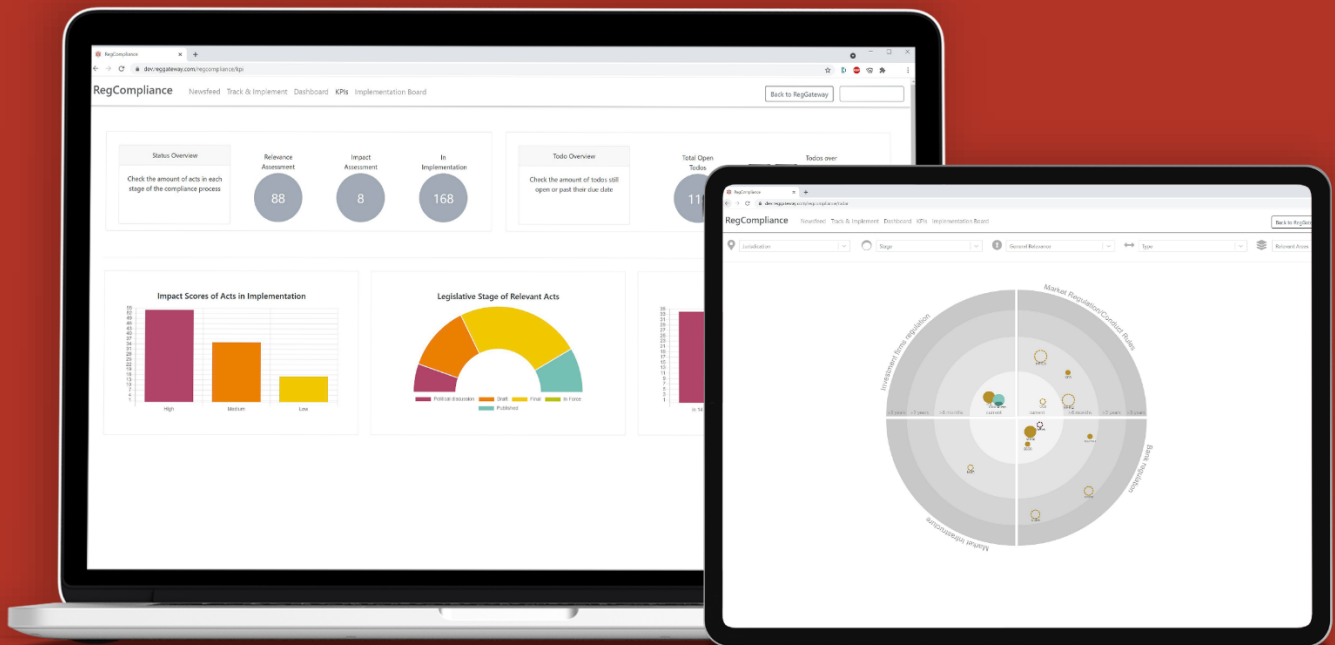


Regulatory monitoring: EU Version

Newsletter

April 2022





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CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

Council: Provisional agreement on a revised bank resolution framework (Daisy Chain proposal)

Status: Political Agreement

The Council of the EU announced that it had reached political agreement with the EP on the ‘Daisy Chain’ proposal, which amends the EU bank resolution framework by: (i) incorporating a dedicated treatment for the indirect subscription of instruments eligible for internal minimum requirement for own funds and eligible liabilities (MREL); (ii) further aligning the treatment of global systemically important institution groups with a Multiple Point of Entry (MPE) resolution strategy with the treatment outlined in the FSB’s international Total Loss-absorbing Capacity (TLAC) Term Sheet; and (iii) clarifying the eligibility of instruments in the context of the internal TLAC.

The Council explains that the co-legislators managed to bridge their divergences on two key points concerning: (a) the deduction regime for own funds and eligible liabilities meeting the requirements for loss-absorption in resolution that are channelled through an intermediate entity in the context of their upstreaming within complex resolution groups. The provisional agreement introduces a revised deduction regime, to avoid in particular double-counting of MREL elements at the level of intermediate entities. It adds a review clause to take into account the impact on different types of banking group structures. Such potential improvements will be assessed by the EC services, with a view to possible inclusion within the future BRRD review proposal, expected this year; and (b) the treatment of MPE resolution strategy groups, especially as regards aligning such treatment on the regime foreseen under TLAC international standards and taking into account third-country entities within such groups. The issue arises especially in cases where the resolution regime of a third country is not equivalent to the EU. Under the provisional agreement, a transitional regime until end 2024 is introduced for these groups, subject to an assessment by EU resolution authorities. The provisional agreement is subject to approval by the Council and the EP before going through the formal adoption procedure.

Date of publication: 28/04/2022

Council: Three-column table to commence trilogue on the Daisy Chain Regulation

Status: Draft

The Council of the EU has published a three-column table to commence the trilogue proceedings with regard to the so-called Daisy Chain Regulation. This draft Regulation aims to implement outstanding elements of the finalisation of Basel III dating back to 2017, by including targeted adjustments to the resolution-related rules contained in the CRR and BRRD.

Date of publication: 28/03/2022

EBA: Response to the EC’s call for advice on the review of the macroprudential framework

Status: Final

The EBA has published a response to the EC’s call for advice on the review of the macroprudential framework, proposing a set of recommendations to simplify the procedures around some of the existing macroprudential tools and to increase harmonisation for others. These recommendations include: (i) rebuilding regulatory capital buffers to sufficient levels so that they can be released when needed again in the future; (ii) undertaking a comprehensive evaluation of the interaction of macroprudential measures with other capital requirements; (iii) maintaining clear roles and responsibilities of the different authorities involved in microprudential and macroprudential policy as well as close coordination between them; (iv) including a legal mandate in the CRD to develop methodologies covering both the identification of other systemically important institutions (O-SIIs) and the setting of buffer rates; (v) simplifying the text of CRD and CRR around governance procedures for some

macroprudential measures; (vi) performing further assessments on the ability of current macroprudential tools to address environmental, crypto assets and cyber security risks; and (vii) establishing an oversight and monitoring system for non-bank lenders and enlarge the scope of the macroprudential framework to cover non-bank lenders. Please see below for the ECB's response to the same call for advice.

Date of publication: 29/04/2022

ECB: Response to the EC's call for advice on the review of the EU macroprudential framework

Status: Final

The ECB has published a response to the EC's call for advice on the review of the EU macroprudential framework. The review of the EU macroprudential framework was preceded by the ECB's monetary policy strategy review, which emphasised that financial stability is a precondition for price stability and vice versa. This recognised that in view of the price stability risks generated by financial crises, there is a clear conceptual case for the ECB taking financial stability considerations into account in its monetary policy deliberations. The ECB response covers the four broad areas included in the call for advice: (i) the revision of the capital buffer framework. First, the ECB supports creating additional macroprudential policy space – in the form of a higher amount of releasable capital buffers – to enhance the ability of the financial system to withstand large, systemic shocks by better enabling banks to absorb losses while maintaining the provision of key financial services to the real economy. Secondly, the ECB suggests increasing the flexibility and effectiveness of the countercyclical capital buffer (CCyB) framework by supporting timelier activation in the build-up phase and release in stress periods. Thirdly, the ECB suggests enhancing information exchange between resolution, competent and designated authorities. Fourthly, the ECB does not support extending leverage buffers to O-SIIs at this stage; (ii) missing and obsolete instruments. Fifthly, the ECB supports introducing a data collection requirement for a minimum set of common lending standard indicators for residential real estate loans for monitoring purposes. Sixthly, the ECB proposes consolidating all macroprudential risk weight measures for real estate into a single article. Seventhly, the ECB does not at this stage support the introduction of the power to impose binding system-wide restrictions on distributions at Union and/ or national level in the CRR/ CRD; (iii) internal market considerations, coordination mechanisms and procedures. Eighthly, the ECB suggests mandating the EBA, in consultation with the ESRB, to issue Guidelines on a revised methodology for O-SII identification and buffer calibration. Ninthly, the ECB suggests mandating the ESRB to report on identifying systemic risks for the purposes of setting the systemic risk buffer (SyRB) and, if appropriate, to issue a recommendation to designated authorities on the application of the SyRB on the basis of this report. Tenthly, the ECB suggests streamlining the procedures governing national flexibility measures set out in Article 458 of the CRR. Eleventhly, the ECB suggests revising the rules on calculating the thresholds for the sectoral SyRB and the interaction between the SyRB and the capital buffers for global and other systemically important institutions; and (iv) global risks. The ECB sees the rationale for removing the CRD provisions on third-country CCyB rates. Please see above for the EBA's response to the same call for advice.

