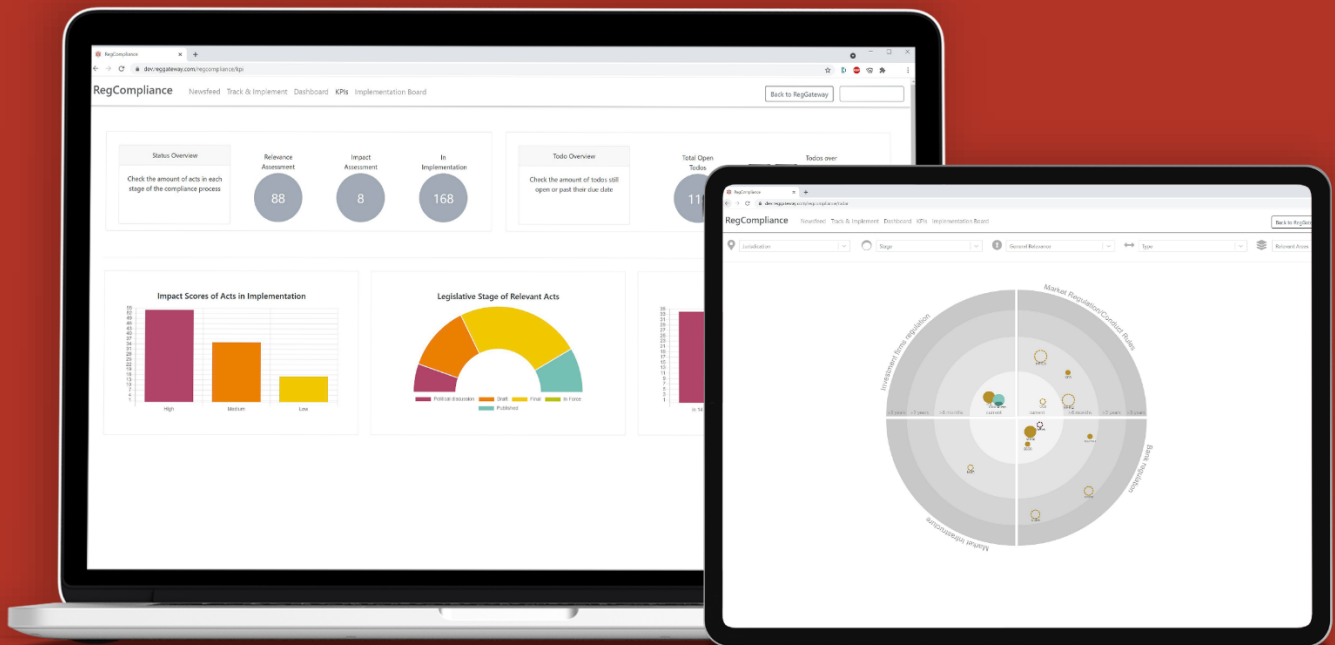


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November 2021





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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) Germany

BaFin: Renewed survey of German credit and securities institutions on cum/cum transactions (Erneute Befragung deutscher Kredit- und Wertpapierinstitute zu Cum/Cum-Geschäften)

Status: Final

BaFin has launched a renewed survey on cum/cum transactions, directed at all German credit institutions and selected securities institutions, in order to better assess their consequences. The query is primarily intended to provide information on the group of institutions affected and the amount of the (potential) financial burden.

On 9 July 2021, the German Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) published a [letter](#) containing a change in administrative practice on the treatment of tax matters in connection with cum/cum transactions. It replaces the [BMF letter of July 2017](#), which for the first time included clear criteria for the tax authorities' handling such transactions. The change in administrative opinion resulting from the new letter means that the supervisory authority must reassess the consequences for institutions.

Date of publication: 10/11/2021

(ii) EU

EC: Targeted consultation on improving the EU's macroprudential framework for the banking sector

Status: Consultation

Deadline for the submission of comments: 18/03/2022

The EC has launched a consultation on improving the EU's macroprudential framework for the banking sector to gather evidence in the form of relevant stakeholders' views and experience with the current macroprudential rules for credit institutions, in line with the better regulation principles and in view of the forthcoming legislative review mandated by Article 513 CRR. The information obtained will feed into the impact assessment for a possible legislative proposal.

Date of publication: 30/11/2021

(iii) International

BCBS: Updates on climate-related financial risks, cryptoassets, the G-SIB assessment methodology and disclosure standards

Status: Final

BCBS has provided updates on its ongoing work regarding climate-related financial risks, cryptoassets, the G-SIB assessment methodology and disclosure standards: (i) Climate-related financial risks – BCBS is currently assessing and developing a suite of potential measures – spanning disclosure, supervisory and regulatory measures – to address climate-related financial risks to the global banking system and has agreed to consult later this month on a set of principles for the effective management and supervision of climate-related financial risks at internationally active banks. On disclosure measures, BCBS welcomed the establishment of the International Sustainability Standards Board, and is exploring the use of the Pillar 3 framework to promote a common disclosure baseline for climate-related financial risks; (ii) cryptoassets – BCBS has reviewed the comments received regarding its consultation on the prudential treatment of banks' cryptoasset exposures. Members reiterated the importance of developing a conservative risk-based global minimum standard to mitigate prospective risks from cryptoassets to the banking

system, consistent with the general principles set out in the consultative document. BCBS will further specify a proposed prudential treatment, with a view to consulting by mid-2022; (iii) the G-SIB assessment methodology – for more information, please see section 1.1(b) below; (iv) disclosure standards – BCBS have approved the final standards for Pillar 3 disclosures related to the revised market risk framework and a set of voluntary disclosures for banks' sovereign exposures. These will be published in the coming weeks; and (v) risks and vulnerabilities to the global banking system – BCBS are assessing: (a) the impact of the prolonged low interest rate environment and its evolving outlook on banks' profitability, business models and risk-taking behaviour; and (b) the supervisory and policy implications related to third- and fourth-party risk management and concentration risk, in coordination with other global standard-setting bodies and international forums.

Date of publication: 09/11/2021

(b) Solvency/Own funds issues

(i) EU

EBA: Final Report on draft RTS on the calculation of risk-weighted exposure amounts of CIUs under Article 132a(4) of the CRR

Status: Final

The EBA has published final draft RTS specifying the methodology to apply to calculate the risk-weighted exposure amounts, in the context of the mandate-based approach when there are some missing inputs. These final draft RTS will contribute to the calculation of own funds requirements for the exposures in the form of units or shares in collective investment undertakings under the Standardised Approach for credit risk. In particular, the final draft RTS provide clarification on the regulatory treatment for missing inputs when the underlying risk of derivatives is unknown, as well as for the computation of the exposure value for counterparty credit risk. The RTS also account for situations where the notional amount of a netting set needs to be computed or for when the identification of netting sets is not feasible. Finally, these draft RTS explain what is considered as insufficient information versus missing inputs and clarify whether market measures provide sufficient information for the application of the mandate-based approach for exposures to CIUs.

Date of publication: 25/11/2021

Commission Implementing Regulation (EU) 2021/2005 laying down ITS amending Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of ECAIs and the credit quality steps set out in CRR

Status: Published in the OJ

Date of entry into force: 07/12/2021

The Commission Implementing Regulation laying down ITS on the mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions (ECAIs) under the CRR was published in the OJ. This Implementing Regulation was made by the EC on 16 November, under Article 136(1) of the CRR.

Date of publication: 17/11/2021

EBA: Final Report on draft RTS specifying the types of factors to be considered for the assessment of the appropriateness of risk weights under Article 124(4) of the CRR and the conditions to be taken into account for the assessment of the appropriateness of minimum LGD values under Article 164(8) of the CRR

Status: Final

The EBA has published its final draft RTS specifying the types of factors and conditions to be considered for the assessment of the appropriateness of risk weights and of minimum loss given default (LGD) values. The final draft RTS have been developed according to Articles 124(4) and 164(8) of the CRR as amended by CRR II.

In particular, the final draft RTS provide technical specifications on the following aspects: (i) for those institutions applying the standardised approach, the key elements for the assessment of risk weights are the loss experience and the loss expectation relating to exposures secured by immovable property within the respective Member States. The final draft RTS specify the types

of factors that authorities should consider during the risk-weight assessment on the basis of the loss experience of exposures secured by immovable property and forward-looking immovable property market developments; and (ii) for those institutions applying the internal ratings-based (IRB) approach to retail exposures secured by residential or commercial immovable property, the final draft RTS clarify the conditions to be considered when assessing the appropriateness of minimum LGD values. In their assessments, relevant authorities should consider whether minimum LGD values cover the sources of systemic risks beyond economic downturn considerations and idiosyncratic risks.

Date of publication: 05/11/2021

(ii) International

FSB: Publication of 2021 G-SIB list

Status: Final

The FSB published its 2021 list of globally systemic important banks (G-SIBs) using end-2020 data and an assessment methodology designed by the BCBS. The 30 banks on the list remain the same as the 2020 list, although certain banks have changed buckets. BCBS has published: (i) updated denominators used to calculate banks' scores; (ii) the thresholds used to allocate the banks to buckets; (iii) the values of the 12 high-level indicators of all banks in the main sample used in the G-SIB scoring exercise; and (iv) the links to the public disclosures of all banks in the full sample of banks assessed. In the near term, the BCBS will review the implications of developments related to the European Banking Union for the G-SIB methodology. In particular, this will include a targeted review of the treatment of cross-border exposures within the Banking Union on the G-SIB methodology.

Date of publication: 23/11/2021

BCBS: G-SIB assessment methodology review process technical amendment finalisation

Status: Final

BCBS has published a report on G-SIB assessment methodology. It has agreed to proceed with its proposed approach to replacing the existing three-year review cycle of the methodology with a process of ongoing monitoring and review in order to ensure that it remains appropriate over time. This will include monitoring: (i) recent developments in techniques or new indicators that can be used for the assessment of systemic risk; (ii) emerging evidence on the effectiveness of the G-SIB regime; and (iii) structural changes that could impact the effectiveness of the regime. Only if this monitoring work reveals evidence of material unintended consequences or material deficiencies with respect to the framework's objectives will BCBS consider changes to the regime. In the near term, BCBS will review the implications of developments related to the European Banking Union for the G-SIB methodology.

Date of publication: 09/11/2021

(c) Securitisation

(i) EU

ESMA: Updated Q&As on the Securitisation Regulation

Status: Final

ESMA has updated its Q&As on the Securitisation Regulation. These updates and new questions on topics include: (i) individual fields in disclosure templates; (ii) trigger measurements in investor reports; and (iii) completing synthetic coverage information.

Date of publication: 19/11/2021

(ii) Eurozone**ECB: Consultation on draft Guide on the notification of securitisation transactions****Status:** Consultation**Deadline for the submission of comments:** 05/01/2022

The ECB has published a consultation on its draft guide on the notification of securitisation transactions. This non-binding guide sets out the notification practices that significant institutions acting as originators or sponsors of a securitisation transaction are advised to follow in order to provide the ECB with information needed for the supervision of compliance with Articles 6 to 8 of the Securitisation Regulation, as specified in Article 7 of that Regulation. The annex to the guide specifies the information that should be provided in relation to: (i) key transaction details; (ii) securitised exposures; (iii) securitisation positions; and (iv) compliance with Articles 6 to 8 of the EU Securitisation Regulation. The ECB expects banks to follow the guide for all securitisation transactions issued after 1 April 2022. The guide will be updated when needed to reflect relevant developments in the regulation and supervision of securitisations. The outcome of the consultation, which ends on 5 January 2022, will be taken into account during the finalisation of the guide.

