Final

The FSB has published its 2021 annual report, which focuses on the FSB’s work to promote global financial stability. The report: (i) finds that the outlook for financial stability continues to be dominated by the Covid-19 pandemic, with recovery uneven across economies and sectors. It highlights financial vulnerabilities related to stretched asset valuations and high non-financial sector debt, stemming from the combination of pronounced economic uncertainty, easy financing conditions and sustained policy support; (ii) highlights the analytical and policy work the FSB is carrying out to foster global financial stability in

response to the pandemic, and new and emerging risks; (iii) finds that there has been limited additional progress in implementing G20 reforms over the past year, as authorities have focused on responding to the impacts of the pandemic. Regulatory adoption of core Basel III elements has generally been timely to date, but implementation of the final reforms to the capital framework is still at a very early stage. More work is also needed to close gaps in the operationalisation of banks' resolution plans and to implement effective resolution regimes for insurers and central counterparties; and (iv) the Covid-19 experience provides important lessons for the functioning of the G20 reforms and reinforces the importance of global regulatory cooperation and of completing the remaining elements of the post-crisis reform agenda. Those parts of the financial system where implementation is most advanced displayed greater resilience and were able to cushion, rather than amplify, the shock. The FSB and standard-setting bodies will continue to promote approaches to deepen international cooperation, coordination and information-sharing, with the support of the G20.

Date of publication: 27/10/2021

### **BCBS: Progress report on the adoption of the Basel regulatory framework**

Status: Final

The Basel Committee on Banking Supervision (BCBS) has published a progress report setting out the jurisdictional adoption status of the Basel III standards as of end-September 2021. It covers the Basel III post-crisis reforms published by the BCBS in December 2017 and the finalised minimum capital requirements for market risk in January 2019. These reforms are due to take effect from 1 January 2023, as announced by the Governors and Heads of Supervision in March 2020. The report shows that over the past year member jurisdictions have made further progress in adopting the Basel III standards, despite the disruptions resulting from the Covid-19 pandemic, and the required shift in regulatory and supervisory priorities. The report is accompanied by a newly developed dashboard to reflect the full history of Basel III implementation, and states that the BCBS will continue to closely monitor the implementation of all elements of these reforms.

Date of publication: 14/10/2021

### **FSB: Annual progress report on G20 data gaps initiative**

Status: Final

The FSB and IMF have published their sixth progress report on the implementation of the second phase of the G20 data gaps initiative (DGI-2). The report highlights that: (i) significant progress has been achieved in closing identified policy-relevant data gaps during phases 1 and 2 of the Data Gaps Initiative; (ii) the initiative has proved its value during the crisis triggered by the Covid-19 pandemic, helping policymakers to access key information in order to assess developments and risks in the financial and non-financial sectors, and to analyse interconnectedness and cross-border spillovers; (iii) due to the Covid-19 pandemic it is very likely that some recommendations will not be fully completed by the end of 2021; and (iv) participating economies and international organisations also recognise the need for a new international cooperation initiative on data gaps after the conclusion of the DGI at the end of 2021.

The new initiative will focus on the following priorities of policy makers: (a) climate change; (b) household distributional information; (c) FinTech and financial inclusion data; and (d) access to private sources of data and administrative data, and data sharing.

Date of publication: 08/10/2021

### **EC: Joint statement on the EU-U.S. Joint Financial Regulatory Forum**

Status: Final

The EC published a joint statement by participants of the EU-US Joint Financial Regulatory Forum (the Forum) following a meeting held on 29 and 30 September. Participants included representatives of the EC, EBA, ESMA, EIOPA, and ECB, and officials from the U.S. Department of the Treasury, the Board of Governors of the FRB, and representatives from the Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), and the Securities and Exchange Commission (SEC). The Forum focused on various themes, including: (i) market developments and current assessment of financial stability risks – in the light of the uncertain economic outlook, participants recognised that cooperative international engagement to mitigate financial stability risks remains essential; (ii) sustainable finance – participants recognised the importance of addressing climate-related challenges for the financial sector and discussed their priorities relating to sustainable finance, also addressing climate-related financial risks; (iii) multilateral and bilateral engagement in banking and

insurance – participants discussed the implementation of Basel III reforms, the treatment of foreign bank branches; (iv) regulatory and supervisory cooperation in capital markets – participants discussed progress in their respective legislative and supervisory efforts to ensure a smooth transition away from LIBOR, exchanged views on the upcoming EU reviews of the AIFMD and of the MiFIR, and took stock of ongoing discussions regarding data transfers and the registration of EU funds in the United States; and (v) financial innovation – participants shared views on developments regarding financial innovation and recent efforts by the EU and the U.S. to improve operational resilience in the financial sector. They also discussed considerations regarding any potential central bank digital currencies and exchanged views on recent developments including regulatory proposals involving new forms of digital payments. Participants will continue to engage on these topics ahead of the next Forum meeting, which is expected to take place in early 2022.

Date of publication: 04/10/2021

## (b) Solvency/Own funds issues

### (i) Germany

#### **BaFin: Consultation 20/2021 on a draft Circular N/2021 (BA) on further requirements for own LGD estimations (*Konsultation 20/2021 des Entwurfs für ein Rundschreiben N/2021 (BA) zu weiteren Anforderungen an eigene LGD-Schätzungen*)**

Status: Consultation

Deadline for the submission of comments: 19/11/2021

BaFin has published a consultation on a draft Circular on the implementation of further requirements for own loss given default (LGD) estimates. It follows on from the [Circular 03/2019 \(BA\) on the application of the definition of default under Article 178 of Regulation \(EU\) No 575/2013 \(CRR\) and on PD estimation, LGD estimation and the treatment of defaulted exposures](#), dated 16 April 2019, with which BaFin, among other things, adopted the [EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures \(EBA/GL/2017/16\)](#) into its administrative practice as of 1 January 2021. The EBA has since added further requirements to the requirements for institutions' own LGD estimates contained therein through the [EBA Guidelines for the estimation of LGD appropriate for an economic downturn \(Downturn LGD estimation\) \(EBA/GL/2019/03\)](#) and the [EBA Guidelines on credit risk mitigation for institutions applying the IRB approach with own estimates of LGDs \(EBA/GL/2020/05\)](#).

Regarding the EBA Guidelines on LGD estimation appropriate to an economic downturn (Downturn LGD estimation), BaFin has notified the EBA that it intends to fully comply with these Guidelines once the [Delegated Regulation \(EU\) 2021/930 supplementing the CRR with regard to RTS specifying the nature, severity and duration of an economic downturn](#) has entered into force, as occurred on 30 June 2021.

Regarding the EBA Guidelines on credit risk mitigation for institutions using the IRB approach including own LGD estimates, the EBA has published a [Single Rule Book Q&A \(2021\\_5677\)](#) on the initiative of BaFin. In this, it clarifies that paragraph 38 of the Guidelines is to be understood as meaning that cash flows and direct costs related to the liquidation of the collateralisation with security are allocated to the part of the risk position covered by this collateralisation with security.

With this draft Circular, BaFin additionally aims to inform that it will adopt the two-abovementioned Guidelines – regarding the Guidelines on credit risk mitigation for institutions using the IRB approach including own LGD estimates (EBA/GL/2020/05) in accordance with the clarification in the [Single Rule Book Q&A \(2021\\_5677\)](#) – in its administrative practice as of 1 January 2022.

Date of publication: 25/10/2021

#### **Third Amendment Regulation on the German Solvency Regulation (*Dritte Verordnung zur Änderung der Solvabilitätsverordnung*)**

Status: Published in the Federal Gazette

Date of entry into force: 25/09/2021

The Third Amendment Regulation on the German Solvency Regulation (*Solvabilitätsverordnung* – SolvV) has been published in the Federal Gazette. The main purpose of this Amendment Regulation is to implement the changes introduced to the systemic risk buffer by CRD V, insofar as these are not implemented by adapting Section 10e of the KWG. The rules introduced in the new

Section 36a of the SolvV relate to the refined uses of the capital buffer for systemic risks, in particular those for addressing sectoral risks to financial stability (especially residential and commercial real estate risks) and create the legal basis for its calculation. The background to this is the requirements of CRD V, which was transposed into German law by the Risk Reduction Act (*Risikoreduzierungs-gesetz – RiG*) in late 2020. CRD V has expanded the scope of the systemic risk buffer and made it more flexible. Thus, all systemic risks that were not already covered by the capital buffers for systemically important institutions, the countercyclical capital buffer or measures under the CRR, are now also addressed. The rules would only become practically relevant if a systemic risk buffer should be established in Germany, which is currently not the case.

In addition, Section 37 of the SolvV has been slightly modified, specifying the method for calculating the maximum distributable amount within the meaning of Section 10i(3) of the German Banking Act (*Kreditwesengesetz – KWG*). The amendments are essentially limited to technical adjustments to the amended European requirements in Article 141(5) and (6) of CRD V.

Date of publication: 24/09/2021

## (ii) EU

### **EBA: Final draft RTS on alternative standardised approach for market risk under the CRR**

Status: Final

The EBA has published its final draft RTS on gross jump-to-default (JTD) amounts and on residual risk add-on (RRAO). These final draft RTS provide technical specifications for the implementation of these two elements of the alternative standardised approach for market risk. Institutions using the alternative standardised approach for market risk are required to compute, on top of the own funds requirements under the sensitivities-based method, own funds requirements for default risk and for residual risks.

The final draft RTS on gross JTD amounts specify key inputs needed for computing own funds requirements for default risk. Gross JTD amounts determined in accordance with these draft RTS are intended to be consistent with those determined in accordance with international standards, while employing the formulae and requirements set out in the CRR. The draft RTS on RRAO clarify the scope of the RRAO, ie for which instruments the own funds requirements for residual risks should be determined. They specify a non-exhaustive list of instruments bearing residual risks, and a list of risks that, in themselves, do not constitute residual risks. These draft RTS also clarify that longevity risk, weather, natural disasters and future realised volatility should all be considered as exotic underlyings.

- Final draft RTS on gross JTD amounts under Article 325w(8) of the CRR
- Final Report on draft RTS on the specification of what an exotic underlying is and which instruments are instruments bearing residual risks for the purposes of Article 325u(2) under Article 325u(5) of the CRR

Date of publication: 22/10/2021

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

Status: Adopted by the EC

The EC has adopted a Delegated Regulation containing RTS for the specification of the assessment methodology that competent authorities are to follow when assessing the compliance of credit institutions and investment firms with the requirements to use the Internal Ratings Based Approach (IRBA) under the CRR (575/2013). The Regulation sets out the methodology a competent authority should follow when an institution applies, specifically: (i) initially use the IRBA; (ii) to use the IRBA for certain types of exposures in accordance with the sequential implementation plan; (iii) for the implementation of material changes to the IRBA; and (iv) to return to the use of less sophisticated approaches.

If the Council of the EU and the EP do not object to the Delegated Regulation, it will enter into force 20 days after its publication in the OJ.

