

Regulatory monitoring: EU Version

Newsletter

October 2022





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Features

HORIZON SCANNING / REGULATORY MONITORING

Identify new regulatory developments easily and tailored to the specific type of regulated firm, so that only relevant changes appear.

FINANCIAL REGULATORY LAW SOURCEBOOK

A categorised collection of all laws in the field of financial regulatory law for Europe and Germany (constantly being expanded), which can be compiled as an obligation register and commented on as desired.

IMPLEMENTATION MANAGEMENT

Effective implementation (including tailored impact analysis and gap analysis) of new legislation and agile control using our project management tool (including KPIs).

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

EBA: 2023 European supervisory examination programme (ESEP) for prudential supervisors

Status: Final

The EBA has published the European Supervisory Examination Programme (ESEP) for 2023, which identifies key topics for supervisory attention across the EU. The ESEP is part of an annual cycle and contributes to enhancing supervisory convergence in the EU by providing common directions and focus areas for supervisors, which helps them shape their prudential supervisory priorities and respective practices. The selection of the key topics for supervisory attention for 2023 is based on the EBA's EU-wide risk analysis, the EBA's relevant policy work and the practical experience of Competent Authorities. The key topics include: (i) Macroeconomic and geopolitical risks; (ii) Operational and financial resilience; (iii) Transition risks towards sustainability and digitalisation; and (iv) Money-laundering and terrorist financing (ML/TF) risks in the SREP and internal controls/governance.

The EBA will follow up on how the key topics are embedded in competent authorities' priorities for 2023 as well as how they form part of their supervisory activities throughout the year.

Date of publication: 27/10/2022

Regulation (EU) 2022/2036 amending the CRR and BRRD as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the MREL

Status: Published in the OJ

Date of entry into force: 14/11/2022

Following the adoption of the Daisy Chain framework by the Council on 4 October, the Regulation (EU) 2022/2036, which covers the prudential treatment of global systemically important institutions, with a multiple point of entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL) has been published in the OJ. The Regulation, often referred to as the 'daisy-chain proposal', amends provisions in the CRR relating to MREL and TLAC focusing on the treatment of the indirect subscription of instruments eligible for internal MREL, with consequential amendments also made to the BRRD. In deviation from the general application date, the consequential amendments to Articles 45d(4) and 45h(2) of the BRRD must be brought into force by 15 November 2023, and amendments to the CRR relating to indirect subscription of internal MREL eligible instruments within resolution groups will apply from 1 January 2024.

Date of publication: 25/10/2022

Publication of seven EEA Joint Committee Decisions amending Annex IX (Financial Services) to EEA Agreement

Status: Published in the OJ

Date of entry into force: 11/06/2022

Seven Decisions of the EEA Joint Committee that amend Annex IX (Financial Services) to the EEA Agreement were published in the OJ. Six of the Decisions incorporate Implementing Regulations and Delegated Regulations under the CRR, BRRD, the

Transparency Directive and the Regulation on the cross-border distribution of funds. One Decision adds Regulation (EU) 2021/337 as an amending act to the Transparency Directive.

- Decision of the EEA Joint Committee No 181/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1881]
- Decision of the EEA Joint Committee No 182/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1882]
- Decision of the EEA Joint Committee No 183/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1883]
- Decision of the EEA Joint Committee No 184/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1884]
- Decision of the EEA Joint Committee No 185/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1885]
- Decision of the EEA Joint Committee No 186/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1886]
- Decision of the EEA Joint Committee No 187/2022 of 10 June 2022 amending Annex IX (Financial services) to the EEA Agreement [2022/1887]

Date of publication: 13/10/2022

EBA: Report on the analysis of the EU dependence on non-EU banks and of EU banks' dependence on funding in foreign currency

Status: Final

The EBA has published a report on the reliance of the EU financial sector on counterparties, operators, and financing originating from outside the Single Market. As of June 2021, 360 banks controlled by non-EU entities were operating in the EU representing 12% of the Union's total banking assets. At the same time, EU banks had, on average, 19% of their total funding denominated in significant foreign currencies. These findings reflect the high degree of openness of the EU economy within the global financial system. While raising funding from non-EU sources brings opportunities, it may create vulnerabilities in some areas. Against this background, matching foreign currency assets with liabilities denominated in the same currency is generally considered prudent risk management.

Date of publication: 03/10/2022

(b) Solvency/Own funds issues

(i) EU

Commission Delegated Regulation (EU) 2022/2060 supplementing the CRR with regard to RTS specifying the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and specifying the frequency of that assessment under Article 325be(3) CRR

Status: Published in the OJ

Date of entry into force: 15/11/2022

The Commission Delegated Regulation (EU) 2022/2060 supplementing the CRR with regard to RTS specifying the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and specifying the frequency of that assessment under Article 325be(3) of the CRR has been published in the OJ.

Date of publication: 26/10/2022

Commission Delegated Regulation (EU) 2022/2059 supplementing the CRR with regard to RTS specifying the technical details of back-testing and profit and loss attribution requirements under Articles 325bf and 325bg CRR

Status: Published in the OJ

Date of entry into force: 15/11/2022

The Commission Delegated Regulation (EU) 2022/2059 supplementing the CRR with regard to RTS specifying the technical details of back-testing and profit and loss attribution requirements under Articles 325bf and 325bg CRR has been published in the OJ.

Date of publication: 26/10/2022

Commission Delegated Regulation (EU) 2022/2058 supplementing the CRR with regard to RTS on liquidity horizons for the alternative internal model approach, as referred to in Article 325bd(7)

Status: Published in the OJ

Date of entry into force: 15/11/2022

The Commission Delegated Regulation (EU) 2022/2058 supplementing the CRR with regard to RTS on liquidity horizons for the alternative internal model approach (A-IMA), as referred to in Article 325bd(7) has been published in the OJ.

Date of publication: 26/10/2022

EC: Commission Delegated Regulation (EU) .../... laying down RTS amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments

Status: Adopted by the EC

The EC has adopted a Delegated Regulation laying down RTS amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments under the CRR. The amendments are as a result of revisions to the CRR made by CRR II. The eligibility criteria specified by the amending RTS are: (i) acquisition of ownership of eligible liabilities must not be directly or indirectly funded by the resolution entity (Article 72b(2), point (c)); (ii) eligible liabilities must not contain incentives to redeem (Article 72b(2), point (g)); and (iii) eligible liabilities may only be called, redeemed, repaid or repurchased once the resolution authority has granted prior permission (Article 77(2)). For the permissions regime, the amending RTS specify, as mandated by Article 78a(3) of the revised CRR: (a) the process of cooperation between the competent authority and the resolution authority; (b) the procedure, including the time limits and information requirements, for granting ad-hoc permission; (c) the procedure, including the time limits and information requirements, for granting general prior permission; and (d) the meaning of 'sustainable for the income capacity of the institution'. The EBA has fulfilled the mandates relating to the two regimes within one RTS to ensure consistency.

The Council of the EU and the EP will now scrutinise the Delegated Regulation. If neither object, the Delegated Regulation shall enter into force 20 days following its publication in the OJ.

Date of publication: 11/10/2022

EC: Commission Delegated Regulation (EU) .../... supplementing CRR with regard to RTS specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum LGD values for exposures secured by immovable property

Status: Final

The EC has adopted a Delegated Regulation containing RTS specifying the types of factors to be considered to assess the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default (LGD) values for exposures secured by immovable property under Articles 124(4) and 164(8) of the CRR as amended by CRR II. The RTS specify: (i) for institutions applying the Standardised Approach, the types of factors to be considered during the appropriateness assessment of risk weights on the basis of the loss experience and forward-looking immovable property market developments; and (ii) for institutions applying the

Internal Ratings Based Approach to retail exposures secured by residential or commercial immovable property, the conditions to be considered when assessing the appropriateness of minimum LGD values.