Date of publication: 15/11/2021**(d) Liquidity****(i) EU****EBA: Report on the impact of the NSFR on the functioning of the precious metals market under the mandate in Article 510(11) of CRR II****Status:** Final

The EBA has published a report on the possible impact of the net stable funding ratio (NSFR) on the functioning of the precious metals markets under the mandate in Article 510(11) of the CRR. The report aims to assess whether it would be justified to reduce the required stable funding factor for assets used for providing clearing and settlement services or for financing transactions of precious metals. It discusses the impact of the introduction of the NSFR on the precious metals market and analyses the impact of possible modifications of the prudential treatment of physically traded commodities under the NSFR. Based on the EBA QIS and COREP data, the amount of physically traded commodities reported by banks was found to be negligible when compared with market volumes. The report also concludes that the requirement for stable funding generated by these assets is limited in comparison with the total amount of required stable funding and a reduction of the weighting factor assigned to these assets would have limited impact on the banks and, in particular, it would not make the NSFR less stringent.

Date of publication: 17/11/2021**(e) Authorisation and passporting****(i) EU****EBA: Final Report on Guidelines on a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of the CRD IV****Status:** Final

The EBA has published a Final Report on Guidelines to specify a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of Directive 2013/36/EU (CRD IV). EBA intends for the guidelines to support competent authorities' comprehensive understanding of the business model, the risk profile, the geographical distribution of the activities, and the viability and sustainability of the credit institution business undertaking, and that form the basis for the determination of the capital at authorisation and further prudential requirements. Similarly, the guidelines underscore the importance of the organisational structure, internal governance framework and control being commensurate with the business plan, so to ensure that the credit institution will be able to perform the targeted activities in a sound and prudent manner. The guidelines advocate for a risk-based approach and insist on the importance of consistency with the supervisory approaches applied in going concern situations. In addition, they consider the proportionality principle for all relevant assessment criteria

and apply to both traditional and innovative business models and/or delivery mechanisms, as they are technology neutral. In the context of the assessment of the application for granting an authorisation, the final guidelines also include guidance on ML/TF risks and highlight the importance of cooperation with the AML supervisor and other public bodies, in accordance with the CRD.

Date of publication: 11/11/2021

(f) Risk management/SREP/Pillar 2/Outsourcing/NPL

(i) EU

CoEU: Directive on credit servicers and credit purchasers

Status: Adopted by the CoEU

The Council of the EU (CoEU) published the provisional version of the press document stating the outcomes of its council meeting from the same day. The document sets out which items were debated and approved. It confirms that the Council has adopted the Directive on credit servicers and credit purchasers and amending Directives 2008/48/EC (Consumer Credit Directive) and 2014/17/EU (Mortgage Credit Directive). In a next step, the Directive will enter into force on the 20th day following its publication in the OJ, with member states required to transpose its provisions by 24 months after its entry into force.

Date of publication: 09/11/2021

(g) Remuneration

(i) International

FSB: Progress Report on the implementation of FSB principles for sound compensation practices and implementation standards

Status: Final

The FSB has published a progress report on the implementation of its Principles for Sound Compensation Practices and their Implementation Standards in financial institutions. The report covers the compensation practices of the largest financial institutions in the banking, insurance and asset management sectors. It highlights uneven progress toward implementing the Principles and Standards, with banks relatively more advanced than insurance and asset management firms. The FSB suggests it may reflect the more pressing need for banks to align compensation with risk-taking following the 2008 global financial crisis. Amongst other summaries, this report: (i) advocates incorporating clawback terms and severance clauses in employment contracts to enhance their enforceability and effectiveness. While in-year adjustments and malus are commonly used, the use of clawback is not widespread due to ongoing legal and practical constraints; (ii) notes the increased use of non-financial measures and disclosure of compensation-related information to shape and promote a sound risk culture and positive behaviours, as well as to contribute to robust risk management. Firms are increasingly incorporating ESG aspects to drive accountability for delivering outcomes. This must be underpinned by robust governance, as the increasing application of non-financial measures requires the Board and internal control functions to use discretion and judgement appropriately; and (iii) finds that most existing compensation frameworks, and associated governance mechanisms, have demonstrated sufficient flexibility to date. However, while banking authorities in most jurisdictions have powers to direct firms to hold back and/or limit bonuses, especially in cases where there are concerns about capital conservation, or to increase deferral periods, this is much less prevalent in the asset management and insurance sectors.

Date of publication: 04/11/2021

(h) Supervisory reporting**(i) EU****EC: Commission Implementing Regulation (EU) 2021/2017 amending Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of the CRD IV**

Status: Published in the OJ

Date of entry into force: 16/12/2021

The Commission Implementing Regulation (EU) 2021/2017 amending Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of Directive 2013/36/EU (CRD IV) has been published in the OJ. This document is based on the [final report by the EBA](#) as of 1 June 2021, which included all benchmarking portfolios and metrics that will be used for the 2022 benchmarking exercise.

According to the EBA, with regard to its final report, the document: (i) extends the framework for the market risk benchmarking in order to allow the collection of new information, in particular as regards sensitivity-based measures (SBM), in relation to the Fundamental Review of the Trading Book (FRTB) SBM for own funds requirements; (ii) adds some additional data fields for credit risk to understand the level of conservatism incorporated in the risk estimates and the resulting risk-weighted exposures amounts; and (iii) further adds a limited number of additional data fields for the IFRS9 portfolios to collect information on additional IFRS9 parameters, in particular the Loss Given Default (LGD).

Date of publication: 26/11/2021

Commission Implementing Regulation (EU) 2021/1971 amending Implementing Regulation (EU) 2016/2070 laying down ITS for templates, definitions and IT-solutions to be used by institutions when reporting to the EBA and to competent authorities in accordance with Article 78(2) of CRD IV

Status: Published in the OJ

Date of entry into force: 09/12/2021

The Implementing Regulation (EU) 2021/1971 amending Implementing Regulation (EU) 2016/2070 laying down ITS for templates, definitions and IT-solutions to be used by institutions when reporting to the EBA and to competent authorities in accordance with Article 78(2) of CRD IV has been published in the OJ. It amends the annexes of Implementing Regulation (EU) 2016/2070. Commission Implementing Regulation (EU) 2016/2070 specifies the reporting requirements for institutions to enable the competent authorities to monitor the range of risk-weighted exposure amounts or own funds requirements for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions, and to assess those approaches. To improve the quality of the data reported and to obtain more accurate benchmark values, the amending Implementing Regulation, namely, decreases the number of benchmark portfolios to be reported, simplifies their design and provides stable definitions.

Date of publication: 19/11/2021

(i) Disclosure**(i) EU****EBA: Final report on draft ITS amending Implementing Regulation (EU) No 637/2021 on disclosure of information on exposures to interest rate risk on positions not held in the trading book in accordance with Article 448 of the CRR**

Status: Final

The EBA has published its first draft ITS on Pillar 3 disclosure of institutions' exposures to interest rate risk on positions not held in the trading book (IRRBB). Article 448 of the CRR requires institutions to disclose, as from 28 June, quantitative and qualitative information on the risks arising from potential changes in interest rates that affect both the economic value of equity

and the net interest income of their non-trading book activities. The ITS put forward templates for the disclosure of information on institutions' IRRBB risk management objective and policy, institutions' internal assumptions for the calculation of their IRRBB exposure values, and the impact of changes in interest rates on institutions' economic value of equity and net interest income, with the objective to implement the Article 448 disclosure requirements. The standards will amend the ITS on institutions' public disclosures (Implementing Regulation (EU) No 637/2021), in line with the strategic objective of developing a single and comprehensive Pillar 3 package that should facilitate implementation by institutions and further promote market discipline. In addition, given the ongoing EBA work on the policy framework for IRRBB, the standards also include transitional provisions that should facilitate institutions' disclosures while the policy framework is being finalised. The disclosure requirements apply to large institutions and to other institutions except those that are not listed, in accordance with the provisions of Articles 433a and 433c of the CRR. Given the application of the disclosure requirements of Article 448 CRR from June 2021, the EBA also provides clarity on what institutions should disclose until the disclosure requirements start to apply. The final draft ITS were submitted to the EC for adoption.

Date of publication: 10/11/2021

(ii) International

BCBS: Revisions to market risk disclosure requirements

Status: Final

BCBS has published a report on revised standards to its market risk disclosure requirements to reflect changes to the minimum capital requirements for market risk published in January 2019. The revised market risk disclosure requirements come into effect on 1 January 2023. Amongst other changes the revised standard introduces: (i) a "traffic light" approach for capital requirements as a consequence of the outcome of the profit and loss attribution test for banks using the internal models approach; and (ii) the simplified standardised approach as an alternative way of calculating capital requirements for market risk.

Date of publication: 11/11/2021

BCBS: Voluntary disclosure of sovereign exposures

Status: Final

BCBS has published a finalised report on voluntary disclosure standards for sovereign exposures. These final standards comprise three templates covering disclosure of sovereign exposures and risk-weighted assets by: (i) jurisdictional breakdown; (ii) currency breakdown; and (iii) according to the accounting classification of the exposures. The implementation of these templates is only mandatory when required by national supervisors. The definitions used in the templates are consistent with the Basel Framework to be effective as of 1 January 2023.

Date of publication: 11/11/2021

1.2 Recovery and resolution

(i) EU

EBA: Final report on revised Guidelines on recovery plan indicators under Article 9 of the BRRD

Status: Final

The EBA has published a Final report on its revised Guidelines on recovery plan indicators under Article 9 of the BRRD. The guidelines, initially issued in 2015, established a common EU standard for developing the framework of recovery plan qualitative and quantitative indicators, while leaving some constrained flexibility to tailor a set of recovery plan indicators depending on institutions' specificities. For each category of recovery plan indicators, the guidelines spell out specific indicators that should be included unless the institution justifies to the competent authorities that they are not relevant to its legal structure, risk profile, size and/or complexity (i.e. a rebuttable presumption). Most of the provisions of the existing guidelines remain unaltered apart from replacing or adding a few metrics to the minimum list of recovery plan indicators and updating the format of the existing text to the current legal template for EBA guidelines. The guidelines have also been expanded: (i) providing additional guidance on the calibration of thresholds of recovery indicators to ensure that recovery options are implemented early enough, so as to be

effective. The guidelines also emphasise the importance of constant monitoring of recovery indicators and timely notification of their breaches to supervisors; and (ii) including three new additional recovery indicators to the minimum list of recovery indicators (MREL/TLAC, asset encumbrance and liquidity position). One of them (cost of wholesale funding) has also been removed.

The guidelines on recovery plan indicators will apply from two months after their publication in all EU languages. The 2015 guidelines on recovery plan indicators will be repealed at the same time.

Date of publication: 09/11/2021

(ii) Eurozone

SRB: Updated operational guidance for operational continuity in resolution and FMI contingency plans

Status: Final

The SRB has updated its operational guidance for operational continuity in resolution (OCIR) and FMI contingency plans. The guidance aims to provide clarification to banks on how to implement SRB expectations for operational continuity and displays an indicative phasing-in timetable. The updated document gives more details on topics related to financial resilience and staffing.

Date of publication: 29/11/2021

2. Investment firms regulation

(i) Germany

BaFin: Note regarding the draft Framework Regulation on the German Investment Firms Act (Hinweis bezüglich des Entwurfs einer Mantelverordnung zum WpIG)

Status: Draft

BaFin has published a note regarding the delay in finalising the draft Framework Regulation (*Mantelverordnung*), which was initially supposed to enter into force on 26 June 2021, together with the Law on the supervision of investment firms (*Wertpapierinstitutsgesetz* – WpIG). As a reason for the delay, the note sets out that the regulations contained in the consulted draft Framework Regulation have not yet been promulgated in the Federal Law Gazette. In particular, the content of the draft Investment Firms Remuneration Regulation (*Wertpapierinstituts-Vergütungsverordnung* – WpI-VergV) is currently being revised. BaFin will again publicly consult on the latter draft as soon as the EBA has published its relevant revised Guidelines on sound remuneration policies. The renewed consultation is expected to start at the end of the first quarter of 2022.

