

# Regulatory monitoring

Newsletter

January 2024





# ECB in focus

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

## Some of our recent posts

### ECB 2022 annual report on banking supervision - key topics and implications for banks

22 June 2023

The ECB published its 2022 annual report on banking supervision on 21 March 2023, highlighting the main supervisory activities in the past year. The Annual Report also outlines the supervisory priorities for 2023-2025, which aim to ensure that banks are resilient, well governed, and prepared for emerging risks.

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### ECB publishes supervisory priorities 2023-25

4 January 2023

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

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### ECB warns banks that failure to comply with leveraged lending guidance may result in capital charges

26 October 2022

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

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

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

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# 1. Bank regulation

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## 1.1 Prudential regulation

### (a) General

#### (i) Germany

##### **BaFin: Report on risks in focus 2024 (*Report über Risiken im Fokus 2024*)**

Status: Final

BaFin has published its annual report on the risks it will focus on throughout the year. It sets out the main risks that BaFin has identified for the financial stability or integrity of the financial markets in Germany and that it will pay particularly close attention to in 2024. These include cyberattacks and the breakdown of IT systems, as such technical disruptions pose risks not only when they occur at banks or insurers themselves: major problems at third-party service providers can also compromise the entire system. In some sectors in Germany, a small number of specialised IT service providers serve a large proportion of banks and insurers. That is why this year BaFin is paying particular attention to the risks that emerge from this kind of market concentration. The report also details the action BaFin is taking to mitigate these risks.

The main risks currently facing the German financial market are risks arising from: (i) significant increases in interest rates; (ii) corrections on the real estate markets; (iii) significant corrections on the international financial markets; (iv) defaults on loans to German companies; (v) cyberattacks with serious consequences; (vi) inadequate money laundering prevention; and (vii) market concentration in the outsourcing of IT services.

Date of publication: 23/01/2024

#### (ii) EU

##### **EBA: Consultation on amendments to draft RTS on prudent valuation under Article 105(14) of the CRR**

Status: Consultation

Deadline for the submission of comments: 16/04/2024

The EBA has launched a consultation on amendments to the draft RTS on prudent valuation under Article 105(14) of the CRR. The EBA is proposing amendments to address targeted implementation issues that have emerged during its application, with the aim of promoting a more harmonised application of the RTS and to reduce the observed variability of additional value adjustments (AVAs) under the core approach.

The consultation also contains a proposal for a framework for 'extraordinary circumstances' for prudent valuation, including conditions for determining the presence of extraordinary circumstances, and rules for the calculation of AVAs under those circumstances, as provided for in amendments to be made to the CRR by CRRIII. In parallel to the public consultation, a quantitative impact study (QIS) will take place to assess the impact of the proposed amendments, as well as to inform the calibration of certain aspects of the revised framework. The feedback received and the QIS results will be taken into account in the finalisation of the draft RTS.

Date of publication: 16/01/2024

## (b) Solvency/Own funds issues

### (i) Germany

#### **BaFin: Updated list on the countercyclical capital buffer: indicator values, time series and indicator description** (*Angepasste Liste zum antizyklischen Kapitalpuffer: Indikatoren, Zeitreihen und Erläuterungen*)

Status: Final

BaFin has published an updated Excel spreadsheet on the countercyclical capital buffer, including indicator values, time series and an indicator description concerning the decision about setting the buffer in early 2024.

Date of publication: 30/01/2024

#### **BaFin: Publication of the General Administrative Act on business credit for 2024** (*Bekanntmachung der Allgemeinverfügung zum Geschäftsguthaben 2024*)

Status: Published

The BaFin has published the General Administrative Act on business credit for 2024, pursuant to Article 26(3) and Articles 77(1)(a), 78(1)(b) CRR and Article 32(2) of the Delegated Regulation (EU) Nr. 241/2014. It regulates the extent to which newly issued shares in cooperative banks can, with their permission, be classified as instruments of common equity tier 1 capital. In the version valid from 1 January 2024, BaFin also stipulates the conditions under which the repayment of business credits based on cancelled cooperative shares is approved in advance.

Date of publication: 01/01/2024

### (ii) EU

#### **EBA: Consultation on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to the benchmarking of internal models**

Status: Consultation

Deadline for the submission of comments: 27/03/2024

The EBA has launched a consultation on draft ITS on amending the Commission Implementing Regulation on the benchmarking of credit risk, market risk and IFRS9 models for the 2025 exercise. Article 78 of the CRD IV requires NCAs to conduct an annual assessment of the quality of internal approaches used for the calculation of own funds requirements. To assist NCAs in this assessment, the EBA calculates and distributes benchmark values to NCAs that allow a comparison of individual institutions' risk parameters. For the 2025 benchmarking exercise the EBA proposes the following changes to improve the exercises and adapt to the relevant policy changes which will be applicable by end-2024: (i) for market risk, new templates and instructions for a new Internal Model Approach framework, reflecting the changes introduced with the FRTB. The EBA is also suggesting reshaping market portfolio and expanding the validation portfolios for the Alternative Standardised Approach; and (ii) for credit risk, minor changes are proposed exclusively for the instructions related to five columns of templates C.102 and C.103 and two columns of template C.105.

Date of publication: 18/01/2024

#### **EBA: Opinion on measures in accordance with Article 124 CRR**

Status: Final

The EBA has published an Opinion following notification by Latvijas Banka, the central bank of Latvia, of its intention to adjust the risk weight for exposures secured by mortgages on commercial immovable property. The measure aims to limit risks associated with commercial immovable property. Based on the information provided, the EBA does not object to the risk weight adjustment.

Date of publication: 12/01/2024

## **EBA: Final report on draft ITS amending Commission Implementing Regulation (EU) 2021/451 with regard to reporting requirements for market risk and repealing Commission Implementing Regulation (EU) 2021/453**

**Status: Final**

The EBA has published a final report setting out final draft ITS amending the Commission Implementing Regulation (EU) 2021/451 with regard to reporting requirements for market risk and repealing the Commission Implementing Regulation (EU) 2021/453. The ITS on specific reporting requirements for market risk have been requiring institutions to submit high-level information on the size of their business subject to market risk and the own funds requirements calculated on the basis of the Alternative Standardised Approach for market risk (ASA) since 2021. As the implementation of the Fundamental Review of the Trading Book (FRTB) in the EU approaches, these new final draft ITS set out the frame and details for expanding the FRTB reporting framework. The amendments complement the already existing reporting requirements with a comprehensive set of templates to capture details on the instruments and positions in scope of the ASA, as well as templates to capture summary and detailed information on the instruments and positions in scope of the alternative internal model approach. As the ASA serves as a fallback approach for calculating own funds requirements for this approach, where the performance of the model is a matter of concern, institutions will also have to report details on the ASA own funds requirements.

The draft ITS will be submitted to the EC for endorsement before being published in the OJ. The draft ITS are expected to apply for the first time for reporting as of 31 March 2025.

