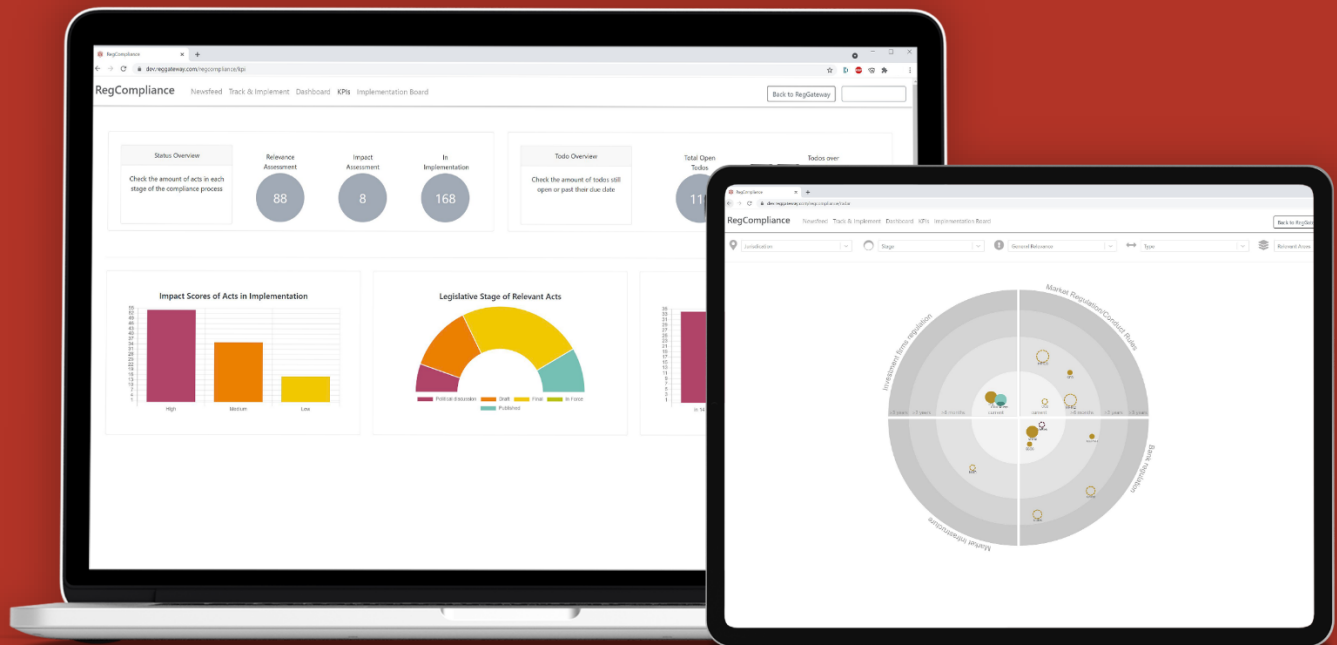


# Regulatory monitoring: EU Version

Newsletter

September 2022





More information  
under [reggateway.com](https://reggateway.com)

# RegGateway

## The All-in-One solution for regulatory monitoring & compliance

### Features

#### HORIZON SCANNING / REGULATORY MONITORING

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

#### FINANCIAL REGULATORY LAW SOURCEBOOK

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

#### IMPLEMENTATION MANAGEMENT

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

#### CHANGE ANALYSIS AND PREVIEW OF RULES

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

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# 1. Bank regulation

## 1.1 Prudential regulation

### (a) General

#### (i) EU

##### **EBA: Basel III monitoring exercise – results based on data as of 31 December 2021**

Status: Final

The EBA has published its first mandatory Basel III Monitoring Report which assesses the impact that Basel III full implementation will have on EU banks in 2028. According to this assessment, which uses a significantly larger sample than in previous years and applies the same methodology as the BCBS, the full Basel III implementation would result in an average increase of 15.0% of the current Tier 1 minimum required capital of EU banks. To comply with the new framework, EU banks would need EUR 1.2 billion of additional Tier 1 capital. The overall impact includes the economic impact of the Covid-19 pandemic on participating banks that materialised up to December 2021, the reference date of this Report. The Report also includes a separate Annex on the impact of the EU Commission proposal for the EU implementation under the Capital Requirements Regulation (CRR3).

Date of publication: 30/09/2022

##### **ESRB: Warning on vulnerabilities in the Union financial system**

Status: Final

The ESRB has published a [report of its meeting](#) on 22 September and issued a warning on vulnerabilities in the financial system of the EU. The General Board of the ESRB have concluded that risks to financial stability in the EU and the probability of tail-risk scenarios materialising have increased. The identified risks pertain to: (i) the deterioration of the macroeconomic outlook; (ii) risks to financial stability stemming from a (possible) sharp asset price correction; and (iii) the implications of such developments for asset quality. The General Board noted that the resilience of the EU financial sector is already being supported by the actions of both microprudential and macroprudential authorities. The General Board calls for these authorities to preserve or enhance this resilience so that the financial sector can continue to support the real economy if and when financial stability risks materialise. According to the General Board, it is necessary for private sector institutions, market participants and relevant authorities to continue preparing for scenarios in which tail risks materialise. The General Board also calls for close coordination between relevant authorities and prudent risk management practices across all financial sectors and market participants, as these remain key to effectively addressing vulnerabilities, and for the avoidance of market fragmentation and negative externalities for other EU Member States. The ESRB also released the 41st issue of its risk dashboard. On this topic, please also see the report by the ESAs below.

Date of publication: 29/09/2022

##### **ESAs: Joint committee report on risks and vulnerabilities in the EU financial system**

Status: Final

The ESAs have published the Autumn 2022 joint risk report. The report highlights that the recovery associated with the receding pandemic has slowed as a result of the Russian aggression in Ukraine. It has contributed to high inflation and is damaging the economic outlook, leading to increased financial market risks across the board. Policy rates are being raised in response and the resulting higher financing costs and lower economic growth may put pressure on the government, and on corporate and household debt refinancing. It will likely also have a negative impact on the credit quality of financial institution loan portfolios. Financial institutions are faced with increased operational challenges associated with heightened cyber risks and the implementation of sanctions against Russia. The financial system has to date been resilient despite the increasing political and economic uncertainty. In light of this, the ESAs advise NCAs, financial institutions and market participants to: (i) prepare for a deterioration in asset quality in the financial sector and monitor developments, including in assets that have benefited from

temporary measures relating to the pandemic and those that are particularly vulnerable to a deteriorating economic environment, and to inflation as well as high energy and commodity prices; (ii) monitor the impact of further increases in policy rates and of potential sudden increases in risk premia on financial institutions and market participants; (iii) monitor the impact of inflation risks; (iv) monitor risks to retail investors, in particular with regard to products where consumers may not fully realise the extent of the risks involved, such as crypto-assets; and (v) manage environmental risks and cyber risks to address threats to information security and business continuity. On this topic, please also see the ESRB report above.

Date of publication: 12/09/2022

### **EBA: Launch of the 2022 EU-wide transparency exercise**

Status: Final

The EBA has launched its annual EU-wide transparency exercise, as part of its efforts to monitor risks and vulnerabilities and to reinforce market discipline. The EBA states that, as in the past, the exercise is exclusively based on supervisory reporting data, which the EBA says will keep the burden on the banks to a minimum. The EBA expects to release more than 1 million data points, on average more than 10,000 data points per bank, with about 120 participating banks. As in previous years, the data will cover capital positions, profitability, financial assets, risk exposure amounts, sovereign exposures and asset quality. Results are expected to be published at the beginning of December.

