

# Regulatory monitoring

Newsletter

April 2023





# ECB in focus

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

The blog features views and commentary from members of Allen & Overy's market-leading German financial services regulation practice.

For enquiries regarding Allen & Overy's ECB in focus blog, please contact us.

## Some of our recent posts

### ECB PUBLISHES SUPERVISORY PRIORITIES 2023-25

*4 January 2023*

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

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### ECB CONSULTS ON GUIDE TO QUALIFYING HOLDING PROCEDURES

*7 November 2022*

On 28 September 2022, the ECB launched a public consultation on its draft guide on qualifying holding procedures. The guide clarifies existing uncertainties in key areas and adds to the existing guidelines that apply across the EU.

[Read more →](#)

### ECB WARNS BANKS THAT FAILURE TO COMPLY WITH LEVERAGED LENDING GUIDANCE MAY RESULT IN CAPITAL CHARGES

*26 October 2022*

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

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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

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## 1.1 Prudential regulation

### (a) General

#### (i) EU

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

Status: Final

The ESAs have issued their Spring 2023 Joint Committee Report on risks and vulnerabilities in the EU financial system. While noting that EU financial markets remained broadly stable, despite the challenging macro environment and recent market pressure in the banking sector, the three Authorities are calling on national supervisors, financial institutions and market participants to remain vigilant in the face of mounting risks. The second half of 2022 witnessed a worsening of the macro environment due to high inflation and tighter financial conditions and the economic outlook remains uncertain. Although recent growth forecasts no longer point to a deep recession and inflation is showing signs of moderation, price growth may remain elevated for longer than previously expected. Recent market pressure on banks following the collapse of a few midsize banks in the United States and the emergency merger of the distressed Credit Suisse with the Union Bank of Switzerland (UBS) highlighted continued high levels of market uncertainty, the sensitivity of the European financial system to exogenous shocks and potential risks related to the end of over a decade of very low interest rates.

Date of publication: 25/04/2023

#### (ii) International

##### **FSB: Letter on considering lessons learned from recent banking-sector turmoil**

Status: Final

The FSB has published a letter from Klaas Knot, FSB Chair, to the G20 finance ministers and central bank governors, ahead of their meeting on 12-13 April. The letter addresses the recent turmoil in the banking sector, noting that the financial stability outlook has become more challenging in recent weeks. However, Mr Knot notes that the recent events have also put the G20's financial reforms, that followed the 2008 Global Financial Crisis, to the test and have shown that the global financial system is much better placed to absorb adverse shocks because of these reforms. But every test of financial resilience involves new challenges and Mr Knot urges authorities to remain vigilant to the evolving outlook and stand ready to take policy measures to maintain the resilience of the global financial system. The FSB is working closely with the BCBS and other standard-setting bodies to draw-out the lessons from the speed of developments in March, the precise nature of the vulnerabilities that crystallised and the associated market reactions, and the consequent priorities for future work. Mr Knot emphasises that while some reprioritisation of the FSB's work programme may be necessary in response to recent events, the FSB remains committed to delivering its previously agreed body of work to the G20, including in the areas of crypto-assets, NBFIs, climate change and enhancing cross-border payments. The letter goes on to address the growing cyber threat landscape, highlighting that the FSB has submitted two reports to the meeting of the G20: recommendations to achieve greater convergence in cyber incident reporting; and a concept note for a format for incident reporting exchange.

Date of publication: 12/04/2023

## (b) Solvency/Own funds issues

### (i) Germany

**BaFin: Updated list on the countercyclical capital buffer: indicator values, time series and indicator description** (*Angepasstes Liste zum antizyklischen Kapitalpuffer: Indikatoren, Zeitreihen und Erläuterungen*)

Status: Final

BaFin has published an updated Excel spreadsheet on the countercyclical capital buffer, including indicator values, time series and indicator description concerning the decision about setting the buffer.

Date of publication: 28/04/2023

### (ii) EU

**EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on the calculation of the own funds requirements for market risk for non-trading book positions subject to foreign exchange risk or commodity risk and the treatment of those positions for the purposes of the regulatory back-testing requirements and the profit and loss attribution requirement under the alternative internal model approach**

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing the CRR with regard to RTS on the calculation of the own funds requirements for market risk for non-trading book positions subject to foreign exchange (FX) risk or commodity risk and the treatment of those positions for the purposes of the regulatory back-testing requirements and the profit and loss attribution requirement under the alternative internal model approach (IMA). The RTS specify how institutions calculate: (i) the own funds requirements for non-trading book positions that are subject to FX risk or commodity risk in accordance with the alternative standardised approach and the IMA; and (ii) the changes in hypothetical profit and loss, actual profit and loss and risk theoretical profit and loss for the purpose of the back-testing and profit and loss attribution requirements.

Date of publication: 20/04/2023

**EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the requirements for the internal methodology or external sources used under the internal default risk model for estimating default probabilities and losses given default**

Status: Adopted by the EC

The EC has adopted the Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the requirements for the internal methodology or external sources used under the internal default risk model for estimating default probabilities and losses given default. The document specifies: (i) the requirements for estimating PDs and LGDs using an institution's internal methodology or external sources. Institutions using the IMA to compute own funds requirements for market risk are required to compute additional own funds requirement using an internal default risk model for their positions in traded debt and equity instruments included in IMA trading desks; (ii) the requirements to be met for estimating PDs and LGDs under the default risk model. An internal methodology used to calculate PDs and LGDs under the default risk model should meet all requirements applicable to the corresponding internal ratings-based (IRB) approach. In addition, they include the possibility for institutions to produce conservative 'fallback' PD and LGD values to be used only where needed; and (iii) the requirements that external sources are to fulfil for their use under the default risk model, ensuring that the methodology employed to derive the PDs and LGDs from these sources is conceptually sound.

Date of publication: 20/04/2023

## Commission Delegated Regulation (EU) 2023/827 laying down RTS amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments

Status: Published in the OJ

Date of application: 29/04/2023

The Commission Delegated Regulation (EU) 2023/827 laying down RTS amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments has been published in the OJ. The amendments are as a result of revisions to the CRR made by CRR II.

Date of publication: 19/04/2023

### (c) Securitisation

#### (i) EU

#### EBA: Final report on draft RTS specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of the CRR

Status: Final

The EBA has published its final report on the draft RTS specifying the determination by originator institutions of the exposure value of synthetic excess spread (SES) pursuant to Article 248(4) of the CRR. The draft RTS specifies the calculation of the components that should be included in the exposure value of SES. These components include: (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES that is still available to absorb losses; (ii) any SES contractually designated by the originator institution in any previous periods that is still available to absorb losses; (iii) or for the current period that is still available to absorb losses; and (iv) any SES contractually designated by the originator institution for future periods.

