

Regulatory monitoring

Newsletter

December 2023





ECB in focus

ECB in focus is our blog dedicated to the banking supervisory activities of the European Central Bank (ECB). We report on key developments in European banking regulation led by the ECB as part of the Single Supervisory Mechanism (SSM).

Some of our recent posts

ECB 2022 annual report on banking supervision - key topics and implications for banks

22 June 2023

The ECB published its 2022 annual report on banking supervision on 21 March 2023, highlighting the main supervisory activities in the past year. The Annual Report also outlines the supervisory priorities for 2023-2025, which aim to ensure that banks are resilient, well governed, and prepared for emerging risks.

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ECB publishes supervisory priorities 2023-25

4 January 2023

The ECB has published its supervisory priorities for 2023-2025. They include three strategic priorities that will form the basis of the ECB's supervisory activity: (1) strengthening resilience to immediate macro-financial and geopolitical shocks; (2) addressing digitalisation challenges and strengthening governance capabilities; and (3) stepping up efforts in addressing climate change.

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ECB warns banks that failure to comply with leveraged lending guidance may result in capital charges

26 October 2022

In her recent speech Elizabeth McCaul, member of the ECB's Supervisory Board, threatened to apply capital charges to significant banks with very high risk exposures to leveraged finance. The extent of banks' exposures to leveraged lending has long been a thorn in the ECB's side.

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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: Roadmap on strengthening the prudential framework

Status: Final

The EBA has published its roadmap on the Banking Package, which implements the final Basel III reforms in the EU. The EBA roadmap aims to strengthen the prudential framework as well as to ensure an international level playing field. It also aims to provide clarity to the industry on how it will develop the mandates implementing the legislation, and how it expects to finalise the most significant components ahead of the application date, on 1 January 2025. The Roadmap develops over four phases, and it is expected to be completed as follows: (i) phase 1 includes the mandates with a deadline of up to one year after the entry into force of the banking package, covering the areas of credit, market and operational risk, which predominantly result from the transition to Basel III; (ii) phase 2 includes the mandates with deadlines up to two years after entry into force, covering CRR mandates related to credit, operational and market risk; (iii) phase 3 includes the mandates that are expected to be finalised within three years after the entry into force of the banking package; and (iv) phase 4 includes the remaining mandates with deadlines of four years after the entry into force of the banking package or later. In addition, there are certain ongoing/recurring mandates that are not part of any of the four phases but will be operational at the date of implementation in 2025.

Date of publication: 14/12/2023

Council of the EU: Political agreement on proposed CRR III Regulation and CRD VI Directive

Status: Draft

The Council of the EU has published two compromise texts, (dated 4 December) on the proposed CRD VI Directive and CRR III Regulation. The “P” item note published in conjunction with the compromise texts explains that the compromise texts reflect the provisional political agreement reached by the Council of the EU with the EP in June, and the outcome of a technical review by the EU co-legislators in November.

- Regulation on requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR III)
- Directive on supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (CRD VI)

Date of publication: 07/12/2023

(b) Solvency/Own funds issues

(i) Germany

BaFin: General Administrative Act on the granting of general permission with respect to certain institutions with regard to the call, redemption, repayment or repurchase of eligible liabilities prior to the date of their contractual maturity date (*Allgemeinverfügung zur Verlängerung der Allgemeinverfügung bezüglich der Erteilung der allgemeinen Erlaubnis gegenüber bestimmten Instituten in Bezug auf die*

Kündigung, Tilgung, Rückzahlung oder den Rückkauf berücksichtigungsfähiger Verbindlichkeiten vor deren vertraglicher Fälligkeit)

Status: Final

BaFin has published a General Administrative Act (*Allgemeinverfügung*) on the granting of general permission with respect to certain institutions with regard to the call, redemption, repayment or repurchase of eligible liabilities prior to their contractual maturity date. This publication extends the application period of the General Administrative Act as of 27 December 2021 by another year until 27 December 2024.

Date of publication: 20/12/2023

(ii) EU

EBA: Final report on amending Guidelines on the specification and disclosure of systemic importance indicators

Status: Final

The EBA has published its updated Guidelines on the specification and disclosure of systemic importance indicators, which are applied by the largest institutions in the EU whose leverage ratio exposure measure exceeds EUR 200 billion. Acting as a central data hub in the disclosure process, the EBA updates data on global systemically important institutions (G-SIIs) on a yearly basis and provides user-friendly tools to aggregate it across the EU. Following the targeted revisions in 2022 to the EBA Guidelines to consider the recognition of the European Banking Union specificities within the Basel Committee on Banking Supervision (BCBS) framework for global systemically important banks (G-SIBs), these amending Guidelines introduce additional changes and clarifications regarding indicators relevant for the identification process of G-SIIs.

Date of publication: 20/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the CRD with regard to RTS specifying the supervisory shock scenarios, the common modelling and parametric assumptions and what constitutes a large decline

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing CRD IV with regard to RTS specifying the supervisory shock scenarios, the common modelling and parametric assumptions and what constitutes a large decline. The draft RTS enable the performance of supervisory outlier tests of institutions' exposure to the interest rate risk arising from nontrading book activities and their impact on net interest income (NII) and economic value of equity (EVE), as well as ensuring continuity and compliance with relevant international standards. They aim to specify common modelling and parametric assumptions that institutions should use to calculate the EVE and NII. As such, they state that for calculating the NII, a constant balance sheet assumption over a one-year time horizon should be used, while, for calculating the EVE, a run-off balance sheet assumption should be used where maturing positions are not replaced. To strike the right balance between ensuring comparability of the results and providing the necessary flexibility for a long-term horizon and an inherent operational complexity, these draft RTS state that commercial margins and spread components should be included in the calculation of the NII, but for the calculation of the EVE, institutions should follow their internal management and measurement approach for interest rate risk in the non-trading book.

The draft RTS will be published in the OJ and enter into force on the twentieth day following its publication, if the EP and Council do not object to it.

Date of publication: 01/12/2023

(c) Securitisation

(i) EU

ESMA: Consultation on the securitisation disclosure templates under Article 7 of the Securitisation Regulation

Status: Consultation

Deadline for the submission of comments: 15/03/2024

ESMA has launched a consultation on the revision of the Disclosure RTS and ITS. These standards relate to the specific information and details of securitisation transactions that should be made available. The objective of this consultation is to gather stakeholders' views on four proposed options for the revision of the securitisation disclosure framework: (i) putting the template review on hold until revision of the L1 text; (ii) expanding the current framework with the introduction of a few amendments to the currently used disclosure templates; (iii) focusing on a targeted review for streamlining the information required and developing a new dedicated and simplified template for private securitisations only; and (iv) undertaking a thorough review of the current disclosure framework including proposing a significant simplification of the templates.

Date of publication: 21/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the Securitisation Regulation with regard to RTS specifying the performance-related triggers and the criteria for the calibration of those triggers

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing the EU Securitisation Regulation on performance-related triggers and the criteria for the calibration of those triggers. The triggers being specified are triggers which allow a switch from non-sequential to sequential amortisation systems, which (if included in an on-balance-sheet securitisation) may mean the securitisation is eligible for the STS label. The RTS set out: (i) the two mandatory triggers referred to in point (a) of Article 26c(5) of the third subparagraph of the EU Securitisation Regulation; (ii) the additional mandatory backward-looking trigger under point (b) of the same subparagraph; and (iii) the mandatory forward-looking trigger under point (c) of the same subparagraph. The RTS also set out criteria to be fulfilled by the parties to the securitisation in order to set the level of the mandatory triggers.

The Delegated Regulation will now be submitted to the Council of the EU and the EP for review. If neither objects, it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 13/12/2023

(d) Liquidity

(i) EU

EBA: Report on liquidity measures under Article 509(1) of the CRR

Status: Final

The EBA has published its report on liquidity measures, which monitors and evaluates the liquidity coverage requirements currently in place in the EU. Between June 2022 and June 2023, the EU banks' liquidity coverage ratio (LCR) declined but remained comfortably above the minimum requirement. However, within this review period there were important fluctuations in the components of the ratio, driven mostly by changes in the banks' allocation of funding deposits and the ongoing reduction of central bank liquidity. Unlike the LCR in domestic currency, EU banks' LCR in foreign currencies remained below 100%.

Date of publication: 20/12/2023

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

(i) Germany

Publication of the Law promoting secondary credit markets (*Veröffentlichung des Kreditweitmarktförderungsgesetzes*)

Status: Published in the Federal Gazette

Date of application: 30/12/2023

The Law promoting secondary credit markets (*Gesetz zur Förderung geordneter Kreditweitmärkte und zur Umsetzung der Richtlinie (EU) 2021/2167 über Kreditdienstleister und Kreditkäufer sowie zur Änderung weiterer finanzmarktrechtlicher Bestimmungen – Kreditweitmarktförderungsgesetz*) has been published in the German Federal Gazette. It aims to implement Directive (EU) 2021/2167 on Credit Servicers and Credit Purchasers, which is intended to strengthen the European market for non-performing loans (NPL) sales and the options for action for banks, as well as to protect consumers and other borrowers and harmonise them at the European level. Ultimately, this serves to deepen the banking and capital markets union and to reduce risks from NPLs for the stability of the economic system. This law aims to implement the Directive into German law. It is important to the government to implement the requirements with minimal bureaucracy and with as few burdens as possible, especially for small and medium-sized companies, while optimally guaranteeing consumer protection.

Date of publication: 29/12/2023

BaFin: Guidance Notice regarding hints on the provision of credit services pursuant to Section 2(3) of the Law on secondary credit markets (*Merkblatt über Hinweise zur Erbringung von Kreditdienstleistungen gemäß § 2 Abs. 3 KrZwMG*)

Status: Final

BaFin has published a Guidance Notice regarding hints on the provision of credit services pursuant to Section 2(3) of the Law on secondary credit markets (*Kreditweitmarktgesetz – KrZwMG*), which aims to implement part of the Directive (EU) 2021/2167 on Credit Servicers and Credit Purchasers.

Date of publication: 18/12/2023

(ii) EU

ECB: SSM supervisory priorities 2024-26, SREP 2023 results, updated SREP methodology

Status: Final

The ECB has published the results of its Supervisory Review and Evaluation Process (SREP) for 2023 and updated its SREP methodology applied to significant institutions under the SSM. The SREP is periodically updated to ensure alignment with the EBA Guidelines on SREP and to reflect new regulations. Andrea Enria announced in a speech, also published on 19 December, that the revised methodology reflects the independent expert report produced in April this year. The ECB has also published its SSM supervisory priorities for 2024-26, noting that the EU banking sector is facing several challenges that require enhanced vigilance by supervisors and banks alike.

Supervised institutions will primarily be asked to: (i) strengthen their resilience to immediate macro-financial and geopolitical shocks – while rising interest rates have had a positive impact on profitability so far, banks must be prepared to cope with more volatile funding sources, higher funding costs, a potential fall in asset quality and a further repricing in financial markets in the short and medium term; consequently, banks need to strengthen their credit risk management and asset and liability management frameworks; (ii) accelerate the effective remediation of shortcomings in governance and the management of climate-related and environmental risks – banks will be asked to step up their efforts and adequately reflect the relevant risk dimensions in their business strategies and risk management frameworks in order to fully comply with the corresponding supervisory expectations by the end of 2024; and (iii) make further progress in their digital transformation and building robust operational resilience frameworks. The ECB expects banks to develop and execute sound digital transformation plans through adequate arrangements to strengthen their business model sustainability and mitigate risks related to the use of innovative technologies. Banks should

have robust outsourcing risk arrangements and IT security and cyber resilience frameworks to proactively tackle any unmitigated risks that might lead to material disruption.

Date of publication: 19/12/2023

EBA: Final report on the Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167

Status: Final

The EBA finalised its Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of a credit servicer as a whole, under the NPL Directive. The Guidelines aim at ensuring that the organs are suitable to conduct the business of the credit servicer in a competent and responsible manner. Among other things, the guidelines specify: (i) the criteria for the assessment of the organs' collective knowledge and experience. This will be performed based on the individual members' assessment by credit servicers, taking into account the principle of proportionality; and (ii) the assessment process by credit servicers and competent authorities, which also covers the assessment of good repute of the members of the credit servicers organs. The Guidelines will apply from three months after the date of publication on the EBA's website in all EU official languages. The Guidelines do not apply to a credit institution established in the EU, an AIFM authorised or registered in accordance with AIFMD or those other entities listed in Article 2(5)(a) of the NPL Directive.

Date of publication: 15/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the CRD with regard to RTS specifying a standardised methodology and a simplified standardised methodology to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing the CRD IV setting out RTS specifying a standardised methodology and a simplified standardised methodology to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities. The draft RTS aim to facilitate implementation by institutions. Having regard to the fact that both the economic value of equity and the net-interest-income estimations can be based on repricing cash flows, both approaches have been based on the same rules regarding slotting in time buckets, with the exception of some cases in which the calculation of net interest income requires additional slotting. The explanatory memorandum explains that when laying down the simplified standardised methodology, the draft RTS ensure proportionality, thereby providing a framework that is appropriate for the lower risk-assessment capacities of small and non-complex institutions. To that end, in the simplified standardised methodology, a number of elements are set out, including certain simplifications and conservative measures, such as: (i) a prescriptive, linear slotting of non-maturity deposit cash flows applying scenario-dependent scalars to the core component; (ii) a simplified calculation of automatic optionality based on pay-outs; and (iii) for the purpose of net interest income, a calculation of interest rates based on an average reference term per product type, an average commercial margin per product type, and an interest rate up to the repricing date of the instruments calculated with estimates of average interest rates. Moving forward, the EP and the Council will review the draft RTS.

