

Regulatory monitoring

Newsletter

August 2023





ECB in Focus

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

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

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

Some of our Recent Posts

ECB 2022 ANNUAL REPORT ON BANKING SUPERVISION - KEY TOPICS AND IMPLICATIONS FOR BANKS

22 June 2023

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

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ECB PUBLISHES SUPERVISORY PRIORITIES 2023-25

4 January 2023

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

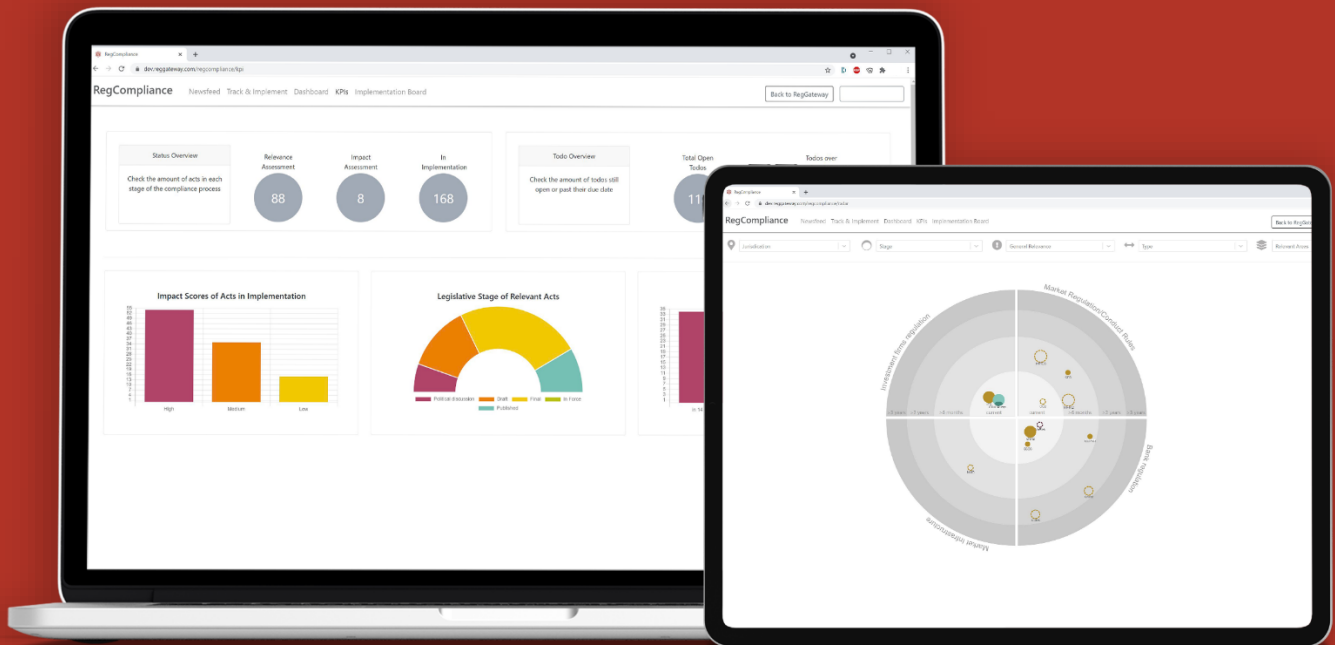
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ECB WARNS BANKS THAT FAILURE TO COMPLY WITH LEVERAGED LENDING GUIDANCE MAY RESULT IN CAPITAL CHARGES

26 October 2022

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

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) Solvency/Own funds issues

(i) EU

EBA: Update of data used for the identification of G-SIIs

Status: Final

The EBA has updated the 13 systemic importance indicators and underlying data for the 32 largest institutions in the EU whose leverage ratio exposure measure exceeds EUR 200 bn. This disclosure includes updated data items specific to the recognition of the Banking Union and of institutions that are part of the Single Resolution Mechanism. Acting as a central data hub in the disclosure process, the EBA updates this data on a yearly basis and provides user-friendly tools to aggregate it across the EU.