These final draft RTS will be submitted to the Commission for adoption. Following the submission, these RTS will be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 24/04/2023

#### EBA: Consultation on Guidelines on the STS criteria for on-balance-sheet securitisation under Article 26a(2) of the Securitisation Regulation

Status: Consultation

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

The EBA has launched a consultation on Guidelines on the criteria related to simplicity, standardisation and transparency and additional specific criteria for on-balance-sheet securitisations (so-called STS criteria) under Article 26a(2) of the Securitisation Regulation. The main objective of the Guidelines is to provide a single point of consistent interpretation of those criteria and to ensure a common understanding of them by the originators, original lenders, securitisation special purpose entities, investors, competent authorities and third party verification agents verifying STS compliance in accordance with Article 28 of the Securitisation Regulation, throughout the Union.

With the introduction of STS criteria for on-balance-sheet securitisations in the Securitisation Regulation, on-balance-sheet securitisations are now eligible for preferential risk-weight treatment under the CRR. The draft Guidelines provide a harmonised interpretation and clarify aspects with a potential level of ambiguity, thus both ensuring a harmonised understanding of the criteria, but also a harmonised implementation in terms of capital requirements. During the development, EBA has been mindful in ensuring consistency with existing Guidelines for traditional securitisations (ABCP and non-ABCP), which has provided a single point of consistent interpretation of the STS criteria to the relevant stakeholders throughout the Union. This means that the guidance is aligned, where the criteria are the same. For a limited number of these criteria, the Guidelines for non-ABCP and ABCP securitisation have been updated to ensure further clarity and to reflect on the practical implementation of the criteria.

Date of publication: 21/04/2023

## (d) Authorisation and passporting

### (i) Germany

**BaFin: Guidance notice on the facts of operating a multilateral trading facility pursuant to Section 1(1a)(2)(1b) of the German Banking Act (*Merkblatt zum Tatbestand des Betriebs eines multilateralen Handelssystems gemäß § 1 Abs. 1a Satz 2 Nr. 1b KWG*)**

Status: Final

BaFin has published an update on its Guidance notice on the facts of operating a multilateral trading facility pursuant to Section 1(1a)(2)(1b) of the German Banking Act (*Kreditwesengesetz – KWG*). This update added a new section on multilateral facilities incorporating, in particular, the [ESMA final report](#) on its opinion on the trading venue perimeter published in February 2023.

The Guidance notice is relevant for operators of multilateral trading facilities.

Date of publication: 27/04/2023

**BaFin: Guidance notice on lending business (*Merkblatt Kreditgeschäft*)**

Status: Final

BaFin has updated its Guidance notice on lending business. Aside from restructuring the document, BaFin has, among others, added sections on deposits at licensed credit institutions and on communal lending operations, and it has significantly extended the list of types of transactions.

We can provide you with a Compare version reflecting the amendments to this Guidance notice upon request. More generally, we can provide Delta Views of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 21/04/2023

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

### (i) EU

**EBA: Opinion on the EC's amendments to the final 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**

Status: Final

The EBA has published an opinion on the Commission's amendments relating to the final 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. Generally, the EBA expressed concern at the substantive and prescriptive nature of the Commission's amendments and considers that a more straightforward approach is appropriate. To address the certain concerns of the Commission, the EBA proposes amendments to the initial draft RTS in relation to what constitutes a large decline. The EBA stresses the importance of adopting these RTS without delay.

Date of publication: 26/04/2023

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

Status: Consultation

Deadline for the submission of comments: 19/07/2023

The EBA has launched a consultation on Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Article 5(2) of Directive (EU) 2021/2167 on credit servicers and credit purchasers (NPL Directive). The Guidelines: (i) specify the criteria for the assessment of the organs' collective knowledge and experience, which will be performed based on the individual members assessment by credit servicers, taking into account the principle of proportionality; and (ii) set out the main requirements of the credit servicers assessment process, including the good repute, and specify when such an assessment has to be performed. Where shortcomings are identified, the credit servicer must take appropriate corrective measures, including to provide induction and training or to replace members of the management body.

The EBA intends to finalise the Guidelines by the end of 2023 to enter into force in early 2024.

Date of publication: 19/04/2023

## **ECB: Report on the assessment of the SREP**

Status: Final

The expert group to the chair of the Supervisory Board of the ECB has published a report on the assessment of the ECB's supervisory review and evaluation process (SREP). The report acknowledges that European banking supervision has made good progress in ensuring that banks maintain sufficient capital levels and notes that the current level of capital requirements for supervised banks looks broadly adequate. While the SREP has significantly helped to increase the resilience of the European banking sector and to promote a level playing field for all significant institutions, the report found that the ECB could further improve the efficiency and effectiveness of its existing supervision processes by making them more integrated and risk sensitive. The report invites the ECB to reform risk scores and the process of determining Pillar 2 capital requirements. Considering that capital alone cannot address all risks, the report recommends that the ECB make full use of all the instruments in its toolbox, including impactful qualitative measures encouraging banks to tackle weak business models and governance practices. The ECB states in a related press release that, as it has already been focusing on the need to target specific risk areas during the SREP, it will therefore be able to implement some of the recommendations of the report as early as in the 2023 cycle. Otherwise, the ECB Supervisory Board will evaluate the report's input as part of a review of supervisory processes planned for 2024.

Date of publication: 17/04/2023

## **(f) Cyber security**

**(i) EU**

### **EC: Proposal for a Regulation laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents (Cyber Solidarity Act)**

Status: Draft

The EC has published a proposal for a Cyber Solidarity Act, which aims to strengthen capacities in the EU to detect, prepare for and respond to significant and large-scale cybersecurity threats and attacks. This draft is [open for feedback](#) for a period of eight weeks until 16 June 2023.

Date of publication: 18/04/2023

### **EC: Proposal for a Regulation amending Regulation (EU) 2019/881 as regards managed security services (Cyber Skills Proposal Amendment)**

Status: Draft

The EC has published a proposal for a targeted amendment to the EU Cyber Security Act, the so-called Cyber Skills Proposal Amendment. This draft aims to enable, by means of Commission implementing acts, the adoption of European cybersecurity



certification schemes for ‘managed security services’, in addition to information and technology (ICT) products, ICT services and ICT processes, which are already covered under the Cybersecurity Act. Managed security services play an increasingly important role in the prevention and mitigation of cybersecurity incidents. This draft is [open for feedback](#) for a period of eight weeks until 16 June 2023.

