

Regulatory monitoring

Newsletter

November 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).

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

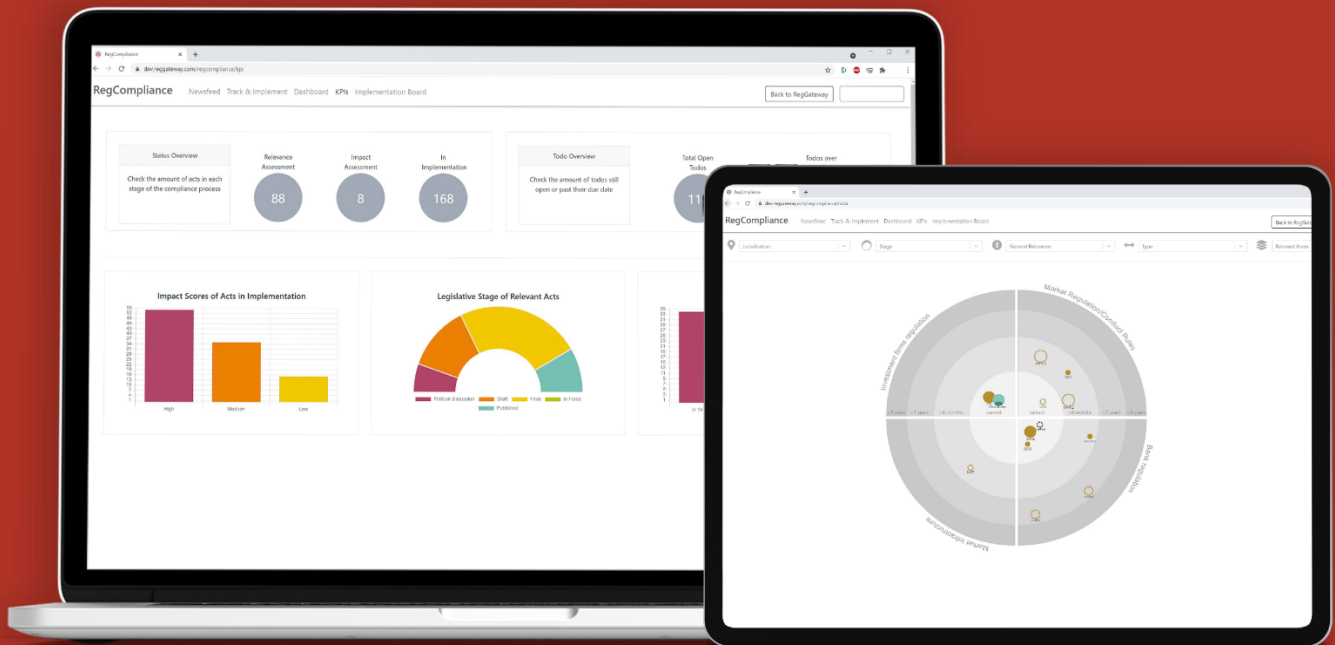
26 October 2022

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

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

ESRB: Speech on first general warning, one year on

Status: Final

The ESRB has published a speech by Christine Lagarde, President of the ECB and Chair of the ESRB, on its first general warning about financial stability risks that it published in September last year. The ESRB considers that the general warning has indeed proved impactful over the past year and that it has worked towards reducing policymakers' "inaction bias" with regard to the implementation of macroprudential policy. The ESRB's view remains that all relevant institutions will need to continue to take action to prevent the risks identified in its warning that have not yet materialised from doing so over the medium term. The ESRB expects that bank profitability will be adversely affected by the rise in funding costs, reflecting higher policy rates, and by much lower lending volumes. And the enduring combination of low growth and higher debt servicing costs will continue to strain vulnerable households and firms, which could see non-performing loans rising. The ESRB considers that the list of vulnerable nodes in the financial system remains long – for example, money market funds and investment funds, notably those investing in illiquid assets. And channels of contagion could still re-emerge. In particular, the margin policies of CCP clearing houses could amplify stress in the system. EU banks' holdings of fixed income securities could be marked down quite significantly, should they need to be sold. The ESRB will therefore continue to monitor developments carefully.

Date of publication: 16/11/2023

(b) Solvency/Own funds issues

(i) Germany

BaFin: General Administrative Act on the reciprocal application of a Norwegian systemic risk capital buffer (*Allgemeinverfügung zur reziproken Anwendung eines in Norwegen angeordneten Kapitalpuffers für systemische Risiken*)

Status: Final

BaFin has published a General Administrative Act on the reciprocal application of a Norwegian systemic risk buffer pursuant to Section 10e(9) of the German Banking Act (Kreditwesengesetz – KWG), recognising this capital buffer. They announced that they will only apply this buffer to German institutes with material exposure in Norway.

Date of publication: 27/11/2023

(ii) EU

EBA: Opinion on measures in accordance with Articles 131 and 133 of the CRD

Status: Final

The EBA has published an Opinion addressed to the EC, following the notification by the Ministry of Business, Industry, and Financial Affairs of Denmark to apply Article 133 of the CRD to activate a new systemic risk buffer (SyRB). The proposed measure introduces a systemic risk buffer rate of 7% for a subset of exposure categories located in Denmark to increase banks' ability to absorb unexpected losses from exposures to real estate companies. The measure applies to all credit institutions authorised in Denmark and to exposures to non-financial corporations operating in real estate activities and in construction –

development of building projects activities. It excludes exposures to social housing associations and housing cooperative associations. The intended date of application of the measure is 30 June 2024.

In the Opinion, the EBA acknowledges the macroprudential risk concerns raised by the Ministry of Business, Industry and Financial Affairs and welcomes the proposed macroprudential measure that considers risks to the debt servicing capacity of real estate companies. It noted that the identification of exposures based on NACE Rev.2 codes could increase the risk that the identified subsets lead to a systemic risk buffer application with greater granularity and complexity. In addition, the EBA highlighted that the calibration of macroprudential measures should be clearly linked to the systemic risk identified to ensure that macroprudential measures are effective and proportionate to mitigate risks.

Date of publication: 30/11/2023

EBA: Consultation on draft RTS on the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors referred to in Article 325bc under Article 325az(8)(a) of the CRR

Status: Consultation

Deadline for the submission of comments: 29/02/2024

The EBA has launched a consultation on draft RTS on the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors under the Fundamental Review of the Trading Book (FRTB) rules referred to in Article 325bc under Article 325az(8)(a) of the CRR. These RTS are part of the Phase 4 deliverables of the EBA roadmap for the new market and counterparty credit risk approaches. These RTS follow the CRR differentiation between material extensions and changes, to be approved by competent authorities, and non-material extensions and changes, to be notified to competent authorities. The RTS further divide the latter category into two sub-categories: notified extensions and changes requiring additional information and other extensions and changes.

