

Regulatory monitoring: EU Version

Newsletter

June 2023





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Features

HORIZON SCANNING / REGULATORY MONITORING

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

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

Council of the EU: Provisional political agreement reached on CRD VI and CRR III

Status: Draft

The Council of the EU has announced that it has reached provisional political agreement with the EP on the proposed Directive amending CRD IV as regards supervisory powers, sanctions, third-country branches and ESG risks (CRD VI) and the proposed Regulation amending the CRR as regards requirements for credit risk, credit valuation adjustment (CVA) risk, operational risk, market risk and the output floor (CRR III). Under the provisional agreement, negotiators agreed: (i) how to implement the so-called 'output floor', limiting banks' variability of capital levels computed by using internal models, and the appropriate transitional arrangements to allow sufficient time for market players to adapt; (ii) to make improvements to the areas of credit risk, market risk and operational risk; (iii) to provide for additional proportionality in the rules, in particular for small and non-complex institutions; (iv) to include a harmonised 'fit and proper' framework for assessing the suitability of members of the institutions' management bodies and key function holders and rules to safeguard supervisory independence; (v) a transitional prudential regime for cryptoassets and amendments to enhance banks' management of ESG risks; and (vi) to harmonise minimum requirements applicable to branches of third-country banks and the supervision of their activities in the EU. The agreement has been agreed 'ad referendum' and still needs to be confirmed by the Council and the EP before it can be formally adopted.

According to a [press release published by the EC](#), CRR III is expected to apply from 1 January 2025 (with certain elements phasing in), while CRD VI will have to be transposed by member states by 30 June 2026.

Date of publication: 27/06/2023

EBA: Opinion on measures to address macroprudential risk following notification by the Swedish Financial Supervisory Authority (Finansinspektionen) in accordance with Article 458 CRR

Status: Final

The EBA has published an Opinion on measures to address macroprudential risk following notification by the Swedish Financial Supervisory Authority (*Finansinspektionen*) in accordance with Article 458 CRR. The European Banking Authority (EBA) today published an Opinion following the notification by the Swedish Financial Supervisory Authority, Finansinspektionen, of its intention to introduce a new measure in accordance with Article 458 of Regulation (EU) No 575/2013. The measure introduces risk weights for targeting asset bubbles in the residential property and commercial immovable property sector in Sweden. Based on the evidence submitted, the EBA does not object to the implementation of the proposed measure. In its Opinion, addressed to the Council, the EC, and the Swedish Financial Supervisory Authority, the EBA acknowledged the concerns of Finansinspektionen over financial stability risks stemming from commercial real estate (CRE). The EBA recognises that CRE activity levels in the Swedish economy have increased substantially in the last years, imposing a risk on financial stability. CRE firms show high level of indebtedness, and despite having diversified their funding structure, banks remain substantially exposed to a downturn risk in the CRE sector. Amid the changing macroeconomic environment, with increasing interest rates and strong inflation, risks emerge on CRE borrowers' debt servicing capacity. A sector specific crisis in the CRE could trigger large rippling effects throughout the economy and the financial system and provoke procyclical behaviours from banks and other stakeholders.

Date of publication: 12/06/2023

EBA: Commission Implementing Regulation (EU) .../... amending Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR

Status: Draft

The EBA has published a draft Implementing Regulation, which updates the list of closely correlated currencies as set out in Implementing Regulation 2015/2197 supplementing the CRR. The list is part of the ITS that was drafted for calculating the capital requirements for foreign-exchange risk according to standardised rules. The updated list has been submitted to the EC for endorsement.

Date of publication: 09/06/2023

(ii) International

IOSCO: Consultation on a report regarding goodwill

Status: Consultation

Deadline for the submission of comments: 20/09/2023

IOSCO has launched a consultation on a report regarding goodwill, seeking input from market participants to identify good practices for addressing the risk of unrecognised impairment on accumulated goodwill balances and related disclosures arising from business combinations. The consultation builds on previous work by IOSCO in recognition that the risk of unrecognised impairment on accumulated goodwill and related disclosures is an area of concern, particularly in times of increasing economic uncertainty. The feedback received will be used to formulate a set of recommendations for regulators, auditors, issuers and those charged with governance. They will also underpin IOSCO's engagement with standard setters, including the International Accounting Standards Board (IASB), on improvements to accounting, reporting and disclosure requirements related to goodwill.

Date of publication: 22/06/2023

(b) Solvency/Own funds issues

(i) EU

ECON: Draft report on the proposal for a Regulation amending EMIR, CRR and the MMF Regulation as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets

Status: Draft

The ECON has published its draft report on the EC's legislative proposals for a Regulation amending EMIR, the CRR and the MMFR as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing (EMIR 3). It sets out ECON's suggested amendments to the EC's proposed texts.

Date of publication: 13/06/2023

ECON: Draft report on the proposal for a Directive amending the UCITS Directive, the CRD IV and the IFD as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions

Status: Draft

The ECON has published its draft report on the EC's legislative proposals for a Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions by amending the UCITS Directive, the CRD IV and the IFD. It sets out ECON's suggested amendments to the EC's proposed texts.

Date of publication: 09/06/2023

EBA: Final draft ITS on supervisory benchmarking for the 2024 exercise**Status: Final**

The EBA has published its final draft ITS on the benchmarking of credit risk, market risk and IFRS9 models for the 2024 exercise. The most significant change, compared to the data collection of 2023, is the roll out for the benchmarking of accounting metrics (IFRS9) to high default portfolios. For market risk, new templates have been added for the collection of additional information, notably the Default Risk Charge (DRC) and the Residual Risk Add-On (RRAO). However, for credit risk, only minor changes have been made.

The draft ITS have been submitted to the EC for endorsement, and will apply 20 days following their publication in the OJ.

Date of publication: 05/06/2023

ECB: Consultation on draft report on sound practices in CCR governance and management**Status: Consultation**

Deadline for the submission of comments: 14/07/2023

The ECB has published a public consultation on its report on sound practices in counterparty credit risk (CCR) governance and management. The report summarises the results of the targeted review performed in the second half of 2022 on how banks govern and manage CCR. It highlights the good practices observed in the market and points to areas where improvement is needed. The review found that, despite some progress in how banks measure and manage CCR, there is still room for improvement in areas such as customer due diligence, the definition of risk appetite, default management processes and stress testing frameworks. Supervisors' expectations cover, among other dimensions, banks' capacity to obtain information from non-bank counterparties, regularly stress test their counterparty credit risk exposures and assess their counterparties' vulnerabilities under tail risk scenarios. The good practices described in the report explain that approaches to CCR taken by banks should be proportionate to the scale and complexity of the business and products offered, as well as the nature of the counterparties, going beyond mere compliance with regulatory requirements.

Date of publication: 02/06/2023

(c) Liquidity**(i) EU****EBA: Third report on monitoring the LCR and NSFR implementation in the EU****Status: Final**

The EBA has published its third report on the monitoring of the liquidity coverage ratio (LCR) and net stable funding ratio (NSFR) implementation. The report assesses the potential impact on LCR and NSFR levels of the upcoming central bank funding repayment (mainly repayments of the targeted longer-term refinancing operations) as well as of a potential scenario of higher liquidity risk, particularly affecting government bonds, derivatives and repo markets, in the context of a higher interest rate environment, inflation and recession risks.

The EBA: (i) analyses the potential liquidity and funding needs that EU banks might need to cover to maintain regulatory and prudent LCR and NSFR levels. To that end, the EBA has developed some broad projections of LCR and NSFR values in 2023 and 2024 before considering alternative funding sources; (ii) provides guidance to both banks and supervisors on how they should monitor, on an ongoing basis, the real capacity of markets and the economic conditions for potential funding sources. This is particularly important in the case of reinforced funding demand by many institutions at the same time or in case of protracted periods of market volatility; (iii) highlights the importance for banks' funding plans to include realistic ways in which to seek other funding to replace maturing central bank funding, where needed; and (iv) announces that it does not intend in the current environment, to work further on a methodology facilitating the application of a 3% reduced outflow rate for stable retail deposits. This was suggested as a potential workstream following the second report, however the EBA notes that no bank in the EU is currently applying such an outflow rate. The EBA will continue to monitor specific aspects of the LCR and NSFR due to current circumstances and the interest rate environment, in close cooperation with competent authorities.