If approved, the draft RTS will come into force on the twentieth day following its publication in the OJ.

Date of publication: 01/12/2023

(iii) International

BCBS: Consultation on recalibration of shocks for interest rate risk in the banking book

Status: Consultation

Deadline for the submission of comments: 28/03/2024

BCBS has launched a consultation on proposed adjustments to its standard on IRRBB. The Committee proposes to make a set of adjustments to the specified interest rate shocks in the IRRBB standard, consistent with commitments in the standard, to periodically update their calibration. It also proposes to make targeted adjustments to the current methodology used to calculate the shocks. These changes aim to address problems with how the current methodology captures interest rate changes during

periods when rates are close to zero. The BCBS notes that the changes are unrelated to its ongoing analytical work on interest rate risk following the March 2023 banking turmoil.

Date of publication: 12/12/2023

FSB: Toolkit on enhancing third-party risk management and oversight

Status: Final

The FSB has published a toolkit for financial authorities and financial institutions for their third-party risk management and oversight. The FSB developed the toolkit in response to concerns over the extent and nature of financial institutions' interactions with a broad and diverse ecosystem of third-party service providers, which could have implications for financial stability. The toolkit, which incorporates feedback from a public consultation conducted over the summer, aims to: (i) reduce fragmentation in regulatory and supervisory approaches to third-party risk management across jurisdictions and in 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 promotes comparability and interoperability of regulatory and supervisory approaches across sectors and jurisdictions. It comprises: (a) a list of common terms and definitions to improve clarity and consistency regarding third-party risk management across financial institutions; (b) tools to help financial institutions identify critical services and manage potential risks throughout the lifecycle of a third-party service relationship; and (c) tools for supervising how financial institutions manage third-party risks, and for identifying, monitoring, and managing systemic third-party dependencies and potential systemic risks. The toolkit is designed to complement and build on relevant existing standards and guidance by international standard-setting bodies and financial authorities, but not to replace them.

Date of publication: 04/12/2023

(f) Cyber security

(i) EU

Council of the EU: Agreement on common position on the cyber solidarity act

Status: Draft

The Council of the EU has reached a common position on the so-called "cyber solidarity act" in order to strengthen the EU's solidarity and capacities to detect, prepare for and respond to cybersecurity threats and incidents. The draft regulation establishes EU capabilities to make Europe more resilient and reactive in front of cyber threats, while strengthening cooperation mechanisms.

Date of publication: 20/12/2023

(g) Remuneration

(i) EU

EBA: Final report on the Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under the CRD and IFD

Status: Final

The EBA has published a final report on the Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under the CRD and IFD. These Guidelines will ensure a higher level of transparency on the EBA's work on the topic of diversity and gender equality and will help improve the quality of the collected data as well as the awareness of all stakeholders in this area. They apply to institutions and investment firms that should be able to provide data on the diversity of their management body and the gender-pay-gap if such data is requested. Under the Guidelines, the data will be collected only from a representative sample of institutions and investment firms, focusing on their diversity policies, diversity practices and the

gender pay-gap at the level of the management body every three years. The EBA Board of Supervisors has adopted a [decision](#) on the technical aspects that will be considered for the sampling of institutions.

Date of publication: 18/12/2023

(h) Large exposures/Limits to shadow banking entities

(i) EU

Commission Delegated Regulation (EU) 2023/2779 supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) of the CRR

Status: Published in the OJ

Date of entry into force: 01/01/2024

The Delegated Regulation supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) of the CRR was published in the OJ. Under Article 394(2), credit institutions are required to report their largest exposures to shadow banking entities that carry out banking activities outside the regulated framework, on a consolidated basis. The draft RTS specify: (i) the criteria for identifying both shadow banking and non-shadow banking entities; (ii) the definition of banking activities and services; and (iii) the criteria for excluding entities established in third countries from being deemed as shadow banking entities. The RTS are aligned with the Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under the CRR.

Date of publication: 12/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying in which circumstances the conditions for identifying groups of connected clients are met

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing the CRR with regard to RTS specifying in which circumstances the conditions for identifying groups of connected clients are met. The definition of a group of connected clients in the CRR makes it possible to identify two or more natural or legal persons who are so closely linked by idiosyncratic risk factors that it is prudent to treat them as a single risk. Consequently, the purpose of these draft RTS is to set out clear circumstances where interconnections between clients by means of a control relationship and/or an economic dependency relationship lead to a single risk and thus a requirement to group those clients. These draft RTS, together with the guidance for the alternative approach for exposures to central governments and for the control and management procedures for identifying clients that constitute a single risk included in the guidelines, provide the complete framework for the identification of groups of connected clients. The Council of the EU and the EP will now review the Regulation, if neither object, it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 06/12/2023

(i) Qualifying holdings

(i) EU

ESAs: Consultation on Guidelines on the system established by the ESAs for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by NCAs

Status: Consultation

Deadline for the submission of comments: 15/01/2024

The ESAs have launched a second consultation paper on joint Guidelines for the system established by the ESAs for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities. The system aims to

support competent authorities by identifying other competent authorities that have conducted such an assessment process for a person of interest, thereby enhancing the efficiency of the fit and proper assessments. At the same time, in line with the applicable data protection requirements, only limited and necessary information will be stored in the system, accessible on a strict need-to-know basis. The consultation covers amendments extending the scope of the joint Guidelines to legal persons, thus ensuring the complete coverage of data subjects. The Guidelines aim to increase the efficiency of the information exchange between sectoral supervisors by harmonising practices and covering both natural and legal persons. The ESAs invite comments on amendments, highlighted in green, to the first consultation paper published in January, concerning only the inclusion of legal persons in the scope of the Guidelines and the information to be exchanged in relation to them.

The ESAs aim to finalise the Guidelines in early 2024, with a view to the Guidelines largely applying from 1 July 2024, except for certain provisions which will apply variously from October 2024, July 2025 or October 2025.

Date of publication: 07/12/2023

(j) Supervisory reporting

(i) Germany

BaFin: Information sheet on the specialised procedure “Company Takeovers – WpÜG” (*Informationsblatt zum Fachverfahren Unternehmensübernahmen – WpÜG*)

Status: Final

BaFin has published an information sheet on the specialised procedure “Company Takeover – WpÜG” for electronic filing of applications, documents and notifications in accordance with the provisions of the German securities acquisition and takeover act (*Wertpapiererwerbs- und Übernahmegesetz – WpÜG*) via its MVP Portal by offerors, applicants, target companies and other authorised persons (e.g. legal representatives).

Date of publication: 14/12/2023

1.2 Recovery and resolution

(i) Germany

BaFin: Announcement on the application of the EBA Guidelines on overall recovery capacity in recovery planning (*Ankündigung der Anwendung der EBA-Leitlinien zur Gesamtsanierungskapazität*)

Status: Final

BaFin has announced that it will apply the EBA Guidelines on overall recovery capacity (ORC) in recovery planning as of 11 January 2024. It expects the institutions to take these into account and fully implement the requirements in their restructuring plans. The Guidelines aim to harmonise requirements for institutions so that they can determine ORC in their recovery plans. They also create standards for supervision in order to assess the overall restructuring capacity in the recovery plans. The ORC describes the extent to which the institutions can use options for action to successfully cope with various stress scenarios. Accordingly, the Guidelines are only relevant for institutions whose recovery plans contains stress scenarios.

Date of publication: 08/12/2023

(ii) EU

EBA: Final report on draft ITS amending the ITS on disclosures and reporting on MREL and TLAC with regard to the disclosures and reporting of information on daisy chains and prior permissions

Status: Final

The EBA has published today its final draft ITS on amendments to disclosure and reporting of the minimum requirement for MREL and TLAC. These amendments reflect the new requirement to deduct investments in eligible liabilities instruments of

entities belonging to the same resolution group, the so called “daisy chain” framework, and other changes to the prudential framework. The amendments will apply for the reference date of June 2024. The final ITS on disclosure and reporting of MREL and TLAC had to be adjusted in response to amendments to the CRR as well as to clarify requirements in response to Single Rulebook Q&A process. In addition to the “daisy chain” framework, changes cover information on the prior permission regime for buying back eligible liabilities instruments issued by the reporting entities and groups, and the breakdown by insolvency ranking. The mapping between the disclosures and reporting requirements is published alongside the amending ITS and has been updated to reflect the amendment to both requirements.

A final review of the ITS and its annexes will be done against the final text of Regulation (EU) 2022/2036 amending the CRR (“daisy chain” framework) once it is published. The amendments are envisaged to apply for the reference date of June 2024.

Date of publication: 20/12/2023

EBA: Report on deposit coverage in response to the EC’s call for advice

Status: Final

The EBA has published a report in response to the EC’s request for data regarding the proportion of public authorities’ deposits in deposit guarantee schemes (DGS), as part of the EC’s review of the crisis management and deposit insurance (CMDI) framework. The EBA’s response provides a quantitative analysis of the current EU deposit coverage of EUR 100,000. The analysis shows that currently under the EUR 100,000 coverage across the EEA, 96% of depositors are fully covered. The 4% of depositors that are not fully covered are mostly companies, and, despite being few in number, they hold more than half of deposits held in the EEA. The report shows that a potential change to the current coverage level of EUR 100,000 would have positive but limited impact on financial stability and depositor protection. On the other hand, it would be costly and have a somewhat negative impact on moral hazard. The analysis also shows that the extension of coverage to public authorities’ deposits would have limited impact on the industry, mainly because there are relatively few public authorities in comparison to the overall number of depositors across the EU.

Date of publication: 18/12/2023

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2015/63 as regards the calculation of eligible liabilities and the transitional regime

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending the BRRD as regards the calculation of eligible liabilities and the transitional regime. The Regulation will make the following amendments to the BRRD: (i) provisions relating to MREL and the definition of eligible liabilities will be revised to reflect the amendments made by BRRD II; (ii) the period during which Member States have the possibility to allow smaller institutions to contribute to national resolution funds under a lump-sum regime will be extended until 31 December 2024; and (iii) in the 2024 contribution period, institutions must provide resolution authorities with the relevant information by 29 February 2024, and the resolution authorities must notify the institutions of their decisions determining the annual contribution due by each institution by 31 May 2024.

The Delegated Regulation will now be submitted to the Council of the EU and the EP for review. If neither objects, the amendments will enter into force on the twentieth day following their publication in the OJ, except for amendments relating to the transitional regime and the process for raising annual contributions which will apply retroactively from 1 December.

Date of publication: 13/12/2023

ESRB: Report on the 52nd regular meeting of the General Board

Status: Final

The European Systemic Risk Board (ESRB) has published a press release on the 52nd regular meeting of its General Board on 30 November 2023, concluding that financial stability risks in the EU remain elevated. At the meeting, the ESRB cautioned that several factors continue to weigh on the financial stability outlook. In particular, it noted that the challenging macroeconomic environment could create balance sheet stress for households and non-financial corporations, as the capacity of fiscal policy to support these sectors is more limited than in the past. The General Board acknowledged the high volatility in bond markets and

the potential of a disorderly adjustment in financial markets, which could be amplified by high credit risk and liquidity risk in the non-bank financial intermediation sector.

Date of publication: 07/12/2023

Council of the EU/EP: Provisional agreement on the “Daisy Chains” proposal

Status: Draft

The Council of the EU and the EP have reached a provisional political agreement on the proposed “Daisy Chains” Directive. The proposal aims to give the resolution authorities the power to set internal MREL on a consolidated basis, subject to certain conditions. Where the resolution authority allows a banking group to apply such consolidated treatment, the intermediate subsidiaries will not be obliged to deduct their individual holdings of internal MREL. In addition, the proposal introduces a specific MREL treatment for “liquidation entities”. Those are defined as entities within a banking group earmarked for winding-up in accordance with insolvency laws, which would, therefore, not be subject to resolution action (conversion or write-down of MREL instruments). On this basis, and as a rule, liquidation entities would not be obliged to comply with an MREL requirement, unless the resolution authority decides otherwise on a case-by-case basis for financial stability protection reasons. The own funds of these liquidation entities issued to the intermediate entities will not need to be deducted except when they represent a material share of the own funds and eligible liabilities of the intermediate entity. The provisional agreement now needs to be approved by COREPER and ECON, followed by a plenary and a Council of the EU vote.

The proposal is for the rules to apply six months after entry into force.

Date of publication: 06/12/2023

(iii) Eurozone

SRB: Statement on the General Court’s judgments on the decisions on 2021 ex-ante contributions

Status: Final

The SRB has published a statement on the General Court’s judgments on the decisions on 2021 ex-ante contributions to the Single Resolution Fund (SRF) vis-à-vis seven credit institutions in France and Germany. It notes that the Court did not find any flaws affecting the substance of the decisions in these cases. However, it considered that the SRB did not provide sufficient reasons in setting the annual target level for ex-ante contributions to the SRF, which is an industry-funded crisis fund for use in resolving failing banks. The SRB will carefully consider the content of the judgments in order to determine the next steps, in cooperation with the relevant National Resolution Authorities.

