

Regulatory monitoring

Newsletter

December 2021





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Features

HORIZON SCANNING / REGULATORY MONITORING

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

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

CoEU: [Compromise text on proposed Daisy Chain regulation](#)

Status: Draft

The Council of the EU has published its compromise text for the proposal for a regulation amending the CRR and BRRD as regards the prudential treatment of global systemically important institution (G-SII) groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (otherwise known as the Daisy Chain proposal). The [proposal](#) aims to address resolution-related issues that have been identified since the revised TLAC/MREL framework became applicable in 2019. Discussions will now be launched with the EP with a view to agreeing the final text. Please see below for the corresponding proposal of the European Parliament.

Date of publication: 21/12/2021

ECON: [Draft report on proposed Daisy Chain regulation](#)

Status: Draft

ECON has published its draft report on the proposal for a regulation amending the CRR and BRRD, known as the Daisy Chain proposal. The report sets out suggested amendments to the draft EP legislative resolution. Please see above for the corresponding proposal of the Council of the EU.

Date of publication: 17/12/2021

(b) Solvency/Own funds issues

(i) Germany

BaFin: [Circular 16/2021 \(BA\) on further requirements for own LGD estimations \(Rundschreiben 16/2021 \(BA\) zu weiteren Anforderungen an eigene LGD-Schätzungen\)](#)

Status: Final

BaFin has published a Circular on the implementation of further requirements for own loss given default (LGD) estimates within the internal ratings based (IRB) approach. It follows on from the [Circular 03/2019 \(BA\) on the application of the definition of default under Article 178 of Regulation \(EU\) No 575/2013 \(CRR\) and on PD estimation, LGD estimation and the treatment of defaulted exposures](#), dated 16 April 2019, with which BaFin, among other things, adopted the [EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures \(EBA/GL/2017/16\)](#) into its administrative practice as of 1 January 2021. The EBA has since added further requirements to the requirements for institutions' own LGD estimations contained therein through the [EBA Guidelines for the estimation of LGD appropriate for an economic downturn \(Downturn](#)

LGD estimation) (EBA/GL/2019/03) and the [EBA Guidelines on credit risk mitigation for institutions applying the IRB approach with own estimates of LGDs](#) (EBA/GL/2020/05).

With this Circular, BaFin also informs that it will adopt the two abovementioned Guidelines, regarding the Guidelines on credit risk mitigation for institutions using the IRB approach including own LGD estimates (EBA/GL/2020/05) in accordance with the clarification in the Single Rule Book Q&A (2021_5677), in its administrative practice as of 1 January 2022.

The document is only relevant for institutions that use the IRB approach with the permission of BaFin.

Date of publication: 29.12.2021

BaFin: General Administrative Act on the granting of general permission to certain institutions in respect of the call, redemption, repayment or repurchase of eligible liabilities prior to the date of their contractual maturity date (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 the date of their contractual maturity date. This publication replaces the [General Administrative Act as of 27 December 2020](#) due to the limitation of its applicability to a one-year period. BaFin has made adjustments to the scope of application of this new document based on the drafts of corresponding [RTS by the EBA](#) as published on 26 May 2021.

Date of publication: 27/12/2021

BaFin: Main features of the O-SII identification (Grundzüge der A-SRI Identifizierung)

Status: Final

BaFin has published its annual report regarding the main features of the method for the identification of other systemically important institutions (O-SIIs). This report includes an annex on the setting of the capital buffer for O-SIIs.

Date of publication: 01/12/2021

(ii) EU

EBA: Consultation on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under the CRD

Status: Consultation

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

The EBA has launched a consultation on amendments to the Implementing Regulation for the 2023 benchmarking of internal approaches used in credit risk and market risk: (i) for credit risk, no changes are proposed with respect to the portfolio's definition or data collection templates, however, in order to improve further the data collection and benchmarking analysis, some further clarifications are included in the instructions; and (ii) for market risk, in order to keep the exercise updated and informative for supervisors, the set of instruments is proposed to be extended (the proposal is to add a more complex set of instruments, which could provide additional information and analysis insights to supervisors and banks; for IFRS 9, no changes to existing templates are envisaged).

Date of publication: 17/12/2021

ESRB: Report on the usability of banks' capital buffers

Status: Final

The ESRB has published a report on the overlap between capital buffers and minimum requirements for EU credit institutions. The report investigates the interaction between capital buffers and the minimum requirements under all three frameworks: (i) the

risk-weighted framework aimed at increasing the resilience of banks; (ii) the leverage ratio requirement; and (iii) the resolution framework. It explores regulatory constraints that may prevent banks from using their buffers and that may also render authorities' decisions to release capital buffers ineffective. It assesses the interactions and resulting constraints, first from a conceptual perspective and then by performing empirical analyses of the scope and magnitude of overlaps and then suggests options for mitigating the overlap issue and indicates their implications.

The ESRB's conclusions include that: (a) when buffers overlap with parallel minimum requirements, buffer usability is inevitably constrained; (b) for the macroprudential framework to be effective, facilitating the usability of buffers within the multi-restrictive framework is important, not least when a macroprudential authority releases a buffer (the results show that, on aggregate, buffer usability will already be limited once the leverage ratio becomes binding in mid-2021, and that usability may further decline once MREL requirements apply in 2022 and 2024); (c) fully Basel-compliant implementation of the output floor might help to increase buffer usability, although it is unlikely to eliminate all overlaps entirely (other forthcoming regulatory changes, such as Pillar 2 leverage ratio requirements, will also affect the nature and magnitude of interactions between buffers and other parallel requirements); and (d) the macroprudential review undertaken by the EC in 2022 and the ongoing review of the crisis management and deposit insurance framework offer a window of opportunity for legal changes. The ESRB has provided an interactive simulation tool to authorities to allow them to investigate the interaction between buffers and minimum requirements.

Date of publication: 17/12/2021

EBA: Final report on draft RTS with regard to specifying the calculation of specific credit risk adjustments

Status: Final

The EBA has published its final report on the draft RTS amending its RTS on credit risk adjustments in the context of the calculation of the Risk Weight (RW) of defaulted exposures under the Standardised Approach (SA). The proposed amendments follow the EC's Action Plan to tackle Non-Performing Loans (NPL) in the aftermath of the Covid-19 pandemic, which indicated the need for a revision of the treatment of purchased defaulted exposures under the SA. This Action Plan asks the EBA to reconsider the appropriate regulatory treatment of the RW for purchased defaulted assets which have been sold at a discount; that is NPL sales. Under the current regulatory framework, the capital charge for a defaulted exposure may increase after its sale from a risk weight of 100% on the seller's balance sheet to a risk weight of 150% on the balance sheet of the credit institution buying the assets. The proposed amendment to the existing RTS on credit risk adjustments introduces a change to the recognition of total credit risk adjustments to ensure that the risk weight remains the same in both cases. In particular, the price discount stemming from the sale will be recognised as a credit risk adjustment for the purposes of determining the risk weight. The EBA also recommends that the treatment set out in this RTS be directly reflected in the level 1 text, in line with the European Commission's CRR3 proposal. The final draft RTS will be submitted to the Commission for endorsement before being published in the OJ.

Date of publication: 13/12/2021

EBA: Updated report on the monitoring of CET1 instruments issued by EU institutions

Status: Final

The EBA has published an updated list of Common Equity Tier 1 (CET1) instruments of EU institutions, together with an updated CET1 report, which includes information on the underlying objectives of the monitoring as well as on the consequences of including or excluding instruments in or from the CET1 list. Since the first publication of the list, and based on the information received by each competent authority, the EBA has included in the list 18 new forms of instruments issued after the entry into force of the CRR. A few pre-CRR instruments, whose terms have been amended, have also been assessed with the aim of ensuring compliance with the new regulatory requirements stemming from the CRR and regulatory technical standards. The report includes some background information on the monitoring work done to establish the CET1 list so as to provide external stakeholders with further guidance on the content and objectives of such list. The main results of the monitoring and assessment of CET1 instruments are also summarised. The latest update includes, in particular, additional guidance in the context of (in)direct funding, refusal of redemption, redeemable shares, incentives for minimum dividends and minimum dividends. The report will be updated on a regular basis to reflect the EBA's findings from the assessment of different forms of CET1 instruments, either pre-CRR or new instruments.

Date of publication: 08/12/2021

EBA: Consultations on interest rate risk arising from non-trading book activities

Status: Consultation

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

The EBA has launched three consultations specifying technical aspects of the revised framework capturing interest rate risks for banking book (IRRBB) positions. These consultations relate to: (i) draft RTS on the IRRBB supervisory outlier test (EBA/CP/2021/36); (ii) draft Guidelines on IRRBB and credit spread risk arising from non-trading book activities (EBA/CP/2021/37); and (iii) draft RTS on the IRRBB standardised approach (EBA/CP/2021/38).

- Consultation on draft RTS specifying supervisory shock scenarios, common modelling and parametric assumptions and what constitutes a large decline for the calculation of the economic value of equity and of the net interest income in accordance with Article 98(5a) of CRD IV
- Consultation on draft Guidelines issued on the basis of Article 84(6) of the CRD IV specifying aspects of the identification, evaluation, management and mitigation of the risks arising from potential changes in interest rates and of the assessment and monitoring of credit spread risk, of institutions' non-trading book activities
- Consultation on draft RTS specifying standardised and simplified standardised methodologies 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 in accordance with 84(5) of CRD IV

Date of publication: 02/12/2021

(c) Securitisation

(i) EU

EBA: Consultation on draft RTS specifying and calibrating the performance-related triggers pursuant to Article 26c(5) of the amended Securitisation Regulation

Status: Consultation

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

The EBA has launched a consultation on draft RTS specifying and, where relevant, calibrating the minimum performance-related triggers for simple, transparent and standardised (STS) on-balance-sheet securitisations that feature non-sequential amortisation. With the purpose of standardisation, the Securitisation Regulation ((EU) 2017/2402), as amended by Regulation (EU) 2021/557, sets out that sequential amortisation shall be applied to all tranches of STS on-balance-sheet securitisations. However, as a derogation, STS on-balance-sheet securitisation might feature non-sequential amortisation to avoid disproportionate costs of protection, as long as some minimum performance-related triggers determine the application of sequential amortisation. This will ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction. The draft RTS further specify the minimum backward and forward-looking triggers, and set out that, for two of them, their level should be determined by the parties involved in securitisation transactions, as they are transaction specific and depend on the assessment made by the parties of the riskiness of the underlying exposures at inception. However, the RTS establish a level for the additional backward-looking trigger to ensure for all STS on-balance-sheet securitisations featuring a non-sequential amortisation that under no circumstances the credit enhancement of the retained senior tranche falls below a certain threshold, in comparison with that at origination, as a result of the amortisation of the protected tranches.

Date of publication: 20/12/2021

EBA: Consultation on draft ITS amending Implementing Regulation (EU) 2016/1801 on the mapping of ECAIs' credit assessments for securitisation in accordance with the CRR

Status: Consultation

Deadline for the submission of comments: 31/01/2022

The EBA has launched a consultation on draft ITS amending Implementing Regulation (EU) 2016/1801 on the mapping of External Credit Assessment Institutions' (ECAIs) credit assessments for securitisation in accordance with the CRR. The CRR amendments brought by the new Securitisation Framework have made it necessary to update the mapping tables accordingly.

Following the amendments to Chapter 5 of the CRR, a hierarchy of approaches was set out to calculate capital requirements for positions in a securitisation, whereby institutions using the Securitisation External Ratings Based Approach shall calculate risk-weighted exposure amounts based on credit quality steps (CQSs) set out in the CRR. The amended Regulation reflects 18 CQSs for long-term external credit assessments, which ensures enhanced granularity and risk sensitivity with respect to the approaches previously considered in the Regulation. In addition, since the adoption of the Implementing Regulation, one additional ECAI has been established in the EU with methodologies and processes in place for producing credit assessments for securitisation instruments, two existing ECAIs have extended their credit assessments to cover securitisations, and ESMA has withdrawn the registration of an ECAI. These changes have been reflected in the mapping tables accordingly.