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

Date of publication: 05/10/2022

(ii) Eurozone

SRB: Agreement “in principle” with ECB on margin for redemptions of eligible liabilities

Status: Final

The SRB has announced that it had reached an “in principle” agreement with the ECB on the margin requirement for redeeming eligible liabilities under Article 78a(1)(b) of the CRR. The new “in principle” agreement is applicable to authorisations granted as of 1 January 2023, including General Prior Permission (GPP) renewals. The margin will be set at the lower value of either the requested predetermined GPP amount or the institution’s Pillar 2 Guidance. However, a different margin may be set depending on the circumstances of the case. This applies for institutions under the supervision of the ECB.

Date of publication: 12/10/2022

(iii) International

BCBS: Evaluation of buffer usability and cyclical in the Basel framework

Status: Final

The BCBS has published its second evaluation report assessing the impact of the implemented Basel reforms regarding buffer usability and cyclical. The BCBS’ findings include that: (i) there are some indications of a positive relationship between capital headroom and lending. The BCBS notes that while some constraint on lending by less well capitalised banks is to be expected, excessive contraction of credit supply in a systemic stress period could be detrimental to financial stability; (ii) temporary reductions in capital requirements supported lending during the pandemic, although there is weaker evidence for countercyclical capital buffer (CCyB) releases specifically, which may reflect more limited use of the CCyB to date. The BCBS considers that the apparent reluctance of banks to cross regulatory capital thresholds and a positive impact of capital releases on lending demonstrate the value of an effective countercyclical regulatory capital regime; (iii) there is limited evidence on whether reluctance by banks to use liquid asset buffers has affected their lending and market activity given the short-lived liquidity pressures during the pandemic. The BCBS considers that further monitoring of this issue may be helpful; and (iv) provisioning could be another source of cyclical pressure on capital. The BCBS found little sign of procyclical effects on lending during the pandemic related to the recent introduction of the expected credit loss framework, although effects are hard to discern given the extensive economic support provided by authorities. More broadly, there are potential benefits of a forward-looking approach to loan loss provisions, which enables regulatory capital measures to better reflect the underlying resilience of banks.

Given the evaluation findings, the longer-term impacts of the pandemic, ongoing geopolitical events, and the potential for new risks to emerge, the BCBS stresses the importance of the prudent build-up and use of buffers at banks to smooth the impact of internal and external shocks. To facilitate this, the BCBS notes that some jurisdictions have chosen to implement positive cycle-neutral CCyB rates. In a newsletter also published on 5 October, the BCBS supports the ability of authorities to take this approach on a voluntary basis. The BCBS will publish a third broader report providing a more holistic analysis of the reforms.

Date of publication: 05/10/2022

(c) Securitisation**(i) EU****Commission Implementing Regulation (EU) 2022/1929 amending the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations**

Status: Published in the OJ

Date of entry into force: 02/11/2022

The Commission Implementing Regulation (EU) 2022/1929 amending the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations have been published in the OJ. The content and format of the notification templates are set out in Annexes I and II of the Implementing Regulation.

Date of publication: 13/10/2022

EC: Report on the functioning of the Securitisation Regulation

Status: Final

The EC has submitted a report to the EP and the Council on the functioning of the Securitisation Regulation. The report focuses on the functioning of: (i) the risk retention requirement; (ii) the due diligence and transparency requirements; (iii) the rules and definition for private securitisations; (iv) the case for an STS equivalence regime; (v) a regime for sustainable securitisation; (vi) the function of the third-party verification of STS; and (vii) the case for establishing a system of limited-licence banks to replace the current structure of true-sale securitisation built around securitisation special purpose entities (SSPEs). The report also considers issues around the jurisdictional scope of the Securitisation Regulation, as raised in the ESAs' opinion, and provides legal interpretations in that context.

The EC's conclusions include that: (a) the EU securitisation framework works well, even though dynamic market growth has not yet materialised. However, more time is needed to get a full picture of the impact of the new securitisation framework, especially due to extraordinary external factors like the Covid-19 pandemic and the accommodative monetary policy of the central banks during that period; (b) targeted improvements to the framework's functioning can be pursued without changes to the Securitisation Regulation, notably on proportionality of certain requirements. The EC has also invited ESMA to revise the technical standards that set out the details of the transparency regime; and (c) there is no need for a separate green securitisation label in the short and medium term. The EC invites the co-legislators instead to address the issue in the ongoing negotiations on the creation of an EU Green Bond Standard. The report includes an overview of the current and upcoming work on the prudential treatment of securitisation, however the EC notes it will wait for feedback from the call for advice sent to the ESAs before assessing whether adjustments would be appropriate.

Date of publication: 10/10/2022

(d) Risk management/SREP/Pillar 2/Outsourcing/NPL**(i) EU****EC: Communication on Guidelines for a best-execution process for sales of nonperforming loans on secondary markets**

Status: Published in the OJ

A communication from the EC on Guidelines for a best execution process for sales of NPL on secondary markets has been published in the OJ. These Guidelines aim to encourage good sell- and buy-side processes for NPL transactions in EU secondary markets, in particular to help sellers and buyers that have less experience with secondary market transactions. It should be noted that while market participants are not obligated to follow the Guidelines, the EC does believe that the Guidelines provide NPL sellers and buyers with a clear and structured process that should enable them to achieve a successful outcome. It is also believed that these Guidelines could lead to a number of benefits for EU secondary markets by increasing

efficiency and transparency of transactions, enabling more standardisation of processes and improving market practices in Member States, especially those where the secondary markets are less developed.

Date of publication: 21/10/2022

EBA: Final standards and Guidelines on interest rate risk arising from non-trading book activities

Status: Final

The EBA has published a final set of Guidelines and two final draft RTS specifying technical aspects of the revised framework capturing interest rate risks for banking book (IRRBB) positions. These Guidelines and RTS complete the onboarding into EU law of the Basel standards on IRRBB and are of particular importance given the current interest rate environment. The EBA will also closely monitor their implementation and the impact of the evolving interest rates on the management of IRRBB by EU institutions and on other prudential aspects. The Guidelines on IRRBB and credit spread risk arising from non-trading book activities (CSRBB) will replace the current Guidelines on technical aspects of the management of interest rate risk arising from non-trading activities under the supervisory review and evaluation process (SREP) published in 2018. Notable new aspects of the Guidelines include the criteria to identify non-satisfactory internal models for IRRBB management and those to assess and monitor CSRBB. These Guidelines will apply from 30 June 2023, except for the part on CSRBB, which will apply from 31 December 2023. The final draft RTS on the IRRBB standardised approach specify the criteria used to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity (EVE) and the net interest income of an institution's non-trading book activities. They will also provide a simplified standardised approach for smaller non-complex institutions. The final draft RTS on IRRBB supervisory outlier tests specify the modelling and parametric assumptions and the supervisory shock scenarios to identify institutions for which the EVE would decline by more than 15% of Tier 1 capital, as well as to evaluate if there is a large decline in the net interest income, that could trigger supervisory measures.

The draft RTS will be submitted to the EC for endorsement, following which they will be subject to scrutiny by the EP and the Council of the EU before being published in the OJ.

- Final report on Guidelines issued on the basis of Article 84(6) of CRD IV specifying criteria for the identification, evaluation, management and mitigation of the risks arising from potential changes in interest rates and of the assessment and monitoring of credit spread risk, of institutions' non-trading book activities
- Final report on draft RTS specifying standardised and simplified standardised methodologies to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities in accordance with 84(5) of CRD IV
- Final report on draft RTS specifying supervisory shock scenarios, common modelling and parametric assumptions and what constitutes a large decline for the calculation of the economic value of equity and of the net interest income in accordance with Article 98(5a) of CRD IV

Date of publication: 20/10/2022

EBA: Report on the peer review on ICT risk assessment under the SREP

Status: Final

The EBA has published the conclusion of its peer review of how competent authorities (CAs) supervise institutions' ICT risk management and have implemented the EBA Guidelines on ICT risk assessment under the supervisory review and evaluation process (SREP). The EBA's findings include: (i) CAs generally apply a risk-based approach to the supervision of ICT risk where the frequency and depth of the assessments correlate with the level of ICT risk of the institutions; (ii) the main challenges faced by CAs are building the necessary ICT supervisory capacity and expertise, applying proportionality in the assessment, and incorporating the ICT risk assessment into the overall SREP; and (iii) no significant concerns regarding the ICT risk assessment under the SREP were identified in the course of the peer review, but the EBA makes a number of recommendations for further improvements of supervisory practice.