Date of publication: 18/04/2023

## **(ii) International**

### **FSB: Final report on recommendations to achieve greater convergence in cyber incident reporting**

Status: Final

The FSB has published a final report on recommendations to achieve greater convergence in cyber incident reporting (CIR). The report identifies commonalities in CIR frameworks and details practical issues associated with the collection of cyber incident information from financial institutions and the onward sharing between financial authorities. These issues include: (i) operational challenges arising from the process of reporting to multiple authorities; (ii) setting appropriate and consistent qualitative and quantitative criteria/thresholds for reporting; (iii) establishing an appropriate culture to report incidents in a timely manner; (iv) inconsistent definitions and taxonomy related to cyber security; (v) establishing a secure mechanism to communicate on cyber incidents; and (vi) legal or confidentiality constraints in sharing information with authorities across borders and sectors. The report sets out 16 recommendations to address these issues with a view to promoting best practices in CIR, while recognising that a one-size-fits-all approach is not feasible or preferable.

Date of publication: 13/04/2023

### **FSB: Report on format for incident reporting exchange (FIRE)**

Status: Final

The FSB has published a report entitled ‘Format for Incident Reporting Exchange (FIRE): A possible way forward’. This follows the FSB’s consultation on a concept for developing a common format for incident reporting exchange to collect incident information from financial institutions and that authorities could use for information sharing. It reflects the public feedback received on the FIRE concept, outlines the potential benefits, risks and costs, and discusses how the FSB will take forward the development of FIRE. A detailed workplan will be developed by this summer. An update cyber lexicon was also published. It includes six new terms: (i) cyber attack; (ii) insider threat; (iii) phishing; (iv) ransomware; (v) security operations centre; and (vi) zero-day vulnerability. The FSB also adjusted the definitions of: (a) cyber alert; (b) cyber incident; (c) cyber incident response plan; (d) information system; (e) penetration testing; and (f) vulnerability assessment.

Date of publication: 13/04/2023

## **(g) Remuneration**

### **(i) EU**

### **EBA: Consultation on draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under the CRD IV and IFD**

Status: Consultation

Deadline for the submission of comments: 24/07/2023

The EBA has published a consultation on draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under the CRD and the IFD. The EBA believes that these Guidelines are necessary to ensure a harmonised benchmarking of diversity practices. The benchmarking of diversity practices allowing competent authorities to monitor diversity trends over time, including the identification of common practices for diversity policies and information on the gender pay gap at the level of the management body. The aspects of diversity that will be analysed concern gender, age, educational and professional background. The Guidelines include templates for data collection. It is proposed that the first data

on the diversity practices under these Guidelines should be reported in 2025 with a reference date of 31 December 2024, including in situations where the financial year differs from the calendar year.

Date of publication: 24/04/2023

## (h) Supervisory reporting

### (i) EU

#### **EBA: Consultation on draft Guidelines on resubmission of historical data under the EBA reporting framework**

Status: Consultation

Deadline for the submission of comments: 31/07/2023

The EBA has launched a consultation regarding Guidelines on resubmission of historical data under the EBA reporting framework. The objective of the draft Guidelines is to provide a common approach to the resubmission by the financial institutions of historical data to the competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework. The general approach aims at limiting the amount of past historical periods subject to resubmission, depending on the frequency of the original reporting and reference dates affected by the errors or inaccuracies that require corrections and resubmissions. Financial institutions are expected to resubmit the corrected data for the current reporting date and historical data for past reference dates going back at least one calendar year (except for the data with monthly reporting frequency). The Guidelines also set out general circumstances when the resubmission of historical data may not be required. They also specify the role of the competent and resolution authorities, and the EBA, when dealing with corrections of historical reported data, noting that depending on the supervisory needs of the competent authorities, resolution authorities or the EBA, the authorities may require the financial institutions to resubmit historical data for more reference dates compared to the Guidelines' requirements.

The Guidelines are expected to apply from 31 December.

Date of publication: 18/04/2023

## 1.2 Recovery and resolution

### (i) Germany

#### **BaFin: Consultation 07/2023 on the Circular on the minimum requirements for information systems for the provision of information for evaluations in the context of a resolution (*Konsultation 07/2023 zum Rundschreiben der MaAbwicklungsbewertung*)**

Status: Consultation

Deadline for the submission of comments: 05/06/2023

BaFin has published a consultation on a new version of the Circular on the minimum requirements for information systems for the provision of information for evaluations in the context of a resolution (*Mindestanforderungen an Informationssysteme zur Bereitstellung von Informationen für Bewertungen im Rahmen einer Abwicklung – MaAbwicklungsbewertung*). This is an update to [Circular 02/2021](#) (MaBewertung) as of February 2021. The Circular sets out that all institutions concerned are required to have suitable systems and processes in place that enable them to provide all internal and external standard reports relevant to the assessment of an institution in a virtual data room within 24 hours. In addition, this update introduces a concrete data model for the resolution assessment. The institutions must enter the information requested in the data room within 72 hours. Furthermore, the amended circular calls on the institutions to establish a structured question and answer process.

The revised circular is aimed at all companies within the meaning of Article 2 of the SRM Regulation and companies listed in Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*) that do not fall within the area of responsibility of the Single Resolution Board (SRB). In principle, it does not apply to institutes and groups for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 24/04/2023

## **BaFin: FAQ on the form on the recovery plan according to simplified requirements as per Section 19 of the German Recovery and Resolution Act (FAQ zum Formular „Sanierungsplan nach vereinfachten Anforderungen gemäß § 19 SAG“)**

Status: Final

BaFin has updated its FAQ on the form on the recovery plan according to simplified requirements as per Section 19 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG). With the update, the FAQ are revised and expanded.

Date of publication: 11/04/2023

## **(ii) EU**

### **EC: Proposal for a Directive amending the BRRD and SRMR as regards certain aspects of the minimum requirement for own funds and eligible liabilities (“daisy chain” proposal)**

Status: Draft

The EC has published a proposal for a Directive amending the BRRD and SRM Regulation as regards certain aspects of the minimum requirement for own funds and eligible liabilities (MREL), the “daisy chain” proposal. This follows up on a review clause introduced by the EP and the Council of the EU in the “daisy chain” Regulation of October 2022 (Regulation 2022/2036). The proposed amendments, primarily: (i) remove the obligation for resolution authorities to set MREL for liquidation entities in specific circumstances; and (ii) give resolution authorities the discretionary power to set internal MREL on a consolidated basis to a subsidiary of a resolution entity. The choice to separate this proposed Directive from the wider CMDI reform package (see entry below) is in order to facilitate its swift negotiation, in view of the entry into force of the requirements for banks in January 2024.