Date of publication: 31/03/2022

ECB: Opinion on a proposal for a Directive amending CRD IV as regards supervisory powers, sanctions, third-country branches, environmental, social and governance risk

Status: Draft

The ECB has published an opinion on the EC's proposal for a Directive amending CRD IV as regards supervisory powers, sanctions, third-country branches, environmental, social and governance risk (CRD VI). The ECB strongly supports the EC's banking reform package, of which CRD VI is a part, and considers that it will strengthen the regulatory framework. The opinion discusses the ECB's support in particular for: (i) enhancing how ESG risks are addressed by imposing stricter requirements and by broadening the supervisory toolkit. This will help to ensure that institutions proactively develop enhanced risk management frameworks; (ii) the faithful implementation of the output floor to reduce unwarranted risk weight variability and the ECB welcome that there will be no double-counting of risks with respect to other requirements, while operational complexities should be avoided. The ECB does, however, express strong concerns with regard to the proposed requirement for a mandatory review of the calibration of both the SyRB and O-SII buffer; (iii) harmonised provisions for the assessment of banks' directors and key staff to facilitate supervisory effectiveness and enhance sound governance. The ECB is, however, concerned that the appointment of members of the management body, in urgent contexts, without any kind of suitability assessment, may lead to the appointment of unsuitable candidates, also due to the ambiguity underlying the interpretation of the terms 'strictly necessary' and 'immediately' used in that context; (iv) a common set of rules for branches of third-country banking groups operating in Member States to replace heterogeneous national approaches. The ECB would like the scope of the proposed new Article 21c clarifying and taking into consideration existing requirements in other EU law that regulates particular services. The ECB also propose that assets originated by a branch but booked remotely to another location should be included when assessing the size

and systemic importance of a branch and that the scope of the reporting requirement be enhanced to capture direct provision of cross-border services provided by the group; (v) further harmonising national powers related to the acquisition of qualifying holdings, transfers of assets or liabilities, mergers or divisions, as well as the sanctioning regime, to ensure the consistency and robustness of the framework; and (vi) allowing supervisors to withdraw the authorisation of credit institutions that have been declared failing or likely to fail, but do not qualify for resolution because the public interest criterion is not met, to facilitate the orderly exit of these banks from the market. The ECB also calls for consistency between CRD IV and the Single Supervisory Mechanism Regulation, on matters relating to supervisory independence in general and conflicts of interest in particular. The ECB sets out its proposed amendments to the text proposed by the EC.

Date of publication: 27/04/2022

ECB: FAQs on Russia-Ukraine war and ECB Banking Supervision

Status: Final

The ECB has published FAQs on its supervisory approach with regards to the Russian invasion of Ukraine. The FAQs include nine questions covering: (i) the ECB's role in sanctions and some related guidance for banks; (ii) the size of banks' exposures to Russia and Ukraine; and (iii) miscellaneous questions including on the expected impact of Russian retaliation on the European banking system. While the ECB is in most respects only responsible for significant banks, such FAQs could also be of more general interest.

Date of publication: 26/04/2022

Council: Conclusions on the EU's economic and financial strategic autonomy

Status: Final

The Council of the EU has published its conclusions on the EU's economic and financial strategic autonomy, one year after the Commission's Communication on this topic. In its conclusions, the Council of the EU focuses on: (i) strengthening the international role of the euro; (ii) a strong, competitive and resilient European financial sector servicing the real economy, avoiding risks arising from excessive reliance on third-country financial institutions and infrastructures; (iii) shielding and strengthening the resilience of financial-market infrastructure; (iv) developing an effective mechanism for managing sanctions; and (v) cooperation with partners.

Date of publication: 05/04/2022

(ii) International

FSB: Letter to G20 finance ministers and central bank governors

Status: Final

The FSB has published a letter, dated 14 April, sent by Klaas Knot, FSB Chair, to the G20 finance ministers and central bank governors ahead of their meeting on 20 April. The letter discusses the current outlook for financial stability and sets out the FSB's plans over the coming months to assess and address emerging vulnerabilities. Key points include: (i) the Russian invasion of Ukraine triggered large price fluctuations in global financial markets. So far, the global financial stability impact of the war appears limited compared to the turmoil caused by Covid-19. Nevertheless, uncertainty remains high, with the return of inflation and the prospect of tighter financing conditions; (ii) other issues that warrant particular attention include linkages between commodity markets and the rest of the financial system, financial system leverage and possible amplifiers in the event of market stress, and cyber risks; (iii) for many emerging market and developing economies heightened geopolitical tensions and rising energy and food prices are adding to the economic strain from Covid-19, reduced policy space and tightening global financial conditions. The FSB's forthcoming report on US dollar funding and emerging market economy vulnerabilities draws policy implications to address vulnerabilities related to external financing; (iv) as part of its work programme to strengthen non-bank financial intermediation (NBFIs), the FSB is developing a systemic approach to NBFIs and policy proposals that are effective from a system-wide perspective. In October 2022, the FSB will deliver a comprehensive progress report on the various initiatives under the NBFIs work programme to the G20 Summit, including on the main findings of relevant FSB and standard-setting body initiatives and on policy proposals to address systemic risk in NBFIs; (v) the FSB is intensifying monitoring of current market developments and emerging vulnerabilities, with a particular focus on commodity markets, margining and leverage. The FSB's ongoing work for the G20 on exit strategies from Covid-19 and measures to avoid scarring effects will also consider the

possible implications of current developments for financial policies; (vi) the Ukraine war has reinforced concerns about the growth and potential use of cryptoassets. The FSB is taking forward work on the regulation and supervision of ‘unbacked’ cryptoassets and stablecoins; and (vii) the letter stresses the importance, and increased urgency, of the FSB’s ongoing policy work on addressing the financial risks from climate change.

Date of publication: 20/04/2022

(b) Solvency/Own funds issues

(i) EU

EBA: Opinion on the European Commission’s amendments relating to the final draft RTS for own funds and eligible liabilities

Status: Draft

The EBA has published an Opinion on the amendments proposed by the EC to the EBA final draft RTS for own funds and eligible liabilities. The EBA rejects the EC’s two substantive amendments, which relate to: (i) the provisions covering the notions of direct and indirect funding (Recital 5 and Article 9(2a)) – the EBA considers that the RTS already contain, from a supervisory perspective, the necessary principles or tools needed for capturing all cases of direct or indirect funding without any additional description; and (ii) the prior permission process for certain types of liquidation entities (Recital 14 and Article 32h) – the EBA considers that its prior permission regime is proportionate to the goals of the regulation. The EBA accepted the remaining changes on other parts that were not considered substantive. The EBA has submitted the amended draft RTS to the EC.

Date of publication: 08/04/2022

EBA: Survey for banks on application of infrastructure supporting factor

Status: Consultation

Deadline for the submission of comments: 27/05/2022

The EBA has launched a survey for banks on their experiences with the application of the so-called infrastructure supporting factor in accordance with CRR II. Article 501a of CRR II introduces a reduction by 25% of the own fund requirements for specific corporate exposures, the so-called infrastructure supporting factor. The eligible exposures must be to entities that were created specifically to finance or operate physical structures or facilities, systems and networks that provide or support essential public services. They must also meet additional conditions, which imply a certain minimum level of quality or maximum riskiness of the exposures. Besides assessing the application of the supporting factor, the survey aims at providing valuable information on the materiality of infrastructure project loans across EU banks, irrespective of whether credit institutions specialise in infrastructure lending or not. National competent authorities will also disseminate the survey directly to the largest banks.

Date of publication: 05/04/2022

(c) Securitisation

(i) EU

EBA: Final draft RTS specifying the requirements for originators, sponsors, original lenders and servicers relating to risk retention pursuant to Article 6(7) of the Securitisation Regulation as amended by the CMRP

Status: Final

The EBA has published final draft RTS specifying the requirements for originators, sponsors, original lenders and servicers relating to risk retention pursuant to Article 6(7) of the Securitisation Regulation as amended by Regulation (EU) 2021/557 (Capital Markets Recovery Package – CMRP). The RTS have been drafted in such a way as to ensure the alignment of interest (risks) between the securitisation sponsors, originators, original lenders, and, in the case of traditional non-performing exposure (NPE) securitisations, servicers, on the one hand, and the investors buying the securitisation positions or providing the credit

protection in synthetic securitisations, on the other. The draft RTS carry over a substantial part of the provisions on risk retention set out in the previous RTS on risk retention adopted by the EBA in 2018. Several additional provisions have been included addressing the extended mandate under Regulation (EU) 2021/557, as part of the CMRP and addressing specific issues relating to risk retention. Several modifications have been made to existing provisions for the sake of ensuring consistency with the mandate focusing on the modalities of risk retention in NPE securitisations and the impact of fees payable to retainers on the risk retention requirement. Further clarity has been provided on the application of the risk retention requirement to re-securitisations, as well as the treatment of synthetic excess spread as a possible form of compliance. The final RTS will enter into force 20 days following its publication in the OJ. The RTS will replace the existing Commission Delegated Regulation (EU) 625/2014, however the Securitisation Regulation contains transitional provisions regarding the application of the existing Delegated Regulation to those securitisations whose securities were issued before its application date.

