

# A&O SHEARMAN



## Regulatory monitoring: EU Version

NEWSLETTER

OCTOBER 2024

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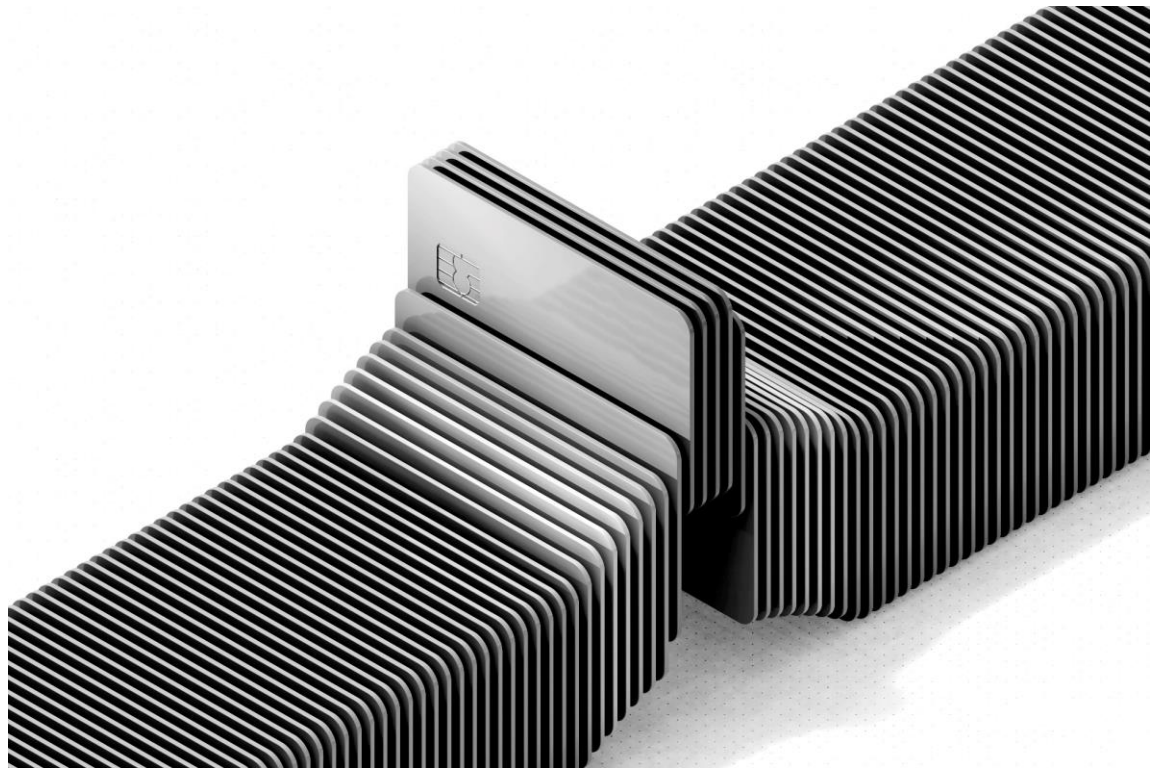
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## FEATURES

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### **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.

# 1. Bank regulation

## 1.1 PRUDENTIAL REGULATION

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### a) General

#### (i) EU

#### **ESRB: Speech on old and new frontiers of the ESRB: Systemic risk, non-banks and data analysis**

Status: Final

The ESRB has published a speech by Olli Rehn, ESRB First Vice-Chair, on new frontiers in macroprudential policy. In the speech, Mr Rehn addressed three issues: (i) the ESRB's 15-year record; (ii) key starting points for the forthcoming ESRB review; and (iii) new frontiers, especially dealing with non-banks and better use of data and analysis. Regarding the EC's upcoming review of the ESRB, Mr Rehn explains that the ESRB will not take a formal position on its founding regulation, although it does believe it is important that co-legislators have the opportunity to benefit from the experience of those involved in the work of the ESRB. As such the ESRB has set up a High Level Group to identify which adjustments to the mission or framework of the ESRB might be required and provide its insights to the EU co-legislators before the review process.

As part of the High Level Group's work, it has sought feedback from the ESRB membership on how the ESRB has succeeded in its core tasks, as well as whether the current operating model of the ESRB is fit for purpose and how the ESRB and its tasks should be renewed and developed as the financial system evolves. The feedback the ESRB received indicates that the current model and mandate of the ESRB does not need a complete overhaul but rather some targeted adjustment. Suggested amendments include: (a) the ESRB playing an even stronger role in the holistic analysis of systemic risks within the EU; (b) deeper collaboration at the EU level on country risk analysis. Given the macroprudential mandate of the ESRB, there is scope for capitalising on the ESRB's analytical work in the EU's Macroeconomic Imbalance Procedure; (c) in its systemic risk assessment, the ESRB should be able to incorporate a range of new emerging risks and vulnerabilities. Several members underlined the need to better understand systemic risks related to the NBFIs, as well as climate change, AI and cyber-security; and (d) to understand the systemic risks related to NBFIs, access to data needs to be widened so that vulnerabilities and interconnections can be better identified and mapped.

Date of publication: 27/09/2024

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### b) Solvency/Own funds issues

#### (i) EU

#### **Commission Delegated Regulation (EU) 2024/2795 amending the CRR with regard to the date of application of the own funds requirements for market risk**

Status: Published in the OJ

Date of entry into force: 01/11/2024

Date of application: 01/01/2025

The Commission Delegated Regulation (EU) 2024/2795 amending the CRR with regard to the date of application of the own funds requirements for market risk has been published in the OJ. Article 461a of the CRR, as amended by



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

Date of publication: 31/10/2024

### **EBA: Report on credit insurance**

Status: Final

The EBA has published a report to the EC on credit insurance and its eligibility and use as a credit risk mitigation technique. The report fulfils the EBA's mandate under CRR3, which was published in the OJ in June and applies for the most part from 1 January 2025, to report on: (i) the appropriateness of the associated risk parameters referred to in Part Three, Title II, Chapters 3 and 4 of CRR; (ii) the effective and observed riskiness of credit exposures where a credit insurance was recognised as a credit risk mitigation technique; and (iii) the consistency of own funds requirements in the CRR3 with the outcomes of the analysis in points (i) and (ii). The EBA's conclusion, based on its assessment of the provisions and the limited data available, is that there is insufficient evidence to warrant a deviation by the EU from the Basel III standards on credit insurance. The EBA notes that credit insurance as a credit risk mitigation technique is expected to result in a reduction of own funds requirements under the revised framework, although to a lesser degree than under the current framework.

Date of publication: 03/10/2024

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c)      Securitisation

(i)      EU

### **EC: Targeted consultation on the functioning of the EU securitisation framework**

Status: Consultation

Deadline for the submission of comments: 04/12/2024

The Directorate-General for Financial Stability, Financial Services and Capital Markets Union has launched a targeted consultation on the effectiveness of the EU securitisation framework. Feedback gathered in preparation of the EC report on the functioning of the Securitisation Regulation, and subsequent stakeholder engagement, indicates that issuance and investment barriers remain high in the securitisation market, hindering the EU economy from fully reaping the benefits that securitisation can offer. Originators and investors argue that issuance and investment barriers are partly driven by the conservativeness of specific aspects of the regulatory framework, such as transparency and due diligence requirements, as well as the capital and liquidity treatment of securitisations.

The consultation seeks feedback on a range of issues impacting the EU securitisation market, including: (i) the effectiveness of the securitisation framework; (ii) the scope of application of the Securitisation Regulation; (iii) due diligence requirements; (iv) transparency requirements and the definition of public securitisation; (v) supervision; (vi) the STS standard; (vii) the securitisation platform; and (viii) prudential and liquidity treatment of securitisation for banks.

Date of publication: 10/10/2024

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d) Liquidity

(i) International

### **FSB: Report on depositor behaviour and interest rate and liquidity risks in the financial system**

Status: Final

The FSB has published a report on depositor behaviour and interest rate and liquidity risks in the financial system. The report draws on lessons from the March 2023 banking turmoil which saw the collapse of several banks, triggered by the confluence of interest rate increases and solvency and liquidity risks. The report identifies life insurers, non-bank real estate investors and banks as most vulnerable to solvency and liquidity risks. These entity types typically have a high proportion of interest rate-sensitive assets and liabilities and are affected by higher rates through various solvency and liquidity risk channels. It also observes that social media may have influenced some of the March 2023 bank runs, along with technological advancements that make it easier and quicker to transfer deposits.

The report finds that the speed of the recent runs means that banks and authorities may need to: (i) be able to react much more quickly to deposit outflows than in the past; (ii) find ways to address the liquidity and solvency vulnerabilities that gave rise to such extreme outflows; and (iii) consider whether monitoring of social media could be helpful as an early warning tool to flag potential stress at a bank or wider turmoil that might affect banks. Consideration could also be given to gathering and publishing data on bank deposits and unrealised losses on bank securities portfolios.