Date of publication: 17/12/2021

(d) Liquidity

(i) Germany

BaFin: Consultation on Circular 22/2021 (BA) regarding Articles 428p(10) and 428aq(10) of the CRR (Konsultation bezüglich des Rundschreibens 22/2021 (BA) zu Art. 428p(10) bzw. 428aq(10) CRR)

Status: Consultation

Deadline for the submission of comments: 28/01/2022

BaFin has launched a consultation on Circular 22/2021 (BA) regarding stable financing of off-balance sheet items within the Net Stable Funding Ratio (NSFR) and the simplified Net Stable Funding Ratio (sNSFR) pursuant to Articles 428p(10) and 428aq(10), respectively, of the CRR ((EU) No. 575/2013) as amended by Regulation (EU) 2019/876. In particular, the Circular is aimed at specifying BaFin's approach to the application of these Articles.

The Circular is intended to address institutions under Article 6(4) of the CRR that are classified as "less significant institutions (LSIs)" under Article 6(4) of the SSM Regulation. It should also be applicable to institutions that are treated as CRR credit institutions in accordance with Section 1a of the German Banking Act (*Kreditwesengesetz* – KWG).

Date of publication: 22/12/2021

(ii) 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. The liquidity coverage ratio (LCR) of EU banks stood at 176% in June 2021, materially above the minimum threshold of 100%. The extended access to additional liquidity via extraordinary central bank facilities supported the banks' efforts to maintain their LCR buffers. At the same time, the EBA renews its concern of EU banks' low foreign currency LCR values, in particular U.S. dollar, as this situation increases the banks' vulnerability for disruptions in foreign exchange markets and may make them overly dependent on central bank foreign currency swap lines. Therefore, the report repeatedly encourages banks and supervisors to work towards improving the situation. The Report also contains a section on the impact of the LCR on lending activities.

Date of publication: 17/12/2021

(e) Authorisation and passporting

(i) Germany

BaFin: Updated Guidance Notice on financial instruments (Angepasstes Merkblatt zu Finanzinstrumenten)

Status: Final

BaFin has published an updated Guidance Notice on financial instruments, in particular including editorial changes to reflect the current structure of Section 1(11) of the German Banking Act (*Kreditwesengesetz* – KWG).

Date of publication: 01/12/2021

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

(i) Germany

BaFin: Letter regarding the supervisory assessment of bank-internal capital adequacy processes (Brief bezüglich der aufsichtlichen Beurteilung bankinterner Risikotragfähigkeitsverfahren)

Status: Final

BaFin has published a letter directed at all credit institutions under its supervision regarding the supervisory assessment of bank-internal capital adequacy processes. It refers to the requirements for these capital adequacy processes as revised in the [BaFin Guidelines on supervisory assessment of bank-internal capital adequacy concepts and their integration into the overall performance and risk management processes \(ICAAP\)](#), dated 24 May 2018. In particular, BaFin emphasises that the Guidelines are to be understood in the sense that previously established so-called going-concern approaches, which do not satisfy the requirements laid out in these Guidelines, will only be accepted for a limited period. The letter now specifies this time period to end on 1 January 2023. It follows that until that date, all credit institutions will need to conclude the adjustment of their capital adequacy approaches to reflect the normative and economic perspectives as described in the abovementioned BaFin Guidelines. Furthermore, the letter sets out that, in line with the ECB interpretation for significant institutions, BaFin will from 1 January 2023 no longer accept Tier 2 capital (*Ergänzungskapital*) to count towards the risk coverage potential (*Risikodeckungspotential*) within the economic perspective. An exception to this rule is available for contingency reserves (*Vorsorgereserven*) pursuant to Section 340f of the German Commercial Code (*Handelsgesetzbuch* – HGB). The letter also expresses BaFin's decision to adopt the ECB interpretation that AT1 instruments are inadequate to count towards the required risk coverage potential within the economic perspective for the institutions under its supervision.

Date of publication: 29/12/2021

BaFin: English translation of the updated version of Circular 10/2017 on banking supervisory requirements for IT (Englische Übersetzung der Änderung des Rundschreibens 10/2017 über die bankaufsichtlichen Anforderungen an die IT – BAIT)

Status: Final

BaFin has published a non-binding English version of the updated Circular 10/2017 on banking supervisory requirements for IT (*Bankaufsichtliche Anforderungen an die IT* – BAIT).

Date of publication: 03/12/2021

(ii) EU**Directive (EU) 2021/2167 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU**

Status: Published in the OJ

Date of entry into force: 28/12/2021

Date of application: 30/12/2023

Directive (EU) 2021/2167 on credit servicers and credit purchasers (the Non-Performing Loans (NPL) Directive) has been published in the OJ. The Directive sets out a common framework and requirements for loan servicers (credit servicers) and loan purchasers, including NPL investors (credit purchasers). Member states are expected to adopt measures implementing the Directive by 29 December 2023 and to apply those measures from 30 December 2023. Entities already carrying out credit servicing activities on 30 December 2023 will be allowed to continue carrying out those activities in their home member state until the earlier of 29 June 2024 or the date on which they obtain an authorisation under the Directive.

Date of publication: 08/12/2021

(g) Large exposures/Limits to shadow banking entities**(i) Germany****BaFin: Consultation on Circular 23/2021 regarding large exposure limits (Konsultation bezüglich des Rundschreibens 23/2021 zu Großkreditobergrenzen)**

Status: Consultation

Deadline for the submission of comments: 05/01/2022

BaFin has launched a consultation on Circular 23/2021 which is intended to incorporate the [EBA Guidelines](#), which specify the criteria for assessing exceptional cases when institutions exceed the large exposure limits set by Article 395(1) of the CRR (EBA/GL/2021/09), into the administrative practice of the BaFin. In addition, the Circular aims to provide details on the time and measures available to such institutions to return to compliance pursuant to Article 396(3) of the CRR. BaFin aims to apply this Circular from 1 January 2022.

Date of publication: 22/12/2021

(h) Deposit protection**(i) EU****EBA: Final report on Guidelines on the delineation and reporting of available financial means of DGS**

Status: Final

Date of application: 30/03/2022

The EBA has published its finalised guidelines on the delineation and reporting of available financial means (AFM) of deposit guarantee schemes (DGSs). The purpose of the guidelines is to ensure that only funds that credit institutions originally contributed to a DGS fund, or that stem indirectly from such contributions, such as recoveries, will count towards reaching the target level of said DGS fund. Conversely, funds that stem directly or indirectly from borrowed resources should not count towards the target level. These clarifications aim at preventing a situation whereby a DGS could meet the target level by taking out a loan, instead of raising contributions from the industry. The guidelines follow up on the recommendations from the EBA Opinion on DGS funding and uses of DGS funds published on 23 January 2020, ahead of any future review of the DGSD. The final guidelines clarify that AFM comprise two subsets: (i) qualified AFM (QAFM) – funds stemming directly or indirectly from contributions of DGS member institutions; and (ii) other AFM – funds, which are not QAFM, including borrowed funds that stem from liabilities such as loans, and hence do not count towards reaching the target level of the DGS fund. The guidelines will extend the reporting requirements from DGSs to the EBA to reflect the clarified concept of AFM, qualified AFM (QAFM)

and other AFM. They also introduce new reporting requirements of DGSs to the EBA, most notably the reporting of outstanding liabilities of DGSs and high-level information on alternative funding arrangements that are in place.

Compared to the draft guidelines published on the final guidelines, the EBA: (a) replaced the approach on the allocation of recoveries to QAFM and other AFM with an approach that permits two alternatives; (b) simplified the treatment of investment income with regards to QAFM; (c) clarified the treatment of loans between DGSs; and (d) included loans between DGSs in reporting requirements and excluded unclaimed repayments.

Date of publication: 17/12/2021

(i) Consolidation

(i) EU

EC: Commission Delegated Regulation (EU) .../... 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 Article 18(3) to (6) and Article 18(8) of CRR II

Status: Adopted by the EC

The EC has adopted a Delegated Regulation containing draft RTS specifying the conditions for the application of different methods of prudential consolidation or of the equity method in the cases referred to in paragraphs 3 to 6 and in paragraph 8 of Article 18 of the CRR. In line with the BCBS Guidelines on the identification and management of step-in risk, the draft RTS also include a list of elements to be taken into account by competent authorities in assessing whether an undertaking should be fully or proportionally consolidated for prudential purposes, considering the risk of step-in for the banking group. In order to ensure consistency with the own funds framework established in the CRR and to avoid the recognition of undue capital benefits, the draft RTS specify the conditions for the inclusion in the consolidated own funds of the amounts of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments issued by the undertakings included in the prudential scope of consolidation and owned by persons other than such undertakings, in those cases where consolidation is required pursuant to Article 18(3) to (6) or (8) of the CRR. The Delegated Regulation will enter into force on the 20th day following that of its publication in the OJ.

Date of publication: 03/12/2021

(j) Notifications

(i) Germany

BaFin: Consultation on draft regulations regarding notification requirements (Konsultation über Verordnungsentwürfe zur Anzeigepflicht)

Status: Consultation

Deadline for the submission of comments: 23/12/2021

BaFin has published several draft regulations on the notification of outsourcing for consultation. These are based in particular on the Law on strengthening the financial markets integrity (*Gesetz zur Stärkung der Finanzmarktintegrität – FISG*) and include drafts relating to the notification requirement under (i) the German Capital Investment Code (*Kapitalanlagegesetzbuch – KAGB*); (ii) the German Banking Act (*Kreditwesengesetz – KWG*); (iii) the German law on the supervision of investment firms (*Wertpapierinstitutsgesetz – WpIG*); and (iv) the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*).

The drafts specify the requirements by the BaFin for the implementation of the notification obligation by the supervised companies in a largely uniform manner across all business areas. Accordingly, the notifications are to be received electronically in the future via BaFin's reporting and publication platform. The aim is to enable the supervisory authority to systematically evaluate the data, in particular to identify concentration risks.

- Consultation of the regulation on notifications and submission of documents pursuant to Section 36 of the KAGB
- Consultation on the fourth regulation amending the Notification Regulation

- Consultation on the first regulation amending the Investment Firms Notification Regulation (*Wertpapierinstituts-Anzeigenverordnung – WpI-AnzV*)
- Consultation on the second regulation amending the ZAG Notification Regulation (*ZAG-Anzeigenverordnung – ZAG-AnzV*)

Date of publication: 03/12/2021

(k) Supervisory reporting

(i) Germany

BaFin: Information sheet on specialised procedure for banking supervision (Informationsblatt zum Fachverfahren „Bankenaufsicht“)

Status: Final

BaFin has published an information sheet with detailed descriptions on how to use its portal of the reporting and publication platform (MVP portal), which offers external parties the possibility of submitting a wide range of information electronically.

Date of publication: 15/12/2021

(ii) EU

EBA: Final report on draft ITS on supervisory reporting requirements, amending the ITS on supervisory reporting regarding COREP, asset encumbrance, ALMM and G-SII reporting

Status: Final

The EBA has published final draft ITS amending Commission Implementing Regulation (EU) 2021/451 as regards COREP, asset encumbrance, additional liquidity monitoring metrics (ALMM) and G-SII reporting. Proportionality was a key consideration in the proposed changes, making reporting requirements better suited to the size and risk of the institutions. In particular, the EBA has introduced the necessary amendments that will exempt small and non-complex institutions from reporting several liquidity metrics, including the concentration of funding by product type, the funding price for various lengths of funding, information on roll-over of funding, as well as more granular data on asset encumbrance. The EBA also implements simplifications for medium-sized institutions, which will be exempted from reporting liquidity metrics on roll-over of funding. The EBA also introduced some changes to reflect amendments to the prudential framework and bring the reporting up to date in the light of changing user needs. The reporting on securitisation has been amended to implement the changes to the prudential requirements brought by the Capital Markets Recovery Package. With respect to the reporting on own funds and own funds requirements, the EBA introduced some minor amendments to obtain a deeper understanding of institutions' use of the option to exempt certain software assets from the deduction from own funds. Furthermore, the definition of the level of asset encumbrance has been amended. Regarding the reporting of information for identifying G-SIIs and assigning G-SII buffer rates, the EBA has expanded the scope of application of the reporting obligation, to include standalone entities that meet the relevant criteria, and not only banking groups.

The draft ITS will be submitted to the EC for endorsement before being published in the OJ. The first reference date for the application of the ITS is expected to be 31 December 2022. The expected implementation period for the proposed changes is one year. The final draft ITS are part of the 3.2 reporting framework release, and the technical package will be published in Q1 2022.