Date of publication: 12/04/2022

(d) Liquidity

(i) EU

Commission Delegated Regulation (EU) 2022/629 amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards adjustment the liquidity thresholds and trade percentile used to determine the SSTI applicable to certain non-equity instruments

Status: Published in the OJ

Date of application: 03/05/2022

The Commission Delegated Regulation (EU) 2022/629 amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards adjustment the liquidity thresholds and trade percentile used to determine the size specific to the instrument (SSTI) applicable to certain non-equity instruments has been published in the OJ. The Delegated Regulation amends Article 17 Delegated Regulation (EU) 2017/583 to move to phase three with regard to the liquidity assessment of bonds and with regard to the SSTI.

Date of publication: 13/04/2022

(e) Cyber security

(i) EU

ECB: Opinion on a proposal for a Directive on measures for a high common level of cybersecurity across the Union, repealing the NIS Directive

Status: Draft

The ECB has published an opinion on the EC's proposed Directive on measures for a high common level of cybersecurity across the EU, and repealing the Directive on Security of Network and Information Systems (NIS Directive) (2016/1148). Generally, the ECB strongly supports the objectives of the proposed directive to increase the level of cyber resilience across all relevant sectors, reduce inconsistencies across the internal market and improve the level of situational awareness and the collective capability to prepare and respond by ensuring efficient cooperation in the EU. The ECB acknowledges the importance of maintaining strong links between the proposed directive and the financial sector, which should remain part of the NIS ecosystem to promote the consistent assessment of risks related to ICT across the EU, and foster effective cross-sectoral information exchange and collaboration when dealing with cyber threats. To that end, it should be possible for the competent authorities under the proposed regulation on digital operational resilience for the EU financial sector 'DORA' to participate in the strategic policy discussions and the technical workings of the NIS Cooperation Group, as well as to exchange information and further cooperate with the single points of contact and the national Computer Security Incident Response Teams referred to in the proposed directive. The ECB provides its opinion in relation to the proposed directive's scope, the ESCB and Eurosystem oversight competences, ICT third-party risk, management of large-scale incidents and crises, information-sharing and national

cybersecurity strategy. The opinion states that where the ECB recommends that the proposed directive is amended, a specific drafting proposal is set out in a separate technical working document accompanied by an explanatory text.

Date of publication: 13/04/2022

(f) Consolidation

(i) EU

Commission Delegated Regulation (EU) 2022/676 supplementing CRR II with regard to RTS specifying the conditions in accordance with which consolidation is to be carried out in the cases referred to in Articles 18(3) to (6) and Article 18(8) of CRR II

Status: Published in the OJ

Date of application: 16/05/2022

The Commission Delegated Regulation (EU) 2022/676 containing RTS on the methods of prudential consolidation under Article 18 of the CRR has been published in the OJ. The RTS specify the conditions for the application of the different methods of prudential consolidation. The RTS also specify several risk indicators to be taken into account by competent authorities in assessing whether an undertaking should be fully or proportionally consolidated for prudential purposes.

Date of publication: 26/04/2022

(g) Disclosure

(i) EU

Commission Implementing Regulation (EU) 2022/631 amending the ITS laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of exposures to interest rate risk on positions not held in the trading book

Status: Published in the OJ

Date of entry into force: 09/05/2022

The Commission Implementing Regulation amending the ITS laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of exposures to interest rate risk on positions not held in the trading book has been published in the OJ. Article 448 of the CRR, as amended by the CRR II, requires institutions to disclose quantitative and qualitative information on the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of their non-trading book activities referred to in Articles 84 and 98(5) of the CRD IV. The Implementing Regulation amends Commission Implementing Regulation (EU) 2021/637 by inserting a new Article 16a and Annexes. These set out qualitative disclosures on how institutions calculate their interest rate risk in the banking book (IRRBB) exposure values based on their internal measurement systems and on institutions' overall IRRBB objective and management. They also provide quantitative disclosures about the impact of changes in interest rates on institutions' economic value of equity and net interest income.

Date of publication: 19/04/2022

1.2 Recovery and resolution

(i) EU

Council: Provisional agreement on a revised bank resolution framework (Daisy Chain proposal)

Status: Political Agreement

The Council of the EU announced that it had reached political agreement with the EP on the ‘Daisy Chain’ proposal, which amends the EU bank resolution framework. For more information, please see section 1.1(a) above.

Date of publication: 28/04/2022

(ii) Eurozone

SRB: 2022 resolution planning cycle booklet

Status: Final

The Single Resolution Board (SRB) has published its 2022 Resolution Planning Cycle (RPC) booklet. This booklet informs stakeholders about the SRB’s resolution planning activities and describes the main processes and phases of the current RPC. The RPC aligns the resolution planning of the banks under the SRB remit on the same 12-month cycle running from April to March. The general policy implementation milestones in 2022 include: (i) updating the SRB policies and operational guidance documents, among others, taking into account the experience gained; (ii) conducting close monitoring of resolvability and preparation of the substantive impediments procedure for those banks which show insufficient progress towards achieving resolvability in line with the Efb; (iii) conducting ongoing MREL monitoring to ensure build-up towards the final targets by the 1 January 2024 general deadline, as well as monitoring the 2022 intermediate targets; (iv) further developing deep-dive assessments, paving the way for conducting future on-site inspections; and (v) starting the preparation of the 2023 RPC, taking into account that 2023 is the final year for all SRB banks to be fully resolvable, in line with the Efb; banks will receive bank-specific 2023 SRB priority letters in September. The SRB work priorities in the 2022 RPC include: (i) in the 2022 RPC, the SRB will focus its work with banks under its remit on three common priorities: (a) liquidity and funding in resolution. Banks must ensure to have the capabilities to mobilise collateral to maximise liquidity sources in resolution; (b) separability and business reorganisation plans. Banks have to provide additional reports on the potential reorganisation plans (required in the context of the open bank bail-in strategy) and on the transferability of parts of their business; and (c) information systems and MIS capabilities for bail-in and valuation data. All banks for which resolution is the preferred strategy are expected to conduct a bail-in dry-run and the self-testing exercise on MIS valuation by end 2022; (ii) the SRB communicated these common priorities, together with bank-specific priorities, to the bank through the SRB priority letters in September/October 2021; and (iii) for those areas of resolvability where banks did not show sufficient progress in line with the Efb, the IRTs initiated closer monitoring based on dedicated reporting by the bank on a quarterly basis.

Date of publication: 20/04/2022

SRB: Letter on the use of IPC during the 2022 ex-ante contribution to the SRF

Status: Final

The SRB has published a letter, addressed to those institutions notified on their 2022 ex-ante contribution to the Single Resolution Fund (SRF), which outlines what Irrevocable Payment Commitments (IPCs) are and what steps need to be taken in order to request the use of IPCs.

Date of publication: 11/04/2022

2. Investment firms regulation

(i) EU

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

Status: Adopted by the EC

The EC has published the text of the Delegated Regulation with regard to RTS for own funds requirement for investment firms based on fixed overheads under the IFR, which it adopted on 11 April 2022. The draft RTS: (i) further specify the deductions to be applied for the calculation from the figures resulting from the applicable accounting standards that are the basis for the calculation of the fixed overheads; (ii) introduce criteria specifying the notion of material change in the activity of an investment firm; and (iii) clarify the additional items to be deducted from the total expenses by commodity and emission allowance dealers on account of the particularity of the activities conducted by those undertakings. Since the mandate is similar to the mandate set out in the CRR, these draft RTS are based on the equivalent CRR RTS set out in Commission Delegated Regulation (EU) 2015/488, taking into account the broader scope of application and the necessary additional specifications.

The Council and the EP will now scrutinise the Delegated Regulation and, if neither objects, it will enter into force 20 days after its publication in the OJ.

Date of publication: 25/04/2022

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

ESMA: Updated Q&As on the Benchmarks Regulation

Status: Final

ESMA has updated its Q&As on the Benchmarks Regulation. In particular, it has updated Q&A 10.6 on the benchmark statement reflecting ESG factors.