Date of publication: 11/01/2024

## **EBA: Response to law firm on the prudential treatment of a BNP Paribas legacy instrument**

**Status: Final**

The EBA has published a response to the letter received from a law firm on 11 September 2023, regarding the case of the prudential classification as a Tier 2 instrument of a legacy perpetual bond (so-called 'Discos') of an institution established in France (BNP Paribas). After careful consideration of the concerns raised, and scrutiny of the detailed terms and conditions of the legacy instrument, the EBA assessed that it cannot count as a fully eligible Tier 2 instrument of BNP Paribas. The EBA shared this assessment with the relevant competent authority for its own consideration, as well as to be informed of the next steps it intended to take, in particular with regard to the EBA Opinion on legacy instruments and the cascading options it contains. It will continue monitoring the residual limited stock of legacy instruments in coordination with the concerned competent authorities.

Date of publication: 11/01/2024

## **EBA: Opinion on a decision to grant the permission referred to in Article 129(1)(c)(ii) and Article 129(1a)(c) of the CRR – notification from Bank of Italy**

**Status: Final**

The EBA has published an Opinion addressed to the Bank of Italy following the Competent Authority's notification of its decision to introduce a partial waiver of Article 129 (1)(c) CRR, which specifies the conditions for the eligibility of covered bonds in relation to risk weight preferential treatments. Given the significant potential concentration problem in Italy, the EBA is of the opinion that the application of a partial waiver is adequately justified. The EBA has assessed the evidence provided by the Bank of Italy to support the measure, namely the current classification of Italian credit institutions in relation to the credit quality steps (CQSs) assigned, the current composition of the Italian covered bond market, and the type and nature of exposures to credit institutions that covered bonds regularly assume. On the basis of the evidence provided, the EBA is of the opinion that Italy has a significant potential concentration problem stemming from the application of the CQS1-CQS2 requirement and, therefore, the partial waiver is adequately justified.

Date of publication: 09/01/2024

## (c) Securitisation

### (i) EU

#### EC: Consultation on draft Delegated Regulation on fees charged to securitisation repositories

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The EC has launched a consultation on a Delegated Regulation amending Delegated Regulation (EU) 2020/1732 with regard to harmonisation of certain aspects linked to fees charged by ESMA to securitisation repositories. This Delegated Regulation supplements the Securitisation Regulation. The EC aims to harmonise and simplify technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. The EC plans to adopt the Delegated Regulations in Q4.

Date of publication: 03/01/2024

## (d) Liquidity

### (i) EU

#### EBA: Report on specific aspects of the NSFR framework under Article 510 (4), (6) and (9) of the CRR

Status: Final

The EBA has published a report on specific aspects of the net stable funding ratio (NSFR) as well as an assessment of the impact of possible changes to the current prudential treatment. Under Articles 510(4), (6) and (9) of the CRR, the EBA is required to evaluate the prudential treatment of the following items under the NSFR framework: derivative contracts; securities financing transactions and unsecured transactions with a residual maturity of less than six months with financial customers; and holding of securities to hedge derivative contracts. The report leverages mostly on qualitative analysis, based on expert judgement supplemented by some materiality and sensitivity analysis. Following this analysis, the EBA concluded that there were no reasons to support the need to modify the prudential treatment currently envisaged for the items discussed. With regard to the treatment of SFTs and unsecured transactions with a residual maturity of less than six months with financial counterparties, the EBA recommends complying with Basel standards after the phase-in period as envisaged in the CRR.

Date of publication: 16/01/2024

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

### (i) Germany

#### BaFin: English version of Circular 05/2023 on the MaRisk (*Englische Version des Rundschreibens 05/2023 zur MaRisk*)

Status: Final

Date of application: 01/01/2024

BaFin has published a courtesy translation for Circular 05/2023 on Minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement – MaRisk*). In particular, the amendment implements the [EBA Guidelines on loan origination and monitoring](#). They concern, for example, the processes in the lending business and the risk management models of the institutes. In addition, BaFin has adjusted the following key aspects or newly integrated them into the MaRisk amendment: (i) for the first time, BaFin sets out requirements for the handling of risk management by banks with regard to their own real estate; (ii) the simplifications for securities trading when working from home, which were originally issued due to the Covid-19 pandemic, continue to apply as long as no deviating standards are adopted internationally; and (iii) the amendment includes sustainability standards and clarifies that the institutes should measure their sustainability risks with the help of scientifically based scenarios.

Date of publication: 16/01/2024

## (ii) EU

### **EBA: Heatmap following the scrutiny on the IRRBB standards implementation in the EU**

Status: Final

The EBA has published a heatmap following the scrutiny on the interest rate risk in the banking book (IRRBB) standards implementation in the EU. With the publication of the regulatory package on IRRBB in October 2022, the EBA communicated its plans to monitor the impact on institutions from increases in interest rates and developments regarding institutions' ability to manage the risks. This included: (i) scrutiny of specific aspects of the EBA Guidelines on IRRBB, such as the five-year repricing maturity cap of non-maturity deposits; (ii) a more general assessment of the management of interest rate risk from a prudential perspective, in particular, changes in the modelling assumptions and hedging strategies used by institutions; and (iii) other aspects related to the impact of increases in interest rates on capital instrument valuations or other accounting or liquidity aspects, which interact strongly with IRRBB ones. The heatmap incorporates three sections, which describe: (a) the regulatory framework for IRRBB in the EU; (b) the EBA scrutiny plans and the work undertaken to date; and (c) the main areas identified for further scrutiny with the corresponding actions/timelines.

Date of publication: 24/01/2024

## (f) Financial conglomerates

### (i) EU

### **ECB: Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions**

Status: Final

The ECB has published a Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions. Following the entry into force of Commission Implementing Regulation (EU) 2022/2454 laying down ITS for the supervisory reporting of risk concentrations and intragroup transactions, the ECB is publishing this guidance on the information that, in its role as coordinator, it will require individual financial conglomerates to report in accordance with those standards and FICOD. The Guide aims to help financial conglomerates in setting up the necessary internal processes for reporting significant risk concentrations and intragroup transactions using the templates provided for in the reporting ITS. Topics covered include: (i) the types of transactions that should be reported; (ii) the format of reporting on information on the management of conflicts of interests and risks of contagion; (iii) the thresholds for risk concentration reporting and intragroup transaction reporting; (iv) the qualitative requirements regarding risk concentrations; and (v) the quantitative and qualitative requirements regarding intragroup transactions. Together with the Guide, the ECB has published a [feedback statement](#), which sets out its response to the consultation on the guide and the changes made to proposals as a result.