Date of publication: 20/10/2021

## EC: Commission Implementing Regulation (EU) .../... amending Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of CRD IV

Status: Adopted by the EC

The EU Commission has adopted an Implementing Regulation amending Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of CRD IV. This document is based on the [final report by the EBA](#) as of 1 June 2021. According to the EBA, the updated ITS include all benchmarking portfolios and metrics that will be used for the 2022 benchmarking exercise, which is an essential supervisory tool to enhance the quality of internal models, and is particularly important in a stressed economic situation. The EBA states that: (i) for the market risk benchmarking, the framework has been extended to allow the collection of new information, in particular as regards sensitivity-based measures (SBM), in relation to the Fundamental Review of the Trading Book (FRTB) SBM for own funds requirements. Some instruments have been updated and clarified, while the overall composition of the portfolio has marginally changed with respect to the 2021 exercise; (ii) for credit risk, a limited number of additional data fields was added to understand the level of conservatism incorporated in the risk estimates and the resulting risk-weighted exposures amounts; (iii) for the IFRS9 portfolios, a limited number of additional data fields have been included to collect information on additional IFRS9 parameters, in particular the Loss Given Default (LGD) – this is in line with the staggered approach communicated in the EBA IFRS9 roadmap published in July 2019; and (iv) the update includes changes and clarifications that the EBA introduced based on its consultation that was published on 17 December 2020.

In a next step, this Implementing Regulation will enter into force 20 days after its publication in the OJ.

Date of publication: 13/09/2021

## EC: Commission Implementing Regulation (EU) .../... amending Implementing Regulation (EU) 2016/2070 laying down ITS for templates, definitions and IT-solutions to be used by institutions when reporting to the EBA and to competent authorities in accordance with Article 78(2) of CRD IV

Status: Adopted by the EC

The EU Commission has adopted an Implementing Regulation amending Implementing Regulation (EU) 2016/2070 laying down ITS for templates, definitions and IT-solutions to be used by institutions when reporting to the EBA and to competent authorities in accordance with Article 78(2) of CRD IV. This document amends the annexes of Implementing Regulation (EU) 2016/2070. It will enter into force 20 days after its publication in the OJ.

Date of publication: 13/09/2021

## (c) Securitisation

### (i) EU

#### ESMA: Final report for STS synthetic securitisation notifications

Status: Final

ESMA has published its final report on draft technical standards specifying content and format of the STS notification for on-balance sheet securitisations (synthetic securitisations) to the EC. The report includes: (i) draft RTS specifying the information that the originator, sponsor and securitisation special purpose entity are required to provide in order to comply with the STS notification requirements for synthetic securitisations as set forth in Articles 26b to 26e of the SECR; (ii) draft ITS to specify the templates for notifying ESMA; and (iii) targeted amendments to the templates in the RTS for STS notifications for traditional securitisations based on ESMA experience with the STS notifications. The final report largely reflects the original proposals included in the consultation paper, considering the feedback received. ESMA explains that it has strived to ensure consistency across the STS frameworks for traditional and synthetic securitisations while taking account of the technical differences between traditional and on-balance sheet securitisations. The draft technical standards have been submitted to the EC for endorsement. In the meantime, originators can make the necessary information available to ESMA by using the interim STS synthetic notification templates. The interim STS synthetic notification templates may be used by originators on a voluntary basis, but may be subject to change following the endorsement by the EC and the entry into force of the RTS/ITS.

Date of publication: 12/10/2021

## (d) Authorisation and passporting

### (i) EU

#### **EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services under CRD IV**

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending RTS which specify the information to be notified by credit institutions to their home competent authority for the exercise of the right of establishment and the freedom to provide services under CRD IV. It introduces amendments which aim to improve the quality and consistency of the information to be provided by credit institutions notifying their home competent authorities of their intention to open a branch or provide services in another Member State or to cease their cross-border activity.

If the Council of the EU and the EP do not object to the Delegated Regulation, it will enter into force 20 days after its publication in the OJ.

Date of publication: 20/10/2021

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

### (i) EU

#### **Council: Directive on credit servicers and credit purchasers**

Status: Adopted by the EP

The Council of the EU has published the text of the proposed Directive on credit servicers and credit purchasers (the Non-Performing Loans Directive), as adopted by the European Parliament on 21 October 2021. In a next step, the Council is expected to adopt the Directive shortly. Once adopted, the Directive will enter into force on the 20th day following its publication in the OJ, with member states required to transpose its provisions by 24 months after its entry into force.

Date of publication: 28/10/2021

### (ii) Eurozone

#### **ECB: Banking Supervision's post-pandemic priorities – the way forward**

Status: Final

The ECB has published a speech by Edouard Fernandez-Bollo, member of the Supervisory Board of the ECB, in which he addressed the ECB Banking Supervision's post-pandemic priorities. Mr Fernandez-Bollo highlighted: (i) the need to avoid risk complacency – the results of the recent stress test exercise conducted by the ECB are indicative of increased banking sector resilience and suggest that Euro area banks could cope with further adverse economic developments. Nevertheless, Mr Fernandez-Bollo explained that various risks related to the pandemic still need to be addressed, and proactive and advanced risk management tools will be crucial to keep credit risks in check and safeguard the bank lending channel's ability to support the real economy; (ii) the urgent need for banks to effectively incorporate climate risks into risk governance frameworks – in 2022, the ECB will conduct a full supervisory review of banks' practices for incorporating climate risks into their risk frameworks as it gradually rolls out a dedicated supervisory review and evaluation process (SREP) methodology that will eventually influence banks' Pillar 2 capital requirements. The ECB will also carry out a supervisory stress test focusing on climate-related risks, the methodology for which will soon be shared with the banks under its supervision; and (iii) the need to address the structural challenges to the stability of the banking system, essentially by investing in digitalisation.

Date of publication: 05/10/2021

**(iii) International****IOSCO: Updated outsourcing principles to ensure operational resilience****Status: Final**

The IOSCO has published its updated outsourcing principles to ensure operational resilience. The principles' application has been expanded from market intermediaries and markets to include trading venues, intermediaries and market participants acting on a proprietary basis and credit rating agencies (CRAs). The principles include fundamental precepts, which cover issues such as the definition of outsourcing, the assessment of materiality and criticality, their application to affiliates, the treatment of sub-contracting and outsourcing on a cross-border basis.

The principles cover and include guidance on: (i) due diligence in the selection and monitoring of a service provider and its performance; (ii) the contract with a service provider; (iii) information security, business resilience, continuity and disaster recovery; (iv) confidentiality issues; (v) concentration of outsourcing arrangements; (vi) access to data, premises, personnel and associated rights of inspection; and (vii) termination of outsourcing arrangements. The IOSCO also briefly addresses the impact of the Covid-19 pandemic on outsourcing and operational resilience and includes an annex that describes how outsourcing integrates with cloud computing and how CRAs use and incorporate outsourcing and cloud computing in their organisational strategies and structures.

Date of publication: 27/10/2021

**(f) Cyber security****(i) International****FSB: Report on cyber incident reporting: existing approaches and next steps for broader convergence****Status: Final**

The FSB has published a report on existing approaches to cyber incident reporting and the next steps for broader convergence. In light of increasing financial stability concerns, especially given the digitalisation of financial services and increased use of third-party service providers, the FSB explored whether harmonisation in cyber incident reporting could be achieved. The FSB found fragmentation across sectors and jurisdictions: (i) in the scope of what should be reported for a cyber incident; (ii) in methodologies to measure the severity and impact of an incident; (iii) in timeframes for reporting cyber incidents; and (iv) in how cyber incident information is used.

Recognising that information on cyber incidents is crucial for effective actions and promoting financial stability, the FSB identified three ways to take work forward to achieve greater convergence in cyber incident reporting. These are: (i) developing best practices – the FSB intends to identify a minimum set of types of information authorities may require related to cyber incidents to fulfil a common objective (for example, financial stability, risk assessment, risk monitoring) that authorities could consider when developing their cyber incident reporting regime; (ii) identifying common types of information to share – the FSB will identify key information that should be shared across sectors and jurisdictions, and consider any legal and operational impediments to sharing such information; and (iii) creating common terminologies for cyber incident reporting – indeed, harmonised cyber incident reporting schemes necessitate a 'common language'. In particular, a common definition for "cyber incident" is needed that avoids the reporting of incidents that are not significant for a financial institution or financial stability.

The FSB intends to develop detailed timelines and modalities for taking this work forward by the end of 2021.

Date of publication: 19/10/2021



## (g) Large exposures/Limits to shadow banking entities

### (i) EU

#### Commission Implementing Decision (EU) 2021/1753 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with the CRR

Status: Published in the OJ

Date of entry into force: 24/10/2021

The Commission Implementing Decision (EU) 2021/1753 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with the Capital Requirements Regulation (575/2013) (CRR) has been published in the OJ. Among other things, the Implementing Decision establishes a list of third countries and territories, listed in Annex VI to this Decision, which shall be considered as applying supervisory and regulatory arrangements equivalent to those applied in the Union for the purposes of Article 391 of the CRR.

Date of publication: 04/10/2021

## (h) Deposit protection

### (i) EU

#### EBA: Opinion on the treatment of client funds under the DGSD

Status: Final

The EBA has published an opinion on the treatment of client funds under the Deposit Guarantee Schemes Directive (2014/49/EU) (DGSD), where it assessed the current approaches to the protection of funds deposited with credit institutions on behalf of clients by entities that are themselves excluded from scheme protection. The EBA considers the interaction between Article 5(1) of the DGSD, which excludes from protection deposits made by credit institutions and other financial organisations, and Article 7(3), which states that the exclusion does not apply where the credit institution making the deposit is not absolutely entitled to the sums held in the account. The potential lack of clarity on the interplay between both Articles was noted by the EBA in 2019. The EBA observed discrepancies in relation to the protection of client funds by schemes across the EU, and also within Member States, depending on what sort of entity deposits them on behalf of its clients.

Thus, the EBA makes several recommendations to the Commission on revisions to the DGSD to ensure that funds deposited on behalf of clients are uniformly protected across the EU. These include amendments intended to ensure that: (i) client funds placed by credit institutions, payment institutions, e-money institutions, and investment firms on behalf of their clients with credit institutions are protected by schemes, if a credit institution were to fail; (ii) there is a harmonised method for repaying funds in client accounts where there is a need to mitigate the risk of contagion from the failed credit institution to the account holder; and (iii) client funds should be taken into account when calculating contributions. The recommendations are intended to inform the Commission's proposals for a revised DGSD, anticipated in Q4.

Date of publication: 28/10/2021

## 1.2 Recovery and resolution

### (i) Germany

#### **BaFin: New version of the circular on the minimum requirements for the feasibility of a bail-in** (*Neufassung des Rundschreibens zu den Mindestanforderungen zur Umsetzbarkeit eines Bail-in – MaBail-in*)

Status: Final

BaFin has published a new version of its circular on the minimum requirements for the feasibility of a bail-in (*Mindestanforderungen zur Umsetzbarkeit eines Bail-in – MaBail-in*). With this update, BaFin extends MaBail-in in principle to institutions and group-affiliated entities for which the resolution plan does not yet stipulate resolution measures, provided that they are part of a resolution group or relevant third-country subsidiaries. This requirement is necessary to ensure the transfer of losses within the resolution group (from subsidiaries to the resolution entity) or within the third-country group (from third-country subsidiaries established in Germany to the respective legal entity in the third country). Until now, MaBail-in had only included general and specific requirements for institutions and group entities designated as resolution entities in the resolution plan.