Date of publication: 23/10/2024

### **BCBS: Progress report on the 2023 banking turmoil and liquidity risk**

Status: Final

The BCBS has published a progress report on the 2023 banking turmoil and liquidity risk. The report, requested by the G20 Brazilian Presidency, provides an update on the BCBS's analytical work on liquidity risk dynamics observed during the turmoil, building on the Committee's stocktake report published in October 2023. The report includes updated empirical analysis on a range of liquidity-related issues highlighted by the turmoil, including distressed banks' outflow rates, the materiality of different liquidity risk factors, and the role and use of supervisory monitoring tools. Drawing on the findings of this progress report, the BCBS plans to pursue a series of follow-up initiatives related to the turmoil, including: (i) prioritising work to strengthen supervisory effectiveness and identify issues that could merit additional guidance at a global level; and (ii) pursuing additional follow-up analytical work based on empirical evidence to assess whether specific features of the Basel Framework, such as liquidity risk and interest rate risk in the banking book, performed as intended during the turmoil and assess the need to explore policy options over the medium term.

Date of publication: 11/10/2024

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e) Cyber security

(i) EU

**EC: Commission Delegated Regulation (EU) .../... supplementing the DORA with regard to RTS on harmonisation of conditions enabling the conduct of the oversight activities**

Status: Draft

The EC has adopted a Delegated Regulation supplementing the DORA with regard to RTS on harmonisation of conditions enabling the conduct of the oversight activities. The draft RTS aim at ensuring maximum efficiency and effectiveness regarding the functioning of the joint examination teams, given their central role in the daily oversight of critical ICT third-party service providers (CTPPs). The draft RTS specify: (i) the information to be provided by an ICT third-party service provider in the application for a voluntary request to be designated as critical; (ii) the information to be submitted by the ICT third-party service providers that is necessary for the lead overseer (LO) to carry out its duties; (iii) the criteria for determining the composition of the joint examination team, their designation, tasks, and working arrangements; and (iv) the details of the competent authorities' assessment of the measures taken by CTPPs based on the recommendations of the LO.

Separate RTS will be adopted focusing on the criteria for determining the composition of the joint examination team, their designation, tasks, and working arrangements. The Delegated Regulation shall enter into force 20 days after publication in the OJ.

Date of publication: 24/10/2024

**EC: Commission Implementing Regulation (EU) .../... laying down ITS for the application of DORA with regard to the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat**

Status: Draft

The EC has adopted an Implementing Regulation laying down ITS for the application of DORA with regard to the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat. It aims to specify which data fields financial entities need to provide at the various stages of the reporting in order to ensure that financial entities report major incidents to their competent authorities in a consistent manner and to ensure that they provide those authorities with data of good quality.

The Implementing Regulation will be published in the OJ without further scrutiny and will enter into force 20 days after publication in the OJ.

Date of publication: 23/10/2024

**EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats**

Status: Draft

The EC has adopted a Delegated Regulation supplementing DORA with regard to RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats. It aims to ensure a consistent and harmonised legal framework in the areas of major ICT-related incident reporting, digital operational resilience testing, ICT third-party risk management and oversight over critical ICT third-party providers.

The Council and the EP will now scrutinise the Delegated Regulation. If neither object, it will be published in the OJ and enter into force 20 days after publication in the OJ.

Date of publication: 23/10/2024

### **ESAs: Opinion on the draft ITS regarding the standard templates for the purposes of the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers under Article 28(9) DORA**

Status: Draft

The ESAs have published an Opinion on the EC's amendments to the draft ITS on registers of information (Rols) under DORA. They raise concerns over the impacts and practicalities of the proposed EC changes to the draft ITS on the Rols in relation to financial entities' contractual arrangements with ICT third-party service providers. The draft ITS proposed by the ESAs were rejected by the EC on the grounds that it is necessary to allow financial entities the choice of identifying their ICT third-party service providers registered in the EU either by using the Legal Entity Identifier (LEI) or by using the European Unique Identifier (EUID). In the ESAs' view, the EC's proposal of adding an additional identifier, allowing EU-based companies to use the EUID, will cause unnecessary complexity and could have negative impacts on the implementation of DORA by financial entities, competent authorities and the ESAs. The ESAs highlight that, although the EUID is available free of charge to EU-registered companies, its introduction in the Rols would entail unforeseen implementation and maintenance efforts for the financial entities. In addition, the coexistence of two identifiers could bring additional complexity that would negatively impact the quality of data used, and risk delays in the designation of critical ICT third-party service providers by the ESAs. The ESAs set out in the Annexes to the opinion proposed amendments to the draft ITS intended to address issues arising from the introduction of the EUID, if the EC proceeds with this policy. The ESAs are also proposing some technical amendments to the ITS, based on the experience and feedback received from the industry during the dry run exercise on reporting of Rols carried out by the ESAs during 2024.

The ESAs call for the final decision on the use of identifiers and the swift adoption of the draft ITS by the EC.

Date of publication: 15/10/2024

#### **(ii) Eurozone**

### **ECB: Report on eurosystem cyber resilience strategy**

Status: Final

The ECB has published its revised cyber resilience strategy to further address evolving cyber threats. The revised strategy updates the original 2017 Strategy taking account of the evolving threat landscape and leveraging industry best practices, lessons learnt from the original strategy and the practical application of the CPMI-IOSCO Cyber Guidance. Revisions to the strategy include: (i) the incorporation of new non-FMI entities that are overseen under the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements – the PISA framework. These entities are encouraged to use tools developed by the Eurosystem to periodically assess and continuously enhance their cyber resilience; (ii) measures to address threats linked to geopolitical tensions or technological innovation such as AI and quantum computing; and (iii) amendments to take into account recent EU regulation, namely DORA, which applies to certain FMIs covered by the strategy including CSDs and CCPs. The strategy also includes a new overarching component for monitoring implementation, which is designed to promote harmonisation.

Date of publication: 18/10/2024

(iii) International

**FSB: Consultation on a Format for Incident Reporting Exchange (FIRE)**

Status: Consultation

Deadline for the submission of comments: 19/12/2024

The FSB has launched a consultation on a Format for Incident Reporting Exchange (FIRE), a common format for financial firms' reporting of operational incidents, including cyber incidents. FIRE aims to promote convergence in reporting practices, to address operational challenges arising from reporting to multiple authorities, and to foster better communication within and across jurisdictions. Developed in consultation with the private sector, FIRE provides a set of common information items for reporting incidents. The FSB explains that its design aims to maximise flexibility and interoperability. Authorities can choose the extent to which they adopt FIRE, leveraging its features and definitions to promote convergence and facilitate translation between existing frameworks. Similarly, financial institutions can use FIRE both in their reporting to financial authorities and in their relationships with service providers.

The consultation package consists of: (i) a 'human-readable' format; (ii) a structured data model of FIRE using the reporting-language-agnostic Data Point Model method; and (iii) a taxonomy in eXtensible Business Reporting Language as a sample machine-readable version of FIRE.

Date of publication: 17/10/2024

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f) Supervisory reporting

(i) EU

**EBA: Consultation on draft RTS on the treatment of structural FX positions under Article 104c CRR and on the reporting on structural FX positions**

Status: Consultation

Deadline for the submission of comments: 07/02/2025

The EBA has launched a public consultation on draft RTS on the treatment of structural FX positions under Article 104c of the CRR and on reporting on structural FX positions. The draft RTS largely retain the provisions of the EBA's 2020 Guidelines. The key changes are: (i) the introduction of a clear quantitative threshold for a currency to be considered eligible for the structural FX treatment; (ii) the option for banks to consider only credit risk own funds requirements when determining the position neutralising the sensitivity to the capital ratios, as long as the credit risk own funds requirements are the ones driving the variability of the ratio against FX changes; (iii) clarifications around how institutions should remove the risk position from the own funds requirements for foreign exchange risk; and (iv) provisions relating to institutions' policies on currencies that are particularly illiquid in the market. The changes are not expected to lead to a material capital impact. The consultation also sets out a proposed policy framework for the treatment of structural FX positions.

Date of publication: 28/10/2024

**EBA: First draft of the technical package for the 4.0 reporting framework**

Status: Final

The EBA has published a draft technical package for version 4.0 of its reporting framework. This publication aims to provide an early version of the 4.0 release given that its reporting obligations will apply as of the first half of 2025. This package, whose final version will be released in December 2024, will facilitate a smoother transition to the new

data point model (DPM) semantic glossary and the capabilities of the DPM 2.0 model. The package provides the standard specifications for the following reporting obligations: (i) reporting of information by issuers of asset-referenced tokens (ARTs) and electronic money tokens (EMTs); (ii) new ITS amending the supervisory reporting framework (COREP templates) to implement the most immediate changes driven by the EU Banking Package (CRR III and CRD VI); and (iii) minor amendments to reporting obligations by class 2 investment firms (COREP templates), in alignment with the CRR III/CRD VI changes.