For the categorisation of model extensions and changes to the relevant categories/sub-categories, the EBA is proposing a combination of qualitative and quantitative conditions. In particular, the quantitative conditions aim at assessing the effect of the extension or change on the IMA own funds requirements and on each component of the FRTB IMA (Expected Shortfall, Stress Scenario Risk Measure and Default Risk Charge), before and after the planned extension or change. In addition, for changes to the institution's choice of the subset of modellable risk factors, the effect of the change on the ratio PESTRC/PEStFC is also assessed.

Date of publication: 29/11/2023

EBA: Final report on draft RTS on the assessment methodology under which competent authorities verify an institution's compliance with the internal model approach as per Article 325az(8) CRR II

Status: Final

The EBA has published a final report on draft RTS on the assessment methodology under which competent authorities verify an institution's compliance with the internal model approach as per Article 325az(8) of the CRR II under the Fundamental Review of the Trading Book (FRTB) rules. These RTS are part of the phase 4 deliverables of the EBA roadmap on market risk and counterparty credit risk approaches. They represent a significant milestone in the implementation of the FRTB internal models in the EU. One of the prerequisites for an institution to use the new internal model approach (IMA) for calculating its own funds requirements for market risk is the approval from its competent authority. To obtain such an approval, the institution is subject to a thorough and comprehensive assessment of its internal model by the competent authority to ensure it complies with the relevant regulatory provisions.

The draft RTS aim to set out a framework for competent authorities to assess those requirements. They are divided into three main chapters: (i) governance; (ii) the internal risk-measurement model covering for the expected shortfall and the stress scenario risk measure; and (iii) the internal default risk model. The RTS include some compulsory assessment techniques that the competent authorities must apply, as well as some optional techniques that may be applicable depending on the situation of the institution. These RTS are part of the phase 4 deliverables of the EBA roadmap for the new market and counterparty credit risk approaches.

Date of publication: 21/11/2023

ESAs: Final report on draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) of the CRR Regulation

Status: Draft

The ESAs have published a final report on two amended draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of credit assessments by the External Credit Assessment Institutions (ECAIs) under Article 136(1) and (3) of the CRR Regulation. The amendments reflect the outcome of a monitoring exercise on the adequacy of existing mappings, and the deregistration of three credit rating agencies (CRAs). In the amended ITS the ESAs are proposing to change the credit quality step (CQS) allocation for four ECAIs, and to introduce new or amended credit rating scales for seven ECAIs. Further, the amended ITS no longer contain mapping tables for the three ECAIs, whose licenses have been revoked since the previous amendment. The ESAs have published individual draft mapping reports illustrating how the methodology was applied to produce the amended mappings in line with the CRR mandate.

The ITS will be submitted to the EC for endorsement, following which they will be published in the OJ. They will apply 20 days after their publication in the OJ.

Date of publication: 13/11/2023

(iii) International

FSB: 2023 list of global systemically important banks (G-SIBs)

Status: Final

The FSB has published a list of global systemically important banks (G-SIBs) for 2023, using end-2022 data and applying the assessment methodology designed by the BCBS. FSB member authorities apply the following requirements to G-SIBs: (i) higher capital buffer: The G-SIBs are allocated to buckets corresponding to higher capital buffers that they are required to hold by national authorities in accordance with international standards; (ii) Total Loss-Absorbing Capacity (TLAC): G-SIBs are required to meet the TLAC standard, alongside the regulatory capital requirements set out in the Basel III framework; (iii) resolvability: These requirements include group-wide resolution planning and regular resolvability assessments. The resolvability of each G-SIB is reviewed in the FSB Resolvability Assessment Process (RAP) by senior regulators within the firms' Crisis Management Groups; and (iv) higher supervisory expectations: These include supervisory expectations for risk management functions, risk data aggregation capabilities, risk governance and internal controls.

Date of publication: 27/11/2023

(c) Securitisation

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in STS securitisations

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in simple, transparent and standardised (STS) securitisations. Homogeneity is one of the key simplicity requirements enabling originators and investors to properly assess the underlying risks while facilitating investors' due diligence. The draft amends the original RTS on homogeneity for non-ABCP and ABCP securitisation. While extending the scope to include on-balance-sheet securitisations, the draft also establishes the same conditions for the homogeneity of the assets for all types of securitisations. They carry over a significant part of the provisions on homogeneity set out in the previous RTS, with some modifications.

Date of publication: 07/11/2023

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

(i) Germany

BRat: Opinion on the draft law promoting secondary credit markets (*Stellungnahme zum Kreditweitmarktförderungsgesetz*)

Status: Draft

Following the [government draft](#) by the German government on 6 November, the Bundesrat has published an opinion on the draft law promoting secondary credit markets and implementing Directive (EU) 2021/2167 on Credit Servicers and Credit Purchasers (*Gesetz zur Förderung geordneter Kreditweitmärkte und zur Umsetzung der Richtlinie (EU) 2021/2167 über Kreditdienstleister und Kreditkäufer sowie zur Änderung weiterer finanzmarktrechtlicher Bestimmungen – Kreditweitmarktförderungsgesetz*). The Directive is intended to strengthen the European market for non-performing loans (NPL) sales and the options for action for banks, as well as to protect consumers and other borrowers and harmonise them at European level. Ultimately, this serves to deepen the banking and capital markets union and to reduce risks from NPLs for the stability of the economic system. This law aims to implement the Directive into German law. It is important to the government to implement the requirements with minimal bureaucracy and with as few burdens as possible, especially for small and medium-sized companies, while optimally guaranteeing consumer protection.

Date of publication: 24/11/2023

BaFin: Extension to the website monitoring FAQ on DORA (*Erweiterung der BaFin-Info-Seite zu DORA*)

Status: Final

BaFin has thoroughly extended its website compiling and monitoring FAQ on the Digital Operational Resilience Act (DORA). This Regulation aims to harmonise rules on cybersecurity, information and communications technology (ICT) risks and digital operational resilience across the financial sector, thus contributing significantly to strengthening the European financial market against cyber risks and ICT incidents. The website includes an overview of DORA as well as updates on the current state of consultations conducted by the ESAs relating to DORA. In particular, the website: (i) lists the criteria for an ICT; (ii) explains why the supervision of critical ICT services by BaFin does not replace their supervision by financial companies; and (iii) sets out when an ICT issue needs to be reported.

Date of publication: 21/11/2023

(ii) EU

EC: Consultation on two draft Delegated Regulations under DORA

Status: Consultation

Deadline for the submission of comments: 14/12/2023

The EC has launched a consultation on two draft Delegated Regulations supplementing DORA by: (i) specifying the criteria for the designation of ICT third-party service providers as critical for financial entities (CTPPs) – to address potential systemic and concentration risks posed by the financial sectors' reliance on a small number of ICT third-party service providers, DORA establishes an EU oversight framework for CTPPs. As Lead Overseers, each of the ESAs will have the power to monitor on a pan-European scale the activity of CTPPs in the context of their ICT services to the financial sector; and (ii) determining the amount of the oversight fees to be charged by the Lead Overseer to CTPPs and the way in which those fees are to be paid – to ensure that Lead Overseers have the necessary resources to effectively carry on the oversight tasks under DORA.