The circular addresses all institutions within the meaning of Section 2(1) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*) and entities within the meaning of Section 1 No 3 of the SAG in Germany that do not fall within the remit of the Single Resolution Board (SRB) pursuant to Article 7(2) and (4)(b) or (5) of the SRM Regulation. It generally does not apply to institutions and group entities for which the resolution plan provides for liquidation under insolvency proceedings.

Date of publication: 05/10/2021

### (ii) EU

#### **EBA: Response to the EC's call for advice on funding in resolution and insolvency as part of the review of the crisis management and deposit insurance framework**

Status: Final

The EBA has published its advice to the EC on funding in resolution and insolvency as part of the review of the crisis management and deposit insurance (CMDI) framework. The EBA response provides a descriptive analysis on banks' capacity to access resolution financing arrangements (RFA) based on banks' balance sheets and their business models, as well as an analysis based on a modelling approach to simulate a crisis scenario. The EBA response provides a descriptive analysis on banks' capacity to access available sources of funding under the current framework and under various creditor hierarchies, and with regards to the minimum requirement for own funds and eligible liabilities (MREL). The descriptive analysis shows the change to banks' internal loss-absorption capacity under four scenarios of depositors' preferences compared to the current creditor hierarchy applicable in each Member State.

The analysis, whose findings are presented under several different capital depletion scenarios, draws two main conclusions: (i) preferring deposits to other ordinary unsecured claims increases the number of banks that are able to meet the requirements to access RFA without the bail-in of any type of depositors; and (ii) a single-tier depositor preference (ie all types of depositors rank *pari passu*) comes with the highest impact on covered deposits and the highest contributions from deposit guarantee schemes compared to the other policy options and the current situation. The modelling approach, which simulates an economic scenario similar to the global financial crisis confirms the findings. The report also investigates the issue of market access for MREL instruments for small and medium-sized banks.

Date of publication: 22/10/2021

## Commission Implementing Regulation (EU) 2021/1751 laying down ITS for the application of the BRRD with regard to uniform formats and templates for notifications of determination of the impracticability of including contractual recognition of write down and conversion powers

Status: Published in the OJ

Date of entry into force: 24/10/2021

The Commission Implementing Regulation (EU) 2021/1751, laying down ITS for the application of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) with regard to uniform formats and templates for notifications of determination of the impracticability of including contractual recognition of write down and conversion powers, has been published in the OJ. The BRRD II Directive ((EU) 2019/879) amends Article 55 of the BRRD to address the scenario where it is impracticable for institutions and entities subject to the BRRD to include bail-in contractual recognition clauses in liability contracts. This Implementing Regulation specifies uniform formats and templates for the notification to resolution authorities of contracts meeting the conditions of impracticability as defined in the recently published [Commission Delegated Regulation \(EU\) 2021/1527 supplementing BRRD with regard to RTS for the contractual recognition of write down and conversion powers](#).

Date of publication: 04/10/2021

### (iii) Eurozone

#### SRB: Operational guidance on separability of banks in time of crisis

Status: Final

The SRB has published operational guidance on separability of banks in time of crisis. Separability is a broad concept relevant to all resolution strategies. It is particularly relevant for banks for which the resolution strategy envisages a transfer tool, such as the sale of a business, asset separation tool and the bridge institution tool. In its Expectations for Banks document, the SRB set out its expectations towards banks under its remit in order to ensure an appropriate level of resolvability. Principle 7.2 set out the expectation for banks to deliver separability analyses for partial transfer tools by the end of 2023. This principle allows the SRB to access the necessary information and analysis from banks in order to operationalise these resolution tools, and to ensure the appropriate level of separability required to implement a transfer. This guidance helps banks by providing more detail on how to achieve this expectation, and how to concretely deliver the relevant information and analysis, namely through an analytical document, the separability analysis report, and an operational document known as the transfer playbook.

Date of publication: 26/10/2021

#### SRB: Updated notification of impracticability to include bail-in recognition clauses in contracts

Status: Final

The SRB has updated its communication on how banks can notify the authorities when bail-in recognition clauses cannot be added to contracts under third-country law, which was initially published on 21 June 2021, following the publication of the delegated and implementing acts. The update concerns: (i) adequate references to the Level 2 legislation; (ii) a requirement for banks to submit notifications, if any, in XBRL; and (iii) some practical instructions for banks reporting categories of liabilities/contracts, in line with the EBA Reporting Framework 3.0. Technically, this applies only to significant institutions, it may, however, also give guidance to other institutions.

Date of publication: 25/10/2021

## 2. Investment firms regulation

### (i) EU

#### **EBA: Final Report on draft RTS on the disclosure of investment policy by investment firms under Article 52 of the IFR**

##### **Status: Final**

The EBA has published a Final Report on draft RTS on the disclosure of investment policy by investment firms under Article 52 of the Investment Firms Regulation ((EU) 2019/2033) (IFR). The IFR sets out in Article 52 a requirement for investment firms to publicly disclose information on their investment policy, and the EBA received a mandate under Article 52(3) of IFR to develop draft RTS to specify templates for investment policy disclosure of investment firms. The draft RTS specify the information that investment firms will have to disclose to show their influence over the companies in which they hold voting rights. A summary of the responses received to the EBA's consultation on the draft RTS, together with the EBA's feedback, is set out in section 4 of the report. [Annex I](#) to the draft RTS contains templates and tables for the purpose of the disclosure of information on firms' investment policies, whereas [Annex II](#) provides instructions on disclosure of investment policy by investment firms.

The first disclosure date will be 31 December. These final draft RTS have been submitted to the EC for adoption.

Date of publication: 19/10/2021

#### **EC: Adoption of four Delegated Regulations supplementing the IFR with RTS on the prudential treatment of investment firms**

##### **Status: Adopted by the EC**

The European Commission has published its adoption of four Delegated Regulations supplementing the IFR (Regulation (EU) 2019/2033) with RTS relating to prudential requirements for investment firms. They are based on a [Final Report](#) by the EBA from 16 December 2020. These Delegated Regulations will now be scrutinised by the Council of the EU and the European Parliament. In case of approval, they will enter into force 20 days after their publication in the OJ.

- Delegated Regulation (EU) .../... adopted on 22 September 2021 supplementing the IFR with RTS that specify adjustments to the K-factor "daily trading flow" (K-DTF) coefficients (C(2021) 6731 final)
- Delegated Regulation (EU) .../... adopted on 22 September 2021 supplementing the IFR with RTS that specify the methods for measuring the K-factors referred to in Article 15 of the IFR (C(2021) 6739 final)
- Delegated Regulation (EU) .../... adopted on 24 September 2021 supplementing the IFR with RTS specifying the amount of total margin for the calculation of the K-factor "clear margin given" (K-CMG) (C(2021) 6776 final)
- Delegated Regulation (EU) .../... adopted on 24 September 2021 supplementing the IFR with RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure (C(2021) 6807 final)

Date of publication: 28/09/2021

## 3. Market regulation/Conduct rules

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### 3.1 Benchmarks

#### (i) EU

##### **Commission Implementing Regulation (EU) 2021/1848 on the designation of a replacement for the EONIA benchmark**

Status: Published in the OJ

Date of entry into force: 11/11/2021

Date of application: 03/01/2022

The Commission Implementing Regulation (EU) 2021/1848 on the designation of a replacement for the Euro overnight index average (EONIA) benchmark has been published in the OJ. The Euro short-term rate is designated as the replacement rate for EONIA from 3 January 2022.

Date of publication: 22/10/2021

##### **Commission Implementing Regulation (EU) 2021/1847 on the designation of a statutory replacement for certain settings of CHF LIBOR**

Status: Published in the OJ

Date of entry into force: 11/11/2021

Date of application: 01/01/2022

The Commission Implementing Regulation (EU) 2021/1847 on the designation of a statutory replacement for certain settings of CHF LIBOR has been published in the OJ. The Swiss Average Rate Overnight is designated as the replacement for certain tenors of CHF LIBOR, from 1 January 2022.

Date of publication: 22/10/2021

##### **EBA: Note on benchmark rate transition risks**

Status: Final

The EBA has published a thematic note on the transition risks of benchmark rates as the reforms of LIBOR (the London Interbank Offered Rate) and EONIA (the Euro Overnight Index Average) near completion. The EBA identifies pockets of transition risks for EU/EEA banks due to their significant exposures linked to LIBOR and EONIA rates. The EBA warns that a very high percentage (more than 25%) of EU/EEA banks' derivatives exposures are linked to LIBOR, reaching nearly €50 trillion. In addition, around €1 trillion of loans and advances are linked to various tenors of LIBOR, and €0.2 trillion to EONIA rates. CHF LIBOR referenced loans are a particular focal point in the analysis as political risks add to the existing legal transition risks for these loans. The EBA reports that surveys among banks and competent authorities reveal that legal challenges accompanying the transition of existing business of the asset side, as well as required changes in bank internal operations and systems, remain key areas of concern. Despite these major challenges, competent authorities tend to agree that the ongoing work and general awareness of the banks under their supervision should adequately address and mitigate risks relating to benchmark rate reforms. They stress that legal uncertainties would remain, even if transitions are well managed and show certain concerns relating to the updating and validation of internal risk models.

Date of publication: 14/10/2021

**(ii) International****ISDA: Updated product table on RFR conventions and IBOR fallbacks****Status: Final**

The International Swaps and Derivatives Association (ISDA) published an updated version of its risk-free rates (RFRs) conventions and IBOR fallbacks product table. The table sets out how the fallbacks in ISDA's amended documentation would function for various different products, including certain non-linear products. The chart also sets out the standard conventions for the same products that reference IBORs, and the standard for such products that reference RFRs as of the date of this document. The table is intended to help counterparties understand how the fallbacks would function in their legacy and new derivatives that reference IBORs. ISDA expects to update this document from time to time to reflect developments, including new conventions and publication of new benchmarks.

Date of publication: 04/10/2021

## 3.2 Consumer protection rules

**(i) Germany****BaFin: Supervisory Statement on BaFin's expectations with regard to the decision of the German Federal Court of Justice regarding changes to general terms and conditions (*Aufsichtsmittteilung über die Erwartungshaltung der BaFin zur Umsetzung des Urteils des Bundesgerichtshofs zu AGB-Änderungen*)****Status: Final**

BaFin has published a Supervisory Statement in which it sets out that it expects credit institutions to comply with the decision of the German Federal Court of Justice (*Bundesgerichtshof* – BGH) of 27 April 2021 (file reference XI ZR 26/20) on invalid fee adjustments and to take all the necessary steps without delay, while dealing fairly with their customers. The BGH had ruled that if a bank's general terms and conditions deemed the customer's consent to changes to the terms and conditions to have been given, without any restrictions as to the content of such changes and thus also to changes to fees, such terms were invalid.

Date of publication: 26/10/2021

**(ii) EU****ESMA: Statement on investment recommendations made on social media****Status: Final**

ESMA has published a statement on investment recommendations made on social media. In its statement, ESMA makes clear what investment recommendations are, how to post them on social media platforms and what the consequences of possible breaches of the EU Market Abuse Regulation can be. ESMA is concerned with the potential to mislead investors. It considers that investment recommendations must be produced and disseminated in an objective and transparent way so that investors can distinguish facts from opinions before making any investment decision. It is also crucial that investors are able to easily identify the source of information and any conflicts of interest of those making the recommendations. Further, ESMA warns that if the rules relating to investment recommendations are not adhered to, there can be fines or further supervisory actions, which, in any case of dissemination of false or misleading information may potentially include a referral to Public Prosecutors for market manipulation.