Date of publication: 21/08/2023

EBA: Updated timeline for the implementation of the IRB roadmap

Status: Final

The EBA has updated its roadmap for the implementation of IRB model requirements to limit compliance costs for institutions. In light of the upcoming implementation of the final Basel III standards in the European framework, the EBA considers that the implementation of the IRB repair requirements for LGD and credit conversion factor models that cover portfolios is no longer eligible for the revised advanced internal ratings based approach. As such, in accordance with the final Basel III framework, implementation of the IRB repair requirements for these models may be postponed to the date of entry into force of the future CRR 3. Before then, institutions may also choose to apply for permission to return to a less sophisticated IRB approach or for the permanent partial use of the standardised approach for those portfolios, according to Articles 149 and 150 of the CRR.

Date of publication: 07/08/2023

EBA: Supervisory handbook on the validation of rating systems under the IRB approach

Status: Final

The EBA has published its final supervisory handbook for the validation of IRB rating systems to clarify the role of the validation function as part of corporate governance. The IRB validation handbook provides guidance on the validation function, as laid out in Article 185 of the CRR. It builds on the EBA RTS and Guidelines, which are part of the IRB repair roadmap, and provides a detailed description of the areas the validation function is expected to assess. In particular, the handbook provides an overview of the validation framework and describes the elements where the validation function is expected to form an opinion, without prescribing any specific methodology. It covers both the tasks related to the model performance assessment, mirroring the CRR distinction between risk differentiation and risk quantification, as well those dealing with the modelling environment, such as data quality and model implementation assessment.

Date of publication: 07/08/2023

EBA: Follow-up report from the consultation on the discussion paper on machine learning for IRB models

Status: Final

The EBA has published a follow-up report from the consultation on the discussion paper on machine learning for internal ratings-based (IRB) models. On 4 August, the EBA published a follow-up report to its discussion paper on machine learning for IRB models. The report summarises the main conclusions from the discussion paper, as well as the interaction between prudential requirements in IRB models and two other legal frameworks that have an impact on internal credit risk models that

use machine learning (ML) techniques, the GDPR and the AI Act. The report provides a picture of the current use of ML techniques for IRB models and analyses the possible obstacles to the implementation of ML models in the IRB model space. It explains that the discussion paper was well received, with most respondents supporting the EBA's proposed principle-based recommendations, as they provided a consistent and clear understanding on how to ensure that the use of ML techniques comply with the regulatory IRB requirements. Moving forward, the EBA will be monitoring developments in this field and will amend or complement the principle-based recommendations if relevant.

Date of publication: 04/08/2023

EBA: Consultation on draft RTS on extraordinary circumstances for continuing the use of an internal model or discarding certain back-testing overshootings under Article 325az(9) CRR

Status: Consultation

Deadline for the submission of comments: 03/11/2023

The EBA has launched a consultation on draft RTS, supplementing the CRR, to identify extraordinary circumstances of market disruption, permitting competent authorities to waive certain requirements for the calculation of own funds requirements for market risk on the basis of internal models. The draft RTS establish a high-level framework for identifying a situation of extraordinary circumstances, setting out conditions that need to be met, and defining indicators that could support the identification of extraordinary circumstances. The RTS set out that only a situation of cross-border financial market stress, or a regime shift, can qualify as a situation of extraordinary circumstances, and only subject to the additional condition that this stress or regime shift impacts the validity of the results of the backtesting or the profit and loss attribution test (PLAT). Under these extraordinary circumstances, institutions may continue using their internal models for a trading desk, even if that trading desk does not meet the back-testing requirements or fails the PLAT, or they may disregard certain overshootings observed during the back-testing.

Date of publication: 03/08/2023

Commission Delegated Regulation (EU) 2023/1578 supplementing the CRR with regard to RTS specifying the requirements for the internal methodology or external sources used under the internal default risk model for estimating default probabilities and losses given default

Status: Published in the OJ

Date of entry into force: 21/08/2023

Commission Delegated Regulation (EU) 2023/1578 supplementing the CRR, with regard to RTS specifying the requirements for the internal methodology or external sources used under the internal default risk model for estimating default probabilities and losses given default has been published in the OJ. It specifies: (i) the requirements for estimating PDs and LGDs using an institution's internal methodology or external sources. Institutions using the IMA to compute own funds requirements for market risk are required to compute additional own funds requirement using an internal default risk model for their positions in traded debt and equity instruments included in IMA trading desks; (ii) the requirements to be met for estimating PDs and LGDs under the default risk model. An internal methodology used to calculate PDs and LGDs under the default risk model should meet all requirements applicable to the corresponding internal ratings-based (IRB) approach. In addition, they include the possibility for institutions to produce conservative 'fallback' PD and LGD values to be used only where needed; and (iii) the requirements that external sources are to fulfil for their use under the default risk model, ensuring that the methodology employed to derive the PDs and LGDs from these sources is conceptually sound.

