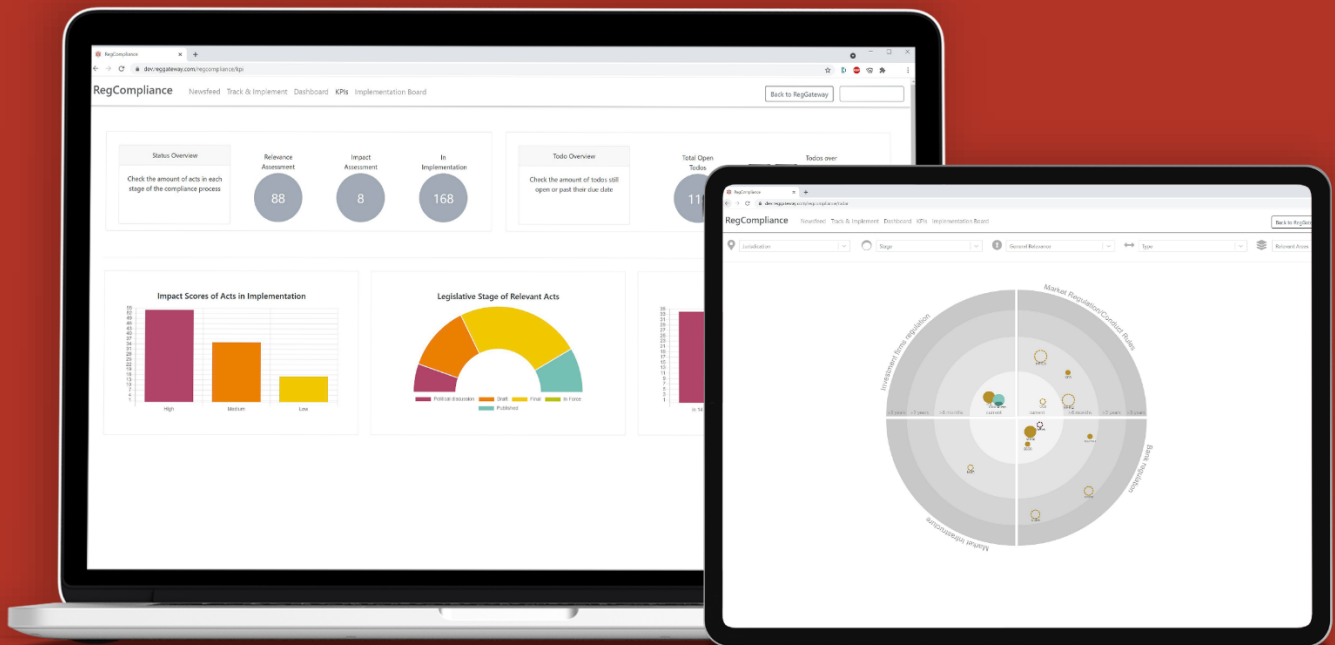


Regulatory monitoring

Newsletter

January 2022





More information
under reggateway.com

RegGateway

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

Features

HORIZON SCANNING / REGULATORY MONITORING

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

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

Contents

1.	Bank regulation	9
1.1	Prudential regulation.....	9
(a)	General	9
	ECB: Opinion on daisy-chain proposal.....	9
	BCBS: FAQs on Basel III monitoring.....	9
(b)	Solvency/Own funds issues.....	9
	BaFin: General Administrative Act on the ratio of the domestic countercyclical capital buffer pursuant to Section 10d of the German Banking Act (Allgemeinverfügung zur Quote des inländischen antizyklischen Kapitalpuffers nach § 10d KWG)	9
	BaFin: Note on plans by BaFin to set up a countercyclical capital buffer and a systemic risk buffer for the residential real estate sector (Hinweis auf Pläne der BaFin zur Festsetzung des antizyklischen Kapitalpuffers und eines Systemrisikopuffers für den Wohnimmobiliensektor).....	10
	BaFin: General Administrative Act on business credit for cooperative banks for 2022 (Allgemeinverfügung Geschäftsguthaben für Genossenschaften für 2022).....	10
(c)	Liquidity	10
	EBA: Final report on Draft amending ITS on currencies with constraints on the availability of liquid assets in accordance with the CRR	10
(d)	Authorisation and passporting.....	11
	BaFin: Guidance Notice on notes regarding financial instruments pursuant to Sections 1(11)(1)-(5) of the German Banking Act (Merkblatt über Hinweise zu Finanzinstrumenten nach § 1 Abs. 11 Sätze 1 bis 5 KWG)	11
(e)	Remuneration	11
	EBA: Consultation on Guidelines on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under CRD IV	11
	EBA: Consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD	12
(f)	Large exposures/Limits to shadow banking entities.....	12
	BaFin: Interpretative guidance on the implementation of the mandatory substitution approach according to Articles 403 and 401(4) of the CRR (Auslegungentscheidung zur Umsetzung des verpflichtenden Substitutionsansatzes gemäß Artikel 403 bzw. 401 Abs. 4 CRR)	12
	BaFin: Circular 01/2022 (BA) regarding large exposure limits (Rundschreiben 01/2022 (BA) zu Großkreditobergrenzen)	12
(g)	Notifications	13

	BaFin: Addition to the Consultation on the fourth regulation amending the Notification Regulation (Zusatz zur Konsultation der Vierten Verordnung zur Änderung der Anzeigenverordnung).....	13
	BaFin: Important notes regarding the draft regulations regarding notification requirements (Hinweis bezüglich der Verordnungsentwürfe zur Anzeigepflicht).....	13
(h)	Disclosure.....	13
	EBA: Final Report on Final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a of the CRR.....	13
1.2	Recovery and resolution	14
	ECB: Opinion on daisy-chain proposal.....	14
	EBA: Final Report on Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 BRRD	14
	EBA: Consultation on Guidelines on transferability to complement the resolvability assessment for transfer strategies	15
1.3	Stress tests/Macroprudential topics	15
	ECB: Launch of the 2022 climate risk stress test.....	15
2.	Investment firms regulation	16
	EBA: Consultation paper on Guidelines on the benchmarking exercises on remuneration practices and gender pay gap under the IFD	16
	EBA: Consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD	16
	Commission Delegated Regulation (EU) 2022/76 supplementing the IFR with regard to RTS specifying adjustments to the K-DTF coefficients.....	16
	Commission Delegated Regulation (EU) 2022/25 supplementing the IFR with regard to RTS specifying the methods for measuring the K-factors referred to in Article 15 of the IFR.....	16
	Commission Delegated Regulation (EU) 2022/26 supplementing the IFR with regard to RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure.....	17
3.	Market regulation/Conduct rules	18
3.1	Benchmarks	18
	BaFin: Application of ESMA Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation (Anwendung der ESMA-Leitlinien zur Methodik, zur Aufsichtsfunktion und zum Führen von Aufzeichnungen im Rahmen der Referenzwerte-Verordnung).....	18
	ESMA: Updated Q&A on the Benchmarks Regulation	18
3.2	Capital markets union	18

	EC: Summary report on the targeted consultation on supervisory convergence and the single rulebook	18
3.3	Credit rating agencies	19
	ESMA: Final report on Guidelines on disclosure requirements for initial reviews and preliminary ratings	19
	ESMA: Consultation on the revision to Guidelines and recommendations on the scope of the CRA Regulation	19
3.4	Market abuse	20
	ESMA: Final report on the review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision.....	20
3.5	MiFID/MiFIR	20
	ESMA: Consultation on ESMA’s Opinion on the trading venue perimeter	20
	ESMA: Updated Q&A on MiFID II and MiFIR transparency topics	21
	ESMA: Consultation on Guidelines on certain aspects of the MiFID II suitability requirements	21
	EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards adjustment of the liquidity thresholds and trade percentile used to determine the SSTI applicable to certain non-equity instruments	21
	ESMA: Final draft on Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements	21
3.6	Prospectus regulation	22
	BaFin: Note on the extended scope of the BaFin database regarding prospectuses and information sheets on capital investment and securities (Hinweis über den erweiterten Umfang der BaFin-Datenbank für Prospekte und Informationsblätter für Vermögensanlagen und Wertpapiere)	22
	BaFin: Updated FAQs on capital investment prospectuses and capital investment information sheets (Änderung der FAQ zu Prospekten für Vermögensanlagen und VIBs)	22
3.7	Securities financing transactions	23
	ESMA: Updated Q&A on SFTR data reporting.....	23
3.8	Short selling	23
	BaFin: FAQ on notification and publication requirements pursuant to Articles 4 et seq. of the Short Selling Regulation (FAQ zu Mitteilungs- und Veröffentlichungspflichten gemäß Art. 5 ff. der EU-Leerverkaufsverordnung)	23
	ESMA: Statement on how to report the NSPs under the new reporting threshold of 0.1%	23

	Commission Delegated Regulation (EU) 2022/27 amending the Short Selling Regulation as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares.....	23
3.9	Transparency requirements/Shareholder requirements	24
	BaFin: Application of ESMA Guidelines on the enforcement of financial information (Anwendung der ESMA Leitlinien zur Überwachung von Finanzinformationen)	24
4.	Market infrastructure	25
4.1	Custody rules	25
	BaFin: Information sheet on the specialised procedure “CSDR Article 7 Settlement Fails Reporting” (Informationsblatt zum Fachverfahren - Meldeverfahren “CSDR Article 7 Settlement Fails Reporting”).....	25
	BaFin: Application of ESMA Guidelines on settlement fails reporting (Anwendung der ESMA-Leitlinien zur Meldung gescheiterter Abwicklungen)	25
4.2	EMIR	25
	ESMA: Final report on seven measures on CCP recovery and resolution	25
	ESMA: Consultation on Review of RTS No 153/2013 with respect to procyclicality of margin.....	26
	ESMA: Methodology for mandatory peer reviews in relation to CCPs’ authorisation and supervision under EMIR.....	26
4.3	Stock exchanges.....	27
	IOSCO: Consultation on Operational resilience of trading venues and market intermediaries during the Covid-19 pandemic	27
5.	Anti-money laundering	28
	BaFin: Interpretation and application guidance on the German Money Laundering Act pursuant to Section 51(8) GwG (Auslegungs- und Anwendungshinweise zum Geldwäschegesetz gemäß § 51 Abs. 8 GwG).....	28
	EBA: Launch of ‘EuReCA’, the EU’s central database for anti-money laundering and counter-terrorism financing	28
	EC: Commission Delegated Regulation (EU) .../... on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849, as regards adding Burkina Faso, the Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan to the table in point I of the Annex and deleting The Bahamas, Botswana, Ghana, Iraq and Mauritius from this table.....	28
	EBA: Opinion and report on ‘de-risking’ and its impact on access to financial services	29
6.	Payments	30
6.1	Payment services/E-money	30

	EPC: Public consultation on the [instant] Euro one-leg out credit transfer arrangement rulebook.....	30
	EBA: Discussion paper on the EBA’s preliminary observations on selected payment fraud data under PSD2, as reported by the industry	30
6.2	Payment accounts	31
	EC: Interpretation of the PAD regarding negative interest rates	31
7.	Institutional supervisory framework	32
	SRB: Priorities for 2022 – the SRB’s view	32
	IOSCO: Final report on lessons learned from the use of global supervisory colleges	32
8.	Investment funds	33
8.1	Product regulation.....	33
	(a) AIF	33
	BaFin: Updated Guidance Notice on the marketing pursuant to Section 330 of the German Investment Code of foreign AIF or EU AIF (Angepasstes Merkblatt zum Vertrieb nach § 330 KAGB bezüglich ausländischer AIF oder EU-AIF).....	33
	ESMA: Launch of a common supervisory action with NCAs on valuation of UCITS and open-ended AIFs	33
	(b) UCITS	34
	ESMA: Launch of a common supervisory action with NCAs on valuation of UCITS and open-ended AIFs	34
8.2	Prudential regulation.....	34
	(a) Compliance.....	34
	ESRB: Recommendation on reform of money market funds.....	34
	ESMA: Letter to the European Commission on reverse solicitation.....	34
9.	Special rules for real estate financing and covered bonds.....	36
9.1	Mortgage credits	36
	EBA: Call for advice on MCD review	36
10.	Special topics	37
10.1	Covid-19	37
	(a) Prudential regulation	37
	EBA: Confirmation of the continued application of Covid-19 related reporting and disclosure requirements until further notice	37
10.2	FinTech/Digital finance	37
	BaFin: New list on crypto securities (Neue Liste über Kryptowertpapiere)	37