Date of publication: 10/01/2024

## 1.2 Recovery and resolution

### (i) EU

### **EC: Report on the macroprudential review for credit institutions, the systemic risks relating to NBFIs and their interconnectedness with credit institutions, under Article 513 CRR II on prudential requirements for credit institutions and amending the EMIR Regulation**

Status: Final

The EC has published a report on its review of the EU macroprudential framework, as set out in the CRR and CRD IV. The review was originally due by June 2022, but was postponed in order to better assess the effects of the pandemic (and the post-pandemic) macroeconomic conditions, the growth of Non-Bank Financial Intermediation (NBFIs) and the US banking crisis of March 2023. The EC notes that the banking sector has been increasingly exposed to new risks, such as climate change-related and transition risks, as well as cyber-risks. It finds that prudential regulators and supervisors have yet to find an adequate manner

to address these risks, which can become systemic if not addressed proactively. It considers that any potential reform of macroprudential tools should take due consideration of its impact on prudential and resolution frameworks and should not give rise to an increase in the overall level of capital or minimum requirements on own funds and eligible liabilities. Going forward, in this area, the EC will mainly focus on: (i) monitoring the usability and releasability of capital buffers to support lending to the economy in the event of a systemic shock, while preserving financial stability; (ii) promoting consistency in the use of macroprudential tools by national authorities; and (iii) assessing the scope for simplification and the efficiency and the ability of the macroprudential framework to tackle both conventional and new risks. As for NBFIs, the EC will collect further evidence on missing tools, potential gaps in existing tools to meet macroprudential objectives and on the effectiveness and consistency of macroprudential policies for NBFIs in the EU. The EC plans to run a targeted consultation on macroprudential policies for NBFIs in 2024. The aim will be to collect further insights into the business models of key NBFIs and the interconnectedness among them and between banks and NBFIs, and to identify gaps in the macroprudential framework and other factors that may contribute to the build-up of systemic risks. In 2024, the EC will also consult on the review of the SFTR.

Date of publication: 24/01/2024

## 1.3 Stress tests/Macroprudential topics

### (i) EU

#### **Commission Delegated Regulation (EU) 2024/397 supplementing the CRR II with regard to RTS on the calculation of the stress scenario risk measure**

Status: Published in the OJ

Date of entry into force: 18/02/2024

The Commission Delegated Regulation (EU) 2024/397 supplementing the CRR II with regard to RTS on the calculation of the stress scenario risk measure has been published in the OJ. The RTS set out two overarching methods to develop the extreme scenarios of future shock for non-modellable risk factors: (i) the direct method, which requires institutions to develop the extreme scenario of future shock for a given non-modellable risk factor by calculating the expected shortfall measure of the losses occurring when varying that risk factor according to its historically observed levels during a stress period; or (ii) the stepwise method, which requires institutions to obtain the extreme scenario of future shock for a given non-modellable risk factor by calculating an expected shortfall measure on the returns observed for that risk factor, and calculating the loss corresponding to the movement in the risk factor identified by that expected shortfall measure. Under both methods, the RTS requires institutions to adjust the extreme scenario of future shock to reflect the statistical uncertainty in determining the extreme scenario of future shock by introducing an uncertainty compensation factor.

Date of publication: 29/01/2024

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

Status: Adopted by the EC

The EC has adopted a Commission Implementing Regulation amending the ITS laid down in Commission Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) CRD IV. Institutions are required to submit to their competent authority, at least annually, the results of the calculations of their risk weighted exposure amounts or own fund requirements under their internal approaches for exposures or positions that are included in the benchmark portfolios, to enable that competent authority to assess the quality of those internal approaches. The amendments, among other things, reflect changes in the focus of the competent authorities' assessments and of the EBA's reports on the benchmarking exercise and the related reporting requirements.

Date of publication: 19/01/2024

## ECB: Stress test of banks' ability to recover from cyberattack

### Status: Final

The ECB has announced that it will conduct a cyber resilience stress test on 109 directly supervised banks in 2024. The exercise will assess how banks respond to and recover from a cyberattack, rather than their ability to prevent it. Under the stress test scenario, the cyberattack succeeds in disrupting the bank's daily business operations. Banks will then test their response and recovery measures, including activating emergency procedures and contingency plans and restoring normal operations. Supervisors will subsequently assess the extent to which banks can cope under such a scenario. As part of the exercise, 28 banks will undergo an enhanced assessment for which they will submit additional information on how they coped with the cyberattack. The sample of 28 banks covers different business models and geographies to provide a meaningful reflection of the euro area banking system and ensure there is efficient coordination with other supervisory activities. Supervisors will discuss the findings and lessons learned with each bank as part of this year's Supervisory Review and Evaluation Process, which assesses a bank's individual risk profile. The ECB plans to communicate the exercise's main findings in the summer.

Date of publication: 03/01/2024

## 2. Investment firms regulation

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### (i) Germany

#### **BaFin: Consultation on a Guidance Notice regarding the required minimum number of directors pursuant to the WpIG (*Konsultation eines Merkblatts über die Mindestzahl von Geschäftsleitern nach dem WpIG*)**

Status: Consultation

Deadline for the submission of comments: 18/03/2024

BaFin has launched a consultation on a Guidance Notice regarding the required minimum number of directors of a securities institution. The aim is to establish standardised risk criteria. The European legal framework stipulates a minimum of two managing directors for securities institutions in accordance with the German Securities Institutions Act (*Wertpapierinstitutsgesetz – WpIG*). Only under certain conditions is just one managing director permitted. This was also recommended by ESMA in its report on the Brexit Peer Review of 8 December 2022. The Guidance Notice now sets out criteria according to which an investment firm must be managed by at least two managing directors. This number of managing directors is necessary in order to fulfil the legal requirements of the WpIG: Namely, the professional suitability and time availability of the management as well as the organisation of a securities institution.

Date of publication: 17/01/2024

#### **Regulation on notifications pursuant to Section 24 of the Law on the supervision of investment firms (*Verordnung über Anzeigen nach § 24 des Wertpapierinstitutsgesetzes*)**

Status: Published in the Federal Gazette

Date of application: 16/01/2024

The Regulation on notifications pursuant to Section 24 of the Law on the supervision of investment firms (*Wertpapierinstituts-Inhaberkontrollverordnung – WpI-InhKontrollV*) has been published in the Federal Gazette. Anyone who intends to acquire or increase significant/qualified holdings in an investment firm must observe the Delegated Regulation (EU) 2017/1946 when submitting a notification in accordance with Section 24 WpIG. This law now replaces the Owner Control Regulation (*Inhaberkontrollverordnung – InhKontrollV*), in the version valid until 28 December 2022, with regard to notifications on the reduction or abandonment of a significant/qualified holding.

Date of publication: 15/01/2024

#### **Remuneration regulation on investment firms (*Wertpapierinstituts-Vergütungsverordnung – WpIVergV*)**

Status: Published in the Federal Gazette

Date of entry into force: 12/01/2024

The remuneration regulation on investment firms (*Wertpapierinstituts-Vergütungsverordnung – WpIVergV*) has been published in the Federal Gazette. It aims to further implement the IFD regarding the specification of remuneration requirements.

Date of publication: 11/01/2024



## 3. Market regulation/Conduct rules

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### 3.1 General

#### (i) EU

##### **ESMA: Risk monitoring report 2024**

Status: Final

ESMA has published its first risk monitoring report of 2024, where it sets out the key risk drivers currently facing financial markets. Beyond the risk drivers, the report provides an update on structural developments and the status of key sectors of financial markets, during the second half of 2023.