Date of publication: 23/10/2024

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g) Disclosure

(i) EU

### **EBA: Consultation on draft ITS on IT solutions for public disclosures by institutions, other than SMEs, of the information referred to in Titles II and III of Part Eight CRR III**

Status: Consultation

Deadline for the submission of comments: 11/11/2024

The EBA has launched a consultation on draft ITS on IT solutions relating to Pillar 3 disclosures under the CRR. Under Article 434(1) and (3) of the CRR, as amended by the CRR III, the EBA is required to centralise institutions' prudential disclosures and make prudential information readily available through a single electronic access point on its website. The EBA refers to this electronic access point as the Pillar 3 Data Hub. The Data Hub will centralise and make publicly available Pillar 3 information for all EEA institutions, including large and other institutions and small and non-complex institutions (SNCIs). Based on the CRR III, the EBA will receive the Pillar 3 information for EEA large and other credit institutions and publish it on the dedicated page in its EBA Data Access Portal (EDAP public portal). As regards SNCIs, the EBA will: (i) calculate the required disclosure data points to fill in the respective templates, based on the supervisory reporting data that the SNCIs are already submitting on a regular basis; and (ii) proceed with the respective publication on its EDAP public portal.

The Pillar 3 Data Hub will kick in on 30 June 2025 for large and other institutions and on 31 December 2025 for SNCIs. The EBA will consult at a later stage on draft ITS for SNCIs and on the resubmission policy.

Date of publication: 11/10/2024

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h) Accounting/Prudential filter/Audit

(i) EU

### **ESMA: Report on first application of IFRS 17 Insurance Contracts**

Status: Final

ESMA has published the report "From black box to open book?", dealing with the application of International Financial Reporting Standard (IFRS) 17 Insurance Contracts. In particular, the report provides: (i) an overview of ESMA's and NCAs' observations regarding the first-time application of the IFRS 17 Insurance Contracts in the 2023 financial statements of a sample of European insurance companies; (ii) examples of disclosures which may enable issuers to visualise the application of certain IFRS 17 requirements; and (iii) recommendations to issuers on how the IFRS 17 disclosures can be improved.

Date of publication: 25/10/2024



## **ESMA: Statement on European common enforcement priorities for 2024 corporate reporting**

Status: Final

ESMA has published its annual statement on European common enforcement priorities for 2024 corporate reporting. It sets out that ESMA and European enforcers will focus in 2025 on the following topics: (i) International Financial Reporting Standards (IFRS) financial statements regarding liquidity considerations and accounting policies; judgments, and significant estimates; (ii) Sustainability statements on materiality considerations in reporting under the European Sustainability Reporting Standards (ESRS); scope and structure of the sustainability statements; and disclosures related to Article 8 of the Taxonomy Regulation; and (iii) European Single Electronic Format (ESEF) digital reporting with regard to common filing errors found in the Statement of Financial Position.

Date of publication: 24/10/2024



## 2. Market regulation/ Conduct rules

### 2.1 BENCHMARKS

#### (i) EU

##### **EP: Publication of the text for the Regulation amending the BMR as adopted by the EP**

Status: Draft

The EP has published the text of its first reading position on the proposed 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 EP adopted its first reading position in April.

Date of publication: 24/10/2024

##### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. The report provides an overview of the sanctions and measures imposed in Member States under the AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II, MiFIR, Prospectus Regulation, SFTR and UCITS Directive. In 2023, more than 970 administrative sanctions and measures were imposed across EU Member States in financial sectors under ESMA's remit. The aggregated value of administrative fines amounted to more than 71 million EUR. The highest amounts of administrative fines were imposed under MAR and MiFID II. No administrative sanctions and measures were imposed under the BMR, ECSPR, SFTR and MiCA in 2023.

Overall, the report finds that there is still room for more convergence between NCAs in the exercise of their sanctioning powers. The use of sanctions is only one of multiple tools in the NCAs' supervisory toolkit, and supervisory effectiveness cannot be measured solely based on the number or value of the sanctions imposed in a Member State. ESMA notes, however, that the consolidated report does not provide a full picture of national enforcement activities; for example, these may also include more informal actions, and not all criminal sanctions are included in the scope of the report. The data on the use of sanctions included in this report was reported to ESMA by the NCAs. In line with the ESMA Strategy 2023-2028, the consolidated report contributes to supervisory and enforcement convergence and facilitates greater transparency on sanctions. Building on this report, ESMA plans to further foster the effective and consistent implementation of capital markets rules and ensure similar breaches lead to similar enforcement outcomes across the EU. ESMA will continue to issue an annual report for future reporting periods.

Date of publication: 11/10/2024

## 2.2 CAPITAL MARKETS UNION

### (i) EU

#### **Council of the EU: Adoption of the Directive amending MiFID and repealing the Listing Directive**

Status: Adopted by the Council of the EU

The Council of the EU has adopted the Listing Act legislative package in a final step in the decision-making process, including: (i) a Regulation amending the Prospectus Regulation, MAR and MiFIR; and (ii) a Directive amending MiFID and repealing the Listing Directive. They seek to streamline the rules applicable to companies going through a listing process or companies already listed on EU public markets. The aim is to simplify the process for companies, particularly SMEs, by alleviating administrative burdens and costs, while preserving a sufficient degree of transparency, investor protection and market integrity.

Following the Council's adoption, both measures will be published in the OJ and enter into force 20 days later. Member States will have 18 months to transpose the Directive amending MiFID into national legislation.

Date of publication: 08/10/2024

#### **Council of the EU: Adoption of the Multiple-vote share structures Directive**

Status: Adopted by the Council of the EU

The Council of the EU has adopted the Listing Act legislative package in a final step in the decision-making process, including a Directive on multiple-vote shares. This Directive creates a minimum harmonisation at EU level that removes obstacles for the access of SMEs with multiple-vote structures to SME growth markets and any other multilateral trading facility open to trading of SME shares. The Directive protects the rights of shareholders with fewer votes per share by introducing safeguards on how key decisions are taken at general meetings and also helps investors to take decisions by mandating transparency measures for companies with multiple-vote share structures.

Following the Council's adoption, the Directive will be published in the OJ and enter into force 20 days later. Member States will have two years to transpose the Directive on multiple-vote shares into national legislation.

Date of publication: 08/10/2024

## 2.3 MARKET ABUSE

### (i) EU

#### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

## 2.4 MIFID/MIFIR

### (i) EU

#### **ESMA: Announcement on supervision of two new data reporting services providers**

Status: Final

ESMA has published the annual assessment of the derogation criteria for data reporting services providers (DRSPs). DRSPs are exempt from ESMA supervision when their activities are of limited relevance for the internal market. This is measured by the number of Member States where clients of the DRSP are established and the market share of the DRSP in terms of number and volume of trades (APAs) and transactions (ARMs) in the EU. This assessment resulted in two entities, which are currently supervised at national level, moving under ESMA's direct supervision, as they do not fulfil the derogation criteria for the second consecutive year. Based on 2023 data these two entities are Wiener Börse AG (operating an Approved Publication Arrangement (APA), domiciled in Austria) and KELER Központi Értéktár Zrt (operating an Approved Reporting Mechanism (ARM) and an APA, domiciled in Hungary). Both entities will be subject to ESMA supervision from 1 June 2025.

Date of publication: 31/10/2024

#### **ESMA: Consultation on draft technical advice to the EC on amendments to research provisions in the MiFID II Delegated Directive and in the context of the Listing Act**

Status: Consultation

Deadline for the submission of comments: 28/01/2025

ESMA has launched a consultation on amendments to the research provisions in the MiFID II Delegated Directive. These amendments aim to reflect changes introduced by the Listing Act that enable joint payments for execution services and research for all issuers, irrespective of the market capitalisation of the issuers covered by the research. The consultation includes proposals to amend Article 13 of the MiFID II Delegated Directive in order to align it with the new payment option offered. In particular, ESMA's proposals aim to ensure that: (i) the annual assessment of research quality is based on robust criteria; and (ii) the remuneration methodology for joint payments for execution services and research does not prevent firms from complying with best execution requirements.

The consultation is primarily aimed at research providers, investment firms and investors. ESMA aims to provide its technical advice on this topic to the EC in Q2 2025.

Date of publication: 28/10/2024

#### **ESMA: Updated guidance under the MiFIR review**

Status: Final

ESMA has published an updated version of its Manual on post-trade transparency under MiFID II/MiFIR and of its Opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments. ESMA is providing further practical guidance on the provisions following the statement from last March on the transition for the application of the MiFID II/MiFIR Review, to reflect the changes introduced. It explains that the amendments are published with the objective of contributing to the smooth transition and consistent application of MiFIR, and complements the clarifications on the applicable MiFIR Review and Technical Standards provisions provided in the Interactive Single Rulebook earlier this year. ESMA also stated that it has updated its Q&As on transparency and market structure issues.