Date of publication: 15/06/2023

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

(i) International

FSB: Consultation on a report enhancing third-party risk management and oversight

Status: Consultation

Deadline for the submission of comments: 22/08/2023

The FSB has launched a consultation on a toolkit for financial institutions and financial authorities, as well as service providers, for enhancing their third-party risk management and oversight. The FSB explains that the toolkit has been developed against a backdrop of digitalisation of the financial services sector and growing reliance of financial institutions on third-party service providers for a range of services, some of which support their critical operations. The toolkit aims to: (i) reduce fragmentation in regulatory and supervisory approaches to financial institutions' third-party risk management across jurisdictions and different areas of the financial services sector; (ii) strengthen financial institutions' ability to manage third-party risks and financial authorities' ability to monitor and strengthen the resilience of the financial system; and (iii) facilitate coordination among relevant stakeholders.

The toolkit includes: (a) a list of common terms and definitions as a foundation to improve clarity and consistency; (b) a summary of the toolkit's approach, including its focus on critical services, its holistic approach to third-party risk management and the application of the principle of proportionality risk; (c) tools to help financial institutions identify critical services and manage potential risks throughout the lifecycle of a third-party service relationship; and (d) tools for supervising how financial institutions manage third-party risks, and for identifying, monitoring and managing systemic third-party dependencies and potential systemic risks.

Date of publication: 22/06/2023

(e) Disclosure

(i) EU

EC: Report on the assessment of the adequacy of the information to be disclosed under Article 89(1) CRD IV

Status: Final

The EC has published a report on the assessment of the adequacy of the information to be disclosed under the Article 89(1) CRD IV country-by-country reporting requirements. While some room for improvement is identified in the report, the assessment did not consider there to be any appetite to reopen the provisions at this point in time, and found that the implementation of country-by-country reporting by institutions is overall adequate and fit for purpose. The public disclosure of mandatory requirements remains for citizens, tax authorities and different stakeholders across the EU a key instrument to increase public awareness in this area and contributes to promoting responsible conduct of institutions towards society. As concerns the administrative burden, the compliance costs incurred by the reporting entities are estimated to be negligible, while the benefits for the wider society significantly outweigh the costs.

Date of publication: 26/06/2023

EBA: Final report on draft ITS amending Commission Implementing Regulation (EU) No 650/2014 on supervisory disclosure laying down ITS with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with CRD IV

Status: Final

The EBA has published a final report on draft ITS amending Commission Implementing Regulation (EU) No 650/2014 on supervisory disclosure laying down ITS with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Article 143 (1) of CRD IV. The draft ITS reflect changes to the EU legal framework, in particular the changes related to supervisory reporting and investment firms made by

CRD V and CRR II. The EBA believes that the draft ITS will enhance the quality and comparability of the reported data by supervisors and provide the market with more information, enhancing transparency in this regard.

The draft ITS will now be submitted to the EC for endorsement before being published in the OJ. The first reference date for the application of the ITS is expected to be 31 December, with the first publication date being 30 June 2024.

Date of publication: 21/06/2023

1.2 Recovery and resolution

(i) EU

EBA: Final report on Guidelines amending Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 BRRD to introduce a new section on resolvability testing

Status: Final

Date of application: 01/01/2024

The EBA has finalised amendments to its Guidelines on improving resolvability for institutions and resolution authorities, which introduce a new section on resolvability testing. The new Guidelines: (i) introduce a self-assessment by resolution entities focusing on the minimum standard set by the EBA resolvability Guidelines and transferability Guidelines; (ii) require authorities to develop a multi-annual testing programme for each resolution entity so that institutions would demonstrate the adequacy of their resolvability capabilities; and (iii) introduce a master playbook for the most complex institutions, which aims to ensure that institutions adopt a holistic approach to resolution planning to ensure the overall coherence of their capabilities to execute the resolution strategy.

Institutions are expected to submit their first self-assessment report by 31 December 2024 and complex institutions their first master playbook by 31 December 2025. Authorities should provide their first testing programme by 31 December 2025.

Date of publication: 13/06/2023

(ii) Eurozone

SRB: Operational Guidance for banks on the measurement and reporting of the liquidity situation in resolution

Status: Final

The SRB has published its operational guidance for banks on the measurement and reporting of the liquidity situation in resolution. The guidance concerns banks within the SRB's direct remit, for which the strategy is resolution, and targets the liquidity dimension of the SRB's previously issued "Expectations for banks" (EfB) which aims to enhance banks' resolvability and preparedness for a potential resolution. The guidance focuses on three objectives: (i) the expectation that banks' internal frameworks, governance and management information systems are set up to meet the data expectations set out in the guidance, including the ability to forecast the net liquidity position across time periods and at short notice; (ii) the expectation that SRB banks have developed the capabilities to report a predefined set of data points on their liquidity situation; and (iii) the expectation that banks have put in place remedial actions to mitigate any deficiencies in their capabilities to provide these data points at the requested level of consolidation and at a high level of frequency.

Banks are expected to build EfB capabilities for a steady state of resolution planning by 31 December. As such, banks are expected to fulfil the expectations under Principle 3.2 of the liquidity dimension during 2023.

Date of publication: 16/06/2023

2. Investment firms regulation

(i) EU

ECON: Draft report on the proposal for a Directive amending the UCITS Directive, the CRD IV and the IFD as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions

Status: Draft

The ECON has published its draft report on the EC's legislative proposals for a Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions by amending the UCITS Directive, the CRD IV and the IFD. For more information, please see section 1.1(b) above.

Date of publication: 09/06/2023

Publication of three Delegated and Implementing Regulations relating to the IFD

Status: Published in the OJ

Date of entry into force: 28/06/2023

The following three Delegated and Implementing Regulations relating to the IFD have been published in the OJ:

- Commission Delegated Regulation (EU) 2023/1117 supplementing the IFD with regard to RTS specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States
- Commission Delegated Regulation (EU) 2023/1118 supplementing the IFD with regard to RTS specifying the conditions under which colleges of supervisors exercise their tasks
- Commission Implementing Regulation (EU) 2023/1119 laying down ITS for the application of the IFD with regard to standard forms, templates and procedures for the information sharing between the competent authorities of home and host Member States

Date of publication: 08/06/2023

3. Market regulation/Conduct rules

3.1 Consumer protection rules

(i) EU

Council of the EU: Text of political agreement on draft Directive concerning financial services contracts concluded at a distance

Status: Draft

The Council of the EU has published a note on the proposed Directive concerning distance financial services contracts. The note includes the text that has reached provisional agreement with the EP (see below). The proposal updates and modernises the general framework, acting as a safety net for the financial services contracts concluded at a distance by repealing the Distance Marketing Directive and including relevant aspects of consumer rights within the scope of the horizontally applicable Consumer Rights Directive. If the EP adopts at first reading the text of the proposed Directive, the Council will also adopt that text.

Date of publication: 23/06/2023

Council of the EU/EP: Provisional political agreement on draft Directive concerning financial services contracts concluded at a distance

Status: Draft

The Council of the EU and the EP have reached a provisional political agreement on the Directive concerning financial services contracts concluded at a distance. The agreed text simplifies existing legislation, increases consumer protection, and creates a level playing field for financial services concluded online, via telephone or through other forms of remote marketing. The main elements of the agreement are: (i) clarification of the scope of application and safety-net feature in the Directive, in particular for financial services that are excluded from other sectoral legislation or only partially covered by it; (ii) the improvement of the rules on information disclosure and modernisation of pre-contractual information obligations, to keep the possibility for EU Member States to impose stricter national rules in this area; (iii) where the trader uses online tools, such as robo-advice or chatbots, the consumer will have the right to request human intervention; (iv) the inclusion in the service provider's interface of a 'withdrawal function' that has to be easily accessible, clearly visible and permanently available during the entire 14-day withdrawal period; and (v) the introduction of additional protection for consumers from dark patterns, requiring EU Member States to take measures to limit the use of dark pattern marketing techniques to influence consumer's choices.