Date of publication: 28/10/2021

## 3.3 Market abuse

### (i) EU

#### Commission Delegated Regulation (EU) 2021/1783 supplementing MAR with regard to RTS containing a template document for cooperation arrangements with third countries

Status: Published in the OJ

Date of entry into force: 31/10/2021

The Commission Delegated Regulation (EU) 2021/1783, supplementing Regulation (EU) No 596/2014 (MAR) with regard to RTS containing a template document for cooperation arrangements regarding the exchange of information between EU Member States' national competent authorities and authorities in third countries, has been published in the OJ. The template contains different sections that describe the scope of the cooperation, the content of the assistance to be provided, of the nature of the procedure, and provides a description of the rules on confidentiality and the uses of information.

Date of publication: 11/10/2021

## 3.4 MiFID/MiFIR

### (i) Germany

#### BaFin: Updated FAQ on MiFID II rules of conduct according to Sections 63 et seq. of the German Securities Trading Act (*Ergänzung der FAQ zu MiFID II-Wohlverhaltensregeln nach §§ 63 ff. WpHG*)

Status: Final

BaFin has published an update on its FAQ on MiFID II rules of conduct according to Sections 63 et seq. of the German Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*). The update consists of a new question in the chapter on inducements (*Zuwendungen*), in which BaFin sets out the conditions under which expenditures to meet regulatory obligations/minimum requirements may be considered as inducements to enhance the quality of the relevant service to the client.

Date of publication: 27/10/2021

### (ii) EU

#### Commission Delegated Regulation (EU) 2021/1833 supplementing MiFID II by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level

Status: Published in the OJ

Date of entry into force: 09/11/2021

The Commission Delegated Regulation (EU) 2021/1833 supplementing MiFID II (2014/65/EU) by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level has been published in the OJ. In particular, it therefore introduces: (i) the ancillary activity tests; (ii) the *de minimis* threshold test; (iii) the trading test; and (iv) the capital employed test.

Date of publication: 20/10/2021

#### ESMA: Call for evidence on retail investor protection aspects

Status: Consultation

Deadline for the submission of comments: 02/01/2022

ESMA has published a call for qualitative and quantitative information from stakeholders on a number of retail investor protection aspects under MiFID II, including: (i) the identification of any significant overlaps, gaps, redundancies and inconsistencies regarding disclosures across investor protection legislation that might have a detrimental effect on investors, in

particular whether consumers can make informed choices and avoid information overload and overly complex information while ensuring investor protection; (ii) an assessment of how regulatory disclosures and communications can work best for consumers in the digital age, and how existing rules might be adapted; and (iii) an assessment of both risks and opportunities with respect to retail investing stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation via online trading platforms and robo advisers. In addition, the call for evidence explores the topic of open finance, focusing on the extent to which value chains should be opened up by sharing specific investor data among investment firms and third-party providers.

In particular, this call for evidence is aimed at investors and consumer organisations, investment firms and credit institutions performing investment services and activities, and at manufacturers of PRIIPs, as well as any relevant trade association. These views will feed into ESMA's technical advice to the EC on the development of its strategy for retail investment, which will be delivered by 30 April 2022.

Date of publication: 01/10/2021

### ESMA: Updated Q&A on MiFID II and MiFIR transparency topics

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR transparency topics. It modified one question on the topic of equity transparency to clarify how the transparency parameters should be determined where the instrument is admitted to trading or traded on multiple trading venues. It also added a question with regard to non-equity transparency to explain how a specific field (Field 25 in Table 2 of Annex IV of RTS 2 on the IR Term of contract) should be populated.

Date of publication: 30/09/2021

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

### (i) EU

#### ESAs: Call for evidence on the EC mandate regarding the PRIIPs Regulation

Status: Consultation

Deadline for the submission of comments: 16/12/2021

The Joint Committee of the European Supervisory Authorities (ESAs) has opened a call for evidence to assist it in providing advice relating to the EC's review of the PRIIPs Regulation. The responses will feed into the ESAs' technical advice to the EC on a review, among other things, of the key information document (KID) for PRIIPs. The ESAs plan to hold a stakeholder event in Q1 2022 before finalising the advice.

Date of publication: 21/10/2021

#### ECON: Draft report on the proposal for a Regulation amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS

Status: Draft

The ECON has published a draft report on the proposal for a Regulation amending the PRIIPs Regulation ((EU) No 1286/2014) as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS. It contains draft EP legislative resolutions, setting out suggested amendments to the proposed Regulation, which the EC had adopted in July 2021.

Date of publication: 18/10/2021



## ESMA: Call for evidence on retail investor protection aspects

Status: Consultation

Deadline for the submission of comments: 02/01/2022

ESMA has published a call for qualitative and quantitative information from stakeholders on a number of retail investor protection aspects under MiFID II. It is aimed at investors and consumer organisations, investment firms and credit institutions performing investment services and activities, and manufacturers of PRIIPs, as well as any relevant trade association. For more information, please see section 3.4 above.

Date of publication: 01/10/2021

## 3.6 Prospectus regulation

### (i) Germany

#### BaFin: Updated FAQs on capital investment prospectuses and capital investment information sheets (*Änderung der FAQ zu Prospekten für Vermögensanlagen und VIB*)

Status: Final

BaFin has updated its FAQs on capital investment prospectuses and capital investment information sheets (*Vermögensanlagen-Informationsblatt – VIB*) by inserting new questions (nos. 32 to 38). With this update, BaFin specifically answers questions from market participants which have arisen as a result of the amendments to the German Capital Investment Act (*Vermögensanlagengesetz – VermAnlG*) as introduced by the Law to further strengthen investor protection (*Anlegerschutzstärkungsgesetz – AnlSchStG*), which entered into force on 17 August 2021. BaFin hereby provides information, in particular on the cases in which an issuer of investments is subject to the new obligation to appoint a controller of the application of funds. In this way, it supports issuers who are planning to offer investments and would like to find out about the provisions that apply in this respect.

Date of publication: 21/10/2021

#### BaFin: Revising the new rules for securities prospectuses under the EU Prospectus Regulation 2017/1129 – FAQs (*Überarbeitung der neuen Regeln für Wertpapierprospekte nach EU-Prospektverordnung 2017/1129 – FAQs*)

Status: Final

Within its FAQs on the new rules for securities prospectuses under the EU Prospectus Regulation 2017/1129, BaFin has noted that it is currently revising the response to Question XIV on any fees charged in connection with the German Securities Prospectus Act (*Wertpapierprospektgesetz – WpPG*) and the EU Prospectus Regulation.

Date of publication: 06/10/2021

### (ii) EU

## 3.7 Securities financing transactions

### (i) EU

#### ESMA: Updated Q&A on SFTR data reporting

Status: Final

ESMA has updated its Q&A on SFTR data reporting which is aimed at competent authorities, entities and market infrastructures by providing clarity on the application of the SFTR requirements. It included a new question regarding the data

fields that should be updated in case of corporate restructuring events affecting the ISO 17442 Legal Entity Identifier (LEI) and the entities to which the information on the LEI update should be broadcasted.

Date of publication: 21/09/2021

## (ii) International

### ICMA: Updated recommendations for reporting under SFTR

Status: Final

The International Capital Market Association (ICMA) published an updated version of its Recommendations for Reporting under SFTR. These Recommendations reflect recent updates to the SFTR validation rules and reporting schemas published by both ESMA and the FCA, together with lessons learnt during the first year of SFTR reporting. A [blackline version](#) has also been published alongside the updated recommendations, which highlights changes made since the February 2021 edition.

Date of publication: 21/10/2021



## 4. Market infrastructure

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### 4.1 EMIR

#### (i) EU

##### **ESMA: Updated Q&A on the Implementation of EMIR**

Status: Final

ESMA has updated its Q&A on the implementation of the EMIR ((EU) No 648/2012) which is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are in line with the responses adopted by ESMA. It amended two questions on the topic of trade repositories: (i) to clarify that counterparties are not required to send valuation updates on the last day of a derivative and for intraday derivatives; and (ii) to specify the steps of the process on how trade repositories are expected to treat situations where the counterparty identified in a derivative has reported a change in the Legal Entity Identifier (LEI) due to a merger, acquisition or other corporate restructuring event or where the identifier of the counterparty has to be updated from BIC (or other code) to LEI because the entity has obtained the LEI.

Date of publication: 21/09/2021

#### (ii) International

##### **BCBS: Consultative report on the review of margining practices**

Status: Consultation

Deadline for the submission of comments: 12/01/2021

The BCBS, CPMI and IOSCO have invited comments on their joint consultative report on margining practices during the March 2020 market turmoil. This report presents analysis undertaken by an ad-hoc group – established by the BCBS, CPMI and IOSCO as part of the FSB's work programme on non-bank financial intermediation – examining whether and, if so, to what extent, margin calls were unexpectedly large in centrally and non-centrally cleared derivatives and securities markets. This report considers both initial margin and variation margin, centrally and non-centrally cleared markets (including clearing member-client dynamics), margin practice transparency, predictability and volatility. It also considers the liquidity management preparedness of market participants to meet margin calls and the availability of each jurisdiction's regulatory data.

On the basis of this analysis, the standard setters are consulting on six potential areas for further work, which may inform policy considerations, namely: (i) increasing transparency in centrally cleared markets; (ii) enhancing liquidity preparedness of market participants as well as liquidity disclosures; (iii) identifying data gaps in regulatory reporting; (iv) streamlining variation margin processes in centrally and non-centrally cleared markets; (v) evaluating the responsiveness of centrally cleared initial margin models to market stresses with a focus on impacts and implications for CCP resources and the wider financial system; and (vi) evaluating the responsiveness of non-centrally cleared initial margin models to market stresses.

Date of publication: 26/10/2021

### 4.2 Stock exchanges

#### (i) International

##### **CPMI: Call for ideas on solutions to expand PVP settlement**

Status: Consultation

Deadline for the submission of comments: 12/11/2021

The BCBS has published a statement from the Committee on Payments and Market Infrastructures (CPMI), which called for opinions and ideas on solutions to expand payment-versus-payment (PvP) settlement in order to inform its development of

proposals for increased PvP adoption by encouraging enhancements to existing PvP arrangements and/or the design of new public and/or private sector solutions. This emerged as a response to the 2019 BIS Triennial FX survey (Triennial), which illustrated that the FX settlement risk remains significant with the proportion of total trades settled globally with PvP protection estimated to be below 40%. The responses could address any of the following questions: (i) how the solution would achieve PvP; (ii) what FX products and currency pairs the solution would be well-suited and/or designed to settle; (iii) which aspects of the solution would incentivise and broaden user participation; (iv) which challenges faced by the market related to settling cross-border wholesale deliverable FX payments would the solution address and how it would do so; and (v) what roles the public sector and private sectors can play in the solution. The information collected will assist the CPMI in facilitating the increased adoption of PvP under Building Block 9 of the cross-border payments programme.

This call is directed to all interested parties, including commercial banks, e-money operators and other FinTech companies. The CPMI will hold a Q&A workshop on 5 November 2021 for engaging parties to ask follow-up questions.