- ♦ [Manual on post-trade transparency under MiFID II / MiFIR](#)

- ♦ **Opinion on the assessment of pre-trade waivers for equity and non-equity instruments**

Date of publication: 16/10/2024

## **ESMA: Q&A on MiFID II**

Status: Final

ESMA has updated its Q&A on MiFID II, in particular the following question: Q&A on lot sizes and position limits.

Date of publication: 11/10/2024

## **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

## **ESMA: Consultation on the review of RTS 22 on transaction data reporting under Art. 26 and RTS 24 on order book data to be maintained under Art. 25 of MiFIR**

Status: Consultation

Deadline for the submission of comments: 03/01/2025

ESMA has published a consultation on the review of technical standards on transaction data reporting and on order book data under MiFIR. The proposed changes to the RTS stem from the MiFIR Review amendments. We discuss the overall MiFIR Review changes in our bulletin "MiFID II: the EU's latest adaptations". The consultation paper is split into two parts each covering one draft technical standard. The first part covers the proposed amendments to RTS 22 in relation to transaction reporting by investment firms. The MiFIR Review amended the scope of financial instruments and the information to be reported. In addition to the proposed changes to fulfil its mandate, ESMA is proposing additional enhancements on various aspects such as the identification of transactions in DLT financial instruments and extension of the scope for transmission of an order agreement.

The second part relates to proposed changes to RTS 24 in relation to order book data and for which ESMA must specify the format of the order book data reporting by trading venues. ESMA explains that these RTS aim to enhance the information available to stakeholders by improving, simplifying and further harmonising data reporting requirements. ESMA believes that the implementation of the revised standards should also result in an overall reduction of the reporting burden for market participants that are subject to different reporting regimes. The deadline for comments is 3 January 2025. ESMA aims to publish a final report and submit the draft technical standards to the EC by the end of Q2 2025.

Date of publication: 03/10/2024

## 2.5 PROSPECTUS REGULATION

### (i) EU

#### **ESMA: Proposals to streamline the prospectus area**

Status: Consultation

Deadline for the submission of comments: 31/12/2024

ESMA has published a consultation and a call for evidence with the aim to streamline the prospectus area. The consultation contains recommendations meant to facilitate European capital market activity by streamlining and reducing regulatory burden. In addition, it also puts forward proposals for non-equity securities that are advertised with ESG features and proposals to update the data reporting requirements to consider the changes introduced by the Listing Act.

The Listing Act calls for an analysis of liability for the information given in a prospectus and an assessment of whether further harmonisation is warranted in this regard. It also calls for proposals of amendments to the liability provisions to be presented if relevant. The call for evidence therefore aims to gather input to provide technical advice on whether further harmonisation should be considered.

- ♦ Consultation on draft technical advice concerning the Prospectus Regulation and on updating the CDR on Metadata
- ♦ Call for evidence on potential further steps towards harmonising rules on civil liability pertaining to securities prospectuses under the Prospectus Regulation

Date of publication: 28/10/2024

#### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

## 2.6 SECURITIES FINANCING TRANSACTIONS

### (i) EU

#### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024



# 3. Market infrastructure

## 3.1 CUSTODY RULES

### (i) EU

#### **EC/ESMA/ECB: Next steps on shortening the standard securities settlement cycle in the EU**

Status: Final

ESMA, the EC and the ECB have published a joint statement on the next steps to support the preparations towards a transition to T+1. Under Article 74(3) of the CSDR, ESMA is required to assess the appropriateness of shortening the settlement cycle in the EU and to propose a detailed roadmap towards a shorter settlement. ESMA plans to deliver its report to the Council of the EU and the EP in the coming months. Its preliminary findings are as follows:

(i) shortening the settlement cycle in the EU will change the way in which markets function, with impacts depending on the type of stakeholder, the category of transaction and the type of financial instrument; (ii) quantifying some of the costs and benefits related to the shortening of the settlement cycle in the EU is challenging, but the elements assessed by ESMA to date suggest that the impacts of T+1 in terms of risk reduction, margin savings and the reduction of costs linked to the misalignment with other major jurisdictions globally, bring along important benefits for the EU Savings and Investments Union; and (iii) harmonisation, standardisation and modernisation will be needed and will require investments.

The improved efficiency and resilience of post-trade processes that would be prompted by a potential move to T+1 would facilitate achieving the objective of further promoting settlement efficiency in the EU. Although settling securities transactions on T+1 in EU CSDs is already technically and legally possible, EU market participants have indicated a strong preference for amending the CSDR to mandate a harmonised shortening of the settlement cycle in the EU. In their view, this would ensure a coordinated and smooth transition to T+1 and provide legal certainty. ESMA explains that a decision on this matter needs to be taken by the EU co-legislators following a legislative proposal from the EC, should the latter decide to adopt one. In addition, ESMA, in close coordination with NCAs, the EC and the ECB, has agreed to establish a governance structure, incorporating the EU financial industry, as soon as possible to oversee and support the technical preparations of any future move to T+1. Details of the governance structure will follow shortly.

Date of publication: 15/10/2024

## 3.2 EMIR

### (i) EU

#### **ESAs: Survey on entities in scope of initial margin model authorisation under EMIR 3**

Status: Consultation

Deadline for the submission of comments: 29/11/2024

The ESAs have launched a short survey addressed to entities within the scope of the initial margin (IM) model authorisation regime introduced by the upcoming EMIR 3. The survey aims to collect general information on entities within the scope of IM model authorisation, as well as specific information relevant for fee calculation and on initial margins and IM models used. This information will provide guidance in the setup of central validation functions and

inform responses to the EC's Call for advice on a possible Delegated Act on fees received on 31 July 2024. The information will also be used to develop proportionate requirements for entities within the scope of IM model authorisation, especially for smaller entities (the so called "Phase 5" and "Phase 6" entities) – as part of upcoming mandates under EMIR 3.

Date of publication: 29/10/2024

### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

### **EP: Corrigenda to the proposed EMIR 3 and EMIR 3 Amending Directive**

Status: Draft

The EP has published corrigenda to the proposed EMIR 3 as well as the EMIR 3 Amending Directive. The corrigenda replace the previous texts adopted by the EP on 24 April 2024. The amendments are largely clarificatory or textual.

Once the EP has confirmed the revised texts under the corrigendum procedure, the Council is expected to formally adopt the finalised texts. EMIR 3 and the Amending Directive will enter into force 20 days after their publication in the OJ. EMIR 3 will apply from that date, subject to certain provisions which will not apply until the date of entry into force of certain technical standards. Member States are expected to implement the Amending Directive 18 months after the date it enters into force.

- ♦ Corrigendum to the proposed Regulation amending EMIR on measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets (EMIR 3)
- ♦ Corrigendum to the proposed Directive making targeted related amendments to the UCITS Directive, CRD IV and the IFD to ensure the EMIR 3 reforms are fully implemented and are consistent with other existing legislation (Amending Directive)

Date of publication: 08/10/2024

## **(ii) International**

### **FSB: Progress report on the implementation of the Legal Entity Identifier**

Status: Final

The FSB has published a progress report on the implementation of the Legal Entity Identifier (LEI), which was established in 2012 as a way to uniquely identify counterparties to financial transactions across borders, and thereby to improve and standardise financial data for a variety of purposes. In 2022, the FSB explored how the LEI could help achieve the goals of the G20 Roadmap for faster, cheaper, more inclusive and more transparent cross-border payments. While the LEI is widely used in particular in OTC derivatives and securities markets, broader adoption of the LEI in cross-border payments remains challenging. The costs, particularly in low-income jurisdictions, and the lack of perceived incentives for voluntary adoption by market participants and end users,

among other things, are notable obstacles to the wider adoption of the LEI. Some jurisdictions have made no tangible progress towards implementing the FSB's previously outlined actions.

To maintain the momentum in expanding LEI adoption, particularly for cross-border payments, the FSB has reiterated its **2022 recommendations** and advocates for their full and timely implementation. The report includes additional recommendations for oversight authorities and standard-setting bodies to support this.

Date of publication: 21/10/2024

### **3.3 STOCK EXCHANGES**

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

##### **EBA: Consultation on draft RTS on the treatment of structural FX positions under Article 104c CRR and on the reporting on structural FX positions**

Status: Consultation

Deadline for the submission of comments: 07/02/2025

The EBA has launched a public consultation on its draft RTS and ITS on structural foreign exchange (FX), under the CRR. For more information, please see section 1.1f) above.