Date of publication: 23/09/2022

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

Status: Published in the OJ

Date of entry into force: 30/04/2022

14 EEA Joint Committee Decisions that amend Annex IX (Financial Services) to the EEA Agreement have been published in the OJ. The Decisions incorporate a number of Implementing and Delegated Regulations, Decisions and Directives with regards to the CRR, CRD IV, SFDR, Taxonomy Regulation, PRIIPs Regulation, the SSR, the BMR and the MMFR into the EEA Agreement. BRRD II is also incorporated.

Date of publication: 22/09/2022

### **Council of the EU: Text of proposed 'Daisy Chain' Regulation**

Status: Draft

The Council of the EU has published the text of the Regulation making targeted amendments to the CRR relating to total loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL). The Council published the text ahead of its adoption of the Regulation.

Date of publication: 21/09/2022

### **EP: Adoption of Daisy Chain proposal at first reading**

Status: Adopted by the EP

The EP has voted in plenary to adopt its first reading position on the EC's legislative proposal for a Regulation making targeted amendments to the CRR relating to total loss-absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL). The next step is for the Council to adopt the proposal. The Regulation will enter into force and apply 20 days after it is published in the OJ.

Date of publication: 13/09/2022



## (ii) Eurozone

### ECB: Overview of the Eurosystem integrated reporting framework

Status: Final

The ECB has published three reports assessing the cost benefits of the Eurosystem integrated reporting framework (IReF), which consists of a range of data-reporting obligations specified in different legal frameworks with different reporting processes, including an obligation to report statistical, resolution and prudential information. The IReF seeks to integrate, insofar as possible, these existing statistical data requirements for banks into a single, standardised reporting framework applicable across the euro area.

- Cost-benefit assessment of the Integrated Reporting Framework: the technical integration of country-specific requirements
- Cost-benefit assessment of the Integrated Reporting Framework: reporting schedules, revision policy, approach to derogations and implementation aspects
- Cost-benefit assessment of the Integrated Reporting Framework: content-related topics and technical aspects

Date of publication: 15/09/2022

## (iii) International

### BCBS: Basel III Monitoring Report 2022

Status: Final

BCBS has published its Basel III Monitoring Report 2022. This report shows that the initial Basel III capital ratios had increased to the highest level since the beginning of the exercise in 2012, and banks' profits remained at or near record high levels across all regions in H2 2021. It also includes special features on banks' exposure to crypto-assets and on capital buffers and total CET1 requirements. Furthermore, the accompanying dashboards now provide an interactive visualisation of the results for market, operational, counterparty credit and credit valuation adjustment risks.

Date of publication: 30/09/2022

### BCBS: Basel Committee advances work on evaluating Basel III reforms and addressing climate-related financial risks, and approves annual G-SIB assessment

Status: Final

The Basel Committee has published a statement following two meetings to take stock of risks to the global banking system and related vulnerabilities, and to discuss a range of policy and supervisory initiatives. It has agreed to publish an evaluation report on buffer usability and cyclical in the Basel framework and to keep discussing ongoing work relating to measures to address climate-related financial risks. The committee has also approved an annual assessment exercise for global systemically important banks (G-SIBs).

Date of publication: 15/09/2022

### BCBS: Governors and Heads of Supervision reaffirm expectation to implement Basel III in full and as fast as possible and provide direction on future work on climate-related financial risks and crypto-assets

Status: Final

BCBS' oversight body, the Group of Central Bank Governors and Heads of Supervision (GHOS), has reiterated its expectations of a full and timely implementation of Basel III, in order to provide a regulatory level playing field for internationally active banks. More than two-thirds of jurisdictions plan to implement all, or the majority of, the standards in 2023/2024, with the remaining jurisdictions planning to implement Basel III in 2025. There are only a limited set of technical standards that are particularly subject to an implementation delay. GHOS also reviewed the BCBS' work on: (i) climate-related financial risks – GHOS reaffirmed the scope of the work and endorsed the holistic approach to developing and assessing potential measures relating to disclosure, supervision and/or regulation; and (ii) cryptoassets – GHOS reiterated the importance of designing a

robust and prudent regulatory framework for banks' exposure to cryptoassets that promotes responsible innovation while preserving financial stability. The GHOS tasked BCBS with finalising this framework around 2022 year-end.

Date of publication: 13/09/2022

### BCBS: FAQs on Basel III Monitoring

Status: Final

BCBS has updated its FAQs on Basel III monitoring by adding a new question (no. 11), which sets out that banks should report in column AV the market value of any crypto-asset exposure amounts which are not reported in columns N to AK.

Date of publication: 25/08/2022

## (b) Solvency/Own funds issues

### (i) EU

#### EBA: Amending Guidelines on the specification and disclosure of systemic importance indicators

Status: Final

The EBA has published amending Guidelines on the specification and disclosure of systemic importance indicators. The Guidelines relate to the ex ante disclosures by European Banking Union-headquartered G-SIBs. An additional identification methodology of G-SIBs in the EU was considered necessary and appropriate and was detailed in Delegated Regulation 2021/539. According to this additional methodology, the additional overall G-SIB score is requested to account for the specificities of the European Banking Union and the SRM within cross-border activity indicators. The BCBS has agreed to give recognition in the G-SIB framework to the progress made in developing the Banking Union through the existing methodology, which allows for adjustments to be made according to supervisory judgement. The EBA explain that items relating to the recognition of the Banking Union, while part of the "memorandum items" under the Basel framework, cannot be considered as "ancillary or memorandum items" within the Banking Union context. The amending Guidelines explain that they constitute a core part of the classification of G-SIBs in the EU and must be disclosed. Disclosure of this data reinforces the credibility and commitment of the EU to fulfil the Basel agreement and provides transparent information on any future supervisory judgement decision taken. As a result, the EBA needs to provide a harmonised understanding of the term "ancillary or memorandum items", referred to in both Commission Implementing Regulation (EU) 2021/637 and the Guidelines. A new paragraph 10a is added to section 4 of the Guidelines, stating that data items relevant for the calculation of adjusted cross-jurisdictional indicators concerning institutions headquartered in member states adhering to the SRM should be considered as part of the cross-jurisdictional activity indicators and not as ancillary or memorandum items for the G-SIB identification and sub-category allocation methodology. Given the limited extent of the changes and the limited impact on the affected institutions, it was deemed disproportionate to carry out a public consultation.

Date of publication: 29/09/2022

#### Commission Implementing Regulation (EU) 2022/1650 amending the ITS laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with the CRR

Status: Published in the OJ

Date of entry into force: 17/10/2022

The Commission Implementing Regulation (EU) 2022/1650 amending the ITS laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with the CRR has been published in the OJ. The amendments reflect the change to the definition of 'recognised exchange' laid down in Regulation 2019/2033 such that 'recognised exchanges' are no longer restricted to 'regulated markets' only but also extend to "a third-country market that is considered to be equivalent". They also address changes that have occurred in the market structure since the entry into force of Implementing Regulation 2016/1646, particularly as regards the appearance of new exchanges, mergers, name changes or

cessation of activities and as a result of the UK's status as a third country. The Implementing Regulation replaces Annex I (Main indices specified under Article 197 CRR) and Annex II (Recognised exchanges specified under Article 197 CRR).