BMF/BMJV: Revised draft regulation on the requirements for electronic securities (Überarbeiteter Entwurf einer Verordnung über Anforderungen an elektronische Wertpapiere – eWpRV).....	37
ESAs: Joint thematic repository of national financial education initiatives on digitalisation	38
ESMA: Updated Q&A on the European crowdfunding service providers for business Regulation	38
ESAs: Public statement welcoming the ESRB Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities	38
ESRB: Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities	39
ESMA: Call for evidence on the DLT Pilot Regime and review of MiFIR RTS on transparency and reporting	39
IOSCO: Consultation report on retail distribution and digitalisation.....	40
10.3 Sustainable finance	40
EBA: Final Report on Final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a of the CRR.....	40
EU Platform on Sustainable Finance: Response to the draft Taxonomy Complementary Delegated Act.....	40
ECB: Opinion on a proposal for a regulation on European green bonds	41
EC: Consultation on Taxonomy Complementary Delegated Act covering certain nuclear and gas activities	41
11. Contacts.....	42



1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

ECB: Opinion on daisy-chain proposal

Status: Draft

The ECB has published an opinion, dated 13 January 2022, on the EC's legislative proposal to amend the CRR regarding the prudential treatment of global systemically important institution (G-SIIs) groups with a multiple point of entry (MPE) resolution strategy, and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL) (the "daisy-chain" proposal). In the opinion, the ECB supports the proposed regulation as it ensures better alignment with various provisions and regulations. Going forward, the ECB invites the Union legislative bodies to: (i) monitor and assess the implementation of these amendments to the CRR, and more specifically, to assess the interplay between the BRRD and the CRR; (ii) avoid global systemically important banks and G-SIIs engaging in regulatory arbitrage between single point of entry and MPE resolution strategies based on the MREL or total loss absorbing capacity (TLAC) target level. The ECB also proposed minor technical adjustments to clarify the interpretation of the legal text and to ensure consistency of terminology used in the regulation.

Date of publication: 17/01/2022

(ii) International

BCBS: FAQs on Basel III monitoring

Status: Final

The BCBS has updated its FAQs on Basel III monitoring by deleting a question (no 11) on the topic of the trading book regarding the "TB" worksheet which collects data to calculate the overall impact of the revised minimum capital requirements for market risk.

Date of publication: 21/01/2022

(b) Solvency/Own funds issues

(i) Germany

BaFin: General Administrative Act on the ratio of the domestic countercyclical capital buffer pursuant to Section 10d of the German Banking Act (Allgemeinverfügung zur Quote des inländischen antizyklischen Kapitalpuffers nach § 10d KWG)

Status: Final

BaFin has published a General Administrative Act on the ratio of the domestic countercyclical capital buffer pursuant to Section 10d of the German Banking Act (*Kreditwesengesetz* – KWG), raising this ratio from zero to 0.75 percent of risk-weighted assets as of 1 February 2022. BaFin states that cyclical systemic risks have built up as a result of strong credit growth in recent years, making the German banking sector more vulnerable. By raising the countercyclical capital buffer, BaFin aims to counter this risk by way of strengthening the resilience of the German banking system as a preventive measure. In accordance with these

changes, BaFin has also updated its [document](#) on indicator values, time series and indicator description concerning the decision about setting the buffer.

Date of publication: 31/01/2022

BaFin: Note on plans by BaFin to set up a countercyclical capital buffer and a systemic risk buffer for the residential real estate sector (Hinweis auf Pläne der BaFin zur Festsetzung des antizyklischen Kapitalpuffers und eines Systemrisikopuffers für den Wohnimmobiliensektor)

Status: Draft

BaFin has published a note on its imminent plans to determine higher requirements for the [countercyclical capital buffer](#) and a [systemic risk buffer for the residential real estate sector](#). These buffers will be introduced by way of General Administrative Acts, following the hearings that ended on 26 January 2022. In particular, BaFin intends to raise the countercyclical capital buffer from zero to 0.75 percent of risk-weighted assets on domestic risk exposures. BaFin also intends to introduce a sectoral systemic risk buffer of 2.0 percent of risk-weighted assets on loans secured by mortgages on residential property. This decision takes into account analyses by the German Financial Stability Board (*Ausschuss für Finanzstabilität* – AFS) and the European Systemic Risk Board (ESRB). It reacts to what BaFin qualifies as excessive lending and price developments, especially with regard to residential property.

Following the publication of the respective Acts, BaFin announced that both buffers are to be activated promptly. However, the institutions will have sufficient time to adjust to the measures, as they will not have to fully comply with the additional capital requirements until 1 February 2023. With the two capital buffers, a total of approximately EUR 22 billion in Tier 1 capital will be preserved in the banking system – EUR 17 billion via the countercyclical capital buffer and EUR 5 billion via the sectoral systemic risk buffer. BaFin further states that the banks will be able to meet these requirements almost entirely from existing surplus capital.

Date of publication: 12/01/2022

BaFin: General Administrative Act on business credit for cooperative banks for 2022 (Allgemeinverfügung Geschäftsguthaben für Genossenschaften für 2022)

Status: Final

BaFin has published a new General Administrative Act on Common Equity Tier 1 instruments for 2022. This document regulates the extent to which newly issued shares in cooperative banks (*Genossenschaften*) can be classified as Common Equity Tier 1 instruments with the permission of BaFin. It also stipulates the conditions under which the repayment of credit balances due to terminated cooperative shares must be approved in advance.

The General Administrative Act is valid until the end of 2022. It only applies to cooperative banks that are not subject to the direct supervision of the ECB. The background to this is the requirements of the CRR and the supplementary Delegated Regulation that the European Commission has issued for the requirements for own funds. The previous General Administrative Act on Common Equity Tier 1 instruments for cooperative banks expired on 31 December 2021.

The general ruling is only relevant for cooperative banks.

Date of publication: 01/01/2022

(c) Liquidity

(i) EU

EBA: Final report on Draft amending ITS on currencies with constraints on the availability of liquid assets in accordance with the CRR

Status: Final

The EBA has published its final draft amendments to its ITS on currencies with constraints on the availability of liquid assets in the context of the liquidity coverage ratio. Following the addition of a new derogation as part of the Risk Reduction Measures package, the EBA has been tasked to amend the existing RTS specifying the use of derogations and the conditions of their

application. Given their interdependence, it was necessary to review the corresponding ITS on the effective list of currencies with constraints, which currently consists of one single currency, the Norwegian Krone (NOK). Based on the updated data analysis, which demonstrates that there is no longer a shortage in the supply of liquid assets in the NOK currency, the EBA proposes to amend the ITS by removing NOK from the list. Since this amendment will lead to an empty list, in order to keep its regulatory efforts proportionate to their impact, the EBA will not update the corresponding RTS. If a future assessment shows the need for a currency to be added to the list, the EBA will propose an update of the corresponding RTS. The draft ITS will be submitted to the EC for endorsement before being published in the OJ.

Date of publication: 26/01/2022

(d) Authorisation and passporting

(i) Germany

BaFin: Guidance Notice on notes regarding financial instruments pursuant to Sections 1(11)(1)-(5) of the German Banking Act (Merkblatt über Hinweise zu Finanzinstrumenten nach § 1 Abs. 11 Sätze 1 bis 5 KWG)

Status: Final

BaFin has updated its Guidance Notice on notes regarding financial instruments pursuant to Sections 1(11)(1)-(5) of the German Banking Act (*Kreditwesengesetz* – KWG). The relevant financial instruments consist of shares, investment products, debt instruments, other rights, units in collective investment schemes, money market instruments, foreign exchange, units of account, emission certificates, crypto securities and crowdfunding instruments. The document has been amended to reflect the latest additions to the legal framework of financial instruments: (i) on crowdfunding instruments in line with the German Crowdfunding Accompanying Act (*Schwarmfinanzierung-Begleitgesetz*); and (ii) on financial instruments using precious metals for various investment and monetisation purposes, as introduced in the amendment to the German Capital Investment Act (*Vermögensanlagengesetz* – VermAnlG) by the Law on strengthening the financial markets integrity (*Finanzmarktintegritätsstärkungsgesetz* – FISG).

Date of publication: 11/01/2022

(e) Remuneration

(i) EU

EBA: Consultation on Guidelines on the benchmarking exercises on the remuneration practices, on the gender pay gap and on approved higher ratios under CRD IV

Status: Consultation

Deadline for the submission of comments: 21/03/2022

The EBA has launched a consultation on revisions to its guidelines on the remuneration benchmarking exercise under the CRD which were last updated in 2014. The revisions include: (i) additional requirements introduced by CRD V regarding the application of derogations to the requirement to pay out a part of variable remuneration in instruments and under deferral arrangements and the benchmarking of the gender pay gap; (ii) new guidance on how to harmonise the benchmarking of approvals granted by shareholders to use higher ratios than 100% between the variable and fixed remuneration; (iii) amendments to the data collection templates in order to take into account the implementing technical standards on disclosures under the CRR. Additional information is collected on the application of the derogations to the application of the requirements to pay out parts of the variable remuneration in instruments and under deferral arrangements; and (iv) specific templates for the benchmarking of the gender pay gap to ensure that it covers a representative sample of institutions and different levels of pay. The EBA plans to collect the benchmarking data under the updated guidelines in 2023 for the financial year 2022. Whereas, the first data on the gender pay gap will be collected in 2024 for the financial year 2023.

Date of publication: 21/01/2022

EBA: Consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD

Status: Consultation

Deadline or the submission of comments: 21/03/2022

The EBA has launched a consultation on revisions to its guidelines on the data collection exercise on high earners which were last updated in 2014. The review of the data collection exercises reflects: (i) the amended remuneration framework laid down in CRD V, including the introduction of derogations to pay out a part of the variable remuneration in instruments and under deferral arrangements; and (ii) the specific remuneration regime that has been introduced for investment firms in the IFR and IFD. The CRD and the IFD require competent authorities to collect information on the number of natural persons, per institution and investment firm respectively, who are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million. The information should also include details on their job responsibilities, the business area and the main elements of the salary, bonus, long-term award, and pension contribution. The new reporting format will be used for the annual collection of data regarding high earners, starting for the financial year that ends in 2022.

Date of publication: 21/01/2022

(f) Large exposures/Limits to shadow banking entities

(i) Germany

BaFin: Interpretative guidance on the implementation of the mandatory substitution approach according to Articles 403 and 401(4) of the CRR (Auslegungentscheidung zur Umsetzung des verpflichtenden Substitutionsansatzes gemäß Artikel 403 bzw. 401 Abs. 4 CRR)

Status: Final

BaFin has published an interpretative guidance on the implementation of the mandatory substitution approach according to Articles 403 and 401(4) of the CRR. Therein, it answers the question as of when the requirements from [EBA Q&A 2020_5496](#) are applicable: in principle, the institutions have to apply the mandatory substitution approach within the scope of large exposure monitoring as of 28 June 2021. However, if institutions are not yet able to fully apply it because their implementation work could not be advanced due to the outstanding issues from the aforementioned EBA Q&A for complex calculation methods, a delay of up to six months after the publication of the EBA Q&A for these institutions may exceptionally be tolerated. As the EBA Q&A have been published in their final form on 21 January 2022, delayed application for large exposure reports relating to a reporting date until 30 September 2022 may be tolerated. Nevertheless, BaFin emphasises that the institutions have to work urgently on the implementation to avoid further delays.