The next step is for the provisional political agreement to be endorsed and formally adopted by both the EP and the Council of the EU. Once formally adopted and published in the OJ, the Directive will enter into force 20 days later. EU Member States will then have 24 months to transpose the Directive into national law and another six months to apply it.

Date of publication: 06/06/2023

3.2 MiFID/MiFIR

(i) EU

ESMA: Final report on the implementation and functioning of the intra-day volatility management mechanism

Status: Final

ESMA has published a final report on the implementation and functioning of the intra-day volatility management mechanism (IVM). Following an assessment of the IVMs introduced by trading venues and identification of differences in the approaches taken in their implementation and calibration, ESMA finds that they have been adequately set up. ESMA however also highlights some practical challenges. The IVM aims at limiting extreme volatility of prices in energy derivatives markets within one day.

ESMA finds them adequately calibrated, with the caveat of the assessment having been done in a period with no evidence of protracted volatility episodes affecting energy commodity derivatives trading.

In addition, ESMA has analysed how IVMs function in comparison with existing circuit breakers under MiFID II to assess the effectiveness added by the IVMs in managing volatility. ESMA find significant practical challenges in the implementation of IVMs for illiquid trading venues. ESMA suggests that the already existing circuit breakers under MiFID II could deliver on the objective to limit excessive intra-day price volatility. To ensure the appropriate implementation and application of circuit breakers by trading venues under MiFID II, ESMA is working on further guidance to be issued in the second half of 2023.

Date of publication: 30/06/2023

EP/Council of the EU: Provisional political agreement on proposals to improve MiFID II market data access and transparency

Status: Draft

The EP and the Council of the EU have announced they have reached provisional political agreement on the proposed amendments to MiFIR and MiFID II which were introduced to improve access to market data and trade transparency. Negotiators came to an agreement in relation to three key issues: (i) an EU-wide consolidated tape (CT), which will continuously disseminate post-trade data with identification of the trading venue of the transaction. Regulated trading venues (except certain smaller markets and growth markets) will have to provide pre- and post-trade information to a consolidated tape provider (CTP) as close to real time as it is technically possible. CTPs should provide free access to this information to retail investors, academics and civil society organisations using the data for research purposes as well as public authorities; (ii) the practice of receiving payments for forwarding client orders for execution ('payment for order flows' (PFOF)) will be banned across Europe immediately, with the exception of certain countries where PFOF is more common. which will have to implement the ban before 30 June 2026; and (iii) that the Commission's review of position limits and position management controls would focus on facilitating energy transition, food security, markets' resistance to external shocks and achieving competitive and liquid markets. In addition, the ancillary activity exemption would also be reviewed, as well as a goal to harmonise commodity and emission allowance derivatives transactions in terms of data collection, formats and dissemination to the public.

The provisional political agreement will now have to be approved by the ECON and the COREPER II, followed by a plenary and the Council vote.

Date of publication: 29/06/2023

AFME: Paper on MiFID II product governance and PRIIPs regimes: An approach for the Equity-Linked markets

Status: Final

AFME has published a paper on an approach for the equity-linked (convertible and exchangeable bond) markets (i.e. syndicated cross-border convertible and exchangeable bond issuance), to the MiFID II product governance and PRIIPs regimes, which came into effect on 1 January 2018. The paper focuses on transactions aimed at a professional or institutional investor base, and not those involving a retail element (whether inside or outside the EEA), which will require further consideration. AFME believes that while not exhaustive, the paper will be useful to the extent transaction parties wish to minimise deal/syndicate-level deliberations, to maximise execution efficiency and speed. While the paper focuses on relevant EU requirements, the AFME Working Group expects that compliance with the approaches set out in the paper should also meet relevant UK requirements.

Date of publication: 06/06/2023

ESMA: Letter to EC on transparency regime for single name-CDS and standardised OTC-derivatives under MiFIR

Status: Final

ESMA has published a letter sent to the EC on the transparency regime for single name-CDS and standardised OTC-derivatives. It explains that the events on single-name CDS markets at the end of March revealed that the market remains opaque and, as a consequence, subject to a high degree of uncertainty and speculation as to the actual trading activity and its drivers. As such,

ESMA remains convinced of the need to further improve the MiFIR requirements on trade transparency, notably on post-trade transparencies for OTC-derivatives.

In the letter, ESMA urges co-legislators not to lose the opportunity of the ongoing MiFIR review to strengthen the transparency regime applicable to standardised OTC-derivatives and particularly the regime for single-name CDSs, by: (i) broadening the scope of instruments subject to the requirements; and (ii) providing for more real-time transparency and a streamlined deferral regime. Lastly, ESMA notes that given the single-name CDS market, and most OTC-derivatives markets are global in nature, it is key to aim for a globally coordinated approach to ensure consistent rules and avoid gaps.

Date of publication: 02/06/2023

ESMA: Announcement of application date for amended MiFIR transparency requirements

Status: Final

ESMA has announced that the amended RTS 1 and RTS 2 under MiFIR will apply from 5 June. The two RTS prescribe transparency requirements applicable to transactions in non-equity and equity/equity-like instruments. The ESMA announcement also covers certain practical points on the dates for the application of these changes regarding: (i) the change of the pre-trade large-in-scale (LIS) threshold for ETFs; (ii) quarterly bond liquidity assessment and SI publication; (iii) the annual calculation for non-equity instruments – including LIS and size-specific to the instrument thresholds for bonds; and (iv) the annual calculation for equity and equity-like financial instruments.

Date of publication: 31/05/2023

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

(i) EU

AFME: Paper on MiFID II product governance and PRIIPs regimes: An approach for the Equity-Linked markets

Status: Final

AFME has published a paper on an approach for the equity-linked markets, to the MiFID II product governance and PRIIPs regimes which came into effect on 1 January 2018. For more information, please see section 3.2 above.

Date of publication: 06/06/2023

3.4 Securities financing transactions

(i) EU

ESMA: Q&A on SFTR data reporting

Status: Final

ESMA has published an update to its Q&A on SFTR data reporting. ESMA has added a new Q&A on reporting of SFTs concluded by IORPs and pension funds. The Q&As were last updated in March.

Date of publication: 07/06/2023

4. Market infrastructure

4.1 Custody rules

(i) EU

Council of the EU: Provisional political agreement with the EP on the CSDR Refit

Status: Draft

The Council of the EU has announced that it has reached provisional political agreement with the EP on the proposed CSDR Refit Regulation. The Council highlights that the new Regulation: (i) clarifies and simplifies the passporting rules, reducing the barriers to cross-border settlement and easing the administrative and financial burden; (ii) improves cooperation between supervisors by requiring a supervisory college to be set up in cases where a CSD's activities in at least two other member states are considered to be of substantial importance to the functioning of the securities markets and investor protection. Supervisors will also have access to better information about the activities of non-EU CSDs operating in the EU; (iii) contains measures to improve efficiency by amending certain elements of the settlement discipline regime, including the preconditions for applying so-called mandatory buy-ins; and (iv) adjusts the conditions under which a CSD can access banking-type services, including through other CSDs. As a result, offering services for a broader range of currencies as well as across borders will be facilitated.

The provisional agreement still needs to be formally adopted by the Council and the EP.

Date of publication: 27/06/2023

4.2 EMIR

(i) EU

ECB: Speech on central clearing in turbulent times: frontiers in regulation and oversight

Status: Final

The ECB has published a speech by Fabio Panetta, Member of the Executive Board of the ECB, on central clearing in turbulent times. Mr Panetta explains that in the current context of elevated economic and financial uncertainty, CCPs must adapt their risk management strategies. Public authorities, meanwhile, must consider how they can best adjust the regulatory and oversight framework for CCPs. Mr Panetta goes on to highlight three areas he believes require progress, in order to preserve the pivotal role of CCPs in safeguarding stability. These areas are: (i) challenges in cross-border supervision; (ii) better preparedness for extreme stress events; and (iii) reducing the procyclicality of margins. He concludes by stating that while the introduction of mandatory central clearing has served the market well in terms of enhancing counterparty risk management and market transparency, in today's turbulent market environment, all stakeholders must adopt a more forward-looking mindset. Mr Panetta highlights that short-term cost considerations must be balanced against the longer-term benefits of a robust set-up in which CCPs remain a pillar of our financial system.