Date of publication: 18/04/2023

### **EC: Publication of three proposals to reform the bank crisis management and deposit insurance framework**

Status: Draft

The EC has adopted three proposals to adjust, and further strengthen, the existing EU bank crisis management and deposit insurance (CMDI) framework. The main elements of the proposed reforms are: (i) clarification of the public interest assessment in managing bank crises to ensure that a full range of crisis management tools, such as transfer tools, can also be applied to failing smaller and medium-sized banks, if this can more effectively achieve the objectives of safeguarding financial stability, depositor confidence and protecting taxpayers’ money; and (ii) facilitating the use of deposit guarantee scheme (DGS) funds in the financing of crisis management tools as an alternative to the basic pay-out function. This would be enabled by amending the hierarchy of claims in insolvency, but must only be a complement to the banks’ internal loss absorption capacity, which remains the first line of defence. Alternative use of DGS funds in funding crisis management tools must also be subject to a harmonised least cost test. Use of DGS funds, when applied to smaller/medium sized banks in resolution, including to access the Single Resolution Fund (SRF), should be possible only: (a) when the resolution authority(ies) deem(s) it necessary to safeguard financial stability and protect taxpayers while facilitating the exit from the market; (b) when it avoids imposing losses on depositors; and (c) when it is subject to adequate conditions and safeguards, notably in the case of accessing the SRF where the bank concerned must have been previously planned to be resolved.

The ECB and SRB have published a [joint statement](#) welcoming these proposals.

- [Proposal for a Directive amending the BRRD as regards early intervention measures, conditions for resolution and financing of resolution action](#)
- [Proposal for a Regulation amending the SRMR as regards early intervention measures, conditions for resolution and funding of resolution action \(SRMR review\)](#)
- [Proposal for a Directive amending the DGSD as regards the scope of deposit protection, use of DGS funds, cross-border cooperation, and transparency \(DGSD review\)](#)

Date of publication: 18/04/2023

## 2. Investment firms regulation

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### (i) EU

#### **EBA: Consultation on draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under the CRD IV and IFD**

Status: Consultation

Deadline for the submission of comments: 24/07/2023

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

Date of publication: 24/04/2023

#### **ESMA: Official translations of joint EBA and ESMA Guidelines on SREP under IFD**

Status: Final

Date of application: 19/06/2023

ESMA has published a webpage with the official translations of the joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) under Article 45(2) of the IFD.

Date of publication: 19/04/2023

## 3. Market regulation/Conduct rules

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### 3.1 General

#### (i) Germany

##### **Regulation amending the Trade notification regulation and the Financial investment brokerage regulation (*Verordnung zur Änderung der Gewerbeanzeigerordnung und der Finanzanlagenvermittlungsverordnung*)**

Status: Published in the Federal Gazette

Date of entry into force: 20/04/2023

The Regulation amending the Trade notification regulation (*Gewerbeanzeigerverordnung* – GewAnzV) and the Financial investment brokerage regulation (*Finanzanlagenvermittlungsverordnung* – FinVermV) has been published in the Federal Gazette. The changes to the FinVermV include: (i) in Section 11a(3)(3) FinVermV, the change from a strict to Delegated Regulation (EU) 2017/565 to a dynamic reference to the applicable version of the Delegated Regulation. Thus, financial investment brokers and fee-based financial investment advisers are now subject to the obligation in accordance with Sections 34f, 34h of the German Industrial Code (*Gewerbeordnung* – GewO) to request information about the sustainability preferences of customers as part of investment advice on financial investment products and to take this into account in the suitability assessment to be carried out; (ii) the expansion of the catalogue of professional qualifications, which according to Section 4(1) FinVermV are equated with a specialist examination, to include the successfully completed final examination as an insurance and financial investment clerk or an insurance and financial investment clerk; (iii) the replacement of the requirement to make the negative declaration pursuant to Section 24(1)(5) FinVermV in written form by a requirement to make these declarations in text form; and (iv) the addition of the topic of “sustainable financial investment products” to the catalogue including the subjects of the expert knowledge test (Annex 1 to the FinVermV).

Date of publication: 19/04/2023

##### **BMJ: Minister’s draft on the Financing for the Future Act (*Entwurf des Zukunftsfinanzierungsgesetzes*)**

Status: Draft

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

We can provide you with Delta Views/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide Delta Views of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 12/04/2023



## 3.2 Benchmarks

### (i) EU

#### **FSB: Statement to encourage final preparations for the USD LIBOR transition**

Status: Final

The FSB has published a statement to encourage final preparations for the USD LIBOR transition at the end of June 2023. It stresses that it is critical that market participants act expeditiously to ensure that their legacy contracts are prepared to transition, encouraging market participants to transition now to avoid a 'pile-up' towards the end of June. The FSB highlights the ongoing importance of choosing robust reference rates in contracts, as it is essential for the financial system that the rates used reflect deep, credible, and liquid underlying markets.

Date of publication: 27/04/2023

## 3.3 Capital markets union

### (i) EU

#### **Council of the EU: Adoption of the negotiating mandate on multiple-vote share structures**

Status: Draft

The Council of the EU has adopted its negotiating mandate on the Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market. It is part of the Listing Act package within the Capital Markets Union (CMU) and aims to make EU capital markets more attractive. In particular, it aims to develop the CMU by cutting unnecessary red tape and costs for companies, encouraging companies to become and remain listed on the EU capital markets.

Date of publication: 19/04/2023

## 3.4 Consumer protection rules

### (i) EU

#### **EBA: Consumer trends report 2022/23**

Status: Final

The EBA has published the eighth edition of its Consumer Trends Report (CTR) for 2022/23. The report summarises trends observed for the products and services under the EBA's consumer protection mandate. The report describes the topical issues that have emerged, and the actions taken by the EBA and national competent authorities to address the issues identified in the previous CTR published in 2021. The report identifies two particular issues facing consumers in the EU: (i) fraud in retail payments; and (ii) over-indebtedness and arrears. The EBA will now use its findings to shape its consumer protection priorities over the next two years.

Date of publication: 24/04/2023

#### **EP: Report on proposed Directive amending the consumer rights directive**

Status: Draft

The EP's Committee on the Internal Market and Consumer Protection (IMCO) has published a report on the proposal for a Directive amending the Consumer Rights Directive concerning financial services contracts concluded at a distance and repealing the Distance Marketing Directive. The IMCO adopted the report on 28 March. As a general approach, the Rapporteur wants to uphold a high level of consumer protection, ensure legal clarity for companies without administrative overburdening and enable

new technological developments in financial services through technology neutrality. The Rapporteur supports the overall approach of the Commission to keep the horizontal scope and the explanatory statement provides that it should be clear that product specific legislation prevails even when the regulations do not have identical content in corresponding acts, but regulate the same provisions, for example provisions on withdrawal rights. The Rapporteur welcomes that some provisions of the Consumer Rights Directive are extended to financial services contracts concluded at a distance, but wants to avoid amending the Consumer Rights Directive outside the scope of this revision. The rapporteur expresses further views on pre-contractual information, the right of withdrawal (in particular, the EC's proposal for a 'withdrawal button') and online requirements.

Date of publication: 12/04/2023

## 3.5 Credit rating agencies

### (i) EU

#### ESMA: EU Credit Ratings market 2023

Status: Final

ESMA has published its report on the EU Credit Ratings market, providing for the first time a cross-market view of credit ratings reported to the EU. It finds that there were 823,400 credit ratings at the end of 2022. These ratings were mostly for US issued debt or issuers (69%), with 17% (141,600 credit ratings) on EEA30 instruments and issuers.