Date of publication: 02/11/2021

(ii) EU

EBA: Final report on Guidelines on internal governance under the IFD

Status: Final

The EBA published its final revised guidelines on internal governance for investment firms under the IFD. The IFD contains specific governance requirements for investment firms in parallel to and consistently with the ones already applicable under CRD. The guidelines are consistent as far as possible with their respective guidelines under CRD. They are addressed to investment firms that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) IFR and competent authorities. These requirements apply regardless of the investment firms' governance structures (unitary board, dual board or other structure). The guidelines complete the various governance provisions in the IFD, by specifying the tasks, responsibilities and functioning of the management body, and the organisation of investment firms, including the need to create transparent structures that allow for the supervision of all their activities. The guidelines also specify in more detail the requirements under the IFD and aim to ensure the sound management of risks across all three lines of defence and, in particular, set out detailed requirements for the second line of defence (the compliance function and the independent risk management where applicable) and, the third line of defence (the internal audit function), where applicable.

Date of publication: 22/11/2021

EBA: Final report on Guidelines on sound remuneration policies under the IFD

Status: Final

Application date: 30/04/2022

The EBA published its final revised guidelines on sound remuneration policies for investment firms under the IFD. The guidelines are consistent as far as possible with their respective guidelines under CRD. Relevant differences between IFD and CRD (e.g., the absence of a bonus cap and differences in instruments and the length of deferral periods) have been taken into account. They are addressed to investment firms that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) IFR and competent authorities. The guidelines specify further the requirements on remuneration policies in the IFD with regard to the respective governance arrangements and processes which should be applied when remuneration policies for all staff and for identified staff are implemented. The guidelines specify the elements that investment firms should implement in order to ensure that remuneration policies are sound and gender neutral in accordance with the IFD and respect the principle of equal pay for male and female workers for equal work or work of equal value. The main part of the guidelines focuses on the specific provisions that apply to investment firms' remuneration policies

for identified staff, in particular the alignment of the variable remuneration with the risk profile of the investment firms or the assets they manage is crucial.

Date of publication: 22/11/2021

EBA/ESMA: Consultation on draft Guidelines on common procedures and methodologies for the SREP under the IFD

Status: Consultation

Deadline for the submission of comments: 18/02/2022

The EBA and ESMA published a consultation paper on their guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) under the Investment Firms Directive (IFD). The common SREP framework introduced in these guidelines sets out the process and criteria for the assessment of the main SREP elements such as: (i) business model; (ii) governance arrangements and firm-wide controls; (iii) risks to capital and capital adequacy; and (iv) liquidity risk and liquidity adequacy.

A scoring system is introduced to facilitate the consistency and comparability of assessment across firms. In addition, the proposed joint guidelines clarify the monitoring of key indicators, on the application of SREP in the cross-border context, and on the use of supervisory measures. The guidelines specify common procedures and methodologies for SREP, which are proportionate to the different sizes and business models of investment firms, and the nature, scale and complexity of their activities. Investment firms are classified into four distinct categories, which translate into the different frequency, depth and intensity of the assessments, and the engagement of the competent authority. For the determination of additional own funds requirements for risks not covered or not sufficiently covered by Pillar 1 requirements, the draft guidelines refer to the draft RTS on the additional own funds requirements also published on the same day in a distinct consultation by the EBA (see below).

Date of publication: 18/11/2021

EBA: Consultation Paper on draft RTS on Pillar 2 add-ons for investment firms under Article 40(6) of the IFD

Status: Consultation

Deadline for the submission of comments: 18/02/2022

The EBA published a consultation paper on draft RTS on Pillar 2 add-ons for investment firms. These draft RTS clarify how competent authorities should measure risks or elements of risks that investment firms face or pose to others, that are not covered or not sufficiently covered by the own funds requirements set out in Part Three or Four of the Investment Firms Regulation. These RTS set out more detailed guidance on the measurement of risks to capital, including specific indicative metrics to be used for the assessment of materiality and determination of capital considered adequate to cover specific risks. Given that the application of additional own funds requirements results from a comprehensive supervisory review and evaluation process (SREP), these draft RTS should be read together with the SREP guidelines under the IFD (see above).

The EBA intends to finalise and communicate the draft RTS to the Commission by 30 June 2022.

Date of publication: 18/11/2021

3. Market regulation/Conduct rules

3.1 General

(i) EU

ESMA: Preliminary report on emission allowances and derivatives thereof

Status: Final

ESMA has published its Preliminary Report on the EU carbon market which responds to the request made by the European Commission in its Communication on energy prices for a preliminary analysis of European emission allowances (EUAs) and derivatives on EUAs. The Report presents an overview of the financial regulatory environment for the carbon market under MAR, MiFID II and EMIR and the tools available to securities supervisors to fulfil their responsibilities. The Report, based on commercial data, also provides an analysis of price evolution and volatility in EUAs and derivatives on EUAs. Weekly position reports in respect of derivatives on EUAs were used for the initial assessment of active counterparties.

Date of publication: 15/11/2021

3.2 Benchmarks

(i) EU

ESMA: Updated Q&As on the Benchmarks Regulation

Status: Final

ESMA has updated its Q&As on the Benchmark Regulation (BMR) by inserting two new Q&As on benchmark statements under Article 27(2a) of the BMR.

Date of publication: 19/11/2021

ESMA: Letter from the RFRWG to the EC on potential designation of statutory replacement rates for GBP & JPY LIBOR

Status: Final

ESMA has published a letter, dated 15 November, from the Euro Risk-Free Rates Working Group (RFRWG) to the EC on the potential designation of statutory replacement rates for GBP and JPY LIBOR. The RFRWG agreed at a meeting held on 1 July to convene a task force to consider solutions for GBP and JPY LIBOR contracts referencing the one, three and six months tenors for which active transition or updating contractual language to include robust fallbacks will not be possible by the end of 2021 (“tough legacy”). The task force suggests aligning the approach taken for tough legacy contracts under EU law with that adopted by the UK, which anticipates use of a synthetic LIBOR for GBP and JPY LIBOR referencing contracts with specific legislation providing legal certainty to contracts linked to synthetic LIBOR. An alignment of approach with the UK would provide a consistent approach for all tough legacy contracts, but would also create certain challenges within the legal framework of the EU BMR. The RFRWG and task force posit that, within the remit of the EU BMR, full legal certainty can only be achieved with the designation of a statutory replacement rate. To enable alignment with the UK approach, several options to designate a replacement rate have been identified and discussed. All of the options create challenges in terms of either full alignment with the UK approach or operational aspects. The RFRWG is open to further discussion on the most appropriate approach under these circumstances. The RFRWG recognises that the primary objective of market participants should be the active transition from GBP and JPY LIBOR to SONIA and TONA (or TORF) respectively. Any decision made by the Commission to designate statutory replacement rates should not impede the progress of market participants to actively transition to the risk-free rates.

Date of publication: 16/11/2021

(ii) International**FSB: Statement to support preparations for LIBOR cessation****Status: Final**

The FSB has issued a statement to support preparations for LIBOR cessation. Most LIBOR panels will cease at the end of this year, with certain key USD settings continuing until end-June 2023 to support the rundown of legacy contracts executed before 1 January 2022, only. With only a few weeks remaining to the end of 2021, the FSB: (i) urges that market participants act urgently to complete any remaining steps set out in the FSB's Global Transition Roadmap. Global and national financial regulators will be closely monitoring progress; (ii) recognises the widespread use of USD and other LIBORs in emerging markets and developing economies and therefore considers engagement with these economies to be a key part of LIBOR transition globally; (iii) considers that transition should be primarily to overnight risk-free-rates (RFRs), the most robust benchmarks available, to avoid reintroducing the weaknesses of LIBOR. It recognises that in some cases there may be a role for RFR-derived term rates and has set out the circumstances where the limited use of RFR-based term rates would be compatible with financial stability. It is crucial that potential alternative rates to LIBOR are especially robust and reflect credible underlying markets underpinned by a sufficient volume of transactions; and (iv) emphasises that the active transition of legacy contracts remains the best way for market participants to have control and certainty over their contract terms, and provides a permanent solution and the ability to move to overnight RFRs, compounded in arrears. The FSB emphasises that synthetic LIBOR is being made available as a temporary bridging solution for legacy contracts only. It should not be directly or indirectly referenced in any new contracts. The FSB will continue to monitor the final steps in completing LIBOR transition over the coming months. Post-end-2021, the FSB will monitor the effort to continue reducing the stock of legacy contracts which are using synthetic LIBOR rates, any continuing new issuance of USD LIBOR contracts post-end-2021, and the size and resolution of legacy contracts referencing USD LIBOR that are due to mature after end-June 2023. The FSB will review these issues in mid-2022 and assess the implications for any further supervisory and regulatory cooperation that may be required.

Date of publication: 19/11/2021

3.3 Capital markets union**(i) EU****EC: Communication on progress on capital markets union action plan and 2022 deliverables****Status: Final**

The EC has published a communication on the progress it has made in implementing the 2020 capital markets union (CMU) action plan and selected deliverables for 2022. An Annex accompanies the communication which further discusses the progress made and next steps in relation to actions announced in the 2020 action plan. The EC's deliverables for 2022 include: (i) a listings review – the EC intends to simplify the EU's rules and plans to adopt a legislative proposal in H2 2022; (ii) an open finance framework – the EC intends to present a legislative proposal and adopt a supervisory data strategy; and (iii) harmonisation of corporate insolvency framework and procedures – the EC intends to propose an initiative by Q3 2022, subject to an impact assessment.

Date of publication: 25/11/2021

EC: Public consultation on a Listing Act**Status: Consultation****Deadline for the submission of comments: 11/02/2022**

The EC consults on a listing act which, as announced in the CMU Action Plan 2020, aims to make the capital markets more attractive for EU companies and to facilitate access to capital for SMEs, in particular by removing regulatory barriers to companies' listing.

Date of publication: 19/11/2021

3.4 Consumer protection rules

(i) Germany

Amendment to the Price Indication Regulation (Verordnung zur Novellierung der Preisangabenverordnung)

Status: Published in the Federal Gazette

Date of entry into force: 28/05/2022

The Regulation to amend the Price Indication Regulation (*Preisangabenverordnung* – PAngV) has been published in the Federal Gazette. This comprehensive amendment is intended to implement amendments to European law into national law and to improve the overall comprehensibility and readability of the PAngV, including disclosure obligations for financial services (in particular concerning consumer loans, advertising for consumer loans, overdraft facilities and remunerated financing assistance).

Date of publication: 23/11/2021

3.5 Market abuse

(i) EU

ESMA: Report on administrative and criminal sanctions and other administrative measures imposed under the Market Abuse Regulation in 2020

Status: Final

ESMA has published its annual report on administrative and criminal sanctions, as well as other administrative measures, issued across the EU under MAR in 2020. The report found that National Competent Authorities and other authorities imposed a total of €17.5 million in fines related to 541 administrative and criminal actions under MAR. There has been an increase in the number of administrative sanctions and measures, however their financial penalties and the number and aggregated value of criminal sanctions have decreased.