Date of publication: 17/10/2022

EBA: Guidelines amending Guidelines EBA/GL/2018/10 on disclosure of nonperforming and forborne exposures

Status: Final

Date of application: 31/12/2022

The EBA has provided clarity on the applicability of several disclosure Guidelines that have been replaced totally or partially by the ITS on Pillar 3 disclosure. Three Guidelines have been repealed: (i) Guidelines on disclosure requirements under Part Eight of the CRR; (ii) Guidelines on liquidity coverage ratio disclosure to complement the disclosure of liquidity risk management; and (iii) Guidelines on disclosure of encumbered and unencumbered assets. The ITS on Pillar 3 disclosures also specify disclosure requirements on non-performing and forborne exposures that are applicable only to large and other listed institutions. The EBA has considered that such limited scope of application of these disclosure requirements compromises the access by external stakeholders to relevant information on credit quality of exposures of small and non-complex institutions and other non-listed institutions. It has therefore revised the Guidelines on disclosure of non-performing and forborne exposures to clarify that these Guidelines will continue to apply to listed small and non-complex institutions and to other medium-sized institutions that are non-listed, but not to those covered by ITS on Pillar 3 disclosures.

Date of publication: 12/10/2022

(e) Cyber security

(i) EU

Council of the EU: Conclusions on ICT supply chain security

Status: Final

In light of some of the most consequential cyber attacks so far, the Council of the EU has agreed to strengthen the security of ICT supply chains. This includes a response to threats of unwanted strategic dependencies in ICT supply chains. Specific actions set out in the conclusions include the strengthening of existing instruments like public procurement or foreign direct investment screening. Furthermore, the conclusions draw on the potential contributions of existing and upcoming cyber-specific legislation, such as the revised Network Information Security Directive (NIS2), the Cybersecurity Act and the Cyber Resilience Act.

Date of publication: 17/10/2022

(ii) International

FSB: Consultation on achieving greater convergence in cyber incident reporting

Status: Consultation

Deadline for the submission of comments: 31/12/2022

The FSB began consulting on proposals to achieve greater convergence in cyber incident reporting. The proposals include: (i) 16 recommendations to address the challenges to achieving greater convergence in cyber incident reporting; (ii) further work on establishing common terminologies related to cyber incidents. A key instrument for achieving convergence in cyber incident reporting is the use of a common language. In particular, a common definition and understanding for what constitutes a 'cyber incident' is needed that avoids the over reporting of incidents that are not meaningful for financial authorities or financial stability; and (iii) a proposal to develop a common format for incident reporting exchange. A review of incident reporting templates and a stocktake of authorities' cyber incident reporting regimes indicated a high degree of commonality in the information requirements for cyber incident reports. Building on these commonalities, the FSB proposes the development of a common reporting format that could be further considered among financial institutions and financial authorities.

Date of publication: 17/10/2022

(f) Disclosure

(i) EU

EBA: Opinion on the EC's amendments relating to the final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a CRR

Status: Final

The EBA has published an opinion on the EC's proposed amendments to the EBA's final draft ITS on prudential disclosures of ESG information under the CRR. The EC has made two substantive changes, mainly with regard to the calculation and disclosure of the Banking Book Taxonomy Alignment Ratio (BTAR), in particular to emphasise: (i) that institutions 'may' choose to disclose this information, instead of being required to do it on a 'best effort basis'; and (ii) that the collection of the information from the counterparties will be on a 'voluntary basis', including that institutions need to inform the counterparties about the voluntary nature of this request of information. The EBA recognises the importance of proportionality and, therefore, although favouring the original 'best effort basis' wording, it accepts the amendments proposed by the EC. The EBA encourages institutions to request this information from the relevant counterparties even if it is on a voluntary basis, and, ultimately, to calculate the BTAR by using estimates or proxies, and to provide further explanations in the narrative on the unavailability of information. The EBA also agrees with the remaining non-substantive changes, due to their nature as non-substantive and given their usefulness in clarifying the text.

Date of publication: 17/10/2022

1.2 Recovery and resolution

(i) EU

EBA: 2023 European resolution examination programme (EREP) for resolution authorities

Status: Final

The EBA has published the European Resolution Examination Programme (EREP) for 2023, which identifies key topics for resolution attention across the EU. The EREP is aimed at shaping resolution authorities' work priorities and respective practices. In line with its mission, the EBA proactively drives convergence in resolution practices through the selection of topics deserving European traction. In doing so, the EBA builds on its expertise in EU-wide policy development, its role in colleges, as well as resolution authorities' practical experience. Resolution authorities are expected to consider the following key topics when developing their 2023 priorities: (i) how MREL shortfalls are being addressed; (ii) the development of management information systems for valuation in resolution; (iii) preparations for managing liquidity needs in resolution; and (iv) Operationalisation of the bail-in strategy.

The EBA will follow up on these key topics, looking at how they are embedded in resolution authorities' priorities for 2023 and how they are reflected in their respective activities throughout the year. Resolution colleges are also expected to consider these topics.

Date of publication: 27/10/2022

Regulation (EU) 2022/2036 amending the CRR and BRRD as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the MREL

Status: Published in the OJ

Date of entry into force: 14/11/2022

Following the adoption of the Daisy Chain framework by the Council on 4 October, the Regulation (EU) 2022/2036, which covers the prudential treatment of global systemically important institutions, with a multiple point of entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and

eligible liabilities (MREL) has been published in the OJ. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 25/10/2022

EBA: Updated report on the monitoring of TLAC-/MREL-eligible liabilities instruments of EU institutions

Status: Final

The EBA has published an updated total loss-absorbing capacity and minimum requirement for own funds and eligible liabilities (TLAC/MREL) monitoring report. Following the first TLAC/MREL monitoring report, the EBA has observed that its recommendations have been, overall, well implemented. Key features of the updated report include: (i) the EBA has observed convergence and standardisation in terms of legal drafting of the notes and programmes, deriving also from the actual implementation of the EBA recommendations from the first TLAC/MREL monitoring report and the ESG recommendations in the latest AT1 monitoring report. Therefore, the updated report integrates only a few new recommendations; (ii) in light of the new observations on certain features of the issuances, new parts have been included in the report, namely on make-whole clauses (to be disallowed), clean up calls (to be allowed) and substitution and variation clauses (for which prior approval is needed in certain circumstances); (iii) some sections have been updated based on new analyses, including on netting & set-off waivers and dual governing law / bail-in; (iv) the observations on ESG instruments included in the previous report have been removed since the recommendations were published in the latest AT1 monitoring report; and (v) alignment with the AT1 Report findings/recommendations has been introduced where needed, including on regulatory & tax calls and supervisory approval for early redemptions. The EBA will continue to monitor the quality of the TLAC/MREL instruments issued also with the objective of covering as many jurisdictions as possible and enriching the observations and recommendations.

Date of publication: 07/10/2022

2. Investment firms regulation

(i) EU

Corrigendum to Implementing Regulation (EU) 2022/389 on competent authority reports under IFD

Status: Published in the OJ

A Corrigendum to Implementing Regulation (EU) 2022/389 laying down ITS for the application of the IFD with regard to the format, structure, content lists and annual publication date of the information to be disclosed by competent authorities has been published in the OJ. The Corrigendum corrects drafting errors in Annex IV of the Implementing Regulation including references to reporting templates.