Date of publication: 01/08/2023

Commission Delegated Regulation (EU) 2023/1577 supplementing the CRR with regard to RTS on the calculation of the own funds requirements for market risk for non-trading book positions subject to FX risk or commodity risk and the treatment of those positions for the purposes of the regulatory back-testing requirements and the profit and loss attribution requirement under the alternative internal model approach

Status: Published in the OJ

Date of entry into force: 21/08/2023

Commission Delegated Regulation (EU) 2023/1577 supplementing the CRR with regard to RTS on the calculation of the own funds requirements for market risk for non-trading book positions subject to foreign exchange (FX) risk or commodity risk and the treatment of those positions for the purposes of the regulatory back-testing requirements and the profit and loss attribution requirement under the alternative internal model approach (IMA), has been published in the OJ. The RTS specify how institutions calculate: (i) the own funds requirements for non-trading book positions that are subject to FX risk or commodity risk in accordance with the alternative standardised approach and the IMA; and (ii) the changes in hypothetical profit and loss, actual profit and loss and risk theoretical profit and loss for the purpose of the back-testing and profit and loss attribution requirements.

Date of publication: 01/08/2023

EBA: Draft Guidelines on the specification and disclosure of systemic importance indicators

Status: Consultation

Deadline for the submission of comments: 01/09/2023

The EBA has launched a consultation on amendments to its Guidelines on the specification and disclosure of systemic importance indicators. The EBA methodology for identifying global systemically important institutions (G-SIIs) closely follows the approach of the BCBS for the identification of global systemically important banks (G-SIBs), as they are referred to in BCBS terminology. To ensure consistency between the internationally agreed standards and the EU regulatory framework, the annex of the EBA Guidelines has been amended to replicate the yearly updated Basel reporting template. In addition, the Guidelines introduce further clarifications on which relevant cross-jurisdictional indicators concerning SRM jurisdictions should be used for identification and, hence, reported and disclosed, without being considered “memorandum” or “ancillary” items or indicators for the EU.

Date of publication: 01/08/2023

(b) Securitisation

(i) International

FSB: Evaluation on effects of G20 reforms on securitisation – summary terms of reference

Status: Consultation

Deadline for the submission of comments: 22/09/2023

The FSB has launched a request for feedback on its report evaluating the effects of G20 reforms on securitisation regarding the summary terms of reference. This report provides details about the objectives, scope and process of the FSB’s evaluation of securitisation reforms. The evaluation aims to: (i) assess the extent to which the G20 reforms on securitisation implemented to date have achieved their financial stability objectives; and (ii) examine broader effects (positive or negative) of the reforms on the functioning and structure of the securitisation markets and the implications for financing to the real economy.

The FSB will incorporate the feedback from stakeholders into a note with preliminary findings, which will be issued for public consultation in early 2024. The final evaluation report will be published around mid-2024.

Date of publication: 30/08/2023

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

(i) EU

EBA: Decision on ad-hoc collection by NCAs to the EBA of institutions' IRRBB data and amendment of the Annex to EUCLID

Status: Final

Date of entry into force: 03/08/2023

The EBA has published its Decision (dated 3 August) to run an ad-hoc data collection of institutions' IRRBB data. The EBA explains that the data collection will provide competent authorities and the EBA with timely and necessary data and tools to monitor risks arising from interest rate changes and the implementation of the IRRBB scrutiny plan. The ad-hoc collection will only apply to those institutions that are already providing IRRBB data in the context of the quantitative impact study exercise and include the same templates that these institutions will have to report once the final ITS on IRRBB reporting starts applying. The submission reference date for the ad-hoc collection is set as 31 December, with NCAs required to submit institutions' data to the EBA by 31 March 2024. In addition, the Decision also amends Decision EBA/DC/2020/335 of 5 June 2022 concerning the EUCLID to reflect the ad-hoc data collection in the data reporting obligations listed in the Annex to that decision.