Date of publication: 23/11/2021

3.6 MiFID/MiFIR

(i) EU

EC: Proposal to amend MiFIR and MiFID II

Status: Draft

The EC has published legislative proposals for amendments to MiFIR and MiFID II. The proposed Regulation amending MiFIR seeks to enhance market data transparency, remove obstacles to the emergence of a consolidated tape, optimise the trading obligations and prohibit payments for forwarding client orders. Most of the amendments contained in the MiFID II proposal relate to the proposed changes to MiFIR.

- Proposal for a Regulation amending MiFIR as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders
- Proposal for a Directive amending MiFID II on markets in financial instruments

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

Date of publication: 25/11/2021

ESMA: Q&As on MiFID II and MiFIR investor protection and intermediaries topics**Status: Final**

ESMA has updated its Q&As on MiFID II and MiFIR investor protection topics by including a new Q&A setting out the considerations manufacturers and distributors should take into account when specifying the target market category for CoCo-Bond Funds.

Date of publication: 19/11/2021

ESMA: Final report on draft RTS for commodity derivatives**Status: Final**

ESMA has published its final draft RTS for commodity derivatives under the MiFID II Recovery Package. The draft technical standards include proposals on the application procedure for position limit exemptions, a methodology to determine position limits and position management tools for trading venues, which will contribute to stable and orderly commodity derivative markets at a time of heightened scrutiny. Under the MiFID II Recovery Package, position limits will only continue to apply to agricultural commodity derivatives and to critical or significant commodity derivatives defined in Level 1 as commodity derivatives with a net open interest above 300,000 lots over a one-year period. As part of the implementation measures of the new framework, ESMA and the national competent authorities have also separately agreed on a procedure to ensure convergence in the calculation of the open interest and the determination of whether a commodity derivative qualifies as critical or significant. The draft RTS on the application procedure for the new position limit exemptions and the methodology for position limits have been incorporated into a broad new draft RTS. The new draft RTS 21a, which will be repealing RTS 21, also retains the provisions of RTS 21 that are not impacted by the changes made to the position limit regime and contains additional proposals by ESMA to improve the functioning of the position limits regime based on experiences following the application of MiFID II.

In the report, ESMA also: (i) explains the amendments it considers necessary to ITS 4 as a consequence of the exclusion of securitised derivatives from the scope of position limits; and (ii) sets out the draft RTS on position management controls, which provide additional tools for market monitoring by trading venues trading commodity derivatives. The EC has three months to decide whether to endorse the proposals. The revised MiFID II regime for commodity derivatives will apply at the end of February 2022.

Date of publication: 19/11/2021

3.7 Packaged retail and insurance-based investment products (PRIIPs)

(i) EU**EP: Adopted position on legislation extending deadline to provide a KID under PRIIPs and UCITS****Status: Adopted by the EP**

The EP has announced that it had voted to adopt at first reading positions on the proposed legislation amending the PRIIPs Regulation and UCITS Directive to extend the transitional arrangement exempting companies from the requirement to provide retail investors with a key information document (KID) until 31 December 2022. The proposed amendment to the UCITS Directive also specifies that a KID should be considered as satisfying the requirements applicable to key investor information. The text also specifies that the EC should produce a report as a matter of urgency addressing problems in the PRIIPs Regulation, including the need for a clearer definition of retail investors. The next step is for the Council of the EU to adopt the legislative proposals.

Date of publication: 23/11/2021

ECON: Adoption of draft reports on use of KIDs under PRIIPs and UCITS

Status: Draft

ECON has updated its webpages on draft legislation in relation to the use of key information documents: (i) on 25 October, ECON adopted a draft report on the proposal for a draft Regulation amending the PRIIPs Regulation (1286/2014) as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS; and (ii) on 29 October, ECON adopted a draft report on the proposal for a Directive amending the UCITS Directive (2009/65/EC) as regards the use of key information documents (KIDs) by UCITS' management companies. The procedure files for each proposal state that they will be considered by the EP's plenary session on 22-25 November. The draft reports set out suggested amendments to the proposed legislation.

- [Draft Regulation amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS](#)
- [Draft Directive amending the UCITS Directive as regards the use of key information documents by management companies of UCITS](#)

Date of publication: 10/11/2021

4. Market infrastructure

4.1 Custody rules

(i) EU

EP: EP and Council agree to CSDR changes to delay MBIs

Status: Final

A tweet by Commissioner McGuinness announced that the EP and Council had agreed to change the Central Securities Depositories Regulation (CSDR) to allow for the postponement of mandatory buy-ins (MBIs). This will delay MBIs beyond 1 February 2022.

Date of publication: 24/11/2021

ESMA: Updated Q&As on the implementation of the CSDR

Status: Final

ESMA has updated its Q&As on the Central Securities Depositories Regulation (CSDR) by inserting two new Q&As with regard to partial settlement functionality.

Date of publication: 17/11/2021

4.2 EMIR

(i) Germany

BaFin: General Administrative Act on the revocation of position limits on so-called liquid commodity derivatives contracts (Allgemeinverfügung zum Widerruf von Positionslimits auf sogenannte liquide Kontrakte für Warenderivate)

Status: Final

Date of effect: 26/11/2021

The BaFin has published a General Administrative Act on the revocation of position limits on so-called liquid commodity derivatives contracts for the purpose of announcing the general ruling on the revocation of various general rulings on the setting of position limits on liquid commodity derivatives contracts. This Act relies on the basis of Section 49(1) of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz – VwVfG*) and Section 54(1) of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) in conjunction with Article 12 of Commission Delegated Regulation (EU) 2017/591 supplementing Directive 2014/65/EU with RTS on the application of position limits for commodity derivatives.

Date of publication: 25/11/2021

BaFin: General Administrative Act on the revocation of position limits on so-called illiquid commodity derivatives contracts (Allgemeinverfügung zum Widerruf von Positionslimits auf sogenannte illiquide Kontrakte für Warenderivate)

Status: Final

Date of effect: 26/11/2021

The BaFin has published a General Administrative Act on the revocation of position limits on so-called illiquid commodity derivatives contracts for the purpose of announcing the general ruling on the revocation of various general rulings on the setting of position limits on illiquid commodity derivatives contracts. This Act relies on the basis of Section 49(1) of the Administrative

Procedure Act (*Verwaltungsverfahrensgesetz – VwVfG*) and Section 54(1) of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) in conjunction with Article 12 of Commission Delegated Regulation (EU) 2017/591 supplementing Directive 2014/65/EU with RTS on the application of position limits for commodity derivatives.

Date of publication: 25/11/2021

(ii) EU

ESMA: Discussion paper on the review of the clearing thresholds under EMIR

Status: Consultation

Deadline for the submission of comments: 19/01/2022

ESMA has published a discussion paper on the EMIR clearing threshold framework, as required by EMIR Refit. The paper aims: (i) to collect stakeholder views on the effectiveness and proportionality of the EMIR clearing thresholds and, more broadly, on the EMIR regime as a whole. It also looks at the effectiveness of the EU regime by comparing it to similar third-country regimes; (ii) to map the population that is currently subject to mandatory clearing to ultimately assess if the clearing thresholds are fit for purpose after the changes introduced in EMIR; and (iii) to assess if the thresholds should be revised to better tackle the systemic risk linked to OTC derivative trading activity, while preserving the clearing obligation as one of the pillars for financial stability in OTC derivative markets. ESMA will consider the feedback it receives and will continue its review with more recent data.

Date of publication: 22/11/2021

ESRB: Summary compliance report on recommendation on liquidity risks arising from margin calls

Status: Final

The ESRB has published a summary compliance report on its July 2020 recommendations aimed at addressing the liquidity risks potentially arising from margin calls. The addressees of the recommendations were a number of authorities that had been granted supervisory responsibilities over CCPs, clearing members and financial and non-financial counterparties. Key findings include: (i) the degree of compliance at this stage is significant and no major systemic concerns have been highlighted by the addressees' responses. In general, the initial responses and the subsequent clarifications collected by the Assessment Team (AT) show that the recommendations have been widely accepted by the addressees; (ii) the clearing industry is highly concentrated both at bilateral and multilateral level; and (iii) despite the relatively high degree of compliance, in the AT's opinion, several issues should be highlighted and further analytical and policy work may be warranted in some cases.

In the area of central clearing, these issues relate to: (a) the evaluation of the performance of anti-procyclical (APC) tools used by CCPs to determine their initial margins – while generally positive, in a number of cases this assessment appears to be influenced by subjective factors and therefore the usefulness and viability of a benchmark to assess the “acceptability” of procyclicality could be considered; (b) despite the overall cautious approach that appears to have been adopted by large clearing members, the use of specific APC tools in client clearing seems to be lacking; (c) the responses indicate that the inclusion in the liquidity risk stress test scenarios of any two entities (not only clearing members, as strictly prescribed by the current regulatory framework) to which a CCP has liquidity exposure is already widely implemented; and (d) CCPs and their relevant national competent authorities seem reluctant to implement the pass-through of intraday variation margins, for both operational and risk-related reasons.

Date of publication: 22/11/2021

ESMA: Q&As on EMIR implementation

Status: Final

ESMA has updated its Q&As on the EMIR implementation by adding two new sub-questions with regard to the calculation of positions for the clearing thresholds under Articles 4a and 10, and the Article 10(3) hedging definition.

Date of publication: 19/11/2021

ESMA: Consultation Paper on the report on highly liquid financial instruments with regard to the investment policy of central counterparties under Article 85(3a)(e) of the EMIR

Status: Consultation

Deadline for the submission of comments: 24/01/2022

ESMA began consulting on the potential extension of the list of financial instruments that are considered highly liquid with minimal market and credit risk, which are eligible for investments by CCPs under EMIR, and whether that list could include one or more money market funds (MMFs) authorised under the MMF Regulation. ESMA proposes to frame the discussion on financial instruments for CCP investments in line with the principles for financial market infrastructures to ensure consistency with international standards. Under current circumstances and given expected future MMF regulatory reforms, ESMA does not consider that there is sufficient ground to recommend an extension of the list of financial instruments for CCP investments to MMFs at this stage, but is consulting regardless. ESMA expects to submit a final report to the EC in Spring 2022.

Date of publication: 19/11/2021

ESMA: Public consultations on CCP resolution regime

Status: Consultation

Deadline for the submission of comments: 24/01/2022

ESMA has published six public consultations to gather stakeholder feedback on how to implement its CCP resolution mandates. The six consultation papers contain proposals for draft regulatory technical standards (RTS) on: (i) safeguards for clients and indirect clients; (ii) resolution colleges; (iii) valuation of CCPs' assets and liabilities in resolution; and (iv) content of resolution plans. They also contain proposals for draft guidelines on the: (a) methodology to value each contract prior to termination; and (b) application of the circumstances under which a CCP is deemed to be failing or likely to fail. ESMA will consider the responses to these consultations with a view to publishing the final reports by Q2 2022.

- Draft RTS on the safeguards for clients and indirect clients (Article 63(2) of the CCPRRR)
- Draft RTS on the resolution colleges (Article 4(7) of the CCPRRR)
- Draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the 'no creditor worse off' principle (Articles 25(6), 26(4) and 61(5) of the CCPRRR)
- Draft RTS on the content of resolution plans (Article 12(9) of the CCPRRR)
- Draft Guidelines for the methodology to value each contract prior to termination (Article 29(7) of the CCPRRR)
- Draft Guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail (Article 22(6) of the CCPRRR)

Date of publication: 18/11/2021

ESMA: Final Report on draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk-free rates

Status: Final

ESMA has published its final report on the clearing (CO) and derivative trading (DTO) obligations to accompany the benchmark transition. The report sets out proposed draft RTS amending the scope of the CO and DTO for OTC interest rate derivatives denominated in EUR, GBP, JPY and USD, as part of the transition away from EONIA and LIBOR and onto alternative benchmarks, primarily Risk-Free Rates such as €STR. It also presents a timeline for when these changes should come into effect. In particular, for the CO, ESMA proposes to remove the EONIA, GBP LIBOR and JPY LIBOR classes, to introduce the €STR and SOFR classes and to extend the SONIA class. For the DTO, it proposes to remove the GBP LIBOR and USD LIBOR classes.