Date of publication: 20/10/2022



3. Market regulation/Conduct rules

3.1 General

(i) International

IOSCO: Survey on interaction between Index Providers and Asset Managers

Status: Consultation

Deadline for the submission of comments: 26/11/2022

IOSCO has launched a survey directed at asset managers and index providers and to examine the nature of the interaction between these parties. IOSCO has identified potential areas that require further study, including: (i) the role of asset managers in relation to indices and index providers and the role and processes of index providers in the provision of indices; (ii) the potential impact of administrative errors on investment funds; and (iii) potential conflicts of interest that may exist at the index provider in relation to the fund. The survey also seeks information from respondents on their governance and processes during exceptional market events or shocks, particularly the Covid-19 market shock (2020) and the Russian market shock (2022).

Date of publication: 13/10/2022

3.2 Market abuse

(i) EU

Commission Delegated Regulation (EU) 2022/1959 supplementing the MAR with regard to RTS setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market

Status: Published in the OJ

Date of entry into force: 07/11/2022

Commission Delegated Regulation (EU) 2022/1959 containing RTS setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market under MAR has been published in the OJ.

Date of publication: 18/10/2022

ESMA: Enhanced cooperation with ACER to strengthen oversight of energy and energy derivative markets

Status: Final

The EU Agency for the Cooperation of Energy Regulators (ACER) and ESMA have announced that they are strengthening their cooperation by establishing a new joint task force with the aim of improving information exchange and avoiding potential market abuse in Europe's spot and derivative markets. Regulatory oversight of potential market abuse of the trading in energy and financial products falls under two EU regulatory frameworks: REMIT and MAR. The joint ACER-ESMA task force aims to provide a framework for broadening cooperation on the monitoring of energy and energy derivatives markets, by reinforcing their cooperation and enhancing coordination in respect of the exchange of data and knowledge among their staff and respective national authorities. The press release highlights that in the current energy crisis characterised by high prices and price volatility, vigilance in detecting market manipulation and insider trading is more important than ever to ensure confidence in EU wholesale energy and financial derivatives trading. ACER and ESMA are also ready to cooperate in additional areas in the future. This could notably be the case in the context of the possible new LNG benchmark currently under consideration by the EC, and with an enhanced monitoring of risks in energy markets, helping to preserve financial stability in EU markets.

Date of publication: 18/10/2022

3.3 MiFID/MiFIR

(i) EU

Corrigendum to Commission Delegated Regulation (EU) 2022/1299 supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues

Status: Published in the OJ

A Corrigendum to Commission Delegated Regulation (EU) 2022/1299 supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues was published in the OJ. The Corrigendum corrects drafting errors in Article 2(1) of the Delegated Regulation.

Date of publication: 27/10/2022

ESMA: Opinion on the product intervention measure relating to futures with additional payment obligations proposed by BaFin

Status: Final

ESMA has published an opinion on the product intervention measure relating to futures with additional payment obligations proposed by BaFin. ESMA's opinion concludes that the proposed measure is justified and proportionate. In the opinion ESMA encourages NCAs to monitor futures with additional payment obligations in their respective markets to assess whether similar risks for retail investors as those identified by BaFin could arise there.

Date of publication: 26/10/2022

ESMA: No publication of the November SI and liquidity calculations for bonds due to quality issues

Status: Final

ESMA has announced that it will not publish the November 2022 results of the quarterly assessment of bond liquidity and the systematic internaliser (SI) regime data for bonds due to data quality issues detected in the reported data of an approved publication arrangement (APA), potentially affecting a material number of bonds.

Date of publication: 19/10/2022

3.4 Prospectus regulation

(i) EU

ESMA: Updated Q&As on Prospectus Regulation

Status: Final

ESMA has updated its Q&As on the Prospectus Regulation. The update includes a new question (15.9) in relation to the application of the prospectus exemption in connection with a takeover by means of an exchange offer. The EC confirms that the reference to "approval" in Article 1(6)(a)(b) refers to the approval process applied by the relevant supervisory authorities designated in accordance with the Takeovers Directive (2004/25/EC) and that have the competence, where applicable, to review the offer document under that directive.

Date of publication: 12/10/2022

3.5 Securities financing transactions

(i) EU

ESMA: Call for evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain

Status: Consultation

Deadline for the submission of comments: 28/11/2022

ESMA has launched a call for evidence on the implementation of the revised Shareholders Rights Directive (SRD2). ESMA aims to gather information on how market participants perceive the appropriateness of the scope and the effectiveness of the SRD2 provisions on the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as on transparency of proxy advisors. ESMA also asks questions to assess the possibility of introducing an EU-wide, harmonised definition of shareholder and whether the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate actions processing can be further clarified and harmonised – relevant to Action 12 of the EC's Capital Markets Union Action Plan.

The information gathered will form the basis of the report to be submitted to the EC as part of the SRD2 review. ESMA intends to deliver the report to the EC by July 2023.

Date of publication: 11/10/2022

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Q&As on the implementation of the CSDR on improving securities settlement in the EU and on central securities depositories

Status: Final

ESMA has published an updated version of its Q&As on the implementation of the CSDR. ESMA has updated three Q&As in relation to settlement discipline. In particular, the new Q&As concern the calculation, scope, and costs and process of cash penalties.

Date of publication: 20/10/2022

ECON: Draft report on CSDR Refit

Status: Final

ECON has published a draft report on the EC's CSDR Refit proposal. The Rapporteur suggests modifications to the proposal, including: (i) to remove the mandatory buy-in regime entirely, while reintroducing into the Short Selling Regulation the CCP buy-in provisions against naked short-selling that already existed prior to the CSDR. The Rapporteur also suggests enhancements to the penalties regime; (ii) to require only one college based on the substantial importance of a CSD in a Member State, rather than one college for passports and one for CSDs belonging to groups with two or more CSDs; (iii) to provide more granular guidance at Level I as to which considerations the EBA should take into account when setting the risk limit for the provision of ancillary foreign currency settlement without authorisation, and also the accompanying risk management and prudential mitigating requirements. The Rapporteur suggests that ESMA is given responsibility for monitoring compliance with the threshold. Additionally, the scope of services to be offered by banking CSDs to user CSDs should be limited to services which are provided for the purposes of settlement in foreign currencies; (iv) limiting the scope of the obligation for CSDs to submit information for financial instruments constituted under the law of another Member State to shares; (v) introducing specific requirements to address risks stemming from CSDs operating securities settlements systems that use netting arrangements; (vi) introducing an LEI obligation for issuers; and (vii) including in the next CSDR review a consideration of the DLT pilot regime and the possibility of moving towards a T+1 settlement cycle.

Date of publication: 14/10/2022

Commission Delegated Regulation (EU) 2022/1930 amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the date of application of the provisions related to the buy-in regime

Status: Published in the OJ

Date of entry into force: 02/11/2022

The Commission Delegated Regulation (EU) 2022/1930 amending the RTS on settlement discipline laid down in Delegated Regulation (EU) 2018/1229 to suspend the application date of the mandatory buy-in regime under CSDR has been published in the OJ. The application of the mandatory buy-in regime will now be deferred from 1 February 2022 until 2 November 2025 in order to avoid negative impacts on the efficiency and competitiveness of capital markets in the EU.

Date of publication: 13/10/2022

4.2 EMIR

(i) EU

EC: RTS extending temporary exemptions regime for intragroup contracts under EMIR

Status: Adopted by the EC

The EC has adopted two amending Delegated Regulations containing RTS that extend the temporary exemptions regime for intragroup contracts for three years under EMIR. The first amends the RTS laid down in Delegated Regulations 2015/2205, 2016/592 and 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts. The amendments extend the date of application of the clearing obligation for intragroup transactions set in the three commission delegated regulations to 30 June 2025. The second Delegated Regulation amends the RTS laid down in Delegated Regulation 2016/2251 as regards the date of application of certain risk management procedures for the exchange of collateral. The date of application of the margin requirements for intragroup transactions set in the margin RTS is also extended to 30 June 2025.

The two Delegated Regulations will enter into force on the day after publication in the OJ.

- Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts
- Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2016/2251 as regards the date of application of certain risk management procedures for the exchange of collateral

Date of publication: 25/10/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 149/2013 as regards the value of the clearing threshold for positions held in OTC commodity derivative contracts and other OTC derivative contracts

Status: Adopted by the EC

Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 149/2013 as regards the value of the clearing threshold for positions held in OTC commodity derivative contracts and other OTC derivative contracts has been adopted by the EC. It will now be scrutinised prior to its publication in the OJ.

Date of publication: 18/10/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements

Status: Adopted by the EC

The EC has adopted a Delegated Regulation (together with an Annex) amending the RTS laid down in Delegated Regulation (EU) 153/2013 as regards temporary emergency measures on collateral requirements under EMIR. The recent political and market developments have led to significant price and volatility increase on energy markets, which have triggered substantial margin increases by CCPs to cover the related exposures. These margin increases have created liquidity strains on non-financial counterparties (NFCs), resulting in them either reducing their positions or leaving them improperly hedged, exposing them to further price variations. The Amending Regulation temporarily expands the pool of eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members, and to public guarantees for all types of counterparties. These provisions will expire 12 months after the entry into application of the Regulation. However, depending on how the situation on energy derivative markets evolves, the EC is ready to ask ESMA to consider an extension of the temporary measures.

The Amending Regulation will enter into force on the day following its publication in the OJ.

Date of publication: 18/10/2022

ESMA: Final report on emergency measures on collateral requirements – draft RTS amending Commission Delegated Regulation (RTS) 153/2013

Status: Final

ESMA has published a final report setting out draft RTS providing measures aimed at alleviating the liquidity pressure on non-financial counterparties (NFCs) active on gas and electricity regulated markets cleared in EU-based CCPs. The draft RTS amends Delegated Regulation 153/2013, which supplements EMIR, to temporarily expand for a period of 12 months the pool of CCP eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members and to public guarantees for all types of counterparties. ESMA also published a [Q&A](#) clarifying the eligibility of bonds and commercial paper as collateral for CCPs. ESMA has sent the final report to the EC for endorsement and it will then be subject to a scrutiny procedure by the EP and the Council of the EU. The amended RTS will enter into force the day after their publication in the OJ. ESMA states that it will continue to work on other potential measures, as outlined to the EC in its September letter, to respond to the extreme volatility in the energy markets.

Date of publication: 14/10/2022

ESMA: CCP strategic objectives 2023–2025

Status: Final

ESMA's CCP Supervisory Committee has published its strategic objectives for 2023-2025 which include: (i) strengthening EU CCP resilience – following recent turmoil and volatility on financial markets, ESMA's focus will be on procyclicality risks, member due diligence and access by non-financial counterparties and concentration risks. ESMA will aim to foster EU wide consistency and coherence and support implementation of the CCP recovery and resolution framework; (ii) addressing third-country CCP (TC-CCPs) cross-border risks – ESMA sets out three priority areas: effective direct supervision of TC-CCPs that qualify as systemically important (Tier 2 CCPs), determining comparable compliance of Tier 2 CCPs and providing effective recognition and monitoring of TC-CCPs that qualify as non-systemically important (Tier 1 CCPs); and (iii) deepening risk and data-driven supervision – ESMA will continue to strengthen its capabilities to identify, understand and assess risks to CCPs and the broader clearing ecosystem in the EU, building further on available data sources, exploring new data sources, whilst at the same time aiming to improve the quality of the data collected. ESMA expects there will be a need to adopt a reviewed strategy for CCPs once changes proposed by the EC following its review of the EU central clearing framework are agreed by the co-legislators and implemented before the end of the current equivalence and recognition decisions for UK CCPs.

Date of publication: 11/10/2022

ESMA: MoUs with People's Bank of China and Chilean Market Commission on CCPs under EMIR

Status: Final

ESMA has published two MoUs that it has entered into with: (i) the People's Bank of China relating to CCPs established in the People's Republic of China; and (ii) the Chilean Market Commission relating to CCPs established in Chile. The MoUs set out the co-operation arrangements between the authorities regarding the relevant CCPs that have applied to ESMA for recognition under EMIR, including in relation to information sharing related to CCPs and to regulatory and supervisory developments in China/Chile. They are also intended to provide ESMA with adequate tools to monitor the ongoing compliance by the CCPs with the recognition conditions in EMIR Article 25.

The Chilean MoU took effect on 22 July and the Chinese MoU will take effect on the date that it is signed by the parties.

- [MoU People's Bank of China](#)
- [MoU Chilean Market Commission](#)

Date of publication: 11/10/2022

RTS and ITS on data reporting, data access, TR registration and reconciliation of TR data under EMIR

Status: Published in the OJ

Date of entry into force: 27/10/2022

The following four Delegated Regulations and two Implementing Regulations supplementing EMIR regarding data reporting, data access, TR registration and reconciliation of TR data under EMIR have been published in the OJ.

- Commission Delegated Regulation (EU) 2022/1855 supplementing EMIR with regard to RTS specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used
- Commission Delegated Regulation (EU) 2022/1856 amending the RTS laid down in Delegated Regulation (EU) No 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access
- Commission Delegated Regulation (EU) 2022/1857 amending the RTS laid down in Delegated Regulation (EU) No 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository
- Commission Delegated Regulation (EU) 2022/1858 supplementing EMIR with regard to RTS specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported
- Commission Implementing Regulation (EU) 2022/1859 amending the ITS laid down in Implementing Regulation (EU) No 1248/2012 as regards the format for applications for registration as trade repositories and for applications for extension of registration as trade repositories
- Commission Implementing Regulation (EU) 2022/1860 laying down ITS for the application of EMIR with regard to the standards, formats, frequency and methods and arrangements for reporting

Date of publication: 07/10/2022

ESMA: Recognition of Shanghai Clearing House and Dubai Clear as TC CCPs

Status: Final

ESMA has recognised Shanghai Clearing House, from the People's Republic of China, and Dubai Clear, from the United Arab Emirates (UAE), as third-country central counterparties (TC CCP) under Article 25 EMIR. The recognition of Shanghai Clearing House as a third-country CCP follows the adoption of a decision on the equivalence of the regulatory framework of the People's Republic of China for central counterparties with EMIR requirements on 22 June 2022. An equivalence decision with respect to the UAE and a Memorandum of Understanding between the 'Securities and Commodities Authority' and ESMA were already in place since December 2016 and February 2017 respectively.

Date of publication: 03/10/2022

5. Anti-money laundering

(i) EU

EC: Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities

Status: Final

The EC has published a report to the EP and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities. This report is the third supranational risk assessment by the EC and this year is made up of two documents: the report and a detailed Staff Working Document, which read together provide a comprehensive mapping of risks on all relevant areas, as well as the necessary recommendations to counter them. The report also assesses the degree to which the EC's recommendation for mitigating measures in its 2019 report have been implemented and evaluates the remaining risks. The EC will monitor the implementation of the report, in principle by 2024. That review will also assess how EU and national measures affect risk levels, in the light of the changes that may be introduced to the current EU regulatory framework.

Date of publication: 27/10/2022

EBA: Call for Input on the 2017 Joint Guidelines to prevent the abuse of fund transfers for ML/TF purposes

Status: Consultation

Deadline for the submission of comments: 15/11/2022

The EBA has published a Call for Input on the 2017 Joint Guidelines to prevent the abuse of fund transfers for ML/TF purposes. The aim of the Call for Input is to identify practical issues that financial institutions experience when complying with the existing Guidelines. These Guidelines need to be amended and extended to reflect the recast regulation on information accompanying transfers of funds, which seeks to bring the EU's legal framework in line with the FATF's standards by extending the obligation to include information about the originator and beneficiary to Crypto Assets Service Providers (CASPs) – the so-called "travel rule".

Date of publication: 21/10/2022

Council of the EU: Final compromise text on the Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

Status: Draft

The Council of the EU has published the final compromise text of the proposed Regulation on information accompanying transfers of funds and certain crypto-assets (recast revised WTR). The Council also published a note (dated 30 September) inviting its Permanent Representatives' Committee (COREPER) to approve the text and to inform the Chairs of the EP's ECON and LIBE Committees that, should the EP adopt the text of the proposal in this exact form, the Council would adopt the proposed Regulation thus amended, subject to legal-linguistic revision by both Institutions. On 5 October, the Council of the EU published an information note, attaching the [letter sent to the ECON Chair](#).