The EC intends to adopt the Delegated Regulations in Q2 2024. It is mandated to adopt the delegated acts by 17 July 2024.

Date of publication: 16/11/2023

EBA: Speech on DORA and operational resilience

Status: Final

The EBA has published a speech by José Manuel Campa, EBA Chair, on operational resilience in the EU financial services sector. Mr Campa begins by sharing some observations on digitalisation trends across the EU. These include that digitalisation is deepening interconnections and dependencies within the EU financial sector and with third-party infrastructure and ICT providers. Further, the growing reliance on ICT providers can potentially create risks to financial stability. In relation to the ESAs' preparatory work for DORA, they have conducted a high-level exercise to trace the landscape of ICT providers in the EU financial sector. Findings included that: (i) there are around 15,000 ICT providers directly serving EU financial entities; (ii) it is a highly concentrated market, despite the high number of ICT TPPs identified and the number of ICT services provided; and (iii) frequently, the suppliers that provide services for the operation of most critical functions are not replaceable or the contingency of alternative suppliers is not foreseen by the financial institution. The ESAs are using the information obtained to develop the new supervisory framework under DORA (for example, in determining the criteria to determine a supplier as critical or essential).

Date of publication: 15/11/2023

EBA: Consultation on draft Guidelines on complaints-handling of credit servicers under the CSD

Status: Consultation

Deadline for the submission of comments: 09/02/2024

The EBA has launched a consultation on its draft Guidelines on complaints-handling by credit servicers under the Credit Servicers Directive (CSD). The proposed Guidelines suggest applying to credit servicers the requirements of the existing Joint Committee Guidelines on complaints-handling. Those requirements include complaints management policy, complaints management function, registration, reporting, internal follow-up, provision of information and procedures for responding to complaints.

Date of publication: 09/11/2023

(e) Cyber security

(i) EU

Council of the EU: Negotiating mandate on draft Regulation amending Regulation (EU) 2019/881 as regards managed security services

Status: Draft

The Council of the EU has announced that the Member States have reached a common position on the proposed targeted amendment of the Regulation (EU) 2019/881 as regards managed security services and have therefore provided the negotiating mandate for this draft. It aims to include European cybersecurity certification schemes for 'managed security services' in the scope of the Cybersecurity Act (CSA) 2019. The Council's position contains the following main amendments to the Commission proposal: (i) it clarifies the definition of 'managed security services' and the alignment with the revised network information systems (NIS 2) directive; (ii) it aligns the security objectives of these certification schemes with the security objectives of other schemes under the current CSA; (iii) it includes modifications in the annex to the cybersecurity act, which contains a list of requirements to be met by conformity assessment bodies; and (iv) it introduces a number of technical and drafting modifications to make sure that all the relevant provisions of the current CSA apply also to managed security services.

Date of publication: 10/11/2023

(ii) International

FATF: Report on illicit financial flows from cyber-enabled fraud

Status: Final

The FATF has published a report on illicit financial flows from cyber-enabled fraud. As digital innovation continues to advance, so too will the sophistication and scale of cyber-enabled fraud, if left unchecked. The report highlights examples of national operational responses and strategies that have proven successful in tackling cyber-enabled fraud. This includes the need to break down silos and accelerate and enhance collaboration across various sectors and on both the domestic and international levels. The report also identifies risk indicators and useful anti-fraud requirements and controls, that may help public and private sector entities detect and prevent cyber-enabled fraud and related money laundering.

Date of publication: 09/11/2023

(f) Supervisory reporting

(i) EU

EBA: 2023 monitoring report on IFRS 9 implementation by EU institutions

Status: Final

The EBA has published its second monitoring report on International Financial Reporting Standard (IFRS) 9 implementation by EU institutions, complementing the observations already included in the last IFRS 9 Monitoring Report, published in November 2021. This Report focuses on high default portfolios (HDPs) and aims to promote further improvements in the expected credit loss (ECL) model practices among EU institutions by providing transparency on the major areas of concern identified by the EBA. The report sets out that: (i) ECL models now lead to timelier recognition of loss provisions but that most findings confirm previously raised issues and some divergence with the EBA's expectations on IFRS 9 implementation; (ii) overlays are becoming an integral part of the ECL framework and therefore, more efforts are needed to reduce the high degree of judgment for their calibration; and (iii) backtesting is a key area that requires further investments by institutions to enlarge the scope and robustness of the analysis and to improve the use of the backtesting results for the periodic review of IFRS 9 models.

In line with the [Roadmap for IFRS 9 deliverables](#), the EBA will continue monitoring and promoting the consistent application of IFRS 9.

Date of publication: 17/11/2023

(ii) International

BCBS: Report on progress in adopting the principles for effective risk data aggregation and risk reporting

Status: Final

The BCBS has published a report on progress in adopting the principles for effective risk data aggregation and risk reporting. The report provides an update on the progress made by 31 G-SIBs (designated during 2011–21) in adopting the principles. Nearly ten years after their initial publication and seven years after the expected date of compliance, banks are at different stages in terms of alignment.

Given the significant work remaining at most banks to fully adopt the principles, the recommendations to banks and supervisors that were highlighted in previous reports are still valid and are complemented by additional recommendations. The Committee will continue to monitor G-SIBs' progress in adopting the principles.

Date of publication: 28/11/2023

(g) Accounting/Prudential filter/Audit

(i) EU

Commission Regulation (EU) 2023/2579 amending Regulation (EU) 2023/1803 as regards IFRS 16

Status: Published in the OJ

Date of entry into force: 11/12/2023

The Commission Regulation (EU) 2023/2579 amending Regulation (EU) 2023/1803 as regards International Financial Reporting Standard (IFRS) 16 has been published in the OJ. It amends the annex to Regulation (EU) 2023/1803 in order to implement amendments to the IFRS 16 issued on 22 September 2022. The IFRS 16 lays down how a company should recognise, measure, present and disclose leases. These amendments specify how the seller-lessee subsequently measures sale and leaseback transactions.

Date of publication: 21/11/2023

1.2 Recovery and resolution

(i) EU

Council of the EU: Negotiating mandate on draft Directive amending the BRRD and SRMR as regards certain aspects of the minimum requirement for own funds and eligible liabilities (“daisy chain” proposal)

Status: Draft

The Council of the EU has adopted a mandate to start negotiations with the EP on the so-called “daisy chain” proposal. This proposal is a targeted amendment of the BRRD and the SRMR to address certain issues in relation to the treatment of “internal MREL” in bank resolution groups. It aims to give the resolution authorities the power of setting these internal MREL on a consolidated basis subject to certain conditions. Where the resolution authority allows a banking group to apply such consolidated treatment, the subsidiaries will not be obliged to deduct their individual holdings of internal MREL, thus preventing the detrimental effect identified by the Commission. In addition, the proposal introduces a specific MREL treatment for “liquidation entities”. Those are defined as entities within a banking group earmarked for winding-up in accordance with insolvency laws, which would, therefore, not be subject to resolution action. On this basis and as a rule, liquidation entities would not be obliged to comply with an MREL requirement in excess of their own funds requirements, unless the resolution authority decides otherwise on a case-by-case basis for financial stability protection reasons. The main changes agreed in the Council clarify the definition and scope of liquidation entities and provide further detail on the conditions for the application of the consolidated treatment of internal MREL.