The draft RTS have been submitted to the Commission for endorsement in the form of Commission Delegated Regulations.

Date of publication: 18/11/2021

ESMA: Preliminary report on emission allowances and derivatives thereof

Status: Final

ESMA has published its Preliminary Report on the EU carbon market. For more information, please see section 3.1 above.

Date of publication: 15/11/2021

EC: Proposed extension to equivalence decision for UK CCPs

Status: Final

The EC has published a statement by the Commissioner for Financial Services, Financial Stability and Capital Markets Union, Mairead McGuinness on the EC's way forward for central clearing. In order to address possible short-term financial stability risk, linked to an abrupt interruption in access to clearing services, Ms McGuinness states that the EC will soon propose an extension of equivalence for UK-based CCPs. Ms McGuinness states however that the EC remains of the view that over-reliance on UK-based CCPs for some clearing activities is a source of financial stability risk in the medium term and will in 2022 propose measures to make EU-based CCPs more attractive to market participants, taking into account the results of the assessment currently being undertaken by ESMA on the systemic importance of UK-based CCPs. Ms McGuinness envisages two pillars as their basis: (i) building domestic capacity – in this context, the EC will explore ways to enhance liquidity in EU CCPs and to expand the range of clearing solutions on offer from EU infrastructures; and (ii) supervision – to strengthen the EU's supervisory framework for CCPs, including a stronger role for EU-level supervision.

Date of publication: 10/11/2021

EBA: Consultation Paper on draft RTS on IMMV under EMIR

Status: Consultation

Deadline for the submission of comments: 04/02/2022

The EBA has published a consultation paper on its draft RTS on Initial Margin Model Validation (IMMV) under Article 11(15)(aa) of EMIR. This consultation paper sets out the supervisory procedures for initial and ongoing validation of initial margin models, which will be used to determine the level of margin requirements for uncleared over the counter derivatives, as referred to in Article 11(15) EMIR. Supervisory validation will ensure harmonised supervisory procedures and an appropriately prudent approach to the level of initial margins for EU derivatives counterparties. The EBA envisages the application of supervisory procedures to both large and medium-sized counterparties by using a dual approach, proportionate to the size of the counterparty.

This entails: (i) a standard supervisory procedure to ensure an in-depth validation of the largest banking counterparties (Section 2 of the RTS); and (ii) a more pragmatic and simplified approach applied to smaller counterparties (Section 3 of the RTS). Additionally, these draft RTS address the issue of how to validate an IM model when this is outsourced (in terms of design or implementation) to external providers. Lastly, it is proposed that the application of the IMMV requirements is phased in with respect to the size of the counterparties and that there are transitional provisions designed to smooth the effect of the validation process.

Date of publication: 04/11/2021

(iii) International

CPMI/IOSCO: Discussion paper on access to CCP clearing and client-position portability

Status: Consultation

Deadline for the submission of comments: 24/01/2022

The Committee on Payments and Market Infrastructures (CPMI) and IOSCO have published a discussion paper on access to central counterparties (CCP) clearing and client-position portability. This paper considers the potential benefits and challenges of new access models developed by CCPs and discusses good practices to facilitate porting of client positions. It aims to increase the common understanding of new access models, which enable clients to directly access CCP services, and effective porting, or transferring, practices for their positions and seeks industry input on potential issues for follow-up work.

Date of publication: 29/11/2021

IOSCO: Consultation Report on principles for the regulation and supervision of commodity derivatives markets

Status: Consultation

Deadline for the submission of comments: 17/01/2022

IOSCO has published a consultation report on revising its principles for the regulation and supervision of commodity derivatives markets. The principles were originally published in 2011, and seek to ensure that commodity derivatives markets continue to facilitate price discovery and hedging, while remaining free from manipulation and abusive practices. Since their publication, new trends arising from regulatory reforms, the growing reliance on electronic trading and data, emerging new technologies and products, and unexpected disruptions beyond market dynamics, amongst other developments, have influenced these markets and price formation within them. As a result, IOSCO conducted a review of the recent developments and their impact on the commodity derivatives markets, and has updated the 2011 principles to provide a more resilient and updated framework. Annex 2 contains a table summarising the differences between the original and revised principles. IOSCO is seeking feedback on whether the revised principles reflect appropriately the changes, trends and activities in the commodity derivatives markets over the last decade, whether any areas are missing, and whether the principles continue to serve as a sound framework for the regulation of the commodity derivatives markets.

Date of publication: 15/11/2021



5. Anti-money laundering

(i) Germany

BaFin: Publication of a new form in the context of the Regulation on enhanced due diligence requirements for the transfer of crypto assets (Veröffentlichung eines neuen Formulars im Zusammenhang mit der Kryptowertetransferverordnung)

Status: Final

BaFin has published the new "Form for Notifications Pursuant to Section 5 of the KryptoWTransferV", which contains explanatory notes summarising the main features and requirements of the notification pursuant to Section 5 of the Publication of a new form in the context of the Regulation on enhanced due diligence requirements for the transfer of crypto assets (*Kryptowertetransferverordnung* – KryptoWTransferV). The money laundering risk associated with the transfer of crypto assets is to be reduced by the KryptoWTransferV, which came into force on 1 October 2021. The order includes enhanced due diligence requirements that must be observed when transferring crypto assets. The regulation serves to implement the international standards of the FATF (Recommendation 15, the "Travel Rule"). It makes it possible to track payment flows in the form of crypto value transfers in the same way as for money transfers. Obligated parties who cannot comply with the provisions of the regulation – for reasons for which they are not responsible – must notify BaFin and may be exempted from the obligations of the regulation for up to 24 months.

Date of publication: 23/11/2021

BaFin: Full implementation of revised EBA-Guidelines on money laundering and terrorist financing risk factors (Vollständige Umsetzung der überarbeiteten EBA-Leitlinien zu den Risikofaktoren für Geldwäsche und Terrorismusfinanzierung)

Status: Final

BaFin has published a statement that it fully implements the revised version of the [EBA-Guidelines on money laundering and terrorist financing risk factors](#) within its [Interpretative Guidance on the German Money Laundering Act](#) (*Geldwäschegesetz* – GwG), which are aimed at the financial industry and supervisory authorities. In addition, it explicitly points out to obligated parties that they must fully comply with the requirements for risk analysis (chapter 2.3.).

In the revised guidelines, the EBA explains the risk factors that firms should consider when assessing for money laundering and terrorist financing. It also sets out the extent to which firms should adapt their customer due diligence procedures to match the identified money laundering and terrorist financing risk.

The EBA's guidelines, first published in 2017, needed to be revised for several reasons. For example, some groups of obligated parties had not previously been adequately addressed. The revised version, published for the first time in March 2021, contains new chapters and elaborations, including on crowdfunding platforms, corporate finance, and payment initiation and account information service providers.

Date of publication: 10/11/2021

BaFin: Circular 15/2021 regarding high-risk countries (Rundschreiben 15/2021 (GW) betreffend Hochrisikostaaten)

Status: Final

BaFin has published Circular 15/2021 to inform on third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing systems that pose significant risks to the international financial system (high-risk countries).

The circular is addressed to all obliged parties under BaFin supervision in accordance with the German Anti-Money Laundering Act (*Geldwäschegesetz* – GwG) in Germany.

Date of publication: 10/11/2021

6. Payments

6.1 Payment services/E-money

(i) Germany

BaFin: Repeal of Circular 4/2015 (BA) on minimum requirements for the security of internet payments (Aufhebung des Rundschreibens 4/2015 (BA) zu Mindestanforderungen an die Sicherheit von Internetzahlungen – MaSI)

Status: Final

BaFin has repealed its Circular 4/2015 (BA) on minimum requirements for the security of internet payments (*Mindestanforderungen an die Sicherheit von Internetzahlungen*) with immediate effect. As reason for this, BaFin stated that the requirements stipulated by the Circular have now been replaced in full by the revised Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) and other implementing rules and regulations, namely (i) the [Delegated Regulation \(EU\) 2018/389](#); (ii) the [Circular on the reporting of serious payment security incidents \(Rundschreiben zur Meldung schwerwiegender Zahlungssicherheitsvorfälle\)](#); (iii) the [Circular on banking supervisory requirements for IT \(Bankaufsichtliche Anforderungen an die IT – BAIT\)](#); and (iv) the [Circular on the payment services supervisory requirements for the IT \(Zahlungsdiensteaufsichtliche Anforderungen an die IT – ZAIT\)](#). These rules and regulations ensure a higher level of protection than the repealed Circular.

Date of publication: 04/11/2021

(ii) EU

EPC: Updated SEPA Request-To-Pay (SRTP) scheme rulebook

Status: Final

Date of entry into force: 01/06/2022

The European Payments Council (EPC) has published an updated version of its SEPA Request-To-Pay (SRTP) scheme rulebook. The second version (2.0) of the SRTP scheme rulebook, is based on the comments received in response to the public consultation that ended on 27 August 2021. It includes enhanced functionalities such as the possibility to populate an URL, the currency agnosticism principle and the request for payment guarantee. The related Implementation Guidelines will be published by 24 December 2021.

Date of publication: 30/11/2021

EPC: Updated SEPA guidelines

Status: Final

The European Payments Council (EPC) has published updated versions of its guidance documents on reason codes, namely its (i) Guidance on reason codes for SDD R-transactions, which applies to the SEPA Direct Debit (SDD) Core rulebook and to the SDD Business-to-Business (B2B) rulebook; (ii) Guidance on reason codes for SEPA Credit Transfer (SCT) R-transactions, which applies to the SEPA Credit Transfer (SCT) rulebook; and (iii) Guidance on reason codes for SEPA Instant Credit Transfer (SCT Inst) R-transactions, which applies to the SEPA Instant Credit Transfer (SCT Inst) rulebook.

In addition, the EPC published: (a) updated Guidelines for the appearance of mandates for the SDD Core and SDD B2B schemes, which contain guidance on the visual presentation of mandates issued by creditors under the SDD Core and the SDD B2B schemes as part of their offer to debtors to use the schemes as a way for making payments and illustrate several ways to reduce the mandate size without losing any essential content while still remaining rulebook compliant; (b) an updated credit identifier overview, which provides basic information on Creditor Identifier (CI) characteristics per SEPA country to allow creditor payment service providers to check the validity of the CIs; (c) a paper on the standardisation and governance of QR-codes for Instant Payments at the Point of Interaction (IPs at the POI); and (d) a clarification paper on SDD Core and SDD

B2B rulebooks, which addresses operational aspects related to the rulebooks and seeks to ensure consistent implementation of the rulebooks by payment service providers participating in the schemes.

- [SDD R-transactions](#)
- [SCT R-transactions](#)
- [SCT Inst R-transactions](#)
- [SDD Core/SDD BRB mandates](#)
- [Credit identifier overview](#)
- [QR-codes for IPs at the POI](#)
- [Clarification paper](#)

Date of publication: 22/11/2021

EC: Call for advice to the EBA regarding the review of PSD2

Status: Final

The EBA has published a letter from John Berrigan, Deputy Director General in DG FISMA, seeking advice from the EBA on a number of specific topics related to the PSD2: (i) scope and definitions; (ii) licensing of payment institutions and supervision of payment service providers; (iii) transparency of conditions and information requirements; (iv) rights and obligations; (v) strong customer authentication; (vi) access to and use of payment accounts data in relation to payment initiation services and account information services; (vii) access to payment systems and access to accounts maintained with a credit institution; (viii) certain cross-sectoral topics; and (ix) enforcement. In addition, the EC welcomes any comments from the EBA on the impact and application of PSD2 and any suggestions for possible improvements and amendments. The EBA is requested to deliver its report by 30 June 2022 at the latest.