Date of publication: 07/08/2023

(d) Remuneration

(i) Germany

BaFin: General Administrative Act on remuneration reports for investment firms (*Allgemeinverfügung zu Vergütungsanzeigen für Wertpapierinstitute*)

Status: Final

BaFin has published a General Administrative Act on remuneration reports for investment firms. It aims to implement thoroughly revised EBA Guidelines substantiating the notification requirements introduced by the IFD. These include the following Guidelines applicable to medium and large investment firms as of 31 December 2022: (i) [Guidelines](#) on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under CRD IV; (ii) [Guidelines](#) on the benchmarking exercises on remuneration practices and the gender pay gap under the IFD; and (iii) [Guidelines](#) on the data collection exercises regarding high earners under CRD IV and the IFD.

The NCAs are required to collate and report the information required in these Guidelines to the EBA by 31 October 2023. While the new requirements introduced by these Guidelines are eventually intended to be incorporated into the Investment Firm Act (*Wertpapierinstitutsgesetz – WpIG*) and future Investment Firm Reporting Regulation (*WpI-Anzeigenverordnung – WpI-AnzV*), due to the limited time left until the reporting deadline BaFin aims to first introduce them by way of a General Administrative Act.

Date of publication: 02/08/2023

(e) Financial conglomerates

(i) EU

ECB: Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions

Status: Consultation

Deadline for the submission of comments: 06/10/2023

The ECB has launched a consultation on a draft Guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions. The draft Guide aims to provide consistency, coherence, effectiveness and transparency regarding

the approach the ECB will take where it has been appointed coordinator of a financial conglomerate. In particular, the Guide aims to help financial conglomerates in setting up the necessary internal processes for reporting significant risk concentrations and intragroup transactions using the templates provided for in Commission Implementing Regulation (EU) 2022/2454.

Date of publication: 21/08/2023

(f) Supervisory reporting

(i) EU

EBA: Guidance note compiling the IMF financial soundness indicators for ‘deposit-takers’ using the ITS on supervisory reporting

Status: Final

The EBA has published an updated Guidance on how to compile and report to the International Monetary Fund (IMF) the Financial Soundness Indicators (FSI) based on EBA data. FSIs provide insight into the financial health and soundness of countries’ financial institutions as well as corporate and household sectors, thus supporting the economic and financial stability analysis. This update takes stock of the additional experience gathered by the EBA with available data after the publication of the latest IMF FSI Guide in 2019. It provides a mapping of IMF FSI indicators to EBA supervisory reporting data, ensuring a harmonised methodology across the EU when compiling and reporting FSIs to the IMF. This updated mapping includes also additional metadata recommendations, which EU national authorities should consider when reporting country-level FSI to the IMF.

Date of publication: 02/08/2023

1.2 Recovery and resolution

(i) EU

EBA: European Resolution Examination Programme (EREP) 2023

Status: Final

The EBA has published a report monitoring the progress made by resolution authorities in embedding the key topics identified in the EBA’s 2022 European Resolution Examination Programme (EREP) into their respective priorities and resolution colleges in 2022. The EBA’s findings include that overall, resolution authorities incorporated the work priorities set by the EBA, with MREL monitoring being a key focus. As of December 2022, resolution authorities were, overall, confident that most banks would reach their final requirements within the required deadline. 2022 was generally the first year when the management information system for valuation was considered a high-priority area, with most activities focused on initial preparatory tasks. While resolution authorities expect that most banks will have adequate capabilities in place by 2024, this may require specific IT system improvements and identification and/or recruitment of staff with appropriate experience. The EREP priorities set for 2024 mainly confirmed the areas of focus set for 2023 although with updated specific elements and extension of the operationalisation of the bail-in tool to cover the operationalisation of the resolution strategy more generally.