Date of publication: 17/11/2023

1.3 Stress tests/Macroprudential topics

(i) EU

EBA: Announcement of timing for publication of 2023 EU-wide transparency exercise and Risk Assessment Report

Status: Final

The EBA has announced that its 2023 Risk Assessment Report and transparency exercise with bank by bank data will be released on 12 December 2023 at 18:00 CET. As with previous exercises, it is exclusively based on supervisory reporting data, which will keep the burden for banks to a minimum. The EBA has interacted with 124 participating banks, envisaging the verification of pre-populated templates and any data quality correction that will be done through the supervisory reporting channel. It expects to release around 1 million data points, up to 10,000 data points per bank.

Date of publication: 14/11/2023

2. Investment firms regulation

(i) EU

Commission Implementing Regulation (EU) 2023/2526 amending the ITS laid down in Implementing Regulation (EU) 2022/389 as regards the content lists of the information on individual data to be disclosed by NCAs

Status: Published in the OJ

Date of entry into force: 11/12/2023

The Commission Implementing Regulation (EU) 2023/2526 amending the ITS laid down in Implementing Regulation (EU) 2022/389 as regards the content lists of the information on individual data to be disclosed by NCAs has been published in the OJ. It amends the templates laid down in Part 1 of Annex IV to Implementing Regulation (EU) 2022/389 to also refer to the data on the composition of own funds and own funds requirements by type of requirement for those investment firms that do qualify as small and non-interconnected. This is necessary as these investment firms can be numerous in certain Member States, with the absence of publicly available information on the composition of their own funds and the own funds requirements potentially distorting a meaningful comparison of aggregated requirements by type across different Member States.

Date of publication: 21/11/2023



3. Market regulation/Conduct rules

3.1 General

(i) Germany

BT: Adoption of the Financing for the Future Act (*Beschlussempfehlung und Bericht über das Zukunftsfinanzierungsgesetz*)

Status: Adopted by the BT

The German Federal Parliament (BT) has adopted the Financing for the Future Act (*Zukunftsfinanzierungsgesetz – ZuFinG*), following the [resolution recommendation](#) published by its Finance Committee on 15 November 2023. 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.

On 24 November 2023, the Bundesrat is scheduled to hold the final consultation on this draft law.

Date of publication: 17/11/2023

(ii) EU

Council of the EU: Adoption of the ESAP Regulation

Status: Adopted by the Council of the EU

The Council of the EU has adopted a Regulation creating the European Single Access Point (ESAP). This is a platform that will make already public financial and sustainability-related information about EU companies and EU investment products easier for investors to consult through free, user friendly, centralised and digital access. This additional visibility is expected to open up more financing opportunities for companies, especially for small companies in small capital markets by way of facilitating the decision-making process for a broad range of investors, including retail investors.

The regulation will be published in the Official Journal and enter into force 20 days after its publication.

Date of publication: 27/11/2023

3.2 Consumer protection rules

(i) EU

Directive (EU) 2023/2673 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC

Status: Published in the OJ

Date of entry into force: 18/12/2023

Date of application: 19/06/2026

The Directive concerning financial services contracts concluded at a distance has been published in the OJ. The Directive repeals the existing legislation from 2002 and introduces new provisions for financial services contracts concluded at a distance as an additional chapter of the consumer rights directive, which protects consumers in all kinds of commercial practices.

Date of publication: 28/11/2023

4. Market infrastructure

4.1 Custody rules

(i) EU

Council of the EU: Adoption of the Regulation on Central Securities Depositories

Status: Adopted by the Council of the EU

The Council of the EU has adopted a Regulation that updates the rules on central securities depositories (CSDs). The new law will reduce the financial and regulatory burden on CSDs and improve their ability to operate across borders, while also strengthening financial stability. This review aims to make securities settlement in the EU more efficient by simplifying requirements and clarifying authorisation processes, among other things.

The regulation will be published in the Official Journal and enter into force 20 days after its publication.

Date of publication: 27/11/2023

4.2 EMIR

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) No 153/2013 as regards the extension of temporary emergency measures on CCP collateral requirements

Status: Draft

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) No 153/2013 as regards the extension of temporary emergency measures on CCP collateral requirements. Uncollateralised bank guarantees for non-financial counterparties (NFCs) acting as clearing members and public guarantees for all types of counterparties will continue to be temporarily eligible by CCPs in order to avoid potential disruption during the upcoming cold season. The temporary measures were initially adopted during the height of the energy crisis to alleviate the liquidity pressure on NFCs active on gas and electricity regulated markets that clear in EU-based CCPs.

Date of publication: 28/11/2023

ESMA: Participation in a global fire-drill with EU CCPs

Status: Final

ESMA has announced that it is jointly coordinating the participation of the majority of EU CCPs in a global fire-drill during the week starting 13 November 2023, in cooperation with EU and non-EU authorities, CCPs, and industry associations. The exercise entails over 30 CCPs simultaneously running a simulation of their default management processes. The participating CCPs will simulate the default of a hypothetical common defaulting clearing member and run their own default management processes. The fact that they are executing this test at the same time may help identify potential operational bottlenecks in the procedures, such as the fact that they may solicit non-defaulting clearing members at the same time. In addition, the exercise is expected to bring benefits to financial stability by providing a chance to share default management best practices among CCPs.

Date of publication: 13/11/2023

5. Anti-money laundering

(i) Germany

BRat: Opinion on the draft law improving the fight against financial crime (*Stellungnahme zum Finanzkriminalitätsbekämpfungsgesetz*)

Status: Draft

The Bundesrat has published an opinion on the draft law improving the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz* – FKBG). The draft law particularly contains the essential regulations for the establishment of the new Federal Office to Combat Financial Crime (*Bundesamt zur Bekämpfung von Finanzkriminalität* – BBF), its tasks and powers as well as necessary technical legal adjustments on money laundering supervision and sanctions. In addition, the draft contains regulations for the establishment of a real estate transaction register.

Date of publication: 24/11/2023

(ii) EU

EBA: Final report on Guidelines amending Guidelines EBA/GL/2021/16 on the characteristics of a risk-based approach to AML/CFT supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of the MLD IV (The Risk-Based Supervision Guidelines)

Status: Final

The EBA has published a final report on Guidelines amending Guidelines EBA/GL/2021/16 on the characteristics of a risk-based approach to AML and TF supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of the MLD IV, also called the Risk-Based Supervision Guidelines. The amendment extends these Guidelines to AML/CFT supervisors of crypto-asset service providers (CASPs) and sets clear expectations of the steps supervisors should take to identify and manage ML/TF risks in this sector and are an important step forward in the EU's fight against financial crime. This step towards a common supervisory approach in that sector is important due to the high ML/TF risks that CASPs can present, in particular through cross-border operations.