Date of publication: 24/01/2022

BaFin: Circular 01/2022 (BA) regarding large exposure limits (Rundschreiben 01/2022 (BA) zu Großkreditobergrenzen)

Status: Final

BaFin has published the Circular 01/2022 with which it adopts the [EBA Guidelines](#), specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits of Article 395(1) of the CRR and the time and measures to return to compliance pursuant to Article 396(3) of the CRR, in its administrative practice as of 1 January 2022. The Guidelines also set out the criteria for the period and measures to be followed to restore compliance with the large exposure limits.

Date of publication: 17/01/2022

(g) Notifications

(i) Germany

BaFin: Addition to the Consultation on the fourth regulation amending the Notification Regulation (Zusatz zur Konsultation der Vierten Verordnung zur Änderung der Anzeigenverordnung)

Status: Consultation

Deadline for the submission of comments: 03/02/2022

BaFin has extended its consultation on the fourth regulation amending the Notification Regulation for the German Banking Act (*Kreditwesengesetz* – KWG) to the Annexes 13 to 18 to Section 9a of this draft Regulation. These Annexes include the forms to be used for the notifications pursuant to Section 24(1a) numbers 5 and 6 of the KWG.

Date of publication: 20/01/2022

BaFin: Important notes regarding the draft regulations regarding notification requirements (Hinweis bezüglich der Verordnungsentwürfe zur Anzeigepflicht)

Status: Draft

BaFin has published important notes above the consultation requests as of 3 December 2021 for four draft regulations on the notification of outsourcing. These regulations 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 (*Zahlungsdienstenaufsichtsgesetz* – ZAG).

The important notes inform that, contrary to the original plans, the four draft regulations did not enter into force on 1 January 2022. For the supervised entities, this means that until the date of entry into force of these draft regulations, the previously applicable statutory provisions with regard to notifications will remain in force unchanged. Similarly, the MVP portal's new specialist procedure for the notification of outsourcing will not go live until draft regulations enter into force, but interested companies already have the option of testing this new specialist procedure via BaFin's homepage in advance.

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: 06/01/2021

(h) Disclosure

(i) EU

EBA: Final Report on Final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a of the CRR

Status: Final

The EBA has published a final report on Final draft ITS on Pillar 3 disclosures on ESG risks, which provide tables, templates and instructions in relation to the CRR requirement to disclose prudential information on ESG risks, including transition and physical risks. The ITS are addressed to large institutions that trade securities on EU regulated markets. The ITS include: (i)

tables for qualitative disclosures on ESG risks; (ii) templates with quantitative disclosures on climate change transition risk; (iii) a template with quantitative disclosures on climate change physical risk; and (iv) templates with quantitative information and key performance indicators on climate change mitigating measures, including the Green Asset Ratio on taxonomy-aligned activities according to the Taxonomy Regulation. The EBA explains that the Pillar 3 framework that these ITS implement will support institutions in the public disclosure of meaningful and comparable information on how ESG-related risks and vulnerabilities, and in particular climate change, may exacerbate other risks in their balance sheet. It will allow comparability between the sustainability performance of institutions and of their financial activities. Furthermore, it will help institutions in providing transparency on how they are mitigating those risks, including information on how they are supporting their customers and counterparties in the adaptation process to eg climate change and in the transition towards a more sustainable economy. The EBA has integrated proportionality measures that should facilitate institutions' disclosures, including transitional periods and the use of estimates. The ITS will amend the final draft ITS on institutions' public disclosures with the strategic objective of defining a single, comprehensive Pillar 3 framework under the CRR that should integrate all of the relevant Pillar 3 disclosure requirements.

Date of publication: 24/01/2022

1.2 Recovery and resolution

(i) EU

ECB: Opinion on daisy-chain proposal

Status: Draft

The ECB has published an opinion on the EC's legislative proposal to amend the CRR regarding the prudential treatment of G-SIIs, groups with an MPE resolution strategy, and a methodology for the indirect subscription of instruments eligible for meeting the MREL (the "daisy-chain" proposal). For more information, please see section 1.1 above.

Date of publication: 17/01/2022

EBA: Final Report on Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 BRRD

Status: Final

The EBA has published Guidelines for institutions and resolution authorities on improving banks' resolvability ("Resolvability Guidelines"). These Guidelines aim to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. In particular, to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructures, funding and liquidity in resolution, bail-in execution, business reorganisation and communication. These Guidelines are addressed to both authorities and institutions in the EU so as to ensure consistent progress on resolvability for all institutions and facilitate resolvability work for cross-border groups and its monitoring in resolution colleges. These Guidelines aim to set out the resolvability conditions for institutions or resolution groups for which the strategy involves the use of resolution powers as opposed to a liquidation procedure. Some of the conditions laid down in these Guidelines may be resolution tool-specific (eg bail-in playbook) and the extent of their application to other resolution tools is left to the discretion of the resolution authority. Similarly, and to ensure proportionality, these Guidelines are not automatically applicable for institutions, groups or resolution groups that benefit from the simplified obligation regime, for which the extent of their possible application is left to the discretion of the relevant resolution authorities. Institutions and authorities should comply with the Guidelines in full by 1 January 2024. Complying with the Guidelines will not necessarily equate with being resolvable as this remains for the relevant resolution authorities to determine. Rather, these Guidelines should be seen as the minimum steps that institutions should take towards resolvability. The Guidelines will be updated and complemented as progress is achieved on relevant policy topics, both at international and EU level. In particular, the EBA is working on Guidelines on the topics of bail-in disclosure, resolution disclosure and resolvability testing.

Date of publication: 13/01/2022

EBA: Consultation on Guidelines on transferability to complement the resolvability assessment for transfer strategies

Status: Consultation

Deadline for the submission of comments: 15/04/2022

The EBA has launched a consultation on draft Guidelines for institutions and resolution authorities on transferability of parts or a whole bank in the context of resolution to complement the resolvability assessment for transfer strategies (“Transferability Guidelines”). The Guidelines aim at assessing the feasibility and credibility of transfer strategies and encompass requirements relating to the implementation of transfer tools when considered as the preferred or alternative strategies for institutions. They complement the [Resolvability Guidelines](#) that were finalised on 13 January 2022 (see above). The Guidelines deal with the transfer perimeter definition, separability (ie how to facilitate separation of an entity or a business from the rest of the group in resolution) and operational transfer of this perimeter. Transferability is defined as the elements of resolvability that will facilitate the transfer of an entity, a business line or a portfolio of assets, rights and/or liabilities to an acquirer (“transfer perimeter”), a bridge institution, or an asset management company. The Guidelines cover three resolution tools: (i) sale of business tool under Article 38 BRRD; (ii) bridge institution tool under Article 40 BRRD; and (iii) asset separation tool under Article 42 BRRD. However, the design and definition of bridge institutions and asset management companies are not covered in these Guidelines.

The EBA expects to finalise the Guidelines by 30 September, with full compliance from institutions and resolution authorities expected by 1 January 2024.

Date of publication: 13/01/2022

1.3 Stress tests/Macroprudential topics

(i) Eurozone

ECB: Launch of the 2022 climate risk stress test

Status: Final

The ECB has launched a supervisory climate risk stress test to assess how prepared banks are for dealing with financial and economic shocks stemming from climate risk. The ECB aims to identify vulnerabilities, best practices and challenges banks face when managing climate-related risk. It notes that it is not a pass or fail exercise, nor does it have direct implications for banks’ capital levels. The exercise consists of three distinct modules: (i) a questionnaire on banks’ climate stress test capabilities; (ii) a peer benchmark analysis to assess the sustainability of banks’ business models and their exposure to emission-intensive companies; and (iii) a bottom-up stress test targeting transition and physical risks. To ensure the proportionality of the exercise, smaller banks will not need to provide their own stress test projections. The stress test targets specific asset classes exposed to climate risk rather than banks’ overall balance sheets. It focuses on exposures and income sources that are most vulnerable to climate-related risk, combining traditional loss projections with new qualitative data collections. The test will use macro-financial scenarios based on scenarios prepared by the Network of Central Banks and Supervisors for Greening the Financial System. These reflect possible future climate policies and assess both physical risks, such as heat and droughts and floods, and short and long-term risks stemming from the transition to a greener economy. The results will feed into the Supervisory Review and Evaluation Process (SREP) from a qualitative point of view. This means that this stress test could indirectly impact Pillar 2 requirements through the SREP scores, but will not directly impact capital through Pillar 2 guidance. The ECB has sent a letter to the CEOs of participating banks to provide a methodological note with further guidance on how to conduct the exercise and complete the relevant templates. The ECB will run the test throughout H1 2022, after which it will publish aggregate results.

Date of publication: 27/01/2022

2. Investment firms regulation

(i) EU

EBA: Consultation paper on Guidelines on the benchmarking exercises on remuneration practices and gender pay gap under the IFD

Status: Consultation

Deadline for the submission of comments: 21/03/2022

The EBA has launched a consultation on Guidelines on the benchmarking exercises on remuneration practices and gender pay gap under the IFD in parallel to the [Consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD](#), as described in section 1.1(e) above. The templates take into account the specificities of investment firms and their remuneration framework, as well as the disclosure requirements under the IFR. The EBA states that it has taken a consistent approach with both guidelines. For investment firms, the EBA plans to collect the first data under the new guidelines in 2023 for the financial year 2022.

Date of publication: 21/01/2022

EBA: Consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD

Status: Consultation

Deadline or the submission of comments: 21/03/2022

The EBA has launched a consultation on draft Guidelines on the data collection exercises regarding high earners under the CRD IV and IFD. For more information, please see section 1.1(e) above.

Date of publication: 21/01/2022

Commission Delegated Regulation (EU) 2022/76 supplementing the IFR with regard to RTS specifying adjustments to the K-DTF coefficients

Status: Published in the OJ

Date of entry into force: 09/02/2022

Commission Delegated Regulation (EU) 2022/76 supplementing the IFR with regard to RTS specifying adjustments to the K-factor 'daily trading flow' (K-DTF) coefficients has been published in the OJ. This Regulation provides a formula defining the adjustments to the K-DTF coefficients in the event that, in stressed market conditions, the K-DTF requirements seem overly restrictive and detrimental to financial stability. The Regulation also defines the period of "an event of stressed market condition". Like the Delegated Regulation below, this act is based on an [EBA Report](#) as of 16 December 2020.

Date of publication: 20/01/2022

Commission Delegated Regulation (EU) 2022/25 supplementing the IFR with regard to RTS specifying the methods for measuring the K-factors referred to in Article 15 of the IFR

Status: Published in the OJ

Date of entry into force: 31/01/2022

Commission Delegated Regulation (EU) 2022/25 supplementing the IFR with regard to RTS specifying the methods for measuring the K-factors referred to in Article 15 of the IFR has been published in the OJ. Like the preceding and following entry, this act is based on an [EBA Report](#) as of 16 December 2020.

Date of publication: 11/01/2022

Commission Delegated Regulation (EU) 2022/26 supplementing the IFR with regard to RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure

Status: Published in the OJ

Date of entry into force: 31/01/2022

Commission Delegated Regulation (EU) 2022/26 supplementing the IFR with regard to RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure has been published in the OJ. As with the Delegated Regulation above, this act is based on an [EBA Report](#) as of 16 December 2020.