Date of publication: 20/12/2023

SRB: Consultation on the future of MREL policy

Status: Consultation

Deadline for the submission of comments: 13/02/2024

The SRB has launched a consultation on the future of MREL. The consultation is part of the SRB’s strategic review to ensure the SRB remains optimally equipped for the future, building on lessons learned from recent crises in the US and Switzerland, together with past SRB resolution cases. The consultation focuses on the following topics: (i) MREL adjustments for preferred resolution strategies, relying on a combination of resolution tools; (ii) the Market Confidence Charge buffer; (iii) the monitoring of MREL eligibility; (iv) discretionary exclusions; and (v) long-term policy considerations.

Date of publication: 14/12/2023

(iv) International

FSB: 2023 resolution report on “Applying lessons learnt”

Status: Final

The FSB has published its 12th report on implementation of its resolution reforms. The FSB’s review of the 2023 bank failures: (i) underscored the strengths of the international resolution framework and the work carried out by banks and authorities to increase resilience and crisis preparedness, while also identifying areas for further work; (ii) reinforced the need to maintain momentum and advance the work on bank resolvability and to avoid complacency; and (iii) found that, while obstacles to mobilising collateral or liquidity across borders cannot be completely removed, several mitigating measures can be adopted.

Looking ahead, the FSB’s 2024 resolution workplan builds on the lessons learnt from the 2023 bank failures and includes several areas of work to further increase the resolvability of banks, CCPs and insurers. For the banking sector, this includes further work on: (a) effective designs for public sector backstop funding mechanisms to support resolution; (b) the choice of resolution strategies and optionality of resolution tools; (c) the operationalisation of bail-in and enhancements to cross-border recognition processes; and (d) ways for resolution authorities to respond to the speed of bank runs. On resolution of CCPs, the FSB will publish the final report on financial resources and tools for CCP resolution following analysis of the consultation feedback and will review members’ experiences in applying the 2020 FSB guidance on financial resources to support CCP resolution.

Date of publication: 15/12/2023

2. Investment firms regulation

(i) Germany

Publication on the Investment firms audit report regulation (*Veröffentlichung der Wertpapierinstituts-Prüfungsberichtsverordnung*)

Status: Published in the Federal Gazette

Date of entry into force: 12/12/2023

The Investment firms audit report regulation (*Wertpapierinstituts-Prüfungsberichtsverordnung* – WpI-PrüfbV) has been published in the Federal Gazette. Along with the *WpI-AnzV* (see entry below), this is one of the four core regulations for investment firms introduced in Articles 1 to 4 of the draft Mantle Regulation (*Mantelverordnung*), which serve to further implement the IFD and to execute the related directly applicable IFR beyond the implementation through the Law on the supervision of investment firms (*Wertpapierinstitutsgesetz* – WpIG).

Date of publication: 11/12/2023

Publication of the Investment firms notification regulation (*Veröffentlichung der Wertpapierinstituts-Anzeigenverordnung*)

Status: Published in the Federal Gazette

Date of entry into force: 12/12/2023

The Investment firms notification regulation (*Wertpapierinstituts-Anzeigenverordnung* – *WpI-AnzV*) has been published in the Federal Gazette. Along with the *WpI-PrüfbV* (see entry above), this is one of the four core regulations for investment firms introduced in Articles 1 to 4 of the draft Mantle Regulation (*Mantelverordnung*), which serve to further implement the IFD and to execute the related directly applicable IFR beyond the implementation through the Law on the supervision of investment firms (*Wertpapierinstitutsgesetz* – WpIG).

Date of publication: 11/12/2023

BaFin: FAQ on capital requirements pursuant to Article 17 IFR (*FAQ zu Eigenmittelanforderungen iSd. Art. 17 IFR*)

Status: Final

BaFin has published FAQ on capital requirements pursuant to Article 17 IFR. The FAQ explain that Article 17(2)(2) of the IFR only applies to financial portfolio management and not to investment consultancy. The reason for this is that the exception in this clause does not cover assets for which securities institutions provide investment advice to the customers.

Date of publication: 01/12/2023

(ii) EU

EBA: Final report on the Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under the CRD and IFD

Status: Final

The EBA has published a final report on the Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under the CRD and IFD. For more information, please see section 1.1(g) above.

Date of publication: 18/12/2023

3. Market regulation/Conduct rules

3.1 General

(i) Germany

Publication of the Financing for the Future Act (*Veröffentlichung des Zukunftsfinanzierungsgesetzes*)

Status: Published in the Federal Gazette

Date of entry into force: 15/12/2023

The Financing for the Future Act (*Zukunftsfinanzierungsgesetz* – ZuFinG) has been published in the Federal Gazette. This law aims to introduce measures to improve financing of forward-looking investments and to facilitate capital market access for businesses, particularly start-ups, high-growth companies and SMEs. Alongside making adjustments to financial market legislation and further developing company law, the act is intended to improve tax law provisions in order to make shares and publicly listed securities more attractive as investments. This step is expected to boost not only the demand side, through attractive investments but also the supply side, by increasing the number of publicly listed companies in Germany.

Date of publication: 14/12/2023

3.2 Benchmarks

(i) EU

Council of the EU: Agreement on the negotiating mandate for the Benchmark Regulation

Status: Draft

The Council of the EU has announced that it has agreed its negotiating mandate on the proposed Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by administrators located in a third country, and certain reporting requirements. The proposal aims to reduce the regulatory burden on administrators of benchmarks that are not economically significant in the EU by removing them from the scope of current rules. It also aims to simplify the current approach to non-EU country benchmarks in the EU. The Council highlights points on which it reached agreement, including that: (i) the regulatory treatment of commodity benchmarks should be tailored to their specific characteristics; (ii) only those benchmarks designated as critical, as significant (either by meeting a quantitative threshold, or by designation of the national competent authority concerned or by ESMA), EU Paris-aligned Benchmarks, EU Climate Transition Benchmarks, and certain commodity benchmarks should remain under the scope of regulation; and (iii) administrators of those benchmarks that were authorised, registered, endorsed or recognised on the date of application of this amending regulation should not be obliged to re-apply for authorisation, registration, recognition, or endorsement.

Once the EP has adopted its negotiating position, the proposal will enter interinstitutional negotiations.

Date of publication: 20/12/2023

ESMA: Public statement on the impact of Brexit on the Benchmark Regulation

Status: Final

ESMA has updated its statement in relation to the consequences of Brexit for the ESMA register for benchmark administrators and third-country benchmarks under the BMR. As the BMR transitional period has been extended to 31 December 2025, the deletion of UK-based administrators has yet to take effect. During the extended transitional period, third-country benchmarks can still be used by supervised entities in the EU if the benchmark is already used in the EU as a reference for financial instruments or financial contracts, or for measuring the performance of an investment fund. Therefore, EU supervised entities can, until 31 December 2025, use third country UK-based benchmarks even if they are not included in the ESMA register. In the absence of an equivalence decision by the EC, UK-based administrators have until 31 December 2025 to apply for

recognition or endorsement in the EU, in order for the benchmarks provided by these UK-based administrators to be included in the ESMA register again. The extension and the need to apply again for recognition or endorsement in the absence of an equivalence decision, also applies to UK-recognised or endorsed third-country benchmarks.

Date of publication: 15/12/2023

ESMA: Q&A on the Benchmark Regulation

Status: Final

ESMA has updated its Q&A on the Benchmark Regulation. ESMA has clarified its questions on: (i) whether the provision of and contribution to benchmarks that are used outside the EU only fall within the scope of the BMR; and (ii) the transitional provisions applicable to third-country benchmarks.

Date of publication: 15/12/2023

ESMA: Report on administrative sanctions and measures and criminal sanctions imposed under the Benchmarks Regulation in 2022

Status: Final

ESMA has published a report on the administrative sanctions and measures and criminal sanctions imposed under the Benchmarks Regulation (BMR) in 2022. One administrative sanction and one administrative measure were imposed on a supervised entity and a supervised contributor (respectively) by two NCAs for two infringements of the BMR. No criminal sanctions were imposed. Due to the limited sanctions and measures taken, the report comments that there is limited scope for observation of clear trends. The information in this report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the BMR.

Date of publication: 13/12/2023

ESMA: Final statement by the Working Group on Euro Risk-Free Rates

Status: Final

ESMA has published the final statement issued by the Working Group on Euro Risk-Free Rates (EUR RFR WG), announcing the completion of the EU Interest Rate Reform. The statement aims to summarise the key achievements of the EUR RFR WG, such as the identification of €STR as a risk-free rate for the euro area and the definition of EURIBOR fallback provisions for each asset class. ESMA also encourages industry to ensure that all financial products referencing EURIBOR, including mortgages, embed robust fallback provisions. The EUR RFR WG has accomplished its mission and the group has been discontinued as of 13 November 2023.

Date of publication: 04/12/2023

3.3 Capital markets union

(i) EU

ESMA: Terms of reference on the task force on the effectiveness of EU capital markets

Status: Final

ESMA has published the terms of reference for the task force on the effectiveness of EU capital markets (the Task Force). The Task Force is responsible for the development of key strategic messages from a supervisory perspective to inform further initiatives to continue to drive the EU Capital Markets Union ambitions. The Task Force shall be responsible for:

(i) contributing analysis and perspective on the functioning of EU capital markets at present; (ii) assessing ongoing initiatives and market developments, and what type of actions should be reinvigorated, further developed or newly started in the pursuit of stronger EU capital markets; (iii) discussing existing weaknesses or barriers hindering the potential of EU capital markets, including how better rulemaking and supervision can contribute to the effectiveness of markets, and how those issues might be

resolved; and (iv) determining the best course of action for ESMA, so as to send a strategic message to stakeholders on measures to improve the effectiveness and attractiveness of EU capital markets.

The Task Force will prepare a paper for discussion with ESMA's Board of Supervisors in March 2024, and will publish the final paper in May 2024.

Date of publication: 13/12/2023

3.4 Consumer protection rules

(i) Germany

BMF: Minister's bill on the regulation repealing the regulation on a comparison website and amending the regulation on the delegation of powers to issue statutory orders to BaFin (*Referentenentwurf über die Verordnung zur Aufhebung der Vergleichswebsitesverordnung sowie zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die BaFin*)

Status: Final

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a minister's bill on the regulation repealing the regulation on a comparison website and amending the regulation on the delegation of powers to issue statutory orders to BaFin.

Date of publication: 11/12/2023

BaFin: Consultation 16/2023 regarding the draft Regulation on reporting regarding payment accounts for the comparison website pursuant to the Payment Accounts Act (*Konsultation 16/2023 zum Entwurf der Vergleichswebsitesmeldeverordnung – VglWebMV*)

Status: Consultation

Deadline for the submission of comments: 15/12/2023

BaFin has launched a consultation regarding the draft Regulation on reporting regarding payment accounts for the comparison website pursuant to the Payment Accounts Act (*Vergleichswebsitesmeldeverordnung* – VglWebMV). This law supplements the Payment Accounts Act and specifies the reporting obligations for payment service providers. It determines the comparison criteria and the data that the institutions must report to BaFin. The draft also specifies criteria that consumers can use to better evaluate different offers in the future. BaFin intends to launch this free comparison website for payment accounts with the aim to create more transparency for consumers in Germany. The comparison website thus contributes to collective consumer protection. The draft Regulation supplements and specifies changes to Sections 16 et seq. VglWebMV. The basis for this is Article 26 of the Future Financing Act, which implements binding EU law.

Date of publication: 01/12/2023

(ii) EU

ESMA: Market report on costs and performance of EU retail investment products 2023

Status: Final

ESMA has published its sixth market report on the costs and performance of EU retail investment products. In this annual report ESMA finds that the average costs of investing in key EU retail financial products declined by the end of 2022. However, cost heterogeneity persisted across EU Member States. The key findings in the report are: (i) UCITS costs have declined, but investors should continue to consider fund fees carefully in their investment decisions; (ii) ESG UCITS funds underperformed on average their non-ESG equivalents in 2022, a likely consequence of the energy crisis; (iii) the market for AIFs remained dominated by professional investors with the share of retail investors reaching around 14% at the end of 2022; and (iv) costs for Structured Retail Products (SRPs), largely charged in the form of entry costs, rose in 2022 for a majority of product types and issuers, although they vary substantially by payoff type and country.

Date of publication: 18/12/2023

3.5 Credit rating agencies

(i) EU

ESMA: 2023 CRA Market Share Report

Status: Final

ESMA has published the 2023 CRA Market Share Report. Article 8d of the CRA Regulation requires issuers or related third parties, who intend to appoint two or more CRAs to rate an issuance or entity, to consider appointing at least one CRA with no more than 10% of the total market share in the EU. Where an issuer or related third party does not choose to appoint a CRA with a less than 10% total market share, the CRA Regulation (Article 8d) requires this decision to be documented. The Market Share Report contains a list of registered CRAs and the types of credit ratings they issue, together with a calculation of CRAs' revenues from credit rating activities and ancillary services at group level, to assist firms in complying with the requirement.