Date of publication: 22/06/2023

Council of the EU: Progress report on proposed EMIR 3

Status: Final

The Council of the EU has published a progress report to update the Permanent Representatives Council (COREPER) about the Swedish Presidency's work on the EC's EMIR 3 legislative proposal. The report sets out the view of the Presidency regarding the state of play of the work of the Council Working Party. It highlights the possible compromises it believes are within reach and illustrates the main positions and arguments of Member States in areas where further work is required. The Presidency: (i) believes that substantial progress has been made over the course of the first half of 2023 towards a Council agreement on the EMIR review; (ii) believes that the way forward is relatively clear in the area of supervisory processes and frameworks based on Member States' comments so far; and (iii) intends to distribute a first draft partial compromise text to

Member States before the end of June for written comments. On the issue of the active account requirement, the Council is split, with no option appearing to have the necessary majority at this stage. Therefore, further reflections will be required in order to find a solution that could constitute an acceptable compromise. With regard to the other topics mentioned in the report, although solutions seem within reach, certain further discussions will take place to ensure a technically sound and balanced compromise. The Spanish Presidency will now take the work forward towards a Council position.

Date of publication: 20/06/2023

ESAs: Letter to EC on EMIR bilateral margining framework and equity options

Status: Final

The ESAs have published a letter sent to the EC in relation to the exemption for non-centrally cleared OTC derivatives that are single-stock equity options or index options ('equity options') from the bilateral margining framework, as set out in the Bilateral Margin RTS. The ESAs note that the exemption, together with an exemption for intragroup derivative contracts, has been repeatedly extended, most recently at the request of the EC, but is now set to expire on 4 January 2024. They therefore seek clarity on what the permanent treatment of equity options should be. The ESAs note that there is some disagreement on the desirability of the exemption and therefore consider that the ongoing EMIR review should look into the issue further.

Date of publication: 13/06/2023

ECON: Draft report on the proposal for a Regulation amending EMIR, CRR and the MMF Regulation as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets

Status: Draft

The ECON has published its draft report on the EC's legislative proposals for a Regulation amending EMIR, the CRR and the MMFR as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing (EMIR 3). For more information, please see section 1.1(b) above.

Date of publication: 13/06/2023

ECON: Draft report on the proposal for a Directive amending the UCITS Directive, the CRD IV and the IFD as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions

Status: Draft

The ECON has published its draft report on the EC's legislative proposals for a Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions by amending the UCITS Directive, the CRD IV and the IFD. For more information, please see section 1.1(b) above.

Date of publication: 09/06/2023

ESMA: Official translations of Guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a EMIR

Status: Final

ESMA has published the official translations of Guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a EMIR. Article 45a EMIR mandates ESMA to draft guidelines further specifying the circumstances in which the competent authority may require the CCP to refrain from undertaking any of the restricted actions referred to in Article 45a(1) of EMIR, for a period specified by the competent authority, that cannot exceed five years. The guidelines will apply from 2 August, two months after the publication of the official translations on ESMA's website.

Date of publication: 02/06/2023

Corrigendum on the equivalence of the regulatory framework for CCPs in Taiwan under EMIR

Status: Published in the OJ

A corrigendum was published in the OJ, amending Commission Implementing Decision (EU) 2022/1684 on the equivalence of the regulatory framework for CCPs in Taiwan to EMIR as regards Futures Clearing Houses under the supervision of the Financial Supervisory Commission. The date on which the Commission will review the grounds on which this equivalence decision was made has been amended from 28 September 2022 to 28 September 2025 (Article 2).

Date of publication: 01/06/2023

4.3 Clearing, settlement, and CCPs related rules other than in the context of derivatives

(i) EU

ESMA: Guidelines for CCPs on template summary resolution plans and template written arrangements for resolution colleges

Status: Final

ESMA has finalised two sets of Guidelines under the CCPRRR on: (i) the template written arrangements for resolution colleges – to assist National Competent Authorities in the creation of the resolution colleges, and also ensure a smooth process to establish and review the resolution college agreement; and (ii) the template summary resolution plans – to provide resolution authorities with guidance as to the type of information that should be included in the summary (and a template of the summary) that would be shared with the CCP.

The Guidelines will apply following their publication by ESMA in the relevant EU official languages.

- Final Report on the Guidelines on written arrangements and procedures for the functioning of resolution colleges
- Final Report on the Guidelines on the summary of resolution plans

Date of publication: 23/06/2023

Commission Delegated Regulation (EU) 2023/1193 supplementing CCPRRR with regard to RTS specifying the contents of the resolution plan

Status: Published in the OJ

Date of entry into force: 11/07/2023

Commission Delegated Regulation (EU) 2023/1193 supplementing CCPRRR with regard to RTS specifying the contents of the resolution plan has been published in the OJ.

Date of publication: 21/06/2023

Commission Delegated Regulation (EU) 2023/1192 supplementing the CCPRRR with regard to RTS specifying the content of the written arrangements and procedures for the functioning of the resolution colleges

Status: Published in the OJ

Date of entry into force: 11/07/2023

Commission Delegated Regulation (EU) 2023/1192 supplementing the CCPRRR with regard to RTS specifying the content of the written arrangements and procedures for the functioning of the resolution colleges has been published in the OJ.

Date of publication: 21/06/2023

ESMA: Official translations of Guidelines on the methodology to be used by the resolution authority for determining the valuation of contracts prior to their termination as referred to in Article 29(1) of CCPRRR

Status: Final

Date of application: 02/08/2023

ESMA has published the official translations of Guidelines on the methodology to be used by the resolution authority for determining the valuation of contracts prior to their termination as referred to in Article 29(1) of CCPRRR. The Guidelines aim to promote the convergence of supervisory and resolution practices with respect to this valuation methodology.

Date of publication: 02/06/2023

ESMA: Official translations of Guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail (Article 22(6) of CCPRRR)

Status: Final

Date of application: 01/08/2023

ESMA has published the official translations of guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail. The Guidelines aim to promote the convergence of supervisory and resolution practices, and include guidance in relation to assessing the likelihood of recovery, financial and liquid resources, and the CCP's ability to provide a critical function.

Date of publication: 01/06/2023

ESMA: Official translations of Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) of CCPRRR)

Status: Final

Date of application: 01/08/2023

ESMA has published the official translations of its guidelines on the consistent application of the triggers for the use of early intervention measures by competent authorities, under Article 18(8) of CCPRRR. The guidelines aim to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to provide competent authorities with guidance on the situations under which they should consider the application of early intervention measures to CCPs, as primarily identified during ongoing supervision or under the supervisory review and evaluation process pursuant to Article 21 of EMIR.

Date of publication: 01/06/2023

5. Anti-money laundering

(i) EU

Commission Delegated Regulation (EU) 2023/1219 amending Delegated Regulation (EU) 2016/1675 as regards adding Nigeria and South Africa to the table in point I of the Annex and deleting Cambodia and Morocco from that table

Status: Published in the OJ

Date of application: 16/07/2023

The Commission Delegated Regulation (EU) 2023/1219, which amends Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries with strategic AML/CTF deficiencies under MLD IV, has been published in the OJ. It adds Nigeria and South Africa to the list, while also removing Cambodia and Morocco.

Date of publication: 26/06/2023

EBA: Report on ML/TF risks associated with payment institutions

Status: Final

The EBA has published a report on the money laundering and terrorist financing (ML/TF) risks associated with payment institutions. In 2022, the EBA carried out an assessment of ML/TF risks in the payment institutions sector, with the objective of better understanding: (i) the scale and nature of the ML/TF risks associated with the payment institutions sector; and (ii) the extent to which payment institutions' AML/CFT systems and controls are adequate and effective in tackling those risks. The EBA's findings suggest that generally institutions in the sector do not manage ML/TF risk adequately, and that AML/CFT internal controls in payment institutions are often insufficient to prevent ML/TF. The EBA's findings also suggest that not all competent authorities are currently doing enough to supervise the sector effectively, which can result in payment institutions with weak AML/CFT controls being able to operate in the EU, and establishing themselves in Member States where the authorisation process is perceived as less stringent to passport their activities cross-border afterwards. The EBA highlights that a more robust implementation by supervisors and institutions of the EBA guidelines is needed to mitigate some of these risks and to reduce the sector's exposure to ML/TF risks. Legislative changes may also be required to combat some of the issues discovered, such as establishing a more consistent approach to assessing the AML/CFT component of the authorisation of payment institutions, the consideration of ML/TF risks in the process of passporting notifications, and the treatment by Member States of agents of payment institutions in the cross-border context.