Date of publication: 06/10/2022

(ii) International

FATF: Public consultation on the revision of Recommendation 25 and its interpretive note

Status: Consultation

Deadline for the submission of comments: 06/12/2022

The FATF has launched a public consultation reviewing Recommendation 25 and its interpretive note on the transparency and beneficial ownership of legal arrangements. The aim is to make improvements to prevent the misuse of legal arrangements for money laundering and terrorist financing. FATF is also considering amending the 'beneficial ownership' definition in the glossary to its recommendations in the hopes of providing clarity on legal arrangements. FATF calls for input from financial institutions, stakeholders, trustees, designated non-financial businesses and professions (DNFBPs) and non-profit organisations, on whether its proposals are adequate and clear and whether implementation challenges may arise. All comments will be reviewed at the FATF meetings in February 2023.

Date of publication: 26/10/2022

FATF: Public consultation on Guidance on Beneficial Ownership (Recommendation 24)

Status: Consultation

Deadline for the submission of comments: 06/12/2022

The FATF has launched a consultation on its updated Guidance paper on Recommendation 24 on the transparency and beneficial ownership of legal persons. FATF seeks views from companies and other legal persons, financial institutions, DNFBPs and non-profit organisations. All comments will be reviewed at the FATF meetings in February 2023.

Date of publication: 26/10/2022

6. Payments

6.1 Payment services/E-money

(i) EU

EPC: Updated 2023 EPC SEPA Instant Credit Transfer Scheme Rulebook and related documents

Status: Final

The EPC has published version 1.1 of the 2023 EPC SEPA Instant Credit Transfer Scheme Rulebook and related documents on the SCT Inst maximum amount. The new rulebook will replace, with immediate effect, version 1.0 of the 2023 SCT Inst rulebook published in May. The update makes two changes to the previous rulebook: the first change is the amended entry into force time of the 2023 SCT Inst rulebook, which is now set at 03:30 CET on 19 November 2023. The second change is a SEPA wide 30 minute downtime period for the SCT Inst scheme from 03:00 CET to 03:30 CET. During the downtime, no single SCT Inst instruction, transaction, r-transaction, transaction investigation or any response message related to them will be possible across SEPA. It is hoped that these changes will help all SCT Inst scheme participants and their SCT Inst service-supporting technical partners to make a smooth changeover of their relevant systems, infrastructures and applications. The EPC has also published version 2.0 of the Guidance document on migration to the 2019 version of the ISO 20022-based XML messaging standard.

- [SEPA Instant Credit Transfer Scheme Rulebook](#)
- [SEPA Instant Credit Transfer Scheme Customer-to-PSP Implementation Guidelines](#)
- [EPC Guidance Document Use of Structured Address under the SEPA Payment Schemes as of November 2025](#)

Date of publication: 27/10/2022

(ii) International

FSB: Consolidated progress report for 2022 on the G20 roadmap for enhancing cross-border payments

Status: Final

The FSB has published the priority themes for the next phase of work under the G20 Roadmap for Enhancing Cross-Border Payments. The FSB states that the Roadmap has now reached an inflection point and needs to move to practical initiatives to enhance payment arrangements. Three priority themes have been identified to focus on in the next phase: (i) payment system interoperability and extension of Real-Time Gross Settlement operating hours and access policies; (ii) legal, regulatory and supervisory frameworks that are both efficient and secure; and (iii) cross-border data exchange and increasing use of standardised messages.

The FSB also discusses: (a) levers that can be utilised for supporting collective action; (b) how to create private sector engagement at all levels; and (c) the engagement of public authorities beyond the G20. The FSB held a high-level cross-border payments summit in October to launch its new phase of work under the roadmap. The FSB will also develop an updated roadmap, which it will provide to the first G20 Finance Ministers and Central Bank Governors meeting in 2023. The FSB has also published a report on the progress made during the second year of the Roadmap. The work in 2021 and 2022 has focused on establishing the foundational elements of the Roadmap and is beginning to pivot from stocktaking, analysis and guidance to practical projects to improve existing systems and develop new ones.

Date of publication: 10/10/2022

6.2 Payment accounts

(i) EU

EC: Proposal for a Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

Status: Consultation

Deadline for the submission of comments: 26/12/2022

The EC has adopted a proposal for a Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro. This proposal follows the 2020 Retail Payments Strategy, which highlighted the need for an EU-wide instant payments scheme. The proposal is now open for feedback which will feed into the following legislative debate.

Date of publication: 26/10/2022

7. Institutional supervisory framework

(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 Russia's invasion of Ukraine, the macroeconomic environment and climate-related matters in financial and non-financial information. The statement also highlights the importance of comprehensive disclosures pursuant to Article 8 of the Taxonomy Regulation.

Date of publication: 28/10/2022

EC: 2023 work programme

Status: Final

The EC has published a communication outlining its work programme for 2023. The work programme was also accompanied by a series of annexes. Annex III sets out 116 priority pending proposals, to which the EC wants the EP and Council of the EU to take swift action. These include the following proposals in relation to financial services: (i) proposal for a Regulation amending the CSDR (CSDR Refit); (ii) proposal for a Regulation amending MiFIR as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders; (iii) proposal for a Directive amending MiFID II; (iv) proposal for a Regulation amending the Regulation on ELTIFs as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds; (v) proposal for a Directive amending the AIFMD and UCITS Directive (AIFMD II) as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds; (vi) 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 (CRR III Regulation); (vii) proposal for a Directive amending the Solvency II Directive; (viii) proposals to strengthen the EU's AML and CTF rules; and (ix) proposal for a Directive on consumer credits. As set out in Annex I, the EC also intends to further improve data access in financial services with an initiative for a framework on open finance. It will also revise the Payment Services Directive. On the basis of the 2023 work programme, the EC, the EP and the Council of the EU will establish a joint declaration on the EU's legislative priorities, committing to take swift action.

Date of publication: 18/10/2022

ESMA: 2023 annual work programme and five-year strategy

Status: Final

ESMA has published its annual work programme for 2023 and five-year strategy for 2023–2028. ESMA's priority work areas for 2023 include: (i) enabling sustainable finance – to develop remaining SFDR technical standards and work to better understand and fight against greenwashing; (ii) facilitating technological innovation and effective use of data – develop technical standards and Guidelines in order to help the market prepare for the implementation of key new regulations: DORA, MiCA and the DLT Pilot Regime; (iii) investors and issuers – report on the impact of costs and charges for retail investors and coordinate new workstreams on mystery shopping. ESMA will also coordinate a Common Supervisory Action in the area of sustainability, covering the risk of greenwashing in the fast-growing area of sustainable investment products; (iv) markets and infrastructures – develop technical standards on authorisation and registration of benchmark providers. ESMA will also deliver the final technical standards and Guidelines mandated under the CCP Recovery and Resolution Regulation; and (v) supervision and convergence – continue risk-based supervision of all EU CRAs, TRs and SRs as well as certain DRSPs, benchmark administrators and third-country CCPs, and work with national authorities to promote supervisory convergence and a common understanding of where major risks lie. ESMA will prepare for the supervision of Consolidated Tape Providers, subject to the ongoing MiFIR review and for the oversight of critical ICT third-party providers with the other ESAs. ESMA's five-year strategic priorities are: (a) fostering

effective markets and financial stability; (b) strengthening supervision of EU financial markets; (c) enhancing protection of retail investors; (d) enabling sustainable finance; and (e) facilitating technological innovation and effective use of data.

- [Annual work programme 2023](#)
- [Five-year strategy 2023-2028](#)

Date of publication: 10/10/2022



8. Investment funds

8.1 Product regulation

(a) AIF

(i) EU

ECB: Opinion on a proposal for a directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds

Status: Final

The ECB has published an Opinion on a proposal for a directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. It generally welcomes the proposal and makes specific observations on the following topics: (i) liquidity management and macroprudential tools; (ii) reporting; and (iii) ESCB access to detailed data on the AIF sector.