Date of publication: 27/09/2022

### **Commission Delegated Regulation (EU) 2022/1622 supplementing the CRR with regard to RTS on emerging markets and advanced economies**

Status: Published in the OJ

Date of entry into force: 11/10/2022

The Commission Delegated Regulation (EU) 2022/1622 on RTS on emerging markets and advanced economies has been published in the OJ. The RTS reflect a mandate set out in Article 325a of the CRR to specify what constitutes an emerging market and an advanced economy for the purposes of specifying risk weights for the sensitivities to equity and equity repo rate risk factors for the calculation of the own funds requirement under the alternative standardised approach. All markets not specified as advanced economies should be considered to be emerging markets.

Date of publication: 21/10/2022

## **(c) Securitisation**

### **(i) EU**

#### **EBA: Final draft RTS specifying the performance-related triggers pursuant to Article 26c(5) of the Securitisation Regulation as amended by Regulation (EU) 2021/557**

Status: Final

The EBA has published its final draft RTS specifying the minimum performance-related triggers for simple, transparent and standardised (STS) on-balance-sheet securitisations that feature non-sequential amortisation. The Capital Markets Recovery Package amended the Securitisation Regulation in several aspects, including creating a specific framework for STS on-balance-sheet securitisation. With the purpose of standardisation, the amended Securitisation Regulation sets out that sequential amortisation shall be applied to all tranches of STS on-balance-sheet securitisations. However, as a derogation, STS on-balance-sheet securitisation might feature non-sequential amortisation to avoid disproportionate costs of protection, as long as some minimum performance-related triggers determine the application of sequential amortisation. This will ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction. These draft RTS further specify: (i) the minimum backward and forward-looking triggers and establish criteria to be fulfilled by the parties involved in the securitisation in order to set the level of the triggers. For this purpose, in the case of the minimum backward-looking triggers, the parties involved in the securitisation shall test the effectiveness of the trigger in a back-loaded loss distribution scenario taking into account the losses expected over the maturity of the transaction at inception; and (ii) the transitional provisions in respect of STS on-balance-sheet securitisations, which include triggers related to the performance of the underlying exposures in accordance with Article 26c(5) of the Securitisation Regulation. The final draft RTS will be submitted to the EC for adoption, and will then be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 20/09/2022

**(d) Liquidity****(i) International****BCBS: Basel Committee finds Japan compliant with its Net Stable Funding Ratio standard and largely compliant with its large exposures framework; updates Handbook for jurisdictional assessments****Status: Final**

The BCBS has published its assessment report on the implementation of its global standards in Japan in the context of its Regulatory Consistency Assessment Programme (RCAP). These assessments have found that Japanese regulations are respectively compliant and largely compliant with the Basel Committee's Net Stable Funding Ratio (NSFR) standard and large exposures framework. The BCBS has also published an updated version of its Handbook for jurisdictional assessments.

- RCAP: Assessment of Basel Committee's large exposures framework for Japan
- RCAP: Assessment of Basel Committee's NSFR standard for Japan
- RCAP: Handbook for Jurisdictional Assessments

Date of publication: 28/09/2022

**(e) Risk management/SREP/Pillar 2/Outsourcing/NPL****(i) EU****FMLC: Response to the EBA Consultation on ITS on NPL transaction data templates****Status: Draft**

The Financial Markets Law Committee (FMLC) has published a letter it sent to the EBA outlining uncertainties it has identified in relation to the draft ITS specifying disclosure templates to be used for the provision of information in connection with the sale of non-performing loans (NPLs) under the Directive on credit servicers and credit purchasers. The issues highlighted by the FMLC include: (i) the treatment of large, syndicated corporate loans. It is unclear, for example, if the involvement of a single EU bank in the initial lending syndicate will bring the whole loan into scope or only that portion of the loan funded by the EU bank; (ii) where there are multiple EU banks in a lending syndicate but they don't all classify the loan as non-performing in accordance with Article 47a of the CRR at the same time or at all; (iii) the servicing framework set out in the Directive, which largely exempts servicing by regulated financial institutions from needing separate licensing. It is unclear why MiFID investment firms, who regularly manage assets on behalf of clients, have not also been exempted in the same way; (iv) that by bringing a loan into scope on the basis of its classification in accordance with Article 47a of the CRR, it is unclear whether a loan can become non-performing for the purposes of the Directive where it is held in the trading book or when held by a non-bank, two scenarios not covered by Article 47a CRR assessments; and (v) there are a number of transitional issues, including the transitional provisions around the requirements for data provision. In addition to clarifying these issues, the FMLC recommends that the EBA or the ESAs issue interpretive guidance.

Date of publication: 02/09/2022

**ECB: Re-evaluation of SREP****Status: Final**

The ECB has announced that it has appointed five high-level experts to review the effectiveness and the efficiency of the Supervisory Review and Evaluation Process (SREP) as well as how it relates to other supervisory processes. The group will engage with major relevant stakeholders and other international experts to gather information and perspectives on supervisory best practices. Its mandate runs until the end of Q1 2023.

Date of publication: 01/09/2022

## (f) Large exposures/Limits to shadow banking entities

### (i) International

**BCBS: Basel Committee finds Japan compliant with its Net Stable Funding Ratio standard and largely compliant with its large exposures framework; updates Handbook for jurisdictional assessments**

Status: Final

The BCBS has published its assessment report on the implementation of its global standards in Japan in the context of its Regulatory Consistency Assessment Programme (RCAP). For more information, please see section 1.1(d) above.

Date of publication: 28/09/2022

## (g) Qualifying holdings

### (i) EU

**ECB: Public consultation on the draft Guide to qualifying holding procedures**

Status: Consultation

Deadline for the submission of comments: 09/11/2022

The ECB has launched a consultation on its draft Guide to qualifying holding procedures. The Guide aims to clarify how the ECB assesses applications to acquire qualifying holdings in banks as a user-friendly handbook. It explains who is obliged to undergo qualifying holding assessments, the documentation required to apply and how the ECB assesses these transactions. The draft Guide also provides information on complex acquisition structures, the application of the principle of proportionality and specific procedural elements. This Guide to qualifying holding procedures will complement the ECB's Guide on the supervisory approach to consolidation in the banking sector, as the two Guides have a complementary focus.

In particular, this consultation is addressed to banks, investors and other stakeholders involved in bank acquisitions.

Date of publication: 28/09/2022

## 1.2 Recovery and resolution

### (i) EU

**EBA: Final report on Guidelines for institutions and resolution authorities to complement the resolvability assessment for transfer strategies (Transferability Guidelines)**

Status: Final

The EBA has published a final report on Guidelines for institutions and resolution authorities to complement the resolvability assessment for transfer strategies, the so-called Transferability Guidelines. In particular, they provide guidance relating to: (i) the definition of the transfer perimeter. Transferability covers all the elements that will facilitate the transfer of an entity, a business line or a portfolio of assets, rights or liabilities to an acquirer (public or private company), a bridge institution or an asset management company; and (ii) the steps to operationalise the implementation of the transfer. The transferability Guidelines complement the resolvability Guidelines, which were published on 13 January. They do not apply to institutions subject to simplified obligations or earmarked for liquidation, unless resolution authorities decide so (in full or in part). In addition, discretion is left to authorities with regards to the extent of application of the Guidelines in cases where the transfer tool is only part of the variant strategy. Those institutions are expected to comply by 1 January 2024. The Guidelines will be updated and complemented as progress is achieved on relevant policy topics, both at international and EU level. In particular, the EBA is

currently consulting on publication of the bail-in mechanics by resolution authorities and working on the topics of resolvability testing and transparency.

Institutions subject to the Guidelines and resolution authorities should comply with these Guidelines in full by 1 January 2024.

Date of publication: 28/09/2022

### Council of the EU: Text of proposed 'Daisy Chain' Regulation

Status: Draft

The Council of the EU has published the text of the Regulation making targeted amendments to the CRR relating to total loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL). For more information, please see section 1.11.1(a) above.