Date of publication: 11/01/2022



3. Market regulation/Conduct rules

3.1 Benchmarks

(i) Germany

BaFin: Application of ESMA Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation (Anwendung der ESMA-Leitlinien zur Methodik, zur Aufsichtsfunktion und zum Führen von Aufzeichnungen im Rahmen der Referenzwerte-Verordnung)

Status: Final

BaFin has announced that it will apply the [ESMA Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation](#) as of 7 February 2022. As a result of the Covid-19 pandemic, illiquid or volatile markets occurred at times, to which benchmark administrators reacted differently. With the new Guidelines on critical and significant benchmarks and the amendment of the [Guidelines on non-significant benchmarks](#), ESMA provides a framework for administrators and supervisors to deal with such extraordinary market situations in a more consistent manner across Europe.

In particular, benchmark administrators are to set out the criteria under which they assume extraordinary circumstances and how, in such cases, the benchmarks in question are calculated alternatively. In doing so, they must present the time frame in which the alternative calculation is applied and how it potentially affects the value of the respective reference value. Should the methodology of a critical or non-significant benchmark need to be changed at short notice due to exceptional circumstances, the Guidelines require that certain minimum standards be met in the consultation with affected users. Administrators must maintain detailed records of any use of an alternative methodology for calculating benchmarks.

Date of publication: 20/01/2022

(ii) EU

ESMA: Updated Q&A on the Benchmarks Regulation

Status: Final

ESMA has updated its Q&A on the Benchmark Regulation (BMR) by amending its response to question on temporary disruptions to the provision of a benchmark in the context of Article 28(2) of the BMR. It now states that a temporary disruption of this type does not constitute by itself a cessation of the benchmark so that supervised entities are not required to initiate the written plans established pursuant to Article 28(2) of the BMR.

Date of publication: 28/01/2022

3.2 Capital markets union

(i) EU

EC: Summary report on the targeted consultation on supervisory convergence and the single rulebook

Status: Final

The EC has published a report setting out a summary of responses to its consultation on supervisory convergence and the single rulebook. Among other things, the report states that: (i) respondents assessed rather positively the impact of the European Supervisory Authorities (ESAs) on the financial system as a whole, financial stability, the functioning of the internal market, the quality and consistency of supervision, strengthening international supervisory coordination, consumer and investor protection and sustainable finance; (ii) more than 70% of the respondents consider that the EBA mandate covers all necessary tasks and powers to contribute to the stability and well-functioning of the financial system. However, in the case of the ESMA, respondents are divided equally between those that consider that ESMA has all necessary powers and those who do not; (iii) the

majority of public authorities and few industry respondents considered that the current framework for industry engagement works well and that stakeholders are sufficiently consulted. However, many respondents from industry underlined the too short time given to provide feedback which does not provide for an adequate consultation of all stakeholders. Industry respondents highlighted that ESAs should intensify their interaction with the industry and adopt a more open and less bureaucratic approach; (iii) some respondents mentioned potential areas for central supervision at EU level such as ESG rating agencies, ESG data providers or EU central counterparties (CCPs); (iv) many respondents pointed out that the ESAs coordination function works in a satisfactory way. Among all the respondents one common trend for the three authorities is the importance to enhance coordination, ensure consistency among the various sectoral legislation, avoid duplication, reduce compliance costs and complexity, and streamline the existing processes (i.e. data reporting); and (v) concerning the single rulebook, the stocktaking exercise did not reveal strong support for further-reaching EU-level harmonisation across all sectoral legislation. However, respondents overwhelmingly converge in their request to better align the timing of level 2 measures with the timing for the application of level 1. The overall majority considers that technical standards, guidelines and recommendations have sufficiently contributed to harmonise the single rulebook. The main issue raised concern the timeline of the procedure.

Date of publication: 17/01/2022

3.3 Credit rating agencies

(i) EU

ESMA: Final report on Guidelines on disclosure requirements for initial reviews and preliminary ratings

Status: Final

ESMA has published a final report on Guidelines on disclosure requirements for initial reviews and preliminary ratings under the Credit Rating Agencies Regulation (CRAR). ESMA explains that the CRAR includes a number of provisions that are designed to provide greater clarity to market participants as to whether entities or debt instruments have been subject to an initial review or a preliminary rating by CRAs before receiving a credit rating. The objective of the provisions is to mitigate against the effects of ratings shopping through greater transparency.

ESMA will apply these Guidelines from 1 July 2022.

Date of publication: 31/01/2022

ESMA: Consultation on the revision to Guidelines and recommendations on the scope of the CRA Regulation

Status: Consultation

Deadline for the submission of comments: 11/03/2022

ESMA has launched a consultation on a targeted revision to paragraphs 14 and 15 of its existing Guidelines and to its Recommendations on the Scope of the CRA Regulation. The proposed revision is intended to provide greater clarity on the exemptions for private ratings under the CRA Regulation, and addresses the following key elements of private credit ratings: (i) the interpretation of the terms “produced pursuant to an individual order” and “provided exclusively to the person who placed the order”; (ii) restrictions on sharing a private credit rating with a “limited number of third parties”; and (iii) how to monitor the distribution of private credit ratings by the ratings producer.

In a next step, ESMA will consider all responses to this consultation and expects to publish a final report by end of Q2 2022.

Date of publication: 28/01/2022

3.4 Market abuse

(i) EU

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

Status: Final

ESMA has published a Final report on the review of the Market Abuse Regulation (MAR) Guidelines on delay in the disclosure of inside information and interactions with prudential supervision. The Guidelines are adding certain cases to the list of legitimate interests of issuers for delaying public disclosure of inside information. The Guidelines also introduce clarifications on whether firms would be in possession of inside information in relation to institution-specific Supervisory Review and Evaluation Process (SREP) decisions, with particular reference to the Pillar 2 Capital Requirements (P2R) and Capital Guidance (P2G).

The amended Guidelines clarify the following: (i) in case of redemptions, reductions and repurchases of own funds subject to supervisory authorisation, institutions have a legitimate interest to delay the disclosure of inside information until the prudential competent authority has authorised the transactions; (ii) there is a legitimate interest for the institution to delay the disclosure of the draft SREP decision informally communicated to an institution, until that decision becomes final following the completion of the decision-making process of the prudential competent authority; and (iii) in respect of the content of the SREP decisions, the P2R are expected to be considered as inside information and as highly likely to be price sensitive whereas P2G may only be inside information. Examples of situations where price sensitivity is expected are when: (a) the difference between the P2G and the institution's level of capital is not minor and is likely to involve a major reaction by the institution, such as a capital increase; and (b) the institution's P2G is not in line with market expectations, so a price impact can be expected.

The Guidelines will be applicable two months after the publication of translations.

Date of publication: 05/01/2022

3.5 MiFID/MiFIR

(i) EU

ESMA: Consultation on ESMA's Opinion on the trading venue perimeter

Status: Consultation

Deadline for the submission of comments: 29/04/2022

ESMA has launched a consultation regarding its Opinion on the trading venue perimeter, intending to enhance supervisory convergence in the EU and to level the playing field between market participants. The document provides guidance on concrete examples, where the trading venue perimeter is not easily identified and might be subject to different interpretations from market participants and national competent authorities. This consultation follows up on the final report on the functioning of Organised Trading Facilities (OTF) under MiFID II in which ESMA committed to publish an opinion clarifying the definition of multilateral systems and providing guidance on when systems should be considered as multilateral systems and, in consequence, seek for authorisation as trading venues.

This consultation is particularly aimed at investment firms and market operators. Based on the feedback, ESMA aims to publish a final report in Q3 2022.

Date of publication: 28/01/2022

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

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR transparency topics. The update affects the chapter on the Double Volume Cap mechanism by adding a new question (no 6) regarding the responsibility of a trading venue to check whether a newly admitted financial instrument is already subject to an EU level suspension under the Double Volume Cap mechanism.

Date of publication: 28/01/2022

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

Status: Consultation

Deadline for the submission of comments: 27/04/2022

ESMA has launched a consultation on amendments to update its guidelines on certain aspects of suitability requirements under MiFID II, particularly in relation to sustainability. The proposals consider: (i) the collection of information from clients on sustainability preferences – firms will need to collect information from clients on their preferences in relation to the different types of sustainable investment products to what extent they want to invest in these products; (ii) the assessment of sustainability preferences – once the firm has identified a range of suitable products for a client, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, it shall identify the product(s) that fulfil the client's sustainability preferences; (iii) organisational requirements – firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and any updates of these preferences; (iv) the integration of the good and poor practices identified in the 2020 Common Supervisory Actions to complement the current guidelines; and (v) the amendments introduced through the Capital Markets Recovery Package to Article 25(2) of MiFID II. ESMA expects to publish a final report in Q3 2022.

Date of publication: 27/01/2022

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

Status: Adopted by the EC

The EC has adopted a draft Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards adjustment of the liquidity thresholds and trade percentile used to determine the size specific to the instrument applicable to certain non-equity instruments under MiFIR. These RTS introduced a phased approach with regard to the methodology to calculate the liquidity of bonds and, with regard to pre-trade transparency, the size specific to the instrument (SSTI) of non-equity instruments, including bonds. Both liquidity and SSTI are relevant for the application of transparency waivers and deferrals. Illiquid instruments are eligible for pre-trade transparency waivers based on Article 9(1)(c) of MiFIR and for post-trade transparency deferrals based on Article 11(1)(b) of MiFIR. When the size of an order is above the SSTI then, based on Article 9(1)(b) of MiFIR, a pre-trade waiver is available in case the order is placed through a so-called 'request-for-quote' or 'voice trading' system, and, based on Article 11(1)(c), a post-trade deferral, regardless of the trading systems that is being used. The draft Delegated Regulation aims to realise a move to a stricter phase 3: (i) for the liquidity assessment of bonds the average daily notional amount traded will be decreased from 10 to 7; and (ii) for SSTI the threshold above which a pre-trade transparency waiver is available will be increased from EUR 400,000 to 600,000 for corporate bonds and EUR 900,000 to 1.5 million for sovereign bonds.

The draft Delegated Regulation will be submitted to the EP and the Council for their approval. If neither of them objects, it will enter into force 20 days after its publication in the Official Journal of the European Union.

Date of publication: 13/01/2022

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

Status: Final

ESMA has published the final draft on the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements. The Guidelines cover several important aspects of the appropriateness process, including the: (i) information to be

provided to clients about the purpose of the appropriateness assessment; (ii) arrangements necessary to understand clients and products; (iii) matching of clients with appropriate products and the effectiveness of warnings; and (iv) other related requirements, such as the execution-only exemption and record-keeping and controls. The report contains a feedback statement summarising the responses received during consultation and highlighting the amendments and clarifications introduced in the final guidelines.

The Guidelines will be translated into the official languages of the EU and published on ESMA's website. The publication of the translations will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the Guidelines. The Guidelines will apply six months after the date of the publication on ESMA's website in all EU official languages.

Date of publication: 03/01/2022

3.6 Prospectus regulation

(i) Germany

BaFin: Note on the extended scope of the BaFin database regarding prospectuses and information sheets on capital investment and securities (Hinweis über den erweiterten Umfang der BaFin-Datenbank für Prospekte und Informationsblätter für Vermögensanlagen und Wertpapiere)

Status: Final

BaFin has announced that, as of 1 January 2022, it will make the following types of documents available for full access as pdf files on its website and keep them accessible there for at least ten years: (i) approved capital investment prospectuses (*Vermögensanlagen-Verkaufsprospekte*) as well as supplements thereto; (ii) capital investment information sheets (*Vermögensanlagen-Informationsblätter* – VIBs) authorised for publication as well as their updated versions; and (iii) securities information sheets (*Wertpapier-Informationsblätter* – WIBs) authorised for publication and their updated versions.