Date of publication: 20/12/2021

EBA: Report on a feasibility study of an integrated reporting system under Article 430c CRR

Status: Final

The EBA has published a report on a two-year feasibility study of an integrated reporting system to collect statistical, resolution and prudential data, under Article 430c of the CRR. The report also contains the EBA's view on what a feasible integrated reporting system could look like and provides further details on the feasible immediate next steps to move towards integration and what areas require further investigation and deep analysis. The EBA's view is that a more integrated reporting system could

be feasible to achieve, considering that the level of integration depends on the fulfilment of necessary conditions, including a positive balance of costs and benefits, as well as an adequate allocation of resources, adequate level of integration of data definitions in the common data dictionary, the implementation of necessary changes to the legal framework (relating to substantive reporting requirements, ie other than competent authorities' powers) and stakeholder buy-in.

The report found that: (i) there is wide agreement that a common data dictionary for prudential, statistical and resolution data collection is a key building block of an integrated reporting system; (ii) there is support to further explore the possibility to increase the level of granularity for the reporting requirements, where feasible, in the context of an integrated reporting system, as a way to further increase the efficiency of the reporting process, but not as a pre-condition to having such a system; (iii) there is support to further assess the possibility to create a Central Data Collection Point; (iv) there is a need for strong governance arrangements; and (v) developing a more integrated system should be done mindful of the progress already achieved in the area of integration so far. Any change should be implemented gradually so as not to disrupt the current processes.

The EBA is committing to further investigate and cooperate with relevant stakeholders to leverage the work already done and the lessons learnt from the different initiatives as an endeavour towards a common vision of integrated reporting across prudential, resolution and statistical reporting. This work will contribute to the EU supervisory data strategy.

Date of publication: 16/12/2021

(I) Accounting/Prudential filter/Audit

(i) EU

ESMA: Report on the application of the IFRS 7 and IFRS 9 requirements regarding banks' ECL

Status: Final

ESMA has published a report on the application of the IFRS 7 Financial Instruments: Disclosures (IFRS 7) and IFRS 9 Financial Instruments (impairment requirements) (IFRS 9) requirements regarding banks' expected credit losses (ECL). The Report provides recommendations to issuers on how to improve the application of the relevant requirements, which issuers, their auditors and audit committees are expected to consider when preparing and auditing the financial statements. ESMA's recommendations to issuers relate to the following areas: (i) general aspects of the ECL disclosures; (ii) assessment of significant increase in credit risk; (iii) forward-looking information; (iv) explanation of changes in loss allowances; (v) transparency of disclosures on credit risk exposures; and (vi) ECL sensitivity disclosures.

Date of publication: 15/12/2021

1.2 Recovery and resolution

(i) EU

CoEU: Compromise text on proposed Daisy Chain regulation

Status: Draft

The Council of the EU has published its compromise text for the proposal for a regulation amending the CRR and BRRD, also known as the Daisy Chain proposal. For more information, please see section 1.1(a) above.

Date of publication: 21/12/2021

ECON: Draft report on proposed Daisy Chain regulation

Status: Draft

ECON has published its draft report on the proposal for a regulation amending the CRR and BRRD, also known as the Daisy Chain proposal. For more information, please see section 1.1(a) above.

Date of publication: 17/12/2021

Commission Delegated Regulations on supplementing Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility

Status: Published in the OJ

Date of entry into force: 02/12/2021

Commission Delegated Regulation (EU) 2021/2106 on supplementing Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility by setting out the common indicators and the detailed elements of the recovery and resilience scoreboard and Commission Delegated Regulation (EU) 2021/2105 supplementing Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility by defining a methodology for reporting social expenditure have been published in the OJ.

- Commission Delegated Regulation (EU) 2021/2106 on supplementing Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility by setting out the common indicators and the detailed elements of the recovery and resilience scoreboard
- Commission Delegated Regulation (EU) 2021/2105 supplementing Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility by defining a methodology for reporting social expenditure

Date of publication: 01/12/2021

(ii) Eurozone

SRB: Approach to CRR discretion on leverage and MREL calibration

Status: Final

The SRB has announced that it will monitor regulatory changes related to competent authorities' discretion to temporarily exclude certain exposures to central banks from the calculation of an institution's total exposure measure (ie leverage amount), due to the effects that it may have on the calibration of the final MREL targets and compliance with the requirements on 1 January 2024. This temporary measure was used by the ECB in response to Covid-19 and banks may benefit from the measure until end of March 2022. The SRB explains that it will monitor whether competent authorities will deem it necessary to extend or not extend the measure beyond March 2022 and the impact in the computation methodology of the leverage amount that might lead to consequences for the final MREL targets. If needed, the SRB will take corrective actions in the annual MREL setting by re-calibrating the final targets on the basis of changed leverage amounts and requirements. In practice, this means that if the relief is not extended, the SRB will re-calibrate MREL targets based on the leverage amount including central bank exposures. The monitoring of compliance with the build-up towards the final MREL targets will also take this into account.

Date of publication: 22/12/2021

SRB: MREL checklist on reported liabilities and sign-off form

Status: Final

The SRB has published a [checklist on reported liabilities](#), to be used by resolution reporting officers as a guide when filling out each quarterly reporting on MREL/TLAC under Article 1(a) of Commission Implementing Regulation (EU) 2021/763. It lists eligibility criteria and conditions that should be met for reported liabilities to be considered MREL eligible.

The SRB has also published a [sign-off form](#), which should be signed in line with Principle 1.1, indent 5 of the SRB's Expectations for Banks confirming that procedures and controls were put in place to ensure that the reported data in the quarterly reporting correspond to liabilities that meet the eligibility criteria in the legislation (SRMR, BRRD and CRR). The sign-off form should be submitted to the relevant National Resolution Authority, starting with the quarterly reporting with reference date 31 December 2021.

Date of publication: 17/12/2021

SRB: Guidance on solvent wind-down of trading books

Status: Final

The SRB has published guidance on solvent wind-down (SWD) of derivatives and trading books in resolution, in line with its Expectations for Banks (EfB), published in April 2020. The guidance provides more details to banks on how to demonstrate

resolvability in relation to Principle 7.1 of the EfB (“Structure, complexity and interdependencies”), in particular with regard to the size and complexity of the trading books. For certain banks, the size and complexity of their trading books could impede the credible and feasible implementation of their envisaged resolution strategies. SWD is an approach that can be used for exiting trading activities in an orderly manner and avoiding posing risks to financial stability. The guidance sets out the scope and minimum expectations for SWD planning and potential execution, with the main objectives to: (i) adequately prepare, develop and maintain banks’ capabilities (including, but not limited to, funding needs in resolution and post resolution) for the planning of an SWD in resolution; and (ii) ensure execution capabilities of the SWD plan in a reasonable timeframe. The application of the guidance is specific to each bank and may be adapted to individual situations in a proportionate manner.

Date of publication: 01/12/2021

(iii) International

FSB: Paper on bail-in execution practices

Status: Final

The FSB has published a paper on practices regarding the execution of bail-in. Drawing on examples and practices across different jurisdictions, this paper provides an overview of practices, operational processes and arrangements as part of the bail-in process. This includes: (i) the suspension of trading and delisting from trading venues of securities of bailed-in firms; (ii) the (re-)listing and (re-)admission to trading of new and existing securities; and (iii) the role CSDs play in the cancellation of shares, write-down and/or conversion of eligible instruments, and issuance of new shares and interim instruments.

The paper also highlights cross-border challenges to the execution of bail-in, where securities are listed on more than one trading venue across different jurisdictions, or where securities are issued in a market other than the domestic market. These include: (a) the suspension of trading and settlement across all relevant trading venues and CSDs; (b) the distribution of the new securities in foreign markets or to foreign investors; and (c) operational challenges arising, for example, from the involvement of multiple CSDs. These issues introduce additional complexities to the execution of bail-in, which may need to be specifically addressed as part of resolution planning.

Date of publication: 13/12/2021

FSB: 2021 Resolution Report – “Glass half-full or still half-empty?”

Status: Final

The FSB has published its tenth report on the implementation of its resolution reforms. The report takes stock of progress made in implementing FSB resolution policies and enhancing resolvability across the banking, financial market infrastructure, and insurance sectors. It also sets out the FSB’s priorities in the resolution area going forward. The FSB states that since their adoption ten years ago, the FSB Key Attributes of Effective Resolution Regimes have set the standard for the reform of resolution regimes and resolution planning across all sectors. Progress towards resolvability has been significant, but the FSB’s recent evaluation of the “too big to fail” reforms found that a number of gaps need to be addressed to fully realise the benefits of the resolution reforms. In addition, digital innovation is giving rise to new challenges for resolution planning, including in relation to the reliance on third-party service providers and cloud services, and the need to assess resolvability of non-traditional market participants. The experience during the Covid-19 pandemic demonstrated that crisis management groups and the cross-border cooperation and information sharing arrangements underpinning them are the back-bone of effective cooperation in times of crisis. However, support by fiscal authorities and central banks during the pandemic was extremely substantial and jurisdictions’ cross-border resolution frameworks have not been tested in earnest. In relation to banks, the report found that work remains to improve the resolvability of global systemically important banks (G-SIBs). Work continues on allocating total loss-absorbing capacity resources within groups, G-SIBs’ capabilities for access to funding in resolution, and valuation and continuity of access in resolution to FMIs. Additionally, cross-border issues still need addressing in relation to funding in resolution and bail-in execution – the FSB will shortly publish a practices paper that summarises the issues on this. In relation to CCPs, the report found that uncertainty remains around the resolvability of CCPs given their systemic role in the financial system. A preliminary report will be published in early 2022 and will inform options for new or revised international policy on the use, composition or amount of financial resources for CCP recovery or resolution.

Date of publication: 07/12/2021

FSB: Report on good practices for CMGs**Status: Final**

The FSB published a report on good practices for Crisis Management Groups (CMGs). The report sets out good practices that have helped CMGs to enhance preparedness for the management and resolution of a cross-border financial crisis affecting a Global Systemically Important Bank (G-SIB) consistent with the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions. The report draws on a stocktake, undertaken in 2020, of how G-SIB home and host authorities use and operate CMGs; and on CMG members' experience during the Covid-19 pandemic. The focus is on CMG activities that seek to enhance crisis preparedness rather than on cooperation during an actual resolution itself.

The good practices identified list 16 desired outcomes that CMGs seek to achieve and relate to: (i) the structure and operation of CMGs; (ii) resolution policy, strategy and resolvability assessments; (iii) coordination on enhancing firm's resolvability; and (iv) enhancing home-host coordination arrangements for crisis preparedness. As CMGs continue to evolve in performing their activities, the FSB will continue to monitor the development of their practices and consider any future work to promote consistency and effective operation of CMGs.

Date of publication: 30/11/2021

1.3 Stress tests/Macroprudential topics

(i) EU**EBA: Announcement of next EU-wide stress test in 2023****Status: Final**

The EBA has announced that the next EU-wide stress test would be carried out in 2023, in line with the decision to aim for a biennial exercise. In 2022, the EBA will perform its regular annual transparency exercise.

Date of publication: 17/12/2021

EBA: Risk assessment of the European Banking System**Status: Final**

The EBA has published its annual risk assessment of the European banking system. The report is accompanied by the publication of the [2021 EU-wide transparency exercise](#), which provides detailed information, in a comparable and accessible format, for 120 banks across 25 EEA/EU countries. Fears about potential asset quality deterioration have not materialised, except for the sectors most affected by the pandemic. Looking ahead, banks as well as micro and macroprudential authorities need to be prepared in case of a deterioration in the economic outlook or in case inflationary pressure translates into further rising rates.

Date of publication: 03/12/2021

EC: Call for evidence on impact assessment on review of macroprudential rules to limit systemic risk**Status: Consultation****Deadline for the submission of comments: 18/03/2022**

The EC has published a call for evidence for the evaluation and impact assessment on its review of macroprudential rules to limit systemic risk in the EU banking sector. This initiative's purpose is to improve the macroprudential rules in the light of lessons learnt from six years' experience of use, including during the major economic crisis caused by Covid-19, and to ensure that appropriate tools are available to deal with emerging systemic risks. The EC sets out details of the problems the initiative aims to tackle, as well as the objectives and policy options for the review.