Date of publication: 03/10/2022

8.2 Prudential regulation

(a) Compliance

(i) EU

Council of the EU: Provisional agreement on the ELTIF review regulation

Status: Draft

The Council of the EU has announced that it has reached provisional agreement with the EP on the review of the regulation on ELTIF. The amendments aim to make ELTIFs more attractive and easier to invest in. In their agreement, the co-legislators intend to overcome a number of supply-side and demand-side limitations. In particular, they clarified the scope of eligible assets and investments, the portfolio composition and diversification requirements, the conditions for borrowing and lending of cash and other fund rules, including sustainability aspects. The package also includes rules to make it easier for retail investors to invest in ELTIFs while ensuring strong investor protection. The next step will be for the Council of the EU and the EP to approve the provisional agreement before going through the formal adoption procedure. The agreed revised text of the legislative proposal has not yet been published.

Date of publication: 19/10/2022

9. Special rules for real estate financing and covered bonds

9.1 Mortgage credits

(i) EU

EBA: Thematic note on residential real estate exposure of EU banks: risks and mitigants

Status: Final

The EBA has published a thematic note on residential real estate exposure of EU banks: risks and mitigants. In this context, EU banks reported more than EUR 4.1 trillion of loans and advances collateralised by residential immovable property. This corresponds to 1/3 of all loans towards households and non-financial corporates. The note found that house prices across the EU have increased substantially during 2021, raising concerns about overheating and the potential for significant price declines in residential real estate markets. In addition, the EBA states that higher interest rates driven by increased inflation combined with the prospect of slower economic growth will likely put financial pressure on lower income and over-indebted households. It concludes that these developments clearly point to higher risks in banks' mortgage portfolios and urges banks to follow prudent loan origination policies and enhance their monitoring of mortgage loan portfolios to identify promptly pockets of risks.

Date of publication: 10/10/2022

10. Special topics

10.1 FinTech/Digital finance

(i) EU

Commission Delegated Regulation (EU) 2022/1988 extending the transitional period for continuing to provide crowdfunding services in accordance with national law as referred to in Article 48(1) of the Crowdfunding Regulation

Status: Published in the OJ

Date of entry into force: 22/10/2022

Delegated Regulation (EU) 2022/1988 extending the transitional period for continuing to provide crowdfunding services under the Regulation on European Crowdfunding service providers for business has been published in the OJ. The Delegated Regulation extends the transitional period by 12 months until 10 November 2023, to allow crowdfunding platforms authorised before 10 November 2021 and competent authorities time to adapt to the new regime.

Date of publication: 21/10/2022

Council of the EU: Final compromise text on the Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

Status: Draft

The Council of the EU has published the final compromise text of the proposed Regulation on information accompanying transfers of funds and certain crypto-assets (recast revised WTR). For more information, please see section **Error! Reference source not found.** above.

Date of publication: 06/10/2022

Council of the EU: Final compromise text on the Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA)

Status: Draft

The Council of the EU has published the final compromise text of the proposed Regulation on markets in crypto-assets (MiCA). In the aforementioned note by the Council, dated 30 September, the Council also addresses COREPER regarding MiCA.

Date of publication: 05/10/2022

ESMA: Risk analysis on crypto-assets and their risks for financial stability

Status: Final

ESMA has published a report on a risk analysis on crypto-assets and their risks for financial stability. In this report, ESMA outlines the latest understanding of crypto-assets' risks and transmission channels to financial markets. This is based on ESMA's monitoring of the development of crypto-assets and their risks to consumer protection. While some sources of risk are well understood from traditional markets, others are novel and linked to the product design, technological development, or the complex infrastructures built around crypto-assets. The report demonstrates that, at present, crypto-assets are still small in size and their interlinkages to traditional markets are limited. In future, this situation may change as market growth can occur suddenly and risk transmission is possible through various channels. Continuous monitoring of the crypto-asset market and its interconnectedness with the wider financial system is required to assess newly emerging threats in a timely manner, while regulations such as the MiCA should be implemented swiftly to mitigate already identified risks.

Date of publication: 04/10/2022

(ii) International**IOSCO: Final report on retail distribution and digitalisation****Status: Final**

IOSCO has published a final report setting out measures members should consider when determining their policy and enforcement approaches to retail online offerings and marketing. IOSCO explains that increased digitalisation and cross border offerings bring various new risks associated with the increased complexity of financial products and services, the rapid pace of innovation, the ongoing gamification trends, and increasing levels and volumes of self-directed trading among retail investors. The report presents a toolkit of policy measures to help members address risks that may arise and a toolkit of enforcement measures that leverage a range of powers and technology-based investigatory techniques and enhanced collaboration with other authorities and providers of electronic intermediary services. The report analyses global developments in online marketing and distribution of financial products to retail investors and discusses enforcement challenges encountered by regulators. It sets out examples of how some member jurisdictions have addressed these issues and requests that IOSCO members continue to observe and consider changes in their respective markets.

Date of publication: 12/10/2022

FSB: Consultative document on regulation, supervision and oversight of crypto-asset activities and markets**Status: Consultation****Deadline for the submission of comments: 15/12/2022**

The FSB has proposed a framework for the international regulation of crypto-asset activities. The core components of this framework are: (i) recommendations that promote the consistency and comprehensiveness of regulatory, supervisory and oversight approaches to crypto-asset activities and markets and strengthen international cooperation, coordination and information sharing; and (ii) revised high-level recommendations for the regulation, supervision, and oversight of global stablecoin arrangements to address associated financial stability risks more effectively. These revisions strengthen the requirements for users' redemption rights and for a robust stabilisation mechanism.

The FSB states that the proposed recommendations are grounded in the principle of "same activity, same risk, same regulation": where crypto-assets and intermediaries perform an equivalent economic function to one performed by instruments and intermediaries of the traditional financial sector, they should be subject to equivalent regulation. The FSB considers that regulation should also take account of novel features and specific risks of crypto-assets and address potential financial stability risks that could arise from the growing interlinkages between the crypto-asset ecosystem and the traditional financial system. The two sets of recommendations are closely interrelated and are intended to work together and to be consistent where they cover the same issues and risks.

The FSB will finalise the proposed recommendations by mid-2023 in light of feedback from the consultation. In addition, the FSB is analysing developments and potential risks to financial stability stemming from decentralised finance and will consider in 2023 whether additional policy work is warranted.

Date of publication: 11/10/2022

FSB: Letter on work to strengthen financial resilience amidst growing financial stability challenges**Status: Final**

The FSB has published a letter from Klaas Knot, FSB Chair, to G20 finance leaders and central bank governors ahead of their 13-14 October summit. The letter discusses the FSB initiatives in relation to: (i) global financial stability – the FSB continues to work closely with its members to tackle current financial stability issues, including those related to commodity markets or hidden leverage. In November, the FSB will report on progress in strengthening the resilience of non-bank financial intermediation; (ii) a regulatory framework for crypto-assets – the FSB's recommendations on stablecoins and on crypto-asset activities promote the comprehensiveness and international consistency of regulatory and supervisory approaches. Crypto-assets will remain a priority topic for the FSB in 2023 with the FSB's work focusing on data, operationalising recommendations, further policy work on DeFi and implementation; (iii) improving cross-border payments – the report on the way forward for the Roadmap for Enhancing Cross-border Payments sets out priorities for this new phase of the work; (iv) containing cyber risks – the FSB will publish a consultative report on 17 October with proposals for achieving greater convergence in cyber incident reporting. The report shall include recommendations to address impediments to convergence, advances work on establishing common terminologies related to cyber incidents and proposes the development of a common format for incident reporting exchange;

and (v) addressing climate-related financial risks – On 13 October, the FSB published reports on the Task Force on Climate-related Financial Disclosures (TCFD), progress in achieving consistent and decision-useful disclosures and recommendations on supervisory and regulatory approaches to climate-related risks.