Date of publication: 18/11/2021

EC: Keynote speech on developments in EU payments market

Status: Final

The EC has published a speech by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability and Capital Markets Union, where she discusses changes and recent developments in the EU payments market. Points discussed include: (i) instant payments; (ii) IBAN discrimination; (iii) review of PSD2; (iv) the Settlement Finality Directive & Digital Markets Act; and (v) international payments beyond the EU.

Date of publication: 16/11/2021

(iii) Eurozone

ECB: Eurosystem oversight framework for electronic payment instruments, schemes and arrangements

Status: Final

The ECB has published a new framework for overseeing electronic payment instruments, schemes and arrangements (PISA framework), together with an assessment methodology and an exemption policy. It replaces the “harmonised oversight approach and oversight standards for payment instruments” and all related oversight frameworks for cards, direct debits, credit transfers and the security objectives for e-money. The framework is aligned, where appropriate and possible, with the relevant principles of the CPMI-IOSCO “Principles for financial market infrastructures” and the Eurosystem’s “Revised oversight framework for retail payment systems”. It thus complements the Eurosystem’s oversight of payment systems and critical service providers and acknowledges relevant requirements set out for the prudential supervision of payment service providers. The Eurosystem will use the PISA framework to oversee companies enabling or supporting the use of payment cards, credit transfers, direct debits, e-money transfers and digital payment tokens, including electronic wallets. The PISA framework will also cover crypto-asset-related services, such as the acceptance of crypto-assets by merchants within a card payment scheme and the option to send, receive or pay with crypto-assets via an electronic wallet. Companies that are already subject to Eurosystem oversight are

expected to adhere to the principles of the new framework by 15 November 2022. Other companies will have a grace period of one year from the time they are notified that they will be subject to oversight under the new framework.

- [Framework document](#)
- [Assessment methodology](#)
- [Exemption policy](#)

Date of publication: 22/11/2021

(iv) International

CPMI: Consultative Report on extending and aligning payment system operating hours for cross-border payments

Status: Consultation

Deadline for the submission of comments: 14/01/2022

The BIS' Committee on Payments and Market Infrastructures (CPMI) has published a consultative report on extending and aligning payment system operating hours for cross-border payments. This report is issued as part of the G20 cross-border payments programme, and focuses on the operating hours of RTGS systems, which are considered key to enhancing cross-border payments. In view of the CPMI, an extension of RTGS operating hours across jurisdictions could help address current obstacles, thereby increasing the speed of cross-border payments and reducing liquidity costs and settlement risks. Based on a survey of central banks from 82 jurisdictions, 62 RTGS systems around the world were analysed and three potential "end states" for extending the operating hours of key payment systems were posited. The report also introduces the concept of a "global settlement window" – the period when the largest number of RTGS systems simultaneously operate. It also discusses operational, risk and policy considerations related to those end states. The CPMI seeks input from payment system operators, participants and other interested parties on the benefits and challenges presented by these three scenarios.

Date of publication: 18/11/2021

7. Institutional supervisory framework

(i) Germany

BaFin: Medium-term objectives for its supervisory activities (Mittelfristziele für eigene Aufsichtstätigkeit)

Status: Final

BaFin has set itself ten medium-term objectives for the years 2022 to 2025 on the following topics: stability, security and operational resilience of supervised companies, identification of “problem companies”, intensification of money laundering prevention, strengthening of collective consumer protection, balance sheet control and market supervision, integration of sustainability and innovation aspects in supervision as well as own modernisation and human resources development.

With its medium-term objectives, BaFin shows where it intends to focus on and use the room for manoeuvre it has within the scope of its legal mandate. In individual supervisory focus areas, the authority also formulates how it intends to implement the strategic goals in concrete terms. Together with the underlying risk analysis, these targets are published annually.

Date of publication: 15/11/2021

(ii) EU

EBA: 2022 ESEP and EREP

Status: Final

The EBA has published its 2022 European Supervisory Examination Programme (ESEP) for prudential supervisors, alongside its 2022 European Resolution Examination Programme (EREP) for resolution authorities. The ESEP is aimed at informing prudential supervisors’ planning processes for selecting supervisory priorities for 2022, and shaping their supervisory practices concerning supervision of these key topics. Five key topics have been identified for supervisory attention for 2022: (i) impact of the COVID-19 pandemic on asset quality and adequate provisioning; (ii) information and communication technology (ICT) security risk, ICT outsourcing risk and risk data aggregation; (iii) digital transformation and FinTech players; (iv) ESG risk; and (v) AML and CFT. Additionally, the EREP aims at informing resolution authorities’ planning processes for selecting resolution planning priorities for 2022 and shaping their practices concerning selected topics on which EU traction is needed. The EREP identifies three topics which resolution authorities are expected to consider when developing their 2022 priorities: (i) how MREL shortfalls are being addressed; (ii) the development of management information systems for valuation in resolution; and (iii) preparations for managing liquidity needs in resolution. The EBA concludes that it will follow up on how the key topics put forward by the ESEP and the EREP are both embedded in competent authorities’ priorities for 2022, as well as reflected in their respective activities throughout the year.

- [European Supervisory Examination Programme \(ESEP\)](#)
- [European Resolution Examination Programme \(EREP\)](#)

Date of publication: 12/11/2021

(iii) International

FSB: FSB Plenary meets in Basel

Status: Final

The FSB Plenary met to discuss vulnerabilities in the global financial system, and agreed to the FSB’s work programme for 2022. Key current vulnerabilities relate to the rise in indebtedness across sovereigns, non-financial corporates and households in response to COVID-19. These developments underline the need to reinforce global financial system resilience. Amongst the initiatives to respond to these developments, the FSB will publish a discussion paper to provide a basis for a dialogue between the public and private sector on emerging policy approaches and industry practices that could prove effective to support a smooth transition out of debt overhang issues stemming from the pandemic. Members also discussed a number of other emerging challenges including the financial system’s exposure to the physical and transition risks posed by climate change, and

growing vulnerabilities for the financial system from the use of crypto-assets. The FSB will provide an updated assessment of the financial stability implications of crypto-assets to the G20 in February 2022. Members discussed the FSB's work programme for 2022, including deliverables to the Indonesian G20 Presidency. The main priorities for the FSB's work include: (i) international cooperation and coordination in financial authorities' response to COVID-19; (ii) enhancing the resilience of the NBFIs sector and follow-up to the FSB's Holistic Review of the March 2020 market turmoil; (iii) containing the risks from the use of crypto technology, including unbacked crypto-assets, stablecoins and decentralised finance, while harnessing the benefits; (iv) assessing and addressing financial risks from climate change; and (v) finalising and monitoring implementation of the post-2008 crisis reforms. The finalised 2022 work programme will be published in January. Klaas Knot takes over from Randal Quarles as FSB Chair on 2 December.

Date of publication: 18/11/2021



8. Investment funds

8.1 Product regulation

(a) AIF

(i) EU

EC: Proposal for a Directive amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by AIFs

Status: Draft

The EC adopted a legislative proposal for a Directive amending the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive regarding delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. The EC and EP will now consider the legislative proposal. The EC proposal contemplates that member states would have 24 months after the entry into force of the amending Directive to adopt and publish the laws, regulations and administrative provisions necessary to comply.

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

Date of publication: 25/11/2021

(b) UCITS

(i) EU

ESMA: Updated Q&As on the application of the UCITS Directive

Status: Draft

ESMA has updated its Q&As on the application of the UCITS Directive. New questions and answers have been included in the section on costs and fees.

Date of publication: 26/11/2021

EC: Proposal for a Directive amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by AIFs

Status: Draft

The EC adopted a legislative proposal for a Directive amending the Alternative Investment Fund Managers Directive (AIFMD) and the UCITS Directive regarding delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. For more information, please see section 8.1(a) above.

Date of publication: 25/11/2021

EP: Adopted position on legislation extending deadline to provide a KID under PRIIPs and UCITS**Status: Adopted by the EP**

The EP has announced that it had voted to adopt at first reading positions on the proposed legislation amending the PRIIPs Regulation and UCITS Directive to extend the transitional arrangement exempting companies from the requirement to provide retail investors with a key information document (KID) until 31 December 2022. For more information, please see section 3.7 above.

Date of publication: 23/11/2021

ECON: Adoption of draft reports on use of KIDs under PRIIPs and UCITS**Status: Draft**

ECON updated its webpages on draft legislation in relation to the use of key information documents (KIDs). For more information, please see section 3.7 above.

Date of publication: 10/11/2021

8.2 Prudential regulation

(a) Compliance

(i) Germany

h BaFin: Information letter for CRR credit institutions and group member securities institutions on the transmission of reporting data (Informationsschreiben für CRR-Kreditinstitute und gruppenangehörige Wertpapierinstitute zur Übermittlung von Meldedaten)**Status: Final**

BaFin has published a letter directed at CRR credit institutions and group member securities institutions, which contains important information regarding the transmission of reporting data to the BaFin for the calculation of the ex-ante contributions to the Single Resolution Fund (SRF) in 2022.

Date of publication: 29/11/2021

BaFin: Information letter for EU Branches and securities institutions under individual supervision on the transmission of reporting data (Informationsschreiben für Unionszweigstellen und Wertpapierinstitute unter Einzelaufsicht zur Übermittlung von Meldedaten)**Status: Final**

BaFin has published a letter directed at EU Branches and securities institutions under individual supervision, which contains important information regarding the transmission of reporting data to the BaFin for the calculation of the ex-ante contributions to the Single Resolution Fund (SRF) in 2022.

Date of publication: 17/11/2021

(ii) EU

EC: Proposal for a Regulation amending the ELTIF Regulation as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other

fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of ELTIF

Status: Draft

The EC has adopted a legislative proposal for a Regulation containing amendments to the Regulation on European long-term investment funds (ELTIFs). The proposal aims to increase the uptake of ELTIFs across the EU, accelerating the acceptance and improving the attractiveness of ELTIFs as a 'go to' fund structure for long-term investments. The targeted changes to the fund rules include: (a) broadening the scope of eligible assets and investments; (b) allowing more flexible fund rules that include the facilitation of fund-of-fund strategies; (c) reducing the barriers preventing retail investors from accessing ELTIFs, in particular the 10,000 euro initial investment requirement and the maximum 10% aggregate threshold requirement for those retail investors whose financial portfolios are below 500,000 euro; (d) to ease selected fund rules for ELTIFs distributed solely to professional investors; and (e) to introduce an optional liquidity window mechanism to provide extra liquidity to ELTIF investors and newly subscribing investors without requiring a drawdown from the capital of ELTIFs. The Council of the EU and the EP will now consider the legislative proposal.

Date of publication: 25/11/2021

(iii) International

FSB: Progress report on enhancing the resilience of non-bank financial intermediation

Status: Final

The FSB has published a report describing the progress to date and planned work by the FSB, as well as by standard-setting bodies and other international organisations, to enhance the resilience of non-bank financial intermediation (NBFIs). The FSB's NBFIs work programme includes analytical and policy work that builds on the lessons from the March 2020 turmoil. The main focus of work to date has been on assessing and addressing vulnerabilities in specific areas that may have contributed to the build-up of liquidity imbalances and their amplification. This includes: (i) policy work to enhance MMF resilience; (ii) work to assess liquidity risk and its management in open-ended funds (OEFs); (iii) work to examine the structure and drivers of liquidity in core government and corporate bond markets during stress; (iv) an examination of the frameworks and dynamics of margin calls in centrally and non-centrally cleared markets; and (v) an assessment of the fragilities in USD cross-border funding and their interaction with vulnerabilities in emerging market economies. Building on the findings in these areas, the second part of the FSB's work programme aims to develop a systemic approach to NBFIs. It involves enhancing the understanding of systemic risks in NBFIs to strengthen their ongoing monitoring; and, where appropriate, developing policies to address such risks.