Date of publication: 21/09/2022

### EP: Adoption of Daisy Chain proposal at first reading

Status: Adopted by the EP

The EP has voted in plenary to adopt its first reading position on the EC's legislative proposal for a Regulation making targeted amendments to the CRR relating to total loss-absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL). For more information, please see section 1.11.1(a) above.

Date of publication: 13/09/2022

## (ii) Eurozone

### SRB: Webpage on 2023 resolution reporting

Status: Final

The SRB has published a new webpage on 2023 resolution reporting. The page summarises the reporting process, requirements and timeline relating to the 2023 resolution reporting data-collection exercise and collates accompanying guidance and other documents.

Date of publication: 26/09/2022

### SRB: CRR quick fix: changes to SRB policy for multiple point of entry banks

Status: Final

The SRB has issued a statement on changes to its policy. The proposed revisions clarify that a resolution authority can only take TLAC surpluses into consideration for loss-absorbing or recapitalisation purposes when they are located in third countries with a legally enforceable resolution framework that meets the standards of the FSB Key Attributes of Effective Resolution Regimes as well as the TLAC term sheet. Where the SRB recognises such surpluses for the purpose of TLAC resources of the parent entity, the subsidiary shall deduct the corresponding amount in accordance with CRR Article 72e(4). The SRB will apply the same principles when determining the MREL for all MPE banks, including for non-GSIs. Under the new rules, a transition period will operate until 31 December 2024 during which the SRB can recognise a surplus in a third country that does not yet have in place a resolution regime if: (i) there is no generally applicable current or foreseen material practical or legal impediment to the prompt transfer of assets from the subsidiary to the parent institution; and/or (ii) the relevant third-country authority of the subsidiary has provided an opinion to the resolution authority of the parent institution that assets equal to the amount to be deducted by the subsidiary in accordance with CRR Article 72e(4) could be transferred from the subsidiary to the parent institution.

Date of publication: 22/09/2022



### (iii) International

#### **FSB: Online survey on experiences with the FSB Framework for information from FMI Intermediaries to support resolution planning**

Status: Consultation

Deadline for the submission of comments: 09/10/2022

The FSB has launched a survey to gather feedback on its Framework for information from FMI Intermediaries to support resolution planning. The Framework aims to help FMI intermediaries better understand which information clients and their resolution authorities may need from them in the run up to, and during, a firm's resolution by providing an overview of the baseline information that is potentially relevant for clients and resolution authorities and which they and FMI intermediaries can then discuss, as needed, in their bilateral engagement. This survey aims to gather stakeholders' feedback on the framework from the perspective of FMI service providers as well as firms subject to a resolution planning requirement and bank resolution authorities (as users of FMI service providers' responses). The deadline for comments is 9 October.

Date of publication: 14/09/2022

## 2. Investment firms regulation

### (i) EU

#### Commission Delegated Regulation (EU) 2022/1455 supplementing the IFR with regard to RTS for own funds requirement for investment firms based on fixed overheads

Status: Published in the OJ

Date of entry into force: 25/09/2022

The Delegated Regulation (EU) 2022/1455 supplementing the IFR with regard to RTS for own funds requirement for investment firms based on fixed overheads under the IFR has been published in the OJ. These RTS: (i) further specify the deductions to be applied for the calculation from the figures resulting from the applicable accounting standards that are the basis for the calculation of the fixed overheads; (ii) introduce criteria specifying the notion of material change in the activity of an investment firm; and (iii) clarify the additional items to be deducted from the total expenses by commodity and emission allowance dealers on account of the specific nature of the activities conducted by those undertakings. Since the mandate is similar to the mandate set out in the CRR, these draft RTS are based on the equivalent CRR RTS set out in Commission Delegated Regulation (EU) 2015/488, taking into account the broader scope of application and the necessary additional specifications.

Date of publication: 05/09/2022



## 3. Market regulation/Conduct rules

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### 3.1 Consumer protection rules

#### (i) EU

##### **EC: Call for evidence on a regulation on strengthened enforcement cooperation in the context of consumer protection**

Status: Consultation

Deadline for the submission of comments: 21/12/2022

The EC has launched a call for evidence on a regulation on strengthened enforcement cooperation in the context of consumer protection. The digitalisation of consumer markets and new business models pose new challenges for enforcing EU consumer law. Consumer authorities and the Commission need to cooperate closely to effectively address non-compliant business practices across borders. A flexible, deterrent, cost-effective and rapid response is key, in particular where breaches are widespread or affect entire sectors. This initiative makes targeted changes to the Consumer Protection Cooperation Regulation to address these issues.

Date of publication: 28/09/2022

##### **EC: Call for evidence on a directive on adapting out-of-court dispute resolution to digital markets in the context of consumer protection**

Status: Consultation

Deadline for the submission of comments: 21/12/2022

The EC has launched a call for evidence on a directive on adapting out-of-court dispute resolution to digital markets in the context of consumer protection. Alternative dispute resolution (ADR) aims to ensure redress for consumers without them having to go to court. Digital markets require fast and simple redress mechanisms. Against this background, the current ADR legislation must be updated to meet those requirements.

Date of publication: 28/09/2022

##### **EP: Negotiation positions on the Consumer Credit Directive II**

Status: Draft

The EP has published a comparison table of the negotiating positions of the EU institutions on the proposal for a Directive on consumer credits to revise and replace the current CCD. The first trilogue took place on 15 September, with further trilogues scheduled for 26 October and 29 November. Among the points discussed in the first trilogue were the scope, the information provided to consumers, the creditworthiness assessment, the advertisement of credit, the overdraft facilities and overrunning, the caps, and the penalties.

- [Comparison table on the Articles](#)
- [Comparison table on the Annexes](#)

Date of publication: 16/09/2022

**EP: Report on the proposal for a Directive on consumer credits (CCD II)****Status:** Final

The EP's Internal Market and Consumer Protection Committee (IMCO) has published its report on the EC's legislative proposal for CCD II. The report sets out a draft EP legislative resolution. The EP will vote on the report in a future plenary session, following which it will commence trilogue negotiations with the EC and the Council.

Date of publication: 05/09/2022

**(ii) International****IOSCO: Final report on Retail Investor Education in the Context of Sustainable Finance Markets and Products****Status:** Final

IOSCO has published a report on retail investor education in the context of sustainable finance markets and products. Therein, IOSCO explains that securities regulators have increasingly focused on whether sustainable finance claims are accurate and if investors have the information they need to evaluate sustainable finance products. However, to make informed decisions, retail investors need to understand the characteristics of such products. Accordingly, the report: (i) identifies some of the main challenges and sound practices for developing educational content on these matters, informing investors of the features and risks of sustainable investments and fostering educational activities that create the conditions for better protecting and informing retail investors of the opportunities and risks related to sustainable finance products; and (ii) describes educational activities that regulators should consider, taking into account the level of sustainable finance and retail investor participation in their markets. This includes: (a) explaining to retail investors how to obtain sustainability-related information and to search and understand whether the offered product(s) matches their sustainability-related preferences; and (b) supporting initiatives of market participants to help retail investors understand ESG certifications, labels and scores regarding the financial products offered to individuals and encouraging and/or facilitating training that helps financial advisors to better understand greenwashing and how to protect investors against unsubstantiated or misleading sustainability claims. The report includes a collection of examples of investor education materials and tools for possible reference or use.