Date of publication: 28/10/2024

#### **(ii) International**

##### **GFXC: Request for feedback on proposed FX Global Code and Disclosure Cover Sheets amendments**

Status: Consultation

Deadline for the submission of comments: 25/10/2024

The Global Foreign Exchange Committee (GFXC) has issued a request for feedback on proposals arising from its Three-Year Review of the FX Global Code. The proposals include modifications to five of the Code's 55 principles (P9, P10, P35, P50, and P51) to clarify market participants' responsibility to mitigate FX Settlement Risk, and to enhance market transparency on FX transactions and the use of FX data. The GFXC is also seeking feedback on proposed amendments to the Disclosure Cover Sheets for both Liquidity Providers and Platforms to improve the transparency and comparability of data sharing practices.

The GFXC intends to publish the revised Code at the end of the year, followed by the updated Disclosure Cover Sheets.

Date of publication: 09/10/2024

## 4. Anti-money laundering

### (i) EU

#### **ESAs: Final report on draft ITS specifying certain tasks of collection bodies and certain functionalities of the ESAP**

Status: Final

The ESAs have published a final report on the draft ITS regarding certain tasks of the collection bodies and functionalities of the European Single Access Point (ESAP). The ESAP is foreseen in Level 1 legislation to be a two-tier system, where information is first submitted by entities to the “collection bodies” – Officially Appointed Mechanisms (OAMs), offices and agencies of the EU, national authorities, among others – and then made available by the collection bodies to the ESAP. These ITS are the first milestone for the successful establishment of a fully operational ESAP. The requirements are designed to enable future users to be able to access and use financial and sustainability information effectively and effortlessly in a centralised ESAP platform. The final report has been delivered to the EC for adoption.

Date of publication: 29/10/2024

### (ii) International

#### **FATF: Consultation on proposed changes to FATF Standards regarding AML/CFT and financial inclusion**

Status: Consultation

Deadline for the submission of comments: 06/12/2024

The FATF has launched a consultation on proposed changes to its Standards in order to better align them with measures to promote financial inclusion. This is part of the FATF's programme of work to address the unintended consequences of AML/CFT measures. The revisions focus on Recommendation 1 and its Interpretive Note, with corresponding changes to Recommendations 10 and 15 and related Glossary definitions. These proposed revisions aim to better promote financial inclusion through increased focus on proportionality and simplified measures in the risk-based approach, and to give countries, supervisors, and financial institutions greater confidence and assurance when implementing of simplified measures.

Date of publication: 28/10/2024

#### **FATF: Announcement on changes of grey listing criteria to further focus on risk**

Status: Final

The FATF has made major changes to the criteria for putting countries on its lists to relieve pressures on least developed countries and focus on those countries posing greater risks to the international financial system. The FATF identifies jurisdictions with strategic deficiencies in their system for fighting money laundering, terrorist financing and proliferation financing. The changes made by the FATF will ensure the listing process better targets the countries that pose the greatest risk to the international financial system and contributes to more adequate support to low-capacity countries.

Under the revised criteria, jurisdictions will be prioritised for active review if they meet the referral criteria and are:  
(i) an FATF Member; (ii) a country on the World Bank High-Income Countries list (excluding those with a financial

sector of two or fewer banks); or (iii) a country that has financial sector assets above USD 10. If the jurisdiction is a least developed country as defined by the United Nations, they would not be prioritised for active review unless the FATF agrees that they pose a significant money laundering, terrorist financing or proliferation financing risk. In such cases, least developed countries entering the review process could be granted a longer observation period to work on progress against their Key Recommended Action roadmap (i.e., a two-year observation period). These changes will apply for the next round of assessments. The FATF anticipates that these reforms could reduce by half the number of low-capacity countries being listed in the upcoming assessment cycle.

Date of publication: 17/10/2024

## **FATF: Report on 2022 Procedures for the AML/CFT/CPF mutual evaluations, follow-up and ICRG**

Status: Final

The FATF has published its report on procedures for the mutual evaluations and follow-up on money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction (AML/CFT/CPF) as well as for the International Co-operation Review Group (ICRG). It conducts these evaluations for its members' effectiveness in tackling as well as the level of technical implementation of the FATF Standards. This document sets out the procedures that are the basis for the mutual evaluation, follow-up and ICRG processes and should be read in conjunction with the Consolidated Processes and Procedures for AML/CFT/CPF Mutual Evaluations and Follow-up (Universal Procedures) and the FATF Methodology.

Date of publication: 17/10/2024

# 5. Payments

## 5.1 PAYMENT SERVICES/E-MONEY

### (i) International

#### **BCBS: Demonstration that policy compliance can be embedded in cross-border payments with Project Mandala**

Status: Final

The BCBS has announced that, together with its central bank partners, it has successfully demonstrated with Project Mandala that regulatory compliance can be embedded in cross-border transaction protocols. The BCBS explains that this project, which has now reached proof of concept stage, aligns with the G20 priority actions for enhancing cross-border payments. The reason for that is that this project has the potential to reduce costs and increase transaction speed, while preserving regulatory compliance.

Date of publication: 28/10/2024

#### **FSB: 2024 annual progress report on meeting the targets for cross-border payments**

Status: Final

The FSB has published its annual progress report on meeting the targets for cross-border payments for 2024. This is the second year the FSB has published the estimates of the Key Performance Indicators (KPIs), which were developed to monitor progress against targets set out in the G20 Roadmap for Enhancing Cross-Border Payments published in 2022. The report finds that, at the global level, the KPIs show limited progress toward achieving the targets. Differences across regions and corridors remain. Some regions continue to face greater challenges, particularly in meeting the targets set for cost and speed. The results are not surprising, as it will take time for the actions carried out under the Roadmap to materialise and for the industry participants to adapt, so that clear improvements are perceived by the end users of cross-border payments.

An overview of the progress in the actions carried out under the Roadmap is presented in the [consolidated Progress Report for 2024](#).

Date of publication: 21/10/2024

#### **FSB: Progress report on the implementation of the Legal Entity Identifier**

Status: Final

The FSB has published a progress report on the implementation of the Legal Entity Identifier (LEI), which was established in 2012 as a way to uniquely identify counterparties to financial transactions across borders, and thereby to improve and standardise financial data for a variety of purposes. For more information, please see section 3.2 above.

Date of publication: 21/10/2024



## 5.2 PAYMENT AND SETTLEMENT SYSTEMS

### (i) Eurozone

#### **ECB: Announcement of initiatives to improve cross-border payments by interlinking fast payment systems**

Status: Final

The ECB has announced the launch of initiatives to help improve cross-border payments within the EU and beyond. The work, which builds on the Eurosystem's TARGET Instant Payment Settlement (TIPS) service, will include: (i) the implementation of a cross-currency settlement service within TIPS. The service will allow instant payments originating in one TIPS currency to be settled in another currency and in central bank money. Initially, euro, Swedish kronor and Danish krone will be available for settlement. A call for interest on the service will be launched in Q4 2024 to ensure it meets market requirements; and (ii) exploratory work on linking TIPS with other fast payment systems. This will include joining the multilateral network of instant payment systems, Project Nexus, led by the BIS.

- ♦ Cross-currency instant payments announcement
- ♦ Global fast payment systems connection announcement

Date of publication: 21/10/2024

#### **ECB: Consultation on the recast of the Regulation on oversight requirements for systemically important payment systems**

Status: Consultation

Deadline for the submission of comments: 29/11/2024

The ECB has launched a consultation on a proposed recast of the regulation laying down oversight requirements for systemically important payment systems (SIPS Regulation). The planned recast of the SIPS Regulation involves the following main changes: (i) revision of the definition of a SIPS operator so as to exceptionally include a euro area branch of a legal entity located outside the euro area, as well as amendments catering for the oversight of such a branch; (ii) new requirements on how SIPS operators are governed, including the establishment of a risk committee to increase the effectiveness of their boards and management; (iii) a new article setting out key requirements on cyber risk that are currently laid out in the Eurosystem cyber resilience oversight expectations for FMIs; and (iv) a new article setting out high-level requirements on managing outsourcing risk. Guidance on how outsourcing expectations are to be interpreted and implemented will be published at a later stage.

Date of publication: 18/10/2024

### (ii) International

#### **BCBS: Report on promoting the harmonisation of application programming interfaces to enhance cross-border payments**

Status: Final

The BCBS Committee on Payments and Market Infrastructures (CPMI) has published recommendations on the interlinking and interoperability of payment systems to enhance cross-border payments, in particular on the promotion of the harmonisation of application programming interfaces to enhance cross-border payments: recommendations and toolkit. The report presents the recommendations of the API Panel of Experts on the prioritisation of harmonisation. Its report makes ten recommendations, divided into four categories: (i) recommendations that aim at facilitating the global API harmonisation processes; (ii) recommendations that focus

on API design principles and the use of existing international data standards; (iii) recommendations to enhance the developer experience; and (iv) recommendations to promote pre-validation APIs and implementation. Each recommendation is accompanied by a list of potential actions that stakeholders may consider as practical and concrete implementation measures. The recommendations are further supported by a toolkit to assist various stakeholders in assessing their current related practices.