Previously, only meta datasets were available for this purpose. With this new practice, BaFin is extending its standard practice for securities prospectuses to the aforementioned types of documents. The reason for these changes are amendments introduced by the Law to further strengthen investor protection (*Anlegerschutzstärkungsgesetz* – AnlSchStG) to Sections 9(3), 13a(3) and 14(4) of the German Capital Investment Act (*Vermögensanlagengesetz* – VermAnlG) and Section 5(4) of the German Securities Prospectus Act (*Wertpapierprospektgesetz* – WpPG).

In accordance with this new practice, prospectuses and VIBs, as well as supplements and updated versions of VIBs, must be submitted to BaFin for review and filing electronically and in an electronically searchable format via its reporting and publication system (*Melde- und Veröffentlichungssystem* – MVP) as of 1 January 2022. This already applied to WIBs and their updated versions. In its note, BaFin also informs that its publication of these documents does not replace the publication by the provider itself. It points out that the databases for these documents are available on the BaFin website.

Date of publication: 07/01/2022

BaFin: Updated FAQs on capital investment prospectuses and capital investment information sheets (Änderung der FAQ zu Prospekten für Vermögensanlagen und VIBs)

Status: Final

BaFin has updated its FAQs on capital investment prospectuses and capital investment information sheets (*Vermögensanlagen-Informationsblätter* – VIBs) by inserting the new question 39. With this update, BaFin explains the scope of the information on these types of documents that can be found in the BaFin database, with the aim to increase transparency for investors. This scope has recently been extended to comprise not only meta datasets on all published capital investment prospectuses and capital investment information sheets but also the documents themselves in electronic format. This new scope of information made available to investors in the BaFin database applies to all publications of the aforementioned type as of 1 January 2022. See above for more information on this new extension.

Date of publication: 05/01/2022

3.7 Securities financing transactions

(i) EU

ESMA: Updated Q&A on SFTR data reporting

Status: Final

ESMA has updated its Q&A on SFTR data reporting by amending a question (no 2) on the reporting of settlement [failures]. In particular, the question includes a revised sub-question on whether a settlement [failure] is reportable, where the Counterparties have been unable to modify the maturity date of an SFT due to a failed settlement that takes place after the day following the maturity date.

Date of publication: 25/01/2022

3.8 Short selling

(i) Germany

BaFin: FAQ on notification and publication requirements pursuant to Articles 4 et seq. of the Short Selling Regulation (FAQ zu Mitteilungs- und Veröffentlichungspflichten gemäß Art. 5 ff. der EU-Leerverkaufsverordnung)

Status:

BaFin has updated its FAQ on notification and publication requirements pursuant to Articles 4 et seq. of the Short Selling Regulation ((EU) No 236/2012) by amending questions 13, 14 and 16 to reflect the raised thresholds for notification and publication requirements as introduced by Delegated Regulation (EU) 2022/27 (see below).

Date of publication: 26/01/2022

(ii) EU

ESMA: Statement on how to report the NSPs under the new reporting threshold of 0.1%

Status: Final

ESMA has published a statement explaining how position holders should report their net short positions (NSPs) in shares when the reporting threshold changes from 0.2% to 0.1%. The last day of application of the old reporting threshold (0.2%) will be in relation to 28 January, with NSPs to be reported to competent authorities by 15:30 of the following trading day. From 31 January onwards, position holders will have to report when their NSPs in shares exceed or are equal to 0.1% of the issued share capital and each 0.1% above that. The statement requires position holders to report NSPs between 0.1% and 0.2% on the day of application of the 0.1% reporting threshold, even where they were entered into ahead of that date. This is to give competent authorities the full picture of NSPs above the new threshold, which otherwise would be incomplete.

Date of publication: 26/01/2022

Commission Delegated Regulation (EU) 2022/27 amending the Short Selling Regulation as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares

Status: Published in the OJ

Date of entry into force: 31/01/2022

Commission Delegated Regulation (EU) 2022/27 amending the Short Selling Regulation (No 236/2012) as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares under Article 5(2) has been published in the OJ. The notification threshold for net short positions was temporarily lowered to 0.1% (and each 0.1% above that) of issued share capital by means of an emergency intervention by ESMA following the March 2020 market turmoil. Due to

(among other factors) ongoing instability and the increased transparency and monitoring made possible by the lower threshold, ESMA and the EC agreed that the temporary measure should be made permanent.

Date of publication: 11/01/2022

3.9 Transparency requirements/Shareholder requirements

(i) EU

BaFin: Application of ESMA Guidelines on the enforcement of financial information (Anwendung der ESMA Leitlinien zur Überwachung von Finanzinformationen)

Status: Final

BaFin has announced that it will apply the German version of the updated ESMA [Guidelines on enforcement of financial information](#) as of 1 January 2022. This updated version is mainly intended to ensure further harmonisation in the EEA with regard to the following points: (i) the manner in which issuers are selected for balance sheet control reviews; (ii) the time period within which all issuers within the jurisdiction of a supervisory authority should be audited; and (iii) the manner in which the audits are carried out. Thereby, this amendment to the Guidelines aims to standardise the enforcement of accurate and complete financial information across Europe.

Date of publication: 05/01/2022

4. Market infrastructure

4.1 Custody rules

(i) Germany

BaFin: Information sheet on the specialised procedure “CSDR Article 7 Settlement Fails Reporting” (Informationsblatt zum Fachverfahren - Meldeverfahren “CSDR Article 7 Settlement Fails Reporting”)

Status: Final

BaFin has published an information sheet on the specialised procedure “CSDR Article 7 Settlement Fails Reporting” to provide guidance on its application of the concerned [ESMA Guidelines](#), which aim to implement a consistent approach on these reporting requirements, as mentioned below. According to Article 7(1) of CSDR, for each securities settlement system (SSS) it operates, a Central Securities Depository (CSD) shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1) of CSDR. It shall provide regular reports (monthly and annually) to the competent authorities, as to the number and details of settlement fails. In line with the abovementioned ESMA Guidelines, BaFin has made an electronic reporting procedure available on its reporting and publishing platform, where the monthly and annual reports have to be submitted using the specialised procedure “CSDR Art. 7 Settlement Fails Reporting”. To provide guidance on this submission requirement, the information sheet explains the steps to complete the registration process for reporting to BaFin.

Date of publication: 20/01/2022

BaFin: Application of ESMA Guidelines on settlement fails reporting (Anwendung der ESMA-Leitlinien zur Meldung gescheiterter Abwicklungen)

Status: Final

BaFin has published a statement confirming that it will apply the [ESMA Guidelines](#) on settlement fails reporting under Article 7 of the Central Securities Depositories Regulation (CSDR) in its supervisory practice from 1 February 2022. According to Article 7(1) of CSDR, for each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1) of CSDR. It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. The competent authorities shall share with ESMA any relevant information on settlement fails.

The aim of the ESMA Guidelines is to ensure a consistent application across Europe of Article 7(1) of the CSDR and Articles 14 and 39 of the RTS on settlement discipline (Delegated Regulation (EU) 2018/1229). These Guidelines regulate, among other things, the exchange of information between ESMA and the competent authorities on failed settlements and the content of the reports that CSDs have to submit.

Date of publication: 10/01/2022

4.2 EMIR

(i) EU

ESMA: Final report on seven measures on CCP recovery and resolution

Status: Final

ESMA has published its seven Final Reports on the central counterparties (CCPs) recovery regime, as mandated under the CCP Recovery and Resolution Regulation (CCPRRR), to provide further specifications of the CCPRRR. This includes proposals for RTSs on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources, on the factors to be taken into account by the competent authority and the supervisory college when assessing the recovery plan

and on the recompense mechanism for non-defaulting clearing members. It also covers Guidelines on the consistent application of the triggers for the use of Early Intervention Measures, on the CCP's recovery plan indicators and scenarios and on the restrictions of dividends in case of a significant non-default event.

- Final report on RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (Article 9(15) of CCPRRR)
- Final report on RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan (Article 10(12) CCPRRR)
- Final report on RTS specifying the conditions for recompense (Article 20(2) of CCPRRR)
- Final report on Guidelines on CCP recovery plan indicators (Article 9(5) CCPRRR)
- Final report on Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR)
- Final report on Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRRR)
- Final report on Guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a of EMIR

Date of publication: 31/01/2022

ESMA: Consultation on Review of RTS No 153/2013 with respect to procyclicality of margin

Status: Consultation

Deadline for the submission of comments: 31/03/2022

ESMA has launched a consultation on a potential review of its RTS on requirements for CCPs, specifically the requirements aiming to limit the procyclicality of margin requirements. ESMA explains that it aims to further harmonise the existing anti-procyclicality margin measures for CCPs as well as the use of specific anti-procyclicality margin tools, following the March 2020 market turmoil. While ESMA's data show that EU CCPs have overall performed well during the early stages of the Covid-19 crisis, the surge in initial margin has raised questions as to whether some of these increases acted in a procyclical manner, potentially causing, or even, amplifying liquidity stress in other parts of the financial system.

Date of publication: 27/01/2022

ESMA: Methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR

Status: Final

ESMA has published an updated version, dated 5 January 2022, of the methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR. This methodology replaces the version published on 5 January 2017. It reflects the changes to the regulatory framework for peer reviews introduced in December 2019 with EMIR 2.2 and the ESAs Review, and is based on the ESMA Peer Review Methodology. The Methodology is divided into four titles: (i) the first title provides an overview of the peer review framework and process; (ii) the second relates to the determination of topics for peer reviews; (iii) the third describes the peer review process; and (iv) the fourth title relates to the framework for the follow-up to peer reviews.

Date of publication: 14/01/2022

4.3 Stock exchanges

(i) International

IOSCO: Consultation on Operational resilience of trading venues and market intermediaries during the Covid-19 pandemic

Status: Consultation

Deadline for the submission of comments: 14/03/2022

IOSCO has launched a consultation on lessons learned from the operational resilience of trading venues and market intermediaries during the Covid-19 pandemic. IOSCO describes the impact of the pandemic on trading venues and market intermediaries. It concludes that these regulated entities largely proved to be operationally resilient and continued to serve their clients and the broader economy, despite unprecedented challenges, such as restrictions on mobility and business operations and periods of extreme market volatility and record trading volumes. The pandemic also increased cyber security risks, accelerated the use of existing, new and emerging technologies and disrupted outsourcing arrangements. IOSCO has found that the resilience of trading venues and intermediaries during the pandemic can in large part be attributed to work conducted in this area. The existing IOSCO operational resilience principles, recommendations and guidance provide the core structure for regulated entities and regulators when considering operational resilience, and the findings in this report suggest this framework has worked well. However, the pandemic has highlighted opportunities to learn lessons on how to further improve regulated entities' operational resilience, on which IOSCO seeks feedback: (i) operational resilience means more than just technological solutions; it also depends on the regulated entity's processes, premises and personnel; (ii) consider dependencies and interconnectivity before and after a disruption to adequately assess potential risks and changes to controls, especially for service providers and off-shore services; (iii) review, update and test business continuity plans to ensure they reflect lessons learned from the pandemic; (iv) an effective governance framework facilitates and supports operational resilience during novel or unexpected situations; and (v) compliance and supervisory processes with greater automation and less dependence on physical documents and manual processes may better accommodate a remote workforce. A review of monitoring and supervision arrangements by regulated entities for remote workforces may be appropriate to help ensure continued effectiveness in a remote or hybrid environment; and (vi) information security risk – decentralised and remote work may increase the importance of monitoring processes to help ensure information security and prevent cyber-attacks. The report also acknowledges that as the next phase of the pandemic evolves, new events may further inform operational resilience considerations.

IOSCO requests feedback on these observations and possible lessons learned regarding operational resilience during the pandemic.