Date of publication: 25/04/2023

## 3.6 MiFID/MiFIR

### (i) EU

#### ESMA: Guidelines on certain aspects of the MIFID II remuneration requirements

Status: Final

Date of application: 03/10/2023

ESMA has published the official translations of the Guidelines on certain aspects of the MIFID II remuneration requirements set out in Article 27 of the MIFID II Delegated Regulation as well as, on the one hand, the conflicts of interest requirements set out in Articles 16(3) and 23 of MiFID II and Article 34 of the MiFID II Delegated Regulation in the area of remuneration; and on the other hand, the conduct of business rules set out in Article 24(1) and (10) of MiFID II. In addition, the Guidelines clarify the application of the governance requirements in the area of remuneration under Article 9(3) of MIFID II.

Date of publication: 03/04/2023

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

Status: Final

Date of application: 03/10/2023

ESMA has published the official translations of the Guidelines on certain aspects of the MiFID II suitability requirements in relation to Article 25(2) of MiFID II and of Articles 54 and 55 of the MiFID II Delegated Regulation.

Date of publication: 03/04/2023

## 3.7 Securities financing transactions

### (i) EU

#### ESMA: 2022 report on quality and use of transaction data

Status: Final

ESMA has published its third data quality report on transaction-level data under the EMIR and SFTR reporting regimes. The report highlights the increased use of transaction data by EU financial regulatory authorities in their day-to-day supervision and identifies significant quality improvements following a new approach to data monitoring. In addition, it sets out how ESMA, together with the NCAs, the ECB and the ESRB, has incorporated key insights from its data monitoring in several internal workstreams. The new framework, adopted in 2022, takes a more data-driven and outcome-focused approach to data monitoring and to collaborating with the NCAs on data quality issues under EMIR and the SFTR. At the core of the new approach are: (i) a centralised data quality dashboard with EU-wide indicators covering the most fundamental data quality aspects under EMIR. In 2023, ESMA will implement an equivalent dashboard under the SFTR; and (ii) a data sharing framework that enables relevant authorities to follow up with counterparties when potentially significant data quality issues are detected. New this year is the analysis of MiFiR transaction data from Authorised Reporting Mechanisms and Approved Publication Arrangements, following on from ESMA's new supervisory powers over Data Reporting Services Providers. ESMA and the NCAs will continue to work on extending the new monitoring framework beyond EMIR and the SFTR in 2023. Both EMIR Refit and ESMA's trade repository supervisory work are expected to lead to a significant improvement in quality of the underlying data when it enters into force in 2024.

Date of publication: 19/04/2023

## 4. Market infrastructure

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### 4.1 Custody rules

#### (i) EU

##### **EC: Commission Delegated Regulation (EU) .../... on amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement**

**Status:** Adopted by the EC

The EC has adopted a Commission Delegated Regulation amending the RTS laid down in Commission Delegated Regulation (EU) 2018/1229 regarding the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement under the CSDR. Delegated Regulation (EU) 2018/1229 on settlement discipline (RTS on settlement discipline) details, among other things, the processes for the collection and distribution of cash penalties and any other possible proceeds from cash penalties. The amendments: (i) remove the separate process established in Article 19 of the RTS on settlement discipline for the collection and distribution of the cash penalties in relation to settlement fails relating to cleared transactions by CCPs. The amendments put CSDs in charge of the entire process of collection and distribution of penalties according to Articles 16, 17 and 18, in alignment with the general approach; and (ii) specify that in case of imbalanced positions in respect of cleared transactions the CCPs may allocate the remaining penalties' amount, credit or debit, to their clearing members and should establish relevant mechanism in their rules to that effect. CCPs and CSDs, as well as the banking sector, expressed concerns about the duplicative process under Article 19 and how it could work in practice.

The EP and the Council of the EU will now scrutinise the Delegated Regulation. If neither objects, it will enter into force 20 days after publication in the OJ and apply from the first business day after 12 months from the entry into force date.

Date of publication: 19/04/2023

### 4.2 EMIR

#### (i) EU

##### **ESMA: 2022 report on quality and use of transaction data**

**Status:** Final

ESMA has published its third data quality report on transaction-level data under the EMIR and SFTR reporting regimes. For more information, please see section 3.7 above.

Date of publication: 19/04/2023

##### **EC: Commission Delegated Regulation (EU) .../... on amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement**

**Status:** Adopted by the EC

The EC has adopted the Commission Delegated Regulation on amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement.

Date of publication: 19/04/2023

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

### (i) EU

#### Commission Delegated Regulation (EU) 2023/840 supplementing the CCPRRR with regard to RTS specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) CCPRRR

Status: Published in the OJ

Date of application: 11/05/2023

The Commission Delegated Regulation (EU) 2023/840 supplementing the CCPRRR with regard to RTS specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) CCPRRR has been published in the OJ. The Regulation covers the: (i) calculation and allocation of the additional amount of pre-funded dedicated own resources; (ii) determination of the percentage level of the additional amount of pre-funded dedicated own resources; (iii) maintenance of the additional amount of pre-funded dedicated own resources; (iv) procedure for applying recovery measures where the additional amount is not immediately available; and (v) procedure for the compensation of non-defaulting clearing members that have provided a financial contribution where the additional amount is not immediately available.

This act is mainly relevant for CCPs.

Date of publication: 21/04/2023





## 5. Anti-money laundering

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### (i) EU

#### Council of the EU: Information note inviting COREPER to agree position on recast revised WTR

**Status: Draft**

The Council of EU has published an information note from its General Secretariat to the Permanent Representatives Committee (COREPER), seeking confirmation of COREPER's agreement to the EP's first reading position on the proposed recast revised WTR. The note explains that when the EP voted on 20 April, it adopted the compromise amendment to the recast revised WTR which will constitute the EP's first-reading position. As the EP's position reflects what has been previously agreed, the Council of EU should be in a position to approve it.

The recast revised WTR would then be adopted and the regulation will enter into force 20 days following its publication in the OJ.

Date of publication: 25/04/2023

#### EP: Adoption of MiCA and recast revised WTR at first reading

**Status: Adopted by the EP**

The EP has announced that it has adopted the Regulation on markets in crypto-assets (MiCA) and the recast and revised Regulation on information accompanying transfers of funds and certain crypto-assets (recast revised WTR). The recast revised WTR, among other things, extends the scope of the 'travel rule' to crypto-assets. Whereas MiCA establishes a regulatory framework for certain crypto-assets that are not already regulated.

The texts will now have to be formally endorsed by the Council of the EU, before publication in the OJ.