Date of publication: 15/10/2024

## **BCBS: Report on linking fast payment systems across borders regarding governance and oversight**

Status: Final

The BCBS CPML has published key insights on the interlinking and interoperability of payment systems to enhance cross-border payments. The report aims to support owners and operators of FPS when they are developing the governance and risk management of their FPS interlinking arrangement as well as overseers when they are defining their oversight approach. It discusses the main decisions to be taken by operators in developing the governance approach for FPS interlinking arrangements. The report also sets out recommendations that overseers should consider when developing an oversight approach for the respective component FPS or a separate entity.

Date of publication: 15/10/2024

## 6. Institutional supervisory framework

### (i) EU

#### **ESAs: 2025 work programme**

Status: Final

The ESAs have published the 2025 work programme. Overarching issues to be monitored by the Joint Committee will include risks to financial stability prompted by geopolitical tensions and uncertainty and consumer and investor protection. Specific areas of ESA work for 2025 include: (i) sustainability – to contribute more guidance, including through Q&As on sustainability disclosures under the SFDR Delegated Regulation, and a report on the reporting of principal adverse impacts under Article 18 SFDR. The ESAs may start work on new technical standards relating to ESG rating disclosures introduced into Article 13 SFDR by the recently agreed Regulation on ESG Ratings; (ii) digital operational resilience – the ESAs will focus on the set-up and operationalisation of the EU-wide Oversight Framework for ICT Critical Third-Party Providers. The ESAs will launch their new oversight activities in accordance with DORA. The ESAs will finalise remaining policy mandates, engage in supervisory convergence work, develop cooperation mechanisms, and implement the EU systemic cyber incident coordination framework; and (iii) cross-sectoral matters – to address mandates and Q&As related to PRIIPs, and the Securitisation Regulation.

Date of publication: 07/10/2024

#### **EBA: Work programme 2025**

Status: Final

The EBA has published its work programme for 2025. The strategic priorities for the EBA's 2025 work programme are: (i) implementing the EU banking package and enhancing the Single Rulebook; (ii) enhancing risk-based and forward looking financial stability for a sustainable economy; (iii) enhancing data infrastructure and launching the data portal; (iv) starting oversight and supervisory activities for DORA and the MiCA Regulation; and (v) developing consumer oriented mandates and ensuring a smooth transition to the new AML/CFT framework. Chapter 1 of the document includes a brief overview of the priorities for 2025-2027 followed by a more detailed presentation of priorities for 2025. Chapter 2 sets out the work under 19 activities, grouped in three categories: (a) policy and convergence work, (b) risk assessment and data and (c) governance, coordination and support.

Date of publication: 30/09/2024

#### **ESMA: 2025 annual work programme**

Status: Final

ESMA has published its 2025 Annual Work Programme. In 2025 ESMA will: (i) increase its focus on implementing the sustainable finance legal and supervisory framework, combating greenwashing, and promoting transparency in sustainable investments; (ii) focus on financial innovation, particularly in the area of AI with the aim of ensuring investor protection and market integrity; (iii) following the application of DORA in 2025, establish a robust supervisory approach to ensure the resilience of critical financial services; (iv) establish an effective and convergent supervision across the EU in relation to the new regulatory regime under MiCA; (v) focus on enhancing cross-border cooperation among EU supervisors, improving data quality, and leveraging technology to streamline

supervision; and (vi) continue developing its data hub finalising the first phase of the European Single Access Point in 2026 for easy access to public data and information on securities markets.

In addition, a significant portion of ESMA's work in 2025 will include policy work to facilitate the implementation of the large number of mandates from the previous legislative cycle, such as EMIR 3, and the preparation of new mandates, such as the European Green Bonds and the ESG Rating Providers Regulations.

Date of publication: 30/09/2024



# 7. Investment funds

## 7.1 PRODUCT REGULATION

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a) AIF

(i) EU

### **ESMA: Q&A on the application of the AIFMD**

Status: Final

ESMA has updated its Q&A on the application of the AIFMD, in particular the following question: guidelines on performance fees in UCITS and certain types of AIFs.

Date of publication: 11/10/2024

### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

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b) UCITS

(i) EU

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

Status: Final

ESMA has updated its Q&A on the application of the UCITS Directive, in particular the following question: crystallisation of performance fees in case of the creation of a new UCITS/compartment/share class in the course of the financial year.

Date of publication: 11/10/2024

### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

## 7.2 PRUDENTIAL REGULATION

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a) Compliance

(i) EU

**Commission Delegated Regulation (EU) 2024/2759 supplementing the ELTIF Regulation with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF, the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure**

Status: Published in the OJ

Date of entry into force: 26/10/2024

Date of application: 26/10/2024

The Commission Delegated Regulation (EU) 2024/2795 supplementing the ELTIF Regulation with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF, the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure, has been published in the OJ. Among other things, the legislation sets out the:

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

Date of publication: 25/10/2024



# 8. Special topics

## 8.1 FINTECH/DIGITAL FINANCE

### (i) EU

#### **EC: Commission Delegated Regulation (EU) .../... supplementing the DORA with regard to RTS on harmonisation of conditions enabling the conduct of the oversight activities**

Status: Draft

The EC has adopted a Delegated Regulation supplementing the DORA with regard to RTS on harmonisation of conditions enabling the conduct of the oversight activities. For more information, please see section 1.1e) above.

Date of publication: 24/10/2024

#### **EC: Commission Implementing Regulation (EU) .../... laying down ITS for the application of DORA with regard to the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat**

Status: Draft

The EC has adopted an Implementing Regulation laying down ITS for the application of DORA with regard to the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat. For more information, please see section 1.1e) above.

Date of publication: 23/10/2024

#### **EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats**

Status: Draft

The EC has adopted a Delegated Regulation supplementing DORA with regard to RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats. For more information, please see section 1.1e) above.

Date of publication: 23/10/2024

#### **EBA: Decision on the procedure for significance assessment regarding the MiCA Regulation**

Status: Final

The EBA has published its decision clarifying the procedural aspects related to the significance assessment of asset-referenced tokens (ARTs) and e-money tokens (EMTs) and the transfer of supervisory responsibilities, including the establishment of supervisory colleges for significant ARTs (s-ARTs) and significant EMTs (s-EMTs) under the MiCA Regulation. S-ARTs and s-EMTs will be subject to EBA supervision as opposed to the supervision of their NCA. The EBA decision: (i) introduces a harmonised reporting calendar for NCAs to report information relevant to an EBA significance assessment and clarifies the reference periods and remittance dates for that

information; (ii) clarifies the reporting requirements for issuers of s-ARTs and s-EMTs, including the reporting of data relevant for the establishment of the EBA's supervisory colleges; (iii) sets out the process and timeline to be followed by the EBA for its consultation on, and notification of, draft and final significance assessments; (iv) establishes the process and information requirements for transferring supervisory responsibilities from an NCA to the EBA; and (v) provides for different templates to implement a significant classification and the transfer of responsibilities.

Date of publication: 22/10/2024

## **ESMA: Launch of survey on legal entities identifiers**

Status: Consultation

Deadline for the submission of comments: 12/11/2024

ESMA has launched a survey on legal entities identifiers to gather evidence on how the optionality in the use of legal identifiers would impact market participants were it to be introduced in future reporting regimes or in the review of existing reporting regimes. ESMA had proposed to mandate the LEI in technical standards under the DORA and the MiCA Regulation, in line with G20/FSB and ESRB recommendations, which advocate for the use of the LEI to identify all parties involved in financial transactions. However, in response to concerns raised by the EC on the mandatory use of LEIs by non-financial entities, the proposals now set the LEI as the default identifier for legal persons, but also allow for the use of alternative identifiers where an entity does not have an LEI. The EC has advocated for allowing for the use of the European Union Identifier in the context of DORA, which does not contain the same level of information as the LEI. ESMA's survey is intended to raise awareness about these recent developments and to collect feedback on the potential impacts of adding alternatives to the LEI.

Date of publication: 18/10/2024

## **ESMA: Opinion on MiCA RTS on the authorisations of crypto-asset service providers and notifications by certain financial entities to provide crypto-asset services**

Status: Draft

ESMA has published an opinion on the EC's amendments to draft MiCA RTS on the authorisations of CASPs and notifications by certain financial entities to provide crypto-asset services. In the opinion, ESMA takes note of the amendments proposed by the EC to the two RTS specifying: (i) the information to be included in a notification by certain financial entities of their intention to provide crypto-asset services; and (ii) the information to be included in an application for authorisation as a CASP. ESMA also reiterates that the final objective of these RTS is to ensure a thorough entry point assessment for applicant CASPs and financial entities intending to provide crypto-asset services in the EU. ESMA believes that this will increase the resilience of the crypto-assets market and enhance investor protection in the crypto-assets space.