Date of publication: 01/04/2022

(ii) International

FSB: Statement welcoming smooth transition away from LIBOR

Status: Final

The FSB has published a statement welcoming a smooth transition away from LIBOR. The FSB confirms that all GBP, EUR, CHF, and JPY LIBOR panels, as well as the one-week and two-month USD LIBOR settings, ceased as of end-2021. The one, three and six-month GBP and JPY LIBOR settings are being published temporarily on a synthetic basis to support legacy contracts. While key panel-based USD LIBOR settings will continue until end-June 2023, this is intended to support the run-off of a substantial proportion of legacy contracts. U.S. Banking Supervisors as well as many other authorities in FSB jurisdictions have strongly encouraged firms to cease new use of USD LIBOR after end-2021, subject only to some limited exceptional use to support an orderly transition. Given the significant use of USD LIBOR globally, the FSB emphasises that firms must have plans in place to ensure their preparedness for the cessation of the USD LIBOR panel. To ensure financial stability, it is important that market participants transition from LIBOR and other IBORs that are set to be discontinued. The FSB encourages firms to maintain momentum in active transition of legacy LIBOR contracts that reference synthetic GBP and JPY LIBOR settings. The FSB also continues to support engagement with emerging market and developing economies to maintain a smooth transition from LIBOR to RFRs, across all global markets. The FSB plans to conduct a follow-up assessment in H2 2022 to identify any remaining transition and supervisory challenges to support the LIBOR transition effort. The FSB's Official Sector Steering Group will continue to serve as a forum in 2022 and 2023 for cooperation among authorities that have leading roles in interest rate benchmark reforms and transition preparedness.

Date of publication: 05/04/2022

3.2 Consumer protection rules

(i) EU

ESMA: Final report on the EC mandate on certain aspects relating to retail investor protection

Status: Final

ESMA has published a final report on the EC mandate on certain aspects relating to retail investor protection. This report includes proposals that aim to simplify the procedure for investors to receive the key information they need to take well-informed investment decisions, while also protecting them from aggressive marketing techniques and detrimental practices.

Date of publication: 29/04/2022

Council: Compromise text on proposal for a Directive on consumer credits

Status: Draft

The Council of the EU has published the Presidency's compromise text, dated 2 March 2022, on a proposal for a Directive of the EP and of the Council on consumer credits, together with accompanying [Annexes](#). Changes compared to the EC proposal are indicated in bold underlined for new text and strikethrough for deleted text. In addition, changes compared to the previous Presidency compromise are highlighted in grey. The new Directive will revise and replace the current CCD, extending its scope, introducing pricing rules, clarifying information requirements, and revising the creditworthiness assessment in order to address technological and market developments.

Date of publication: 22/04/2022

ESMA: Response to consultation on options to enhance the suitability and appropriateness assessments

Status: Final

ESMA has published a letter to the EC, dated 13 April 2022, responding to the EC's consultation on options to enhance the suitability and appropriateness assessments under MiFID II. ESMA is fully supportive of the EC's objective to take a holistic view of investor protection rules and to make the EU an even safer place for individuals to save and invest long-term and therefore to increase participation of retail investors in capital markets. However, ESMA brings to the EC's attention the following points: (i) the proposal to apply a unique and standardised retail investor assessment regime that no longer differentiates among the various investment services might raise questions of whether a 'one size fits all' approach can effectively serve all different types of retail investors and situations. The design of a new standardised regime would need to fully take into account the needs of the different kinds of investors and safeguard the principle of proportionality; (ii) the proposals would have a significant impact on the current model for the provision of services. If the new framework were to be adopted, sufficient guidance and information would need to be provided to clients to help them understand the implications of the regime change and sufficient time should be given to firms for the implementation of the new rules which would seem to require significant IT changes to existing systems; (iii) ESMA is fully supportive of the aim to increase competition among intermediaries and to allow investors to easily switch between or use multiple brokers/financial intermediaries. However, there is some resistance from clients to share personal information, and ESMA believes that such concerns should be taken into account in order for any such initiative to be successful. Furthermore, if the EC proceeds with its proposal, GDPR implications should be further assessed, as the right to data portability set out in Article 20 of the GDPR does not seem to include personal data which are derived, computed or inferred from the data provided by the client; (iv) ESMA notes that if MiFID and IDD instruments were to be assessed jointly for the purpose of the suitability assessment, it would be essential to also ensure alignment of other relevant requirements (for example on the disclosure of information on costs and charges; reporting requirements on the depreciation of the client's portfolio, where applicable) as it would be very confusing to clients, and also could be operationally difficult for firms, if different parts of the client's portfolio (managed under a unique asset allocation) were subject to different disclosure and reporting requirements; and (v) ESMA notes that, in its consultation the EC does not mention knowledge and experience among information to be collected from clients. This information is important in assessing accurately clients' profiles. ESMA therefore expects that knowledge and experience is included in the key components of a standardised personal investment plan.

Date of publication: 19/04/2022

3.3 Market abuse

(i) EU

ESMA: Translations of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision

Status: Final

Application date: 13/06/2022

ESMA has published the official translations of the revised Guidelines on delay in the disclosure of inside information and interactions with prudential supervision under the Market Abuse Regulation (MAR). The Guidelines: (i) provide a non-exhaustive and indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of

inside information and situations in which delay of disclosure is likely to mislead the public; and (ii) provide clarifications concerning the existence of inside information in relation to Pillar 2 Capital Requirements and Pillar 2 Capital Guidance.

Date of publication: 13/04/2022

3.4 MiFID/MiFIR

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing MiFID II with regard to RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits

Status: Adopted by the EC

The EC has adopted a Delegated Regulation and Annex supplementing MiFID II with regard to RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits. The Delegated Regulation builds on Commission Delegated Regulation 2017/591 (RTS 21). RTS 21 sets out the standard methodology that should be used by National Competent Authorities in order to calculate and apply position limits in a harmonised way across commodity derivatives traded on trading venues and economically equivalent OTC contracts. RTS 21 provides for a baseline limit and ways to adjust this limit based on seven factors for spot and other months' physically settled and cash settled contracts. RTS 21 also contains provisions to specify the application of the methodology: how and when positions should be aggregated, when contracts should be considered the same; and when OTC contracts should be considered economically equivalent. Finally, the Regulation lays down rules to specify when a commodity derivative position can be qualified as reducing risk. The Delegated Regulation contains three categories of amendments compared to RTS 21: (i) amendments relating to the Capital Markets Recovery Package (CMRP) empowerments; (ii) amendments that are a direct consequence of CMRP changes; and (iii) amendments based on the experience gained over the last few years with the existing methodology. The existing RTS 21 will be repealed.

Date of publication: 20/04/2022

ESMA: Translations of Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements

Status: Published

Application date: 12/10/2022

ESMA has published the official translations of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements.

Date of publication: 12/04/2022

ESMA: Complementary annual transparency calculations

Status: Final

ESMA has started to make available the results of the annual transparency calculations for equity and equity like instruments. These parameters apply no later than 14 April 2022 and until 31 March 2023. ESMA invites market participants to: (i) monitor the release of the transparency calculations for equity and equity-like instruments on a daily basis to obtain the estimated calculations for newly traded instruments and the four-week calculations applicable to newly traded instruments after the first six weeks of trading; and (ii) refer to Question 3, Section 4 in ESMA's Q&As on MiFID II and MiFIR transparency topics, for the temporary parameters to be applied in the case of one or more of the transparency parameters not being published. The additional list of assessed equity and equity-like instruments will be available through FITRS in the XML (with publication date from 8 April 2022) and through the register web interface.

Date of publication: 08/04/2022

Implementing Decision 2022/552 determining that national securities exchanges of the U.S. that are registered with the Securities and Exchange Commission comply with legally binding requirements which are equivalent to the requirements laid down in Title III of MiFID II and are subject to effective supervision and enforcement

Status: Published in the OJ

Date of entry into force: 26/04/2022

The Commission Implementing Decision (EU) 2022/552 determining that U.S. national securities exchanges that are registered with the SEC comply with legally binding requirements that are equivalent to the requirements laid down in Title III of the MiFID II and are subject to effective supervision and enforcement has been published in the OJ.

Date of publication: 04/04/2022

ESMA: Updated Q&As on MiFIR data reporting

Status: Final

ESMA has updated its Q&As on MiFIR data reporting. In particular, ESMA has updated Q&A 2 on the legal entity identifier of the issuer, Q&A 4 on instrument identification codes and underlying instrument code and Q&A 21 on the reporting of nominal value per unit and minimum traded value.

Date of publication: 01/04/2022

ESMA: Postponed annual review of RTS 2 on non-equity transparency

Status: Final

ESMA has announced that it is postponing its annual review of RTS 2 on non-equity transparency due to be carried out under MiFIR. RTS 2 requires that ESMA performs an annual review by 30 July 2022, assessing whether it is appropriate to move to the next stage of the phase-in for the liquidity determination of bonds, and the trade percentiles determining the pre-trade sizes specific to the financial instrument (SSTI) threshold for bonds and derivatives. ESMA considers that the ongoing MiFIR review is likely to make part of the review redundant due to the proposed removal of the SSTI threshold, and might impact other provisions related to the instruments subject to this report. Moreover, since the previous step of the phase-in is still being implemented, it would not be possible to assess the impact of moving to the next stage based on transaction data. ESMA will resume the submission of the annual RTS 2 report in 2023.