The amendments include guidance on the sources of information competent authorities should consider when assessing ML/TF risks associated with CASPs. They highlight the importance of a consistent approach in setting supervisory expectations, where multiple competent authorities are responsible for the supervision of the same institutions. They also emphasise the importance of training so that staff from competent authorities have the technical skills and expertise necessary to carry out their roles.

Date of publication: 27/11/2023

EBA: Consultation on Guidelines on preventing the abuse of funds and certain crypto-assets transfers for ML/TF purposes under Regulation (EU) 2023/1113 ('The Travel Rule Guidelines')

Status: Consultation

Deadline for the submission of comments: 26/02/2023

The EBA has launched a consultation on new Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes. These 'travel rule' Guidelines specify the steps that Payment Service Providers (PSPs), Intermediary PSPs (IPSPs), crypto-asset service providers (CASPs) and Intermediary CASPs (ICASPs) should take to detect missing or incomplete information that accompanies a transfer of funds or crypto-assets. They also detail the procedures all these providers should put in place to manage a transfer of funds or a transfer of crypto-assets that lacks the required information. The Guidelines also ensure that relevant authorities can fully trace such transfers where this is necessary to prevent, detect or investigate money laundering and terrorist financing. These Guidelines aim at forging a common understanding to ensure the consistent application of EU law as well as a stronger anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

Date of publication: 24/11/2023

EC: Commission Delegated Regulation (EU) .../... supplementing Regulation (EU) No 1093/2010 with regard to RTS specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained in the AML/CFT central database referred to in Article 9a(2) of that Regulation

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation supplementing Regulation (EU) No 1093/2010 with regard to RTS specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained in the AML/CFT central database referred to in Article 9a(2) of that Regulation.

Date of publication: 09/11/2023

(iii) International

FATF: Report on misuse of citizenship and residency by investment programmes

Status: Final

The FATF has published a report on misuse of citizenship and residency by investment (CBI/RBI) programmes. These programmes are government-administered programmes that grant citizenship or residency to foreign investors by expediting or bypassing normal migration processes. They can help spur economic growth through foreign direct investment, but they are also attractive to criminals and corrupt officials seeking to evade justice and launder the proceeds of crime amounting to billions of dollars. The report highlights the vulnerabilities of these complex and international investment migration programmes, including the frequent use of intermediaries, involvement of multiple government agencies, abuse by professional enablers and lack of proper governance of the CBI/RBI programmes. Furthermore, the report proposes measures and cites examples of good practice that can help policy makers and those responsible for managing the investment migration programmes to address these risks. These include an in-depth analysis and understanding of how criminals can exploit CBI or RBI programmes. It also highlights how governments can incorporate risk mitigation measures, such as multi-layered due diligence, in the design of their investment migration programmes. The report emphasises that the elevated risks of money laundering and financial crime in these investment migration programmes relate not only to the applicant, but also the professional enablers and intermediaries involved in the process. It is therefore essential to ensure clarity around the respective roles and responsibilities of the various parties involved in RBI/CBI programmes to be able to detect fraudulent activity.

Date of publication: 22/11/2023

FATF: Amendments to Recommendation and Best Practices for NPOs

Status: Final

The FATF has published amendments to Recommendation 8 and its best practices on combating the potential terrorist financing abuse of non-profit organisations (NPOs). At its October Plenary, the FATF agreed on amendments to Recommendation 8 that aim to protect NPOs through the effective implementation of risk-based measures. These amendments include: (i) requiring countries to periodically identify organisations that fall within the FATF definition of NPOs and assess the terrorist financing risks posed to them; (ii) requiring countries to have in place focused, proportionate and risk-based measures to address terrorist finance risks identified; and (iii) clarifying that countries should ensure oversight or monitoring of NPOs, but they need not designate and supervise NPOs as reporting entities or require them to conduct customer due diligence. The FATF explains that it has updated its best practices to reflect the amendments to Recommendation 8 and to help countries, the non-profit sector and financial institutions understand how best to protect relevant NPOs from abuse for terrorist financing, without unduly disrupting or discouraging legitimate NPO activities. The FATF believes that when implemented appropriately, the best practices will preserve the integrity of the NPO sector, the donor community, and the financial institutions and intermediaries they use, without unduly disrupting or discouraging legitimate NPO activities. For the first time, the best practices paper also includes examples of bad practices and specifically explains how not to implement the FATF's requirements.

- [Updated FATF Recommendations](#)
- [Best Practices on Combating the Abuse of Non-Profit Organisations](#)

Date of publication: 16/11/2023

BCBS: Discussion paper on digital fraud and banking: supervisory and financial stability implications

Status: Consultation

Deadline for the submission of comments: 16/02/2024

BCBS has published a discussion paper on digital fraud and banking, providing a high-level assessment of the supervisory and financial stability implications of digital fraud for the global banking system. Its purpose is to elicit comments and feedback from a broad range of interested stakeholders. It is structured around topics including: (i) what digital fraud is, its main defining features and its effect on banks; (ii) the supervisory and financial stability implications and the relevance of digital fraud to the BCBS mandate; and (iii) what initiatives in the banking sector at a domestic, regional and global level have been pursued, or are planned, to mitigate digital fraud risks. The paper does not make a formal distinction between retail and wholesale digital fraud. While most of the paper is primarily focused on retail, the BCBS considers that there are also some elements that may have a connection to wholesale digital fraud.

Date of publication: 15/11/2023

6. Payments

6.1 Payment services/E-money

(i) EU

EP: Legislative progress of Regulation on instant credit transfers in euro

Status: Draft

The EP has updated its procedure file on the proposed Regulation amending the SEPA Migration Regulation and the Cross-Border Payments Regulation as regards instant credit transfers in euro to indicate that it will consider the proposed Regulation during its plenary session to be held from 5 to 8 February 2024.

Date of publication: 23/11/2023

ECON: Draft reports on proposed PSD3 and PSR1

Status: Draft

ECON has published draft reports on the PSD3 package. In the PSD3 report, amendments tabled by the Rapporteur include in relation to: (i) authorisation of PSPs and grandfathering provisions; (ii) access to settlement systems; (iii) the use of central contact points; (iv) access to cash; and (v) opening of accounts by payment institutions and e-money institutions.

In the PSR1 report, amendments tabled by the Rapporteur include in relation to: (a) transparency measures in ATMs, currency exchanges and mark-ups on the exchange reference rates; (b) transparency measures when third party providers access the data of users not through APIs; (c) strengthening the role of the EBA; and (d) better protections for consumers from fraud and an extension of the responsibility to provide this protection to electronic communication service providers.

- [Report on PSD3](#)
- [Report on PSR1](#)

Date of publication: 16/11/2023

Council of the EU: Provisional agreement on the instant payments regulation

Status: Draft

The Council and the EP have reached a provisional agreement on the proposed Regulation as regards instant credit transfers in euro. The proposed Regulation is part of the initiative to promote the provision and uptake of instant payments in line with the Eurosystem's retail payments strategy, to increase consumer choice and foster innovation, safety and open strategy autonomy.