**Date of publication:** 07/10/2021

## 5. Anti-money laundering

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### (i) Germany

#### **BaFin: Updated interpretative guidance on the German Money Laundering Act (*Aktualisierung der Auslegungs- und Anwendungshinweise zum Geldwäschegesetz*)**

Status: Final

BaFin has updated its interpretative guidance (general part) on the German Money Laundering Act (*Geldwäschegesetz* – GwG). This guidance amends the previous version of the interpretative guidance on the GwG to reflect the changes made to the GwG, mainly by the Law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 (*Transparenz-Finanzinformationsgesetz Geldwäsche* – TraFinG Gw). The latest of these changes have been applicable since 1 August 2021. BaFin has also published a [blackline version](#) of this guidance. The interpretative guidance applies to all obliged parties under the GwG who are under the supervision of BaFin pursuant to Section 50 No 1 of the GwG.

Date of publication: 27/10/2021

#### **BaFin: Note on the General Administrative Act on the arrangement of the storage of data in a file system in accordance with Section 24c(1) of the German Banking Act (*Hinweise zur Allgemeinverfügung zur Anordnung der Speicherung von Daten in einem Dateisystem nach § 24c Abs. 1 KWG*)**

Status: Final

BaFin has published a note regarding the [General Administrative Act](#), which stipulates that credit institutions must save the International Bank Account Numbers (IBAN) they have issued to payment service providers in a file system in accordance with Section 24c(1) of the German Banking Act (*Kreditwesengesetz* – KWG). The credit institutions must specify the names of the end customers to which the payment service companies pass the virtual IBANs.

The General Administrative Act is aimed at credit institutions within the meaning of Section 1(1) of the KWG.

Date of publication: 06/10/2021

### (ii) EU

#### **AFME: Report on AML transaction monitoring in the markets sector**

Status: Final

The Association for Financial Markets in Europe (AFME) has published a paper on firms' monitoring of financial transactions for suspicion of money laundering. This paper considers the effectiveness of the processes that make up a firm's AML transaction monitoring control framework, and provides a roadmap to support firms in designing and operating the most effective solution. This paper is based on survey results and interviews with banking firms, regulators, law enforcement agencies and financial intelligence units across Europe. AFME's conclusions are that, although current AML transaction monitoring systems are widely considered to offer limited effectiveness in the markets sector, there is much more that can – and should – be done to identify money laundering that may be falling beneath the radar. AFME notes that there is no quick fix solution for implementing a standard set of rules in an automated transaction monitoring system, rather investments in skills and technology are needed over a sustained period, and a hybrid approach of multiple techniques is likely to yield the best results. AFME has therefore designed a roadmap to support improved monitoring for firms.

Date of publication: 20/10/2021

## EP: In-depth analysis on preventing money laundering in the banking sector – reinforcing the supervisory and regulatory framework

Status: Final

The EU Parliament has published an in-depth analysis aimed at preventing money laundering in the banking sector by reinforcing the supervisory and regulatory framework. This paper provides an overview of current initiatives and actions aimed at reinforcing the AML supervisory and regulatory framework in the EU, in particular from a Banking Union perspective. This briefing includes: (i) the EU framework for fighting money laundering, including legislation (5th AML Directive) and various Commission and Council Action Plans; (ii) an overview of AML-prevention-relevant authorities at the EU and national level; (iii) the 2019 review of the founding regulations of the European Supervisory Authorities; and (iv) the latest proposed changes to the AML framework, as proposed by the Commission in July 2021.

Date of publication: 01/10/2021

### (iii) International

## FATF: High-level synopsis of the stocktake of the unintended consequences of the FATF standards

Status: Final

The FATF has published a high-level synopsis of a stocktake, which consolidates previous analysis of the unintended consequences resulting from incorrect implementation of the FATF standards. The report focuses on four key themes: de-risking, financial exclusion, undue targeting of non-profit organisations (NPOs) and curtailment of human rights (focusing on due process and procedural rights). The FATF's findings include that: (i) AML/CFT rules are not the main cause of de-risking, but can be a related factor, and AML/CFT improvements can be part of the solution, along with a proper implementation of the risk-based approach; and (ii) two main factors cause financial exclusion: (a) implementation issues at the country or private sector level, which leads to the misapplication of the FATF Standards, and in particular, the failure to use the proportionality that is central to the risk-based approach; and (b) the FATF's standards, evaluation processes and other activities do not adequately encourage authorities, the private sector and assessment teams to understand the impact of financial exclusion on ML/TF risks.

The FATF notes that the analysis shows that it is already actively responding to unintended consequences, with a significant percentage of the FATF's activity and attention over recent years devoted to mitigating de-risking, financial exclusion, and undue targeting of NPOs. During the next phase of this project, the FATF will identify and consider potential options to mitigate these unintended consequences.

Date of publication: 27/10/2021

## FATF: Cross-border payments – survey results on implementation of the FATF standards

Status: Final

The FATF has published the results to its survey, run jointly with the BCBS, on key areas of divergence in implementing AML/CFT requirements, which create frictions for cross-border payments and their potential solutions. The survey results highlight that: (i) a lack of a risk-based approach and inconsistent implementation of the AML/CFT requirements increase cost, reduce speed, limit access and reduce transparency; (ii) inconsistent national approaches cause the biggest obstacles for the private sector in: (a) identifying and verifying customers and beneficial owners; (b) sanctions screening; (c) sending and receiving customer/transaction information; and (d) establishing and maintaining correspondent banking relationships; (iii) key drivers of these frictions include conflicting laws and regulations. Challenges caused by varied interpretation and implementation of data protection and privacy rules and data localisation requirements also have a cross-cutting impact across the whole range of areas of divergence; and (iv) frictions are also caused by AML/CFT measures implemented at national levels, which are not stemming from the FATF standards. The FATF will take a holistic view on the challenges identified, including through ongoing dialogue and engagement with the private sector in order to identify potential solutions.

Date of publication: 22/10/2021

## **FATF: Consultation on the revisions to recommendation 24 and the interpretive note**

**Status: Consultation**

**Deadline for the submission of comments: 03/12/2021**

The FATF has published a consultation on revisions to recommendation 24 on the transparency and beneficial ownership of legal persons. The revisions seek to reinforce the recommendation to ensure greater transparency around the beneficial ownership of legal persons, and take action to mitigate the risks: the FATF ask for views in particular in relation to: (i) the multipronged approach to collection of beneficial ownership information. The FATF proposes a requirement for a public authority or body to hold beneficial ownership information. Countries would decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision; (ii) bearer shares and nominee arrangements: the FATF's questions include whether bearer shares and bearer share warrants without any traceability should be subject to additional controls and whether nominee arrangements should be subject to new disclosure requirements; (iii) whether countries should be required to assess the ML/TF risks of foreign-created legal persons; (iv) a risk-based approach to verifying beneficial ownership information; and (v) requirements on access to information.

The FATF will consider responses at its February 2022 plenary meeting.

**Date of publication: 22/10/2021**

## 6. Payments

### 6.1 Payment services/E-money

#### (i) EU

##### **EBA: Consultation on draft RTS amending the Commission Delegated Regulation (EU) 2018/389 supplementing PSD 2 with regard to RTS for strong customer authentication and common and secure open standards of communication**

Status: Consultation

Deadline for the submission of comments: 25/11/2021

The EBA has launched a consultation on the amendment of its RTS on strong customer authentication (SCA) and secure communication (CSC) under PSD2 with regard to the 90-day exemption from SCA for account access. The proposed amendment aims to address a number of issues that the EBA has identified in the application of the exemption, particularly in cases where account servicing payment service providers have not made use of the exemption and request SCA for each account access, or where they request SCA more frequently than every 90 days, as allowed by the RTS. To address the impact of these issues on account information service providers' (AISP) services, the EBA proposes to introduce a new mandatory exemption from SCA for the specific use case when the access is done through an AISP that is subject to certain safeguards and conditions aimed at ensuring the safety of the customers' data. For the other case where customers access the data directly, the EBA proposes to retain the exemption in Article 10 of the RTS to be voluntary, as no specific issues have been identified in such cases. However, to ensure a level playing field among all PSPs, the EBA also proposes to extend the 90-day timeline in Article 10 for the renewal of SCA to the same 180-day period for the renewal of SCA when the account data is accessed through an AISP.

Date of publication: 28/10/2021

##### **EBA: Clarifications to the seventh set of issues raised by its industry working group on Application Programming Interfaces under PSD2**

Status: Final

The EBA has published clarifications to a seventh set of issues that had been raised by participants of its industry working group on Application Programming Interfaces (APIs) under the Payment Services Directive (PSD2). The clarifications respond to issues raised on downtime of dedicated interfaces, payment status/rejection reasons, account servicing payment service providers (ASPSPs) restricting access in case of embedded redirection, scope of the bank-offered consent, inability to initiate bulk payments via APIs, and whether the Electronic Banking Internet Communication Standard (EBICS) is within the scope of PSD2.

Date of publication: 20/10/2021

##### **EBA: Repeal of Guidelines on the security of internet payments under PSD1**

Status: Final

The EBA has repealed its Guidelines on the security of internet payments under the former Payments Services Directive (PSD1). These Guidelines have been superseded by PSD2 and the related instruments the EBA has developed in support of PSD2, which incorporate, and go beyond, the requirements set out in these Guidelines.

Date of publication: 14/10/2021



## (ii) International

### FSB: Report on global targets for enhancing cross-border payments and progress report

Status: Final

The FSB has published a progress report on the first year of the G20 Roadmap for enhancing cross-border payments, together with specific quantitative global targets for addressing the challenges of cost, speed, transparency and access faced by cross-border payments. It notes that most of the milestones set by the Roadmap for 2021 have been successfully completed or are close to finalisation. The next stage of work in 2022 will include the development of specific proposals for material improvements of underlying systems and arrangements, as well as the development of new systems. This will require global coordination, sustained political support and investment in systems, processes and technologies. The global targets are divided between three market segments: wholesale, retail, and remittances. An implementation approach for monitoring progress toward the targets will be developed in 2022.

By October 2022, the FSB will provide a report with further details of the implementation approach for progress monitoring. The FSB will publish an interim report in June 2022 on progress in developing the implementation approach.

- [Final report on targets for addressing the four challenges of cross-border payments](#)
- [Progress report on the G20 Roadmap for enhancing cross-border payments](#)

Date of publication: 13/10/2021

## 7. Institutional supervisory framework

### (i) EU

#### EC: European Commission work programme 2022

##### Status: Final

The EC has published a communication (COM(2021) 645) outlining its work programme for 2022 and setting out the next steps in its agenda towards a greener, fairer, more digital and more resilient post-Covid-19 Europe. Additionally, the EC published the [annexes](#) to the 2022 work programme and two factsheets. The annexes include: (i) new policy and legislative initiatives – Annex I contains 42 new Commission initiatives across all six political priorities of President von der Leyen’s Political Guidelines. Importantly, the EC intends to deliver an initiative on instant payments within the EU. A legislative proposal is expected in Q2 2022; (ii) the priority pending proposals in 76 areas where the EC requests that the co-legislators take rapid action. Important proposals include: proposal for a Regulation on digital operational resilience for the EU financial sector (DORA); proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT); proposal for a Regulation on markets in crypto-assets (MICA); proposals designed to strengthen and modernise the EU anti-money laundering (AML) and counter-terrorist financing (CTF) framework; proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral; proposal for a Regulation amending the Single Resolution Mechanism Regulation (806/2014) to establish a European Deposit Insurance Scheme; and proposal for a Directive on consumer credits. One [factsheet](#) briefly outlines the 2022 Commission Work Programme’s timeline and structure, while the other [factsheet](#) summarises Annex I.