Date of publication: 16/06/2023

Publication of Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

Status: Published in the OJ

Date of entry into force: 29/06/2023

Date of application: 30/12/2024

The Regulation on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (recast revised WTR) has been published in the OJ. The Council of the EU adopted the text on 16 May, following the EP's adoption on 20 April, and published the adopted texts on 2 June.

Date of publication: 09/06/2023

EP: Trilogue agreement on proposed Directive to make searching financial records easier through a single access point

Status: Draft

The EP has announced that it has reached a trilogue agreement with the Council of the EU on the proposed Directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through the single access point. The proposed Directive aims to ensure more effective investigations into illicit finance by making it easier to retrieve data across borders from centralised bank registries. It mandates EU Member States to ensure that the information from centralised registries is available through a single access point to be developed and operated by the EC. The Directive is part of the EU's fight against serious and organised crime, as the new rules will provide law enforcement authorities quick access to information on the accounts where criminals and terrorists keep or hide their funds or assets. It will harmonise the format in which banks and crypto companies send transaction records to the investigating authorities. Faster tracing of assets derived from crime will also allow more effective confiscation of criminal profits.

Once officially adopted by both the EP and the Council of the EU, the legislation will be published in the OJ and enter into force.

Date of publication: 06/06/2023

(ii) International

FATF: Consultation on amendments to recommendation and best practices for NPOs

Status: Consultation

Deadline for the submission of comments: 18/08/2023

The FATF has launched two parallel consultations regarding non-profit organisations (NPOs). The first consultation is on proposals to amend recommendation 8 and its interpretive note, which aims to protect NPOs from potential terrorist financing abuse. The revisions seek to address the problem of over-application of preventive measures to the NPO sector in some countries, recognising the negative impact this can have on legitimate NPO activities. The amendments require countries to have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities. The second consultation aims to update the FATF's best practice paper to combat the abuse of NPOs. The aim of this review is to better clarify how a risk-based approach can be implemented in this area.

The FATF expects to finalise this work at its October plenary meeting.

- [Recommendation consultation](#)
- [Best practice consultation](#)

Date of publication: 29/06/2023

FATF: Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers

Status: Final

The FATF has published a targeted update on implementation of its standards on virtual assets (VAs) and virtual asset service providers (VASPs) and calls on all countries to rapidly implement those standards. It has found that jurisdictions continue to struggle with fundamental requirements such as undertaking a risk assessment, enacting legislation to regulate VASPs, and conducting a supervisory inspection. 75% of jurisdictions are not completely compliant with the FATF's VA/VASP requirements. In addition, jurisdictions have made insufficient progress on implementing the Travel Rule, which is a key AML/CFT measure. Of the 151 jurisdictions that responded to FATF's 2023 Survey, more than half still have not taken any steps towards implementing the Travel Rule. The FATF's report acknowledges that there has been collaboration within the private sector to improve industry compliance.

Date of publication: 27/06/2023

FATF: Outcomes of plenary of June 2023

Status: Final

The FATF has set out the outcomes from its plenary meeting, which took place between 21 and 23 June. In the meeting the FATF, among other things: (i) reiterated that all jurisdictions should be vigilant to current and emerging risks from the circumvention of measures taken against the Russian Federation in order to protect the international financial system; (ii) agreed to publish the fourth targeted update on the implementation of the FATF Recommendations on virtual assets and virtual asset service providers; (iii) advanced the work on preventing the misuse of non-profit organisations (NPOs) and agreed to release for public consultation potential revisions to Recommendation 8 and the updated FATF Best Practices paper on combating the abuse of NPOs; and (iv) published an updated list of the jurisdictions under increased monitoring, which now includes Cameroon, Croatia and Vietnam. It also published an up-to-date list of the high-risk jurisdictions subject to a call for action, though no new jurisdictions were added.

Date of publication: 26/06/2023



6. Payments

6.1 Payment services/E-money

(i) EU

EPC: Preliminary Information on EPC SRTP related API Specifications

Status: Final

The EPC default SEPA Request-to Pay (SRTP) Application Programming Interface (API) Specifications set out the rules for implementing SRTP related APIs based on version 3.1 of the SRTP scheme rulebook, which will become effective on 30 November 2023. These specifications cover SRTP related messages in the inter-SRTP service provider space only (in both directions). An overview of the SRTP functional messages based on the process steps and datasets as described in the rulebook can be found in the SRTP related API Specifications - Preliminary Information' document.

The use of APIs for the exchanges between SRTP service providers will be mandatory as of 30 November 2023. However, the SRTP scheme participants, are free to already use their APIs now.

Date of publication: 30/06/2023

EC: Adoption of financial data access and payments package on PSD3, PSR and FIDA

Status: Draft

The EC has published the texts of legislative proposals that it has adopted concerning reforms to EU payment services and to implement a framework for financial data access. The first is a proposal for a regulation on a framework for financial data access and amending the EBA Regulation, the EIOPA Regulation and the ESMA Regulation and DORA: "FIDA". This proposal establishes a framework for responsible access to individual and business customer data across a range of financial services – "open finance". This builds on PSD2's "open banking" provisions that regulate access to customer data held by account-servicing payment service providers. The proposal aims to ensure that all consumers and firms have effective tools to control the use of their financial data.

The second is a proposal for a directive on payment services and electronic money services in the internal market amending the SFD and repealing PSD2 and 2EMD (Second Electronic Money Directive): "PSD3". There is also a proposal for a regulation on payment services in the internal market and amending the EBA Regulation: "PSR". The main changes include: (i) strengthening measures to combat payment fraud; (ii) allowing non-bank payment service providers access to all EU payment systems, with appropriate safeguards, and giving them a right to have a bank account; (iii) improving the functioning of open banking, especially as regards the performance of data interfaces, removing obstacles to open banking services and consumer control over their data access permissions; (iv) further improving consumer information and rights; and (v) merging the legal frameworks applicable to electronic money and to payment services.

- Proposal for a Regulation on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554 (FIDA)
- Proposal for a Directive on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC (PSD3)
- Proposal for a Regulation on payment services in the internal market and amending Regulation (EU) No 1093/2010 (PSR)

Date of publication: 28/06/2023

ECON: Adoption of draft report on proposed Instant Payments Regulation

Status: Draft

ECON has announced that it had adopted a draft report on the EC's legislative proposal for a Regulation amending the SEPA Regulation and the Cross-Border Payments Regulation as regards instant credit transfers in euro. In the press release, ECON highlights changes it intends to make to the proposed regulation, including in relation to: (i) instant credit transfers – where a

payment order for an instant credit transfer in euro is submitted from a payment account that is not denominated in euro, the payment service provider (PSP) should convert the amount of transaction from the currency in which the payment account is denominated into euro as soon as it receives that payment order; (ii) customer safety, penalties and sanctions – PSPs should allow their clients to set a maximum amount for instant credit transfers in euro as a safeguard against fraud; and (iii) charges – charges applied by a PSP on payers and payees in respect of instant credit transfer transactions in euro cannot be higher than the charges applied to credit transfer transactions in euro. PSPs should not be allowed to raise, directly or indirectly, the charges for regular transactions in order to circumvent this requirement.

Date of publication: 28/06/2023

EPC: Updated SPAA Scheme Rulebook

Status: Final

Date of effect: 30/11/2023

The EPC has published the updated version (1.1) of the SEPA Payment Account Access (SPAA) scheme rulebook, which replaces with immediate effect version 1.0. The main changes in version 1.1 of the SPAA scheme rulebook can be summarised as follows: (i) inclusion of extended sections regarding strong customer authentication (SCA), which take into account the outcome of the related public consultation that ended on 15 March 2023; (ii) definition of a minimum viable product (MVP) – based on the analysis of market demand – covering a set of Premium Application Programming Interface (API)-based services that an asset holder (participating in the scheme) agrees to offer as a minimum to an asset broker (participating in the scheme). A distinction has been made between MVP#1 and MVP#2, which is inter alia linked to the introduction of different adherence categories for asset holders. For example, MVP#1 is only applicable to ‘category A’ asset holders that only provide data asset related services; (iii) updates in relation to a mechanism to request a payment with transaction fees not borne by the payer; (iv) dataset and attribute alignments; and (v) clarifications on the envisaged homologation process as well as on the default business conditions.