Date of publication: 01/04/2022

ESMA: Final report on Guidelines on certain aspects of the MiFID II remuneration requirements

Status: Final

ESMA has published a final report on Guidelines on certain aspects of the MiFID II remuneration requirements. The report summarises the responses to its previous consultation on the draft Guidelines and explains how the responses have been taken into account. The purpose of the Guidelines is to enhance clarity and foster convergence in the implementation of certain aspects of the MiFID II remuneration requirements. The Guidelines will replace ESMA's existing Guidelines on the same topic, issued in 2013. The Guidelines build on the text of the 2013 Guidelines. In addition, the Guidelines take into account new requirements under MiFID II and the results of supervisory activities conducted by national competent authorities (NCAs) on the topic. The Guidelines will apply from six months of the date of publication of the Guidelines on ESMA's website in all EU official languages. Within two months of the date of publication of the Guidelines in all EU official languages, NCAs must notify ESMA whether they: (i) comply; (ii) do not comply, but intend to comply; or (iii) do not comply and do not intend to comply with the Guidelines.

Date of publication: 31/03/2022

(ii) International**IOSCO: Report on market data in the secondary equity market – current issues and considerations****Status: Final**

IOSCO has published a report on issues and considerations of market data in secondary equity markets. IOSCO provides a summary of the comments received to its December 2020 consultation report on the subject and offers three considerations based on the information gathered to assist regulators: (i) pre-trade data (ie information about orders or quotations) and post-trade data (ie information about executions) are important in promoting transparency of trading. As appropriate, it is important to consider the elements of market data that are necessary to facilitate the ability of all market participants to effectively and fairly participate in secondary markets and to make informed investment, order routing and trading decisions. The needs of market participants may differ depending on factors such as, participants' business model, market structure in the particular jurisdiction, or the type of participants in the market (retail, institutional, proprietary); (ii) fair access to market data is important for providing market data to market participants. Fair access may cover issues including market data pricing, connectivity terms and pricing, and contractual arrangements. Market data is not interchangeable in all cases, and where appropriate, helping to ensure fair access across different execution venues is an important consideration. In addition, the extent to which access to free or delayed data can meet the needs of some participants may be a useful consideration; and (iii) where appropriate, consolidation may improve access to market data and may, in some circumstances, be useful in helping to reduce its costs, identify liquidity and compare execution quality in jurisdictions where there may be fragmented liquidity.

Date of publication: 28/04/2022

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

(i) EU**Corrigendum to Commission Delegated Regulation (EU) 2021/2268 amending the RTS laid down in Delegated Regulation (EU) 2017/653 which considers key information documents (KID) for PRIIPs****Status: Final**

A Corrigendum to Commission Delegated Regulation (EU) 2021/2268 amending the RTS laid down in the Delegated Regulation on packaged retail and insurance-based investment products (PRIIPs) key information documents (KID) (2017/653) has been published in the OJ. The RTS relate to the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by PRIIPs offering a range of options for investment and alignment of the transitional arrangement for PRIIPs manufacturers offering units of funds referred to in Article 32 of the PRIIPs Regulation (1286/2014) as underlying investment options with the prolonged transitional arrangement laid down in that Article. The corrigendum reverses the changes made by the previous corrigendum published in February 2022 and also removes '2268' from the title of the Delegated Regulation.

Date of publication: 13/04/2022

3.6 Securities financing transactions

(i) EU**ESMA: Q&As on ESMA Guidelines on Alternative Performance Measures (APMs)****Status: Final**

ESMA has updated its Q&As on ESMA Guidelines on Alternative Performance Measures (APMs). In particular, ESMA added two new Q&As and: (a) explains that where issuers include financial measures using ESG labels in regulated information or in prospectuses, and those measures are not determined in accordance with applicable legislation, issuers should comply with the

principles included in the APM Guidelines. ESMA encourages issuers to provide reconciliations between APMs related to ESG measures and KPIs or measures required by the Taxonomy Regulation and the SFDR; and (b) calls on issuers to use caution when they present APMs using ESG labels as these may be misperceived by users as compliant with the Taxonomy Regulation or SFDR.

Date of publication: 01/04/2022

ESMA: Updated Q&As on SFTR data reporting

Status: Final

ESMA has updated its Q&As on SFTR data reporting. In particular, ESMA has updated Q&A 12 on the currency of the overview and margin reports.

Date of publication: 01/04/2022

ESMA: EMIR and SFTR data quality report 2021

Status: Final

ESMA has published the second edition of its data quality report, based on data gathered under the EMIR and SFTR reporting regimes. The report provides a holistic view of state of play of both reporting regimes as regards the quality of the reported data and the actions that the NCAs and ESMA are taking to improve the quality of the data. The report finds that the coordinated supervisory actions by ESMA and the NCAs have significantly enhanced data quality in 2021. Nevertheless certain aspects related to data reconciliation will require more efforts by reporting entities. In particular, the report suggests that data quality could be enhanced if counterparties used the same data set and the same identifiers for the reported data in their internal risk management processes. Key points include: (i) EMIR data quality - ESMA highlights the positive results of its targeted actions which led to a significant reduction in reporting errors. Compared to the previous year, misreporting of valuations was reduced by around 50% of the reporting firms subject to the review. ESMA also carried out several projects demonstrating that the supervised trade repositories (TRs), to a large extent, comply with their obligations under EMIR. Despite this, the analysis identified some shortcomings in the data provided to the authorities which require TRs to redouble their efforts in this area; and (ii) SFTR data quality - 2021 was the first year of the coordinated supervisory actions between ESMA and the NCAs for SFTR. For this reason, ESMA's analysis focused on fundamental aspects of data quality, such as the timeliness of reporting, data rejection rates and pairing. Since its start on 13 July 2020, the SFTR reporting regime has shown comparable results to EMIR across all data quality metrics. The report also identified several prerequisites for further enhancing data quality for both TRs and counterparties: (a) TRs – timely and complete reporting of regulatory information to the users of TR data, accuracy and confidentiality of data reported by counterparties to and stored by TRs, and accuracy of regulatory reports submitted to the users of TR data; and (b) counterparties - completeness and accuracy of the reported information, in particular with regards to the reporting of valuation and collateral data, timely submission of the reports, and consistency of reported information reflected in the reconciliation of data submitted by the two counterparties of the same derivative/transaction.

Date of publication: 01/04/2022

3.7 Short selling

(i) EU

ESMA: Final report on the review of certain aspects of the Short Selling Regulation

Status: Final

ESMA has finalised its report on its review of the Short Selling Regulation (SSR). The report focuses on three main areas: (i) an empirical analysis of the impacts of the short selling bans adopted during the Covid-19 pandemic. ESMA proposes amendments to the current legislative provisions which govern emergency measures (ie long term bans, short term bans and ESMA powers to issue emergency measures). Such amendments aim to clarify the interpretation of certain provisions and overall ensuring that the procedure for the issuance of short and long-term bans is sufficiently flexible for relevant competent authorities to tackle emergency situations; (ii) a review of the current framework for the calculation of net short positions (NSPs), the so-called “locate rule” and the list of exempted shares. ESMA, in light of the episodes of high volatility which took place in the U.S.

markets and elsewhere in respect of the so-called “meme stocks”, has considered the possibility of similar phenomena developing in European markets and has re-assessed in light of such occurrences the relevant SSR provisions. ESMA proposes to enhance the existing rules about uncovered short sales by introducing record keeping requirements and a degree of harmonisation of sanctions; and (iii) a review of the framework for transparency and publication of NSPs, also in light of recent market turmoil events and proposes the introduction of a centralised system for publication and disclosure to the public of NSPs. ESMA has submitted the report to the EC and is ready to provide technical guidance should the EC decide to proceed with a review of the SSR.

Date of publication: 04/04/2022



4. Market infrastructure

4.1 EMIR

(i) EU

Commission Implementing Decision (EU) 2022/551 amending Implementing Decision (EU) 2021/85 on the equivalence to the requirements of EMIR of the regulatory framework of the U.S. for CCPs that are authorised and supervised by the U.S. SEC

Status: Published in the OJ

Date of entry into force: 07/04/2022

The Commission Implementing Decision (EU) 2022/551 amending Implementing Decision (EU) 2021/85 on the equivalence to the requirements of EMIR of the regulatory framework of the U.S. for CCPs that are authorised and supervised by the U.S. Securities and Exchange Commission (SEC) has been published in the OJ.