Date of publication: 01/11/2021

9. Special rules for real estate financing and covered bonds

9.1 Mortgage credits

(i) EU

EC: Consultation on review of the MCD

Status: Consultation

Deadline for the submission of comments: 28/02/2022

The EC is consulting on its review of the Mortgage Credit Directive (MCD). The EC's previous work on the review highlighted that the MCD has been effective in raising the standard of consumer protection and has helped harmonise mortgage-lending practices across the Member States. Nevertheless, the level of protection still differs across Member States and some limitations, in particular in terms of scope and information disclosure requirements for digital delivery, seem to hinder the full effectiveness of the rules. The MCD was found to have had a limited impact on the creation of a single market for mortgages and the EC considered that there is a need to ensure that the MCD remains fit for purpose as the market develops and new challenges arise. Those identified in the consultation include: (i) the effect of digitalisation on new market players, automated decision-making systems, non-traditional data, consumer habits and consumer protection; (ii) the need to improve energy efficiency and ensure the use of sustainable materials in buildings in order to achieve the EU's goal of carbon-neutrality in 2050; (iii) to assess what lessons can be learnt from the handling of the Covid-19 crisis and the adoption of relief measures such as loan repayment moratoria; and (iv) to take into account the amendments suggested in the Consumer Credit Directive proposal.

Date of publication: 22/11/2021

10. Special topics

10.1 FinTech/Digital finance

(i) EU

EC: Legislative proposal for a European single access point (ESAP)

Status: Draft

The EC has published a legislative proposal to establish a European Single Access Point (ESAP) to provide EU-wide access to information activities and products of the various categories of entities that are required to disclose such information, which is relevant to capital markets, financial services and sustainable finance. ESAP is part of the European financial data spaces presented in the Commission's Digital Finance Strategy published in September 2020. The Digital Finance Strategy sets out the objective that, by 2024, information disclosed to the public pursuant to EU financial services legislation should be disclosed in standardised and machine-readable formats. The proposal comprises a Regulation to establish an ESAP, as well as a Directive and Regulation to amend various EU legislation to enable the functioning of the ESAP. The proposed ESAP Regulation includes: (i) scope, definitions and establishment of ESAP; (ii) conditions for voluntary submission of information; (iii) list and tasks of collection bodies; (iv) cybersecurity; (v) functionalities of ESAP; (vi) access to information; (vii) tasks of ESMA; (viii) monitoring of ESAP by ESMA; and (ix) ESAP review.

- Proposal for a Regulation establishing an ESAP providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability
- Proposal for a Directive amending certain Directives as regards the establishment and functioning of the ESAP
- Proposal for a Regulation amending certain Regulations as regards the establishment and functioning of the ESAP

Date of publication: 25/11/2021

EP: Deal struck on a DLT pilot regime

Status: Draft

The EP has announced that it has reached political agreement with the Council of the EU on the proposed Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The EP states that negotiators decided that financial instruments services provided using the DLT market should be limited and subject to the following value thresholds: (i) shares (500 million euro); (ii) bonds (1 billion euro); (iii) corporate bonds (200 million euro); and (iv) UCITS (500 million euro). Additionally, operators of DLT can admit new financial instruments only until their total market value reaches 6 billion euro. Negotiators introduced the DLT settlement system and the DLT trading and settlement system, which should be able to cooperate with other market participants in order to test innovative solutions based on DLT.

The DLT market infrastructures and their operators will be exempt from certain rules that fall under financial services legislation, but should have in place adequate safeguards to ensure investors are effectively protected when using DLT. These safeguards will include clearly defined liability to clients for any losses due to operational failures. The EP explained that to allow for competition, while preserving a level playing field and high standards of investor protection, as well as financial stability, new entrants should be able to access the pilot regime provided that they comply with the same requirements as authorised investment firms or market operators. Such requirements should be based on the service provided and on risks. Rules will be technologically neutral; operators of DLT market infrastructure will be required to comply with them irrespective of the technology used. Negotiators agreed that the operation of a DLT market infrastructure cannot undermine the EU's climate policies. Development and investments in low- or zero-emission DLTs are therefore strongly encouraged.

Date of publication: 24/11/2021

CoEU: Agreement on MiCA and DORA within the digital finance package**Status: Draft**

The Council of the EU announced that it had adopted its position on the Regulation on Markets in Crypto Assets (MiCA), Digital Operational Resilience Act (DORA) and the Amending Directive accompanying the Digital Finance package proposals. The Council and the EP will now enter trilogue negotiations on the proposals. Once a provisional political agreement is found between their negotiators, both institutions will formally adopt the regulations.

- [Adoption document](#)
- [Proposal for a Regulation on MiCA, and amending Directive \(EU\) 2019/1937](#)
- [Annexes to the Regulation on MiCA, and amending Directive \(EU\) 2019/1937](#)
- [Proposal for a Regulation on DORA for the financial sector and amending Regulations \(EC\) No 1060/2009, \(EU\) No 648/2012, \(EU\) No 600/2014 and \(EU\) No 909/2014](#)
- [Proposal for a Directive amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, \(EU\) 2015/2366 and EU/2016/2341](#)

Date of publication: 24/11/2021

ESMA: Q&As on the European crowdfunding service providers for business regulation**Status: Final**

ESMA has updated its Q&As on the European Crowdfunding Service Providers Regulation (ECSPR). It improved clarity with regard to: (i) the transitional period; (ii) the meaning of "business activity or activities"; (iii) the legal nature of the activity of individual portfolio management of loans; (iv) the perimeter of the Article 21(6) prohibition; and (v) the key investment information sheet.

Date of publication: 19/11/2021

EBA: Discussion paper on machine learning for IRB models**Status: Consultation****Deadline for the submission of comments: 11/02/2022**

The EBA has published a discussion paper on machine learning (ML) used in the context of internal ratings-based (IRB) models to calculate regulatory capital for credit risk, which aims to set supervisory expectations on how new sophisticated machine learning models can coexist with and adhere to the CRR when used in the context of IRB models. The EBA notes that, in the context of credit risk, ML models might be useful to improve predictive power and are not new to internal models used for credit approval processes, but they have not been incorporated into institutions' IRB models as rapidly as in other areas.

The main pivotal challenge comes from their complexity which leads, at least for the more complex ones, to challenges: (i) in interpreting their results; (ii) ensuring their adequate understanding by the management functions; and (iii) justifying their results to supervisors. The discussion paper aims at discussing the relevance of possible obstacles to the implementation of ML models in the IRB model space based on some practical issues. Practical issues that are referred to on the use of data, explainability and other challenges are generally not new to IRB models, but may be exacerbated when using ML models and, therefore, may lead to specific challenges. The EBA is considering whether to provide a set of principle-based recommendations, which should ensure an appropriate use of such techniques by institutions in the context of IRB models.

Date of publication: 11/11/2021

ESMA: Final report on draft technical standards under the Crowdfunding Regulation**Status: Final**

ESMA has published a final report on eight draft regulatory technical standards and four draft implementing technical standards under the Crowdfunding Regulation (European Crowdfunding Service Providers Regulation – ECSPR). The report sets out ESMA's feedback statements relating to the nine draft technical standards that it has consulted on and presents ESMA's analysis on the three other standards, which it considered to be too limited in scope for a full public consultation. The twelve standards in the report cover all investor protection aspects under the ECSPR, namely: (i) complaints handling; (ii) conflict of interest; (iii)

business continuity plan; (iv) authorisation; (v) information on default rate; (vi) entry knowledge test and simulation of the ability to bear loss; (vii) key investment information sheet; (viii) cooperation between competent authorities; (ix) reporting; (x) notification to ESMA of national provisions concerning marketing requirements; (xi) cooperation between competent authorities; and (xii) cooperation between competent authorities and ESMA.

ESMA states that the draft technical standards have been amended and improved based on the feedback received during the consultation. As the ECSPR entered into force on 10 November 2021, ESMA decided to deliver on all its technical mandates simultaneously in order to provide indicative guidance to competent authorities and stakeholders. The draft technical standards are submitted to the EC for adoption. The EC shall decide whether to adopt the technical standards within three months.

Date of publication: 10/11/2021

EBA: Final report on draft RTS on individual portfolio management of loans offered by crowdfunding service providers under Article 6(7) of the Crowdfunding Regulation

Status: Final

The EBA has published its final report on draft RTS on individual portfolio management of loans offered by crowdfunding service providers. Article 6(7) of the Crowdfunding Regulation (European Crowdfunding Service Providers Regulation – ECSPR) mandates the EBA to submit draft RTS to specify information that must be provided to investors to ensure they are appropriately informed about the risks they are exposed to when they invest in individual portfolio management of loans. The draft RTS: (i) require providers to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying: (a) the single projects; (b) the portfolio; and (c) the project owners; (ii) set out the information that crowdfunding platforms must disclose in relation to several key characteristics of each loan included in a certain portfolio; and (iii) specify the policies that the crowdfunding platform needs to have in place in relation to contingency funds, should it decide to have one to compensate investors. These policies aim to ensure that contingency funds have appropriate governance arrangements and procedures in place with respect to the collection of fees and disbursement of refunds. The draft RTS will be submitted to the EC for endorsement after which they will be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 09/11/2021

10.2 Sustainable finance

(i) Germany

BaFin: Agreement with the IDW Practice Note for auditors on the implementation of the Disclosure Regulation (Zustimmung zum IDW Praxishinweis für Wirtschaftsprüfer bezüglich der Umsetzung der Offenlegungsverordnung)

Status: Final

BaFin has published a note to confirm that the IDW Practice Note for auditors on the implementation of the Disclosure Regulation reflects the expectations of BaFin. This Regulation stipulates that providers of financial products must make decision-relevant information relating to the sustainability criteria ESG (environmental, social, governance) available to potential investors in a uniform manner.

Date of publication: 04/11/2021

(ii) EU

ESMA: Speech on ESG reporting, risk management, strategy and responsibility

Status: Final

ESMA has published a speech given by Verena Ross, ESMA Chair, on ESG reporting, risk management, strategy and responsibility. Ms Ross addresses three aspects that, on the one hand, are needed to support effective capital allocation decisions targeted at sustainable investments and, on the other, are needed to counter the risk of greenwashing: (i) transparent and reliable

disclosures; (ii) a good understanding of the underlying sustainability profile of target investments; and (iii) sound board accountability and stakeholder involvement on sustainability commitments.

Points of interest include: (a) ESMA considers that countering green-washing is central to the objective of a sound regulatory regime and to securing the overall credibility of a more sustainable financial system; (b) ESMA considers that international cooperation is key to ensuring that consistent measures are taken to protect investors and secure financial stability as the demand and need for sustainability-related financial products increases; (c) ESMA is working with EIOPA and the EBA on a workstream to coordinate and support initiatives to enhance financial literacy, which includes sustainable finance. ESMA is concerned that many retail investors are not able to fully assess the risk-return profile of simple financial instruments, which is complicated further by the sustainability dimension; and (d) in the area of governance, one key development Ms Ross considers will be important is to find the appropriate mechanisms to make sure that issuers and their directors take into account a broader set of stakeholder interests in their corporate decisions compared to what is currently the case.