Date of publication: 31/08/2022

## 3.2 Market abuse

**(i) EU****ESMA: Q&A on the Market Abuse Regulation (MAR)****Status:** Final

ESMA has updated its Q&A on the Market Abuse Regulation (MAR). The updated Q&A include two new questions on the topic of disclosure of inside information. The first of these questions deals with financial guidance and disclosure of inside information (Q5.11) and the second one concerns market analysts' expectations and the identification of inside information (Q5.12). The content of this document is aimed at competent authorities to ensure that their supervisory activities and their actions are converging along the lines of the responses adopted by ESMA and also at helping issuers, investors and other market participants by providing clarity on the content of the market abuse rules, rather than creating an extra layer of requirements.

Date of publication: 23/09/2022

## 3.3 MiFID/MiFIR

### (i) EU

#### **ESMA: Public statement to investment firms on the impact of inflation in the context of investment services to retail clients**

Status: Final

ESMA has published a statement reminding investment firms to consider the impact of rising inflation in the EU and the rest of the world, as is the case at the moment, when applying relevant MiFID II requirements in the interest of investor protection. ESMA notes that the rise in inflation poses a risk for retail investors, as some of them will not fully appreciate the link between inflation and financial markets and may not fully understand how considerations on inflation should be factored into their saving and investment decisions. ESMA reminds firms of requirements under MiFID II when manufacturing and distributing investment products and when providing investment services to retail clients. In particular, it highlights the requirement: (i) to provide fair, clear and not misleading information to clients. In particular, ESMA expects firms to ensure that the information they address to retail clients, or disseminate in such a way that it is likely to be received by them, reflects, in comprehensible form, inflation risks and the possible effect this may have on the value and return of the investment; and (ii) to assess the suitability of products for clients, including to ensure that the client has an adequate understanding of the relationship between risk and return (including, where relevant, the impact inflation might have on nominal returns, the necessarily low remuneration of risk-free assets and the incidence of time horizon on this relationship, and of the impact of overall costs and charges on his investments). ESMA also expects manufacturers and distributors to consider the effect of expected inflation in their product governance processes.

Date of publication: 27/09/2022

#### **ESMA: Final Report on Guidelines on certain aspects of the MiFID II suitability requirements**

Status: Final

ESMA has published a final report on its Guidelines on certain aspects of the MiFID II suitability requirements. This assessment of suitability is one of the most important requirements for investor protection in the MiFID framework. The Guidelines were reviewed following: (i) amendments to Commission Delegated Regulation 2017/565 to integrate sustainability factors, risk and preferences into certain organisational requirements and operating conditions for investment firms; (ii) the good and poor practices identified in ESMA's 2020 Common Supervisory Action on suitability; and (iii) the amendments introduced through the Capital Markets Recovery Package to Article 25(2) of MiFID II. The changes relate to sustainability preferences and organisational requirements. Feedback on ESMA's January consultation on the Guidelines, together with ESMA's response, is set out in Annex III to the report.

The Guidelines will apply six months after they are translated into the official languages of the EU and published on ESMA's website.

Date of publication: 23/09/2022

#### **ESMA: Q&A on MiFID II and MiFIR commodity derivatives topics**

Status: Final

ESMA has revised its Q&A on MiFID II and MiFIR commodity derivatives topics. This includes updates to several questions in the following categories: (i) position limits; (ii) ancillary activity; (iii) position reporting; and (iv) third country issues. The revision reflects mainly the amendments introduced by the Recovery Package for commodity derivatives, including those introduced by the entry into force of the latest [technical standards](#) and the Commission Delegated Regulation on the ancillary activity criteria. The Recovery Package has introduced significant changes to the EU commodities derivatives framework, with the main changes including: (i) amendments to the criteria to be met for the ancillary activity exemption and deletion of and the yearly notification of eligibility by the market participant to the relevant NCA; (ii) a limitation on position limits to agricultural commodity derivatives and to significant or critical contracts; (iii) the introduction of new exemptions to the position limits regime; and (iv) an exclusion of securitised derivatives based on commodities or commodity indices from position limits and position reporting.

Date of publication: 23/09/2022

### ESMA: Q&A on MiFID II and MiFIR market structures topics

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR market structures topics. The updated Q&A include a new question on the subject of Direct Electronic Access (DEA) and algorithmic trading, confirming that trading venues can set specific trading hours which are either applicable only to a sub-set of financial instruments or to a specific financial instrument insofar as these trading hours are properly communicated.

Date of publication: 23/09/2022

### EC: Infringement decisions following non-transposition of EU legislation

Status: Final

The EC has announced that it is adopting a package of infringement decisions due to the absence of communication by Member States of measures taken to transpose EU directives into national law. The EC is sending a letter of formal notice to those Member States which have failed to notify national measures transposing directives. In this case, there are 24 Member States who have not yet notified full transposition measures for ten EU directives whose transposition deadline expired between 1 July and 31 August 2022. The Member States concerned now have two months to reply to the letters of formal notice and complete their transposition, or the EC may decide to issue a reasoned opinion. Amongst others, the press release refers to:

(i) Commission Delegated Directive (EU) 2021/1269 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into MiFID II product governance obligations; and (ii) Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS.

Date of publication: 21/09/2022

### ESMA: Q&A on MiFID II and MiFIR transparency topics

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR transparency topics. ESMA has included a new Q&A in the section on third country issues to confirm that transactions executed between two branches of the same legal entity, or between a branch and its parent company, are not subject to transparency or transaction reporting requirements, as they do not entail a change in the ownership of financial instruments.

Date of publication: 05/09/2022



## 4. Market infrastructure

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### 4.1 Custody rules

#### (i) EU

##### **ESMA: Recommendation from the Working Group on Euro Risk-Free Rates on the availability of derivative products referencing €STR**

Status: Final

ESMA has published a recommendation from the Working Group on Euro Risk-Free Rates on the availability of derivative products referencing €STR, particularly those that will be utilised for the purpose of calculating and publishing a forward-looking term €STR rate in order to support the adoption of EURIBOR fallback. For all market making institutions, the group recommends that all reasonable steps are taken to make derivatives referencing the €STR benchmark available to customers. These may include (but are not limited to) the adoption of derivative products onto relevant platforms and market infrastructure; and the provision of pricing referencing both €STR and EURIBOR when discussing product options with customers. For all market participants transacting in derivatives referencing Euro denominated benchmarks, the group recommends assessing whether €STR would be a suitable benchmark for their needs and, where relevant, taking the necessary steps to be able to transact accordingly, including the adoption or development of the necessary infrastructure.