Date of publication: 03/08/2023

2. Investment firms regulation

(i) EU

Commission Delegated Regulation (EU) 2023/1668 supplementing the IFD with regard to RTS specifying the measurement of risks or elements of risks not covered or not sufficiently covered by the own funds requirements set out in Parts Three and Four of the IFR and the indicative qualitative metrics for the amounts of additional own funds

Status: Published in the OJ

Date of application: 20/09/2023

The Commission Delegated Regulation (EU) 2023/1668 supplementing the IFD with regard to RTS specifying the measurement of risks or elements of risks not covered or not sufficiently covered by the own funds requirements set out in Parts Three and Four of the IFR and the indicative qualitative metrics for the amounts of additional own funds has been published in the OJ. It aims to provide a comprehensive methodology described to be proportionate to the nature, scope and complexity of the activities performed by investment firms. The Delegated Regulation intended to identify, assess and quantify material risks that investment firms are exposed to or pose to their counterparties or to the wider market in which they operate. Based on this methodology, competent authorities must ensure that investment firms hold adequate own funds to cover such material risks, including those risks that are explicitly excluded from the own funds requirements set out in Part Three (Capital Requirements) or Part Four (Concentration Risk) of the IFR.

Date of publication: 31/08/2023

Commission Delegated Regulation (EU) 2023/1651 supplementing the IFD with regard to RTS for the specific liquidity measurement of investment firms under Article 42(6) IFD

Status: Published in the OJ

Date of application: 12/09/2023

The Commission Delegated Regulation (EU) 2023/1651 supplementing the IFD with regard to RTS for the specific liquidity measurement of investment firms under Article 42(6) IFD has been published in the OJ. Article 42 of the IFD gives competent authorities the power to impose additional Pillar 2 liquidity requirements on an individual investment firm, where that firm is exposed to liquidity risk or elements of liquidity risk that are material. These RTS specify in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities how the liquidity risk and elements of liquidity risk should be measured.

Date of publication: 23/08/2023

3. Market regulation/Conduct rules

3.1 General

(i) Germany

BMJ/BMF: Government draft for the Financing for the Future Act (*Regierungsentwurf des Zukunftsfinanzierungsgesetzes*)

Status: Draft

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

Date of publication: 16/08/2023

(ii) EU

ESMA: Report on trends, risks and vulnerabilities

Status: Final

ESMA has published its latest version of the report on trends, risks and vulnerabilities. The report sets ESMA's perception that financial markets are adapting to the new economic environment of durably higher inflation and interest rates while risks remain high in ESMA's remit. In particular, the downside risks have increased while there remains a high degree of market and investor nervousness. The publication underlines the finding that markets are set to remain very sensitive to potential deteriorations in economic fundamentals or risks in the financial sector.

Date of publication: 31/08/2023

3.2 MiFID/MiFIR

(i) EU

ESMA: Official translations of Guidelines on MiFID II product governance requirements

Status: Published

Date of application: 03/10/2023

ESMA has published the official translations of the MiFID II Guidelines on product governance requirements. The aim of the Guidelines is to strengthen investor protection and ensure that firms act in their clients' best interests during all stages of a product's life cycle. In particular, it deals with: (a) the specification of any sustainability-related objectives a product is compatible with; (b) the practice of identifying a target market per cluster of products instead of per individual product ("clustering approach"); (c) the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and (d) the periodic review of products, including the application of the proportionality principle.

Date of publication: 03/08/2023

ESMA: Sustainable finance implementation timeline

Status: Final

ESMA has updated its sustainable finance implementation timeline for the SFDR, TR, CSRD, MiFID, IDD, UCITS and AIFMD. The timeline covers a number of implementation dates for measures under this legislation from 2021 until 2028.

Date of publication: 03/08/2023



4. Market infrastructure

4.1 EMIR

(i) EU

Commission Delegated Regulation (EU) 2023/1626 on amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement

Status: Published in the OJ

Date of entry into force: 31/08/2023

Date of application: 02/09/2023

The Commission Delegated Regulation (EU) 2023/1626 on amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement has been published in the OJ. The Regulation amends Article 19 of Delegated Regulation 2018/1229, by removing the specific collection and distribution process by CCPs for cash penalties and places CSDs in charge of the process to collect from and distribute to their relevant participants, pursuant to Articles 16, 17 and 18 of Delegated Regulation (EU) 2018/1229. It is believed that this amendment will remove the operational risks, technical complexities and costs to the process of collecting and distributing cash penalties for settlement fails relating to cleared transactions.