Date of publication: 03/11/2023

6.2 Payment and settlement systems

(i) EU

ECB: Decision amending Decision on terms and conditions of TARGET-ECB

Status: Published in the OJ

Date of entry into force: 20/11/2023

The ECB Decision (EU) 2023/2532 amending ECB Decision (EU) 2022/911 concerning the terms and conditions of TARGET-ECB (ECB/2022/22) has been published in the OJ. Decision (EU) 2023/2532 states that: (i) in February 2022, the ECB's Governing Council adopted Guideline (EU) 2022/912 that provides for the start of operations of a new-generation

TARGET. These amendments made to Guideline (EU) 2022/912 that affect the terms and conditions of TARGET-ECB need to be reflected in Decision (EU) 2022/911; and (ii) in September 2023, the ECB's Governing Council adopted [Guideline \(EU\) 2023/2415](#), which amends Guideline (EU) 2022/912 to clarify certain aspects. The national central banks of the Member States whose currency is the euro are required to take the necessary measures to comply with Guideline (EU) 2023/415 and apply them from 20 November 2023. Decision (EU) 2022/911 must be amended accordingly.

Date of publication: 16/11/2023



7. Institutional supervisory framework

(i) EU

ESMA: New Union Strategic Supervisory Priorities for NCAs

Status: Final

ESMA has announced that it is changing its Union Strategic Supervisory Priorities (USSPs) to focus on cyber risk and digital resilience alongside ESG disclosures. With this new priority, it emphasises the reinforcement of firms' ICT risk management through close monitoring and supervisory actions, building new supervisory capacity and expertise. Its aim is to keep pace with market and technological developments, and closely monitor potential contagion effects of attacks and disruptions across markets and firms.

The new USSP will come into force in 2025, at the same time as the Digital Operational Resilience Act (DORA). This timeline is intended to provide supervisors and firms in Member States with sufficient time to prepare for compliance with the new regulatory requirements. Meanwhile, ESMA and NCAs will carry out preparatory work planning and shaping the supervisory activities to undertake under this priority.

Date of publication: 09/11/2023

(ii) International

SRB: Work programme 2024

Status: Final

The SRB has published its 2024 Annual Work Programme, setting out its objectives and priorities for the year ahead. This work programme will be completed early next year with a multi-annual work programme for the SRB, based on the 2023 strategic review of SRB and Single Resolution Mechanism operations, which will be launched early next year.

Date of publication: 30/11/2023

FSB: Outcomes from FSB November Plenary meeting

Status: Final

The FSB published a press release in relation to its Plenary meeting that took place on 13 and 14 November. Topics discussed by the Plenary include: (i) financial stability outlook – while the banking system as a whole remains resilient, the Plenary discussed pockets of remaining banking-sector vulnerabilities, property markets and operational resilience. Members stressed the importance to work in close coordination with IOSCO in the FSB's work addressing structural vulnerabilities from liquidity mismatch in open-ended funds; (ii) implementation of crypto-asset recommendations – members stressed the importance of global and consistent implementation of the FSB's high-level recommendations, including in non-FSB jurisdictions, and of actions to guard against the risk of regulatory arbitrage, in cooperation with the standard-setting bodies and relevant international organisations; and (iii) the FSB's work programme – the FSB will continue to work on the lessons from the March turmoil and to monitor macro-financial vulnerabilities in a higher interest rate environment.

The finalised work programme will be published in early 2024.

Date of publication: 14/11/2023

8. Investment funds

8.1 Product regulation

(a) AIF

(i) EU

Council of the EU: Final compromise text on amendments to AIFMD and UCITS Directive

Status: Draft

The Council of the EU has published its final compromise text for the proposed Directive amending the AIFMD and the UCITS Directive relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by AIF. This text reflects the provisional political agreement with the EP that was reached in July 2023. The new rules aim to enhance the integration of asset management markets in Europe and to modernise the framework for key regulatory aspects and the availability of liquidity management tools, with new requirements relating to the activation of these instruments, as well as the data sharing and cooperation between authorities. They also provide for new measures to identify undue costs that could be charged to funds, and hence their investors and to prevent possible misleading names to better protect investors.

The General Secretariat of the Council invites the Permanent Representatives Committee to: (i) approve the compromise text with a view to reaching an agreement at first reading with the EP; and (ii) give to the Chairman of the Permanent Representatives Committee the mandate to inform the Chair of the EP's ECON Committee that, should the EP adopt the compromise text of the proposal, the Council of the EU would adopt the proposed Regulation as amended, subject to legal-linguistic revision by both institutions.

Date of publication: 10/11/2023

(b) UCITS

(i) Germany

BGH: Ruling on the transparency control of the German general and special fund rules of a capital management company of a domestic UCITS

Status: Final

The German Federal Court of Justice (BGH) has published its ruling of 5 October 2023 – III ZR 2016/22 on the transparency control of the German General and Special Fund Rules of a capital management company of a domestic undertaking for collective investment in transferable securities (UCITS). The English translation of the wording of the relevant cost clause is as follows: (i) Section 30 of the Special Fund Rules (“BAB”): “1. the Company shall receive from the UCITS fund a daily lump-sum cost allowance of 1.5% p.a. of the UCITS fund on the basis of the asset value determined on each trading day (cf. section 18 of the “AABen”). ... The following fees and expenses are covered by this lump sum and are not charged separately to the UCITS investment fund: a) remuneration for the management of the UCITS fund (fund management, administrative activities, distribution costs, service fee for reporting and analysis); (...).”; and (ii) Section 18 of the General Fund Rules (“AABen”) reads in extract form: “1. in order to calculate the issue and redemption price of the units, the market values of the assets belonging to the UCITS investment fund less the loans taken out and other liabilities (net asset value) are determined and divided by the number of units in circulation (unit value). ... The assets are valued in accordance with Sections 168 and 169 KAGB and the Kapitalanlage-Rechnungslegungs- und Bewertungsverordnung (KARBV).”

In its judgment, the court essentially sets out the following reasons (recitals 25 to 27) as to why the flat fee costs described above are to be assessed as non-transparent and unclear against the background of the German General Terms and Conditions (Allgemeine Geschäftsbedingungen – AGB) and are therefore invalid: (a) no information with regard to the time interval according to which defendant is to receive the remuneration, because the longer the withdrawal intervals are, the higher the

NAV on which the settlement is to be based; (b) the calculation of the remuneration on days that are non-trading days is unclear, in particular with regard to public holidays; this also relates to the calculation of the NAV within the meaning of Section 18 of the General Fund Rules; and (c) further, it is also unclear in this context: (A) which standards are to be used to decide whether a NAV is to be determined on non-trading days; (B) which NAV is decisive if no NAV is determined on non-trading days; and (C) the place to be taken into account when determining public holidays or trading days (e.g. public holidays in Bavaria deviate substantially from public holidays in Berlin).