The impact assessment is intended to analyse the following broad policy options: (i) no change of the macroprudential provisions; (ii) streamlining and more transparent use of the current provisions (this would involve clarifying how they should be used to address a particular systemic risk and fostering more transparency and comparability of Member States' use of macroprudential measures, without defining new tools by law; and this will include making better use of data on exposures to a

broad range of financial risks); (iii) upgrading the framework (this would involve adding provisions related to macroprudential risks and tools not yet covered in EU legislation or national legislative frameworks, as well as stronger monitoring and coordination mechanisms to achieve a more consistent use of the current macroprudential tools); and (iv) a new macroprudential framework (this would involve setting up a macroprudential framework that covers the entire financial sector by adopting a new and dedicated legal instrument, designed to address systemic risks in a holistic and cross-sectoral way).

Date of publication: 01/12/2021



2. Investment firms regulation

(i) EU

Commission Implementing Regulation (EU) 2021/2284 laying down ITS for the application of the IFR with regard to supervisory reporting and disclosures of investment firms

Status: Published in the OJ

Date of entry into force: 11/01/2022

Commission Implementing Regulation (EU) 2021/2284 laying down ITS for the application of the IFR with regard to supervisory reporting and disclosures of investment firms has been published in the OJ. The ITS specify the templates, reporting dates and definitions relating to the supervisory reporting and disclosure requirements for investment firms under the IFR. The provisions on disclosures and reporting reflect mandates in Articles 49(2) and 54(3), respectively, of the IFR.

Date of publication: 22/12/2021

EBA: Final draft RTS package on reclassification of investment firms as credit institutions

Status: Final

The EBA has published a package of two final draft RTS regarding: (i) the reclassification of investment firms as credit institutions; and (ii) the provision of information for the effective monitoring of credit institution thresholds. Article 8a of CRD IV, which was introduced by the IFD, specifies the triggers for when a systemically important investment firm must seek authorisation as a credit institution. Broadly, the trigger is that the average of the firm's monthly total assets, calculated over a period of 12 consecutive months on a solo consolidated basis, is equal to or exceeds EUR30 bn. The draft RTS cover areas relevant for the calculation and implementation of the EUR30 bn threshold, including the accounting standards for the determination of asset values, the methodology for implementing the solo and the group test, as well as the procedure to calculate the total assets on a monthly basis and the treatment of assets belonging to European branches of third-country groups. The EBA states that particular consideration was given to the scope and corresponding methodology for the calculation of the total assets to be compared with the EUR30 bn threshold and the draft RTS have undergone subsequent amendments to enhance the comparability of treatment for all undertakings relevant for the threshold in accordance with the regulatory framework. The second set of draft RTS specify harmonised reporting requirements to provide competent authorities with the tools for carrying out the ongoing monitoring of the EUR30 bn threshold.

The draft RTS contain a set of templates in order to assist competent authorities in verifying the relevant information. They will be submitted to the EC for endorsement following which they will be subject to scrutiny by the EP and the Council before being published in the OJ. They are expected to apply from June 2022, subject to the legislative process being concluded in time.

- Final report on draft RTS on the reclassification of investment firms as credit institutions in accordance with Article 8a(6)(b) of CRD IV
- Final report on draft RTS on the provision of information for the effective monitoring of the credit institution thresholds under Article 55(5) of the IFR

Date of publication: 20/12/2021

EBA: Consultation on draft RTS on the specific liquidity measurement for investment firms under Article 42(6) of the IFD

Status: Consultation

Deadline for the submission of comments: 10/03/2022

The EBA has published a consultation paper on draft RTS on the specific liquidity measurement for investment firms under Article 42(6) of the IFD (EBA/CP/2021/41). Article 42(1) of the IFD mandates competent authorities to impose specific liquidity requirements for an investment firm on the basis of an assessment of supervisory review and evaluation process. Article 42(6) of IFD mandates the EBA to develop draft RTS to specify how the liquidity risk and elements of liquidity risk are to be measured. The draft RTS on specific liquidity measurement set out liquidity risk elements that may raise major concern for

investment firms and that competent authorities will be required to consider when setting specific liquidity requirements as a result of an investment firm's supervisory review and evaluation process. The draft RTS specify that those elements shall be considered under normal and severe, but plausible, conditions. In addition, to ensure proportionality, competent authorities should assess only a smaller set of elements for small and non-interconnected investment firms.

Date of publication: 10/12/2021

EBA: Consultation on draft Guidelines on liquidity requirements exemption for investment firms under Article 43(4) of the IFR

Status: Consultation

Deadline for the submission of comments: 10/03/2022

The EBA has published a consultation paper on draft Guidelines on the liquidity requirements exemption for investment firms under Article 43(4) of the IFR (EBA/CP/2021/42). The draft Guidelines set out the criteria that competent authorities should take into account when exempting small and non-interconnected investment firms from liquidity requirements set out in the IFR. These Guidelines specify that an exemption should be based on the assessment of the financial resource needed for an orderly wind-down of the investment firm. The EBA intends to publish the final Guidelines by mid-2022, with the Guidelines applying two months following publication.

Date of publication: 10/12/2021

Commission Delegated Regulation (EU) 2021/2155 supplementing the IFD with regard to RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration

Status: Published in the OJ

Date of entry into force: 12/12/2021

Commission Delegated Regulation (EU) 2021/2155 supplementing the IFD with regard to RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration has been published in the OJ.

Date of publication: 07/12/2021

Commission Delegated Regulation (EU) 2021/2154 supplementing the IFD with regard to RTS specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages

Status: Published in the OJ

Date of entry into force: 12/12/2021

Commission Delegated Regulation (EU) 2021/2154 supplementing the IFD with regard to RTS specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages has been published in the OJ.

Date of publication: 07/12/2021

Commission Delegated Regulation (EU) 2021/2153 supplementing the IFD with regard to RTS specifying the criteria for subjecting certain investment firms to the requirements of CRR II

Status: Published in the OJ

Date of entry into force: 27/12/2021

Commission Delegated Regulation (EU) 2021/2153 supplementing the IFD with regard to RTS specifying the criteria for subjecting certain investment firms to the requirements of CRR II has been published in the OJ.

Date of publication: 07/12/2021

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

ESMA: Public statement on the supervision of clearing and derivative trading obligations post benchmark transition

Status: Final

ESMA has issued a statement on the implementation of the changes to the clearing obligation (CO) and derivative trading obligation (DTO) in light of the benchmark transition. ESMA clarifies the situation in which its proposed draft RTS on the CO and DTO will not enter into force in time for the transition to alternative benchmarks of EONIA or LIBOR-based OTC derivative contracts by the end of 2021. The draft RTS are currently subject to endorsement by the EC and will then be under review by the EP and the Council. As EONIA, GBP and JPY LIBOR are due to cease by the end of the year, and in view of the communication to stop referencing USD LIBOR as soon as practicable and in any event by 31 December, ESMA does not expect the liquidity criteria for the CO and DTO to be met for OTC IRD classes referencing EONIA, GBP, JPY and USD LIBOR beyond the end of the year. ESMA encourages national competent authorities to take a risk-based approach to their supervisory tasks and not to prioritise their supervisory actions in relation to the CO and DTO for certain interest rate derivative classes from 3 January 2022. ESMA recommends voluntary clearing of derivative classes that will be included in the scope of the CO ahead of its start date.

Date of publication: 16/12/2021

ESMA: Statement from the EUR Risk Free Rates Working Group

Status: Final

ESMA has published a statement from the EUR Risk Free Rates Working Group. The Working Group support the CFTC Market Risk Advisory Committee (MRAC) recommendation to adopt SOFR instead of USD LIBOR in all new cross currency swaps activity with a USD LIBOR leg in the interdealer market from 13 December. The Working Group recommends alignment in EU interdealer cross currency swap markets, and recognises that this helps market participants to meet the target of ceasing new use of USD LIBOR as of the end of 2021 (except for certain risk management exceptions) per guidance from U.S. and UK authorities. The Working Group also recommends the adoption of €STR for the EUR leg of EUR vs USD cross currency swaps in the EU interdealer market as of 13 December.

Date of publication: 09/12/2021

ESMA: Translation of Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation

Status: Final

ESMA has published translations into all official EU languages of its final report on the Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation, which was originally published on 24 September 2021.

Date of publication: 07/12/2021

(ii) International

ISDA: Publication of new fallbacks for additional IBORs

Status: Final

ISDA has published a new set of fallbacks for derivatives referenced to certain interbank offered rates (IBORs) not covered by ISDA's initial fallbacks rollout earlier this year. The new fallbacks cover IBORs in India (MIFOR), Malaysia (KLIBOR), New Zealand (BKBM), Norway (NIBOR), the Philippines (PHIREF) and Sweden (STIBOR), ensuring a robust replacement based on risk-free rates would automatically take effect if any of those benchmarks permanently ceases to exist. ISDA has published a supplement to the 2006 ISDA Definitions plus a new version of the 2021 ISDA Interest Rate Derivatives Definitions to enable parties to include the fallbacks into new derivatives transactions from today. The [December 2021 Benchmark Module of the ISDA 2021 Fallbacks Protocol](#) has also been published to allow firms to incorporate the fallbacks into all legacy derivatives contracts with counterparties that also adhere to the protocol. That module is effective immediately, and other modules covering additional IBORs may be published in future. The documents are available through ISDA's '[Benchmark reform and transition from LIBOR InfoHub](#)'.

Date of publication: 16/12/2021

3.2 Consumer protection rules

(i) EU

EBA: Report on the application of the Guidelines on the remuneration of sales staff

Status: Final

The EBA has published a report on the application of its Guidelines on the remuneration of sales staff. The assessment, on which the report is based, focused on the internal arrangements of institutions for designing, approving and monitoring the remuneration policy and practices for sales staff, in particular the practices on awarding variable remuneration (VR) to sales staff. The EBA's assessment revealed that financial institutions in the sample focus more on prudential requirements and commercial interests than on consumer protection requirements and that, in terms of governance structures, the design, approval and monitoring of the remuneration policies and practices are often handled by the same function, which gives rise to the risk of an inaction bias when reviewing the remuneration policies and practices. The EBA has identified 17 distinct good practices, which include: (i) for financial institutions to involve the HR, compliance and risk management functions in the design of the policies; (ii) to involve shareholders before granting VR in excess of 100% of fixed remuneration; (iii) to apply a mix of quantitative and qualitative criteria when determining the VR of sales staff; (iv) not to make sales performance the determining criterion for the promotion of staff; (v) to implement measures that explicitly dis-incentivise sales staff from acting in a way that gives rise to consumer detriment; (vi) to include in the key performance indicators that determine variable remuneration some measurements of customer satisfaction or, conversely, customer detriment; and (vii) to ensure that pay-out curves for VR do not set incentives to maximise sales at a specific point.

Date of publication: 09/12/2021

3.3 Credit rating agencies

(i) EU

ESMA: Report on CRA market share calculation

Status: Final

ESMA has published its annual report on the credit rating agency (CRA) market share calculation. This report lists the registered CRAs and types of credit ratings they issue, together with a calculation of CRAs' revenues from credit rating activities and ancillary services at group level. It is intended to assist issuers and related third parties in meeting their obligation under Article

8d of the CRA Regulation that requires those that 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.

This report is relevant for issuers that use CRAs.

Date of publication: 22/12/2021

3.4 MiFID/MiFIR

(i) Germany

BaFin: Three General Administrative Acts continue to permit the deferred publication of transactions (Drei Allgemeinverfügungen gestatten weiterhin die spätere Veröffentlichung von Geschäften)

Status: Final

BaFin has published three General Administrative Acts (*Allgemeinverfügungen*) stating that transactions in financial instruments may continue to be published later than generally required by MiFIR. BaFin is extending its corresponding regulations by another six months until 3 July 2022. The currently applicable regulations are limited until 2 January 2022. With effect from 3 January 2022, BaFin will extend the current regulations by way of issuing three General Administrative Acts for the following types of transactions: (i) transactions in non-equity instruments on trading venues operated by an investment services company; (ii) over the counter (OTC) transactions in non-equity instruments by investment services firms; and (iii) transactions in equity instruments on trading venues operated by an investment services company.

A separate permission for a subsequent publication of OTC transactions with equity instruments is still not provided for. According to MiFIR, these are covered by the permission for trading venues. Trading venues that fall under the supervision of BaFin must obtain its approval before making use of the permission for subsequent publication.

Background: Since 3 January 2018, new rules on post-trade transparency for transactions in financial instruments have applied under MiFIR. In principle, details of transactions in financial instruments on a trading venue and OTC transactions in financial instruments traded on a trading venue must be published in real time or as soon as technically possible. National supervisory authorities may permit later publication under certain conditions. The authorities may also permit certain information on the transactions to be published at a later date.