- [Adopted text of MiCA](#)
- [Adopted text of recast revised WTR](#)

Date of publication: 20/04/2023

#### EP: Approval of negotiating mandates for proposals reforming the AML/CFT policies

**Status: Draft**

The EP announced that it has approved its negotiating mandates for its AML/CTF legislative reform package composed of the AMLR, MLD6 and the AMLA Regulation. Negotiations may now begin with the Council of the EU and the first meeting is due to take place at the beginning of May 2023.

Date of publication: 19/04/2023

#### ECON: Report on the proposal for a Regulation establishing the AML Authority

**Status: Draft**

The ECON has published a report on the proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010. The next step is for the EP to adopt a position during a plenary session in April 2023, after which the EP can begin negotiations with the Council of the EU.

Date of publication: 12/04/2023

# 6. Payments

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## 6.1 Payment services/E-money

### (i) EU

#### **ECB: Third report on the progress on the investigation phase of a digital euro**

Status: Final

The ECB has published its third progress report on the digital euro which provides an update on progress made in the digital euro investigation phase over the past months. The report explains key features relevant to end users and service providers, and considers a number of distribution aspects, including scheme access criteria, delivery approach and form factor. The report also describes digital euro services and advanced functionalities such as core/optional/value-added services, conditional payments and cross-currency functionality. The current proposal with regard to digital euro access is to make the digital euro available to euro area residents, merchants and governments in its initial releases, with end users being able to access and use the digital euro either through PSPs' existing online banking/payment apps or through an app provided by the Eurosystem. The ECB's Governing Council will review the outcome of the investigation phase in Q3 2023 and will decide whether to move on to a subsequent project phase. There will be no decision on the possible issuance of a digital euro until a later stage, and this would depend on legislative developments.

Date of publication: 24/04/2023

#### **EBF: Joint call for removing payments from the scope of the Digital Identity Regulation**

Status: Final

The European Banking Federation (EBF), the European Association of Co-operative Banks, and the European Savings and Retail Banking Group, jointly known as the European Credit Sector Associations (ECSAs), published a statement on the European Commission's proposal for a European Digital Identity (eIDAS 2.0). While they welcomed the ambitions presented in the proposal, they are concerned that Recital 31 and Art. 12b.2 as adopted by the European Parliament and corresponding Art. 6db.2 of the Council's General Approach are currently open to interpretation. In particular, they consider that the current wording seems to imply that the full payment sphere is included in eIDAS 2.0 on a mandatory basis and urge the European Parliament and the Council to re-consider their proposed wording during the trilogue negotiations. The ECSAs believe that if widely used cards and payment specifications were included in the new European Digital Identity Wallet (EUDIW) Infrastructure, huge investments would be required not only in the financial sector, but also for the overall acceptance network, which could possibly result in disproportionate costs for merchants and service industries that accept card payments in accordance with PSD2. They argue that by deleting payments from the scope, the legislators would also solve the general issue of liability that banks would face. Therefore, in order to avoid the mandatory nature of the acceptance of the EUDIW in terms of strong customer authentication (SCA) on payments, they recommend limiting such mandatory acceptance to the verification of the user's identity only.

Date of publication: 11/04/2023

## 7. Banking union

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### 7.1 Single Supervisory Mechanism (SSM)

#### (i) EU

##### EC: Report on second SSM Regulation review

Status: Final

The EC has published a report on the single supervisory mechanism (SSM). The report follows the second review by the EC of the SSM Regulation. The EC concludes that, overall, the SSM is functioning well and that there are no major changes required to be made to the SSM Regulation at this stage. It has become a mature, established supervisory authority that delivers on the objectives set out when it was created. It helps ensure that banks are well prepared and capitalised for economic and financial crises. It also provides good quality and proactive banking supervision, rapidly adapting to supervisory challenges, as shown during the Covid19 crisis. Cooperation within the SSM between the ECB and the national competent authorities is working well. Equally positive feedback was received on how close cooperation is working. However, three areas that will require continued focus are: (i) the SSM is facing challenges on the availability of the skills that are required to conduct supervision in highly specialised areas – this limits the possibility to prioritise the work in areas such as ICT/cyber risks and internal model assessments; (ii) the importance of external communication and cooperation – in the coming years, it is important to ensure that MoUs that have been put in place with other authorities are used effectively, in particular in relation to cooperation with non-bank supervisors, resulting in better supervisory outcomes; and (iii) the harmonisation of certain legislative areas – the review notes that this falls outside the control of the SSM itself, however, it highlights the difficulties that the SSM is facing in the areas of fit and proper assessment, sanctioning powers and AML, where the SSM is largely dependent on national law. Supervision would benefit from a more harmonised legal framework as this would address concerns about an unlevel playing field within the SSM.

Date of publication: 18/04/2023

## 8. Institutional supervisory framework

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### (i) EU

#### ECB: Decision amending Decision ECB/2014/16 concerning the establishment of an Administrative Board of Review and its Operating Rules

Status: Published in the OJ

Date of entry into force: 17/05/2023

The decision of the ECB amending Decision ECB/2014/16 concerning the establishment of an Administrative Board of Review and its Operating Rules has been published in the OJ. The Administrative Board of Review is the body of the ECB that carries out reviews of the ECB's supervisory decisions. The EBA has determined that it is necessary to clarify and adapt certain aspects of Board's Operating Rules. The clarifications relate to specific procedural areas including the role of alternate members of the Board, the process and content of the notice of the review, the assessment of the admissibility of the request for review and certain organisational and practical matters.

Date of publication: 27/04/2023

#### ECB: Publication of three Guidelines on the Eurosystem monetary policy framework

Status: Published in the OJ

Date of application: 29/06/2023

Three ECB Guidelines have been published to amend the Eurosystem monetary policy framework.

- Guideline (EU) 2023/832 amending Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework
- Guideline (EU) 2023/831 amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework
- Guideline (EU) 2023/833 amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral

Date of publication: 19/04/2023

#### ESMA: Overview of planned consultation papers 2023

Status: Final

ESMA has published a table detailing the planned consultation papers of 2023. In line with the ESMA Regulation, ESMA consults the SMSG on proposed technical standards and Guidelines. The purpose of this table is to provide an overview of the currently planned consultations to help the SMSG to plan its activities. Upcoming consultations in Q2 include DORA RTS and ITS, as well as RTS under the revised ELTIF Regulation.