Date of publication: 31/01/2024

#### (ii) International

##### **IOSCO: Report on credible deterrence in the enforcement of securities regulations**

Status: Final

IOSCO has published a revised version (dated October 2023) of its report on credible deterrence in the enforcement of securities regulations. The report was first published in June 2015, with the aim of identifying and promoting awareness of factors that may credibly deter misconduct in securities and investment markets. The factors referred to highlight useful enforcement practices and powers adopted by regulatory authorities to promote and encourage credible deterrence of misconduct.

Date of publication: 16/01/2024

### 3.2 Benchmarks

#### (i) EU

##### **ECON: Draft report on the proposal for a Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements**

Status: Draft

ECON has published a draft report on the proposal for a Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements. The draft report, which was prepared by Rapporteur Jonás Fernández, contains the draft EP legislative resolution, setting out suggested amendments to the proposed Regulation.

Date of publication: 15/01/2023

##### **EC: Consultation on draft Delegated Regulation on fees charged to certain benchmark administrators**

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The EC has launched a consultation on a Delegated Regulation amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of supervisory fees charged by ESMA to certain benchmark administrators. The Delegated Regulation (EU) 2022/805 supplements the BMR. The EC aims to harmonise and simplify technical aspects of ESMA's fee

collection system so that fee collection is less complex and more uniform across sectors. The EC plans to adopt the Delegated Regulations in Q4.

Date of publication: 03/01/2024

### 3.3 Credit rating agencies

#### (i) EU

##### **EC: Consultation on draft Delegated Regulation on fees charged to CRAs**

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The EC has launched a consultation on a Delegated Regulation amending Delegated Regulation (EU) 272/2012 as regards harmonisation of certain aspects linked to fees charged by ESMA to CRAs. The amended Delegated Regulation supplements the CRA Regulation. The EC aims to harmonise and simplify technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. The EC plans to adopt the Delegated Regulations in Q4.

Date of publication: 03/01/2024

### 3.4 MiFID/MiFIR

#### (i) Germany

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

Status: Final

BaFin has updated its FAQ on the MiFID II rules of conduct according to Sections 63 et seq. of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) with regard to the time requirements for processing the transfer of custody accounts. The update clarifies that it is the duty of the institution that received an order regarding a transfer to notify the customer in case of a delay in this process. This can be the previous manager as well as the future manager. The latter is the case if the future manager has received the order as a “custody collection”. If the future manager is obliged to provide interim notification but the reasons for the delay lie solely with the previous manager, the future manager must point this out. The reasons for this update were questions it had received from market participants on these requirements.

The FAQ also clarifies that the previous and future managers must continue to ensure that the transfer is processed on time. This applies regardless of who is obliged to provide interim notification. If there are obstacles to the execution of the order that the customer can overcome, the institutions must contact the customer immediately.

Date of publication: 29/01/2024

#### (ii) EU

##### **EP: Adoption of Proposals to enhance MiFID II financial market data transparency**

Status: Draft

The EP has announced that it had adopted amendments to MiFID II and MiFIR at the first reading. The amendments enhance financial market data transparency, optimise orderly trading and prohibit payments for forwarding client orders. The new provisions aim to reduce information asymmetries between market participants and improve orderly trading in commodity

derivatives concerning energy and food. To protect investors from suboptimal trading decisions, the practice of receiving payments for forwarding client orders for execution will be banned across the EU.

The next step is for the Council of the EU to formally adopt the proposed amending legislation, after which the amendments will enter into force on the twentieth day following their publication in the OJ.

Date of publication: 16/01/2024

### **ESMA: Coordination of supervisory activities on MiFID II pre-trade controls**

**Status: Final**

ESMA has launched a Common Supervisory Action (CSA) with NCAs with the objective of assessing the implementation of pre-trade controls (PTCs) by EU investment firms using algorithmic trading techniques. PTCs are used by investment firms to carry out checks at order entry to limit and prevent sending erroneous orders for execution to trading venues. Following the May 2022 flash crash, ESMA and NCAs have gathered evidence on this through questionnaires submitted to a sample of EU investment firms. The CSA will cover: (i) implementation of PTCs, including their calibration methodology and the use of hard and soft blocks in the design of PTCs; (ii) establishment of credit and risk limits and their interaction with PTCs; (iii) monitoring and governance frameworks related to PTCs; and (iv) implementation and monitoring of PTCs in case of outsourcing of trading activity to third countries. The rules governing the use of PTCs are set out in MiFID II and more specifically in CDR 2017/589 (RTS 6). ESMA and NCAs will carry out the CSA in the course of 2024.

Date of publication: 11/01/2024

### **ESMA: Opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments**

**Status: Final**

ESMA has updated its opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments. This opinion provides a summary of ESMA considerations on which ESMA opinions on pre-trade transparency waivers issued under Articles 4(4) and 9(2) of MiFIR are based. The opinion therefore does not represent new ESMA guidance but aims at communicating ESMA's position regarding the compliance of the intended waivers with the applicable legal provisions to contribute to a level playing field. ESMA notes that as of 31 August 2023, it has issued a total of 1,209 opinions, of which 427 opinions are equity waivers and 782 opinions are non-equity waivers.

Date of publication: 08/01/2024

### **ESMA: Manual on post-trade transparency under MiFID II/ MiFIR**

**Status: Final**

ESMA has updated its manual on post-trade transparency under MiFID II/MiFIR. The manual is intended to operate as a convergence tool to promote common approaches and practices. Two changes have been made: (i) a correction on the types of transactions subject to post-trade transparency to confirm that off-venue contingent trades are subject to post-trade transparency; and (ii) the inclusion of guidance on the reporting of Field 22 of RTS 2 relating to non-equity transparency calculations. The manual is expected to be updated again shortly in the context of the MiFID II/ MiFIR review and the subsequent RTS 1 and 2 review and any further legislative or legal change impacting its content.

Date of publication: 08/01/2024

## 3.5 Securities financing transactions

### (i) EU

#### **EC: Consultation on draft Delegated Regulation on fees charged to trade repositories under SFTR**

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The EC has launched a consultation on a Delegated Regulation amending Delegated Regulation (EU) 2019/360 as regards harmonisation of certain aspects linked to fees charged by ESMA to trade repositories. This Delegated Regulation supplements the SFTR. The EC aims to harmonise and simplify technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. The EC plans to adopt the Delegated Regulations in Q4.

Date of publication: 03/01/2024

## 4. Market infrastructure

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### 4.1 Custody rules

#### (i) EU

##### **ESMA: Report on provision of cross-border services by CSDs and handling of applications under Article 23 of CSDR from 2020 to 2022**

Status: Final

ESMA has published a report on the provision of cross-border services by CSDs and the handling of applications under Article 23 of CSDR from 2020 to 2022. It notes an overall stability in the landscape of EEA CSDs, with a clear dichotomy between ICSDs and other EEA CSDs, and a diversity of approaches to cross-border integration. The report also identifies regulatory factors and market factors, including connection to T2S, as main drivers of development of cross-border services.