- General Administrative Act to permit the deferred publication of transactions in non-equity instruments on trading venues operated by an investment services company (*Allgemeinverfügung zur Gestattung einer späteren Veröffentlichung von Geschäften mit Nichtteigenkapitalinstrumenten an Handelsplätzen, die durch ein Wertpapierdienstleistungsunternehmen betrieben werden*)
- General Administrative Act to permit the deferred publication of OTC transactions in non-equity instruments by investment services firms (*Allgemeinverfügung zur Gestattung einer späteren Veröffentlichung von OTC-Geschäften mit Nichtteigenkapitalinstrumenten durch Wertpapierdienstleistungsunternehmen*)
- General Administrative Act to permit the deferred publication of transactions in equity instruments on trading venues operated by an investment services company (*Allgemeinverfügung zur Gestattung einer späteren Veröffentlichung von Geschäften mit Eigenkapitalinstrumenten an Handelsplätzen, die durch ein Wertpapierdienstleistungsunternehmen betrieben werden*)

Date of publication: 28/12/2021

(ii) EU

EC: Commission Delegated Regulation (EU) .../... supplementing MiFIR by specifying criteria for derogation of the principle that APAs and ARMs are supervised by ESMA

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing MiFIR by specifying criteria for derogation of the principle that approved publication arrangements (APAs) and approved reporting mechanisms (ARMs) are supervised by ESMA. The EC explains that Regulation (EU) 2019/2175 grants ESMA, from 1 January 2022, direct authorisation and supervisory powers over data reporting services providers (DRSPs), except for those ARMs and APAs that, by way of derogation from MiFIR on account of their limited relevance for the internal market, are subject to authorisation and supervision by a competent authority

of a Member State. Article 2(3) of MiFIR gives the Commission power to adopt a delegated act on this derogation. The criteria take account of: (i) the extent to which the services are provided to investment firms authorised in one Member State only; (ii) the number of trade reports or transactions; and (iii) whether the ARM or APA is part of a group of financial market participants operating cross border.

The Council of the EU and the EP will now scrutinise the Delegated Regulation, which will enter into force and apply on the third day following that of its publication in the OJ.

The document is relevant for DRSPs only.

Date of publication: 17/12/2021

ESMA: Annual report on application of waivers and deferrals for non-equity instruments under MiFIR

Status: Final

ESMA has published its annual report on waivers and deferrals for equity and non-equity instruments covering the year 2020. The report includes an analysis based on waivers for which ESMA issued an opinion to the competent authority. It also provides an overview on the use of waivers and the application of the deferral regime in the EEA for trade transparency under MiFIR. Overall, ESMA observed no major change in market microstructure and waivers and deferrals regimes remain an integral part of the EEA market structure, specifically for ETFs and the bond market. The large in scale waiver is the most used and shares and exchange-traded funds are the instrument type for which waivers are requested most frequently. Consistent with 2019, ETFs are the instruments with the highest percentage of “dark” trading with respect to the overall volume traded in those instruments. The application of the discretionary deferral regime across all non-equity instruments by competent authorities continues resulting in a patchwork of national approaches across the EEA. The withdrawal of the UK from the EU at the end of 2020 meant that this was a transitional year, and in order to take a forward-looking approach ESMA did not include UK data for 2020 in the report. Wherever possible, a comparison with the UK and with last year’s findings were included in the report, to reflect the UK’s impact on EEA markets prior to Brexit.

Date of publication: 16/12/2021

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

(i) EU

Commission Delegated Regulation (EU) 2021/2268 amending the RTS laid down in Delegated Regulation (EU) 2017/653 which considers KIDs for PRIIPs

Status: Published in the OJ

Date of entry into force: 09/01/2022

Date of application: 01/07/2022

Commission Delegated Regulation (EU) 2021/2268 amending the RTS laid down in Commission Delegated Regulation (EU) 2017/653 as regards 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 PRIIP manufacturers offering units of funds referred to in Article 32 of PRIIPs Regulation as underlying investment options with the prolonged transitional arrangement laid down in that Article, has been published in the OJ.

Among other things, the Delegated Regulation sets out: (i) new methodologies underpinning the calculation of appropriate performance scenarios and a revised presentation of these scenarios, as well as standards for information on past performance that needs to be provided by some investment funds; (ii) revised summary cost indicators and changes to the content and presentation of information on the costs of PRIIPs; (iii) a modified methodology underpinning the calculation of transaction costs; and (iv) modified rules for PRIIPs that offer a range of options for investment.

Date of publication: 20/12/2021

Regulation (EU) 2021/2259 amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS

Status: Published in the OJ

Date of entry into force: 21/12/2021

Regulation (EU) 2021/2259 amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS has been published in the OJ. In particular, this legislation extends the transitional arrangement exempting companies from the requirement to provide retail investors with a key information document (KID) until 31 December 2022.

Date of publication: 20/12/2021

ESAs: Updated Q&As on PRIIPs KID

Status: Final

The ESAs have updated their Q&As on the key information document (KID) requirements for PRIIPs, as laid down in Commission Delegated Regulation (EU) 2017/653. The new Q&As relate to: (i) the application of Article 15(2) to different holding periods; (ii) market risk assessment: product categories; (iii) performance scenarios for category 1 PRIIPs; (iv) list of costs of PRIIPs other than investment funds; and (v) presentation of “total costs”.

Date of publication: 17/12/2021

3.6 Securities financing transactions

(i) EU

ESMA: Updated Q&As on SFTR data reporting

Status: Final

ESMA has updated its Q&As on SFTR data reporting. ESMA has added a new question explaining that, in the case of the Overview report, trade repositories should calculate and express the aggregate positions in SFTs in their EUR equivalent value, irrespective of whether a position captures SFTs featuring the same or different currencies.

Date of publication: 17/12/2021

ESMA: Amended Guidelines on calculation of positions in SFTs by TRs under the SFTR

Status: Final

ESMA has amended its Guidelines on calculation of positions in SFTs by Trade Repositories (TRs) under the Securities Financing Transactions Regulation (SFTR). ESMA notes that the guidelines aim to ensure consistency of position calculation across TRs, with regard to the: (i) time of calculations; (ii) scope of the data used in calculations; (iii) data preparation; (iv) record keeping of data; and (v) calculation methodologies. The guidelines contain relevant clarifications to TRs as to: (a) the calculations carried out by TRs and the format of provision of access to data pursuant to Article 80(4) of EMIR as referred to in Article 5(2) of the SFTR and detailed under Article 5 of RTS on data aggregation; and (b) the level of access to positions provided by TRs to the entities included in Article 12(2) of the SFTR with access to positions in line with Article 3 of RTS on data access.

Date of publication: 14/12/2021

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Updated Q&As on CSDR

Status: Final

ESMA has updated its Q&As on implementation of the Central Securities Depositories Regulation (CSDR). ESMA has amended a question in its section on settlement instructions sent by CCPs in relation to how a CCP sending a settlement instruction stemming from the netting of transactions executed in various trading places should populate such a field with the 'place of trading'. ESMA has also added a new question on participants' settlement efficiency as to which settlement fails should be taken into account when calculating a participant's rate of settlement efficiency in accordance with Article 39(2) of the regulatory technical standards on settlement discipline.

Date of publication: 17/12/2021

ESMA: Public statement on the supervisory approach on the implementation of the CSDR buy-in provisions

Status: Final

ESMA has published a statement to clarify the practical implementation of the EU CSDR settlement discipline regime. The CSDR settlement discipline regime is scheduled to start applying on 1 February 2022, however the co-legislators have agreed on an amendment to CSDR, to be introduced via the Proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (MiDLT), which will allow ESMA to propose a later start date for the CSDR buy-in regime, while keeping the date of application of the penalties and reporting requirements unchanged. However, the adopted text of MiDLT is not expected to enter into force ahead of 1 February 2022.

To avoid potential additional costs linked to any additional later change of the systems and processes of market participants implementing these measures, ESMA expects national competent authorities (NCAs) not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime. Further, with regards to the requirement in the Short Selling Regulation that CCPs include a buy-in regime in their operating rules, which is meant to be repealed upon application of the CSDR buy-in regime, ESMA expects NCAs to encourage CCPs to continue applying the buy-in rules currently implemented by them until the application of the revised CSDR buy-in regime.

Date of publication: 17/12/2021

ESMA: Translation of the final report on the Guidelines on settlement fails reporting under Article 7 of the CSDR

Status: Final

ESMA has published translations into all official EU languages of its final report on the Guidelines on settlement fails reporting under Article 7 of the CSDR, which was originally published on 24 September 2021.

Date of publication: 08/12/2021

ESMA: Announcement of upcoming data publication aimed at CSDs

Status: Final

ESMA has announced that it will start publishing information on trading venues with the highest turnover for bonds. This information is needed by central securities depositories (CSDs) in order to apply cash penalties under the Central Securities Depositories Regulation (CSDR). ESMA aims to publish this data for the first time by 1 February 2022 and will update it on a

quarterly basis. This will enable CSDs to access centralised and transparent information for the application of cash penalties for bonds.

Date of publication: 01/12/2021

4.2 EMIR

(i) EU

ESMA: Assessment of systemically important UK CCPs under Article 25(2c) of EMIR

Status: Final

ESMA has published a statement and report on the conclusions from its assessment of systemically important (Tier 2) CCPs established in the UK and of the risks they may pose to the financial stability of the EU. The report ([part 1](#) and [part 2](#)) identifies three clearing services, one provided by LCH Ltd and two by ICE Clear Europe Ltd, as being of substantial systemic importance for EU financial stability and posing risks that may not be fully mitigated under the current EMIR regulatory framework. It concludes that the costs and risks of derecognising these services would outweigh the benefits to the EU at this time. The assessment nonetheless identified important risks and vulnerabilities in connection with a continued recognition of these clearing services due to all three clearing services having dominant market shares in one or more EU currency denominated products.

Furthermore, insufficient supervisory powers, particularly in crisis events and including in the context of a Tier 2 CCP recovery or resolution, may hamper EU authorities' access to timely information and the possibility to intervene effectively. The report includes four sets of policy measures as a response to identified risks and vulnerabilities: (i) considering appropriate incentives for reducing the size of EU exposures to Tier 2 CCPs; (ii) revising the comparable compliance framework; (iii) expanding ESMA's supervisory and crisis management toolbox; and (iv) enhancing cooperation with UK authorities on CCP recovery and resolution. ESMA has also published [ESRB's response](#) to its consultation on the report, in which the ESRB confirmed that it agreed with ESMA's main findings. ESMA's findings will also provide important input to the EC's decision regarding the extension of its temporary equivalence decision for UK-based Tier 2 CCPs in early 2022.

Date of publication: 17/12/2021

ESMA: Public statement on the supervision of clearing and derivative trading obligations post benchmark transition

Status: Final

ESMA has issued a statement on the implementation of the changes to the clearing obligation (CO) and derivative trading obligation (DTO) in light of the benchmark transition. For more information, please see section 3.1 above.

Date of publication: 16/12/2021

(ii) International

FSB: Global monitoring report on non-bank financial intermediation sector

Status: Final

The FSB has published a report on developments in the non-bank financial intermediation (NBF) sector, up to the end of 2020. The main findings include: (i) total global financial assets exhibited strong growth in 2020, mainly driven by banks and central banks, which grew at their highest rate since the 2008 global financial crisis (in contrast to the trend over the past decade, the NBF sector grew less than the banking sector and the sector's share of total financial assets declined); (ii) despite the substantial volatility in financial markets during the first half of 2020, measures of vulnerability in NBF appeared broadly stable when comparing 2020 to 2019 (largely unchanged measures of credit intermediation, maturity and liquidity transformation and leverage highlight the rapid response and impact of official sector intervention in the wake of the March 2020 market turmoil); and (iii) data availability and quality continue to evolve, and there is scope for further improvements to better capture

vulnerabilities in NBFIs (as part of its work programme to enhance the resilience of the NBFIs sector, the FSB will consider further enhancements to the annual monitoring exercise in light of the Covid-19 experience).