It is to be noted that the defendant's cost clause deviates to a large extent from the BaFin model cost clauses. Nevertheless, some of the points addressed by the Court are also included in the BaFin model cost clause. Thus, this ruling may to a certain extent affect the entire UCITS and retail funds industry in Germany. Since this ruling is the first in the context of the cost clauses against the background of the AGB-control, and has also been decided at the highest instance, we assume that the ruling will be used as a basis for discussing the further development of costs clauses for German funds.

Date of publication: 24/11/2023

(ii) EU

Council of the EU: Final compromise text on amendments to AIFMD and UCITS Directive

Status: Draft

The Council of the EU has published its final compromise text for the proposed Directive amending the AIFMD and the UCITS Directive relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by AIF. For more information, please see section 8.1(a) above.

Date of publication: 10/11/2023

9. Special topics

9.1 FinTech/Digital finance

(i) Germany

BaFin: Guidance Notice 03/2023 on Guidelines on the facts of the crypto securities registration (*Merkblatt 03/2023 über Hinweise zum Tatbestand der Kryptowertpapierregisterführung gemäß § 1 Abs. 1a Satz 2 Nr. 8 KWG*)

Status: Final

BaFin has published a Guidance Notice on Guidelines on the facts of the crypto securities registration pursuant to Section 1(1a)(2)(8) of the German Banking Act (*Kreditwesengesetz* – KWG). It is directed at all market participants and contains information on the interpretation and authorisation requirements regarding the registration management. The Guidance Notice also distinguishes it from other elements of the KWG. The crypto securities register was added to the KWG in 2021 by the Act on the Introduction of Electronic Securities (*Gesetz zur Einführung von elektronischen Wertpapieren* – eWpG).

By way of background, the eWpG established the crypto securities registration as a new financial service in the KWG. Since the law came into force on 10 June 2021, companies that want to provide this service need a licence from BaFin. If the transitional provision pursuant to Section 65 of the KWG is used, the licence is deemed to have been granted provisionally if companies had started their activities by 10 December 2021 at the latest and had announced their intention to do so two months before starting their activities. Companies must submit a complete licence application no later than six months after starting their activity.

Date of publication: 23/11/2023

(ii) EU

EBA: Consultation on Guidelines on preventing the abuse of funds and certain crypto-assets transfers for ML/TF purposes under Regulation (EU) 2023/1113 ('The Travel Rule Guidelines')

Status: Consultation

Deadline for the submission of comments: 26/02/2023

The EBA has launched a consultation on new Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes. For more information, please see section 5 above.

Date of publication: 24/11/2023

ESMA: Speech on innovation with protection: the next steps on the MiCA journey

Status: Final

ESMA has published a speech by Verena Ross, ESMA Chair, on innovation with protection, detailing the next steps on the MiCA journey. In her speech, Ms Ross presents some of the key features of ESMA's most recent consultation paper on the level 2 measures under the MiCA Regulation, as well as ESMA's stance on the preparation for MiCA implementation. Ms Ross explains that the recent ESMA consultation on the second MiCA package published in October aims to empower investors and regulators with robust tools to enable them to work as smoothly as possible within crypto-asset markets. Ms Ross goes on to discuss MiCA implementation, explaining that ESMA is encouraging uniform implementation of MiCA across Member States to discourage the industry from engaging in "forum shopping", as there should be no competitive advantage for service providers based on where they choose to establish themselves. This is also true of the supervisory practices in relation to authorisation procedures, as ESMA is aiming to prevent regulatory arbitrage. In preparing for MiCA implementation, ESMA encourages Member States to designate competent authorities and empower them with the resources and expertise to carry out their new supervisory and enforcement functions under MiCA, ideally by the end of this year. Ms Ross also notes that while the need for time to adjust is acknowledged in the grandfathering clause, lasting for up to 18 months, she thinks that Member States should consider limiting this transitional phase to 12 months. It is ESMA's view that, by minimising the time during which a patchwork

of different laws will apply across the Member States, it will more easily create a level playing field and limit potential harm to investors who may have difficulty discerning the regulatory status of an asset or service they are using during the transitional phase. ESMA also confirms that breaches of the reverse solicitation clause will be met with stringent enforcement by ESMA and the competent authorities. This is both to protect MiCA-compliant firms from unfair competition and to shield EU investors from unknowingly using unregulated crypto-asset services. Ms Ross concludes her speech by reminding all investors of the limits of MiCA, that while the framework is designed to make the market safer for investors by regulating the intermediaries, it cannot prevent investors themselves from seeking out quick and easy profits. Therefore, investors should continue to protect themselves from scams, especially when they venture into the decentralised corners of the market that MiCA cannot reach.

Date of publication: 16/11/2023

EC: Delegated regulation on the supervision of crypto-assets

Status: Consultation

Deadline for the submission of comments: 06/12/2023

The EC has published a draft delegated regulation on the supervision of crypto-assets. It specifies criteria for an asset-referenced token or e-money token to be classified as significant, introduces supervisory measures on product intervention powers (i.e. the ability of a body/authority to restrict or ban the sale of crypto-assets or related activities), lays down procedural rules for the EBA to impose fines and introduces rules on the supervisory fees charged by the EBA.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of the MiCA Regulation. Therein the EBA specifies financial instruments that can be considered highly liquid and bearing minimal market risk, credit risk and concentration risk, where the reserve of assets may be invested in. In developing these RTS, the EBA is required to take into account the various types of assets that can be referenced by an asset-referenced token and their correlation with the highly liquid financial instruments that the issuer might invest in. This is to mitigate different market value volatilities between them. In turn, this ensures that the amount of the reserve of assets can meet, at all times, the market value of the asset referenced for any redemption request that can arise. Furthermore, in the specification of highly liquid financial instruments, the EBA needs to consider the Liquidity Coverage Ratio (LCR) framework and the Undertakings for the Collective Investment in Transferable Securities (UCITS) framework. This latter framework serves to determine the concentration limits in the investment of highly liquid financial instruments by the issuer, which is also part of the mandate to the EBA.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of the MiCA Regulation. The draft RTS proposes minimum percentage rates of the reserve of assets with a maturity of no longer than between one and five working days. Furthermore, the EBA proposes overall techniques for liquidity management of the reserve of assets. This includes minimum creditworthiness and liquidity soundness of credit institutions taking deposits from issuers, concentration limits to issuers' deposits with a credit institution and overcollateralisation of the assets referenced by the tokens. Moreover, the draft RTS establish the specific minimum amount of deposits with credit institutions to be held by issuers in each official currency referenced.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of the MiCA Regulation. The draft RTS ensure that the relevant issuers of tokens properly assess and monitor their liquidity needs and that their reserve assets have a resilient liquidity profile to meet any redemption of the asset-referenced tokens that can be requested at any time by their holders.