Date of publication: 31/01/2024

### 4.2 EMIR

#### (i) Germany

##### **BaFin: Application of ESMA Guidelines for reporting under EMIR (*Anwendung von ESMA-Leitlinien zu EMIR-Meldungen*)**

Status: Final

BaFin has announced that it will apply the [ESMA Guidelines for reporting under EMIR](#) published in October 2023. This specifically includes the reporting obligation for derivatives in accordance with Article 9 EMIR and the obligations of trade repositories. They are to be fulfilled by the counterparties subject to the reporting obligation under Article 9 EMIR and the trade repositories, starting from 29 April 2024. The ESMA Guidelines harmonise and standardise EMIR reporting. This creates the basis for producing high-quality data and effectively monitoring systemic risks. Another advantage is that the costs along the entire reporting chain will be reduced. This applies to the counterparties that report the data, the trade repositories that check the data for completeness and accuracy, and the authorities that use the data for supervisory and regulatory purposes. The Guidelines describe, among other things, the reporting logic, the reporting of different types of derivatives and access to data.

Date of publication: 24/01/2024

#### (ii) EU

##### **Commission Delegated Regulation (EU) 2024/363 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the TONA and SOFR benchmarks referenced in certain OTC derivative contracts**

Status: Published in the OJ

Date of entry into force: 11/02/2024

The Commission Delegated Regulation (EU) 2024/363 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the Tokyo Overnight Average Rate (TONA) and Secured Overnight Financing Rate (SOFR) benchmarks referenced in certain OTC derivative contracts, has been published in the OJ. The amendments: (i) specify that the clearing obligation will take effect on 11 February for certain transactions referencing SOFR and TONA; and (ii) reflect the deletion of the old benchmarks and introduction of the new.

Date of publication: 22/01/2024

## **EC: Consultation on draft Delegated Regulation on fees charged to trade repositories under EMIR**

Status: Consultation

Deadline for the submission of comments: 31/01/2024

The EC has launched a consultation on a Delegated Regulation amending Delegated Regulation (EU) 1003/2013 as regards harmonisation of certain aspects linked to fees charged by ESMA to trade repositories. Delegated Regulation (EU) 1003/2013 supplements EMIR. The EC aims to harmonise and simplify technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. The EC plans to adopt the Delegated Regulations in Q4.

Date of publication: 03/01/2024

### **(iii) International**

## **BCBS/IOSCO: Consultation on streamlining VM processes and IM responsiveness of margin models in non-centrally cleared markets**

Status: Consultation

Deadline for the submission of comments: 17/04/2024

The BCBS and IOSCO have launched a consultation on a report on streamlining variation margin (VM) processes and initial margin (IM) responsiveness of margin models in non-centrally cleared markets. The report sets out eight recommendations to encourage the widespread implementation of good market practices but does not propose any policy changes to the BCBS-IOSCO frameworks. The first four recommendations aim to address challenges that could inhibit a seamless exchange of VM during a period of stress. The other four highlight good practices for market participants to smoothly implement initiatives to ensure the calculation of IM is consistently adequate for contemporaneous market conditions and proposes that supervisors should monitor whether these developments are sufficient to make this model responsive enough to extreme market shocks.

Date of publication: 17/01/2024

## **BCBS/IOSCO: Consultation on policy proposals on transparency and responsiveness of initial margin in centrally cleared markets**

Status: Consultation

Deadline for the submission of comments: 16/04/2024

The BCBS, CPMI and IOSCO have launched a consultation on policy proposals on transparency and responsiveness of initial margin in centrally cleared markets, setting out ten policy proposals which aim to increase the resilience of the centrally cleared market ecosystem in times of market stress. The proposals are designed to improve market participants' understanding of centrally cleared initial margin calculations and potential future margin requirements. They suggest that: (i) CCP margin simulation tools with certain minimum functionality should be made available to clearing members and their clients; (ii) CCPs should disclose additional information related to their margin models including on anti-procyclicality tools. The consultation also considers whether CCPs should report certain public quantitative disclosure elements in a more timely and frequent manner; (iii) CCPs should disclose a standardised metric for measuring initial margin responsiveness to facilitate the monitoring of margin requirements by clearing members and their clients; (iv) CCPs should implement enhanced analytical and governance frameworks for margin models and when CCPs use discretion to override model margin requirements, it should be done within a publicly disclosed analytical and governance framework; and (v) clearing members should provide greater transparency to their clients and the CCPs of which they are members. Additionally, they should develop enhanced analytical frameworks for assessing margin responsiveness when passing on margin calls to clients.

Date of publication: 16/01/2024

## 5. Anti-money laundering

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### (i) EU

#### **Council of the EU/EP: Provisional agreement on the AML Regulation and MLD6**

**Status:** Draft

The Council of the EU and the EP have reached a provisional agreement on the proposed AML Regulation and MLD6. Key proposals from the AML Regulation include: (i) a Union-wide limit on large cash payments of 10,000 euro, that will also be extended to payment service and electronic money providers; (ii) enhanced transparency rules for football clubs and ultra-rich individuals. Cryptoasset service providers (CASPs) will also be required to comply with enhanced due diligence on their customers; and (iii) access for national Financial Intelligence Units (FIUs) and other competent authorities to information on beneficial ownership. Key proposals from MLD6 include: (a) the harmonisation of EU AML supervision; (b) increased powers for the FIU, so that they can analyse and detect ML/TF cases as well as to suspend suspicious transactions, accounts or business relationships; (c) harmonisation of content and functioning of the beneficial owners' registers; and (d) unfiltered, direct and free access to beneficial ownership information held in national registers for competent authorities, supervisory bodies, tax authorities, AMLA, the European Public Prosecutor's Office, the European Anti-Fraud Office, Europol and Eurojust.

The texts will now be finalised and presented to member states' representatives in the Committee of permanent representatives and the EP for approval. If approved, the Council and the EP will then have to formally adopt the texts before they are published in the OJ and enter into force.

**Date of publication:** 18/01/2024

#### **EBA: Final report on Guidelines amending Guidelines EBA/2021/02 on customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF Risk Factors Guidelines under Articles 17 and 18(4) of MLD 4**

**Status:** Final

**Date of application:** 30/12/2024

The EBA has published a final report on Guidelines amending the EBA Guidelines on customer due diligence and the factors which credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of MLD4. The amendments extend the scope of the Guidelines to include CASPs, with the aim of helping CASPs identify ML/TF risks by providing a non-exhaustive list of different factors, which may indicate the CASP's exposure to higher or lower levels of the ML/TF risk due to its customers, products, delivery channels and geographical locations. The EBA explains that based on these risk factors, CASPs can develop an understanding of their customer base and identify which part of their business or activity is most vulnerable to ML/TF. The Guidelines also explain how CASPs should adjust their mitigating measures, including the use of blockchain analytics tools. Given the interdependence of the financial sector, the Guidelines also include guidance addressed to other credit and financial institutions that have CASPs as their customers or which are exposed to crypto-assets.