Date of publication: 26/06/2023

EC: Speech on digital finance and payments

Status: Final

The EC has published a speech by Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, setting out the EC’s policy response at EU level to support digital finance as it evolves, and the progress made in implementing the retail payments strategy. Ms McGuinness explains that the EU is making the most of the opportunities but it is also conscious of the need to keep a handle on the risks. She explains that the EC is guided by the digital finance strategy and the retail payments strategy, having already reached agreement on three files: (i) DORA; (ii) MiCAR; and (iii) the DLT pilot.

She then goes on to explain that the EC will adopt the new revisions to PSD2 next week. Ms McGuinness sets out the four main themes of this review: (a) reducing payment fraud – measures will include a check that the bank account number, the IBAN, matches the account name. This is already part of the instant payments proposal, so the EC is proposing to apply it to all credit transfers in the EU. There will be a stronger legal basis for banks to cooperate around fraud, and a targeted shift of liability from consumers to the payment service providers, under certain conditions, for some types of authorised fraud; (b) open banking – real improvements to how open banking data interfaces work will be introduced. Obstacles to data access will be explicitly prohibited. The EC does not plan to introduce charging for data access or to impose a single standard for data interfaces. An obligatory dashboard will give consumers an overview, so they will be able to better manage the permissions they give around their data; (c) elements to address some of the problems around accessing bank accounts or payment systems; and (d) elements to address implementation and enforcement. Building on open banking, next week the EC will also propose rules on open finance – the Financial Data Access framework.

Ms McGuinness also considers the proposal to establish a digital Euro. She concludes by discussing the EU’s AI Act, which will classify some AI systems used in finance as high risk. While the co-legislators are still negotiating the AI Act, it does seem that both want to broaden the high-risk uses of AI to cover not only assessing creditworthiness, as proposed by the EC, but also private health and life insurance. The aim is to finalise the AI Act as soon as possible so that it is adopted during this legislature.

Date of publication: 20/06/2023

EPC: Publication of SEPA Request-To-Pay (SRTP) Scheme Rulebook

Status: Final

The EPC has published version 3.1 of the SEPA Request-to-Pay (SRTP) scheme rulebook. The scheme rulebook covers the set of operating rules and technical elements that allow a payee to request the initiation of a payment from a payer in a wide range of physical or online use cases. Version 3.1 of the scheme rulebook includes some clarifications about the use of market APIs to ensure interoperability between the scheme participants and two additional datasets related to the redirect option to be aligned with the related Implementation Guidelines, which were published on 3 March. The effective date of this version of the scheme rulebook is 30 November. The EPC also published version 3.0 of its clarification paper on the SRTP Scheme Rulebook, which provides guidance and, where feasible, recommendations to the future SRTP scheme participants on matters that are not described in versions 3.0 and 3.1 of the SRTP scheme rulebook.

Date of publication: 31/05/2023



7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) Eurozone

ECB: Public consultation on the revised ECB Guide to internal models

Status: Consultation

Deadline for the submission of comments: 15/09/2023

The ECB has launched a consultation on its revised Guide to internal models. The revised Guide clarifies how banks should go about including material climate-related and environmental risks in their models. It also provides clarifications for banks that wish to revert to the standardised approach for calculating their risk-weighted assets. Specifically on credit risk, the Guide helps all banks to move towards a common definition of default and a consistent treatment of massive disposals. The update of the market risk chapter details how to measure default risk in trading book positions. The revised Guide also provides clarifications regarding counterparty credit risk, which is the risk that the counterparty to a transaction could default. It also explains how the ECB understands the rules applicable to banks when they use internal models to calculate how much capital they need.

The ECB plans to publish the comments received, together with a feedback statement and the updated Guide. The ECB has also published [FAQs on the consultation](#).

Date of publication: 22/06/2023

8. Institutional supervisory framework

(i) EU

ESMA: Data strategy for 2023-2028

Status: Final

ESMA has launched a five-year data strategy. Over the next five years, ESMA intends to: (i) become an enhanced data hub – focusing on improved data and information accessibility, interoperability and usability, and achieving synergies and economies of scale; (ii) ensure access to data of public interest – contribute to providing easily accessible and usable information to the market participants, including to retail investors, in machine readable formats and via user-friendly search and analytical interfaces; (iii) promote data-driven supervision – enable cutting-edge, smart and effective data-driven supervision by joint developments and use of novel technologies; (iv) increase data collaboration – achieve better data standardisation, quality and reusability, and to promote the adoption of innovative technologies; (v) produce efficient data policy output – reduce the compliance burden for reporting entities by reducing duplicative and inconsistent requirements, optimising reporting flows, effective and efficient data sharing, and exploiting emerging technologies; and (vi) facilitate systematic data use – establish processes, methodologies and tools enabling systematic use of data for evidence-based policy development, supervision and risk assessment. This strategy is intended to be revisited over time as new legislative, technological or any relevant types of development emerge that need to be addressed in a way that would require adjustments.

Date of publication: 15/06/2023

9. Investment funds

9.1 Product regulation

(a) AIF

(i) EU

ESMA: Q&A on the application of the AIFMD

Status: Final

ESMA has updated its Q&A on the application of the AIFMD. It has added new Q&As in relation to: (i) notifications of AIFs – specifically in relation to third-party investment strategies, the pre-marketing notification and de-notification obligations when there are no investors in a host Member State; (ii) notification of AIFMs – specifically in relation to passporting and ancillary investment management functions; and (iii) calculating leverage – specifically in relation to calculating the leverage of an AIF whose core investment policy is to invest in real estate.

Date of publication: 14/06/2023

(b) UCITS

(i) EU

EC: Request for technical advice from ESMA on review of the Eligible Assets Directive

Status: Final

ESMA has published a letter (dated 6 June) it received from the EC formally requesting technical advice on the review of the Eligible Assets Directive (EAD). The EC plans to review the EAD, to take stock of the market practices to ensure that the eligibility rules are implemented in a uniform manner in all Member States, also taking into account market and regulatory developments that have occurred over the last 16 years. Therefore, the EC has mandated ESMA to carry out an assessment of the implementation of the EAD in Member States, to analyse whether any divergences have arisen in this area and to provide the EC with a set of recommendations on how the EAD should be revised to keep it in line with market developments.

In particular, the EC requests ESMA to: (i) propose clarifications on the key definitions and the criteria against which the eligibility of an asset is assessed; (ii) analyse whether and to what extent cross-references to other EU legal frameworks could improve legal clarity and, where appropriate, consistency between these frameworks; (iii) assess the risks and benefits of UCITS gaining exposures to asset classes that are not directly investable for UCITS; (iv) advise on possible legislative clarifications to address the shortcomings identified in the context of its supervisory convergence work; (v) conduct a data gathering exercise on the manner and the extent to which UCITS have gained direct and indirect exposures to certain asset categories that may give rise to divergent interpretations and/or risk for retail investors (e.g. structured/leveraged loans, catastrophe bonds, emission allowances, commodities, crypto-assets, unlisted equities, and other relevant asset classes); and (vi) make a preliminary assessment of the impacts of the proposed regulatory adjustments, if any, taking into account the characteristics of the underlying market.

The EC has requested that ESMA delivers its technical advice by 31 October 2024.

Date of publication: 16/06/2023

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

ESMA has updated its Q&A on the application of the UCITS Directive. It has added new Q&As on: (i) the management of AIFs and pension schemes by UCITS management companies; (ii) the de-notification of marketing arrangements for UCITS; and (iii) the scope of activities passported by UCITS management companies.

Date of publication: 14/06/2023

ECON: Draft report on the proposal for a Directive amending the UCITS Directive, the CRD IV and the IFD as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions**Status: Draft**

The ECON has published its draft report on the EC's legislative proposals for a Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions by amending the UCITS Directive, the CRD IV and the IFD. For more information, please see section 1.1(b) above.