Date of publication 16/12/2021

ISDA: Contractual standards for digital asset derivatives

Status: Final

ISDA has published a paper on the key issues around contractual standards for digital asset derivatives. The paper explains how ISDA will develop digital product templates and definitions and how they can be integrated within the operational and technological infrastructure that is being designed and implemented across the digital asset ecosystem. In particular, the paper will: (i) identify the distinguishing features of different types of digital asset, highlighting the key characteristics and features of these assets and their relevance to contractual standards; (ii) identify potential disruption events that could occur with respect to digital asset derivatives and provide a framework for defining these events, drawing lessons from the approaches adopted for these events in other asset classes; (iii) identify issues relating to how digital assets and the derivatives that reference them can be valued, including in circumstances where a valuation source or methodology is disrupted; (iv) explain how contractual standards for digital asset derivatives will interact with the existing ISDA documentation architecture, highlighting potential interpretative issues that might arise with respect to the ISDA Master Agreement when considering some of the novel features of digital asset markets; and (v) highlight potential contractual issues to consider when collateralizing digital asset derivatives, whether using traditional or digital forms of collateral. ISDA has also produced a supplement to the paper that sets out a granular, technical analysis of different ISDA product definitions and their potential applicability to digital asset derivatives.

Date of publication: 14/12/2021

FSB: 2021 implementation progress on OTC derivatives market reforms

Status: Final

The FSB has published a progress report on the implementation of the G20's OTC derivatives market reforms: (i) there was significant progress in implementing final higher capital requirements for non-centrally cleared derivatives (NCCDs), which are now in place in 15 out of 24 FSB member jurisdictions; interim higher capital requirements for NCCDs are in force in 23 FSB member jurisdictions, unchanged since the 2020 progress report; (ii) margin requirements for NCCDs are in force in 16 jurisdictions (the final implementation phase will take effect on 1 September 2022 and some jurisdictions that have yet to implement the requirements expect to do so by that date); (iii) trade reporting requirements for OTC derivatives transactions are in force in 23 FSB member jurisdictions, unchanged since the 2020 progress report, with preparation ongoing in the final jurisdiction (some jurisdictions report they have further strengthened the functioning of trade repositories and the reporting requirements); (iv) central clearing requirements are in force in 17 FSB member jurisdictions, unchanged since the 2020 progress report (some jurisdictions are taking steps towards implementation of mandatory central clearing, including authorisation of a central counterparty (CCP) in the jurisdiction; and (v) there have been few developments in jurisdictions regarding platform trading requirements, which are in force in 13 FSB member jurisdictions, unchanged since the 2020 progress report.

Date of publication: 03/12/2021

5. Anti-money laundering

(i) EU

EBA: Final report on draft RTS under Article 9a(1) and (3) of the EBA Regulation setting up an AML/CFT central database and specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained therein

Status: Final

The EBA has published final draft RTS on a central AML/CFT database, as mandated under Article 9 of the EBA Regulation ((EU) No 1093/2010). The central AML/CFT database will contain information on material AML/CFT weaknesses in financial sector operators that competent authorities have identified. It will also contain information on the measures competent authorities have taken in response to those material weaknesses. The draft RTS specify when weaknesses are material, the type of information competent authorities have to report, how information will be collected and how the EBA will analyse and disseminate the information contained in the database. They also set out the rules necessary to ensure confidentiality, the protection of personal data and the effectiveness of the database. The EBA will use this database to inform its view of ML/TF risks affecting the EU's financial sector. It will also share information from this database with competent authorities as appropriate, support them at all stages of the supervisory process and, in particular, if specific risks or trends emerge.

The EBA will submit the draft RTS to the EC for approval. Once approved, the RTS will be directly applicable in all Member States. The EBA plans for the database to start receiving data in Q1 2022.

Date of publication: 20/12/2021

EBA: Final report on revised Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849

Status: Final

The EBA has revised its Guidelines on the characteristics of a risk-based approach to AML/CFT supervision, and the steps to take when conducting supervision on a risk-sensitive basis. The amendments address the key challenges for supervisors when implementing the risk-based approach and take into consideration changes in the EU legal framework and new international guidance by the FATF and BCBS on this topic. In summary, the revised guidelines: (i) emphasise the need for a comprehensive risk assessment at a sectoral and sub-sectoral level to support competent authorities' identification of those risk areas that require more intense supervisory attention; (ii) explain different supervisory tools available to competent authorities and provide guidance on selecting the most effective tools for different purposes; (iii) emphasise the importance of a robust follow-up process and set out different aspects that competent authorities should consider when determining the most effective follow-up action; (iv) provide further guidance on the implementation of a robust supervisory strategy and plan, to ensure that competent authorities allocate their supervisory resources according to the risk exposure of subjects of assessment under their supervision; (v) clarify competent authorities' obligations as regards the AML/CFT supervision of groups; (vi) highlight the importance of cooperation among competent authorities and between competent authorities and other stakeholders (in particular, the guidelines recognise that supervisory cooperation is important not only when supervising cross-border groups, but also in respect of domestic groups and subjects of assessments); and (vii) provide further guidance on how competent authorities can determine the type of guidance needed within the sector and how to communicate this guidance in the most effective manner. The revised guidelines will be translated into the official EU languages and national authorities will then have two months to report whether they comply. The revised guidelines will apply three months after publication of the official language versions, when they will repeal and replace the original 2016 version of the guidelines. Alongside the revised guidelines, the EBA has published a factsheet on AML and CTF supervisory colleges and a factsheet on its approach to monitoring the functioning of these colleges.

Date of publication: 16/12/2021

EBA: Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and FIUs under CRD IV

Status: Final

Date of application: 01/06/2022

The EBA has finalised its Guidelines setting out how prudential supervisors, AML/CFT supervisors and financial intelligence units (FIUs) should cooperate and exchange information in relation to AML/CFT, in line with provisions laid down in the CRD. The guidelines set out general provisions and practical modalities for the cooperation and information exchange while respecting the autonomy of the supervisors/units respective roles. The requirements apply domestically and on a cross-border basis, regardless of the institutional setting of the authorities. In particular, the guidelines facilitate and support the cooperation and information exchange throughout the supervisory life cycle covering authorisations of new institutions, ongoing supervision including the risk assessment, and, where relevant, the imposition of supervisory measures and sanctions, including the withdrawal of the authorisation.

Date of publication: 16/12/2021

EBA: Consultation on draft Guidelines on the use of remote customer onboarding solutions under Article 13(1) of MLD4

Status: Consultation

Deadline for the submission of comments: 10/03/2022

The EBA has launched a public consultation on its draft Guidelines on the use of remote customer onboarding solutions under MLD4. These Guidelines set out a common understanding by competent authorities of the steps financial sector operators should take to ensure safe and effective remote customer onboarding practices in line with applicable anti-money laundering and countering the financing of terrorism legislation and the EU's data protection framework. Once adopted, these Guidelines will apply to all financial sector operators that are within the scope of MLD4.

The EBA will finalise these Guidelines once the consultation responses have been assessed. A public hearing will take place via conference call on 24 February 2022.

Date of publication: 10/12/2021

(ii) International

FSB: Draft framework for money laundering/terrorist financing – risk assessment of a remittance corridor

Status: Final

The FSB has published a joint report by the IMF and the World Bank, dated September 2021, proposing a draft framework and methodology for risk assessment in remittance corridors having the potential of being identified as “safe remittance corridors”. This draft framework provides a contribution to the FSB’s Roadmap for Enhancing Cross-Border Payments that was endorsed by G20 Leaders in 2020 and aims to achieve faster, cheaper, more transparent, and more inclusive cross-border payment services. Specifically, the draft framework for remittance corridors’ risk assessments is the first action under Building Block 7, the goal of which is to promote “safe payment corridors”. It proposes the development of a draft framework and methodology for the ML and TF risk assessment in remittance corridors and the identification of potential “lower risk corridors”. This term does not imply an absence of ML/TF risks in the corridor, but rather a lower risk level. This assessment framework can be applied jointly or separately by the sender and the recipient corridor countries. This report is expected to facilitate ML/TF pilot risk assessments in one or more remittance corridors to be determined in the next phase of the project. The final version of the framework will incorporate findings and insights from the pilot risk assessments and stakeholder consultations.

Date of publication: 13/12/2021

6. Payments

6.1 Payment services/E-money

(i) EU

EPC: Reminder on implications of Brexit for all SEPA payment scheme participants

Status: Final

The European Payments Council (EPC) has published a reminder with regard to the measures it has previously requested the SEPA payment scheme participants to implement to ensure a continued smooth processing of cross-border payments involving a UK-based SEPA payment scheme participant after the UK's withdrawal from the EU on 31 December 2020. This is because the respective EU and UK Funds Transfer Regulations require additional information to be sent with payments into/from the UK as the UK is now a third country under those Regulations following Brexit. SEPA transactions to be executed or settled as of 1 January 2021 involving a UK-based SEPA payment scheme participant must contain (i) the full address details of the originator for SCT and SCT Inst transactions; (ii) the full address details of the debtor for SDD Core and SDD B2B collections. The EPC has been notified that some EEA-based SEPA payment scheme participants are not complying with the extra information requirements mandated under the EU Funds Transfer Regulation, notably regarding the need to provide the full address of the originator/debtor. The EPC urges all SEPA payment scheme participants concerned to complete as soon as possible the identification of their customers with incoming and outgoing cross-border SEPA transactions involving both a UK and an EEA payment account, and to ensure that all customers concerned provide the necessary extra SEPA transaction data.

Date of publication: 21/12/2021

EPC: Updated 2021 SEPA scheme rulebooks and other SEPA rules

Status: Final

The European Payments Council (EPC) has published updated versions of some of its 2021 SEPA scheme rulebooks and payment scheme management rules. These include: (i) 2021 SEPA Direct Debit Core Scheme Rulebook (version 1.1). The version 1.1 has no specific impact on the business and operational rules compared to the version 1.0 of this Rulebook. The 2021 SEPA Direct Debit Core Scheme Rulebook version 1.1 enters into force on 11 January 2022 and remains in effect up to and including 18 November 2023; (ii) 2021 SEPA Instant Credit Transfer Scheme Rulebook (version 1.1). The version 1.1 has no specific impact on the business and operational rules compared to the version 1.0 of this Rulebook. The 2021 SEPA Instant Credit Transfer Scheme Rulebook version 1.1 enters into force on 11 January 2022 at 08:00 CET and remains in effect up to 19 November 2023 08:00 CET; (iii) Maximum Amount for Instructions under the SEPA Instant Credit Transfer Scheme Rulebook version 1.1. This document sets the maximum amount per instruction that can be processed under the SEPA Instant Credit Transfer Scheme based on the 2021 SEPA Instant Credit Transfer Scheme Rulebook version 1.1. This document is referred to in section 2.5 of that Rulebook and forms a binding supplement to it; (iv) 2021 SEPA Direct Debit Business-To-Business Scheme Rulebook (version 1.1). The version 1.1 has no specific impact on the business and operational rules compared to the version 1.0 of this Rulebook. The 2021 SEPA Direct Debit Business-To-Business Scheme Rulebook version 1.1 enters into force on 11 January 2022 and remains in effect up to and including 18 November 2023; (v) 2021 SEPA Credit Transfer Scheme rulebook (version 1.1). The version 1.1 has no specific impact on the business and operational rules compared to the version 1.0 of this Rulebook. The 2021 SEPA Credit Transfer Scheme rulebook version 1.1 enters into force on 11 January 2022 and remains in effect up to and including 18 November 2023; and (vi) SEPA Payment Scheme Management Rules (version 4.4). This version reflects the disbandment of the Scheme End-User Forum and the Scheme Technical Forum, and the creation of the Scheme End-User Multi-Stakeholder Group and of the Scheme Technical Player Multi-Stakeholder Group at the start of 2022. The version 4.4 of the SEPA Payment Scheme Management Rules enters into force as of 11 January 2022 and will remain in effect until further notice.

- [2021 SEPA Direct Debit Core Scheme Rulebook](#)
- [2021 SEPA Instant Credit Transfer Scheme Rulebook](#)
- [Maximum Amount for Instructions](#)
- [2021 SEPA Direct Debit Business-To-Business Scheme Rulebook](#)

- [2021 SEPA Credit Transfer Scheme rulebook](#)

Date of publication: 13/12/2021

EPC: 2021 report on payment threats and fraud trends

Status: Final

The European Payments Council (EPC) has published its 2021 report on payment threats and fraud trends. The document: (i) provides an overview of the most important threats and other “fraud enablers” in the payments landscape and for each threat sets out the impact, context and suggested controls and mitigations; (ii) elaborates on how the identified threats impact the payment-relevant processes; and (iii) sets out the types of fraud related to specific payment instruments and supporting schemes.