Date of publication: 19/10/2021

#### ESAs: Sectoral reports on the independence of NCAs

##### Status: Final

The European Supervisory Authorities (ESAs) have each published an individual report on the supervisory independence of national competent authorities (NCAs) in their sectors. The reports’ findings are based on self-assessment by the NCAs, and highlight that their independence is multi-faceted and dependent on a number of legal, institutional, operational and cultural factors. The three ESAs seek to factually represent the arrangements and practices reported by NCAs without assessing the independence of individual NCAs. The ESAs consider that the reports can support NCAs in assessing whether it might be desirable to seek any legislative or regulatory amendment to further improve the framework underpinning their independence, while providing the ESAs themselves with helpful information that may be considered for any future work regarding supervisory independence.

- [ESMA Report on the independence of National Competent Authorities \(ESMA42-110-3265\)](#)
- [EBA Report on the supervisory independence of Competent Authorities \(EBA/REP/2021/29\)](#)
- [EIOPA Report on independence of National Competent Authorities \(EIOPA-BoS-21/278\)](#)

Date of publication: 18/10/2021

#### EBA: 2022 Work Programme

##### Status: Final

The EBA has published its annual work programme for 2022, which describes its activities and key strategic areas of work for the coming year. For 2022, the EBA has five “vertical” strategic priorities: (i) to monitor and update the prudential framework for supervision and resolution – among other things, the EBA will focus on further developing its resolvability guidelines, monitoring the implementation of the framework and fostering convergence, and supporting the EC in the crisis management and deposit insurance review; (ii) to revisit and strengthen the EU-wide stress-testing framework – the EBA will focus on putting into practice the revised new framework and work on the new methodology for the next EU-wide stress test; (iii) to continue its work on its data strategy and leverage the European centralised infrastructure for supervisory data to bring more value to the EBA’s stakeholders through data – the EBA will start collecting from the ECB payment fraud data under the EBA Guidelines on fraud reporting for all EU countries, as well as data stemming from the new CRD/CRR package and supervisory data relating to investment firms; (iv) Digital Resilience, FinTech and Innovation – among other things, the EBA will start

preparing a number of technical standards and guidelines for a supervisory role for crypto-asset issuers and a role in the oversight of third-party providers, which are new mandates deriving from the Digital Operational Resilience Act and Markets in Crypto-assets Regulation; and (v) to fight AML/CFT and contribute to a new EU infrastructure – among other things, the EBA intends to use its database proactively to ensure that ML/TF risks are addressed by competent authorities and financial institutions in a timely and effective manner.

The EBA has also set two horizontal priorities: (a) to provide tools to measure and manage environmental, social and corporate governance (ESG) risks; and (b) to monitor and mitigate the impact of the Covid-19 pandemic.

Date of publication: 05/10/2021

## **ESMA: Summary of Conclusions**

Status: Final

ESMA has published a summary of conclusions of its management board. Topics discussed include: (i) the exceptional delay of the second payment by Credit Rating Agencies (CRAs); (ii) the supervision of data reporting service providers and benchmark administrators; (iii) the 2021 supervisory convergence heat map; (iv) the level of existing and emerging risks in EU financial markets, in particular cyber security, procyclicality risk in central clearing and the impact of the Covid-19 pandemic; and (v) the Union Strategic Supervisory Priorities.

Date of publication: 01/10/2021

## **(ii) Eurozone**

### **ECB: Guideline (EU) 2021/1829 amending Guideline (EU) 2017/2335 on the procedures for the collection of granular credit and credit risk data (ECB/2021/47)**

Status: Published in the OJ

Date of entry into force: 13/10/2021

The Guideline (EU) 2021/1829 amending Guideline (EU) 2017/2335 on the procedures for the collection of granular credit and credit risk data has been published in the OJ. It is addressed to the national central banks of the Member States whose currency is the Euro.

Date of publication: 19/10/2021

### **ECB: Regulation (EU) 2021/1814 amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions (ECB/2021/46)**

Status: Published in the OJ

Date of entry into force: 03/11/2021

The Regulation (EU) 2021/1814 amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions has been published in the OJ. In particular, the amendment introduces a new formula and method for calculating sanctions which the ECB may impose in the exercise of its non-supervisory central bank functions by referring to the new ECB Decision (EU) 2021/1815 (see below).

Date of publication: 15/10/2021

### **ECB: Decision (EU) 2021/1815 on the methodology applied for the calculation of sanctions for non-compliance with the requirement to hold minimum reserves and related minimum reserve requirements (ECB/2021/45)**

Status: Published in the OJ

Date of entry into force: 03/11/2021

The Decision (EU) 2021/1815 on the methodology applied for the calculation of sanctions for non-compliance with the requirement to hold minimum reserves and related minimum reserve requirements has been published in the OJ. It specifies a

new formula and method for calculating sanctions which the ECB may impose in the exercise of its non-supervisory central bank functions.

Date of publication: 15/10/2021

### **ECB: Opinion on an Austrian draft law re-enacting the Federal Law on the establishment of a Fiscal Advisory Council and establishing a Productivity Board**

**Status: Final**

In response to a request from the Austrian Federal Ministry of Finance, the ECB has published an opinion on a draft law in relation to the Oesterreichische Nationalbank (OeNB) which aims to re-enact the Federal Law on the establishment of a Fiscal Advisory Council and to establish a Productivity Board. This opinion identifies breaches of law within both the conferral of new tasks on the OeNB in relation to the Productivity Board and the OeNB's financing of the Fiscal Advisory Council.

Date of publication: 06/10/2021



## 8. Investment funds

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### 8.1 Product regulation

#### (a) AIF

##### (i) Germany

**BaFin: Updated Guidance Notice on fees and charges levied in relation to cross-border activities pursuant to Article 10(1) of the Cross-border Fund Distribution Regulation (*Angepasstes Merkblatt für Gebühren und Abgaben im Zusammenhang mit grenzüberschreitenden Tätigkeiten gemäß Artikel 10 Abs. 1 der Cross-border Fund Distribution Regulation*)**

Status: Final

BaFin has updated its Guidance Notice on fees and charges levied in relation to cross-border activities of AIFMs, EuSEF managers, EuVECA managers and UCITS management companies referred to in Article 10(1) of the Cross-border Fund Distribution Regulation (Regulation (EU) 2019/1156) in order to reflect the changes to these fees and charges following the entering into force of the [Special Fees Regulation of the Federal Ministry of Finance on Financial Services Supervision](#) (*Finanzdienstleistungsaufsichtsgebührenverordnung – FinDAGebV*) on 1 October 2021.

These changes also entailed amendments of the information on fees and charges provided in the following Guidance Notices, which have therefore been updated on 1 October 2021:

- Guidance Notice on marketing of EU UCITS in Germany pursuant to Section 310 of the German Investment Code (*Kapitalanlagegesetzbuch – KAGB*) (*Merkblatt zum Vertrieb von EU-OGAW gemäß § 310 KAGB*)
- Guidance Notice on notifications pursuant to Section 320 of the KAGB (*Merkblatt für Anzeigen nach § 320 KAGB*)
- Guidance Notice on distribution pursuant to Section 323 of the KAGB (*Merkblatt zum Vertrieb gemäß § 323 KAGB*)
- Guidance Notice on distribution pursuant to Section 329 of the KAGB (*Merkblatt zum Vertrieb gemäß § 329 KAGB*)
- Guidance Notice on marketing of AIFs pursuant to Section 331 of the KAGB (*Merkblatt zum Vertrieb von EU-AIF oder inländischen AIF in der EU oder im EWR gemäß § 331 KAGB*)

Date of publication: 01/10/2021

#### (b) UCITS

##### (i) Germany

**BaFin: Updated Guidance Notice on fees and charges levied in relation to cross-border activities pursuant to Article 10(1) of the Cross-border fund distribution regulation (*Angepasstes Merkblatt für Gebühren und Abgaben im Zusammenhang mit grenzüberschreitenden Tätigkeiten gemäß Artikel 10 Abs. 1 der Cross-border Fund Distribution Regulation*)**

Status: Final

BaFin has updated its Guidance Notice on fees and charges levied in relation to cross-border activities of AIFMs, EuSEF managers, EuVECA managers and UCITS management companies referred to in Article 10(1) of the Cross-border Fund Distribution Regulation (Regulation (EU) 2019/1156). For more information, please see section 8.1(a) above.

Date of publication: 01/10/2021

**(ii) EU****ECON: Draft report on the proposal for a Directive amending Directive 2009/65/EC as regards the use of KIDs by management companies of UCITS****Status: Draft**

The European Parliament's Economic and Monetary Affairs Committee (ECON) has published a draft report on the proposal for a Directive amending the UCITS Directive (2009/65/EC) as regards the use of key information documents (KIDs) by management companies of undertakings for collective investment in transferable securities (UCITS). It contains draft EP legislative resolutions, setting out suggested amendments to the proposed Directive, which the EC had adopted in September 2021.

Date of publication: 18/10/2021

**ECON: Draft report on the proposal for a Regulation amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS****Status: Draft**

The ECON has published a draft report on the proposal for a Regulation amending the PRIIPs Regulation ((EU) No 1286/2014) as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS. For more information, please see section 3.5 above.

Date of publication: 18/10/2021

**8.2 Prudential regulation****(a) Compliance****(i) International****FSB: Policy proposals to enhance money market fund resilience****Status: Final**

The FSB has published its final report with policy proposals, including a framework and toolkit, to enhance money market fund (MMF) resilience. The report, which was delivered to the G20, is a key deliverable of the FSB's work programme on non-bank financial intermediation for 2021. The FSB explains that MMFs are subject to two broad types of vulnerabilities that can be mutually reinforcing: they are susceptible to sudden and disruptive redemptions, and they may face challenges in selling assets, particularly under stressed conditions. The FSB considers the likely effects of a broad range of policy options to address these vulnerabilities. The policy toolkit includes mechanisms to: (a) impose on redeeming fund investors the cost of their redemptions; (b) absorb credit losses; (c) address regulatory thresholds that may give rise to cliff effects; and (d) reduce liquidity transformation. In terms of next steps: (i) FSB members are assessing, or will assess, MMF vulnerabilities in their jurisdiction and will address them using the framework and policy toolkit in this report, in line with their domestic legal frameworks; (ii) the FSB will, with the IOSCO, review progress made by member jurisdictions in adopting reforms, carrying out a stocktake by the end of 2023, followed up with an assessment by 2026; (iii) the IOSCO plans to revisit its Policy Recommendations for MMFs in light of the report; and (iv) the FSB and IOSCO intend to carry out follow-up work, complementing MMF policy reforms, to enhance the functioning and resilience of short-term funding markets.