As such, ESMA recommends that the EC considers amendments to MiCA, namely: (a) requiring applicant CASPs and notifying entities to provide the results of an external cybersecurity audit; and (b) including, in the assessment of the good repute of the members of the management body of applicant CASPs, checks regarding the absence of penalties also in areas other than commercial law, insolvency law, financial services law, anti-money laundering and counter terrorist financing, fraud or professional liability.

The opinion has been communicated by ESMA to the EC, EP and the Council of the EU. The EC may adopt the two RTS with the amendments it considers relevant or reject it. The EP and the Council of the EU may object to an RTS adopted by the EC within a period of three months.

Date of publication: 16/10/2024

## **ESAs: Opinion on the draft ITS regarding the standard templates for the purposes of the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers under Article 28(9) DORA**

Status: Draft

The ESAs have published an Opinion on the EC's amendments to the draft ITS on registers of information (Rols) under DORA. For more information, please see section 1.1e) above.

Date of publication: 15/10/2024

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

Status: Final

ESMA has updated its Q&A on the MiCA Regulation, in particular the following question: status of entities providing crypto-asset services as part of the grandfathering regime.

Date of publication: 11/10/2024

## **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, ECSPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

## **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation with regard to RTS on information to be exchanged between competent authorities**

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing the MiCA Regulation with regard to RTS on information to be exchanged between competent authorities. These RTS aim to ensure that the information exchanged between competent authorities in fulfilling their duty to cooperate with each other is of sufficient scope to allow competent authorities to discharge their supervisory, investigative and enforcement duties and functions effectively.

Date of publication: 10/10/2024

## **EBA: Final report on Guidelines on redemption plans under Articles 47 and 55 MiCA Regulation**

Status: Final

The EBA has finalised its Guidelines on redemption plans under Articles 47 and 55 of the MiCA Regulation. The Guidelines, which are addressed to competent authorities designated under the MiCA Regulation, cover issuers of asset-referenced tokens (ARTs) and of e-money tokens (EMTs). They cover: (i) the principle of proportionality and the elements to be taken into account to ensure the redemption plan contains an appropriate level of detail and is reviewed or updated regularly; (ii) the main features and objectives of the redemption plan as referred to in Article 47 MiCA Regulation; (iii) the content of the redemption plan, including governance requirements relating to processes for the development, update and execution of the redemption plan and to the identification of the responsible persons; (iv) the triggers of the redemption plan; and (v) the interaction of the redemption planning

under the MiCA Regulation with resolution plans under the BRRD applicable to credit institutions and other entities, and with the CCP recovery and resolution regulation. Following feedback received during the public consultation, targeted amendments have been made to streamline the wording and provide further clarity on certain aspects, including clarifications to allow for flexibility so that the guidance addressed to issuers of ARTs relating to the liquidation of the reserve of assets can be used, to some extent, also by issuers of EMTs.

The Guidelines will be translated into the official EU languages and published on the EBA website. They will apply two months after publication.

Date of publication: 09/10/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation with regard to RTS specifying the requirements, templates and procedures for the handling of CASPs**

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing the MiCA Regulation with regard to RTS specifying the requirements, templates and procedures for the handling of complaints by crypto-asset service providers (CASPs). The RTS are made under a mandate in Article 71 of MiCA which requires CASPs to handle complaints promptly and fairly; in particular they have to inform clients of the possibility to file complaints and allow them to do so free of charge. The RTS cover complaints-handling procedures, resources dedicated to complaints-handling, requirements on the means and language for complaints filing and the procedure on the acknowledgement of receipt and verification of admissibility of the complaints. It also describes the requirements on the investigation of complaints, the requirements on decisions on complaints based on reasons for the outcome of the investigation, the requirements for the communication with clients and requirement for CASPs to continuously analyse complaints-handling data to ensure consistent complaints handling. A template for filing complaints can be found in the Annex to the Delegated Regulation. The EBA consulted on the draft RTS in July 2023 and published a final report relating to them in March.

Date of publication: 01/10/2024

#### **(ii) International**

### **FSB: Report on the financial stability implications of tokenisation**

Status: Final

The FSB has published a report on the financial stability implications of the tokenisation of financial assets. The report focuses on tokenisation of financial assets (e.g., tokenised money that can be used for payments) based on distributed ledger technology (DLT) as the underlying technology platform. It does not cover digital assets such as central bank digital currencies and crypto-assets.

Tokenisation in the financial sector is not currently deemed to pose a risk to financial stability given adoption is low. However, the report identifies financial stability vulnerabilities associated with DLT-based tokenisation, relating to liquidity and maturity mismatch, leverage, asset price and quality, interconnectedness, and operational fragilities. Financial stability risks could arise if tokenisation should scale up significantly and vulnerabilities are not addressed. The report recommends that the FSB, standard-setting bodies (SSBs), and national authorities: (i) consider ways to address data and information gaps in monitoring tokenisation adoption; (ii) consider ways to increase understanding of how tokenisation and its related features fit into legal and regulatory frameworks and supervisory

approaches, taking into consideration ongoing relevant work by SSBs and international organisations; and (iii) continue to facilitate cross-border regulatory and supervisory information sharing on tokenisation.

Date of publication: 22/10/2024

## **FSB: Status report on G20 crypto-asset policy implementation roadmap**

Status: Final

The FSB has published a status report on the 2023 IMF-FSB crypto-asset policy implementation roadmap. G20 jurisdictions have made progress in implementing the policy and regulatory responses developed by the IMF, FSB, and standard-setting bodies (SSBs). Nearly all FSB member jurisdictions have plans in place to develop new or revise their existing regulatory frameworks for crypto-assets and stablecoins, or they already have those frameworks in place. The report highlights challenges affecting progress, including: (i) inconsistent implementation of the FSB framework, which may allow those conducting cross-border crypto-asset activities from an offshore jurisdiction to engage in regulatory arbitrage; and (ii) non-compliance with applicable laws and regulations, which undermines efforts to implement the FSB framework and other international crypto-asset standards and can require greater enforcement resources. The FSB, by end-2025, will conduct a review of the status of the implementation of the FSB Framework at the jurisdictional level.

Date of publication: 22/10/2024

## **FSB: Letter to G20 Finance Ministers and Central Bank Governors**

Status: Final

The FSB has published a letter sent to G20 finance ministers and central bank governors providing an update on various workstreams, including on cyber and operational resilience. The FSB notes that cyber and operational resilience risks continue to pose a threat to financial stability and is therefore delivering, for public consultation, a common Format for Incident Reporting Exchange (FIRE). FIRE is designed to enhance convergence in incident reporting, address operational challenges arising from reporting to multiple authorities and foster better communication amongst authorities. After public consultation, the FSB expects to publish the final version of FIRE by Q2 2025.

Date of publication: 22/10/2024

## **BCBS: Report on the tokenisation in the context of money and other assets: concepts and implications for central banks**

Status: Final

The BCBS, including the CPMI, has published a report examining the tokenisation of money and its potential impact for central banks. The report looks at the global challenges in the regulated payment sector and considers the possible benefits of tokenisation in addressing existing frictions in financial markets.

The report highlights four key considerations for central banks: (i) whether, and to what extent, to react to ongoing private sector tokenisation initiatives – central banks could consider ways to foster interoperability if markets develop in a fragmented manner; (ii) whether and how central banks assess the trade-offs and the appropriate balance between different types of settlement assets in token arrangements. This may include how or in what form central banks could provide central bank money as a settlement asset for token arrangements; (iii) identifying token arrangements that may already, or potentially in the future, meet the criteria to be subject to regulation, supervision and oversight at the individual jurisdiction level. Relevant authorities might consider how to cooperate, both within

and across jurisdictions; and (iv) the potential impact of token arrangements on monetary policy implementation, including through changes in the structure of regulated markets or the demand for central bank versus other types of money.

Date of publication: 21/10/2024

## **IOSCO: Final report on investor education on crypto-assets**

Status: Final

The IOSCO has published its final report on investor education surrounding crypto-assets. The report summarises the results of an IOSCO survey distributed to members of its Committee for Retail Investors in autumn last year about retail investor behaviour, demographics, and experiences with crypto-assets. The report highlights examples of regulatory changes and enforcement activity by committee members since the 2020 report on investor education, updates the risks for retail crypto investors and discusses priority issues for investor education in the crypto-asset space, such as relationship investment scams and the need to communicate with retail investors on, and about, social media. IOSCO encourages its members to consider using one or more of the educational materials and measures discussed in the report (as applicable to their jurisdiction) and to ensure that retail investors have the information they need to make informed investment decisions.