Date of publication: 20/12/2023

ESMA: Final report on EU CLO credit ratings – risk of conflicts of interests relating to methodology changes

Status: Final

ESMA has published a report on EU credit ratings for collateralised loan obligations (CLO). The report highlights potential conflicts of interest risks that were observed in the dialogue between credit rating agencies (CRAs) and market participants, and the potential influence these may have had on the CLO methodology development and rating process of the concerned CRAs from 2017 to 2021. ESMA observed that all CRAs investigated have procedures in place to identify, manage and mitigate the risk and perception of conflict of interests, in particular from fee-related discussions and negotiations. ESMA found that it is common practice for CRA analysts to participate in market outreach activities, including with arrangers and key investors. While ESMA recognises the benefits of analytical outreach with industry, there is a risk that the CLO methodologies developed by CRAs could be unduly influenced by commercial feedback, and the type of information provided by market participants. ESMA highlights that analytical outreach and the boundaries of that outreach need to be carefully safeguarded and communicated to the staff of CRAs. However, ESMA observed the controls around other forms of commercial influence to be less developed. Finally, ESMA found that while analytical market outreach to industry plays an important role for CRAs, in some instances market outreach included the sharing of information that ESMA considers not appropriate. This included, on occasion, market participants sharing with CRAs feedback on the commercial perception of a methodology. ESMA notes that such information could provide rating analysts with commercial information that results in a perception of, or actual, conflict of interests, which could impair the accuracy, objectivity, and independence of CLO credit ratings. ESMA has informed each CRA of its findings and will develop individual remedial action plans to ensure appropriate safeguards and controls are in place. Moving forward, ESMA will continue to monitor the developments in CLO markets, including changes in CLO credit ratings, rating practices and rating methodologies.

Date of publication: 07/12/2023

3.6 MiFID/MiFIR

(i) EU

ESMA: Q&A on the MiFID II and MiFIR investor protection and intermediaries topics

Status: Final

ESMA has updated its Q&A on the MiFID II and MiFIR investor protection and intermediaries topics. ESMA has: (i) updated the Q&A on aggregating costs and charges to clarify the requirement in relation to all in-fees; and (ii) added a new question explaining how investment firms should indicate the parts of the total costs and charges paid in or represented in an amount of foreign currency in their ex-ante and ex-post costs and charges disclosures.

Date of publication: 15/12/2023

ESMA: Discussion on MiFID II investor protection topics linked to digitalisation

Status: Consultation

Deadline for the submission of comments: 14/03/2024

ESMA has published a discussion paper on the digitalisation of retail investment services and related investor-protection considerations. ESMA is seeking feedback on recommendations regarding online disclosures, digital tools, and marketing practices. The paper explores retail investment developments and examines the recent surge in the adoption of digital tools and social media by firms and retail investors following the pandemic, including how technology impacts retail investor behaviour and decision-making. ESMA assesses both the opportunities and the potential risks linked to digitalisation on the basis of NCA supervisory experience and relevant academic literature. Recommendations cover the following key points: (i) layering and accessibility of information; (ii) digital marketing communications and practices; (iii) the use of influencers; (iv) social features of investment apps; (v) gamification; (vi) nudging techniques; and (vii) dark patterns. ESMA will use the feedback to this discussion paper to develop a position on the use of digital engagement and marketing practices, and to assess whether a regulatory response may be needed.

Date of publication: 14/12/2023

(ii) International

IOSCO: Consultation on a report on market outages

Status: Consultation

Deadline for the submission of comments: 01/03/2024

IOSCO has launched a consultation on a report on market outages. The context is that recent market outages have shown that trading venues can take different approaches regarding the coordination and communication of recovery pathways for the impacted market participants and the general public. On the basis of previous IOSCO work and new information gathered via a members' survey, the paper identifies key findings and proposes five good practices for trading venues to consider. These proposed practices are, in summary: (i) establishing and publishing an outage plan with clearly defined roles and responsibilities; (ii) implementing a communication plan for initial notification of the outage and regular status and recovery pathway updates; (iii) communicating information relevant to the reopening of trading in a timely and simultaneous manner to all market participants, providing clarity on order status and an adequate notice period before trading resumes; (iv) ensuring any processes and procedures to operate a closing auction and/or to establish alternative closing prices are published in the outage plan, and communicated to all market participants during an outage; and (v) conducting and sharing with the relevant regulators a lessons-learned exercise of the market outage and adopting a post-outage plan, with clearly defined timelines and allocation of responsibilities for remediation, to reduce the likelihood of future incidents and to improve the venue's ability to respond effectively to outages.

Date of publication: 14/12/2023

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

(i) EU

ESAs: Q&A on the PRIIPs Key Information Document (KID)

Status: Final

The ESAs have published an updated set of consolidated Q&As on the PRIIPs Key Information Document (KID). The Q&As combine responses given by the EC to questions requiring the interpretation of EU law according to Article 16b(5) of the ESA Regulations, and responses generated by the ESAs relating to the practical application or implementation of the PRIIPs Regulation and its Delegated Acts under Article 16b(1) of the ESA Regulations. The original delegated rules are found in the PRIIPs KID Delegated Regulation which has been amended by Delegated Regulation (EU) 2021/2268. The updated document includes Q&As that relate to the amendments introduced in Delegated Regulation (EU) 2021/2268 that applied from 1 January 2023. The sections of the Q&A document that have been updated include: (i) General topics; (ii) Market risk assessment:

product categories; (iii) Performance scenarios; (iv) Multi-option products; and (v) Investment funds. The ESAs last updated the consolidated Q&As in May.

Date of publication: 05/12/2023

4. Market infrastructure

4.1 Custody rules

(i) EU

Regulation (EU) 2023/2845 amending the 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 and amending the Short Selling Regulation

Status: Published in the OJ

Date of entry into force: 16/01/2024

Date of application: 16/01/2024

The Regulation (EU) 2023/2845 amending the 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, and amending the Short Selling Regulation has been published in the OJ. This Regulation aims to reduce the financial and regulatory burden on CSDs and improve their ability to operate across borders, while also strengthening financial stability. The review aims to make securities settlement in the EU more efficient by simplifying requirements and clarifying authorisation processes, among other things.

Date of publication: 27/12/2023

ESMA: Consultation on technical advice on CSDR penalty mechanism

Status: Consultation

Deadline for the submission of comments: 29/02/2024

ESMA has launched a consultation on technical advice on the CSDR penalty mechanism. The co-legislators have concluded negotiations on the review of the CSDR. The provisional agreement on CSDR maintains mandatory buy-ins as part of the settlement discipline toolkit. However, they will only apply as a measure of last resort where the rate of settlement fails in the EU is not improving and is presenting a threat to financial stability. Hence, to ensure that mandatory buy-ins are a necessary, appropriate and proportionate means to address the level of settlement fails on the EU capital market, the full potential of other measures to address settlement fails, in particular cash penalties, must be explored. ESMA is therefore consulting on the effectiveness of the current penalty mechanism in discouraging settlement fails and incentivising their rapid resolution, and on ESMA's preliminary proposals on: (i) alternative parameters, when the official interest rate for overnight credit charged by the central bank issuing the settlement currency is not available; (ii) the treatment of historical reference data for the calculation of late matching fail penalties; and (iii) alternative methods for calculating cash penalties, including progressive penalty rates.

ESMA expects to send the technical advice to the EC by the end of September 2024.

Date of publication: 15/12/2023

4.2 EMIR

(i) EU

ESAs: Final report on bilateral margining of equity options

Status: Final

The ESAs have published the joint draft RTS under EMIR in which they are proposing a two-year extension to the equity option exemption from bilateral margining, as well as issuing a no-action opinion. These RTS provide clarity to market participants on how to handle equity options as from 4 January 2024, the date on which the current temporary exemption is set to expire. More specifically, the ESAs are proposing to extend the temporary exemption and are issuing a no-action Opinion

which includes clarifications on the supervisory expectations. This interim solution comes in the context of the still ongoing EMIR Review negotiations, which should provide a decision regarding the treatment of equity options with respect to bilateral margining, and follows the letter sent by the ESAs on 13 June 2023 to the EC and the co-legislators highlighting the need to have a clear decision as part of the ongoing EMIR Review.

Date of publication: 20/12/2023

ESMA: Final report on Guidelines on position calculation under EMIR

Status: Final

ESMA has published its final report on amendments to its Guidelines on position calculation under Article 80(4) of EMIR, as amended by technical standards introduced under the EMIR Refit Regulation. The revised Guidelines will apply to trade repositories (TRs) that are registered or recognised by ESMA in accordance with Articles 55 and 77 of EMIR respectively. The Guidelines provide clarification regarding the time of calculations, the scope of the data to be used in calculations and the calculation methodologies under the new EMIR Refit standards. The final report also clarifies the way forward for TRs to manage the six-month EMIR Refit transition period.

Having assessed the current usage and dependencies of the position report, and in response to stakeholder feedback, ESMA plans to delay the application date of the revised Guidelines until the EMIR Refit transition period has been concluded. The existing Guidelines will be repealed on 29 April 2024, and replaced with the new Guidelines that will apply from 28 October 2024, providing for a six-month transition period.

Date of publication: 18/12/2023

ESMA: 2022 CCP peer review report on due diligence of clearing members

Status: Final

ESMA has published its annual peer review report on the supervision of EU CCPs by NCAs. The review found that participating NCAs broadly met supervisory expectations in relation to CCP clearing members. In particular, the NCAs consistently assessed the CCPs' compliance with the participation requirements, with due diligence of clearing members and with their review process. The review of how NCAs ensured compliance with the rules governing CCP college activities during the reporting period is overall positive, although, in some cases, NCAs ensured compliance with certain deadlines under EMIR only after the end of the review period. The review identified the need for further work to promote convergence in respect of the continuous monitoring of clearing members' operational capacity. ESMA has issued recommendations to the NCAs to address the identified shortcomings which NCAs are expected to address within one year.

Date of publication: 12/12/2023

ESMA/ECB: Cooperative Arrangement regarding the coordination and exchange of supervisory information in relation to CCPs and their participants

Status: Final

ESMA has published the cooperative arrangement it has entered into with the ECB regarding the coordination and exchange of supervisory information in relation to CCPs and their participants. The purpose of the arrangement is to formalise cooperation and information-sharing mechanisms between the two authorities. The provisions of the arrangement include principles regarding the exchange of supervisory information that is relevant for the discharge of their respective tasks and competences. The arrangement also covers the ongoing cooperation between the authorities, setting out how meetings will be conducted and how they will communicate with each other.

Date of publication: 08/12/2023

Council of the EU: Agreement on negotiating mandates on EMIR 3

Status: Draft

The Council of the EU has adopted a mandate to start negotiations with the EP on the legislative proposals amending EMIR (EMIR 3). The review aims to make the EU clearing landscape more attractive and resilient, to support the EU's open strategic

autonomy and to preserve the EU's financial stability. The proposed EMIR amendments contain several legislative measures to improve EU clearing services, notably by streamlining and shortening procedures, improving consistency between rules, strengthening CCP supervision and requiring market participants to be subject to a clearing obligation to clear a portion of the products, which has been identified by ESMA as of substantial systemic importance, through active accounts at EU CCPs. The Council of the EU also published two notes from the COREPER setting out the text of the proposed Directive and the proposed Regulation.

- Proposal for a Regulation on measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets
- Proposal for a Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions

Date of publication: 06/12/2023

(ii) International

ISDA: Explanatory memorandum to the master regulatory reporting agreement

Status: Final

ICMA, in collaboration with AFME, FIA, ISDA and ISLA, has published an updated version of the Master Regulatory Reporting Agreement (MRRA), alongside an accompanying explanatory memorandum. The MRRA provides users with a template agreement for documenting regulatory reporting arrangements in relation to derivatives and securities financing transactions entered into under industry standard documentation, such as the Global Master Repurchase Agreement. The MRRA sets out common terms governing mandatory and delegated reporting of derivatives transactions under EMIR, compatible with changes introduced via the EMIR Refit, as well as securities financing transactions under the SFTR.

Date of publication: 06/12/2023

5. Anti-money laundering

(i) Germany

BaFin: Circular 12/2023 regarding high-risk countries (*Rundschreiben 12/2023 (GW) zu Hochrisikostaaten*)

Status: Final

BaFin has published Circular 12/2023 to provide information about third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing systems that pose significant risks to the international financial system (high-risk countries).

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

Date of publication: 11/12/2023

BReg: Law improving the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz*)

Status: Draft

The German government has published another draft on the law improving the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz – FKBG*). The draft law particularly contains the essential regulations for the establishment of the new Federal Office to Combat Financial Crime (*Bundesamt zur Bekämpfung von Finanzkriminalität – BBF*) and its tasks and powers, as well as necessary technical legal adjustments on money laundering supervision and sanctions. In addition, the draft contains regulations for the establishment of a real estate transaction register.

Date of publication: 06/12/2023

(ii) EU

Regulation (EU) 2023/2859 establishing an ESAP providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability

Status: Published in the OJ

Date of entry into force: 09/01/2024

The Regulation (EU) 2023/2859 establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability has been published in the OJ. This is a platform that will make already public financial and sustainability-related information about EU companies and EU investment products easier for investors to consult through free, user friendly, centralised and digital access. This additional visibility is expected to open up more financing opportunities for companies, especially for small companies in small capital markets, by way of facilitating the decision-making process for a broad range of investors, including retail investors.

Date of publication: 20/12/2023

Regulation (EU) 2023/2869 amending certain Regulations as regards the establishment and functioning of the ESAP

Status: Published in the OJ

Date of entry into force: 09/01/2024

The Regulation (EU) 2023/2869 amending certain Regulations as regards the establishment and functioning of the European Single Access Point (ESAP) has been published in the OJ. This is part of the Capital Markets Union (CMU) Action Plan and aims to, inter alia, facilitate the decision-making process for a broad range of investors, including retail investors, by increasing the circulation of information, including across borders, and by increasing the digital use of that information. ESAP is intended

not to impose any additional information reporting requirements on European companies, as it will provide access to information already made public in application of the relevant European directives and regulations. Under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation.