Date of publication: 11/08/2023

(ii) International

CPMI/IOSCO: Report on current CCP practices to address non-default losses

Status: Final

The CPMI and IOSCO have published a report on CCP practices to address non-default losses (NDLs) to highlight the need for CCPs to have adequate resources and appropriate tools to address NDLs. This report does not create additional standards for CCPs or other financial market infrastructures (FMIs), nor does it provide guidance on existing standards. It is intended to facilitate the sharing and understanding of these practices and to improve CCPs' plans for managing NDLs. It builds on the CPMI and IOSCO's August 2022 discussion paper to provide a more thorough description of current practices that CCPs employ to address NDLs. The CPMI and IOSCO intend to undertake additional work on NDLs across all FMI types, including an assessment of the implementation of the Principles for Financial Market Infrastructures and guidance on general business risks. Further engagement with industry stakeholders will also be undertaken to inform a public consultation in the near term on further guidance or recommendations with respect to NDLs.

Date of publication: 23/08/2023

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

(i) EU

Commission Delegated Regulation (EU) 2023/1616 supplementing the CCPRRR with regard to RTS specifying the circumstances in which a person is deemed to be independent from the resolution authority and from the CCP, the methodology for assessing the value of assets and liabilities of a CCP, the separation of the valuations, the methodology for calculating the buffer for additional losses to be included in provisional valuations, and the methodology for carrying out the valuation for the application of the ‘no creditor worse off’ principle

Status: Published in the OJ

Date of entry into force: 29/08/2023

The Delegated Regulation (EU) 2023/1616 on RTS that supplement the CCPRR has been published in the OJ. It contains RTS that specify the circumstances in which a person is deemed to be independent from the resolution authority and from the central counterparty, the methodology for assessing the value of assets and liabilities of a central counterparty, the separation of the valuations, the methodology for calculating the buffer for additional losses to be included in provisional valuations, and the methodology for carrying out the valuation for the application of the ‘no creditor worse off’ principle.

Date of publication: 09/08/2023

Commission Delegated Regulation (EU) 2023/1615 supplementing the CCPRRR with regard to RTS specifying the conditions under which compensation, cash equivalent of such compensation or any proceeds that are due pursuant to Article 63(1) CCPRRR are to be passed on to clients and indirect clients and the conditions under which passing on is to be considered proportionate

Status: Published in the OJ

Date of entry into force: 29/08/2023

The Delegated Regulation (EU) 2023/1615 on RTS that supplement the CCPRRR has been published in the OJ. It contains RTS that specify the conditions under which compensation, cash equivalent of such compensation or any proceeds that are due pursuant to Article 63(1) CCPRRR are to be passed on to clients and indirect clients and the conditions under which passing on is to be considered proportionate.

Date of publication: 09/08/2023

5. Anti-money laundering

(i) Germany

BaFin: Circular 07/2023 regarding high-risk countries (*Rundschreiben 07/2023 (GW) zu Hochrisikostaaten*)

Status: Final

BaFin has published Circular 07/2023 to provide information about third countries with strategic deficiencies in their anti-money laundering and counter-terrorist financing systems that pose significant risks to the international financial system (high-risk countries).

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

Date of publication: 09/08/2023

(ii) EU

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 to add Cameroon and Vietnam to the list of high-risk third countries

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation amending Delegated Regulation (EU) 2016/1675 amending the list of high-risk third countries with strategic AML and CTF deficiencies produced under MLD4. The list of countries is amended periodically to take account of information from international organisations and standard setters in the field of AML/CTF, such as the FATF. The Delegated Regulation will add Cameroon and Vietnam to the table of third countries that have been identified as having strategic AML and CTF deficiencies in point I of the Annex to Delegated Regulation (EU) 2016/1675.

The Delegated Regulation will be submitted to the Council of the EU and the EP for scrutiny. If neither objects, it will enter into force 20 days after it is published in the OJ.