The EPC’s conclusions include: (a) social engineering attacks and phishing attempts are still increasing and they remain instrumental often in combination with malware, with a shift from consumers, retailers, SMEs to company executives, employees (through “CEO fraud”), PSPs and payment infrastructures and more frequently leading to authorised push payments fraud; (b) malware remains a major threat, in particular ransomware has been on the rise during the past year, requiring new mitigating measures. PSP’s customer relation departments should inform customers of measures including proper maintenance of own devices; (c) advanced persistent threats are considered as a potential high risk for payment infrastructures and network related payment ecosystems. Measures against this should begin with security defence-in-depth strategy and architecture and also include advanced security data analytics; (d) denial of service numbers are not increasing, however, they are still frequently targeting the financial sector. This is a contribution of botnets and due to the high volume of infected consumer devices, severe threats remain. To combat botnets technical countermeasures can be adopted but cybercrime dedicated laws, user awareness and enhanced cooperation is also required; (e) a fraudulent payment transaction is often followed by the use of a monetisation channel such as an immediate cash withdrawal, a purchase with no trace, a money transfer or a transfer to another account (“money mulling”). Raising awareness among customers, identification of “mules” combined with monitoring and stopping measures should be adopted as mitigation actions; and (f) an important aspect to mitigate the risks and reduce the fraud related to payments is the sharing of fraud intelligence and information on incidents among PSPs. However, often this is being limited by rules and regulations related to data protection, even more so in the case of cross-border sharing. It is to be expected that the new [EBA Guidelines on fraud reporting](#) will support an improved information sharing and the availability of more accurate fraud figures.

Date of publication: 06/12/2021

EPC: Call for change requests to the SRTP scheme rulebook

Status: Consultation

Deadline for the submission of comments: 25/02/2022

The European Payments Council (EPC) has launched a call for change requests to the SEPA request-to-pay (SRTP) scheme rulebook. Any person or organisation with a legitimate interest can submit a change request in accordance with the rules described in section 4.2.3 “Submission of Change Requests to the Secretariat” of the current rulebook version 2.0.

Date of publication: 01/12/2021

(ii) International

FSB: Survey on its work under building block 6 of the roadmap for enhancing cross-border payments

Status: Consultation

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

The FSB has launched a survey as part of its work under Building Block 6 of the Roadmap for enhancing Cross-border Payments, where the FSB agreed to conduct a stocktake of existing national and regional data frameworks relevant to the functioning, regulation and supervision of cross-border payment arrangements, with a view to identify issues relating to cross-border use of those data by national authorities and by the private sector. The FSB wishes to gather stakeholders’ feedback in order to better understand how requirements applicable to data (e.g., where and what data must be stored/retained, where it may be transferred, the rules governing the security or access to data) could affect cross-border payments, by potentially affecting cost, speed, access, security of cross-border payments, or interoperability of cross-border payment networks. Data frameworks

within the scope of the survey include: (i) domestic data frameworks, including rules, regulations, guidelines and supervisory guidance, that affect the provision of, or access to, cross-border payment services in one or more jurisdictions, or the manner in which those services utilise cross-border payments data in one or more jurisdictions; (ii) implementation of international standards from the FSB and other standard-setting bodies, including BCBS, CPMI, FATF, IAIS and IOSCO, if not included as part of formal domestic data frameworks; and (iii) other international efforts, arrangements or agreements that jurisdictions may implement in their domestic data frameworks or that may affect cross-border data flows.

The FSB invites feedback from banks, non-banks, financial market infrastructures, academics and industry associations. Responses to the survey will support FSB member authorities in the analysis of the constraints on cross-border data flows imposed by existing national and regional data frameworks.

Date of publication: 10/12/2021



7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) Eurozone

ECB: Revised guide and questionnaire for fit and proper assessments

Status: Final

The ECB has published an updated guide for fit and proper assessments and a [fit and proper questionnaire template](#) for members of the management bodies of significant credit institutions under the SSM questionnaire. The ECB has also published a [feedback statement](#) to the consultation on the amendments. The objective of this revised version of the guide to fit and proper assessments, which replaces the previous May 2018 version, is to explain in greater detail the policy stances, supervisory practices and processes applied by the ECB when assessing the suitability of members of the management bodies of significant credit institutions and to specify the ECB's main expectations. The questionnaire template is to be used as a guide as to the information that the ECB and NCAs expect to receive in order to assess the fitness and propriety of appointees.

Date of publication: 08/12/2021

ECB: Supervisory priorities and assessment of risks and vulnerabilities for 2022-2024

Status: Final

The ECB has published its supervisory priorities for the SSM for 2022-24. The ECB has identified three priorities, each with corresponding vulnerabilities to be addressed: (i) for banks to emerge from the pandemic healthy (vulnerabilities include deficiencies in banks' credit risk management frameworks and exposures to Covid-19 vulnerable sectors and leveraged finance); (ii) to seize the opportunity to address structural weaknesses via effective digitalisation strategies and enhanced governance (two deficiencies are identified: in banks' digital transformation strategies and in management bodies' steering capabilities); and (iii) to tackle emerging risks (these include climate-related and environmental risks, IT outsourcing and cyber resilience and also counterparty credit risk). For each priority, the ECB has developed a set of strategic objectives and underlying work programmes, spanning the next three years, which aim to address the most material vulnerabilities.

Date of publication: 07/12/2021

8. Institutional supervisory framework

(i) Germany

Twenty-seventh regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (Siebenundzwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht – FinDABefugV)

Status: Published in the Federal Gazette

Date of entry into force: 30/12/2021

The Twenty-seventh regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (*Siebenundzwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht – FinDABefugV*) has been published in the German Federal Gazette. In particular, the regulation extends Section 1(1) of the FinDABefugV in order to empower BaFin to issue statutory regulations based on the new delegation powers in Section 32f(8)(2) of the German Securities Act (*Wertpapierhandelsgesetz – WpHG*) which have been introduced by Article 4 of the Law on strengthening the financial markets integrity (*Gesetz zur Stärkung der Finanzmarktintegrität – FISG*).

Date of publication: 29/12/2021

Twenty-sixth regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (Sechszwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht – FinDABefugV)

Status: Published in the Federal Gazette

Date of entry into force: 30/12/2021

The Twenty-sixth regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (*Sechszwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht – FinDABefugV*) has been published in the German Federal Gazette. In particular, the amendment inserts a new Section 1e into the FinDABefugV, empowering the BaFin to issue statutory regulations based on the new delegation powers in Section 28(4)(3) of the German Payment services supervision law (*Zahlungsdienstleistungsaufsichtsgesetz – ZAG*) which have been introduced by Article 6 of the Law on strengthening the financial markets integrity (*Gesetz zur Stärkung der Finanzmarktintegrität – FISG*).

Date of publication: 29/12/2021

BaFin: Updated Organisational Statute for the Federal Financial Supervisory Authority (Angepasstes Organisationsstatut für die Bundesanstalt für Finanzdienstleistungsaufsicht – OsBaFin)

Status: Final

BaFin has published the updated Organisational Statute for the Federal Financial Supervisory Authority (OsBaFin), which reflects the changes made by a resolution of the BaFin Board of Directors of 10 November 2021 pursuant to Section 6(1) of the Financial Supervisory Act (*Finanzdienstleistungsaufsichtsgesetz – FinDAG*). The update does not require any implementation by financial institutions.

Date of publication: 01/12/2021

(ii) EU

ESMA: Public statement on the transfer of competences and duties relating to certain data reporting services providers from NCAs to ESMA

Status: Final

ESMA has published a statement clarifying the transfer of competences and duties relating to supervisory and enforcement activity in the field of certain data reporting services providers (DRSPs) from National Competent Authorities (NCAs) to ESMA. Under Articles 27b and 54a of MiFIR, as amended by Regulation (EU) 2019/21752 ('ESAs Review Regulation'), the operations of certain DRSPs will be subject to ESMA's authorisation and supervision as of 1 January 2022. The EC has gathered feedback from stakeholders on a draft delegated act encompassing these empowerments. However, as of today, the delegated act has not been adopted yet. MiFIR does not envisage the consequences of a late application date of the delegated acts. It therefore remains unclear whether ESMA or the relevant NCA would be competent for authorisation and ongoing supervision of DRSPs from 1 January 2022 until the entry into force of the delayed delegated act. ESMA expects that the delegated act will be adopted and apply shortly after 1 January 2022. To avoid imposing on supervised entities the unnecessary burden of potentially having to change supervisor twice over a few months, ESMA considers following the below pragmatic supervisory approach: (i) as of 1 January 2022, ESMA would take over supervisory responsibilities from the NCAs only for the DRSPs which, according to ESMA's best estimations, may likely fall under its remit once the delegated act will apply (ESMA will bilaterally inform the DRSPs that it is planning to start supervising from 1 January 2022); and (ii) once the delegated act on derogation criteria and supervisory fees becomes applicable, ESMA will charge fees to the DRSPs which are not derogated and fall under its supervision, for the entire period starting from 1 January 2022. NCAs are encouraged to continue to oversee DRSPs which will likely be subject to derogation from ESMA supervision and, therefore, fall under NCAs supervisory purview once the delegated act will apply. ESMA will continue to monitor market and regulatory developments, and to periodically reassess whether this approach remains fit for purpose.

Date of publication: 14/12/2021

EC: Speech on 2022 work priorities

Status: Final

The EC has published a speech given by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability and Capital Markets Union (CMU), which sets out the EC's ongoing priorities. Work the EC plans to undertake in 2022 includes: (i) CMU: (a) rules to make listing easier for EU companies, especially SMEs; and (b) work towards an SME IPO fund, including a feasibility study on a scheme for banks to refer SMEs to other sources of funding if the bank cannot or does not want to lend to them; (ii) central clearing – early next year the EC will put forward a series of measures to build the capacity of EU-based CCPs and Ms McGuinness will propose an extension of the equivalence decision for UK CCPs; and (iii) AML – in order for the AML Authority to be set up by 2023, Ms McGuinness notes that trilogue discussions will need to be completed by the end of 2023.

Date of publication: 03/12/2021

9. Investment funds

9.1 Product regulation

(a) AIF

(i) Germany

BaFin: Guidance Notice for marketing according to Section 323 KAGB (Merkblatt zum Vertrieb gemäß § 323 KAGB)

Status: Final

BaFin has published an update on the Guidance Notice for marketing of units or shares in EU AIFs or domestic special AIFs managed by an EU AIF management company to semi-professional and professional investors in the Federal Republic of Germany pursuant to Section 323 of the German Capital Investment Code (*Kapitalanlagegesetzbuch* – KAGB). The update provides an extended overview of fees payable in the event of revocation.

Date of publication: 15/12/2021

(ii) EU

ESMA: Updated Q&As on the application of the AIFMD

Status: Final

ESMA has updated its Q&As on the application of the AIFMD, with a new Q&A as to whether managers of undertakings investing in cryptoassets are subject to the AIFMD. ESMA states that collective investment undertakings raising capital from a number of investors to invest in cryptoassets in accordance with a defined investment policy for the benefit of those investors will qualify as an AIF. As the AIFMD does not provide for a list of eligible or non-eligible assets, AIFs may in principle invest in any traditional or alternative assets as long as the AIFM can ensure compliance with the AIFMD. However, more specific investment and risk diversification requirements for AIFs investing in cryptoassets as well as limitations regarding the target investors of such AIFs may exist at national level. ESMA notes that it is important to assess on a case-by-case basis and that market participants and NCAs should pay attention to the guidance provided in the ESMA guidelines on key concepts of the AIFMD. ESMA reminds market participants and investors of the high risks involved in investments in cryptoassets.

Date of publication: 17/12/2021

(b) UCITS

(i) EU

Regulation (EU) 2021/2259 amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS

Status: Published in the OJ

Date of entry into force: 21/12/2021

Regulation (EU) 2021/2259 amending the PRIIPs Regulation as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS has been published in the OJ. For more information, please see section 3.5 above.