Date of publication: 13/01/2022

5. Anti-money laundering

(i) Germany

BaFin: Interpretation and application guidance on the German Money Laundering Act pursuant to Section 51(8) GwG (Auslegungs- und Anwendungshinweise zum Geldwäschegesetz gemäß § 51 Abs. 8 GwG)

Status: Final

BaFin has published a non-binding English translation for the updated version of the Interpretation and application guidance on the German Money Laundering Act (*Geldwäschegesetz* – GwG) as published on 27 October 2021. This guidance amends the previous version of the Interpretation and application guidance on the GwG to reflect the changes made to the GwG, mainly by the Law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 (*Transparenz-Finanzinformationsgesetz Geldwäsche* – TraFinG Gw). The latest of these changes have been applicable since 1 August 2021.

Date of publication: 05/01/2022

(ii) EU

EBA: Launch of ‘EuReCA’, the EU’s central database for anti-money laundering and counter-terrorism financing

Status: Final

The EBA has launched the European central database for reporting material weaknesses in individual European financial institutions regarding anti-money laundering and counter-terrorism financing (AML/CFT), ‘EuReCA’. Competent authorities will report these weaknesses as well as the measures they have imposed on financial institutions to rectify those material weaknesses. The information from EuReCA will be used by EBA to inform its view of ML/TF risks affecting the EU financial sector. It will also share information from EuReCA with competent authorities as appropriate, to support their supervisory process and inform them on specific ML/TF risks or trends.

Date of publication: 31/01/2022

EC: Commission Delegated Regulation (EU) .../... on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849, as regards adding Burkina Faso, the Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan to the table in point I of the Annex and deleting The Bahamas, Botswana, Ghana, Iraq and Mauritius from this table

Status: Adopted by the EC

The EC has adopted a Delegated Regulation that amends the list of high-risk third countries with strategic AML/CTF deficiencies produced under Article 9(2) of MLD4. The Delegated Regulation: (i) adds Burkina Faso, the Cayman Islands, Morocco, Senegal, Haiti, the Philippines, South Sudan, Jordan and Mali; and (ii) removes Ghana, Botswana, Mauritius, the Bahamas and Iraq. The Delegated Regulation also outlines the steps being taken by Turkey to address the strategic deficiencies in its AML/CTF regime. In light of the progress it has made, the EC has decided that there is no need to adopt further measures against Turkey under Article 9 at this stage.

The Delegated Regulation will be submitted to the EP and the Council to consider for approval.

Date of publication: 07/01/2022

EBA: Opinion and report on 'de-risking' and its impact on access to financial services

Status: Final

The EBA has published an Opinion and report on the detrimental impact of unwarranted de-risking and ineffective management of money laundering and terrorist financing risks, as well as the steps competent authorities should take to tackle this issue. De-risking refers to decisions taken by financial institutions not to provide services to customers in certain risk categories. De-risking can be a legitimate risk management tool but it can also be a sign of ineffective money laundering (ML) and terrorist financing (TF) risk management, with at times severe consequences. The EBA's findings suggest that de-risking has a detrimental impact on the achievement of the EU's objectives, in particular in relation to fighting financial crime effectively and promoting financial inclusion, competition and stability in the single market.

The EBA considers that its regulatory guidance on how to manage ML/TF risks, if applied correctly, should help avert unwarranted de-risking. Further, the EBA identified a number of steps competent authorities and the EC and co-legislators could take. The EBA: (i) encourages competent authorities to engage more actively with institutions that de-risk and with users of financial services that are particularly affected by de-risking, to raise mutual awareness of their respective rights and responsibilities; and (ii) advises the EC to clarify, in the Payment Account Directive (PAD), the interaction between AML/CTF requirements and the right to open and use a payment account with basic features, and to take advantage of the forthcoming review of the Payment Services Directive (PSD2) to ensure more convergence in the way payment institutions access credit institutions' payment accounts services. The EBA is committed to following-up with competent authorities on the actions they have taken to tackle unwarranted de-risking going forward.

Date of publication: 05/01/2022

6. Payments

6.1 Payment services/E-money

(i) EU

EPC: Public consultation on the [instant] Euro one-leg out credit transfer arrangement rulebook

Status: Consultation

Deadline for the submission of comments: 17/04/2022

The European Payments Council (EPC) has launched a public consultation on its proposed [instant] Euro one-leg out credit transfer ([Inst] Euro OCT) Arrangement Rulebook, and the proposed Maximum Amount for Instant Euro OCT Instructions under the [Inst] Euro OCT Arrangement Rulebook. Under the proposed Arrangement, a Euro one-leg out credit transfer (Euro OCT) is defined as an electronic payment instrument for making international euro credit transfer payments between a payment account held at a PSP established in and/or licensed to operate in a country or territory included in the SEPA geographical scope, and an account held at a Financial Institution (FI) established in and/or only licensed to operate in a non-SEPA country or territory. The Arrangement supports both incoming and outgoing Euro OCTs from the perspective of a Payee and a Payer respectively holding a payment account held at a SEPA-based Payee's PSP and at a SEPA-based Payer's PSP, and any related exception handling and inquiries.

The Euro OCT Arrangement further supports the treatment of the following sub-types: (i) Standard Euro OCT where an instant processing is not requested by the Payer. After the receipt of the Standard Euro OCT, the actor concerned processes the Standard Euro OCT and/or makes the funds available as soon as possible or according to the arrangements agreed with the next actor in the international payment chain; (ii) Instant Euro OLO Credit Transfer (Inst Euro OCT) whereby the Payer requests an instant processing of this credit transfer. The Arrangement sets the maximum execution timelines and deadlines for such instant payments and related exception handling exclusively for the SEPA Leg, as well as the maximum transferable amount per Inst Euro OCT. The Arrangement provides a set of Inter-PSP rules, practices and standards to be complied with by SEPA-based PSPs who adhere to the Arrangement. The Arrangement would be optional for SEPA-based PSPs. SEPA-based PSPs interested in adhering to it, would have to support it at least in the role of a SEPA-based Payee's PSP.

After the consultation deadline the EPC will review the feedback and consider concrete next steps for the proposed [Inst] Euro OCT Arrangement.

Date of publication: 18/01/2022

EBA: Discussion paper on the EBA's preliminary observations on selected payment fraud data under PSD2, as reported by the industry

Status: Consultation

Deadline for the submission of comments: 19/04/2022

The EBA has published a discussion paper on its preliminary observations on selected payment fraud data under the revised Payment Services Directive (PSD2), as reported by the industry for the years 2019 and 2020. The paper presents the main findings related to three payment instruments: credit transfers, card-based payments and cash withdrawals and also outlines other patterns that appear to be inconclusive and that would benefit from comments and views from market stakeholders.

According to EBA's assessment, the preliminary patterns derived from the selected fraud dataset collected by PSPs as per the Guidelines on fraud reporting under Article 96(6) of the PSD2 suggest that the regulatory requirements developed in relation to payment security are having the desired effect. In almost all instances, the share of fraudulent payments in the total payment volume and value is significantly lower for transactions that are authenticated with strong customer authentication (SCA) than those that are not. The analysis also confirms that fraud is substantially higher for cross-border transactions with counterparts located outside the EEA than for those conducted inside this area, which is a known pattern of payment fraud.

EBA invites stakeholders to respond to the questions asked in the discussion paper, so as to better interpret fraud data that will be reported in future years.

Date of publication: 17/01/2022

6.2 Payment accounts

(i) EU

EC: Interpretation of the PAD regarding negative interest rates

Status: Final

The Danish Financial Supervisory Authority (FSA) has published a letter dated 13 January that it had received from the EC in response to two letters asking the EC for its views on the compatibility of charging negative interest rates on payment accounts with the Payment Accounts Directive (PAD). The Danish FSA considered that the PAD does not prevent credit institutions from charging negative interest rates on deposits in a payment account, while the Danish Consumer Ombudsman came to the opposite conclusion.

The EC notes that the answer to this question is not straightforward, as evidenced by these two diametrically opposed conclusions. The main question is whether negative interest rates could be considered as a “fee” in the sense of Article 2(15) PAD. After having examined all arguments, the EC leans towards a conclusion whereby negative interest rates are not to be considered as “fees” in the sense of the PAD, and do not thus need to comply with the “reasonableness” criteria in Article 18. However, the EC states that the final assessment of this question and the final interpretation of the PAD lies with the ECJ.

Date of publication: 17/01/2022

7. Institutional supervisory framework

(i) Eurozone

SRB: Priorities for 2022 – the SRB's view

Status: Final

The SRB has published a press release on its priorities for 2022. The SRB highlights three key priorities for the year ahead: (i) MREL build up. Banks under the SRB's remit have been able to raise capital and debt instruments, and thus build up further the necessary MREL buffers at record low interest rates this year. It encourages all banks to continue to build up their MREL in this favourable market; (ii) separability and reorganisation plans. For mid-sized banks, the SRB is prioritising the work on transfer tools, separability and adjustments of MREL for such transfer tools. During 2021, the SRB issued a guidance note on separability and it will continue to work on this area in 2022; and (iii) information systems and management information systems. IT and cyber risks and their management, particularly regarding the timely availability of data, must be a key priority for banks.

The SRB will also continue its work on being crisis-ready. Ensuring its SPE strategy is operationalised fully is another area of focus and will hopefully help overcome the home-host friction that otherwise risks fragmenting the market and might have a negative impact on financial stability. The SRB's heat-map on assessing resolvability was designed as a tool to monitor, benchmark and communicate banks' progress towards full resolvability and the SRB is currently evaluating the first cross-cutting assessment based on the progress made by banks so far. A more transparent assessment of resolvability has long been a key priority for the SRB. On top of these priorities, the SRB will also continue to work with its European partners on completing the Banking Union, including finding an institutional solution for liquidity in resolution, making progress towards a common deposit guarantee system and work on a European framework for bank insolvency.

Date of publication: 10/01/2022

(ii) International

IOSCO: Final report on lessons learned from the use of global supervisory colleges

Status: Final

IOSCO has published a final report on lessons learned from the use of global supervisory colleges. IOSCO states that jurisdictions have become increasingly interconnected, also as market participants make more use of technology. However, it recognises that there may be an imbalance in the level and amount of information available to regulators and differing degrees of information sharing among jurisdictions. IOSCO believes enhancements to supervisory cooperation could encourage sharing of information, including during times of market stress. The report sets out a series of good practices, covering matters such as general purpose, membership, governance, multilateral confidentiality arrangements and the cross-border operations of supervisory colleges. It is based on previous IOSCO work on market fragmentation and builds upon the experiences of IOSCO members with supervisory colleges for such entities as credit rating agencies and CCPs. The report calls for the use of 'core-extended' structures where circumstances allow. This arrangement would allow all relevant authorities – including those from emerging jurisdictions – to participate in information exchange about a supervised entity appropriately. Finally, the report considers sectors of securities markets where the use of supervisory colleges could be expanded; building on: (i) considerations such as interconnectedness where market participants may be doing business across multiple jurisdictions and/or conduct activities which could have spill-over effects on other jurisdictions; and (ii) new emerging areas where supervisory knowledge may not yet have been fully developed. Based on these criteria, some IOSCO members have suggested there may be merit in making use of supervisory colleges for market intermediaries, financial benchmarks administrators, crypto-asset platforms and asset management.

Date of publication: 18/01/2022

8. Investment funds

8.1 Product regulation

(a) AIF

(i) Germany

BaFin: Updated Guidance Notice on the marketing pursuant to Section 330 of the German Investment Code of foreign AIF or EU AIF (Angepasstes Merkblatt zum Vertrieb nach § 330 KAGB bezüglich ausländischer AIF oder EU-AIF)

Status: Final

BaFin has updated its Guidance Notice on the marketing pursuant to Section 330 of the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB) of foreign AIF or EU AIF. With this update, BaFin: (i) added detailed information on the requirements for electronic submission of the necessary notifications and encouraged the use of this submission method; (ii) amended the information on the applicable fees and charges; and (iii) reflected the changes to the KAGB introduced by the German Fund Jurisdiction Act (*Fondsstandortgesetz* – FoStoG) by inserting a new section on the notification procedures for a revocation pursuant to the new section 295a of the KAGB.