Date of publication: 20/12/2023

Directive (EU) 2023/2864 amending certain Directives as regards the establishment and functioning of the ESAP

Status: Published in the OJ

Date of entry into force: 09/01/2024

Date of application: 10/01/2026

The Directive (EU) 2023/2864 amending certain Directives as regards the establishment and functioning of the European Single Access Point (ESAP) has been published in the OJ. This is part of the Capital Markets Union (CMU) Action Plan. It aims to, inter alia, facilitate the decision-making process for a broad range of investors, including retail investors, by increasing the circulation of information, including across borders, and by increasing the digital use of that information. The ESAP is intended not to impose any additional information reporting requirements on European companies, as it will provide access to information already made public in application of the relevant European directives and regulations. Under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation.

Date of publication: 20/12/2023

Council of the EU: Agreement with EP on procedure to select a seat for the new anti-money laundering authority

Status: Draft

The Council of the EU and the EP have reached a common understanding on the process for selecting the seat of the future European authority for countering money laundering and terrorist financing (AMLA), following a [provisional agreement](#) in the week prior. The co-legislators agreed on the principle of organising joint public hearings to allow representatives of member states' candidacies to present their applications. The co-legislators will assess each application according to the selection criteria included in the call for applications, the information provided by candidates in their application forms and the EC's assessment of those forms, as well as the outcome of the joint public hearings. The final decision on the location of AMLA's seat should be made by the co-legislators in an informal inter-institutional meeting at political level, where the EP's and the Council's representatives will vote together at the same time, with the same number of votes attributed to each co-legislator. Nine member states submitted applications to host AMLA: Belgium (Brussels), Germany (Frankfurt), Ireland (Dublin), Spain (Madrid), France (Paris), Italy (Rome), Latvia (Riga), Lithuania (Vilnius) and Austria (Vienna). The EC was tasked to assess the eligibility of the candidacies. The release of the EC's assessment is expected for January 2024. The next step is to proceed with the selection.

Date of publication: 18/12/2023

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 as regards the deletion of the Cayman Islands and Jordan from the table in point I of the Annex

Status: Adopted by the EC

The EC has adopted a Delegated Regulation amending the list of high-risk countries under MLD4 identified as having strategic deficiencies in their AML/CTF regimes that pose significant threats to the EU financial system. The Delegated Regulation removes the Cayman Islands and Jordan from the list, reflecting FATF amendments made in October to its list of "Jurisdictions under Increased Monitoring".

The Delegated Regulation will be submitted to the Council of the EU and the EP for review. If neither objects, it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 12/12/2023

6. Payments

6.1 Payment services/E-money

(i) EU

ECON: Draft report on the proposal for a Regulation on a framework for Financial Data Access

Status: Final

The ECON has published a draft report on the proposed Regulation on a framework for financial data access (FiDA). The report sets out the ECON Rapporteur's proposed amendments to the EC's draft text. The Rapporteur's key amendments relate to: (i) enhancing customer trust – the changes include more clearly circumscribing the categories of personal data that can be made available under FiDA and removing the possibility for undertakings that are not established in the EU to benefit from authorisation as financial information service providers; (ii) promoting innovation – the changes include adapting the narrative to focus the FiDA framework on a customer's data access right, rather than sharing the customers' data, as well as a suggestion to more closely aligning provisions on compensation with the market-driven approach under the Data Act; and (iii) improving interoperability and supervision – the modifications include a closer alignment of FiDA with the GDPR, the Data Act and Data Governance Act and also a further strengthening of the ESA's role vis-à-vis that of NCAs.

Date of publication: 15/12/2023

EPC: Payment threats and fraud trends report

Status: Final

The EPC has published its annual payment threats and fraud trends report. The report provides an overview of the attack landscape, outlining the most important threats and other "fraud enablers". For each threat or "fraud enabler", including social engineering and phishing, malware, Advanced Persistent Threats (APT's), Distributed Denial of Service (DDoS), botnets, third-parties-related and monetisation channels, the EPC provides analysis on the impact and context, with suggested controls and mitigations also described. Some of the conclusions concerning payment threats and fraud enablers that can be drawn from the report include: (i) social engineering attacks and phishing attempts are still increasing, and they remain instrumental often in combination with malware, with a shift from consumers, retailers, and SMEs to company executives, employees, PSPs and payment infrastructures and more frequently leading to APP fraud; (ii) awareness campaigns are still very important countermeasures against social engineering and should be coordinated, involving also public administrations, and they should target individual and corporate customers, as well as employees; (iii) malware remains a major threat, in particular ransomware, which has been on the rise during the past year, requiring new mitigating measures; (iv) one of the most sophisticated and lucrative types of payment fraud now and for the future seems to be APT and the EPC explains that it must be considered as a potential high risk not only for payment infrastructures but also for all network related payment ecosystems; (v) the number of DDoS attacks has increased and they are still frequently targeting the financial sector; and (vi) third-party vendors are more and more critical for PSPs, however they can introduce new risks, therefore, the management of relations with suppliers is of crucial importance in banking and financial legislation in order to prevent consequences such as data breaches, financial losses, and operational failures.

Date of publication: 07/12/2023

6.2 Payment accounts

(i) Germany

BMF: Minister's bill on the regulation repealing the regulation on a comparison website and amending the regulation on the delegation of powers to issue statutory orders to BaFin (*Referentenentwurf über die*

Verordnung zur Aufhebung der Vergleichswebsitesverordnung sowie zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die BaFin)

Status: Final

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a minister’s bill on the regulation repealing the regulation on a comparison website. For more information, please see section 3.4 above.

Date of publication: 11/12/2023

BaFin: Consultation 16/2023 regarding the draft Regulation on reporting regarding payment accounts for the comparison website pursuant to the Payment Accounts Act (*Konsultation 16/2023 zum Entwurf der Vergleichswebsitesmeldeverordnung – VglWebMV*)

Status: Consultation

Deadline for the submission of comments: 15/12/2023

BaFin has launched a consultation regarding the draft Regulation on reporting regarding payment accounts for the comparison website pursuant to the Payment Accounts Act (*Vergleichswebsitesmeldeverordnung – VglWebMV*). For more information, please see section 3.4 above.

Date of publication: 01/12/2023

(ii) EU

Commission Delegated Regulation (EU) 2023/2772 supplementing the Accounting Directive as regards sustainability reporting standards

Status: Published in the OJ

Date of entry into force: 25/12/2023

Date of application: 01/01/2024

The Commission Delegated Regulation (EU) 2023/2772 supplementing the Accounting Directive as regards European sustainability reporting standards (ESRS) has been published in the OJ. The ESRS in this first set apply to all undertakings under the scope of the Corporate Sustainability Reporting Directive (CSRD) regardless of in which sector or sectors the undertaking operates. The EC will monitor the implementation of the standards contained in this delegated act to ensure that they lead to the disclosure of relevant, reliable and comparable sustainability information. In future years, the EC is expected to adopt additional delegated acts for additional sets of standards.

Date of publication: 22/12/2023

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

ESMA/ECB: Cooperative Arrangement regarding the coordination and exchange of supervisory information in relation to CCPs and their participants

Status: Final

ESMA has published the cooperative arrangement it has entered into with the ECB regarding the coordination and exchange of supervisory information in relation to CCPs and their participants. For more information, please see section 4.2 above.

Date of publication: 08/12/2023

8. Institutional supervisory framework

(i) EU

EBA: Consultation on two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

Status: Consultation

Deadline for the submission of comments: 25/03/2024

The EBA has launched a consultation on two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures. These measures are binding on any person or entity under the jurisdiction of Member States. They comprise individual measures, i.e., targeted financial sanctions, and sectoral measures, i.e. financial and economic measures or embargoes. Through these Guidelines, the EBA creates, for the first time, a common understanding, among payment service providers (PSPs), crypto-asset service providers (CASPs) and their supervisors of the steps they need to take to be able to comply with restrictive measures.

Date of publication: 21/12/2023

ESAs: Report on the update on the functioning of innovation facilitators – innovation hubs and regulatory sandboxes

Status: Final

The ESAs have published a report on innovation hubs and regulatory sandboxes, referred to as “innovation facilitators”. The report identifies a number of benefits and challenges relating to the operation and design of such innovation facilitators, and presents recommendations and considerations to further enhance the role and efficiency of innovation facilitators across the EEA in the financial sector.

To improve the operation of innovation facilitators and the experience for participating firms, NCAs are invited to: (i) improve their understanding of the concerns and interests of participating firms; (ii) broaden the scope of innovations captured, including at the cross-sectoral level; (iii) ensure effective collaboration among NCAs; and (iv) continuously evaluate the functioning of innovation hubs and regulatory sandboxes. In the report, the ESAs also suggest that the EC should undertake a comprehensive reflection on the EU-wide strategy to support financial innovation and the operation of innovation facilitators, in particular regulatory sandboxes.

Date of publication: 11/12/2023

(ii) International

BCBS: Announcement of the outcome of December meeting

Status: Final

The BCBS has published a press release detailing the outcome of its meetings on 5 and 7 December to discuss a range of policy and supervisory initiatives. Upcoming work initiatives include: (i) G-SIBs and window-dressing – a consultation in 2024 on potential policy options aimed at reducing window-dressing behaviour by some banks in the context of the framework for G-SIBs; (ii) interest rate risk in the banking book – a consultation on a set of targeted adjustments to its standard on IRRBB, which proposes updates to the interest rate shocks specified in the IRRBB standard to take account of interest rate movements since the standard was first published in April 2016 and will be published this month; (iii) cryptoassets – the continued monitoring of the evolution of banks' cryptoasset custody activities and, taking account of market developments, considering whether any additional work may be needed. The BCBS also agreed to consult this month on revisions to the prudential standard for banks' exposures to cryptoassets published in December 2022 and will consult on targeted revisions relating to the criteria for stablecoins to receive a preferential Group 1b regulatory treatment and on technical amendments intended to promote a consistent understanding of the standard, the BCBS concluded that cryptoassets that use permissionless blockchains create risks that cannot be sufficiently mitigated at present and agreed to retain the existing treatment for such cryptoassets.

(iv) implementation of Basel III reforms - the Committee reviewed and approved the assessment reports on the implementation

of the Net Stable Funding Ratio and large exposures framework by Mexico and Switzerland and also approved the follow up implementation assessment report of the Liquidity Coverage Ratio by Mexico, which will be published this month; and (v) climate-related financial risks – the Committee discussed the development of potential risk management considerations associated with the transition to a low carbon economy and related physical risks, and will continue to consider these issues over the coming months; these would complement previous initiatives by the Committee, including the publication of supervisory principles, responses to FAQs, and the recently proposed disclosure framework.

Date of publication: 07/12/2023

9. Investment funds

9.1 Product regulation

(a) AIF

(i) EU

ESMA: Market report on costs and performance of EU retail investment products 2023

Status: Final

ESMA has published its sixth market report on the costs and performance of EU retail investment products. For more information, please see section 3.4 above.

Date of publication: 18/12/2023

EC: Commission Implementing Regulation (EU) .../... laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of alternative investment fund managers and the exchange of information between competent authorities on cross-border notification letters

Status: Adopted by the EC

The EC has adopted the draft Commission Implementing Regulation laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of alternative investment fund managers and the exchange of information between competent authorities on cross-border notification letters. The exchange of information between competent authorities is part of the administrative procedures in relation to the notifications of alternative investment funds managers (AIFMs) wishing to carry out marketing or management activities, to provide services or to establish a branch in host Member States. To close those administrative procedures in a smooth, fast, unbureaucratic, and reliable way, it is necessary to specify and harmonise the exchange of information between competent authorities by the development of harmonised forms, templates, cooperation procedures and the implementation of communication by electronic means. While such information might be provided by e-mail, it should be possible to provide that information also by other, potentially more advanced electronic technology. It is therefore necessary to set out a detailed procedure for those electronic transmissions and for dealing with technical problems that might occur in the process of the transmission of the information between the competent authorities. The provisions in this draft are closely linked since they deal with the form and content of the information to be exchanged between AIFMs and the national competent authorities of home and host Member States where the AIFM intends to provide cross-border services.

The Council and the EP will now scrutinise the draft legislation. If neither objects, it will enter into force 20 days after publication in the OJ and apply 30 days later.

Date of publication: 15/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of managers of AIFMs

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of managers of AIFMs under Article 33 of the AIFMD. In order to foster convergence and to standardise the transmission of notifications for cross-border marketing and the cross-border management activities of AIFs throughout the EU, the AIFMD may be supplemented with RTS for the exchange of information and related communication between NCAs, specifying the information to be provided, as well as the content and format of notification letters that AIFMs submit to NCAs if they wish to undertake cross-border marketing or cross-border management activities and provide services in host Member States. These draft RTS also aims to further specify the procedure

for the communication of the notification file by the relevant home NCA to the host NCA of the Member States where these activities are envisaged.

The Council and the EP will now scrutinise the draft legislation. If neither objects, it will enter into force 20 days after publication in the OJ and apply 30 days later.