Date of publication: 12/04/2023

### (ii) International

#### IOSCO: Work program for 2023-2024

Status: Final

IOSCO has published its work program for 2023-2024, setting out its priorities over the coming two years. IOSCO organises its workstreams under five themes; key priorities include: (i) strengthening financial resilience – IOSCO will meet its commitments under the FSB's 2023 Non-Bank Financial Intermediation (NBFII) workplan as part of its agreed follow-up work in response to the Covid-19 pandemic. IOSCO has identified Private Finance as a new priority, as a result of the area's unprecedented growth

and increasing role in funding the real economy, combined with emerging concerns around the increasing interconnectivity of the sector with regulated public markets; (ii) supporting market effectiveness – this workstream includes work aimed at enhancing operational and securities market resilience, including work on market outages, the use of post trade risk reduction services and alternative benchmarks.; (iii) protecting investors – IOSCO plans to carry out follow-up work stemming from the Retail Market Conduct Task Force stock-take of regulatory approaches regarding conduct in retail markets published in Q1 2023; (iv) addressing new risks in sustainability and FinTech – IOSCO will continue to work on improving the completeness, consistency and comparability of sustainability reporting under the stewardship of its Board-level Sustainability Taskforce. Similarly, with respect to FinTech, IOSCO plans to maintain the momentum reached under its July 2022 crypto-asset roadmap, to assess and respond to the risks associated with crypto-asset market activities and decentralised finance under the stewardship of the Board-level Fintech Taskforce; and (v) promoting regulatory cooperation and effectiveness – a key initiative is the IOSCO Multilateral Memorandum of Understanding (MMoU). IOSCO remains committed to promoting the benefits of the MMoU, and to encouraging more jurisdictions to become signatories. IOSCO will review and refresh the work programme, as appropriate, at end-2023 to ensure its ongoing relevance.

**Date of publication: 05/04/2023**



## 9. Investment funds

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### 9.1 Product regulation

#### (a) AIF

##### (i) Germany

#### **BaFin: Guidance Notice on notifications pursuant to Section 320 of the German Investment Code (Merkblatt für Anzeigen nach § 320 KAGB)**

**Status: Final**

BaFin has updated its Guidance Notice on notifications pursuant to Section 320 of the German Investment Code (*Kapitalanlagegesetz – KAGB*). It aims to explain the requirements for the sale of shares of European or foreign AIF to German consumers.

Date of publication: 01/04/2023

#### **BaFin: Guidance Notice on distribution pursuant to Section 329 of the German Investment Code (Merkblatt zum Vertrieb gemäß § 329 KAGB)**

**Status: Final**

BaFin has updated its Guidance Notice on distribution pursuant to Section 329 of the German Investment Code (*Kapitalanlagegesetz – KAGB*). This document, which was originally published in January 2018, presents the main features of the notification procedure pursuant to Section 329 of the KAGB and explains the requirements for the marketing of units or shares in domestic special feeder AIFs or EU feeder AIFs managed by an EU AIF management company or an AIF capital management company, whose respective master AIF is not an EU AIF or domestic AIF managed by an EU AIF management company or AIF capital management company, or foreign AIFs to semi-professional and professional investors in the Federal Republic of Germany.

Date of publication: 01/04/2023

# 10. Special topics

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## 10.1 FinTech/Digital finance

### (i) Germany

#### **BaFin: Application of ESMA Guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure (*Anwendung von ESMA-Leitlinien für DLT-basierende Marktinfrastrukturen*)**

Status: Final

BaFin has announced that it applies the [ESMA Guidelines](#) on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure in their entirety in its supervisory practice. The Guidelines aim to ensure consistent, efficient and effective supervisory practices for the specific permission for multilateral DLT trading facilities (DLT-MTF), DLT settlement facilities (DLT-SS) and DLT trading and settlement systems (DLT-TSS) are created and ensured. They specify standard forms, formats and templates to apply for specific permission in accordance with Articles 8 to 10 of the DLT Pilot Regime Regulation. Depending on the applicant's regulatory status and the type of application, the appropriate standard forms should be used.

The Guidelines are aimed at the competent authorities and market participants who apply for special permits for the operation of DLT market infrastructures.

Date of publication: 19/04/2023

### (ii) EU

#### **Council of the EU: Information note inviting COREPER to agree position on recast revised WTR**

Status: Draft

The Council of EU has published an information note from its General Secretariat to the Permanent Representatives Committee (COREPER), seeking confirmation of COREPER's agreement to the EP's first reading position on the proposed recast revised WTR. For more information, please see section 5 above.

Date of publication: 25/04/2023

#### **EP: Adoption of MiCA and recast revised WTR at first reading**

Status: Final

The EP has announced that it has adopted the Regulation on markets in crypto-assets (MiCA) and the recast and revised Regulation on information accompanying transfers of funds and certain crypto-assets (recast revised WTR). For more information, please see section 5 above.

Date of publication: 20/04/2023

#### **ECB: Blog post on better oversight of crypto activities**

Status: Final

The ECB has published a blog post by Elizabeth McCaul, Member of the ECB Supervisory Board, on the need for better oversight of crypto-asset activities in response to the recent bank failures and collapse of FTX. Points of interest include: (i) Ms McCaul highlights the lack of regulatory equivalence regimes in the crypto-asset world for comprehensive oversight. She calls for the assessment of existing laws, such as MiFID, and future ones, such as MiCA, to address this, and identify any other regulatory or supervisory gaps that may lead to failures; (ii) Ms McCaul cautions that contagion can go both ways, from crypto markets to banks and also vice versa. She notes the significant capital held by crypto-asset firms in the recently failing banks; (iii) although

the BCBS standard on the prudential treatment of crypto-assets is not yet legally binding in the EU, the ECB expects that banks hoping to engage in crypto activities will comply with the standard and take it into account in their business and capital planning. The BCBS standard complements MiCA, which the ECB expects to be adopted in Q2 2023; and (iv) in relation to MiCA, the ECB is considering asking banks to share with it all the information they are required to share with the MiCA competent authorities. The ECB is also currently developing dedicated guidance for Joint Supervisory Teams to support them in their assessment of the prudential implications of crypto activities to inform the Supervisory Review and Evaluation Process. Ms McCaul sets out a number of ways that she considers that CASP oversight can be strengthened, including: (a) an evaluation of whether MiCA's quantitative metrics adequately capture the significance of CASPs. These thresholds should also be measured at group level rather than at individual entity level; (b) a consolidated group-level approach to supervision of large CASPs. Conflicts of interest should be identified across the group and even beyond, taking into account affiliated entities. In addition, the requirement to establish intermediate parent undertakings should be extended to CASPs to remove opportunities for regulatory arbitrage, such as the exposure limits under the BCBS standard on crypto-assets; (c) in line with the principle of proportionality, subjecting significant CASPs to both stricter requirements and enhanced supervision: neither of which is catered for by MiCA; and (d) ensuring that no jurisdiction allows entities to run their business without disclosing their legal status and who is responsible for the business. There needs to be more thought put into imagining what international coordination will look like and how it can be effective in regulating the crypto world.