Date of publication: 26/09/2022

##### **ECB: Opinion on a proposal for a regulation amending the Central Securities Depositories Regulation**

Status: Draft

The ECB has published an opinion in response to the [EC proposal](#) for a Regulation amending the Central Securities Depositories Regulation (CSDR) as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories (CSDs). The ECB welcomes the proposed regulation and strongly supports further facilitating capital markets integration by reducing barriers to the cross-border provision of settlement services. The ECB goes on to make specific observations, including in relation to: (i) a more targeted scope for the CSDR's settlement discipline regime. The ECB considers that the settlement discipline regime should take as its starting point the aim of sanctioning only those settlement failures that result in adverse financial effects for the counterparty of the failing party. The ECB welcomes the proposed exclusions from the settlement discipline regime of both settlement failures caused by factors not attributable to the participants to the transaction, and settlement failures occurring in the context of transactions that do not involve 'two trading parties' (although the ECB invites the Union legislator to consider clarifying the scope of this exclusion). The ECB considers regulation-driven mandatory buy-ins to be a significant interference in the execution of securities transactions and the functioning of securities markets and that it would be preferable to discard the possibility of mandatory buy-ins altogether. If maintained, the conditions for activating a mandatory buy-in mechanism in respect of certain financial instruments or categories of transactions should be weighed against the impact of mandatory buy-ins on the functioning of securities markets and the effect on the financial stability and settlement efficiency in the Union. The ECB suggests that consideration should be given to an approach whereby, instead of legislation prescribing the exact method of executing buy-ins, market participants are required to contractually agree on such details between themselves. Finally, the ECB invites the Union legislator to consider: (i) excluding securities financing transactions from the scope of any mandatory buy-ins; (ii) cooperation between competent authorities and relevant authorities. The ECB proposes to widen the scope of the passporting colleges' mandate to cover other types of cross-border activities, including settlement in relevant foreign currencies and the operation of interoperable links; (iii) banking-type ancillary services. The ECB suggests that the proposed regulation could be amended to include the possibility of developing regulatory technical standards to address the implications of the provision of banking-type ancillary services by CSDs to other CSDs; (iv) netting. The ECB considers that the requirement to adequately monitor and manage any risks stemming from netting arrangements in relation to the cash leg of a CSD's applied settlement model should apply to all CSDs operating securities settlement systems that use netting arrangements, irrespective of whether those CSDs provide banking-type ancillary services or not; and (v) default. The ECB suggests aligning the definition of default in the CSDR with the definition set out in the PFMI. The ECB also suggests that the Union legislator may wish to reflect on a clarification to the effect that a CSD has the possibility to determine additional events that constitute a default by a CSD participant, where the default management rules and procedures referred to in the CSDR are not sufficient to address

material events that may occur in a system. Specific drafting proposals are set out in a separate [technical working document](#) accompanied by an explanatory text to this effect.

Date of publication: 26/09/2022

## 4.2 EMIR

### (i) EU

#### **Commission Delegated Regulation (EU) 2022/1671 extending the transitional period referred to in Article 89(1), first subparagraph, of EMIR**

Status: Published in the OJ

Date of entry into force: 01/10/2022

The Commission Delegated Regulation (EU) 2022/1671 extending the transitional period referred to in Article 89(1), first subparagraph, of EMIR has been published in the OJ. It extends this transitional period to 18 June 2023.

Date of publication: 30/09/2022

#### **Commission Implementing Decision (EU) 2022/1683 on the equivalence of the regulatory framework for central counterparties in Colombia to the requirements of EMIR**

Status: Published in the OJ

Date of entry into force: 01/10/2022

The Commission Implementing Decision (EU) 2022/1683 on the equivalence of the regulatory framework for central counterparties in Colombia to the requirements of EMIR has been published in the OJ.

Date of publication: 30/09/2022

#### **Commission Implementing Decision (EU) 2022/1684 on the equivalence of the regulatory framework for central counterparties in Taiwan to EMIR as regards Futures Clearing Houses under the supervision of the Financial Supervisory Commission**

Status: Published in the OJ

Date of entry into force: 20/10/2022

The Commission Implementing Decision (EU) 2022/1684 on the equivalence of the regulatory framework for central counterparties in Taiwan to EMIR as regards Futures Clearing Houses under the supervision of the Financial Supervisory Commission has been published in the OJ. It is stressed that this Decision should not be interpreted as reflecting any official position of the European Union with regard to the legal status of Taiwan.

Date of publication: 30/09/2022

#### **ESMA: Report on the review of the clearing thresholds under EMIR**

Status: Final

ESMA has published a feedback report on the review of the clearing thresholds under EMIR. EMIR Refit introduced a mandate for ESMA to periodically review the clearing thresholds (CTs) and update them when necessary, in order to ensure that they remain appropriate. ESMA conducted a review of the CTs in November 2021 and ran a public consultation. Taking into account the feedback received in relation to commodity derivatives, ESMA published a final report on 3 June with draft RTS proposing to increase the CT for commodity derivatives. This September report considers the other elements of the feedback received. ESMA is of the view that the amendments to EMIR proposed in the high-level response to the European Commission's consultation on the targeted review of EMIR, published in April, would address to a large extent many of the points raised by respondents. The more urgent aspects relating to the CT for commodity derivatives have been handled in the June final report. For the other asset classes, ESMA will not advise implementing further changes to the levels of the CTs.

ESMA will continue monitoring the coverage of the CTs, in line with the EMIR mandate to periodically review the CTs, to ensure that they remain well-calibrated. Furthermore, ESMA is aware of the constant changes, particularly in the current market circumstances, and will monitor the developments on an on-going basis.

Date of publication: 28/09/2022

### **ESMA: Consultation on an Opinion on market outages**

Status: Consultation

Deadline for the submission of comments: 16/12/2022

ESMA has launched a consultation on how National Competent Authorities (NCA) should ensure that trading venues have appropriate communication protocols in case of a market outage. The consultation seeks feedback on ESMA's proposed guidance on how trading venues should communicate with market participants in case of an outage. It sets out ESMA's expectations of how NCAs should ensure that trading venues have appropriate communication protocols in place ensuring the continuity of communication to members, participants and the public during an outage. In addition, it includes ESMA's guidance on how NCAs should ensure that trading venues have arrangements in place to avoid an outage affecting the dosing auction, and, where an outage prevents the trading venue from running the dosing auction, to ensure that the market is provided with an official dosing price. It also seeks feedback from stakeholders on measures that a trading venue should have in place to ensure that it has the ability to run its dosing auction and on whether the lack of a reference price raises any concern in an outage context. Finally, the consultation covers outages on non-equity markets.

The contributions from interested parties will be collated in an Opinion that ESMA aims to publish in early 2023. The Opinion will apply to equity markets and, where applicable, to non-equity instruments.

Date of publication: 26/09/2022

### **ESMA: Consultation on draft RTS on Business Reorganisation Plans under Articles 37(4) and 38(4) of CCPRRR**

Status: Consultation

Deadline for the submission of comments: 01/12/2022

ESMA has launched a consultation on new rules for CCPs business reorganisation plans. The proposed rules are part of the CCPs resolution regime under the CCP Recovery and Resolution Regulation (CCPRRR). The draft RTS provide clarifications and cover the minimum elements to be included in the business reorganisation plans that CCPs are expected to implement as part of their resolution tools under the CCPRRR, as well as the criteria to be fulfilled by them. The objective of the proposed measures is to ensure that CCPs which are failing, or likely to fail, maintain continuity of their critical functions and core business lines, as well as to reduce the impact of any failure on the EU financial system. The deadline for comments is 1 December. ESMA intends to publish its final reports by Q1 2023.

Date of publication: 22/09/2022

### **ESMA: Response regarding the current level of margins and of excessive volatility in energy derivatives markets**

Status: Final

ESMA has responded to the EC's request for ESMA to conduct assessments regarding the current level of margins and of excessive volatility in the energy derivatives markets. ESMA sets out its high-level assessment concerning: (i) measures to limit excessive volatility (circuit breakers) – a new type of trading halt mechanism would be useful to trigger halts for a limited period of time, and also in exceptional circumstances such as volatility spikes. It should be set at EU level and apply to all venues offering trading in energy derivatives; (ii) CCP margins and collateral – ESMA stresses the importance of avoiding an undesired shifting of risks to CCPs and the financial system more generally. It sets out an assessment of the EMIR requirements in relation to specific asset classes requested by the EC. ESMA notes that it is assessing the broader implications of the recent market developments for CCP risk management and whether the current requirements are adapted to the specificities of these markets; (iii) commodity clearing thresholds – ESMA requests that the EC adopt the measure increasing the commodity clearing threshold to €4bn; (iv) improving regulatory reporting on commodity derivatives – ESMA considers it crucial to put NCAs into a position to have increased visibility regarding OTC transactions for contracts with the same underlying as those traded on EU

trading venues. This should apply independently of the country of establishment of those entities. ESMA also finds that wholesale energy products should be submitted to minimum reporting requirements, comparable to financial instruments; and (v) regulating and supervising commodity traders acting like investment firms – ESMA proposes revising or replacing the MiFID II “ancillary activity exemption”, which exempts ancillary trading activity of non-financial entities from the regulatory requirements of an investment firm. ESMA considers that all European commodity firms have been able to benefit from this exemption and, due to their size and nature, the biggest entities should be duly licenced and supervised as investment firms for their trading and investment service provision activities.