Date of publication: 18/08/2023

EBA: Report on the functioning of AML/CTF colleges in 2022

Status: Final

The EBA has published its third report on the functioning of AML/CFT colleges, which sets out the EBA's findings and observations from its monitoring of AML/CFT colleges in 2022. The report found that competent authorities had taken important steps to improve the effectiveness of AML/CFT colleges, although many have yet to reach full maturity. In particular, the EBA observed that: (i) more than 50 AML/CFT colleges were still not operating, and members' ability to share information in some colleges was hampered by their failure to sign the requisite cooperation agreements; (ii) the number of third country observers remained very low, potentially limiting what supervisors know about group-wide risks; (iii) there was limited awareness among some competent authority staff of the benefits of sharing information in the colleges' setting; and (iv) several lead supervisors had not adjusted the nature and frequency of meetings based on the ML/TF risks to which the financial institution had been exposed, meaning that some high-risk colleges met infrequently, while colleges set up in relation to lower risk institutions met at least biannually.

Based on these findings, the EBA has decided that the action points adopted in 2022 remain relevant for the 2023-2024 period and that lead supervisors should address them without delay to make the best use of the AML/CFT colleges framework. The report also includes examples of best practice, which should assist competent authorities in this regard.

Date of publication: 10/08/2023

6. Payments

6.1 Payment accounts

(i) EU

EBA: Report on its mystery shopping exercise into personal loans and payment accounts

Status: Final

The EBA has published a report on its mystery shopping exercise into personal loans and payment accounts. The content and scope of this mystery shopping exercise was informed by the findings of the separate thematic review on the transparency and level of fees and charges of retail banking products that the EBA published in December 2022. The exercise focused on the pre-contractual phase of obtaining personal loans and, in some jurisdictions also payment accounts, including those with basic features. The report found that the exercise demonstrated the added value that mystery shopping can bring as a complementary tool to NCA's conventional supervisory actions and yields information and insight into the conduct of financial institutions that is not readily available through other means. Mystery shopping allows NCAs to obtain greater insight into the conduct of financial institutions, which in turn allows them to take corrective actions to better comply with applicable requirements, thus eventually enhancing the protection of consumers. For example, within the small sample of financial institutions covered by the mystery shopping exercise, the EBA found that the conduct of some of them is inadequate and needs to improve. Some financial institutions, for instance, did not provide the required pre-contractual information to consumers, and automatically increased the total amount of the credit to include the bank fees without collecting consumer's explicit consent. The report concludes with a number of actions for NCAs to consider.

Date of publication: 08/08/2023

7. Institutional supervisory framework

(i) Eurozone

ECB/SRB: Memorandum of Understanding on the exchange of certain confidential statistical information between the ECB and SRB

Status: Final

The ECB and SRB have signed a Memorandum of Understanding (MoU) on the exchange of certain confidential statistical information between the ECB and SRB in order to improve analysis related to bank resolution. The SRB explains that the MoU is an important milestone in the cooperation between the SRB and ECB, as it replaces the existing ad-hoc statistical data exchange and it provides for a general framework agreement for sharing confidential statistical data collected by the Eurosystem in its role as euro area monetary authority.

Date of publication: 04/08/2023

(ii) International

FSB: Annual financial report

Status: Final

The FSB has published its annual financial report. This report contains the audited financial statements of the FSB for the 12-month period from 1 April 2022 to 31 March 2023. It also provides details on the FSB governance arrangements and its transparency and accountability mechanisms. A detailed explanation of the activities undertaken to implement the mandate and tasks of the FSB is provided in the FSB's annual report, which is a separate report that will be published in November.

Date of publication: 30/08/2023

8. Investment funds

8.1 Product regulation

(a) AIF

(i) EU

ESMA: Sustainable finance implementation timeline

Status: Final

ESMA has updated its sustainable finance implementation timeline for the SFDR, TR, CSRD, MiFID, IDD, UCITS and AIFMD. For more information, please see section 3.2 above.

Date of publication: 03/08/2023

(b) UCITS

(i) EU

ESMA: Sustainable finance implementation timeline

Status: Final

ESMA has updated its sustainable finance implementation timeline for the SFDR, TR, CSRD, MiFID, IDD, UCITS and AIFMD. For more information, please see section 3.2 above.