Date of publication: 15/12/2023

ESMA: Public statement regarding an update on the Guidelines on funds' names using ESG or sustainability-related terms

Status: Final

ESMA has published an update on the status of ESMA's Guidelines on ESG and sustainability-related terms in fund names, including details on the timing of their publication. Since the launch of the work on the guidelines, the AIFMD and UCITS Directive reviews have progressed. As such, ESMA has decided to postpone the adoption of the Guidelines to ensure that the outcome of these reviews may be fully considered. In particular, the text of the provisional agreement resulting from the interinstitutional negotiations contains two new mandates for ESMA to develop Guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair, or misleading. ESMA plans to adopt the guidelines shortly after the date of entry into force of the amended legal texts and is publishing this statement to highlight the key content of the guidance that it intends to provide in the forthcoming Guidelines. The Guidelines are expected to be approved and published in Q2 2024, subject to the timing of the publication of the AIFMD and UCITS Directive revised texts. The Guidelines would apply three months after the date of their publication on the website in all EU official languages. Managers of new funds would be expected to comply with the Guidelines in respect of those funds from the date of application of the Guidelines. Managers of funds existing before the date of application of the Guidelines should comply with the Guidelines in respect of those funds six months from the application date.

Date of publication: 14/12/2023

(b) UCITS

(i) EU

ESMA: Market report on costs and performance of EU retail investment products 2023

Status: Final

ESMA has published its sixth market report on the costs and performance of EU retail investment products. For more information, please see section 3.4 above.

Date of publication: 18/12/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS under Articles 17, 18 and 20 of the UCITS Directive. In order to foster convergence and to standardise the transmission of notifications for cross-border marketing and the cross-border management activities of UCITS throughout the EU, the UCITS Directive contains provisions mandating the ESMA to develop draft RTS and ITS for the exchange of information and related communication between NCAs. This includes the RTS specifying the information to be provided, as well as the content and format of notification letters that management companies submit to NCAs if they wish to undertake cross-border marketing or cross-border management activities and to provide services in host Member States. The RTS also aims to further specify the procedure

for the communication of the notification file by the relevant home NCA to the host NCA of the Member States where these activities are envisaged.

The Council and the EP will now scrutinise the draft legislation. If neither objects, it will enter into force 20 days after publication in the OJ and apply 30 days later.

Date of publication: 15/12/2023

ESMA: Public statement regarding an update on the Guidelines on funds' names using ESG or sustainability-related terms

Status: Final

ESMA has published an update on the status of ESMA's Guidelines on ESG and sustainability-related terms in fund names, including details on the timing of their publication. For more information, please see section 9.1(a) above.

Date of publication: 14/12/2023

9.2 Prudential regulation

(a) Compliance

(i) Germany

BMJ: Minister's bill of a second law on the reform of the Capital investors' test cases act *(Referententwurf eines Zweiten Gesetzes zur Reform des Kapitalanleger-Musterverfahrensgesetzes)*

Status: Draft

The Federal Ministry of Justice (*Bundesjustizministerium* – BMJ) has published a Minister's bill on the Second law on the reform of the Capital investors' test cases act (*Kapitalanleger-Musterverfahrensgesetz* – KapMuG). The KapMuG provides a special civil model case procedure before the higher regional courts, in particular for claims based on false, misleading or omitted public capital market information. Questions of fact or law that arise equally in several individual proceedings before the regional courts are submitted to the Higher Regional Court (*Oberlandesgericht*) and are heard and decided in a single procedure if parties in at least ten of these individual proceedings so request. Following the model decision, the individual proceedings before the regional courts are brought to a conclusion on the basis of this decision. This law is to be retained as a special code of procedure with its current scope of application. While keeping its basic procedural structures, it will be further developed into an effective instrument for both the judiciary and individual legal protection in dealing with mass proceedings relating to capital market law and established as such on a permanent basis.

Date of publication: 28/12/2023

BaFin: Letter on pending changes to the German regulation on capital investment audit reports *(Schreiben zu anstehenden Änderungen der Kapitalanlage-Prüfungsberichte-Verordnung – KAPrÜfbV)*

Status: Final

BaFin has circulated a letter on pending changes to the German regulation on capital investment audit reports (*Kapitalanlage-Prüfungsberichte-Verordnung* – KAPrÜfbV). The amendment is intended to introduce an [overview table](#) comprising the findings from the audits and a new form for reporting in the context of the money laundering. This form provides for the classification of these findings from F-1 to F-4 or F-5. BaFin hopes that auditors use the templates provided with the letter in anticipation of the corresponding amending regulation to the KAPrÜfbV in the context of outstanding audits of capital management companies or investment funds that require authorisation or registration and attach corresponding assessments to their audit reports.

Date of publication: 23/11/2023

(ii) EU

ESMA: Final report on draft RTS under the revised ELTIF Regulation

Status: Final

ESMA has published the final report setting out the draft RTS for the European Long-Term Investment Fund (ELTIF) regulation. The draft RTS cover: (i) the circumstances in which the life of an ELTIF is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF; (ii) the circumstances for the use of the matching mechanism, i.e., the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors; and (iii) the costs disclosure. The final report delineates the specific rules that are to be applied, providing a detailed framework for aspects such as minimum holding period and maximum redemption frequency, choice of liquidity management tools, notice period and maximum percentage of liquid assets that can be redeemed. It sets out the amendments made by ESMA in response to feedback from the last public consultation.

ESMA has submitted the draft RTS to the EC for endorsement and final approval.

Date of publication: 19/12/2023

ESMA: Final report on Guidelines on stress test scenarios under the MMF Regulation

Status: Final

ESMA has published the final report on the Guidelines on stress test scenarios under the Money Market Funds Regulation (MMFR). The report combines an update of the methodology to implement the scenario related to the hypothetical changes in the level of liquidity of the assets held in the portfolio of the MMF, with the annual calibration of the risk parameters. Based on feedback received from stakeholders, the revised methodology includes parameters reflecting the liquidity stress affecting the money market and a new risk factor to simulate the additional impact of asset sales under stress market conditions. This takes the form of a price impact representing the additional cost incurred by selling a large amount of securities in a market with few buyers. The 2023 parameter update reflects the prevailing sources of systemic risk identified for the financial system, against the background of a prolonged period of low growth, elevated inflation and higher interest rates. The severity of the parameters of the stress test scenarios in relation to hypothetical movements of the interest rates materially increased compared to the 2022 Guidelines, while other scenarios have been updated with a degree of severity similar to the previous exercise.

The Guidelines will now be translated and will become applicable two months after publication of the translations. Once the updated Guidelines apply, managers will have to report the results of the new parameters to NCAs with their quarterly reports. Until then, managers should use the parameters set in the 2022 Guidelines and report accordingly.

Date of publication: 19/12/2023

(iii) International

FSB: Revised policy recommendations to address structural vulnerabilities from liquidity mismatch in OEFs

Status: Final

The FSB has published its revised policy recommendations to address structural vulnerabilities from liquidity mismatch in open-ended funds and IOSCO published final guidance on anti-dilution liquidity management tools (LMTs) for the effective implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes. The revised FSB recommendations are addressed to financial regulatory and supervisory authorities. They set out the key objectives for an effective regulatory and supervisory framework to address vulnerabilities arising from liquidity mismatch in open-ended funds (OEFs). Combined with the LMT Guidance, these recommendations aim to achieve a significant strengthening of liquidity management by OEF managers compared to current practices. The revised recommendations provide greater clarity on the redemption terms that OEFs can offer to investors, based on the liquidity of the OEF asset holdings.

The Revised FSB Recommendations seek to achieve: (i) greater inclusion of anti-dilution LMTs in OEF constitutional documents; and (ii) greater use of, and greater consistency in the use of, anti-dilution LMTs in both normal and stressed market conditions. To support these objectives and ensure more effective liquidity risk management practices, IOSCO's LMT Guidance aims to support the greater use of anti-dilution LMTs by OEFs to mitigate investor dilution and potential first-mover advantage

arising from structural liquidity mismatch in OEFs. The LMT Guidance sets out key operational, design, oversight, disclosure and other factors and parameters that responsible entities should consider when anti-dilution LMTs are used, to promote greater, more consistent, and more effective use of these tools. Looking ahead: (a) IOSCO will consider how to further operationalise the Revised FSB Recommendations through amendments to the 2018 IOSCO Recommendations and supporting good practices, as needed; (b) the FSB and IOSCO will complete a stocktake by the end of 2026 to review progress by member jurisdictions in implementing their respective revised Recommendations and guidance; and (c) by 2028, the FSB and IOSCO will assess whether implemented reforms have sufficiently addressed risks to financial stability.

Date of publication: 20/12/2023

FSB: Annual global monitoring report on non-bank financial intermediation

Status: Final

The FSB has published its annual global monitoring report on non-bank financial intermediation. This report describes broad trends in financial intermediation across 29 jurisdictions that account for around 85% of global GDP. The report mainly covers developments in 2022, when most economies experienced a rising rate environment in response to inflationary pressures.

Date of publication: 18/12/2023

10. Special rules for real estate financing and covered bonds

10.1 Mortgage credits

(i) Germany

BaFin: Maximum loss rates for risk positions secured with real estate pursuant to Articles 125, 126, 199 CRR (*Verlustraten für mit Immobilien besicherte Risikopositionen gemäß Artikel 125, 126, 199 CRR*)

Status: Final

BaFin has updated its list on loss ratios for risk positions secured with real estate pursuant to Articles 125, 126, 199 CRR. It has noted that these maximum loss rates have been complied with.

The publication is only relevant for institutions granting real estate-secured loans.

Date of publication: 27/12/2023

(ii) EU

EBA: Report in response to the call for advice from the EC on green loans and mortgages

Status: Final

The EBA has responded to the EC's call for advice on green loans and mortgages. The response provides an overview of green lending and associated practices in the banking sector, and outlines issues identified in the green loans market. To facilitate a more active participation by banks in the green loans market, the EBA advises to make available a voluntary EU definition and label for green loans based on the use of the loan proceeds. These initiatives should leverage current market practices and industry standards that are in line with the EU's environmental objectives.

In particular, the EBA proposes that: (i) the EU definition and labelling framework for green loans, while based on the Taxonomy, incorporates a degree of flexibility to facilitate market participants' credible efforts in contributing to environmental objectives; (ii) the labelling framework for green loans provides the necessary information and transparency for prospective borrowers, including information on the long-term benefits of investing in energy-efficient solutions, documentation requirements and availability of financial support schemes; and (iii) when reviewing the Mortgage Credit Directive, it consider integrating the concept of green mortgages as well as the expected features of these loans. Important aspects include information about energy performance, the use of energy performance certificates as part of pre-contractual information and enhancing competence and knowledge related to green mortgages.

Date of publication: 15/12/2023

EBA: Peer review report on supervision of treatment of mortgage borrowers in arrears

Status: Final

The EBA has published a peer review report on the supervision of treatment of mortgage borrowers in arrears. The report sets out the findings of the peer review of seven competent authorities' conduct supervision of creditors' treatment of mortgage borrowers in arrears, taking into account the EBA Guidelines on arrears and foreclosure. The review found that, overall, conduct supervision is effective: competent authorities have adapted their supervision to reflect the changed economic environment and risks to mortgage borrowers, although they have done so to varying degrees, which may partly reflect differences in domestic mortgage markets. All competent authorities under review have implemented the EBA's Guidelines in their entirety. The EBA notes that the competent authorities that allocated significant and dedicated resources to conduct supervision, were particularly effective and prepared for challenges mortgage borrowers may face in the current interest rate climate. Competent authorities that focused primarily on prudential supervision had a more limited focus on the Mortgage

Credit Directive's (MCD) consumer protection objectives, and lacked adequate resources and supervisory approaches to engage with the particular issues that arise for borrowers – although some had made recent changes aimed at strengthening conduct supervision. In these areas the EBA has adopted follow up measures for some competent authorities. The EBA requires all EEA supervisors of the MCD, which also have prudential supervisory responsibilities, to ensure that they have appropriate supervisory resources focused on conduct objectives. The EBA will conduct a follow-up peer review of the implementation of the measures included in the report in two years. Competent authorities are encouraged to assess the steps needed in their jurisdiction in order to address current and potential risks to consumers from the ongoing changes to interest rates.

Date of publication: 11/12/2023

11. Special topics

11.1 Brexit

(i) EU

ESMA: Public statement on the impact of Brexit on the Benchmark Regulation

Status: Final

ESMA has updated its statement in relation to the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks under the BMR. For more information, please see section 3.2 above.

Date of publication: 15/12/2023

11.2 FinTech/Digital finance

(i) Germany

BT: Government draft on the Law on the digitalisation of the financial market (*Regierungsentwurf des Finanzmarktdigitalisierungsgesetzes – FinmadiG*)

Status: Draft

The German government has published its draft on the Law on the digitalisation of the financial market (*Finanzmarktdigitalisierungsgesetz – FinmadiG*). The draft law is intended to incorporate the MiCA Regulation, the new version of the Transfer of Funds Regulation and carry out or implement the DORA package summarised in a FinmadiG. The MiCA Regulation establishes an independent and innovative European regulatory framework for markets for crypto-assets, which replaces the previous national framework for the regulation of crypto-assets. The draft law stipulates that the MiCA regulation can be implemented in Germany by means of a new Crypto Market Supervision Act (*Kryptomärkteaufsichtsgesetz – KMAG*). It bundles the supervisory powers of BaFin over crypto-assets and crypto-asset service providers into one law.

Date of publication: 22/12/2023

BaFin: Protocol on the special IT sector meeting regarding cloud/exit (*Protokoll Sonderfachgremium IT zum Cloud/Ausstieg*)

Status: Final

BaFin has published its protocol on the special IT sector meeting regarding cloud/exit. The protocol summarises the key discussion aspects and results from this meeting. It sets out the procedures to ensure the exit from significant outsourcing of IT activities to cloud providers.