Date of publication: 09/10/2024

## **8.2 AI**

### **(i) International**

## **G7: Cyber expert group statement on planning for the opportunities and risks of quantum computing**

Status: Final

The G7 Finance Ministers and Central Banks have published a statement by the G7 Cyber Expert Group (CEG) on planning for the opportunities and risks of quantum computing. The CEG encourages jurisdictions to monitor developments in quantum computing, to promote collaboration among relevant public and private stakeholders, and to begin planning for the potential risks posed by quantum computing on some current encryption methods. The CEG explains that the development of an operational quantum computer (or hybrid computer) is increasingly possible within a decade, although its capability to undermine existing cryptography, at least initially, remains uncertain. However, as it may take significant time and economic effort for financial entities to coordinate activities to mitigate vulnerabilities in anticipation of a postquantum environment, entities should ready themselves to handle impending threats as soon as possible. As such, the CEG recommends financial entities consider taking the following steps to address the emerging risk: (i) develop a better understanding of quantum computing, the risks involved and strategies for mitigating those risks; (ii) assess quantum computing risks in their areas of responsibility; and (iii) develop a plan for mitigating quantum computing risks.

Date of publication: 17/10/2024



## 8.3 SUSTAINABLE FINANCE

### (i) EU

#### **ESAs: 2024 Joint Report on principal adverse impacts disclosures under the SFDR**

Status: Final

The ESAs have published their third annual report on disclosures of principal adverse impacts under the SFDR. The Report assesses both entity and product-level Principal Adverse Impact (PAI) disclosures under the SFDR. These disclosures aim at showing the negative impact of financial institutions' investments on the environment and people and the actions taken by asset managers, insurers, investment firms, banks and pension funds to mitigate them. The findings show that financial institutions have improved the accessibility of their PAI disclosures. There has also been positive progress regarding the quality of the information disclosed by financial products, and, in general, in the quality of the PAI statements. A few National Competent Authorities (NCAs) also reported slight improvements in the compliance with the SFDR disclosures in their national markets.

Looking forward, the Report includes recommendations to NCAs to ensure convergent supervision of financial market participants' practices, and to the European Commission for their comprehensive assessment on the SFDR.

Date of publication: 30/10/2024

#### **ESMA: Sustainable finance implementation timeline for SFDR, TR, CSRD, BMR, EuGBR**

Status: Final

ESMA has published an updated sustainable finance implementation timeline. The timeline covers developments relating to the SFDR, the Taxonomy Regulation, the CSRD, the BMR and the European Green Bonds Regulation. Key dates in the timeline include: (i) when financial undertakings and non-financial undertakings should disclose KPIs under the Taxonomy Regulation; and (ii) the possibility of material relating to the EC's review of the SFDR being published in mid-2025.

Date of publication: 14/10/2024

#### **ESMA: Report on sanctions and measures imposed under AIFMD, BMR, CSDR, EUCPR, EMIR, MAR, MiCA, MiFID II - MiFIR, PR, SFTR and UCITS in 2023**

Status: Final

ESMA has published its first consolidated report on sanctions and measures imposed by the NCAs in Member States in 2023. For more information, please see section 2.1 above.

Date of publication: 11/10/2024

#### **EP: Corrigendum to proposed Regulation on ESG rating activities**

Status: Draft

The EP has published a corrigendum to its proposed Regulation on the transparency and integrity of ESG rating activities. The amendments are largely clarificatory or textual, with a limited number of more substantive amendments. These include a revised prohibition on the purchase of securities by those involved in providing ESG ratings – the proposed Regulation now prohibits those directly involved in the determination of an individual rating from buying or selling financial instruments issued or guaranteed by an entity that is rated within their area of

analytical responsibility, whereas senior management of ESG rating providers cannot buy or sell any financial instruments issued or otherwise supported by any entity rated by the ESG rating provider.

Once the EP has confirmed the revised text under the corrigendum procedure, the Council is expected to formally adopt the finalised text. The Regulation will enter into force 20 days after its publication in the OJ and will apply 18 months after it enters into force.

Date of publication: 08/10/2024

## **ESMA: Market report on EU carbon markets 2024**

Status: Final

ESMA has published its first annual report on EU carbon markets. The report delivers insights into the functioning of the EU Emissions Trading System (EU ETS) market. Key findings highlighted by ESMA relate to: (i) prices and volatility – the price of EU emission allowances declined in 2023, driven in part by lower demand for emission allowances from weak industrial activity, falling natural gas prices which led to a reduction in coal-based power generation and an increase in renewable energy, along with increased supply following the decision to auction additional allowances to finance the REPowerEU plan; (ii) auctions – the volume of emission allowances increased in 2023 and the primary emission allowance market remains considerably concentrated, with ten participants buying 90% of auctioned volumes in 2023, reflecting a preference by most EU ETS operators to source allowances from financial intermediaries; and (iii) trading and positions – the vast majority of emission allowance trading in secondary markets takes place through derivatives, reflecting the annual EU ETS compliance cycle where non-financial sector firms hold long positions (for compliance purposes) while banks and investment firms hold short positions.

The report concludes that no significant issue has been identified in the functioning of EU carbon markets. No major policy issues have been identified although further analysis may be needed in the future as ESMA will continue to monitor carbon market developments.

Date of publication: 07/10/2024

### **(ii) International**

## **UNEP FI: Two guidance documents on responsible banking**

Status: Final

The United Nations Environment Programme Finance Initiative (UNEP FI) has published two member guidance documents regarding sustainable finance and banking. One is the Priorities guidance, which identifies four strategic priorities – climate, nature, inclusive economies, and human rights – setting forth current challenges, supporting frameworks and impactful outcomes that can be achieved within each area of focus. The other is the Blueprint guidance setting out, for each priority area, what ambition looks like for banks by 2030 and beyond across seven thematic areas: strategy, internal processes and policies, portfolio composition and financial flows, client engagement, advocacy and partnerships, target-setting and implementation, and transparency and disclosure. The Blueprint is designed to help banks encourage sustainable practices, create synergies with clients, and take up the leadership mantle in the transition towards more sustainable business models and economies.

- ♦ **Priorities for a global responsible banking sector**
- ♦ **Responsible banking blueprint**

Date of publication: 08/10/2024

## UNEP FI: Net-Zero Banking Alliance 2024 progress report

Status: Final

The UNEP FI has published a 2024 progress report produced by the Net-Zero Banking Alliance (NZBA). Launched in 2021, the NZBA is a bank-led alliance of 144 banks globally voluntarily committed to aligning their financing activities with routes to net zero emissions by 2050. The progress report summarises information received from 122 member banks and offers insights into members' progress on target setting and transition planning. Overall, the report shows that most NZBA banks are taking significant steps towards meeting their climate goals. In the report, the NZBA identifies areas where more work is required, such as setting decarbonisation targets for banks, which remains a challenging exercise due to the quality of client greenhouse gas emissions data, unclear decarbonisation pathways, and a lack of a supportive policy environment. Insights gained from the progress will inform the steps NZBA will take to support emerging market banks that need more time to meet milestones. Following the vote earlier this year by member banks to reinforce and update the NZBA target setting Guidelines, NZBA banks with significant capital markets activities are due to update their targets to include related emissions by November 2025.

Date of publication: 01/10/2024



# Contact

## Financial Services Regulatory

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**Dr Alexander Behrens**  
*Key contact — Partner*

Tel +49 69 2648 5730  
alexander.behrens@aoshearman.com



**Brice Henry**  
*Partner — Paris*

Tel +33 140065366  
brice.henry@aoshearman.com



**Mia Dassas**  
*Partner — Paris*

Tel +33 140065364  
mia.dassas@aoshearman.com



**Pien Kerckhaert**  
*Partner — Amsterdam*

Tel +31 20 674 1309  
pien.kerckhaert@aoshearman.com



**Sylvia Kierszenbaum**  
*Partner — Brussels/Antwerp*

Tel +32 3 287 74 10  
sylvia.kierszenbaum@aoshearman.com



**Axel de Backer**  
*Partner — Brussels/Antwerp*

Tel +32 3 287 7402  
axel.debacker@aoshearman.com



**Salvador Ruiz Bachs**  
*Partner — Madrid*

Tel +34 91 782 99 23  
salvador.ruizbachs@aoshearman.com



**Baptiste Aubry**  
*Partner — Luxembourg*

Tel +352 44 44 5 5245  
baptiste.aubry@aoshearman.com



**Carole Schmidt**  
*Knowledge Counsel — Luxembourg*

Tel +352 44 44 5 5275  
carole.schmidt@aoshearman.com



**Lisa Huber**  
*Knowledge Lawyer — Germany*

Tel +49 69 2648 5467  
lisa.huber@aoshearman.com

For more information, please contact:

## Frankfurt

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Bockenheimer Landstraße 2  
60306 Frankfurt am Main  
Germany

Tel +49 69 2648 5000  
Fax +49 69 2648 5800

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