Date of publication: 11/10/2022

10.2 Sustainable finance

(i) EU

ESMA: Updated strategy for 2023-2028 to include ESG disclosures

Status: Final

ESMA has published a press release announcing that it is updating its Union Strategic Supervisory Priorities to include ESG disclosures alongside market data quality. The new priority of ESG disclosures replaces costs and performance for retail investment products. ESMA and the NCAs also intend to foster transparency and comprehensibility of ESG disclosures across key segments of sustainable finance value chain such as issuers, investment managers or investment firms and hence tackle greenwashing, to accompany the growing demand for ESG-related financial products. ESMA also aims to gradually promote an increased scrutiny on ESG disclosures through effective and consistent supervision.

Date of publication: 27/10/2022

EBA: Report on incorporating ESG risks in the supervision of investment firms

Status: Final

The EBA has published a report on how to incorporate ESG risks in the supervision of investment firms. The report, addressed to NCAs, provides an initial assessment of how ESG factors and ESG risks could be included in the supervisory assessment of investment firms. It sets out the foundations for integrating ESG risk-related considerations in the supervisory process, covering the main SREP elements including: (i) business model analysis; (ii) assessment of internal governance and risk management; and (iii) assessment of risks.

The report suggests proportionality when integrating ESG considerations, taking into account the investment firms' business model, size, internal organisation and the nature, scale and complexity of its services and activities, alongside the materiality of its exposure to ESG risks. The EBA recommends that the integration of ESG risks into supervisory review should be gradual, the primary focus being the recognition of ESG risks in investment firms' strategies, governance arrangements and internal processes, with a view to later incorporating them in the assessments of risks to capital and liquidity. Competent authorities are expected to monitor and encourage further developments in the data and quantification methodologies of ESG risks as part of the supervisory review.

Date of publication: 24/10/2022

EBA: Opinion on the EC's amendments relating to the final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a CRR

Status: Final

The EBA has published an opinion on the EC's proposed amendments to the EBA's final draft ITS on prudential disclosures of ESG information under the CRR. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 17/10/2022

EU Platform on Sustainable Finance: Final report on minimum safeguards

Status: Final

The EU Platform on Sustainable Finance has published a final report advising on the application of minimum safeguards in relation to the Taxonomy Regulation. The report does so by: (i) embedding minimum safeguards in existing EU regulation; (ii)

identifying substantive topics relating to the standards and norms referenced in Article 18 of the Taxonomy Regulation; and (iii) presenting advice on compliance with minimum safeguards. The report focuses in particular on SFDR, the proposed Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CSDDD). The report identifies four core topics for which compliance with minimum safeguards should be defined: human rights, including workers' rights, bribery/corruption, taxation and fair competition. The Platform recommends that the EC treat as evidence of non-compliance with the minimum safeguards: (a) inadequate or non-existent corporate due diligence processes on human rights (including labour rights, bribery, taxation and fair competition), or a final liability on any of these matters; (b) failing to cooperate with a national contact point (NCP) (under the OECD Responsible Business Conduct Guidelines for Multinational Enterprises) or an assessment of non-compliance with the OECD Guidelines by an OECD NCP; and (c) failing to respond to allegations by the Business and Human Rights Resource Centre. As regulation of human rights due diligence (CSDDD) and sustainability reporting (CSRD) is not yet fully finalised, there remains some uncertainty surrounding their implementation and therefore the Platform intends to revise the report once the CSDDD and CSRD are finalised, and some experience on practical implementation and court rulings is accumulated. The report includes advice on project finance, SME financing, green bonds and how to assess compliance by sub-sovereigns.

Date of publication: 11/10/2022

EU Platform on Sustainable Finance: Recommendations on data and usability of EU Taxonomy

Status: Final

The EU Platform on Sustainable Finance has published its recommendations on data and usability of EU Taxonomy, together with [appendices to the report](#) which, among other things, contain a simplified disclosure proposal. The main themes of usability issues identified by the report include: (i) misalignment between the sustainable finance reporting requirements across the regulatory framework, including differing definitions of 'sustainable investment', 'do no significant harm', 'good governance' and risk approaches; (ii) sequencing issues across the reporting framework, ensuring that the data is available to financial institutions in order to satisfy their own reporting obligations; (iii) regulatory overload, ensuring that the regulatory reporting requirements are evenly distributed and proportional to financial market participants, financial undertakings, non-financial corporates, public sector actors and SMEs use cases; (iv) interpretive issues, ensuring reporting requirements are clearly understood by all user groups; and (v) regulatory and data gaps, filling any regulatory gap or addressing any regulatory hurdle that might hinder the use of the Taxonomy and fostering the availability and accessibility of data. The report does not address the application of the EU Taxonomy to SMEs or the treatment of SMEs within financial institutions reporting obligations at entity-level or at financial product level. The Platform is preparing a separate report on SMEs.

Date of publication: 11/10/2022

EC: FAQs on the interpretation of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation

Status: Final

The EC has published a Commission Notice on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of eligible economic activities and assets. The FAQs aim to clarify the content of Commission Delegated Regulation (EU) 2021/2178 (Disclosures Delegated Act), which sets out the content and presentation of information to be disclosed. These FAQs complement FAQs published by the EC in December 2021.

Date of publication: 06/10/2022

(ii) International

FSB: Two FSB reports on addressing climate-related financial risks

Status: Final

The FSB has published a final report on supervisory and regulatory approaches to climate-related risks. The report provides high-level recommendations covering: (i) supervisory and regulatory reporting and collection of climate-related data from financial institutions – authorities are encouraged to accelerate the identification of their data needs for supervisory and regulatory objectives, identify relevant types of data and metrics that they may require from financial institutions and provide key policy considerations to assist authorities in their future work towards expanding regular standardised regulatory reporting

requirements; (ii) system-wide supervisory and regulatory approaches and the extent to which supervisory and regulatory tools and policies address climate-related risk – authorities are encouraged to expand the use of climate scenario analysis and stress tests for macroprudential purposes; and (iii) early consideration of other potential macroprudential policies and tools – authorities and standard-setting bodies are encouraged to undertake research and analysis in the near to medium term on the appropriate enhancements to their regulatory and supervisory frameworks. As approaches develop and mature in the next few years, the FSB will consider in 2024 conducting a peer review of supervisory and regulatory practices against its recommendations. It will also consider in 2025 whether to make an update to the report's recommendations.

The FSB also published a progress report on climate-related disclosures, which takes stock of progress made over the past year by: (a) the International Sustainability Standards Board (ISSB) in developing its global baseline standard; (b) national and regional authorities in promoting climate-related disclosures; and (c) firms in making climate-related disclosures. During the period until the ISSB global baseline standard is agreed and the implementation of that standard across jurisdictions begins to be monitored, there is a continuing need to maintain momentum by monitoring and reporting on progress in firms' climate disclosures. The FSB has therefore requested that the TCFD prepare another progress report on firms' disclosures in 2023. The reports have been delivered to G20 Finance Ministers and Central Bank Governors for their 12-13 October meeting.

- [Final report on supervisory and regulatory approaches to climate-related risks](#)
- [Progress report on climate-related disclosures](#)

Date of publication: 13/10/2022

TCFD: 2022 status report

Status: Final

The Task Force on Climate-related Financial Disclosures (TCFD) has published its 2022 status report, its fifth annual report. The report assesses the developments and progress made over the past five years. The percentage of companies disclosing information in line with the TCFD's recommendations has steadily increased each year as has the amount of TCFD-aligned information companies disclose. The TCFD highlight that since the publication of last year's status report, there have been further significant actions by regulators and international standard setters to use the TCFD recommendations in developing climate-related reporting requirements and standards, including proposals released earlier this year by the U.S. Securities and Exchange Commission, the ISSB and the European Financial Reporting Advisory Group. The TCFD will prepare another status report, as requested by the FSB, in October 2023.

Date of publication: 13/10/2022

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