Date of publication: 11/10/2021

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

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### 9.1 Mortgage credits

#### (i) EU

**BaFin: General Administrative Act regarding the reciprocal application of Luxembourg's loan-to-value limits for mortgage loans on private residential real estate (*Allgemeinverfügung zur reziproken Anwendung der Loan-to-Value-Begrenzung Luxemburgs für private Wohnimmobilienfinanzierungen*)**

Status: Final

Date of entry into force: 01/12/2021

BaFin has published the General Administrative Act regarding the reciprocal application of Luxembourg's loan-to-value (LTV) limits for mortgage loans on private residential real estate. It has issued this Act pursuant to Section 48u(7) of the German Banking Act (*Kreditwesengesetz* – KWG) to recognise these LTV limits, which have been enacted in Luxembourg by the Commission de Surveillance du Secteur Financier (CSSF) with effect from 1 January 2021. The LTV describes the ratio of the loan amount to the market value of a property. With this Act, BaFin implements a [Recommendation of the ESRB](#) published on 11 June 2021. This Act is considered promulgated as of 20 October 2021.

Date of publication: 19/10/2021

## 10. Special topics

### 10.1 Covid-19

#### (a) Other

##### (i) EU

#### ESMA: Annual public statement on European common enforcement priorities

Status: Final

ESMA has published its annual public statement on European common enforcement priorities. This year's priorities cover the impact of the Covid-19 pandemic and climate-related matters, provide guidance on the measurement of expected credit losses, and highlight disclosure obligations pursuant to Article 8 of the Taxonomy Regulation.

Date of publication: 29/10/2021

##### (ii) International

#### FSB: Report on lessons learnt from the Covid-19 pandemic from a financial stability perspective

Status: Final

The FSB has published a report on lessons learnt from the Covid-19 pandemic from a financial stability perspective. This final report updates the [July interim report](#), and outlines actions by the FSB and other standard-setting bodies in response to those lessons. Key lessons and actions include: (i) market and institutional resilience. The FSB notes that the functioning of bank capital and liquidity buffers may warrant further attention – the BCBS will update its overall analysis on the lessons from the pandemic. This, along with other relevant work and discussions, will serve as an input to the FSB report to the G20 in 2022 on how to improve functionality of international financial standards and reduce procyclicality to safeguard global financial stability and support an equitable recovery from the Covid-19 pandemic; (ii) non-bank financial intermediation (NBFI). The March 2020 market turmoil underscored the need to strengthen resilience in the NBFI sector. The FSB is taking forward a comprehensive work programme to enhance NBFI resilience; (iii) operational resilience. The Covid-19 pandemic has highlighted the importance of effective operational risk management being in place before a shock hits. The FSB will develop best practices for the types of information authorities may require in relation to cyber incidents to promote financial stability. The FSB is also launching further work related to third-party risk management and outsourcing, and will develop expectations for financial authorities' use in oversight of financial institutions' reliance on critical service providers; and (iv) crisis preparedness. The pandemic highlighted the importance of effective cross-border cooperation, coordination and risk-sharing. The FSB will identify a set of good practices and emerging practices of crisis management groups to enhance preparedness for, and facilitate the management and resolution of, a cross-border financial crisis affecting a global systemically important bank.

The report also highlights broader policy issues that warrant further attention, including monitoring Covid-19 policy responses as they are wound down to identify systemic vulnerabilities early on, promoting resilience amidst rapid technological change and completing the remaining elements of the post-2008 crisis reform agenda. In addition, the FSB will examine how macroprudential policy has functioned during the pandemic and its aftermath.

Date of publication: 28/10/2021

#### FSB: Letter from FSB Chair to G20 Leaders

Status: Final

The FSB has released a letter (dated 25 October 2021) from Randal K. Quarles, the FSB Chair, to G20 Leaders ahead of their October Summit. Among other things, the letter covers: (i) Lessons learnt from the Covid-19 pandemic for global cooperation on financial stability. Mr Quarles notes that international cooperation through the G20 has made an important contribution to global financial stability. Those parts of the system where implementation is most advanced – banks and financial market



infrastructures – displayed greater resilience and were able to cushion, rather than amplify, the shock of the Covid-19 pandemic. Not all sectors displayed the same strengths, however. Short-term funding markets, in particular, experienced acute stress in March 2020 and the FSB has been working to address weaknesses in certain sectors of non-bank financial intermediation that were brought into sharper focus during this time. Additionally, the FSB also drew important lessons regarding operational resilience, cyber threats, and third-party relationships, among other issues; (ii) harnessing the benefits of technology while containing its risks. The Covid-19 pandemic gave a boost to the use of digital financial services, in particular various forms of digital payments. The FSB states that growth in this area reinforces the need to assess the financial stability implications of financial innovation, particularly innovation with a technological component. Further, crypto-assets in their various forms raise particular challenges, and the FSB will continue to closely monitor these markets and their implications for financial stability. Mr Quarles also referred to the G20 roadmap on enhancing cross-border payments, on which the FSB has recently published a progress report; (iii) strengthening understanding of climate-related risks. The large and growing number of international initiatives underway to understand financial risks posed by climate change reflect the increased attention to this topic, but also highlight the need for coordination. Mr Quarles refers to the FSB's climate roadmap; and (iv) charting a path forward. The Covid-19 pandemic underscored that threats to global financial stability can emerge quickly and from a wide variety of sources. A top priority for the FSB has therefore been to develop a more systematic way of assessing vulnerabilities across the global financial system. As a result, it published its new Financial Stability Surveillance Framework in September. The letter concludes by Mr Quarles noting that FSB Vice-Chair, Klaas Knot, will take over as Chair on 2 December 2021.

Date of publication: 28/10/2021

### **FSB: Speech on financial stability and coordination in times of crisis**

Status: Final

The FSB has published a speech by Randal K. Quarles, Chair of the FSB, on financial stability and coordination in times of crisis. Within the speech, Mr Quarles reflected on the role that the FSB played during the Covid-19 crisis. Points of interest in the speech include: (i) the reaction and response to the crisis – Mr Quarles underlined how the FSB was able to leverage cooperation to ensure stability and contain spillovers. This was mainly due to the openness of information sharing, allowing FSB members to quickly identify areas of concern that required action, the several FSB expert groups who examined and assessed specific issues as they unfolded, and the broad stakeholder input; (ii) the Covid-19 crisis showed that non-bank financial intermediation is a critical area for action due to “liquidity transformation”. Mr Quarles noted in the speech that “liquidity transformation” creates incentives for money market fund investors to redeem when market liquidity becomes scarce; (iii) the key lessons learnt from the Covid-19 crisis – Mr Quarles highlighted that the global financial system entered the latest crisis more resilient than the last, the importance of policy flexibility for each of the jurisdictions, and that there are instances where policy may fail to have the desired effect; and (iv) Mr K. Quarles mentioned refreshing the FSB workplan, with a particular focus on non-bank financial intermediation, climate-related financial risk, crypto-assets and stablecoins.

Date of publication: 18/10/2021

## 10.2 FinTech/Digital finance

### **(i) Germany**

**BaFin: Consultation 19/2021 on a draft Regulation on the detailed arrangement of audits pursuant to Section 32f of the German Securities Trading Act for crowdfunding service providers pursuant to Regulation (EU) 2020/1503 (*Konsultation 19/2021 des Entwurfs einer Verordnung zur näheren Ausgestaltung der Prüfungen nach § 32f WpHG bei Schwarmfinanzierungsdienstleistern nach der Verordnung (EU) 2020/1503*)**

Status: Consultation

Deadline for the submission of comments: 19/11/2021

BaFin has published a consultation on a draft Regulation on the detailed arrangement of audits pursuant to Section 32f of the German Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG) for crowdfunding service providers pursuant to Regulation (EU) 2020/1503. With this draft Regulation, BaFin, in coordination with the Federal Minister of Finance (*Bundesfinanzministerium* – BMF), intends to further specify key aspects of the audit procedures provided for by Section 32f of the WpHG.

Date of publication: 26/10/2021

**(ii) EU****ESMA: Speech on its role as a data driven regulator and supervisor****Status: Final**

ESMA has published a speech by Natasha Cazenave, Executive Director, on ESMA's 2022 priorities with a particular focus on data standardisation and high quality data. Points of interest include: (i) ESMA acknowledges the costs and implementation challenges faced by market participants in meeting reporting requirements and, while implementation costs are a recurring theme in ESMA's discussions with market participants, in very few instances were those costs clearly specified; (ii) ESMA encourages firms to take a company-wide, rather than a regime-specific, approach to reporting. It is committed to further engaging with market participants to discuss ways to streamline and simplify the reporting flows and requirements; (iii) the issues highlighted in the EMIR and SFTR data quality report will be among ESMA's future key areas of focus; and (iv) Ms Cazenave considers that new technological trends, particularly RegTech and SupTech, will have an important impact on the way supervisory data is generated by reporting entities, provided to the authorities, and subsequently used.

Date of publication: 08/10/2021

**(iii) International****FATF: Updated Guidance for a risk-based approach to virtual assets and virtual asset service providers****Status: Final**

The FATF has published its updated 2019 Guidance for a risk-based approach to virtual assets (VAs) and virtual asset service providers (VASPs), as part of its ongoing monitoring of the virtual assets and VASP sector, as well as an ['In Brief' document](#) providing a summary of the sections of the guidance and the key changes made. The guidance is intended to both help national authorities in understanding and developing regulatory and supervisory responses to VA activities and VASPs, and help private sector entities seeking to engage in VA activities in understanding their AML/CFT obligations and how they can effectively comply with these requirements.

The 2021 Guidance includes updates focusing on the following six key areas: (i) clarification of the definitions of virtual assets and VASPs; (ii) guidance on how the FATF Standards apply to stablecoins; (iii) additional guidance on the risks and the tools available to countries to address the money laundering and terrorist financing risks for peer-to-peer transactions; (iv) updated guidance on the licensing and registration of VASPs; (v) additional guidance for the public and private sectors on the implementation of the "travel rule"; and (vi) principles of information-sharing and cooperation among VASP Supervisors.

The FATF will remain vigilant and will closely monitor the virtual assets and VASP sector for any material changes that necessitate further revision or clarification of the FATF Standards. This includes in relation to areas covered in the Guidance such as stablecoins, peer-to-peer transactions, non-fungible tokens and decentralised finance.

Date of publication: 28/10/2021

**FSB: Progress report on the regulation, supervision and oversight of "global stablecoin" arrangements****Status: Final**

The Financial Stability Board (FSB) has published a report on the progress made on the implementation of its high-level recommendations for the regulation, supervision and oversight of "global stablecoin" (GSC) arrangements. The report: (i) discusses key market and regulatory developments since the publication of the FSB high-level recommendations, in particular the continuing growth of market capitalisation of stablecoins throughout 2020/21; (ii) takes stock of the implementation of the FSB high-level recommendations across jurisdictions, which it deems insufficiently coordinated to effectively address potential market fragmentation and risks to financial stability that might arise from an increasing use of stablecoins; (iii) describes the status of the review of the existing frameworks, standards, guidelines and principles published by standard-setting bodies (SSB), including the BCBS, CPMI and IOSCOI; and (iv) identifies areas for consideration for potential further international work.

Further adjustments on international level would, in particular, be useful regarding: (a) conditions for qualifying a stablecoin as a GSC; (b) prudential, investor protection and other requirements for issuers, custodians and providers of other GSC functions

(eg wallet providers); (c) redemption rights; (d) cross-border and cross-sectoral cooperation and coordination; and (e) mutual recognition and deference.