Date of publication: 06/04/2022

ESMA: Response to the consultation on a targeted review of EMIR with respect to the EU central clearing framework

Status: Final

ESMA has published a response to the consultation on EC's targeted review of EMIR with respect to the EU central clearing framework. ESMA outlines key considerations regarding the scope and implementation of the clearing obligation, including proposals to: (i) increase the attractiveness of cleared EU markets, for instance by expanding and facilitating entities clearing in the EU; (ii) improve the clearing obligation framework, for example by changing the reference from OTC to non-cleared derivatives in the clearing thresholds; (iii) incentivise EU clearing participants to reduce their exposures to UK CCPs; (iv) enhance the EU supervisory framework for CCPs; and (v) mitigate risks remaining at UK CCPs. ESMA notes that the EC's consultation does not include proposals to mitigate the outstanding risks resulting from EU exposures to systemically important CCPs, in particular in cases of a CCP recovery and resolution. ESMA therefore makes a number of proposals to enhance ESMA's powers, in particular with regards to Tier 2 CCPs. The EC, based on the feedback received from stakeholders to its public consultation, is expected to develop a legislative proposal amending the EU central clearing framework.

Date of publication: 05/04/2022

ESMA: EMIR and SFTR data quality report 2021

Status: Final

ESMA has published an EMIR and SFTR data quality report 2021. For more information, please see section 3.6 above.

Date of publication: 01/04/2022

ESRB: Response to ESMA's consultation on APC measures for CCPs

Status: Final

The ESRB has published its response to ESMA's consultation on anti-procyclicality (APC) measures for central counterparties (CCPs). It welcomes the initiative by ESMA, in particular because it repeatedly stresses the need to address procyclicality in initial margining (and collateral) practices. Nevertheless, it suggests some improvements to the proposal, providing ESMA with some topical considerations for the revision of the anti-cyclicality framework in EMIR. In the appendix, the ESRB answers the questions ESMA raised in its consultation that are most relevant from a financial stability perspective.

Date of publication: 31/03/2022

5. Anti-money laundering

(i) EU

EBA: Statement on financial inclusion in the context of the invasion of Ukraine

Status: Final

The EBA has published a statement addressed to both financial institutions and supervisors to ensure they make every effort to provide access for Ukrainian refugees to at least basic financial products and services. The EBA: (i) sets out how its AML/CFT guidelines apply in the current context, and how financial institutions can adapt their AML/CFT measures to provide a pragmatic and proportionate response to the compliance challenges they face; (ii) clarifies what financial institutions and supervisors can do to protect vulnerable persons from abuse by criminals and calls on financial institutions to ensure that compliance with the EU's restrictive measures regime does not lead to unwarranted de-risking; and (iii) considers that financial institutions should pay particular attention to apparent attempts by customers to obfuscate relationships with sanctioned persons and those who are at risk of being sanctioned, or to conceal the ultimate beneficial owner, through for example, sudden changes in the customer's ownership or control structure. However, achieving compliance with the EU's financial sanctions regime should not lead to the financial exclusion of legitimate and potentially vulnerable customers, including customers with links to Russia or Belarus that are legally resident in the EU.

The EBA will continue to monitor the situation and work with competent authorities and the private sector as necessary to share best practices, set common regulatory expectations and facilitate the development of a common approach.

Date of publication: 27/04/2022

Council: Comparison table on proposed Regulation on information accompanying transfers of funds and certain cryptoassets

Status: Draft

The Council of the EU has published a three-column table to commence trilogues, comparing the negotiating positions taken by the EC, the Council and the EP on the proposed Regulation on information accompanying transfers of funds and certain cryptoassets. The Council agreed its negotiating mandate in December 2021. The EC adopted the proposed Regulation in July 2021 as part of a package of measures to reform the EU anti-money laundering and counter-terrorist financing regime. It is intended to revise and recast the revised Wire Transfer Regulation.

Date of publication: 21/04/2022

EP: Approval of negotiating mandate on proposed Regulation on information accompanying transfers of funds and certain cryptoassets

Status: Adopted by the EP

The EP has announced that it had agreed its negotiating mandate on the proposed Regulation on information accompanying transfers of funds and certain cryptoassets. The EP will now commence negotiations with the Council. The EP published the text of the report adopted by ECON on the proposed regulation on 1 April 2022, with the amendments ECON made since publication of the draft report. Please see below for the ECON approval and a description of the amendments.

Date of publication: 07/04/2022

EBA: Translations of Guidelines on risk-based supervision

Status: Final

Application date: 04/07/2022

The EBA has published the translations of the revised Guidelines on risk-based supervision. These revised Guidelines set out the steps supervisors should take to ensure adequate AML/CFT oversight of their sector and support the adoption, by credit and financial institutions, of effective ML/TF risk management policies and procedures. They aim at helping supervisors choose

the most effective tools to meet their supervisory objectives. National authorities now have two months to report whether they comply with the Guidelines.

Date of publication: 04/04/2022

ECON: New cryptoasset rules to stop illicit flows in the EU

Status: Draft

The EP has announced new cryptoasset rules to stop illicit flows in the EU. MEPs from the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties adopted their position on draft legislation strengthening EU rules against money laundering and terrorist financing. The legislation is part of the new EU anti-money laundering package, and aims to ensure that cryptoassets can be traced in the same way as traditional money transfers as there is an absence of rules for tracing transfers of cryptoassets like bitcoins and electronic money tokens. Key points include: (i) traceability of transfers of cryptoassets. Under the new requirements agreed by MEPs, all transfers of cryptoassets will have to include information on the source of the asset and its beneficiary, information that is to be made available to the competent authorities. The rules would also cover transactions from so-called unhosted wallets (a cryptoasset wallet address that is in the custody of a private user). Technological solutions should ensure that these asset transfers can be individually identified. The rules would not apply to person-to-person transfers conducted without a provider, such as bitcoins trading platforms, or among providers acting on their own behalf; (ii) no minimum thresholds. MEPs decided to remove minimum thresholds and exemptions for low-value transfers; and (iii) a public register of high-risk entities. MEPs want the EBA to create a public register of businesses and services involved in cryptoassets that may have a high risk of money laundering, terrorist financing and other criminal activities, including a non-exhaustive list of non-compliant providers. Before making the cryptoassets available to beneficiaries, providers would have to verify that the source of the asset is not subject to restrictive measures and that there are no risks of money laundering or terrorism financing. The adopted text represents the draft mandate for MEPs to negotiate the final shape of the legislation with EU governments. Please see above for the approval of the EP as a whole during the plenary session in April 2022.

Date of publication: 31/03/2022

(ii) International

FATF: Declaration of the Ministers of the FATF

Status: Final

Following its biennial Ministerial meeting, the Financial Action Task Force (FATF) has published a declaration of its ministers. In outlining its strategic priorities, the task force has committed to take swift and decisive action to improve the effectiveness of measures to fight money laundering, terrorist and proliferation financing. This includes promptly implementing the FATF's global beneficial ownership rules, which were strengthened earlier this year, to stop criminals from hiding their illicit activities and dirty money behind anonymous shell companies and other corporate structures. In addition to enhancing beneficial ownership transparency, the strategic priorities for the two years ahead (2022-2024) include increasing capabilities to more effectively recover criminal assets, which will help remove incentives for crimes, such as corruption and tax crimes, and return assets to victims.

Date of publication: 21/04/2022

FATF: Report on state of effectiveness and compliance with the FATF standards

Status: Final

The Financial Action Task Force (FATF) has published a report on the state of effectiveness of its anti-money laundering (AML) and counter-terrorist financing (CTF) standards. The report is based on data from FATF and FATF-Style Regional Bodies mutual evaluation reports since 2013, which assessed the strengths and weaknesses of national frameworks to tackle these crimes. Overall, the report finds that countries have made huge progress in improving technical compliance by establishing and enacting a broad range of laws and regulations to better tackle money laundering, terrorist and proliferation financing. In terms of laws and regulations, 76% of countries have now satisfactorily implemented the FATF's 40 Recommendations. However, the report also highlights that many countries still face substantial challenges in taking effective action in line with the risks they face. The report informed the FATF's strategic review, which aims to make the next cycle of FATF assessments more timely, risk-based and effective. The FATF took stock of the results of the current round of mutual evaluations (the fourth

round) and used this information to make a number of changes to how the FATF will assess countries' actions in the fifth round. Some of the changes to the fifth round of assessments will include: (i) a significantly shorter mutual evaluation cycle, so that countries get assessed more frequently; (ii) greater emphasis on the major risks and context to ensure that countries focus on the areas where the risks are highest and; and (iii) a results-orientated follow-up assessment process, which will focus on specific actions to tackle money laundering, terrorist financing and the financing of weapons of mass destruction. The FATF also published its [methodology](#) and [procedures](#) for the fifth round of mutual evaluations. These documents will apply when the FATF commences its fifth round of mutual evaluations and may be subject to change before the start of the fifth round.