Date of publication: 12/12/2023

BaFin: Protocol on the special IT sector meeting regarding cloud/IT-emergency management (*Protokoll Sonderfachgremium IT zum Cloud/IT-Notfallmanagement*)

Status: Final

BaFin has published its protocol on the special IT sector meeting regarding cloud/IT-emergency management. The protocol summarises the key discussion aspects and results from this meeting. It sets out the procedures that ensure the continuation and recovery of time-critical IT activities and processes of the financial organisation that are dealt with in Chapter 10 of BAIT / VAIT.

Date of publication: 12/12/2023

(ii) EU

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, updating questions within the following chapters: (i) general provisions; (ii) provisions of crowdfunding services, and organisational and operational requirements; and (iii) investor protection and marketing communications. ESMA has added new questions in relation to: (i) whether a crowdfunding service provider can only accept sophisticated investors; (ii) how placement without a firm commitment and reception and transmission of orders as referred to in Article 2(1) of the Crowdfunding Regulation should be understood in the context of the Crowdfunding Regulation; and (iii) how NCAs should apply Article 11(2)(c) of the Crowdfunding Regulation at the point of authorisation and how and to what extent an insurance policy can be combined with own funds.

Date of publication: 15/12/2023

ESAs: Joint consultation on second batch of policy mandates under DORA

Status: Consultation

Deadline for the submission of comments: 04/03/2023

The ESAs have launched a joint consultation on a second batch of six policy mandates under the Digital Operational Resilience Act (DORA). The ESAs are mandated to jointly develop a total of 13 policy instruments, presented in two batches. The second batch includes four draft RTS, one set of draft ITS and two sets of Guidelines. These policy instruments aim to ensure a consistent and harmonised legal framework in the areas of major ICT-related incident reporting, digital operational resilience testing, ICT third-party risk management and oversight over critical ICT third-party providers.

- RTS and ITS on major incident reporting
- Guidelines on estimation of aggregated annual costs and losses caused by major ICT-related incidents
- RTS on subcontracting ICT services supporting critical or important functions
- RTS on the harmonisation of conditions enabling the conduct of the oversight activities
- Guidelines on the oversight cooperation and information exchange between the ESAs and the competent authorities
- RTS specifying elements related to threat led penetration tests

Date of publication: 08/12/2023

EBA: Consultation on draft RTS specifying requirements for policies and procedures on conflicts of interest for issuers of ARTs under MiCAR

Status: Consultation

Deadline for the submission of comments: 07/03/2023

The EBA has launched a consultation on draft RTS specifying the requirements for policies and procedures on conflicts of interest for issuers of ARTs under MiCAR. The draft RTS aim to strengthen the management of conflicts of interest by issuers of ARTs and ensure convergence of requirements across the EU. Ensuring the sound management of the reserve of assets and contributing to the protection of holders and prospective holders of ARTs is key. For that purpose, the draft RTS require the issuer to give particular attention to the conflicts of interest that could arise when it manages and invests the reserve of assets, including when third parties are involved. The draft RTS encompass specific provisions, including documentation requirements, related to personal transactions that have to be conducted objectively, in the interest of each party. The draft RTS also specify that the remuneration procedures, policies and arrangements of the issuer should not create conflicts of interest. The draft RTS underline the key role of the issuer's management body, which is responsible for defining and adopting the conflicts of interest policies and procedures. The draft RTS require a person responsible for the management of conflicts of interest with adequate resources at hand. Finally, the draft RTS set out the content of the disclosure, which should be accessible to the public, both in term of sources and language. The EBA expects that the final RTS will be available when MiCAR enters into force.

Date of publication: 07/12/2023

(iii) International

IOSCO: Final report with policy recommendations for decentralised finance (DeFi)

Status: Final

IOSCO has finalised its policy recommendations for decentralised finance (DeFi). The nine policy recommendations follow a “lifecycle” approach in addressing the key risks identified and cover six key areas: (i) understanding DeFi arrangements and structures; (ii) achieving common standards of regulatory outcomes; (iii) identification and management of key risks; (iv) clear, accurate and comprehensive disclosures; (v) enforcement of applicable laws; and (vi) cross-border cooperation. They are principles-based and outcomes-focused, and aimed at DeFi products, services, activities, and arrangements by applying IOSCO’s widely accepted global standards for securities markets regulation. IOSCO aims to address market integrity and investor protection concerns arising from DeFi by supporting greater consistency of regulatory frameworks and oversight in member jurisdictions. The interoperability of the recommendations with IOSCO’s policy recommendations for crypto and digital assets markets is set out in the “Umbrella Note”, also published.

Date of publication: 19/12/2023

BCBS: Consultation on crypto-asset standard amendments

Status: Consultation

Deadline for the submission of comments: 28/03/2024

BCBS has published a consultation paper on proposed targeted adjustments to its standard on banks’ exposures to crypto-assets. The proposals expand the criteria on the composition of the reserve assets that back stablecoins, covering issues such as the credit quality, maturity and liquidity of the reserve assets. The requirements determine whether the stablecoins to which banks may be exposed will be eligible for inclusion in the Group 1b category of crypto-assets, and thus benefit from a preferential regulatory treatment. Under the proposals, banks would also be required to perform due diligence to ensure that they have an adequate understanding of the stabilisation mechanisms of stablecoins to which they are exposed, and the effectiveness of those mechanisms. As part of the due diligence performed, banks would be required to conduct statistical or other tests demonstrating that the stablecoin maintains a stable relationship in comparison to the reference asset. The consultation also includes various proposed technical amendments and a set of answers to frequently asked questions, to help promote a consistent understanding of the crypto-asset standard.

Date of publication: 14/12/2023

11.3 AI

(i) International

IOSCO: Statement on online harm

Status: Final

IOSCO has published a statement in relation to online harm. IOSCO refers to “online harm” as meaning financial fraud perpetrated on the Internet, primarily targeting retail investors in the securities and derivatives markets, orchestrated using deceptive acts and/or misleading or fraudulent content, including user-generated content, where the author is unauthorised, or makes false or misleading claims or impressions, to induce the purchase of financial products and / or services. The statement is intended to serve as: (i) a warning to retail investors about the serious perils of online harm, including those IOSCO identifies as five critical threats that it wishes to draw to the attention of the retail investor community; (ii) an invitation to other relevant stakeholders, including legislators, law enforcement agencies, search engine operators, social media platforms and other intermediaries and facilitators to support global efforts to reduce online harm; and (iii) a call to action to regulators to respond holistically and innovatively to online harm, including by working with players in the broader online harm ecosystem. IOSCO notes that combatting online fraud and harm has become one of its biggest priorities.

Date of publication: 15/12/2023

11.4 Sustainable finance

(i) EU

Commission Delegated Regulation (EU) 2023/2772 supplementing the Accounting Directive as regards sustainability reporting standards

Status: Published in the OJ

Date of entry into force: 25/12/2023

Date of application: 01/01/2024

The Commission Delegated Regulation (EU) 2023/2772 supplementing the Accounting Directive as regards European sustainability reporting standards (ESRS) has been published in the OJ. For more information, please see section 6.1 above.

Date of publication: 22/12/2023

EC: Draft notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets

Status: Final

The EC has published a draft notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets. The notice sets out guidance to financial undertakings in the form of replies to FAQs on the reporting of their key performance indicators (KPIs) under the Disclosures Delegated Act. The guidance is intended to help the financial market participants concerned prepare their first mandatory reporting exercise in 2024. It covers topics including: (i) the scope of covered entities; (ii) the scope of consolidation of disclosures; (iii) the taxonomy-assessment of exposures to individual undertakings, of groups, and of specific exposures; and (iv) specific questions related to credit institutions, insurance undertakings and asset managers.

The draft was approved in principle by the EC on 21 December and its formal adoption in all the official languages of the EU will take place as soon as the language versions are available.

Date of publication: 21/12/2023

Commission Delegated Regulation (EU) 2023/2830 supplementing Directive 2003/87/EC by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances

Status: Published in the OJ

Date of entry into force: 21/12/2023

Commission Delegated Regulation (EU) 2023/2830 supplementing Directive 2003/87/EC by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances was published in the OJ. The Delegated Regulation replaces the EU ETS Auctioning Regulation 2010 ((EU) No 1031/2010). Amendments were necessary in order to, among other things, take account of the new rules and elements introduced in Directive 2003/87/EC, including the extension of the scope of the existing emission trading system to maritime transport and the introduction of a new and separate emissions trading system for buildings, road transport and industrial activities not covered by the existing emission trading system. In addition, minor modifications were made to clarify and fine-tune existing provisions, based on the lessons learned from implementation.

Date of publication: 20/12/2023

Council of the EU: Agreement on negotiating mandate on the Regulation on the transparency and integrity of ESG rating activities

Status: Draft

The Council of the EU has agreed on the negotiating mandate on the Regulation on the transparency and integrity of ESG rating activities, with the aim of boosting investor confidence in sustainable products. ESG ratings provide an opinion on a company's or a financial instrument's sustainability profile, by assessing its exposure to sustainability risks and its impact on society and the environment. ESG ratings have an increasingly important impact on the operation of capital markets and on investor confidence.

The new rules aim to strengthen the reliability and comparability of ESG ratings by improving the transparency and integrity of the operations of ESG ratings providers, making ratings more comparable and preventing potential conflicts of interests. Under the proposed rules, ESG rating providers will need to be authorised and supervised by ESMA and comply with transparency requirements, in particular with regard to their methodology and sources of information. Changes made to the EC's proposal, highlighted by the Council, include: (i) clarification of the circumstances under which ESG ratings fall under the scope of the regulation, providing further details on the applicable exemptions; (ii) clarification of its territorial scope, outlining what constitutes operating in the EU, and further clarification on the applicable provisions under the endorsement regime; (iii) introduction of a lighter, temporary and optional registration regime of three years for existing small ESG rating providers and new small markets entrants; and (iv) introduction of the possibility for ESG ratings providers to not have a separate legal entity for certain activities, provided that there is a clear distinction between activities and that they put in place measures to avoid conflicts of interests. This derogation would not be applicable to consulting or audit activities when they are provided to rated entities.

The EP agreed on its negotiating mandate in the plenary session held between 11 and 14 December. Today's agreement on the Council mandate paves the way to interinstitutional negotiations that are expected to start in January 2024.

Date of publication: 20/12/2023

Regulation (EU) 2023/2859 establishing an ESAP providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability

Status: Published in the OJ

Date of entry into force: 09/01/2024

The Regulation (EU) 2023/2859 establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability has been published in the OJ. For more information, please see section 5 above.

Date of publication: 20/12/2023

Regulation (EU) 2023/2869 amending certain Regulations as regards the establishment and functioning of the ESAP

Status: Published in the OJ

Date of entry into force: 09/01/2024

The Regulation (EU) 2023/2869 amending certain Regulations as regards the establishment and functioning of the European Single Access Point (ESAP) has been published in the OJ. For more information, please see section 5 above.

Date of publication: 20/12/2023

Directive (EU) 2023/2864 amending certain Directives as regards the establishment and functioning of the ESAP

Status: Published in the OJ

Date of entry into force: 09/01/2024

Date of application: 10/01/2026

The Directive (EU) 2023/2864 amending certain Directives as regards the establishment and functioning of the European Single Access Point (ESAP) has been published in the OJ. For more information, please see section 5 above.

Date of publication: 20/12/2023

ECB/ESRB: Report towards macroprudential frameworks for managing climate risk

Status: Final

The ECB and ESRB have published a joint report on macroprudential frameworks for managing climate risk. The report finds that banks have a key role to play within the financial system when it comes to managing and reducing risks to financial stability that arise from emissions of the EU economy. This is because banks lend disproportionately to sectors with high exposure to climate-related risk. Reassessing and repricing climate risk could create financial instability through numerous channels with high exposure to climate-related risk. This includes the transmission of climate shocks through global value chains and the potential for financial contagion as both banks and financial markets seek to simultaneously reposition their asset portfolios against the backdrop of a significant insurance protection gap. The report proposes three frameworks to tackle climate risks to financial stability: (i) addressing risk surveillance – it takes stock of advances in measuring and modelling the impacts of climate risk, proposing a list of indicators for regular financial stability risk monitoring. Details of these indicators are set out in a chartbook accompanying the report; (ii) macroprudential policy – it outlines both the features of a robust strategy as well as an initial operational design based on existing instruments, which can be scaled up as further information and more tailored policy options emerge; and (iii) on prospective financial stability impacts stemming from nature degradation, which could serve to exacerbate the financial stability impacts of climate change.

Date of publication: 18/12/2023

EBA: Report in response to the call for advice from the EC on green loans and mortgages

Status: Final

The EBA has responded to the EC's call for advice on green loans and mortgages. For more information, please see section 10.1 above.

Date of publication: 15/12/2023

ESMA: Consultation on draft Guidelines on enforcement of sustainability information

Status: Consultation

Deadline for the submission of comments: 15/03/2024

ESMA has launched a consultation on draft Guidelines on Enforcement of Sustainability Information. The main goals of the draft Guidelines are to: (i) ensure that national competent authorities carry out their supervision of listed companies' sustainability information under the Corporate Sustainability Reporting Directive (CSRD), the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation in a converged manner; and (ii) establish consistency in, and equally robust approaches to, the supervision of listed companies' sustainability and financial information; this will facilitate increased connectivity between the two types of reporting.