Date of publication: 05/04/2023

## 10.2 Sustainable finance

### (i) EU

#### ECB: Report on the results of the 2022 supervisory assessment of C&E risks disclosures

Status: Final

The ECB has published a report setting out the results of its third assessment of institutions' climate-related and environmental (C&E) risks disclosures. The assessment covered the existence, substantiation and soundness of disclosures across key areas. The assessment found that while the majority of significant institutions now disclose basic information, the quality of the disclosures remains low. The ECB's assessment report includes examples of good practices that institutions can consider in their efforts to align disclosures with supervisory expectations. The report reminds institutions that they will have to comply with the tighter EU rules on disclosures of C&E risks under the ITS on Pillar 3 disclosures this year. The ECB's report includes observations and examples of practices that institutions can consider in their efforts to align disclosures with supervisory expectations.

Date of publication: 21/04/2023

#### EC: Answers to questions on the interpretation of the SFDR, submitted by the ESAs in September 2022

Status: Final

The EC has published its answers to eight questions jointly submitted by the ESAs in September 2022 on the interpretation of the SFDR. The first two answers concern the clarification and application of the definitions of the term "sustainable investment" in Article 2(17) SFDR. The first answer clarifies that this definition does not prescribe any specific approach to determine the contribution of an investment to environmental or social objectives. Instead, financial market participants must disclose the individual methodology they have applied. The second answer sets out requirements for the application of this term.

The EC further deals with the scope of Article 9(3) SFDR, determining that: (i) financial products that have an objective of reducing carbon emissions with both active or passive investment strategies can fall within this scope; and (ii) financial products with a passive investment strategy which designate as a reference benchmark either a Paris Aligned Benchmark or a Climate Transition Benchmark do not automatically fall within its scope. The answers also clarify the criteria to differentiate between financial products subject to Article 8 SFDR and those subject to Article 9 SFDR. In this context, they determine that the types of characteristics that can be promoted under Article 8 SFDR can include carbon emissions reductions as long as they do not mislead investors into thinking that the products have an objective of reducing carbon emissions.

In addition, the document sets out that the description relating to the consideration of Principal Adverse Impacts (PAIs) at financial product-level, as referred to in Article 7.1(a) SFDR, needs to include both a description of the adverse impacts and the procedures put in place to mitigate those impacts. It clarifies that the definition for the term "employee" as used in the 500

employee PAI threshold in Article 4(3), (4) SFDR is governed by the respective national law. The EC finally explains that regarding the periodic disclosure frequency for portfolio management services under Article 11(2)(i) SFDR only requires the submission of one annual report, to be annexed to every fourth regular quarterly report.

The answers also include an [annex on amendments](#) to previously published answers (in July 2021 and May 2022 respectively) regarding the SFDR. These answers explain key aspects of the regulatory framework under the SFDR. These amendments include cosmetic changes to: (i) answers on the design of financial products subject to Article 9 SFDR; and (ii) answers on the application of Articles 5 and 6 of the Taxonomy Regulation.

Date of publication: 14/04/2023

### **ESAs: Joint consultation on a review of SFDR Delegated Regulation regarding PAI and financial product disclosures**

Status: Consultation

Deadline for the submission of comments: 04/07/2023

The ESAs have launched a joint consultation on a review of SFDR Delegated Regulation regarding principal adverse effects (PAI) and financial product disclosures. The ESAs are proposing changes to the disclosure framework to address issues that have emerged since the introduction of SFDR and are seeking feedback on: (i) extending the list of social indicators for PAI; (ii) refining the content of a number of the other indicators for adverse impacts and their respective definitions, applicable methodologies, metrics and presentation; and (iii) amending the decarbonisation (the ESAs' preferred term is "GHG emissions reduction") targets.

The paper also proposes further technical revisions to the SFDR Delegated Regulation by: (a) improving the disclosures on how sustainable investments "do not significantly harm" the environment and society; (b) simplifying pre-contractual and periodic disclosure templates for financial products; and (c) making other technical adjustments concerning, among others, the treatment of derivatives, the definition of equivalent information, and provisions for financial products with underlying investment options. The ESAs plan to organise a joint public hearing and targeted consumer testing during the consultation period. After considering the comments received, the ESAs will prepare a final report and submit it to the European Commission.

Date of publication: 12/04/2023

### **EC: Consultation on a Delegated Regulation regarding the EU taxonomy criteria for sustainable economic activities**

Status: Consultation

Deadline for the submission of comments: 03/05/2023

The EC has launched a consultation on a Delegated Regulation regarding the EU taxonomy criteria for sustainable economic activities. This initiative is for a new set of EU taxonomy criteria for economic activities that contribute substantially to one or more of the following environmental objectives: (i) sustainable use and protection of water and marine resources; (ii) transition to a circular economy; (iii) pollution prevention and control; (iv) protection and restoration of biodiversity and ecosystems. The Commission is also proposing targeted amendments to the Taxonomy Climate Delegated Act and to the Taxonomy Disclosures Delegated Act.

Date of publication: 05/04/2023

## **(ii) International**

### **FSB: Report on climate-related financial risk factors in compensation frameworks**

Status: Final

The FSB has published a report, which looks at compensation practices around climate-related objectives, and how the stated goal of financial institutions is incorporated into their compensation frameworks. Climate-related metrics incorporated in compensation frameworks include the reduction of carbon footprint, provision of sustainable finance and products, and accountability type measures such as leadership in the climate-related area. Some financial institutions also use external-based metrics, such as ratings and indices, to benchmark themselves against their peers. Where they are included in compensation frameworks, climate-related metrics are generally applicable at individual and/or collective level for executives and senior

management only. The report does not aim to present and compare practices across jurisdictions, but rather to identify challenges and to provide an early insight in a fast-moving field to assist ongoing initiatives of regulators and financial institutions. Common challenges identified include: (i) gaps in data availability and reliability that make it difficult to apply consistent metrics and monitor them in performance evaluation and compensation determination; (ii) development of objectively measurable metrics that are aligned with financial institutions' strategies; and (iii) misalignment of timeframes between compensation assessment periods and the materialisation of climate-related results. Incorporation of climate-related metrics into compensation frameworks is expected to evolve further. Continuous revision and adaptation of metrics by financial institutions, in response to a fast-changing environment, is needed to ensure effective alignment of compensation with prudent risk taking. Financial regulators can facilitate this process by helping share regulatory and industry practices with each other and with industry.

Date of publication: 20/04/2023



# 11. German Omnibus Acts (*Artikelgesetze*)

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## (i) Germany

**Regulation amending the Trade notification regulation and the Financial investment brokerage regulation  
(*Verordnung zur Änderung der Gewerbeanzeigerordnung und der  
Finanzanlagenvermittlungsverordnung*)**

Status: Published in the Federal Gazette

Date of entry into force: 20/04/2023

The Regulation amending the Trade notification regulation (*Gewerbeanzeigerordnung* – GewAnzV) and the Financial investment brokerage regulation (*Finanzanlagenvermittlungsverordnung* – FinVermV) has been published in the Federal Gazette. For more information, please see section 3.1 above.

Date of publication: 19/04/2023



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