The Guidelines will be translated into the official EU languages and published on the EBA's website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations.

**Date of publication:** 16/01/2024

#### **ESAs: Consultation on draft ITS specifying certain tasks of collection bodies and certain functionalities of the ESAP under the ESAP Regulation**

**Status:** Consultation

**Deadline for the submission of comments:** 08/03/2024

The ESAs have launched a consultation on draft ITS specifying certain tasks of collection bodies and certain functionalities of the European single access point (ESAP) under Regulation (EU) 2023/2859. The ESAs are requesting input on proposed rules

in relation to the tasks of collection bodies, including: (i) automated validations to be performed on the information submitted by entities; (ii) the characteristics of the Qualified Electronic Seal; (iii) the open standard licences to be applied; and (iv) the characteristics of the data collection application programming interface (API). The ESAs also request input on the proposed rules in relation to the functionalities of the ESAP, including: (a) the characteristics of the data publication API; (b) the legal entity identifier to be used to identify the entities that submit the information or to which the information relates; and (c) the classification of the types of information; and (d) the categories for the size of the entities.

The ESAs expect to publish a final report and the submission of the draft ITS to the EC by 10 September 2024.

**Date of publication:** 08/01/2024



## 6. Banking union

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### 6.1 Single Supervisory Mechanism (SSM)

#### (i) EU

##### **ECB: Updated supervisory manual for the SSM**

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

The ECB has published an updated version of its supervisory manual for the Single Supervisory Mechanism (SSM). The manual describes the organisational set-up of the SSM and defines the methodologies, processes, and procedures for banking supervision in the euro area. It also explains how the SSM cooperates with other authorities in the wider institutional framework. The manual first describes how the SSM is organised and how it discharges its supervisory tasks and then details how supervision is conducted in practice. The manual covers: (i) the functioning of the SSM; (ii) the supervisory cycle; (iii) the supervision of all supervised entities; (iv) the supervision of significant institutions; and (v) the supervision of less significant institutions. This revised manual updates the manual that was first published in March 2018. The ECB explains that the updated version offers the most up-to-date information on European banking supervision, reflecting, among other things, the reorganisation of ECB Banking Supervision that took place in 2019. The revised manual also replaces the 2014 guide on banking supervision.

Date of publication: 04/01/2024

## 7. Institutional supervisory framework

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### (i) Germany

**Regulation repealing the regulation on a comparison website and amending the regulation on the delegation of powers to issue statutory orders to BaFin (*Verordnung zur Aufhebung der Vergleichswebsitesverordnung sowie zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die BaFin*)**

Status: Published in the Federal Gazette

Date of application: 30/01/2024

The Regulation repealing the regulation on a comparison website has been published in the Federal Gazette. The Regulation will also amend the regulation on the delegation of powers to issue statutory orders to BaFin.

Date of publication: 29/01/2024

### (ii) EU

**ESMA: Overview of planned consultations 2024**

Status: Final

ESMA has provided an overview of the consultations it plans to launch in 2024. These relate to topics including: MiCAR, the MiFID/MiFIR review, UCITS, DORA, EMIR and AIFMD. In Q1, ESMA plans to consult on: (i) Guidelines on the due diligence requirements under the Securitisation Regulation; (ii) the MiCA Regulation Guidelines and technical standards; (iii) the MiFID review – RTS on position management controls and ITS 4 on position reporting; (iv) RTS under the EU Green Bond Regulation; (v) Guidelines on internal controls for ESMA supervised entities; and (vi) a call for evidence on the review of the UCITS Eligible Assets Directive.

Date of publication: 19/01/2024

**ESRB: Report on improvements to the macroprudential stance framework**

Status: Final

The ESRB has published a report on improvements to the macroprudential stance framework in order to compare systemic risks, macroprudential policies and resilience at a country level. The purpose was to assess the macroprudential stance of member countries as either tight, neutral or loose, thus providing an overview of how countries' macroprudential policies compared with the policies of others.

Date of publication: 15/01/2024

**EBA: Final draft RTS and ITS on the functioning of supervisory colleges under the CRD**

Status: Final

The EBA has revised its final draft RTS and ITS on the functioning of supervisory colleges under CRD IV. The technical standards have been updated to reflect the new requirements laid down in CRD V and CRR II, as well as to take into account the EBA's ongoing college monitoring activity and the lessons learned from the implementation of the standards. Key amendments include: (i) enhanced information exchange within the college, as well as with observers, in going concerns and in emergency situations; (ii) effective identification of emerging risks in case of an event of adverse material impact on the risk profile of the group or its entities; and (iii) appropriate use of the possibility for "entrustment of tasks and delegation of responsibility", when it facilitates the efficient and effective supervision of cross-border banking groups. The draft technical standards will be submitted to the EC for endorsement following which they will be subject to scrutiny by the EP and the

Council before being published in the OJ. In view of the considerable changes, the current technical standards on colleges of supervisors, adopted by the EC in 2015, will be repealed as soon as the new ones are issued.

Date of publication: 09/01/2024

## **ECON: Regulation amending ESRB Regulations to facilitate data sharing and re-use by financial sector authorities**

Status: Draft

The EP's ECON has published a draft report on the proposal for a Regulation amending the ESRB Regulation, EBA Regulation, EIOPA Regulation, ESMA Regulation and InvestEU Regulation with regard to certain reporting requirements in the fields of financial services and investment support. The draft report, prepared by Rapporteur Othmar Karas, contains the draft EP legislative resolution, which sets out the suggested amendments to the proposed Regulation, as well as an explanatory statement. The Rapporteur welcomes the proposed Regulation, as it is an important revision on cutting red tape in the financial sector and shows that the EU is always working to reduce unnecessary bureaucracy and inefficient duplication of reporting and disclosure requirements. However, the Rapporteur is convinced that further changes are necessary to significantly improve the impact of the intended effects on the entire financial sector. The Rapporteur proposes the following amendments: (i) expanding the scope to the entire financial sector. While the EC proposes to amend only the ESRB and ESAs Regulations, Mr Karas proposes to also capture AML authorities, resolution authorities and the supervisory functions of central banks; (ii) introducing the "report once principle" by default. Mr Karas suggests that authorities should only request information from entities, if they have not already reported this information to other authorities; (iii) avoiding "Gold plating", cross-sector inconsistencies and ensuring proportionality. While the EC proposes that the ESAs should review level 2 measures in this respect, Mr Karas suggests a broader mandate; (iv) the establishment of a Single Integrated Reporting System. Mr Karas suggests that the relevant authorities should establish a Single Integrated Reporting System by 31 December 2026; and (v) the removal of legal obstacles to data exchange. Mr Karas proposes including a mandate to all authorities responsible for supervision in the financial sector to report these legal obstacles to the EC by 31 December.

The EC should, by 30 June 2025, propose a legislative proposal to remove the legal obstacles.