The consultation paper will be of interest to listed companies required to publish sustainability information by the CSRD and Article 8 of the Taxonomy Regulation, to investors and other users of sustainability information and to auditors and independent assurance services providers.

Date of publication: 15/12/2023

Council of the EU/EP: Provisional agreement on the draft corporate sustainability due diligence directive

Status: Draft

The Council of the EU and the EP have announced a provisional deal on the Corporate Sustainability Due Diligence Directive, which aims to enhance the protection of the environment and human rights in the EU and globally. The Directive will set obligations for large companies in relation to actual and potential adverse impacts on human rights and the environment, and with respect to the operations of the company itself, its subsidiaries and its business partners. The provisional agreement frames the Directive's scope, clarifies the liabilities for non-compliant companies, better defines the different penalties, and completes the list of rights and prohibitions that companies should respect. The agreed scope includes large companies that have more than 500 employees and a net worldwide turnover of EUR 150 million. For non-EU companies it will apply if they have a EUR 150 million net turnover generated in the EU, three years from the entry into force of the Directive, and the EC will publish a list of in-scope non-EU companies. However, according to the deal reached between the co-legislators, the financial sector will be temporarily excluded from scope, but there will be a review clause for a possible future inclusion of this sector based on a sufficient impact assessment. The provisional agreement needs to be endorsed and formally adopted by both institutions.

Date of publication: 14/12/2023

ESMA: Public statement regarding an update on the Guidelines on funds' names using ESG or sustainability-related terms

Status: Final

ESMA has published an update on the status of ESMA's Guidelines on ESG and sustainability-related terms in fund names, including details on the timing of their publication. For more information, please see section 9.1(a) above.

Date of publication: 14/12/2023

ESMA: Announcement of the launch and participation in Common Supervisory Action on ESG disclosures for Benchmarks Administrators

Status: Final

ESMA has announced that it will launch a Common Supervisory Action (CSA) with NCAs on ESG disclosures under the BMR. The goal of the CSA will be to assess compliance of supervised Benchmarks Administrators with the BMR ESG disclosure requirements. The CSA will cover disclosure of ESG factors in the benchmarks statement and in the benchmarks methodology, and specific disclosure requirements regarding climate benchmarks methodology. ESMA believes this initiative will help ensure consistent and effective supervision across the EU and enhance the comparability of the information provided to benchmark users. ESMA and the NCAs will carry out the CSA during 2024, until Q1 2025.

Date of publication: 13/12/2023

EU Platform on Sustainable Finance: Report on climate change taxonomy and the EU regulatory response: EU taxonomy-aligning benchmarks (TABs)

Status: Consultation

Deadline for the submission of comments: 31/03/2024

The EU Platform on Sustainable Finance has published a draft report and call for feedback on EU taxonomy-aligning benchmarks. The report puts forward two proposals for voluntary benchmarks (EU TAB and EU TABex), with the aim of initiating a discourse on the pivotal role the taxonomy could assume in shaping climate and environmental benchmarks. The main objectives of the proposed benchmarks are to: (i) show how a significant level of comparability of taxonomy-aligning benchmarks methodologies could be achieved, while leaving benchmark administrators with an important level of flexibility in designing their methodology; (ii) provide investors with an appropriate tool to align the taxonomy with their investment strategy; (iii) increase transparency on investor impact, specifically with regard to climate change and the environmentally sustainable Capital Expenditures required for the energy transition; and (iv) disincentivise greenwashing. Ultimately, the Platform on Sustainable Finance aims at supporting the development of innovative tools that contribute to the decarbonisation and greening of investment portfolios.

Date of publication: 13/12/2023

EP: Report on the proposal for a regulation on the transparency and integrity of ESG rating activities

Status: Draft

The EP published a report by ECON on the EC's proposal for a Regulation on the transparency and integrity of ESG rating activities. The report contains a draft EP legislative resolution, the text of which sets out suggested amendments to the proposed Regulation. ECON voted to adopt the report at its meeting on 4 December 2023.

Date of publication: 08/12/2023

ESAs: Final Report on draft RTS on the review of PAI and financial product disclosures in the SFDR Delegated Regulation

Status: Draft

The ESAs have published a final report on draft RTS on the review of principal adverse impacts (PAI) and financial product disclosures in the SFDR Delegated Regulation. The report follows from the joint consultation paper published by the ESAs in April on the same topic. Having considered the feedback to the consultation, the ESAs have adjusted the draft RTS in several areas. The draft RTS cover the following topics: (i) an extension of the social PAI indicators; (ii) other changes to the PAI disclosure framework; and (iii) a new financial product disclosure of greenhouse gas emission reduction targets. In addition, after conducting consumer testing exercises in four Member States, the ESAs are proposing some improvements and simplifications to the financial product templates, contained in Annexes II-V of the SFDR Delegated Regulation, including a new “dashboard” with a simple summary of key information.

The ESAs are also proposing additional minor technical amendments to the SFDR Delegated Regulation relating to: (a) enhanced disclosure of how sustainable investments comply with the “do not significantly harm” principle; (b) revision of the provisions for products with investment options such as multi-option products; and (c) other technical changes, including harmonised calculation of sustainable investments and a requirement to produce the disclosures in machine-readable format. The EC will now study the draft RTS and decide whether to endorse them within three months. These draft RTS would be applied independently of the comprehensive assessment of the SFDR announced by the EC in September and before changes resulting from that assessment would be introduced.

Date of publication: 04/12/2023

ECON: Adoption to significant changes to draft Regulation on the transparency and integrity of ESG rating activities

Status: Draft

The EP has announced that the ECON adopted the draft report on the EC's proposal for a Regulation on the transparency and integrity of ESG rating activities. However, the EP notes that ECON has proposed significant changes to the rules put forward by the EC: (i) ratings providers should refrain from aggregating the E, S and G scores, as this could obscure poor performance on any of these individual metrics; in particular, ESG ratings providers should disclose whether E, S, or G factors are taken into account or an aggregation thereof, the rating given to each relevant factor, and the weighting each of these factors is given in the aggregation; (ii) ratings providers should explicitly disclose the rated entity's materiality, i.e., whether the delivered rating addresses both material financial risk to the rated entity and the material impact of the rated entity on the environment and society, or whether it takes into account only one of these; (iii) ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those providers use in their ESG rating activities and in each of their ESG ratings product; and (iv) an entity seeking to obtain more than one ESG rating should choose at least one ESG rating provider with a market share below 15%.

Date of publication: 04/12/2023

(ii) International

NGFS: Recommendations toward the development of scenarios for assessing nature-related economic and financial risks

Status: Final

The NGFS has published a technical document providing recommendations for the development of scenarios for assessing nature-related economic and financial risks. The document provides a comprehensive overview of the challenges related to the development of such scenarios, in view of the specific and complex features. It then reviews a range of modelling approaches for scenarios of two main types, namely nature-economy models and biophysical models, and assesses the extent to which those approaches can integrate the outputs of nature-specific narratives, and the extent to which they account for the transmission channels through which specific nature-related hazards can propagate in the economy. The document also examines alternative approaches to the examined models to assess nature-related financial risks, with a focus on those that represent multiple hazards in multiple sectors. The document concludes with a list of options for central bankers and supervisors for moving forward with the development of quantified nature-related scenarios both in the short-term and longer-term.

Date of publication: 13/12/2023

IOSCO: Report on supervisory practices to address greenwashing

Status: Final

IOSCO has published a final report on supervisory practices to address greenwashing. The report provides an overview of initiatives undertaken in various jurisdictions to address greenwashing, in line with IOSCO recommendations published in November 2021 and the subsequent call for action in November 2022. The report presents the challenges hindering the implementation of these recommendations, including: (i) data gaps, transparency, quality, and reliability of ESG ratings; (ii) consistency in labelling and classification of sustainability-related products; (iii) evolving regulatory approaches; and (iv) capacity building needs. IOSCO notes that while some of these challenges are currently being addressed, greenwashing remains a fundamental market conduct concern that poses risks to both investor protection and market integrity. The report also notes that while the ESG ratings and data products market remain largely unregulated, some jurisdictions are currently developing policy frameworks for ESG ratings and data products providers. Finally, the report refers to the cross-border nature of sustainability-related investments, which requires adequate cooperation. IOSCO believes that such cross-border cooperation, including sharing experiences and knowledge, as well as exchanging relevant information and data, is therefore necessary in ensuring market integrity and investor protection.

Date of publication: 04/12/2023

IOSCO: Consultation report on voluntary carbon markets

Status: Consultation

Deadline for the submission of comments: 03/03/2024

IOSCO has published a consultation report outlining a set of good practices to promote the integrity and orderly functioning of the Voluntary Carbon Markets (VCMs). The report discusses the feedback that IOSCO received to its discussion paper on VCMs. Overall, respondents generally agreed with the description of the carbon market ecosystem and vulnerabilities, called for coordination between various initiatives aimed at improving the functioning of VCMs, and expressed mixed views with respect to the legal treatment of carbon credits, as well as the use of DLT and tokenisation in connection with VCMs. After considering the feedback received, IOSCO is proposing a set of 21 good practices relating to regulatory frameworks, primary market issuance, secondary market trading, and use and disclosure of use of carbon credits. The proposed set of good practices is addressed to relevant regulators and other authorities, as well as market participants, and looks to support jurisdictions that have or are seeking to establish VCMs. In the report, IOSCO also highlights the key considerations that do not fall within the scope of financial market integrity and the typical remit of financial market regulators, describing other initiatives that are currently underway which may address the objectives of these key considerations.

Date of publication: 03/12/2023

12. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

Publication of the Law promoting secondary credit markets (*Veröffentlichung des Kreditweitmarktförderungsgesetzes*)

Status: Published in the Federal Gazette

Date of application: 30/12/2023

The Law promoting secondary credit markets (*Gesetz zur Förderung geordneter Kreditweitmärkte und zur Umsetzung der Richtlinie (EU) 2021/2167 über Kreditdienstleister und Kreditkäufer sowie zur Änderung weiterer finanzmarktrechtlicher Bestimmungen – Kreditweitmarktförderungsgesetz*) has been published in the German Federal Gazette. For more information, please see section 1.1(e) above.

Date of publication: 29/12/2023

Publication of the Financing for the Future Act (*Veröffentlichung des Zukunftsfinanzierungsgesetzes*)

Status: Published in the Federal Gazette

Date of entry into force: 15/12/2023

The Financing for the Future Act (*Zukunftsfinanzierungsgesetz – ZuFinG*) has been published in the Federal Gazette. For more information, please see section 3.1 above.

Date of publication: 14/12/2023

13. Contacts

Financial Services Regulatory / Funds and Asset Management Capital Markets



Dr Alexander Behrens
Key contact | Partner
Tel +49 69 2648 5730
alexander.behrens@allenoverly.com



Dorothee Atwell
Partner
Tel +49 69 2648 5408
dorothee.atwell@allenoverly.com



Stephan Funck
Of Counsel
Tel +49 69 2648 5791
stephan.funck@allenoverly.com



Dr Daniela Schmitt
Counsel
Tel +49 69 2648 5475
daniela.schmitt@allenoverly.com



Martina Stegmaier
Counsel
Tel +49 69 2648 5605
martina.stegmaier@allenoverly.com



Lukas Wagner
External Consultant
Tel +49 69 2648 5906
lukas.wagner@allenoverly.com



Valeska Karcher
Senior Associate
Tel +49 69 2648 5312
valeska.karcher@allenoverly.com



Judith Bremer
Associate
Tel +49 69 2648 5562
judith.bremer@allenoverly.com



Suzana Cvejic
Associate
Tel +49 69 2648 5868
suzana.cvejic@allenoverly.com



Niklas Germayer
Associate
Tel +49 69 2648 5973
niklas.germayer@allenoverly.com



Ruth Rawas
Associate
Tel +49 69 2648 5616
ruth.rawas@allenoverly.com



Katharina Wollmert
Associate
Tel +49 69 2648 5553
Katharina.wollmert@allenoverly.com

**Derivatives, Structured
Finance and Financial
Services Regulatory**

**Derivatives and
Structured Finance,
Debt Capital Markets**



Julius Brauer
Senior Paralegal
Tel +49 69 2648 5504
julius.brauer@allenoverly.com



Lisa Huber
Professional Support Lawyer
Tel +49 69 2648 5467
lisa.huber@allenoverly.com



Dr Stefan Henkelmann
Partner
Tel +49 69 2648 5997
stefan.henkelmann@allenoverly.com



Martin Scharnke
Head of ICM Germany
Tel +49 69 2648 5835
martin.scharnke@allenoverly.com

FOR MORE INFORMATION PLEASE CONTACT

Frankfurt

Bockenheimer Landstraße 2
60306 Frankfurt am Main
Germany

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

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Allen & Overy LLP

Dreischeibenhäuser 1, 40211 Düsseldorf, Germany | Tel +49 211 2806 7000 | Fax +49 211 2806 7800
Bockenheimer Landstraße 2, 60306 Frankfurt am Main, Germany | Tel +49 69 2648 5000 | Fax +49 69 2648 5800
Ballindamm 17, 20095 Hamburg, Germany | Tel +49 40 82 221 2100 | Fax +49 40 82 221 2200
Maximilianstraße 35, 80539 Munich, Germany | Tel +49 89 71043 3000 | Fax +49 89 71043 3800
allenoverly.com

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