Date of publication: 20/01/2022

(ii) EU

ESMA: Launch of a common supervisory action with NCAs on valuation of UCITS and open-ended AIFs

Status: Final

ESMA has published a press release on launching a Common Supervisory Action (CSA) with National Competent Authorities (NCAs) on the valuation of UCITS and open-ended Alternative Investment Funds (AIFs) across the EU. The CSA aims to assess compliance of supervised entities with the relevant valuation-related provisions in the UCITS and AIFMD frameworks, in particular the valuation of less liquid assets, and will be conducted throughout 2022. The CSA will focus on authorised managers of UCITS and open-ended AIFs investing in less liquid assets, which are unlisted equities, unrated bonds, corporate debt, real estate, high yield bonds, emerging markets, listed equities that are not actively traded, and bank loans. The work will be done using a common assessment framework developed by ESMA, which sets out the scope, methodology, supervisory expectations and timeline for how to carry out a comprehensive supervisory action in a convergent manner. NCAs will share knowledge and experiences through ESMA to foster convergence in how they supervise valuation-related issues. One core objective is the consistent and effective supervision of valuation methodologies, policies and procedures of supervised entities to ensure that less liquid assets are valued fairly both during normal and stressed market conditions, in line with applicable rules.

Date of publication: 20/01/2022

(b) UCITS**(i) EU****ESMA: Launch of a common supervisory action with NCAs on valuation of UCITS and open-ended AIFs****Status: Final**

ESMA has published a press release on launching a Common Supervisory Action (CSA) with National Competent Authorities (NCAs) on the valuation of UCITS and open-ended Alternative Investment Funds (AIFs) across the EU. For more information, please see section 8.1(a) above.

8.2 Prudential regulation

(a) Compliance**(i) EU****ESRB: Recommendation on reform of money market funds****Status: Final**

The ESRB has published a recommendation on reform of money market funds. In addition, it published a [Report on the economic rationale](#) supporting this recommendation. The ESRB explains that the financial market turmoil of 2020 showed that the regulatory changes that followed the global financial crisis did not go far enough in terms of mitigating systemic risks in the MMF sector. Consequently, the ESRB is now recommending policy reforms aimed at addressing the remaining sources of systemic risk, which will also reduce the need for central bank intervention in crises. In view of the forthcoming revision of the MMF Regulation, the ESRB recommends that the EC: (i) reduce threshold effects that increase first-mover advantages, including by amending the features that make MMFs similar to deposit-taking institutions; (ii) reduce liquidity transformation by diversifying asset portfolios and improving their liquidity through requirements to hold public debt assets and by making sure that such liquidity can be used when needed; (iii) facilitate the use of liquidity management tools that impose trading costs on redeeming investors; and (iv) enhance monitoring and stress-testing frameworks. The ESRB also published a report explaining the economic rationale for its recommendations and providing an impact assessment. The report concludes that the recommended reforms would not prevent MMFs from performing their economic functions. The report also identifies the main shortcomings of the short-term debt securities market in which MMFs operate. The ESRB requests that the EC communicates the actions undertaken in response to its recommendation by 31 December 2023.

Date of publication: 25/01/2022

ESMA: Letter to the European Commission on reverse solicitation**Status: Final**

ESMA has published a letter, dated 17 December 2021, from Verena Ross, Executive Director, to John Berrigan, Director General, Directorate-General for Financial Stability, Financial Markets and Capital Markets Union, on a request for support in relation to the report on reverse solicitation. It responds to the [24 September 2021 letter](#) from John Berrigan to Natasha Cazenave, Executive Director, ESMA. ESMA was invited to ask National Competent Authorities (NCAs) for input on a number of questions relating to the use of reverse solicitation by asset managers and the impact on passporting activities. In the letter, ESMA: (i) explains that almost all NCAs have no readily available information on the use of reverse solicitation either via asset managers or investor associations. However, a couple of NCAs provided some interesting information on the extent to which reverse solicitation is used in their jurisdiction that allows ESMA to share some anecdotal evidence of the use of reverse solicitation within the Union. Unfortunately, in the absence of quantitative information for other Member States, it is difficult at this stage to draw any conclusion for the rest of the Union; (ii) in an attempt to obtain information on this practice, ESMA states that the EC may consider contacting directly market participants such as asset managers, depositories or account holders, possibly via national and European trade associations, which may have such information and, if not, could consult their members. ESMA is of the view that using the proportion of foreign investors in funds may not be an appropriate proxy for all jurisdictions, in particular for home jurisdictions from where funds are passported significantly across the Union. One solution could be to use the proportion of foreign investors from countries where funds are not notified for cross-border marketing but

this information might be difficult to obtain; and (iii) regarding the possible extension of the notification portal referred to in Article 13(2) of the Regulation to enable the exchange of notifications of cross-border marketing between NCAs, ESMA confirms that this extension has been proposed for prioritisation in the context of the 2022 IT ESMA budget.

Date of publication: 03/01/2022

9. Special rules for real estate financing and covered bonds

9.1 Mortgage credits

(i) EU

EBA: Call for advice on MCD review

Status: Final

The EBA published a [letter](#) dated 21 December 2021 from John Berrigan, EC Director General of FISMA, to José Manuel Campa, EBA Chair, regarding the call for advice from the EC to the EBA on the review of the Mortgage Credit Directive (MCD). The EC is seeking advice from the EBA on the following: (i) MCD evaluation – the EC is asking the EBA about problems related to areas excluded from the scope of the MCD, tying and bundling, as well as the availability of foreign currency loans; (ii) impact of digitalisation, with a focus on the opportunities and risks presented by peer-to-peer lending platforms, and whether these should be facilitated through the MCD. The EBA also needs to consider the issues related to the MCD information disclosure rules, both at pre-contractual and advertising stages. It should also address any problems and possible risks for consumer protection arising from the use of AI systems for mortgage borrowers' creditworthiness assessments, as well as any risks posed by the use of robo-advisers for mortgage credit granting processes; (iii) facilitating the cross-border provision for mortgages, with regard to any difficulties for the use of credit databases across-borders or other obstacles for the cross-border provision of mortgage loans, how digitalisation could help facilitate cross-border provision, and whether it sees any risks from the conclusion of mortgage credit agreements fully online; (iv) financial stability, specifically whether the MCD needs to be amended to address issues it identified with respect to residential mortgages to ensure responsible lending and borrowing, as well as contribute to financial stability; (v) lessons learned from Covid-19 and whether further actions need to be taken in the context of the MCD review to address potential consumer detriment arising from the treatment of borrowers in arrears or at risk of foreclosure; and (vi) sustainability with regard to possible ways to encourage the uptake of green mortgages at EU level, and on whether climate-change related risks to properties used to secure loans should be taken into consideration in the banks assessment when offering mortgage loans. The EBA is asked to deliver the advice to the EC by 30 June 2022.

Date of publication: 14/01/2022

10. Special topics

10.1 Covid-19

(a) Prudential regulation

(i) EU

EBA: Confirmation of the continued application of Covid-19 related reporting and disclosure requirements until further notice

Status: Final

The EBA has confirmed the continued application of Covid-19 related reporting and disclosure requirements until further notice. Following the uncertainty over Covid-19 developments, the EBA confirmed the need to continue monitoring exposures and the credit quality of loans benefitting from various public support measures. To facilitate such monitoring, the EBA stated that the Guidelines on the reporting and disclosure of exposures subject to measures applied in response to the Covid-19 crisis will continue to apply until further notice. The EBA will continue to monitor developments and will further reassess the application of the Guidelines on an annual basis and will consider repealing the Guidelines when the situation permits.

Date of publication: 17/01/2022

10.2 FinTech/Digital finance

(i) Germany

BaFin: New list on crypto securities (Neue Liste über Kryptowertpapiere)

Status: Final

BaFin has published a new public list on its website pursuant to Section 20(3) of the German Electronic Securities Act (*Gesetz über elektronische Wertpapiere – eWpG*). This list consolidates information on crypto securities notified to BaFin in accordance with Section 20(1)(2) of the eWpG. The information in the list is based on the publications made by the issuers in the Federal Gazette. The crypto securities list is intended to provide an uncomplicated overview of the publications associated with crypto securities.

Date of publication: 17/01/2022

BMF/BMJV: Revised draft regulation on the requirements for electronic securities (Überarbeiteter Entwurf einer Verordnung über Anforderungen an elektronische Wertpapiere – eWpRV)

Status: Draft

The joint draft regulation on the requirements for electronic securities (*Entwurf einer Verordnung über Anforderungen an elektronische Wertpapiere – eWpRV*) of the Federal Ministry of Finance (*Bundesfinanzministerium – BMF*) and the Federal Ministry of Justice (*Bundesjustizministerium – BMJV*) has been revised on the basis of the input from the first hearing. The revised version has now been published as a synopsis and accompanied by an [explanatory text](#). The draft regulation specifies the requirements for the maintenance of electronic securities registers in accordance with the Electronic Securities Act (*Gesetz über elektronische Wertpapiere – eWpG*), which entered into force on 10 June 2021. The draft was prepared on the basis of Sections 15 and 23 of the eWpG.

The eWpG enables the issuance of bonds and investment fund share certificates to dispense with the previously required securities certificate and to issue the securities instead via their entry in an electronic securities register. Electronic securities registers are either central registers maintained by the central securities depository or a custodian bank or crypto securities registers maintained by means of blockchain technology or comparable technologies. Under the eWpG, register-keeping entities

must fulfil various requirements. The revised draft includes general requirements for the establishment and maintenance of an electronic securities register, the authentication instruments to be used, the accessibility of the source code used as well as requirements for cryptographic procedures and interfaces (cf Sections 5, 11, 14, 15, 16 and 19 of the draft eWpRV).

The draft was essentially amended in the following points: (i) requirement that a change in access to investment terms and conditions of electronic share certificates must be announced in good time and in an appropriate manner, Section 7(2) of the draft eWpRV; (ii) easing of the designation of the issuer if an LEI is available, Section 8(1) no 2 of the draft eWpRV; (iii) separate definition for participants of an electronic securities register or crypto securities register for the entire scope of the legal regulation, Section 2 of the draft eWpRV; (iv) admission of the identification of the person who wishes to access the register, also by fulfilling certain requirements of the German Money Laundering Act (*Geldwäschegesetz* – GwG), Sections 10(4), 11(4) of the draft eWpRV; and (v) various clarifications on terms, retrieval of data and specification of time limits, eg Sections 18(2), 19(2) of the draft eWpRV.

Date of publication: 14/01/2022

(ii) EU

ESAs: Joint thematic repository of national financial education initiatives on digitalisation

Status: Final

The European Supervisory Authorities (ESAs) have published a joint thematic repository of national financial education initiatives on digitalisation with a specific focus on cybersecurity, scams and fraud. It consists of more than 120 initiatives across the banking, insurance, pension and investment sectors. Most initiatives are addressed to consumers in general, although some target specific groups of consumers, such as retail investors, elderly people, students, children/young people, families or other particular groups such as journalists and mass media representatives. Some of the initiatives that NCAs have launched build on the increased importance of social media and “influencers” as sources of information and promoters of investment platforms.

The thematic repository will be used to prepare a joint ESAs thematic report on financial education to be published later this year.

Date of publication: 31/01/2022

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

Status:

ESMA has updated its Q&A on the European crowdfunding service providers for business Regulation (ECSPR) by inserting six new questions in the chapter on investor protection provisions with regard to Articles 23, 24 and 27 of the ECSPR. The new questions deal with (i) the language of the key investment information sheet (KIIS) and KIIS at platform level; (ii) languages accepted by the national competent authorities; (iii) marketing of crowdfunding projects; and (iv) cross-border marketing.