Date of publication: 22/12/2023

### **(iii) International**

## **FSB: Work programme for 2024**

Status: Final

The FSB has published its work programme for 2024. Priority areas of work include: (i) supporting global cooperation on financial stability – the FSB will continue to participate in the joint FSB-IMF Early Warning Exercise; (ii) completing resolution reforms – the FSB will continue its work to promote the full implementation of the Key Attributes of Effective Resolution Regimes for Financial Institutions across all sectors. The focus will be to address the lessons learned from the March 2023 banking turmoil, to finalise the work on CCP financial resources and tools for resolution; (iii) enhancing the resilience of non-bank financial intermediation (NBFIs) – this includes completing the data pilot project to enhance authorities' and the FSB's ability to monitor vulnerabilities associated with open-ended fund liquidity mismatch, enhancing liquidity preparedness of non-bank market participants for margin and collateral calls and new work on the functioning and resilience of repo markets; (iv) enhancing cross-border payments – this includes a report on progress in the use of the LEI in cross-border payments and developing recommendations to strengthen the consistency of regulation and supervision of banks and non-banks providing cross-border payment services; (v) harnessing the benefits of digital innovation while containing its risks – a key focus for 2024 and beyond is on the effective implementation of the agreed global regulatory and supervisory framework for crypto-asset activities and markets and for global stablecoin arrangements; (vi) enhancing cyber and operational resilience – the FSB will design a format for incident reporting exchange (FIRE) to promote greater convergence in financial institutions' reporting of incidents to financial authorities; and (vii) addressing financial risks from climate change – the FSB is continuing its work on climate data and vulnerabilities analysis, undertaking analysis on the relevance of transition plans for financial stability, and will prepare an annual progress report on companies' climate disclosures. The programme includes an [indicative timeline](#) of the FSB's planned publications.

Date of publication: 24/01/2024

## **BCBS: Announcement of first six projects for 2024 work programme**

**Status: Final**

The BCBS has announced the first batch of six new projects in its 2024 Innovation Hub work programme. The upcoming projects include: (i) protecting payment systems from the potential threat of quantum computers; (ii) testing the use of AI and big data technologies for supply chain disclosure and adaptation. The project will seek to improve the tracking of so-called Scope 3 emissions, which are less well defined and harder to track; (iii) studying the privacy of payments in retail CBDCs; (iv) testing the feasibility of tokenising promissory notes, financial instruments that help fund multilateral development banks and other international financial institutions; (v) testing the use of network analytics to help identify financial crime patterns in payment systems. It will map current and emerging financial crime typologies in real-time payment systems, drawing upon lessons from instant payment systems and digital asset networks; and (vi) rebuilding the data directory platform of the Network for Greening the Financial System. The new initiatives will be added to the existing projects that continue from last year.

Date of publication: 23/01/2024

## 8. Investment funds

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### 8.1 Product regulation

#### (a) AIF

##### (i) EU

#### ESMA: Two reports on the EU AIFs

**Status:** Final

ESMA has published two reports on the EU AIFs. It confirms the risks posed by real estate (RE) funds, in a context of declining volumes of transactions and falling prices in several jurisdictions. Existing liquidity mismatches in AIFs are particularly heightened by the high share of open-ended RE funds, some of which offer daily liquidity. This vulnerability could be systemically relevant in jurisdictions where RE funds own a large share of the RE market. Looking at the full sector and specifically at the risks posed by leveraged AIFs, ESMA finds that: (i) the size of the sector declined slightly (-3%) to EUR 6.8tn in 2022 and AIFs account for 36% of the EU fund industry; (ii) the fall in value was mainly driven by valuation losses for funds exposed to bonds and equities amid adverse market developments in 2022; (iii) RE funds face multiple risks related to leverage, market footprint, valuation discrepancies and liquidity mismatches; (iv) leverage for hedge funds remains very high, and this may pose a risk of market impact. However, most of them also dispose of large levels of cash to address potential margin calls, which limits the risk of fire sales; and (v) NCAs have reported risks posed by the Liability-Driven Investment (LDI) funds, which gain leveraged exposures to the UK government bond market. Risks have remained elevated, and the limits set after the severe stress experienced in September 2022 remain appropriate. In light of these findings, ESMA reports on the measures taken by authorities to address the risks identified, and will continue to work with the NCAs to meet ESMA's financial stability objective.

- [Report on the EU AIFs market](#)
- [Article on the risks posed by leveraged AIFs in the EU](#)

Date of publication: 30/01/2024

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

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### 9.1 Mortgage credits

#### (i) **EU**

##### **EBA: Opinion on measures in accordance with Article 124 CRR**

Status: Final

The EBA has published an Opinion following notification by Latvijas Banka, the central bank of Latvia, of its intention to adjust the risk weight for exposures secured by mortgages on commercial immovable property. For more information, please see section 1.1(b) above.

Date of publication: 12/01/2024

# 10. Special topics

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## 10.1 FinTech/Digital finance

### (i) EU

#### **ESMA: Consultation on the draft Guidelines on reverse solicitation under MiCA**

Status: Consultation

Deadline for the submission of comments: 29/04/2024

ESMA has launched a consultation on draft Guidelines on reverse solicitation under MiCA. It is seeking input on proposed Guidance relating to the conditions of application of the reverse solicitation exemption and the supervision practices that NCAs may take to prevent its circumvention. The proposed Guidance confirms ESMA's previous message that the provision of crypto-asset services by a third-country firm is limited under MiCA to cases where the client is the exclusive initiator of the service. This exemption should be understood as very narrowly framed and must be regarded as the exception. A firm cannot use it to bypass MiCA.

Date of publication: 29/01/2024

#### **ESMA: Consultation on the draft Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments**

Status: Consultation

Deadline for the submission of comments: 29/04/2024

ESMA has launched a consultation on draft Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments. It is seeking input on establishing clear conditions and criteria for the qualification of crypto-assets as financial instruments. This initiative, which follows on from previous work by ESMA, is aimed at bridging the MiCA regulation and MiFID II and ensuring consistency across the EU. The proposed Guidelines aim to provide NCAs and market participants with structured but flexible conditions and criteria to determine whether a crypto-asset can be classified as a financial instrument. To do so, the draft strikes a balance between providing guidance and avoiding establishing a one-size-fits-all approach. Once finalised, these Guidelines will provide much-needed clarity and contribute to the global standards in crypto-asset regulation.

Date of publication: 29/01/2024

#### **Commission Delegated Regulation (EU) 2024/358 supplementing the Crowdfunding Regulation with regard to RTS specifying requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures**

Status: Published in the OJ

Date of entry into force: 11/02/2024

The Commission Delegated Regulation (EU) 2024/358 supplementing the Crowdfunding Regulation with regard to RTS specifying requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedure, has been published in the OJ. The RTS specify: (i) the information that crowdfunding service providers must disclose to investors about the methods used to calculate the credit score for crowdfunding projects and to suggest the price for crowdfunding offers; (ii) the factors that crowdfunding service providers must consider to ensure fair and appropriate pricing of the loans they facilitate on their platforms; (iii) the governance arrangements that crowdfunding service providers must have in place to support information disclosure to investors, credit risk assessment and loan valuation and the risk management framework; and (iv) the information and factors that crowdfunding service providers must consider when: (a) assessing the credit risk for a crowdfunding project or project owner; and (b) conducting a loan valuation at different points in the life cycle of the loan.