Date of publication: 19/11/2021

(iii) Eurozone

ECB: Report on the state of climate and environmental risk management in the banking sector

Status: Final

The ECB has published a report on its review of banks' approaches to managing climate and environmental risks. The ECB requested 112 institutions (those under the Single Supervisory Mechanism) to conduct a self-assessment of their current practices against the ECB's 13 supervisory expectations on climate-related and environmental risks (C&E risks) and to submit implementation plans detailing how and when they would bring their practices into line. The key findings include: (i) none of the institutions are close to fully aligning their practices with the supervisory expectations. They themselves deem 90% of their reported practices to be only partially or not at all aligned with the ECB's supervisory expectations. The expected completion timelines submitted to the ECB show that many institutions will not have practices in place that are aligned with the ECB supervisory expectations in the near future; (ii) virtually all institutions that performed a thorough materiality assessment expect C&E risks to have a material impact on their risk profile in the coming three to five years; (iii) while steps are being taken to adapt policies and procedures, few institutions have put in place C&E risk practices with a discernible impact on their strategy and risk profile; and (iv) most institutions have a blind spot for physical risks and other environmental risk drivers, such as biodiversity loss and pollution. In the report, the ECB identified a set of good practices across different expectations that originated from institutions spanning a range of business models and sizes. The ECB recognises that the challenges linked to the integration of C&E risks into strategies, governance and risk management arrangements are constantly evolving. Therefore, the ECB is committed to continuing its dialogue with the institutions so that they keep on strengthening their management of C&E risks. The ECB expects all institutions to take decisive action to address the shortcomings set out in a dedicated supervisory feedback letter. A supervisory dialogue with each institution was conducted by Joint Supervisory Teams between August and September. For some institutions, a qualitative requirement may be communicated as part of the 2021 Supervisory Review and Evaluation Process.

Date of publication: 22/11/2021

(iv) International

IOSCO: Final Report on ESG ratings and data products providers

Status: Final

IOSCO has published a final report setting out recommendations in relation to the oversight of ESG ratings and data products providers. As this market does not typically fall within the remit of securities regulators, IOSCO suggests that regulators could consider focusing greater attention on the use of ESG ratings and data products and the activities of ESG rating and data products providers in their jurisdictions. The recommendations start with a proposal that regulators could consider focusing greater attention on the use of ESG ratings and data products and the activities of ESG rating and data products providers in their jurisdictions. This is followed by a set of recommendations addressed to ESG ratings and data products providers, setting out that they could consider a number of factors related to issuing high quality ratings and data products, including publicly disclosed data sources, defined methodologies, management of conflicts of interest, high levels of transparency, and handling confidential information. The recommendations also suggest that users of ESG ratings and data products could consider conducting due diligence on the ESG ratings and data products that they use within their internal processes. The

recommendations close with suggestions that ESG ratings and data products providers, and entities subject to assessment by ESG ratings and data products providers could consider improving information gathering processes, disclosures and communication between providers and entities subject to assessment.

Date of publication: 23/11/2021

BCBS: Consultative Document on principles for the effective management and supervision of climate-related financial risks

Status: Consultation

Deadline for the submission of comments: 16/02/2022

BCBS published a public consultation on principles for the effective management and supervision of climate-related financial risks. The consultation paper forms part of the Committee's holistic approach to address climate-related financial risks to the global banking system and aims to promote a principles-based approach to improving both banks' risk management and supervisors' practices in this area. The consultative document includes 18 high-level principles. Principles 1 through 12 provide banks with guidance on effective management of climate-related financial risks, while principles 13 through 18 provide guidance for prudential supervisors. These were drafted in a way to accommodate a diverse range of banking systems, and are intended to be applied on a proportionate basis depending on the size, complexity and risk profile of the bank or banking sector for which the authority is responsible.

Date of publication: 16/11/2021

NGFS: Report on growing risk of climate-related litigation

Status: Final

The NGFS has published a report to raise awareness of the growing source of risk – climate-related litigation. The report considers that understanding the risks arising from climate-related litigation is crucial for central banks and supervisory authorities, as the financial implications of such litigation in this area can be substantial. The report outlines general trends in climate-related litigation and proposes ways of addressing these risks. It has a section on climate-related litigation risk as a sub-category of physical and transition risks and also briefly discusses the direct exposure of financial institutions to climate-related litigation. It includes an overview of selected cases as well as the results of a survey that was conducted amongst NGFS members to gather information from the respective jurisdictions about climate-related litigation.

The report's conclusions include that: (i) it is clear that climate-related litigation is increasing across jurisdictions and is a fast-moving target. Climate-related cases are increasingly brought directly against financial institutions, and the NGFS considers it likely that these developments will continue in the coming years; (ii) supervisory authorities may not have, so far, fully recognised the impacts of such cases when assessing climate-related financial risks even though they constitute an important channel through which physical risks and transition risks may affect assets or counterparties of financial institutions. Therefore, the current trend of rising climate litigation requires a careful monitoring of these risks by supervisors and central banks. The NGFS consider that supervisors need to ensure that financial institutions supervised by them adequately manage financial and operational risks resulting from potential climate-related litigation against themselves as well as against institutions to which they are exposed.

Date of publication: 05/11/2021

IOSCO: Speech on on its sustainable finance work

Status: Final

IOSCO has published a speech by Erik Thedéen, Chair of the IOSCO Sustainable Finance Task Force, regarding IOSCO's recent work on sustainable finance. Mr. Thedéen explains that recent IOSCO work has focused on issuers and asset managers' disclosures, but also on the role of ESG data and ratings providers for effective sustainable finance. Highlights of the speech include: (i) IOSCO identifies the IFRS Foundation as the vehicle to develop a global baseline for investor-oriented sustainability standards. The International Sustainability Standards Board (ISSB, see update below), global standards can drive much-needed international consistency and comparability in sustainability-related information, laying the groundwork towards high quality mandatory reporting. IOSCO plans to thoroughly assess ISSB proposals to ensure they meet the needs of investors before deciding whether IOSCO can endorse them. This assessment will analyse how the ISSB global baseline for sustainability standards can be adopted within regulatory frameworks to promote consistent and comparable sustainability-related disclosures

across jurisdictions; (ii) on asset manager disclosures, greenwashing is a reality today in financial markets in many complex ways. Mr. Thedéen reiterates the need to fight green washing, as this is a threat to not only consumer protection, but also the credibility of sustainable finance more generally. Internationally consistent and comparable sustainability-related information is essential to bringing this to an end; (iii) IOSCO will publish shortly its report on ESG ratings and data product providers, where it calls for transparency on how providers develop their ratings and good governance, free from conflicts of interest, to increase trust in the outcome of the ratings; and (iv) IOSCO will convene an international roundtable of key players in sustainability assurance to assess the needs, challenges, and opportunities for the enhancement of the current ecosystem and assurance framework. IOSCO will also intensify its capacity building efforts to assist jurisdictions in implementing these new requirements and in supervising their application in the markets.

Date of publication: 04/11/2021

IFRS: Announcements of the foundation of the ISSB, consolidation with CDSB and VRF, and publication of prototype disclosure requirements

Status: Final

The IFRS Foundation has published a press release announcing the formation of the International Sustainability Standards Board (ISSB), the consolidation of the Climate Disclosure Standards Board (CDSB) and the Value Reporting Foundation (VRF) into the ISSB by June 2022, and the publication of prototype climate-related disclosure standards and general requirements for disclosure of sustainability-related financial information standards. The ISSB is a standard-setting board that has been created because of the demand for high quality, transparent, reliable and comparable reporting by companies on climate and other ESG matters. The intention is for the ISSB to deliver a comprehensive global baseline of sustainability-related disclosure standards that provide investors and other capital market participants with information about companies' sustainability-related risks and opportunities to help them make informed decisions. The ISSB will sit alongside and work in close cooperation with the IASB, ensuring connectivity and compatibility between IFRS Accounting Standards and the ISSB's standards.

Date of publication: 03/11/2021

NGFS: Glasgow Declaration

Status: Final

The Central Banks and Supervisors Network for Greening the Financial System (NGFS) published the "NGFS Glasgow Declaration: Committed to Action" on the occasion of the 2021 United Nations Climate Change Conference (COP26), in which NGFS members reiterate their willingness to contribute to the global response required to meet the objectives of the Paris Agreement. The NGFS will deepen, expand and strengthen its efforts towards greening the financial system, to improve the resilience of the financial system to climate-related and environmental risks, and encourage the scaling up of the financing flows needed to support the transition towards a sustainable economy. Hence, the "NGFS Glasgow Declaration" sets out several concrete commitments on what the NGFS will work on and deliver in the coming years, covering all the core activities of the central banks and supervisors community. An additional press release explains that many NGFS members are also publishing an individual pledge or strategy on the occasion of COP26, demonstrating that the integration of climate-related and environmental risks into financial stability monitoring and micro-supervision is rapidly becoming a reality. Almost all the pledges and strategies encompass actions to strengthen such integration, through the use of scenario analysis (including climate stress tests), the issuance of further supervisory expectations or guidance going very often beyond already developed practices, and/or through intellectual and capacity building within their organisations.

Date of publication: 03/11/2021

IOSCO: Final Report on the recommendations on sustainability-related practices, policies, procedures and disclosure in asset management

Status: Final

IOSCO has published its final report setting out recommendations on sustainability-related practices, policies, procedures and disclosures in the asset management industry. This guidance reflects the feedback received in response to the consultation report

published in June 2021, and helps asset managers consider material sustainability-related risks and opportunities, integrate them into the decision-making process, and make disclosures so that investors understand the impact of their investments.

It aims to improve sustainability-related practices, policies, procedures and disclosures in the asset management industry through five recommendations for securities regulators and policymakers to: (i) consider setting regulatory and supervisory expectations for asset managers in respect of the development and implementation of practices, policies and procedures relating to material sustainability-related risks and opportunities, as well as related disclosure; (ii) consider clarifying and/or expanding on existing regulatory requirements or guidance or, if necessary, creating new regulatory requirements or guidance, to improve product-level disclosure in order to help investors better understand sustainability-related products, and material sustainability-related risks for all products; (iii) have supervisory tools to monitor and assess whether asset managers and sustainability-related products are in compliance with regulatory requirements and enforcement tools to address any breaches of such requirements; (iv) consider encouraging industry participants to develop common sustainable finance-related terms and definitions, including relating to ESG approaches, to ensure consistency throughout the global asset management industry; and (v) consider promoting financial and investor education initiatives relating to sustainability, or, where applicable, to enhance existing sustainability-related initiatives.

In addition, the Report also includes the findings from the STF's fact-finding exercises, that in jurisdictions with sustainability-related requirements relating to practices and disclosures by asset managers at the entity level, the requirements can be broadly categorised into the following areas: governance, investment strategy, risk management, and metrics and targets, with governance requirements being the most common amongst jurisdictions. The report also recognises a clear need to address the challenges associated with the lack of reliability and comparability of data at the corporate issuer level and the ESG data and ratings provided by third-party providers to enable the investment industry to properly evaluate sustainability-related risks and opportunities.

A separate IOSCO report will be published later in November 2021 and will cover recommendations for ESG data and ratings providers.

Date of publication: 02/11/2021

11. German Omnibus Acts (*Artikelgesetze*)

(i) **Germany**

Regulation to amend the Price Indication Regulation (Verordnung zur Novellierung der Preisangabenverordnung)

Status: Published in the Federal Gazette

The Regulation to amend the Price Indication Regulation (*Preisangabenverordnung* – PAngV) has been published in the Federal Gazette. For more information, please see section 3.4 above.

Date of publication: 23/11/2021

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