Date of publication: 09/06/2023

ESMA: Follow-up report to the peer review on the Guidelines on ETFs and other UCITS issues**Status: Final**

ESMA has published its follow-up report to the peer review on the Guidelines on ETFs and other UCITS issues. The report found that NCAs have strengthened their supervisory practices, enhanced internal and external Guidance, and performed supervisory work in the area of ETFs and other UCITS since 2018. However, ESMA notes that there are still concerns in relation to the level of costs for some UCITS using Efficient Portfolio Management (EPM) techniques. The report assessed if BaFin, EFSA, and the CSSF had improved their practices based on the 2018 peer review findings and recommendations. In addition, ESMA assessed the supervisory work carried out by the AMF, BaFin, CBoI, and CSSF in relation to the attribution of revenues and costs derived from securities lending activities by UCITS. Moving forward, NCAs are expected to continue monitoring the effective application of the Guidelines and the effectiveness of the supervisory practices implemented, taking supervisory action when needed. Further work in the areas of costs, fees and revenues for EPM techniques and instruments could continue at EU level.

Date of publication: 06/06/2023

9.2 Prudential regulation

(a) Compliance

(i) EU**ECON: Draft report on the proposal for a Regulation amending EMIR, CRR and the MMF Regulation as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets****Status: Draft**

The ECON has published its draft report on the EC's legislative proposals for a Regulation amending EMIR, the CRR and the MMFR as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing (EMIR 3). For more information, please see section 1.1(b) above.

Date of publication: 13/06/2023

ESMA: TRV risk analysis on stress testing MMFs in the EU

Status: Final

ESMA has published an article on the results of the Money Market Funds (MMFs) stress tests reported to ESMA. The results show that liquidity and credit risks would be the most impactful for MMFs, in the context of the adverse scenario. The different redemption scenarios tested however show the capability of MMFs to meet redemption requests under adverse circumstances, despite a calibration reflecting the intensity of the March 2020 stress episode. This article presents the results of the stress tests reported at the end of 2021, drawing lessons from the stress episode affecting MMFs in March 2020 in a context of deep global recession caused by the COVID-19 pandemic.

Date of publication: 06/06/2023



10. Special topics

10.1 Brexit

(i) EU

EU-UK Memorandum of Understanding on financial services cooperation

Status: Final

The EU and UK have signed an MoU on regulatory cooperation in financial services. The MoU establishes the Joint EU-UK Financial Regulatory Forum to serve as a platform intended to take stock of progress and to undertake forward planning of regulatory cooperation. The Forum's general operational objectives are to: (i) improve transparency; (ii) reduce uncertainty; (iii) identify potential cross-border implementation issues, including concerns linked to potential regulatory arbitrage by firms; (iv) as appropriate, consider working towards compatibility with each other's standards; (v) when relevant, promote domestic implementation consistent with international standards; (vi) share knowledge to facilitate a common understanding of the EU and the UK's regulatory frameworks; and (vii) exchange information and views on other issues of common interest within the scope of these regulatory cooperation arrangements. The Forum will meet at least semi-annually, with the first meeting expected to take place in the autumn.

Date of publication: 27/06/2023

10.2 FinTech/Digital finance

(i) EU

ESMA: Speech on building safe digital financial markets

Status: Final

ESMA has published a speech by Verena Ross, ESMA Chair, on building safe digital financial markets: a collective effort. Ms Ross begins her speech by addressing current market conditions, noting that while economic sentiment has become more positive in early 2023, there is certainly no room for complacency and that ESMA is keeping the overall risk assessment across its remit at the highest level. Ms Ross believes that finalisation of the Digital Finance Package represents a very positive step in terms of creating an adequate regulatory and supervisory framework in the EU for the use of new technologies in financial services. Ms Ross also discusses: (i) MiCAR – ESMA has established a phased consultation plan to manage over 50 mandates for developing level 2 and 3 measures. It will consult on the measures in three consultation packages in early July, in October and in early 2024. Ms Ross notes that creating a safe and inclusive financial marketplace is not solely the responsibility of regulators but should be a collective effort. ESMA therefore welcomes industry-led initiatives to facilitate the efficient and prudent adoption of new technologies through the development of harmonised standards and the promotion of coordinated practices within the industry. ESMA is also prioritising initiatives to promote convergent approaches to authorisation and supervision of crypto-asset service providers, by sharing experiences, learning lessons from each other and finding common approaches wherever possible; (ii) DLT Pilot Regime Regulation – the first two official applications have already been submitted and around 15 other potential applications are in the pipeline for the second half of this year and the beginning of 2024. Ms Ross highlights that any lessons learned from the DLT pilot may result in changes to the main sectoral legislation in the EU, such as MiFID II and the CSDR; and (iii) CSDR – ESMA intends to publish a report in 2024 on settlement efficiency in the EU, including the impact of cash penalties and a comparison between CSD settlement and settlement internalised at the level of custodians. ESMA believes that a key part of the work to improve settlement efficiency is to identify and address the root causes of settlement fails, by looking at the entire custody and settlement chain. In addition, ESMA will continue to monitor international developments on T+1 to understand the impact on EU market players.

Date of publication: 21/06/2023

EC: Speech on digital finance and payments

Status: Final

The EC has published a speech by Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, setting out the EC's policy response at EU level to support digital finance as it evolves, and the progress made in implementing the retail payments strategy. For more information, please see section 6.1 above.

Date of publication: 20/06/2023

ESAs: Consultation on the first batch of policy products for DORA

Status: Consultation

Deadline for the submission of comments: 11/09/2023

The ESAs have launched consultations on the first batch of policy products for DORA. The ECB also published an introductory note that sets out further information on the draft technical standards.

A public hearing is due to be held on 13 July 2023. The ESAs expect to submit the draft technical standards to the EC by 17 January 2024.

- Consultation on draft RTS to further harmonise ICT risk management tools, methods, processes and policies as mandated under Articles 15 and 16(3) DORA
- Consultation paper draft RTS on specifying the criteria for the classification of ICT related incidents, materiality thresholds for major incidents and significant cyber threats under DORA
- Consultation on draft ITS to establish the templates composing the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers as mandated by DORA
- Consultation on draft RTS to specify the detailed content of the policy in relation to the contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers as mandated by DORA

Date of publication: 19/06/2023

EBA: Opinion on the EC's amendments relating to the final draft RTS on requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures supplementing Article 19(7) EU of the Crowdfunding Regulation

Status: Final

The EBA has published an Opinion on the amendments proposed by the European Commission to the EBA final draft RTS on requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures. The EC had made one substantive change with regard to the treatment of personal data included in the documentation related to the creditworthiness assessment of prospective project owners. Following the comments received by the European Data Protection Supervisor, the EC proposed to require that personal data included in that documentation will be kept for a limited period of time (no longer than five years) after the repayment of the final instalment of the loan.

In its Opinion, the EBA recognises the importance of treating personal data in accordance with the "storage limitation" principle established under Article 5(1) of the GDPR and, therefore, accepts the proposed amendment. The EBA highlights however that: (i) the record-keeping requirement in the RTS is aimed at providing enough time for crowdfunding platforms to build up a robust database on financial and non-financial factors on projects and project owners, to improve their scoring models and enhance benchmarking analysis; and (ii) personal data included in the documentation for the assessment of creditworthiness of prospective project owners will always be treated in accordance with GDPR, i.e. for the time necessary to fulfil the original purpose of their collection and use, in this case for the period that is necessary to assess the capacity of project owners to repay their loan.

Date of publication: 14/06/2023

Publication of the Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Status: Published in the OJ

Date of entry into force: 29/06/2023

Date of application: 30/12/2024

The Regulation on markets in crypto-assets, and amending Regulations (EU) 1093/2010 and (EU) 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA) has been published in the OJ. The Council of the EU adopted the text on 16 May, following the EP's adoption on 20 April, and published the adopted texts on 2 June.

An up-to-date overview of the MiCA implementing measures can be found on a [web page](#) set up by ESMA, which is dedicated to monitoring these developments.