Date of publication: 22/01/2024

## **ESAs: Publication of first set of rules under DORA for ICT and third-party risk management and incident classification**

**Status: Final**

The ESAs have published the first set of final draft technical standards under the DORA. These are aimed at enhancing the digital operational resilience of the EU financial sector by strengthening financial entities' ICT and third-party risk management and incident reporting frameworks. The joint final draft technical standards include: (i) RTS on ICT risk management frameworks and on simplified ICT risk management frameworks; (ii) RTS on criteria for the classification of ICT-related incidents; (iii) RTS to specify the policy on ICT services supporting critical or important functions provided by ICT TPPs. These RTS specify parts of the governance arrangements, risk management and internal control frameworks that financial entities should have in place regarding the use of ICT third-party service providers. They aim to ensure financial entities remain in control of their operational risks, information security and business continuity throughout the life cycle of contractual arrangements with such ICT third-party service providers; and (iv) ITS to establish the templates for the register of information. The final draft technical standards have been submitted to the EC, who will now review them with the objective of adopting the standards in the coming months.

- [Final Report on draft RTS on classification of major incidents and significant cyber threats](#)
- [Final report on draft RTS to specify the policy on ICT services supporting critical or important functions](#)
- [Final report on draft ITS on Register of Information](#)
- [Final report on draft RTS on ICT Risk Management Framework and on simplified ICT Risk Management Framework](#)

Date of publication: 17/01/2024

## 10.2 Sustainable finance

### **(i) EU**

#### **EBA: Industry survey on the classification of exposures to ESG risks**

**Status: Consultation**

**Deadline for the submission of comments: 29/04/2024**

The EBA has launched an industry survey to receive input from credit institutions on their methodologies to classify exposures to ESG risks, as well as on the accessibility and availability of ESG data for this purpose. The objective of the survey is to collect qualitative information on credit institutions' current practices to inform the EBA's work on the feasibility of introducing a standardised methodology to identify and qualify exposures to ESG risks.

Date of publication: 29/01/2024

#### **EP: Approval of later adoption of sustainability reporting standards**

**Status: Final**

The EP has adopted its negotiating position on the proposed decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings. The proposal aims to rationalise reporting obligations for companies by postponing the adoption deadline for sector-specific sustainability reporting standards for two years until June 2026. Sector-specific European Sustainability Reporting Standards (ESRS) should clarify what exactly and to what detail companies in particular sectors should disclose about their impact on people and the planet, including on decarbonisation, biodiversity or human rights, since methods and impacts differ depending on the sector. This delay should enable companies to focus on the implementation of the first set of general ESRS adopted on 31 July 2023. Since reporting obligations for non-EU companies with a turnover above 150 million euro and their branches in the EU with a turnover above 40 million euro will only start to apply in 2028, the EC also proposes to delay adoption of the general sustainability reporting standards for third country companies until 2026. Although it agrees with the delay, the EP suggests that the EC publishes eight sector-specific reporting standards as soon as they are ready before the deadline. It also asks to improve the transparency and flexibility of the process and requests the EC consults the EP on the progress with



development of the sustainability reporting standards at least once a year and on related planning, prioritisation and timelines adopted in this context by the responsible institution. Interinstitutional negotiations can now begin.

Date of publication: 25/01/2024

### **ECB: Report on risks from misalignment of banks' financing with the EU climate objectives**

Status: Final

The ECB has published a report on the results of an assessment of the alignment of the EU banking sector with the EU climate objectives, together with a related [blog post by Frank Elderson](#), ECB Executive Board Member and Supervisory Board Vice-Chair. The analysis of 95 banks covering 75% of euro area loans shows that: (i) currently banks' credit portfolios are substantially misaligned with the goals of the Paris Agreement, leading to elevated transition risks for roughly 90% of these banks; (ii) transition risks largely stem from exposures to companies in the energy sector that are lagging behind in phasing out high-carbon production processes and are late in rolling out renewable energy production; (iii) 70% of these banks could face elevated litigation risks as they are publicly committed to the Paris Agreement, but their credit portfolio is still measurably misaligned with it. It is therefore vital that these banks do more work with their counterparties to ensure the companies they finance do not prevent them from living up to their net-zero commitment. This is more relevant than ever, considering that climate litigation has skyrocketed in recent years.

In the blog, Mr Elderson considers that the best thing banks can do is to put in place Paris-aligned transition plans. They should include concrete intermediate milestones from now until 2050 and develop key performance indicators that allow their management bodies to monitor and act upon any risks arising from possible misalignment with their transition path. Banks can use the alignment assessment methodology outlined in the report to advance their transition planning capabilities.

Date of publication: 23/01/2024

### **EBA: Consultation on draft Guidelines on the management of ESG risks**

Status: Consultation

Deadline for the submission of comments: 18/04/2024

The EBA has launched a consultation on draft Guidelines on the management of ESG risks. The Guidelines set requirements for the internal processes and ESG risk management arrangements that institutions should have in place, to ensure the safety and soundness of institutions in the short, medium and long term. This includes principles for the development and content of institutions' plans in accordance with CRD VI, with a view to monitoring and adequately addressing the financial risks stemming from ESG factors.

The EBA plans for the Guidelines to be finalised by the end of 2024.

Date of publication: 18/01/2024

### **ESAs: Updated Q&A on SFDR and the SFDR Delegated Regulation**

Status: Final

The ESAs have published an updated version of their consolidated Q&As on the SFDR and the SFDR Delegated Regulation. The consolidated Q&As, first published in May 2023, combine responses given by the EC to questions requiring the interpretation of EU Law, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of SFDR, which are not colour coded. The updated document explains that the wording of question 1 in section V financial product disclosures, was amended on 12 December 2023.

Date of publication: 12/01/2024

## **ECON: Opinion on the proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third country undertakings**

**Status: Final**

The ECON has published an Opinion on the proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third country undertakings.

Date of publication: 12/01/2024

### **(ii) International**

## **NGFS: Explanatory note on NGFS scenarios: Purpose, use cases and guidance on where institutional adaptations are required**

**Status: Final**

The NGFS has published a technical document, providing guidance on the purpose and use cases of the NGFS scenarios. The document sets out that, while being a starting point for assessing climate and transition-related financial risks, the NGFS scenarios reflect only a small selection of potential future pathways, which do not necessarily represent the most likely or most extreme potential outcomes. Owing to technical and practical limitations they also do not encompass every potential implication of climate change. Hence, the document emphasises the need for scenario users to seek to tailor their analyses to suit their requirements and determine what additional risk assessment tools and scenario calibration may be required. The document provides the main areas where users may need to adapt the intensity of the scenarios. It includes FAQs, which the NGFS will update regularly.

Date of publication: 23/01/2024

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