Date of publication: 22/09/2022

## (ii) International

### IOSCO: Report on client clearing: access and portability

Status: Final

CPMI and IOSCO have published a report, which aims to increase common understanding of new access models that enable clients to directly access CCP services, and of effective porting, or transferring, practices for their positions. The purpose of this paper is to: (i) develop knowledge and understanding regarding these new access models; (ii) develop knowledge and understanding of current porting processes at CCPs; (iii) examine and analyse possible solutions to facilitate access and portability arrangements; and (iv) consider in particular the potential benefits, risks and challenges that these new possible solutions may bring with respect to access (Principle 18 of the Principles for financial market infrastructures), tiering (Principle 19) and portability (Principle 14). CPMI and IOSCO will monitor market developments in this area and consider whether to engage further in the future.

Date of publication: 08/09/2022

## 5. Anti-money laundering

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### (i) EU

#### **EBA: Report on the functioning of anti-money laundering and counter-terrorist financing colleges in 2021**

Status: Final

The EBA has published a report on the functioning of AML/CFT supervisory colleges for 2021. The findings show that although competent authorities are committed to implementing the AML/CFT colleges framework, they need to do more to ensure ongoing collaboration and proactive information exchange within colleges. The report sets out: (i) the EBA's observations of good practices, which include well-structured and organised college meetings by lead supervisors, pro-active participation and sharing of comprehensive information by some members and an effective involvement of prudential supervisors in some colleges; and (ii) areas for improvement, with six actions for college members to undertake going forward. In particular, it highlights that, due to their immaturity, AML/CFT colleges are not yet fully embedded in supervisory processes. The EBA reminds supervisors of the importance of exchanging information in colleges on an ongoing basis and without delay, particularly where material weaknesses in the institution's AML/CFT framework have been identified. It also emphasises the need for colleges to be organised in a more risk-sensitive manner with more frequent meetings being held for those cross-border institutions that are exposed to higher risks of ML/TF. Throughout 2022, the EBA will continue to monitor and provide technical support to competent authorities in this process to ensure that AML/CFT colleges function effectively and achieve their objectives.

Date of publication: 01/09/2022

## 6. Payments

### 6.1 Payment services/E-money

#### (i) EU

##### **EPC: Guidelines to enable data capture via QR code for the initiation of a SEPA credit transfer**

Status: Final

The EPC has updated a document setting out general Guidelines for the use of a Single Euro Payments Area (SEPA) wide quick response (QR) code to enable the data capture for the initiation of a SEPA Credit Transfer (SCT). In general, the document describes how the data capture prior to the initiation of an SCT can be made by means of a two-dimensional barcode. The updated version includes a recommendation listing certain payment use cases for which the QR code Guidelines are suitable or unsuitable.

Date of publication: 13/09/2022

#### (ii) International

##### **BCBS: Harmonisation of ISO 20022: partnering with industry for faster, cheaper, and more transparent cross-border payments**

Status: Consultation

Deadline for the submission of comments: 21/10/2022

The BCBS has published an update provided by the CPMI on a workstream of the G20 cross-border payments programme focused on the harmonisation of ISO 20022 for enhancing cross-border payments. This includes highlights from a stocktake of global ISO 20022 adoption by payment system operators. A joint CPMI and SWIFT Payments Market Practice Group taskforce is currently working on defining the harmonised requirements for the use of ISO 20022. The CPMI is planning for the ISO 20022 harmonisation requirements to identify a core message set and define the minimum requirements for a data model. The harmonisation requirements would complement the existing usage Guidelines by providing high-level requirements to be adopted by all usage Guidelines. The proposed 2025 introduction of the requirements would align with the removal by SWIFT of the ability to send cross-border MT payment messages over its network. CPMI emphasises that, in order to be successful, the adoption of the CPMI ISO 20022 harmonisation requirements will need a global community effort. The article outlines and requests feedback on preliminary high-level harmonisation requirements. CPMI intends to issue a formal consultation paper at the end of 2022 on the full details of the proposed harmonisation requirements.

Date of publication: 09/09/2022



## 7. Institutional supervisory framework

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### (i) EU

#### **EBA: Work Programme 2023**

Status: Final

The EBA has published its annual work programme for 2023, describing its key strategic areas of work for the coming year, as well as related activities and tasks. In 2023, the EBA will continue delivering on the priorities defined for the period 2022-2024 in its programming document. Its focus will be on: (i) finalising the Basel implementation in the EU; (ii) running an enhanced EU-wide stress test; (iii) providing data to all stakeholders; (iv) addressing the new challenges arising from the digitalisation of finance; and (v) further contributing to the build-up of the capacity to fight ML/FT and to protect consumers in the EU. It will also continue to pay particular attention to the European ESG agenda in its regulatory and risk assessment mandates, as well as in its own organisation. Given the political agreements reached in 2022 on DORA and MiCA, the EBA will also actively begin its preparations to be able to discharge the new oversight responsibilities it will receive, together with EIOPA and ESMA.

Date of publication: 29/09/2022

#### **EBA: Opinion on the 2020 discharge report of the EU Parliament**

Status: Final

The EBA has published its view on the opinions stated by the EU Parliament in its 2020 discharge report. The original report covers 30 observations on areas of budget and financial management, performance, staff policy, procurement, prevention and management of conflicts of interest and transparency, internal control, Covid-19 response and business continuity. In response, the EBA is of the view that 26 have already been implemented or are no longer applicable. It maintains that the implementation of follow-up actions for three observations is ongoing and concludes that for one observation the status has to be further considered.

Date of publication: 12/09/2022

#### **EBA: Revised list of validation rules**

Status: Final

The EBA has issued a revised list of validation rules for its reporting standards, highlighting those which have been deactivated either for incorrectness or for triggering IT problems. It states that Competent Authorities throughout the EU are informed that data submitted in accordance with these reporting standards should not be formally validated against the set of deactivated rules. In addition, the EBA also reactivated some validation rules, which should be applied again.

Date of publication: 09/09/2022

#### **ESAs: 2023 Joint Work Programme**

Status: Final

The ESAs have published a joint Work Programme for 2023 to closely coordinate their goals for the coming year. They will continue to closely monitor and assess emerging key cross-sectoral risks and vulnerabilities for financial stability and publish its bi-annual cross-sectoral Risk Reports. They will also continue to focus on the areas of consumer and investor protection, retail financial services, retail investment products and prudential analysis of cross-sectoral developments, risks and vulnerabilities for financial stability, digital operational resilience, financial conglomerates and prudential consolidation, as well as accounting and auditing. Furthermore, the ESAs will continue their work in the areas of the Green Deal and Renewed Sustainable Finance strategy as well as the Digital Finance Package and several other sectors.