Date of publication: 03/08/2023

8.2 Prudential regulation

(a) Outsourcing

(i) Germany

BaFin: Note on outsourcing reporting regarding the portfolio management according to the Outsourcing Reporting Regulation under the German Investment Code (*Mitteilung zu Auslagerungsanzeigen zur Portfolioverwaltung nach KAGB-AuslAnzV*)

Status: Final

BaFin has published a note on outsourcing reporting regarding the portfolio management according to the Outsourcing Reporting Regulation under the German Investment Code (*Kapitalanlagegesetzbuch – KAGB*) (*Verordnung über die Anzeigen und die Vorlage von Unterlagen nach § 36 des Kapitalanlagegesetzbuchs – KAGB-AuslAnzV*). It announces that a streamlined reporting procedure will be introduced from 1 October 2023. From that date, it will no longer be necessary to report separately on every single portfolio management outsourcing for a fund or fund segment. Instead, it will suffice to submit the outsourcing notifications in relation to the respective outsourcing company. For this purpose, however, all funds affected at the time of reporting, i.e. including the portfolio, and also the (potential) sub-outsourcing must be listed in the notification relating to the outsourcing company.

Date of publication: 24/08/2023

(b) Compliance

(i) International

FSB: Thematic peer review on MMF reforms – summary terms of reference

Status: Consultation

Deadline for the submission of comments: 08/09/2023

The FSB has published a request for feedback and summary terms of reference as part of its thematic peer review of MMF reforms. The objective of the review is to take stock of the progress made by FSB member jurisdictions in assessing and addressing MMF vulnerabilities in their domestic markets. The summary terms of reference provides more detail on the objectives, scope, and process for the review. The FSB is specifically inviting feedback from stakeholders on: (i) how MMF vulnerabilities differ across jurisdictions depending on MMF structure, investor composition, asset profile, or other factors; (ii) the progress made by FSB member jurisdictions in addressing MMF vulnerabilities; and (iii) operational and other challenges faced by the industry in implementing MMF reforms.

The FSB expects to publish the peer review report by the end of 2023.

Date of publication: 16/08/2023

9. Special topics

9.1 FinTech/Digital finance

(i) EU

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

Status: Final

ESMA has updated its Q&As relating to the EU Crowdfunding Regulation, adding new Q&As on: (i) the starting date of the 12-month period referred to in Article 1(2); (ii) applicability of the threshold in Article 1(2)(c); (iii) the activities that a crowdfunding service provider can engage in; (iv) what changes to the information supplied in an authorisation application warrant notification to the relevant competent authority; and (v) whether a legal person can be appointed to be responsible for the management of a crowdfunding service provider within the meaning of Article 12(2).

Date of publication: 03/08/2023

9.2 AI

(i) EU

EBA: Follow-up report from the consultation on the discussion paper on machine learning for IRB models

Status: Final

The EBA has published a follow-up report from the consultation on the discussion paper on machine learning for internal ratings-based (IRB) models. For more information, please see section 1.1(a) above.

Date of publication: 04/08/2023

9.3 Sustainable finance

(i) EU

ESMA: Sustainable finance implementation timeline

Status: Final

ESMA has updated its sustainable finance implementation timeline for the SFDR, TR, CSRD, MiFID, IDD, UCITS and AIFMD. For more information, please see section 3.2 above.

Date of publication: 03/08/2023

EC: Commission Delegated Regulation (EU) .../... supplementing the Accounting Directive as regards sustainability reporting standards

Status: Adopted by the EC

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

of standards. The CSRD requires the EC to adopt by June 2024: sector-specific standards, proportionate standards for listed SMEs, and standards for non-EU companies.

The EP and Council will now formally scrutinise the Delegated Regulation. Should they not reject it, the Delegated Regulation shall enter into force three days after it is published in the OJ. It shall apply from 1 January 2024 to the undertakings that were already subject to the non-financial reporting requirements introduced by the Non-Financial Reporting Directive. It will be phased-in for other categories of undertakings.

Date of publication: 31/07/2023



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