Date of publication: 19/04/2022



6. Payments

6.1 Payment services/E-money

(i) EU

EBA: Final report on draft RTS amending Commission Delegated Regulation (EU) 2018/389 supplementing PSD2 with regard to RTS for strong customer authentication and common and secure open standards of communication

Status: Final

The EBA has published its final report on the amendment of its RTS on the exemption to strong customer authentication and secure communication (SCA & CSC) for account access under PSD2. The changes: (i) introduce a new mandatory exemption to SCA that will require account providers not to apply SCA when customers use an account information service provider (AISP) to access their payment account information, provided certain conditions are met. The amendment aims to reduce frictions for customers using such services and to mitigate the impact that the frequent application of SCA and the inconsistent application of the current exemption have on AISP's services; (ii) limit the scope of the voluntary exemption in Article 10 RTS to instances where the customer accesses the account information directly; and (iii) extend the timeline for the renewal of SCA from every 90 days to every 180 days, both when the information is accessed through an AISP or directly by the customer. In light of the comments received during the consultation, the EBA introduced some changes to the draft amending RTS. In particular, the EBA extended the timeline for ASPSPs to make available to AISP's the changes to their interfaces from one month to two months before the implementation of these changes and extended the overall implementation period from six months to seven months after the publication of the amending RTS in the OJ. The EBA also introduced some additional clarifications on the application of the mandatory exemption.

The draft amending RTS will be submitted to the EC for endorsement following which it will be subject to scrutiny by the EP and the Council before being published in the OJ. The amending RTS will apply seven months after entry into force.

Date of publication: 05/04/2022

7. Institutional supervisory framework

(i) EU

ESAs: Joint Committee Annual Report 2021

Status: Final

The ESAs have published a Joint Committee Annual Report 2021, providing a detailed account of their joint work completed over the past year. It outlines that the Joint Committee continued to play a central role in the coordination and exchange of information between the ESAs, the EC and the ESRB. A significant part of its work in 2021 focused on developing the regulatory and supervisory framework for sustainability-related disclosures. The report sets out that the main areas of cross-sectoral focus continued to be joint risk assessment, enhancement of consumer protection, development of the regulatory and supervisory frameworks for sustainable finance and securitisation. In addition, monitoring and contributing to the digital finance developments, supporting FinTech scale up through innovation hubs and sandboxes as well as cyber security completed the work programme.

Date of publication: 19/04/2022

EBA: Letter on a new proposition of time limits for submission of regulatory mandates according to the EBA Founding Regulation

Status: Final

The EBA has published a letter, dated 2 February 2022, sent to the EC requesting deadline extensions for several legal mandates: (i) under CRR II – the Art. 325ap(3) RTS on emerging markets and advanced economies for equity risk under the FRTB-SA until 31 March, the Art. 394 (4) RTS on Large Exposures (Shadow banking) until 30 June 2022, Art. 400, the report on the use of exemptions for LE set until 30 June 2022 and the amendment to the ITS specifying currency with constraints on the availability of liquid assets until 28 February 2022; (ii) under the IFD – the RTS on liquidity risk measurement until 30 June 2022; (iii) under the Securitisation CRR Quick Fix – the Art. 248(4) RTS on the exposure value of synthetic excess spread until 31 December 2022; (iv) under Regulation (EU) 2021/557 – the Art. 6 (7) RTS on risk retention for NPEs securitisation until 31 December 2022, the Art 26b (13) RTS on homogeneity criteria for on-balance sheet securitisation until 31 March 2023, the Art 26c (5) RTS on performance related triggers for on-balance sheet securitisation until 30 June 2022 and the Art. 45a report on developing a specific sustainable securitisation framework until 31 March 2022; and (v) under the EMIR Refit the Art 11 (15) (aa) RTS on Initial Margin Model Validation until 31 December 2022.

Date of publication: 13/04/2022

8. Investment funds

8.1 Prudential regulation

(a) Compliance

(i) EU

EC: Targeted consultation on the functioning of the Money Market Fund Regulation

Status: Consultation

Deadline for the submission of comments: 13/05/2022

The EC has launched a targeted consultation on the functioning of the Money Market Fund Regulation (MMFR), in order to feed into its report assessing its adequacy from a prudential and economic point of view, which is required in the MMFR to be published this summer. The consultation takes the form of a questionnaire with some general questions directed to all on the MMFR's effectiveness, efficiency, relevance, coherence and value, followed by specific questions addressed to investors in MMFs and MMFs asset managers.

Date of publication: 12/04/2022

(ii) International

FSB: Call for papers on vulnerabilities from liquidity mismatch in OEFs and policies to address them

Status: Consultation

Deadline for the submission of comments: 06/05/2022

The FSB, together with IOSCO, has launched a call for papers on vulnerabilities from liquidity mismatch in open-ended funds (OEFs) and on policies to address them, in advance of a research conference on 16 and 17 June 2022. This conference, which forms part of the FSB's work programme to enhance the resilience of non-bank financial intermediation, will provide selected stakeholders an opportunity to exchange views on the findings of recent work by FSB and IOSCO on the experience of OEFs in the March 2020 market turmoil as well as provide input to ongoing work by the FSB and IOSCO to assess their respective recommendations in this area.

Date of publication: 13/04/2022

IOSCO: Consultation paper on ETFs and good practices for consideration

Status: Consultation

Deadline for the submission of comments: 06/07/2022

The IOSCO has launched a consultation on Exchange Traded Funds (ETFs) and good practices for consideration. IOSCO explains that, for ETFs, the 11 proposed good practices: (i) address product structuring (including means of facilitating effective arbitrage and range of assets and strategies for ETF offerings), disclosure, liquidity provision and volatility control mechanisms; (ii) respond to significant recent global ETF market growth, and the increasing number of new products with exposures to novel and less liquid asset classes and more complex investment strategies; and (iii) offer detailed guidance on how best to facilitate effective arbitrage and market-making for ETFs that reference fixed-income assets. IOSCO recognises that the proposed good practices may not be applicable in all jurisdictions or in all circumstances, but they could represent a helpful way of addressing certain issues.

Date of publication: 06/04/2022

9. Special rules for real estate financing and covered bonds

9.1 Mortgage credits

(i) EU

ESRB: Response to the EC consultation on the review of the mortgage credit directive

Status: Final

The ESRB has published its response to the EC's November 2021 consultation on its review of the Mortgage Credit Directive (MCD). The ESRB outlines its proposal to include borrower-based measures (BBMs) in EU legislation, including the MCD. The ESRB considers that, given the importance of residential real estate (RRE) markets and their financing for financial stability as well as the strong economic and financial interconnectedness between Member States, there should also be a common minimum basis for BBMs in national legal frameworks. The ESRB explains that BBMs can help to ensure sound lending standards and higher resilience of borrowers. BBMs could be explicitly stated in the MCD as it already mentions aspects of financial stability and also refers to the FSB's Principles for Sound Residential Mortgage Underwriting Practices. Enshrining BBMs in the MCD could allow authorities to apply macroprudential BBMs to loans granted by all types of lenders. This would not only minimise regulatory arbitrage but also eliminate the possibility of circumventing restrictions that apply to RRE funding due to the imposition of BBMs on banks as lenders.

Date of publication: 31/03/2022

10. Special topics

10.1 Covid-19

(a) Other

(i) EU

IOSCO: Discussion paper on corporate bond markets as drivers of liquidity during Covid-19 induced market stresses

Status: Consultation

Deadline for the submission of comments: 30/06/2022

IOSCO has published a discussion paper on corporate bond markets as drivers of liquidity during market stresses induced by the Covid-19 pandemic. IOSCO seeks feedback on possible ways to help improve market functioning and liquidity provision, such as assessing the feasibility, benefits and costs of mitigating shifts in liquidity demand and alleviating supply-side market constraints, including the potential unintended consequences from any prospective market changes. The corporate bond analysis provides the broader context on the underlying markets that buy-side investors such as ETFs and traditional open-ended funds increasingly invest in.

Date of publication: 06/04/2022

10.2 FinTech/Digital finance

(i) EU

Council: Adoption of regulation on a pilot regime for DLT market infrastructures

Status: Adopted by the Council

The Council of the EU adopted the regulation on a pilot regime for market infrastructures based on DLT. The proposed Regulation will enter into force 20 days after it is published in the OJ and will apply nine months after the date it has entered into force, except for Articles 8(5), 9(5), 10(6) and 17, which will apply from the date of entry into force and Article 16 which will apply from 4 July 2023.