Date of publication: 05/09/2022

## 8. Investment funds

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### 8.1 Product regulation

#### (a) UCITS

##### (i) EU

#### **EC: Infringement decisions following non-transposition of EU legislation**

Status: Final

The EC has announced that it is adopting a package of infringement decisions due to the absence of communication by Member States of measures taken to transpose EU directives into national law. For more information, please see section 3.3 above.

Date of publication: 21/09/2022

## 9. Special topics

### 9.1 Covid-19

#### (a) Other

##### (i) International

###### BCBS: Review of margining practices

Status: Final

The BCBS, CPMI and IOSCO have jointly published a report reviewing margining practices during March and April 2020. The report records how the Covid-19 market turmoil of March 2020 was the most significant test of the resilience of financial markets since the Great Financial Crisis of 2007–09, but that financial markets generally proved resilient, with no widespread concerns about counterparty credit risk. During the period of high market volatility in March 2020, large increases in aggregate margin requirements were seen in both the centrally and non-centrally cleared markets. This report is part of the FSB's work programme on non-bank financial intermediation and examines whether and, if so, to what extent, margin calls were unexpectedly large in centrally and non-centrally cleared derivatives and securities markets. It considers both initial margin (IM) and variation margin (VM), as well as centrally and non-centrally cleared markets (including clearing member-client dynamics), margin practices transparency, predictability and volatility. It also considers the liquidity management preparedness of market participants to meet margin calls and the availability of each jurisdiction's regulatory data.

The report concludes that further policy work is necessary in the following six areas: (i) increasing transparency in centrally cleared markets; (ii) enhancing the liquidity preparedness of market participants as well as liquidity disclosures; (iii) identifying data gaps in regulatory reporting; (iv) streamlining VM processes in centrally and non-centrally cleared markets; (v) evaluating the responsiveness of centrally cleared IM models to market stresses, with a focus on impacts and implications for CCP resources and the wider financial system; and (vi) evaluating the responsiveness of non-centrally cleared initial margin models to market stresses. The BCBS, CPMI and IOSCO will work together and with the FSB, as part of its work programme on NBFIs, to take forward this work.

Date of publication: 29/09/2022

### 9.2 FinTech/Digital finance

##### (i) EU

###### ECON: Draft report on the proposal for a regulation amending certain Regulations as regards the establishment and functioning of the European single access point

Status: Draft

The ECON has published a draft report on the proposal for a regulation amending certain Regulations as regards the establishment and functioning of the European single access point (ESAP). The ESAP aims to provide investors with easier access to corporate information by way of creating a single point of digital access to public financial and sustainability-related information about EU companies and EU investment products. This is the first action in the Capital Markets Union (CMU) Action Plan and is intended to further the objectives of the Digital Finance Strategy. It does not impose any additional information reporting requirements on European companies.

Date of publication: 30/09/2022

## ESMA: Report on the Call for Evidence on the DLT Pilot Regime and compensatory measures on supervisory data

Status: Final

ESMA has published a report on the call for evidence on the Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT) (DLT Pilot). The report also makes recommendations relating to certain compensatory measures on supervisory data. The DLT Pilot requires ESMA to assess whether the RTS developed under MiFIR relative to certain pre- and post-trade transparency and data reporting requirements need to be amended to also be effectively applied to securities issued, traded and recorded on DLT. Based on the feedback received on its call for evidence launched in January 2022, ESMA does not consider it necessary to amend the RTS on transparency and data reporting requirements for the purpose of the DLT Pilot. However, ESMA recognises that for certain technical elements, guidance on ESMA's expectations would contribute to a consistent application of the DLT Pilot. Therefore, ESMA intends to issue such guidance either before the application of the DLT Pilot, or based on first experiences of the pilot, as appropriate. In addition, based on the feedback received, ESMA considers it important to already at this stage make some recommendations on compensatory measures that national competent authorities should request to ensure the integrity, completeness, consistency, usability and comparability of the supervisory data collected from DLT market infrastructures. ESMA does not intend to provide guidance on other compensatory measures at this stage. Following the publication of this report, ESMA will work on supervisory guidance clarifying the application of certain elements of the RTS on transparency and data reporting requirements. ESMA also intends to issue guidance on questions received by various stakeholders on the DLT Pilot to contribute to the convergent application of the DLT Pilot.

Date of publication: 27/09/2022

## ESMA: Q&A on the European crowdfunding service providers for business Regulation

Status: Final

ESMA has updated its Q&A on the European crowdfunding service providers for business Regulation (ECSPR) by updating the latest Q&A relating to general provisions as well as investor protection provisions.

Date of publication: 23/09/2022

## 9.3 Sustainable finance

### (i) EU

## ESAs: Final report on draft RTS on information to be provided in pre-contractual documents, on websites, and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities

Status: Final

The ESAs have published a final report on draft RTS on information to be provided in pre-contractual documents, on websites, and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities. They propose to add specific disclosures to provide transparency about investments in taxonomy-aligned gas and nuclear economic activities. These disclosures, which are in line with the definitions in the Complementary Climate Delegated Act, will help investors make informed decisions. Specifically, the disclosures: (i) add a yes/no question in the financial product templates of the SFDR Delegated Regulation to identify whether the financial product intends to invest in such activities; if the answer is yes, a graphical representation of the proportion of investments in such activities would be required; and (ii) implement minor technical revisions to the Delegated Regulation to correct inconsistencies observed after its publication.

Date of publication: 30/09/2022

## ESMA: Updated sustainable finance implementation timeline

Status: Final

ESMA has updated its sustainable finance implementation timeline, which covers the key pieces of legislation under the EU sustainable finance framework: SFDR, Taxonomy Regulation, Corporate Sustainability Reporting Directive, MiFID, Insurance

Distribution Directive, UCITS and AIFMD. The timeline includes key developments up until 2028. Key dates remaining in 2022 are that on 30 December: (i) Art 7 SFDR disclosures on product-level 'principle adverse impact' consideration applies; and (ii) the EC is expected to have issued an evaluation of the SFDR.

Date of publication: 16/09/2022

## **(ii) International**

### **IOSCO: Encouragement for standard-setters' work on assurance of sustainability-related corporate reporting**

**Status: Final**

IOSCO has published a statement, welcoming the work of the international audit and assurance standard setters on assurance of sustainability-related corporate reporting in response to a growing trend of stakeholders seeking this type of information. The standard setters include the International Auditing and Assurance Standards Board (IAASB) and the International Ethics Standards Board for Accountants (IESBA).

Date of publication: 15/09/2022

### **NGFS: Updated climate scenarios for forward looking climate risks assessment**

**Status: Final**

The Network for Greening the Financial System (NGFS) has updated its set of climate scenarios for forward looking climate risks assessment. The update includes: (i) the most recent country-level climate commitments made at the COP26 in 2021, and the latest GDP and population pathways; (ii) projections of the potential losses from extreme weather events (floods and tropical cyclones), in addition to the specific impacts of chronic climate changes on the macroeconomy. The NGFS also published: (a) a "Climate Scenarios Sensitivity Analysis to Macroeconomic Policy Assumptions" document, which explores the policy conditionality of the updated scenarios, and assesses the sensitivity of the results to assumptions related to fiscal and monetary policy; and (b) a guidance note summarising "Practical Lessons for the Development of Climate Scenarios with Extreme Weather Events from Emerging Markets and Developing Economies", which aims to complement existing climate risk assessment literature by providing central banks and prudential supervisory authorities with a practical framework for assessing physical climate risks with extreme weather events. The NGFS states that the objective for the next revisions to the scenarios will be to improve their design and to promote their extensive use by a broad range of stakeholders.

Date of publication: 06/09/2022

## 10. Contacts

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