The FSB will continue to support the effective implementation of the FSB high-level recommendations and facilitate coordination among SSBs. It will therefore keep monitoring FinTech developments and potential financial stability risks, including risks arising from the growth of crypto-assets and stablecoins. The FSB will undertake a review of its recommendations in January 2022, to identify how any gaps could be addressed by existing frameworks. If needed, the FSB will update its recommendations.

Date of publication: 07/10/2021

### **IOSCO: Consultative report on the application of the principles for financial market infrastructures to stablecoin arrangements**

Status: Consultation

Deadline for the submission of comments: 01/12/2021

The IOSCO, together with the Committee on Payments and Market Infrastructures (CPMI), has published for public consultation a preliminary report on the application of the principles for financial market infrastructures (PFMI) to systemically important stablecoin arrangements (SAs), which confirms and clarifies that stablecoin arrangements should observe international standards for payment, clearing and settlement systems.

The view of the IOSCO and CPMI is that the SA's function of transferring of coins between users (transfer function) is comparable to the transfer function performed by other types of financial market infrastructure (FMI). Therefore, an SA performing a transfer function is considered an FMI for the purpose of applying the PFMI, and if the SA is determined by relevant authorities to be systemically important, the PFMI principles applying to payments systems will entirely apply to such SA. The report provides: (i) considerations to assist relevant authorities in determining whether an SA is systemically important. Authorities should consider the size of the SA, the nature and risk profile of the SA's activity, the interconnectedness and interdependencies of the SA, as well as its substitutability; and (ii) guidance on the application of the PFMI with respect to these features of SAs. The guidance relates to governance (principle 2), comprehensive risk management (principle 3), settlement finality (principle 8) and money settlements (principle 9). The report also sets out that the CPMI and IOSCO may further examine regulatory, supervisory and oversight issues associated with SAs and coordinate their examinations with other standard-setting bodies.

Date of publication: 06/10/2021

## 10.3 Sustainable finance

### (i) **Germany**

#### **BaFin: Report on sustainability risks in the German financial sector (*Sachstandserhebung zu Nachhaltigkeitsrisiken im deutschen Finanzsektor*)**

Status: Final

BaFin has published a report on sustainability risks in the German financial sector, which is based on a survey among institutions under direct supervision by BaFin. It determines the extent to which the [Guidance Notice on Dealing with Sustainability Risks](#), which was first published by BaFin in 2019, has been implemented in the German financial sector: while almost all German financial institutions are already addressing sustainability risks, there are major differences in implementation. The survey results may help companies to assess themselves in comparison with competitors and show where there is still a need for action.

Date of publication: 15/10/2021

**(ii) EU****ESAs: Final Report on draft RTS for taxonomy-related product disclosures****Status: Final**

The ESAs have published draft RTS on disclosures in relation to products which make sustainable investments contributing to environmental objectives under the Sustainable Finance Disclosure Regulation (SFDR) as amended by the Taxonomy Regulation. The draft RTS propose: (i) for products under Articles 5 and 6 of the Taxonomy Regulation – the inclusion of pre-contractual and periodic disclosures that identify the environmental objectives to which the product contributes and show how and to what extent the product's investments are aligned with the EU Taxonomy. This consists of two graphs showing the taxonomy-alignment of investments of the financial product based on a specified methodology that calculates that alignment, and an assurance provided by an auditor or a review by a third party that the economic activities funded by the product that qualify as environmentally sustainable are compliant with the detailed criteria of the Taxonomy Regulation; and (ii) for pre-contractual and periodic disclosures, the inclusion of annexes with amendments to the mandatory templates for financial products that promote environmental and/or social characteristics or have a sustainable investment objective as defined in the SFDR, so that they include additional disclosures for Article 5 and Article 6 products under the Taxonomy Regulation. The draft RTS also aim to establish a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation. Regarding the specific issue of the treatment of sovereign bonds in the representation of the taxonomy-alignment of investments, the ESAs decided to require the disclosure of the taxonomy-alignment of investments in two ways: one including sovereign exposures and one excluding sovereign exposures from the calculation. The EC will scrutinise the draft RTS and decide whether to endorse them within three months of their publication.

Date of publication: 22/10/2021

**(iii) Eurozone****ECB: Speech on requiring banks to translate 2050 targets into milestones****Status: Final**

The ECB has published a speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on requiring banks to translate 2050 targets into milestones. In his speech, Mr Elderson notes, among other things, that: (i) banks now need to start thinking about the next important step in risk management, which will require them to look at the 30 years ahead and devise intermediate targets for risk exposures that can render them fit for a carbon-neutral economy by 2050; (ii) the ECB will soon publish the results and the good practices of banks' self-assessments against its supervisory expectations; (iii) both the legislative initiatives underway and the industry's own acknowledgement of the importance of moving to transition-robust business models imply that banks need transition plans compatible with EU policies implementing the Paris Agreement, with concrete intermediate milestones, to enhance their long-term strategies and decision-making; and (iv) these transition plans should highlight banks' alignment and potential divergences with the relevant policy objectives through which the EU implements the Paris Agreement. They should be part of a bank's strategy-setting and be closely linked to its business model and business plan, and contain concrete intermediate milestones from now until 2050 and the associated key and performance indicators so that the bank's management and the competent authorities can at all times understand the risks arising from a possible misalignment with the transition path. Mr Elderson notes that if banks fail to meet these milestones, competent authorities will have to take appropriate measures to ensure that this failure does not result in financial risks.

Date of publication: 20/10/2021

**ECB: Letter on Methodology of the SSM-wide climate risk stress test 2022****Status: Final**

The ECB has published a letter it sent to banks announcing important information regarding participation in the 2022 ECB Climate Risk Stress Test (2022 CST), with a [methodological note](#) as attachment. The output of this exercise will be integrated into the Supervisory Review and Evaluation Process (SREP) using a qualitative approach. The stress test comprises three distinct modules: (i) an overarching questionnaire to assess how banks are building their climate stress test capabilities for use as a risk

management tool; (ii) a peer benchmark analysis to compare banks across a common set of climate risk metrics; and (iii) a bottom-up stress test targeting transition and physical risks.

The ECB will conduct the CST 2022 alongside other ECB supervisory initiatives on climate-related and environmental risk in 2022, including a Thematic Review of banks' climate-related and environmental risk management practices, results will be included in the SREP.

Date of publication: 18/10/2021

#### **(iv) International**

##### **NGFS: Progress report on the implementation of the recommendations of its Guide for Supervisors**

Status: Final

The Network for Greening the Financial System (NGFS) has published a progress report on the implementation of the recommendations of its Guide for Supervisors. The report assesses the progress made by supervisors in integrating climate related and environmental risks into their supervisory frameworks, and identifies 12 focus areas to better assist supervisors in this endeavour. The NGFS has found that supervisors have made noticeable progress, particularly on integrating climate-related risks into their work, though progress on the broader concept of environmental risks is slower. The focus areas are supported by practical guidance and case studies, providing actionable tools for supervisors at varying stages of progress in incorporating climate-related and environmental risks into supervisory scope, strategy and organisational framework, risk identification and assessment, and the setting of supervisory expectations – including on disclosures – and their enforcement. The report also provides a deeper dive into a few identified areas that were covered in less detail in the NGFS Guide, especially environmental risks and disclosure. The NGFS calls for further progress to fully embed climate-related and – with even more room for headway – other environmental risks into supervisory frameworks. Common challenges identified include data gaps, lack of harmonised methodologies and risk metrics, and insufficient internal capacity and resources.

Date of publication: 26/10/2021

##### **NGFS: Progress report on global supervisory and central bank climate scenario exercises**

Status: Final

The NGFS has published a progress report on global supervisory and central bank climate scenario exercises. This progress report sets out how a growing number of NGFS members, across all continents, are using climate scenarios to identify, assess and understand climate risks in their economies and financial systems.

Date of publication: 19/10/2021

##### **FSB: 2021 status report by the Task Force on Climate-related Financial Disclosures**

Status: Final

The FSB has published a 2021 status report by the Task Force on Climate-related Financial Disclosures (TCFD), which sets out the further progress in TCFD-aligned disclosures by firms. The report findings include that: (i) disclosure of climate-related financial information aligned with the TCFD recommendations has accelerated over the past year, growing by nine percentage points in 2020 compared to four percentage points in 2019, and over 50% of firms disclosed their climate-related risks and opportunities. However, the report notes that significant progress is still needed; (ii) Europe remains the leading region for disclosures; and (iii) as support from the private sector has grown, governments around the world have begun to codify aspects of the recommendations into policy and regulation. Brazil, the EU, Hong Kong, Japan, New Zealand, Singapore, Switzerland, and the UK have announced requirements for domestic organisations to report in alignment with the TCFD recommendations. The TCFD has also published two documents to support decision-useful disclosure: (a) Guidance on Metrics, Targets, and Transition Plans to support preparers in disclosing decision-useful information and linking those disclosures with estimates of financial impacts; and (b) an update to the implementation guidance on its recommendations initially published in 2017.

The FSB asks the TCFD to continue its work to promote and monitor progress in firms' take-up of its recommendations, and publish a further status report in September 2022, reviewing disclosures by companies in their public reporting for 2021.

Date of publication: 14/10/2021

## UNEP FI: Progress report of UN Principles for Responsible Banking signatories

### Status: Final

The UN Environment Programme Finance Initiative (UNEP FI) has published its first report summarising the progress made by banks that have signed the Principles for Responsible Banking, a framework for ensuring that signatory banks' strategies and practices align with the vision set out in the Sustainable Development Goals and the Paris Climate Agreement. The Principles were created in 2019 through a partnership between founding banks and the UN, and are designed to bring purpose, vision and ambition to sustainable finance. The UNEP FI report finds that signatories are showing early signs of collective progress and building the foundations to transform sustainable banking; however, momentum needs to accelerate in some key areas. Key findings from the report show that 94% of banks identify sustainability as a strategic priority for their organisation, 93% are analysing the environmental and social impacts of their activities, and 30% are setting targets with a strong collective focus on climate and financial inclusion. The report finds early indications of impact on the real economy, with US\$2.3 trillion of sustainable finance being mobilised. The UNEP FI banking board and secretariat take the view that continued and accelerated action is needed from signatories. Suggested areas of improvement include enhancing the availability and quality of data, setting targets in line with improved impact analysis, and increasing action on critical sustainability issues such as biodiversity loss, equality and human rights. The next progress report at a collective level is scheduled for 2023.

Date of publication: 14/10/2021

## OECD: Reports on ESG investing, climate transition and financial markets

### Status: Final

The OECD has published two reports focused on sustainable finance and climate transition. The two reports are: (i) ESG Investing and Climate Transition: Market Practices, Issues and Policy Considerations. This report highlights the main findings from recent OECD research on ESG rating and investing. It offers policy considerations to strengthen ESG practices to foster global interoperability and comparability, and encourage greater alignment of environmental metrics with a low-carbon transition. This serves as an input report to the G20 Sustainable Finance Working Group; and (ii) Financial Markets and Climate Transition: Opportunities, Challenges and Policy Implications. This second report focuses on the critical contribution financial markets must play towards achieving an orderly transition to low-carbon economies, and the policies needed to support that transition.

- [ESG Investing and Climate Transition](#)
- [Financial Markets and Climate Transition](#)

Date of publication: 04/10/2021

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## Derivatives and Structured Finance, Debt Capital Markets

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