Date of publication: 20/12/2021

Directive (EU) 2021/2261 amending the UCITS Directive as regards the use of KIDs by management companies of UCITS

Status: Published in the OJ

Date of entry into force: 21/12/2021

Directive (EU) 2021/2261 amending the UCITS Directive as regards the use of key information documents (KIDs) by management companies of UCITS has been published in the OJ. Together with Regulation (EU) 2021/2259 (see above), this legislation extends the transitional arrangement exempting companies from the requirement to provide retail investors with a KID until 31 December 2022. The Directive also specifies that a KID should be considered as satisfying the requirements applicable to key investor information.

Date of publication: 20/12/2021

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

Status: Final

ESMA has updated its Q&As on the application of the UCITS Directive by adding: (i) two new questions with regards to issuer concentration: (a) on how securities issued by certain issuers (for example, sovereign issuers) under Article 54(1) are treated; and (b) where a UCITS has a hedged share class in a different currency, whether unrealised FX profits and losses should be counted towards the net asset value of the hedged share class and be taken into account when calculating the counterparty risk limit under Article 52(1); and (ii) as to whether advance notice for the marketing of new share classes of UCITS is required where the host and home Member States have already been notified for cross-border marketing.

Date of publication: 17/12/2021

10. Special rules for real estate financing and covered bonds

10.1 Covered bonds

(i) EU

BaFin: Maximum loss rates for exposures collateralised by domestic residential and commercial real estate (Höchstverlustraten für durch inländische Wohnimmobilien und Gewerbeimmobilien besicherte Risikopositionen)

Status: Final

BaFin has published its determination of compliance with the maximum loss rates for exposures collateralised by domestic residential and commercial real estate for the year 2020 in accordance with the CRR. It noted that the maximum loss rates under Article 125(3) and Article 199(3) of the CRR for exposures collateralised by residential real estate, and under Article 126(3) and Article 199(4) of the CRR for exposures secured by commercial real estate, have been complied with.

Date of publication: 17/12/2021

11. Special topics

11.1 Covid-19

(a) Other

(i) International

BCBS/IOSCO: Extended call for comments on margining practice during March 2020

Status: Consultation

Deadline for the submission of comments: 26/01/2022

The BCBS, CPMI and IOSCO announced that they were extending the deadline for comments on their consultative report on margining practices during the March 2020 market turmoil. The report, which is part of the FSB's work programme to enhance the resilience of the non-bank financial intermediation sector, looks at margin calls in March and April 2020, margin practice transparency, predictability and volatility across various jurisdictions and markets, as well as market participants' liquidity management preparedness.

Date of publication: 20/12/2021

11.2 FinTech/Digital finance

(i) Germany

BaFin: Updated Guidance Notice on deposit business (Angepasstes Merkblatt Depotgeschäfte)

Status: Final

BaFin has updated its Guidance Notice on deposit business, in particular with regard to changes introduced by the Law on electronic securities (*Gesetz über elektronische Wertpapiere – eWpG*).

Date of publication: 15/12/2021

(ii) EU

CoEU: Final compromise text for the DLT pilot regime

Status: Draft

The Council of the EU has published the final compromise text of the proposed Regulation on a pilot regime for market infrastructures based on distributed ledger technology (MiDLT), having reached a [provisional agreement with the EP](#). The text will now be formally adopted by the Council and the EP, at which point it will be published in the OJ. It will enter into force 20 days later and apply nine months after this date.

Date of publication: 21/12/2021

EC: Strategy on supervisory data in EU financial services

Status: Final

The EC has published a communication on its strategy on supervisory data in EU financial services. The EC's strategy builds upon the conclusions of the comprehensive fitness check of EU supervisory reporting requirements in financial sector legislation. This strategy will contribute directly to the objectives of the European Data Strategy and the Digital Finance package to promote digital innovation in Europe. Moreover, this strategy contributes to the objectives of a Capital Markets Union and

helps to achieve a single market in financial services. There are four main building blocks in this strategy: (i) ensuring consistent and standardised data that relies on clear and common terminology, as well as on common standards, formats and rules; (ii) facilitating the sharing and re-use of reported data among supervisory authorities by removing undue legal and technological obstacles to avoid duplicative data requests; (iii) improving the design of reporting requirements by developing guidelines based on best practices in applying better regulation principles in supervisory reporting; and (iv) putting in place joint governance arrangements in order to improve coordination and foster greater cooperation between different supervisory authorities and other relevant stakeholders, allowing them to share their expertise and to exchange information.

Date of publication: 15/12/2021

EBA: Consultation on draft RTS on credit scoring and loan pricing disclosure, credit risk assessment and risk management requirements for Crowdfunding Service Providers under Article 19(7) Regulation (EU) 2020/1503

Status: Consultation

Deadline for the submission of comments: 08/03/2022

The EBA is consulting on draft RTS specifying the information that crowdfunding service providers must provide to investors under Article 19(7) of the Regulation on European Crowdfunding Service Providers (ECSPR). The draft RTS specify: (i) the elements, including the format, that are to be included in the description of the method to calculate credit scoring and to suggest loan pricing; (ii) the information and factors that crowdfunding service providers need to consider when carrying out a credit risk assessment and conducting a valuation of a loan; (iii) the factors that a crowdfunding service provider must consider when ensuring that the price of a loan it facilitates is fair and appropriate; and (iv) the minimum contents and governance of the policies and procedures required for information disclosure and of the risk-management framework for credit risk assessment and loan valuation. After considering feedback, the EBA expects to submit the draft RTS to the EC in May 2022.

Date of publication: 08/12/2021

ECON: Reports on DORA proposal and Digital Finance Package supporting Directive

Status: Draft

The EP has published the text of the reports, adopted by ECON, on the proposed Regulation on digital operational resilience for the financial sector (DORA) and the proposed Directive amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, 2013/36/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341. ECON adopted both reports on 1 December 2021. It set out a draft EP legislative resolution with suggested amendments to the proposed legislation. The reports have now been tabled for EP's first reading in plenary.

- [Report on the DORA proposal](#)
- [Report on the proposal for the DFP Supporting Directive](#)

Date of publication: 07/12/2021

CoEU: Negotiating mandate on proposed Regulation on transparency of crypto-asset transfers

Status: Draft

The Council of the EU has announced that EU ambassadors agreed on a mandate to negotiate with the EP on a proposal to update existing rules on information accompanying transfers of funds and certain cryptoassets. This aims to introduce an obligation for cryptoasset service providers to collect and make accessible full information about the sender and beneficiary of the transfers of virtual or cryptoassets they operate. This is proposed to ensure the traceability of cryptoasset transfers, so as to be able to better identify possible suspicious transactions and if necessary block them. The Council explains that the modifications introduced streamline and clarify the EC's proposal by: (i) introducing requirements for cryptoasset transfers between cryptoasset service providers and un-hosted wallets; and (ii) requiring that the full set of originator information travel with the cryptoasset transfer, regardless of the transaction amount. The Council also aims to synchronise the application of the proposal on transfer of funds and the market in cryptoassets regulation.

Date of publication: 01/12/2021

(iii) Eurozone

ECB: Opinion on proposed Regulation to extend traceability requirements to transfer of crypto-assets

Status: Final

The ECB has published an opinion on the proposed Regulation on transparency of cryptoasset transfers. The ECB welcomes the proposed regulation as a means of levelling the playing field for crypto-asset service providers, but calls for revisions to the proposed regulation on the following: (i) definitions. The proposed regulation should be clarified to avoid any doubt that transactions between hosted and un-hosted wallets are covered, with the effect that exactly the same information as for other crypto-asset transfers must be collected and stored; (ii) monitoring. Market developments and money laundering activities involving crypto-assets without the use of service providers or in decentralised peer-to-peer exchanges should also be closely monitored by the EC and relevant national authorities; (iii) scope of the proposed regulation. The ECB understands that it is not intended to cover crypto-assets issued by central banks acting in their monetary authority capacity. However, for the sake of legal certainty and in order to fully align the scope of the proposed regulation with that of the proposed MiCA regulation, the ECB proposes to explicitly indicate this in the recitals and provisions of the proposed regulation; (iv) reference to currencies. It is not appropriate to make reference in a Union legal text to 'fiat currencies'. Rather, the proposed regulation should refer instead to 'official currencies'; and (v) the Regulation should apply from the same date as MiCA. This would be helpful from a systemic and financial stability perspective in order to ensure that the proposed regulation applies to crypto-asset transfers sooner rather than later, instead of waiting for the coming into operation of the rest of the AML package.

Date of publication: 01/12/2021

(iv) International

IOSCO: Consultation report on the use of innovation facilitators in growth and emerging markets

Status: Consultation

Deadline for the submission of comments: 06/02/2022

IOSCO has launched a consultation on proposed recommendations on the use of innovation facilitators in growth and emerging markets. The consultation covers three types of innovation facilitators (IFs): innovation hubs, regulatory sandboxes, and regulatory accelerators. IOSCO's consultation presents: (i) definitions and the risks and opportunities posed by IFs; (ii) the global trends and an overview of emerging markets' regulatory initiatives; (iii) examples of the current practices in advanced markets; and (iv) also discusses the role of conducting a policy assessment in developing IFs.

IOSCO proposes four recommendations for emerging market member jurisdictions to consider when setting up innovation facilitators, which cover: (a) considerations prior to the establishment of innovation facilitators; (b) definition and disclosure of objectives and functions of innovation facilitators; (c) defined eligible entities and the criteria for application; and (d) mechanisms for cooperation and exchange of information with both local and foreign relevant authorities. The report also includes a decision tree for regulators to consider when looking at establishing an innovation facilitator and assessing what type of innovation facilitator to set up.

Date of publication: 07/12/2021

11.3 Sustainable finance

(i) EU

EC: Information on sustainability disclosures under Article 8 of the Taxonomy Regulation

Status: Final

The EC and the EU Platform on Sustainable Finance have provided supplementary information in order to help users of the EU taxonomy with disclosures required under Article 8 of the Taxonomy Regulation: (i) a [non-binding FAQ](#) on how financial and non-financial undertakings should report Taxonomy-eligible economic activities and assets in accordance with Article 8; (ii) to supplement the FAQ, the Platform's [considerations on voluntary information](#) as part of Taxonomy-eligibility reporting; and (iii) the [EU taxonomy NACE alternate classification mapping](#), which maps selected industry classification systems and how they relate to the description of economic activities in the EU Taxonomy Climate Delegated Act. The Taxonomy Climate Delegated

Act sets out technical screening criteria for economic activities that contribute to climate adaptation and climate mitigation. The mapping table is intended to help users identify their activities among those described in the Taxonomy Climate Delegated Act. Activity references and descriptions in the table do not prevail over activity descriptions in the Delegated Act.

Date of publication: 20/12/2021

Commission Delegated Regulation (EU) 2021/2178 supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation

Status: Published in the OJ

Date of entry into force: 30/12/2021

Date of application: 01/01/2022

Commission Delegated Regulation (EU) 2021/2178 supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Article 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation has been published in the OJ. From 1 January 2022 until 31 December 2022, non-financial undertakings shall only disclose the proportion of Taxonomy-eligible and Taxonomy non-eligible economic activities in their total turnover, capital and operational expenditure and the qualitative information referred to in Section 1.2 of Annex I relevant for this disclosure. From 1 January 2022 until 31 December 2023, financial undertakings shall only disclose: (i) the proportion in their total assets of exposures to Taxonomy non-eligible and Taxonomy-eligible economic activities; (ii) the proportion in their total assets of the exposures referred to in Article 7, paragraphs 1 and 2; (iii) the proportion in their total assets of the exposures referred to in Article 7(3); and (iv) the qualitative information referred to in Annex XI. Credit institutions shall also disclose the proportion of their trading portfolio and on demand inter-bank loans in their total assets. The key performance indicators of non-financial undertakings, including any accompanying information to be disclosed pursuant to Annexes I and II to this Regulation, shall be disclosed from 1 January 2023. The key performance indicators of financial undertakings, including any accompanying information to be disclosed pursuant to Annexes III, V, VII, IX, XI to this Regulation, shall be disclosed from 1 January 2024. Sections 1.2.3 and 1.2.4 of Annex V shall apply from 1 January 2026.

Date of publication: 10/12/2021

Commission Delegated Regulation (EU) 2021/2139 supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives

Status: Published in the OJ

Date of entry into force: 29/12/2021

Date of application: 01/01/2022

Commission Delegated Regulation (EU) 2021/2139 supplementing Regulation (EU) 2020/852 by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives has been published in the OJ.

Date of publication: 09/12/2021

12. Contacts

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