Date of publication: 28/01/2022

ESAs: Public statement welcoming the ESRB Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities

Status: Final

The European Supervisory Authorities (ESAs) have published a public statement welcoming the ESRB Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities, as described below.

Date of publication: 27/01/2022

ESRB: Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities

Status: Final

The ESRB has published a recommendation for the establishment of a pan-European systemic cyber incident coordination framework (EU-SCICF). The ESRB explains that the EU-SCICF would strengthen coordination among financial (and other) authorities in the EU, as well as key actors at international level. It would complement the existing EU cyber incident response frameworks by addressing the risks to financial stability stemming from cyber incidents. Alongside the recommendation, the ESRB published a report on mitigating systemic cyber risk. The report: (i) presents a macroprudential strategy for developing the capabilities needed to mitigate the risk of financial instability in the event of a cyber-incident. It reviews the current macroprudential framework and suggests how it could be adapted to better address the risks and vulnerabilities stemming from systemic cyber risk. Furthermore, the report sets out how macroprudential authorities should improve their analytical and monitoring capabilities and discusses mitigants which could contribute to financial stability; (ii) calls for a new set of macroprudential tools, which address both cyber and financial risk stemming from cyber incidents. The ESRB states that a monitoring and analytical framework for systemic cyber risk needs to be implemented to help design and calibrate this new set of tools. For example, testing the cyber resilience of the financial system through scenario analysis can show how systemic institutions in the financial system would respond to and recover from a severe but plausible cyber incident scenario. To draw conclusions from such cyber resilience stress tests on financial stability, macroprudential authorities need to set an acceptable level of disruption to operational systems that provide critical economic functions. It is also important to increase the understanding of systemic cyber risk-related vulnerabilities and contagion channels in the financial system. To this end, systemically important nodes at financial and operational levels should be identified – including third-party providers. The ESRB and its dedicated European Systemic Cyber Group intend to explore a monitoring and analytical framework for systemic cyber risk and the required tools to address this risk in their future work.

Date of publication: 27/01/2022

ESMA: Call for evidence on the DLT Pilot Regime and review of MiFIR RTS on transparency and reporting

Status: Consultation

Deadline for the submission of comments: 04/03/2022

ESMA has published a call for evidence on the distributed ledger technology (DLT) Pilot Regime. The call for evidence seeks input from stakeholders on the use of DLT for trading and settlement and on the need for amending the RTS on regulatory reporting and transparency requirements. The Regulation on a pilot regime for market infrastructures based on DLT requires ESMA to assess whether the RTS developed under MiFIR relative to certain pre-and post-trade transparency and data reporting requirements need to be amended in order to be effectively applied to securities issued, traded and recorded on DLT. The areas covered in the call include: (i) RTS 1 (equity transparency); (ii) RTS 2 (non-equity transparency); (iii) RTS 3 (double volume cap and provision of data); and (iv) RTS on data reporting requirements – which are RTS 22 (transaction reporting), RTS 23 (reference data), RTS 24 (order record keeping), and RTS 25 (clock synchronisation). In addition, in relation to the transaction reporting exemption, the call for evidence seeks stakeholders' views on possible effective ways to allow regulators' access to information on: (a) transactions; (b) financial instruments' reference data; and (c) transparency data. The aim is to ensure more efficient, secure, and cost-effective management of the data stored on DLTs while preserving its quality, usability and comparability.

Based on the feedback received, ESMA will consider whether amendments to the RTS are necessary. If amendments are necessary, ESMA will consult on its proposal before submitting the final draft RTS to the EC for adoption. The DLT Pilot Regime is expected to apply in early 2023.

Date of publication: 04/01/2022

(iii) International**IOSCO: Consultation report on retail distribution and digitalisation****Status: Consultation****Deadline for the submission of comments: 17/03/2022**

The International Organization of Securities Commissions (IOSCO) has published a consultation paper on measures to address risks arising from digitalisation of retail marketing and distribution. IOSCO recognises that growth in digitalisation and use of social media is changing the way financial services and products are marketed and distributed. Domestic and cross-border online offerings of financial services and products provide new opportunities for firms to reach potential clients and for investors to access a wide range of financial services and products more easily. However, developments in digital offerings also give rise to regulatory and investor protection challenges, spanning the whole distribution chain. In the consultation, IOSCO analyses the developments in online marketing and distribution of financial products to retail investors in member jurisdictions, both domestically and on a cross-border basis. It presents proposed toolkits of policy and enforcement measures that would help in addressing the issues and risks associated with online marketing and distribution.

Proposed policy toolkit measures relate to: (i) firm level rules for online marketing and distribution, and online onboarding; (ii) responsibility for online marketing; (iii) capacity for surveillance and supervision of online marketing and distribution; (iv) staff qualification and/or licensing requirements for online marketing; (v) ensuring compliance with third country regulations; and (vi) clarity about legal entities using internet domains.

Proposed enforcement toolkit measures relate to: (a) proactive technology-based detection and investigatory techniques; (b) powers to promptly take action where websites are used to conduct illegal securities and derivatives activity and other powers effective in curbing online misconduct; (c) increasing efficient international cooperation and liaising with criminal authorities and other local and foreign partners; (d) promoting enhanced understanding by and collaboration with providers of electronic intermediary services with regard to digital illegal activities; and (e) additional efforts to address regulatory and supervisory arbitrage.

Date of publication: 17/01/2022

10.3 Sustainable finance

(i) EU**EBA: Final Report on Final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a of the CRR****Status: Final**

The EBA has published a final report on Final draft ITS on prudential disclosures on ESG risks in accordance with Article 449a of the CRR. For more information, please see section 1.1(h) above.

Date of publication: 24/01/2022

EU Platform on Sustainable Finance: Response to the draft Taxonomy Complementary Delegated Act**Status: Final**

The EU Platform on Sustainable Finance has published a feedback report on the draft Taxonomy Complementary Delegated Act. The report provides feedback on the draft technical screening criteria (TSC), focusing on environmental performance and usability aspects. The Platform explains that in the time available it has identified limitations with the TSC, but has not devised alternatives. The Platform's key feedback points are: (i) that the EC should ensure consistency with the Taxonomy Regulation and the Climate Delegated Act and allow sufficient time for impact assessments; (ii) the TSC for climate change mitigation in relation to gaseous fossil fuels that allow emissions above the do no significant harm (DNSH) level in the Climate Delegated Act should be removed; (iii) the TSC for new and existing nuclear energy facilities do not ensure DNSH and are therefore not Taxonomy aligned; and (iv) the disclosure arrangements do not significantly distinguish the activities from other Taxonomy aligned disclosures and the measurement and verification requirements are insufficient for monitoring performance and thus taxonomy alignment. The Platform proposes specific changes to the disclosure arrangements, should the criteria be adopted.

The Platform also notes that it will respond in the coming weeks to the EC's request to develop a proposal for an extended Taxonomy. This will set out an intermediate performance category and an unsustainable category from which there must be an urgent and just transition. The Platform explains that such an approach is necessary because the existing green Taxonomy was not intended to include every activity in the economy, in particular energy activities that must transition because emissions are currently too high or significant harm is present.

Date of publication: 24/01/2022

ECB: Opinion on a proposal for a regulation on European green bonds

Status: Draft

The ECB has published an opinion on a proposal for a regulation on European green bonds in response to a request from the European Parliament. In light of the objectives of the European Green Deal, the ECB welcomes the proposal which aims to establish a harmonised framework for European green bond standards (EuGBs). In particular, the opinion covers in more detail: (i) the voluntary nature and scope of the proposed regulation; (ii) the alignment with the Taxonomy Regulation and other EU legislation; (iii) transparency requirements; and (iv) the registration system and supervisory framework. This document is accompanied by a [technical working document](#) with specific drafting proposals for amending the regulation and an explanatory text.

Date of publication: 18/01/2022

EC: Consultation on Taxonomy Complementary Delegated Act covering certain nuclear and gas activities

Status: Consultation

The EC has announced that it is consulting with the Member States Expert Group on Sustainable Finance and the Platform on Sustainable Finance on a draft text of a Taxonomy Complementary Delegated Act, under the Taxonomy Regulation, covering certain gas and nuclear activities. The EC considers there is a role for natural gas and nuclear as a means to facilitate the transition towards a predominantly renewable-based future. Within the Taxonomy framework, this would mean classifying these energy sources under clear and tight conditions, in particular as they contribute to the transition to climate neutrality. To ensure transparency, the EC will amend the Taxonomy Disclosure Delegated Act so that investors can identify if activities include gas or nuclear activities, and to what extent, so they can make an informed choice. The Platform on Sustainable Finance and the Member States Expert Group on Sustainable Finance must be consulted on all Delegated Acts under the Taxonomy Regulation, and will have until 12 January 2022 to provide their contributions. The EC will then analyse their contributions and formally adopt the complementary Delegated Act in January 2022. It will be then sent to the co-legislators for their scrutiny.

Date of publication: 01/01/2022

11. Contacts

Financial Services Regulatory



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



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



Dr Frank Herring
Of Counsel
Tel +49 69 2648 5310
frank.herring@allenoverly.com



Lennart Dahmen
Counsel
Tel +49 69 2648 5901
lennart.dahmen@allenoverly.com



Woldemar Häring
Counsel
Tel +49 69 2648 5541
woldemar.haering@allenoverly.com



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



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



Kai Schadtler
Senior Associate
Tel +49 69 2648 5768
kai.schadtler@allenoverly.com



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



Betül Kohlhäufel
Associate
Tel +49 69 2648 5788
betuel.kohlhaeufl@allenoverly.com



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



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

Derivatives, Structure Finance and Financial Services Regulatory



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



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

Derivatives and Structured Finance, Debt Capital Markets

FOR MORE INFORMATION PLEASE CONTACT

Frankfurt

Bockenheimer Landstraße 2
60306 Frankfurt am Main
Germany

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

COPYRIGHT/DISCLAIMER

Our newsletter contains material published and copyrighted information by various authors (in particular of the: Basel Committee on Banking Supervision (BCBS), Committee on Payments and Market Infrastructures (CPMI), Council of Europe (CoE), Directorate General for Financial Stability, Financial Services and Capital Markets Union (FISMA), European Banking Authority (EBA), European Central Bank (ECB), European Commission (EC), European Parliament (EP), European Parliament's Committee on Economic and Monetary Affairs (ECON), European Securities and Markets Authority (ESMA), European Systemic Risk Board (ESRB), Federal Bank of Germany (BB), Financial Action Task Force (FATF), Financial Stability Board (FSB), German Federal Financial Supervisory Authority (BaFin), German Federal Government, German Federal Ministry for Economic Affairs and Energy (BMWi), German Ministry of Finance (BMF), German Federal Ministry of Justice and Consumer Protection (BMJV), German Parliament (BT), Joint Committee of the ESAs (JC), Single Resolution Board (SRB), and Vienna Initiative).

Our newsletter does not represent any legal advice and is provided for information purposes only. All rights reserved, all information without engagement, subject to modifications. This document may be duplicated and distributed only with the express permission of Allen & Overy LLP.

Allen & Overy LLP

Dreischeibenhaus 1, 40211 Düsseldorf, Germany | Tel +49 211 2806 7000 | Fax +49 211 2806 7800
Bockenheimer Landstraße 2, 60306 Frankfurt am Main, Germany | Tel +49 69 2648 5000 | Fax +49 69 2648 5800
Kehrwieder 12, 20457 Hamburg, Germany | Tel +49 40 82 221 20 | Fax +49 40 82 221 2200
Maximilianstraße 35, 80539 Munich, Germany | Tel +49 89 71043 3000 | Fax +49 89 71043 3800
allenoverly.com

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is open to inspection at our registered office at One Bishops Square, London E1 6AD.

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at allenoverly.com/global/global_coverage.