Date of publication: 09/06/2023

Publication of Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

Status: Published in the OJ

Date of entry into force: 29/06/2023

Date of application: 30/12/2024

The Regulation on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (recast revised WTR) has been published in the OJ. For more information, please see section 5 above.

Date of publication: 09/06/2023

ESMA: Q&A on the implementation of the DLT Pilot Regime Regulation

Status: Final

ESMA has published an updated version of its Q&A on the implementation of the Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT Pilot Regime Regulation). ESMA has added new Q&As on the following topics: (i) DLT financial instruments; (ii) DLT market infrastructures; (iii) cash settlement; and (iv) exemptions from the CSDR. The Q&As were last updated in March.

Date of publication: 02/06/2023

(ii) International

BCBS: Discussion on recent market developments, agrees to consult on Basel Core Principles, and advances work on crypto-assets

Status: Final

The BCBS has announced the outcomes of its meeting to take stock of recent market developments and risks to the global banking system, and to discuss a range of policy and supervisory initiatives. During the meeting, the BCBS: (i) agreed to continue to examine the supervisory and regulatory implications stemming from the recent banking turmoil, building on existing initiatives already underway, including working on strengthening the effectiveness of supervision, liquidity risk management and interest rate risk in the banking book; (ii) reaffirmed its expectation of implementing all aspects of Basel III in full and consistently; (iii) agreed to consult on revisions to its Core principles for effective banking supervision (Basel Core Principles), drawing on supervisory insights and structural changes since the previous update in 2012. A consultation paper will be published in July; (iv) assessed certain outstanding elements of the prudential treatment of banks' exposures to crypto-assets. This includes work related to the treatment of permissionless blockchains as well as the eligibility criteria for "Group 1" stablecoins. Any potential revisions made to the existing standard will be subject to public consultation; (v) took stock of the work related to the development of a Pillar 3 framework requiring disclosure of bank exposures to climate-related financial risks. The BCBS agreed

to issue a consultation paper on the proposed framework by the end of this year; and (vi) reviewed and approved the assessment reports on the United States' implementation of the Net Stable Funding Ratio and large exposures framework.

The reports will be published next month.

Date of publication: 06/06/2023

10.3 AI

(i) EU

EC: Speech on digital finance and payments

Status: Final

The EC has published a speech by Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, setting out the EC's policy response at EU level to support digital finance as it evolves, and the progress made in implementing the retail payments strategy. For more information, please see section 6.1 above.

Date of publication: 20/06/2023

10.4 Sustainable finance

(i) EU

ESMA: Speech on building safe digital financial markets

Status: Final

ESMA has published a speech by Verena Ross, ESMA Chair, on building safe digital financial markets: a collective effort. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 21/06/2023

ESMA: Call for evidence on the integration of sustainability preferences in the suitability assessment and product governance arrangements

Status: Consultation

Deadline for the submission of comments: 15/09/2023

ESMA has published a call for evidence on the integration of sustainability preferences in the suitability assessment and product governance arrangements under MiFID II. The objective of this call for evidence is to gather industry feedback that will help better understand the evolution of the market and provide answers as to how firms apply the new MiFID rules on sustainability. In particular, ESMA wants to: (i) develop a better understanding of how MiFID II requirements are being implemented and applied by firms across the EU and the challenges firms face in their application; (ii) gain a better understanding of investor experience and reactions to the inclusion of sustainability factors in investment advice and portfolio management services; and (iii) collect information, views and data on main trends on aspects related to the provision of sustainable investment products and services to retail clients.

ESMA, together with the NCAs, will assess the responses and continue monitoring the application by firms of the MiFID II requirements on suitability and product governance, including the related ESMA Guidelines.

Date of publication: 16/06/2023

EC: Sustainable finance package

Status: Final

The EC has published a package of measures for the EU sustainable finance framework, which includes: (i) a proposal for a Regulation on the transparency and integrity of ESG rating activities – the EC aims for new organisational principles and clear rules on the prevention of conflicts of interest to increase the integrity of the operations of ESG rating providers. ESG rating providers will be authorised and supervised by ESMA. The EC will now engage in discussions with the EP and Council on the proposal; (ii) a new set of EU Taxonomy criteria for economic activities making a substantial contribution to one or more of the non-climate environmental objectives, namely: sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems. To complement this, the EC has also adopted targeted amendments to the EU Taxonomy Climate Delegated Act, which expand on economic activities contributing to climate change mitigation and adaptation not included so far – in particular in the manufacturing and transport sectors. The EC has also adopted amendments to the EU Taxonomy Disclosures Delegated Act, to clarify the disclosure obligations for the additional activities. Once all EU official languages are available, the Delegated Acts will be officially adopted and transmitted to the EP and the Council for their scrutiny. They are expected to apply as of January 2024; (iii) recommendations on transition finance to provide guidance as well as practical examples for companies and the financial sector; and (iv) an overview of the recent measures and tools put forward to address key implementation issues and questions raised by stakeholders, including an EU Taxonomy User Guide.

Date of publication: 13/06/2023

NGFS: Survey on climate scenarios

Status: Final

The Network for Greening the Financial System (NGFS) published the results of its first public feedback survey on climate scenarios. Of the 213 respondents from 57 countries, over 70% use the NGFS scenarios, primarily to assess how climate risks could affect their organisation, individual financial institutions, or financial stability. Looking ahead, key priorities identified by survey respondents align with and reinforce ongoing improvements planned for the next release of the NGFS scenarios, anticipated by the end of 2023.

Date of publication: 06/06/2023

ESAs: Publication of progress reports on greenwashing in the financial sector

Status: Final

The ESAs have published their progress reports on greenwashing in the financial sector. In these reports, the ESAs put forward a common high-level understanding of greenwashing applicable to market participants across their respective remits – banking, insurance and pensions and financial markets. The ESAs understand greenwashing to be ‘a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants’. The ESAs also highlight that sustainability-related misleading claims can occur and spread either intentionally or unintentionally and in relation to entities and products that are either within or outside the remit of the EU regulatory framework. The ESAs will publish final greenwashing reports in May 2024 and will consider final recommendations, including on possible changes to the EU regulatory framework.

These progress reports have been [welcomed by BaFin](#).

- [EBA Progress Report](#)
- [EIOPA Progress Report](#)
- [ESMA Progress Report](#)

Date of publication: 01/06/2023

(ii) International

ISSB: Inaugural global sustainability disclosure standards

Status: Final

The International Sustainability Standards Board (ISSB) has published the first two IFRS Sustainability Disclosure Standards: (i) IFRS S1 – these provide a set of disclosure requirements designed to enable companies to communicate to investors about the sustainability-related risks and opportunities they face over the short-, medium- and long-term; and (ii) IFRS S2 – these set out climate-related disclosures. The ISSB will now work with jurisdictions and companies to support adoption. Both standards are accompanied by guidance which suggests ways that a company may apply the disclosure requirements. The publication of these standards has been [welcomed by the FSB](#).

Date of publication: 26/06/2023

NGFS: Stocktake on financial institutions' transition plans and their relevance to micro-prudential authorities

Status: Final

The Network for Greening the Financial System (NGFS) published a report taking stock of emerging practices relating to climate transition plans and assessing the role of central banks and supervisors in relation to transition plans. The report sets out six key findings: (i) while the potential of transition plans is widely recognised, there are multiple definitions of transition plans, reflecting their use for different purposes; (ii) there is merit in distinguishing transition planning from a transition plan; (iii) existing frameworks speak to a mix of objectives, audiences and concerns for transition plans but predominantly relate to climate-related corporate disclosures; (iv) transition plans could be a useful source of information for micro-prudential authorities to develop a forward-looking view of whether the risks resulting from an institution's transition strategy are commensurate with its risk management framework; (v) there are some common elements to all transition plans which are relevant to assessing safety and soundness; and (vi) the role that micro-prudential authorities play needs to be situated in the context of the actions of other financial and non-financial regulators rather than acting in isolation.

Following the overall conclusion and key findings, the NGFS plans to take forward actions in two broad areas: (a) engaging with standard-setting bodies so that they can advance their respective work on transition plans and planning in a coordinated manner; and (b) take forward additional work to advance the discussion on the relevance of transition plans and planning to micro-prudential authorities' mandate, supervisory toolkit, and the overall prudential framework.

Date of publication: 31/05/2023

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