Date of publication: 12/04/2022

EC: Launch of EU Digital Finance Platform

Status: Final

The EC has launched an EU Digital Finance Platform. The platform intends to be a collaborative space bringing together industry and public authorities to support innovation in the EU's financial system and help work towards a true Single Market in digital finance. Its main objectives are to overcome fragmentation and support the scaling up of digital financial services. It will initially consist of two main building blocks: (i) an observatory offering interactive features such as a Fintech Map, an overview of latest policy developments and a section where users will be able to share relevant research material; and (ii) a gateway which will act as a single access point to supervisors, with information about national innovation hubs, regulatory sandboxes and licensing requirements. This part of the Platform will also host functionalities linked to cross-border testing, enabling firms to involve multiple national authorities in the testing of new products or applications. Speaking at the launch of the platform, Mairead McGuinness, European Commissioner for Financial Services, Financial Stability and Capital Markets Union discussed, amongst other elements, the second phase of the platform, to be launched in 2023. Building on user feedback, new features are set to be added, which could include a data hub, where firms could access and share data in order to test products and solutions. Ms McGuinness also confirmed that the EC, together with the ESAs, is setting up a digital finance academy. In a related speech,

Verena Ross, ESMA Chair, focused on how the platform links to the work of the European Forum for Innovation Facilitators (EFIF) and the launch of the Cross-Border Testing Framework. Ms Ross provided an overview of the work that the EFIF has undertaken since its launch in 2019. The Cross-Border Testing Framework is one of the most prominent projects of the EFIF and will assist innovative FinTechs in their engagement with innovation facilitators cross-border through digital tools. The Digital Platform will act as its basis.

Date of publication: 08/04/2022

EC: Targeted consultation and call for evidence on a digital euro

Status: Consultation

Deadline for the submission of comments: 14/06/2022

The EC has launched a targeted consultation on the digital euro, following its 2020 public consultation, in order to collect further information on expected impacts on key industries (financial intermediation, payment services, merchants), users (consumer associations, retailers' associations), chambers of commerce and other stakeholders in international trade. The consultation focuses on: (i) users' needs and expectations for a digital euro; (ii) the digital euro's role for the EU's retail payments and the digital economy; (iii) making the digital euro available for retail use while continuing to safeguard the legal tender status of euro cash; (iv) the digital euro's impact on the financial sector and the financial stability; (v) application of AML-CFT rules; (vi) privacy and data protection aspects; and (vii) international payments.

The EC has also launched an accompanying call for evidence for an impact assessment on the digital euro. The call for evidence notes that EC adoption of a potential Regulation on the digital euro is planned for Q1 2023.

- [Targeted consultation on a digital euro](#)
- [Call for evidence on a digital euro for the EU](#)

Date of publication: 05/04/2022

Council: Three-column table to commence trilogue on the MiCA Regulation

Status: Draft

The Council of the EU published a three-column table comparing the negotiating positions taken by the EC, the Council of the EU and the EP on the proposal for a Regulation on markets in cryptoassets (MiCA), as trilogues commence.

Date of publication: 01/04/2022

10.3 Sustainable finance

(i) EU

Council: Confirmation of its position on European Green Bonds

Status: Draft

The Council of the EU has agreed its position on the EC proposal of a Regulation to create European Green Bonds. With this proposal, the EU aims to implement its strategy on financing sustainable growth and the transition to a climate-neutral, resource-efficient economy. In particular, it lays down uniform requirements for issuers of bonds that wish to use the designation 'European Green Bond' or 'EuGB' for their environmentally sustainable bonds made available to investors in the Union, and establishes a registration system and supervisory framework for external reviewers of European green bonds. Environmentally sustainable bonds are one of the main instruments for financing investments related to green technologies, energy efficiency and resource efficiency as well as sustainable transport infrastructure and research infrastructure.

In a next step, the Council is planning to start negotiations with the EU Parliament in order to agree on a final version of the text.

Date of publication: 13/04/2022

EC: Commission Delegated Regulation (EU) .../... supplementing the SFDR with regard to RTS specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports

Status: Adopted by the EC

The EC has adopted a draft Delegated Regulation supplementing the SFDR on RTS specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. This Delegated Regulation specifies: (i) the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’; (ii) the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts; and (iii) the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in precontractual documents, on websites and in periodic reports. The EC has bundled 13 separate RTS into this one Delegated Regulation in view of their interconnectedness and for ease of use. The EC sets out the relevant reporting templates and aggregate statistical data in the Annexes.

The Delegated Regulation will enter into force 20 days following its publication in the OJ and will apply from 1 January 2023.

Date of publication: 06/04/2022

EC: Targeted consultation and call for evidence on ESG ratings and sustainability risks in credit ratings

Status: Consultation

Deadline for the submission of comments: 06/06/2022

The EC has launched a targeted consultation on ESG ratings and sustainability risks in credit ratings. The EC hopes to gain a better insight on the functioning of the market for ESG ratings, as well as better understand how credit rating agencies (CRAs) incorporate ESG risks in their creditworthiness assessment. Responses from market participants will feed into an impact assessment to be prepared later this year that will evaluate whether a possible policy initiative on ESG ratings and on sustainability factors in credit ratings is needed. The consultation also seeks views from market participants on the use of other types of tools that can be offered by sustainability-related providers, including research, controversy alerts, rankings, etc.

The EC has also launched a call for evidence for an impact assessment on the potential policy initiative. The policy initiative, whether legislative or not, will focus on the authorisation of ESG rating providers, their operations and transparency of their methodologies, rules on conflicts of interests and separation of departments, a sanctioning regime, and an EU supervisory regime. The EC is planning to propose an initiative to foster the reliability, trust and comparability of ESG ratings by early 2023.

- Targeted consultation on the functioning of the ESG ratings market in the EU and on the consideration of ESG factors in credit ratings
- Call for evidence on ESG ratings and sustainability risks in credit ratings

Date of publication: 04/04/2022

Platform on Sustainable Finance: Final report on taxonomy extension options supporting a sustainable transition

Status: Final

The EU Platform on Sustainable Finance has published a final report on taxonomy extension options supporting a sustainable transition under the EU Taxonomy Regulation. The Platform considered the premises, issues, and options, for and against, extending the environmental taxonomy ‘beyond green’ to classify a wider range of economic activities. The Platform considers the balance of arguments to be in favour of an extended environmental taxonomy, which would introduce greater transparency and clarity for investors and ensure market practices are aligned across the EU. However, there are trade-offs which must be considered as well, particularly the higher level of complexity of the extended taxonomy framework for the different economic actors, the costs of additional reporting obligations and the potential reputational risks linked to the increased clarity on non-

aligned disclosure, all while the original taxonomy is just starting to be used and before the impact of its use can be formally assessed. The Platform has decided to extend the taxonomy framework to classify activities according to the traffic light colour system. Overall, the Platform recommends: (i) extending the environmental (“green and sustainable”) taxonomy with priority on extension to activities supporting urgent environmental transition; (ii) defining key parts of an extended taxonomy; (iii) identifying further economic activities with no technological possibility of improving their environmental performance; (iv) clarifying that significant harm is the same concept whether it requires an urgent transition or an urgent exit; (v) extending the taxonomy with a transition focus and with coherent supporting policies; (vi) naming the Intermediate (or ‘Amber’) Performance space, acknowledging “Intermediate” or “Amber” transitions; (vii) aiming for a rapid phasing in of an extended taxonomy; (viii) technically assessing DNSH criteria for clarifying environmental performance levels requiring urgent transition and intermediate performance levels; (ix) defining intermediate transition, corresponding investments and plans; (x) technically identifying and developing criteria for activities that have no technological possibility to transition away from a significantly harmful performance level; and (xi) establishing how a low environmental impact (LEnvI) taxonomy extension could potentially be created with NACE3 code analysis and voluntary guidance.

Date of publication: 29/03/2022

(ii) International

FSB: Interim report on supervisory and regulatory approaches to climate-related risks

Status: Consultation

Deadline for the submission of comments: 30/06/2022

The FSB has published an interim report on supervisory and regulatory approaches to climate-related risks. This report aims to assist supervisory and regulatory authorities in developing their approaches to monitor, manage and mitigate cross-sectoral and system-wide risks arising from climate change and to promote consistent approaches across sectors and jurisdictions. Its recommendations focus on: (i) supervisory and regulatory reporting and collection of climate-related data from financial institutions; (ii) system-wide supervisory and regulatory approaches to assessing climate-related risks; and (iii) early consideration of other potential macroprudential policies and tools to address systemic risks.

Date of publication: 29/04/2022

NGFS: Report on enhancing market transparency in green and transition finance

Status: Final

The Network for Greening the Financial System (NGFS) has published a report on enhancing market transparency in green and transition finance. The report sets out some key considerations relevant to policymakers, including: (i) enhanced market transparency about issuers’ and investors’ green and transition objectives. Taxonomies and climate transition frameworks are most effective when they are tied to clear objectives and science-based net zero targets; (ii) facilitate comparability and interoperability of taxonomies, frameworks, and principles. A common understanding of criteria, targets and methodologies is critical to avoid divergences in assessments in green external reviews; and (iii) accelerate efforts on disclosure and reporting. Enhanced disclosure and reporting, based on global disclosure standards with industry-specific metrics, will form the basis for consistent, comparable and reliable climate data, transition plans and investment products. The report aims to feed into international discussions on improving compatibility of approaches to identify, verify and align investments to sustainability goals.

Date of publication: 27/04/2022

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