Date of publication: 08/11/2023

EBA: Consultation on draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) of the MiCA Regulation. The draft Guidelines lay out the risks identified by the EBA to be covered in the liquidity stress testing. They also pinpoint the methodology identifying the common reference parameters of the stress test scenarios to be included in the liquidity stress testing to be applied. Following application of the Guidelines, the supervisor may strengthen the liquidity requirements of the relevant issuer to cover those risks based on the outcome of the liquidity stress testing.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS on own funds requirements and stress testing of issuers under the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched two consultations on draft RTS on own funds requirements and stress testing of issuers under the MiCA Regulation which form part of the prudential package of MiCA products. The first RTS specify the adjustment of own funds requirements and stress testing of issuers of asset-referenced tokens (ART) and e-money tokens (EMT). The second RTS specify the procedure and timeframe to adjust its own funds requirements for issuers of significant asset-referenced tokens or of e-money tokens. The draft RTS on the adjustment of own funds requirements and design of stress testing programmes for issuers specify: (i) the criteria for the assessment of 'higher degree of risk'; (ii) the procedure for competent authorities to determine the period of time considered appropriate for issuers to increase the own funds amount to the higher own funds requirements and the measures to be taken to ensure the timely compliance thereof; and (iii) a minimum set of requirements to issuers for the design and implementation of their stress-testing programmes.

The requirements apply to issuers of ARTs subject to own funds requirements as well as to electronic money institutions issuing EMTs that are significant under the MiCA Regulation and can be expanded to e-money institutions issuing EMTs that are not significant if the competent authority of the home Member State requires it. While the other draft RTS specify the procedure and timeframe for issuers to adjust their own funds requirements to 3% of the average amount of the reserve assets when their ARTs are classified as 'significant' ARTs.

- Draft RTS to specify the adjustment of own funds requirements and stress testing of issuers of ART and of EMT subject to the requirements in Article 35 of the MiCA Regulation
- Draft RTS to specify the procedure and timeframe to adjust its own funds requirements for issuers of significant ART or of EMT subject to the requirements set out in Article 45(5) of the MiCA Regulation

Date of publication: 08/11/2023

EBA: Consultation on draft Guidelines on recovery plans under Articles 46 and 55 of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft Guidelines on recovery plans to be drafted by issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs) under Articles 46 and 55 of the MiCA Regulation. These draft Guidelines set out the requirements with respect to the format of the recovery plans and the information to be included therein. Through recovery planning, issuers of ARTs and EMTs should prepare in advance to face adverse scenarios that may impact their ability to comply with the regulatory requirements applicable to the reserve of assets. They set out supervisory expectations for issuers to be able to identify and understand the risks they face and lay down possible actions to restore compliance with regulatory requirements.

In specifying the content of the recovery plans, these draft Guidelines build on the existing legislative requirements on recovery planning in financial sector and supervisory experience and adapt them, where relevant, to reflect the specificities of ART and EMT issuers. The draft Guidelines also include provisions on the interaction between the recovery plans drafted by multiple issuers of the same token or by issuers offering two or more tokens to the public, as well as to reduce the burden on credit institutions and investment firms already subject to the recovery planning obligations under the BRRD.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS on the methodology to estimate the number and value of transactions associated to uses of ART as a means of exchange under Article 22(6) of the MiCA Regulation and of EMT denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft RTS on the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens (ART) as a means of exchange under Article 22(6) of the MiCA Regulation and of e-money tokens (EMT) denominated in a non-EU currency for reporting transactions associated to uses of these tokens “as a means of exchange” pursuant to Article 58(3) of that Regulation. The proposal aims to clarify the scope of the transactions associated to the use of ARTs and EMTs denominated in a non-EU currency as a means of exchange that should be reported by issuers, and how issuers should estimate the number and value of such transactions. The draft RTS also aim at contributing to the objective of the MiCA Regulation of monitoring and preventing risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU.

Date of publication: 08/11/2023

EBA: Consultation on draft ITS on the reporting on ART under Article 22(7) of the MiCA Regulation and on EMT denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft ITS on the reporting on asset-referenced tokens (ART) under Article 22(7) of the MiCA Regulation and on e-money tokens (EMT) denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation. The proposal provides specific templates and related instructions for the issuers of ARTs and of EMTs denominated in a non-EU currency to comply with their reporting obligations. It also provides templates and related instructions that crypto-asset service providers (CASPs) must provide to issuers of ARTs and of EMTs denominated in a non-EU currency.

Date of publication: 08/11/2023

EBA: Consultation on draft RTS on supervisory colleges under Article 119(8) of the MiCA Regulation

Status: Consultation

Deadline for the submission of comments: 08/02/2024

The EBA has launched a consultation on draft RTS on the criteria for determining the composition of supervisory colleges for each issuer of a significant asset referenced token (ART) or of a significant e-money token (EMT) as well as the general conditions for the functioning of supervisory colleges under Article 119(8) of the MiCA Regulation. The proposals set out in these draft RTS specify: (i) the criteria to be used for determining “the most relevant” custodians of the reserve of assets, trading platforms, payment service providers providing payment services in relation to the significant EMTs and crypto-assets service providers providing custody and administration of crypto-assets on behalf of clients; and (ii) the conditions under which it is considered that ARTs and EMTs are “used at large scale” in a Member State for the purpose of determining the composition of a supervisory college under the MiCA Regulation. They also specify the general conditions for the functioning of supervisory colleges, including aspects related to participation in the college meetings, the voting procedures for the adoption of a non-binding opinion by the college, and aspects related to the exchange of information and the entrustment of tasks among college members.

Date of publication: 08/11/2023

(iii) International

FSB: Report on the financial stability implications of multifunction crypto-asset intermediaries

Status: Final

The FSB has published a report on the financial stability implications of multifunction crypto-asset intermediaries. In particular, the report warns that combining different activities within multifunction crypto-asset intermediaries (MCIs), many of which are typically restricted or separated in traditional finance, could exacerbate MCI vulnerabilities. It sets out that financial stability implications from the failure of an MCI will depend on the effective implementation and enforcement of comprehensive and consistent regulations to crypto-asset markets globally. Moreover, further work may be necessary to enhance cross-border cooperation and information sharing and to address information gaps identified in the report.

Date of publication: 28/11/2023

IOSCO: Final report on policy recommendations for crypto and digital asset markets

Status: Final

IOSCO has finalised its report setting out policy recommendations for crypto and digital asset markets. IOSCO’s 18 targeted recommendations are principles-based and outcomes-focused and are aimed at the activities performed by crypto-asset service providers (CASPs). They apply IOSCO’s global standards for securities markets regulation to address key issues and risks identified in these markets. IOSCO aims to: (i) promote greater consistency with respect to how IOSCO members approach the regulation and oversight of crypto-asset activities, given the cross-border nature of the markets, the risks of regulatory arbitrage and the significant risk of harm to which retail investors continue to be exposed; and (ii) ensure that CASPs meet the standards of business conduct that apply in traditional financial markets.

The recommendations cover six key areas, consistent with the IOSCO Objectives and Principles for Securities Regulation and relevant supporting IOSCO standards, recommendations, and good practices: (a) conflicts of interest arising from vertical integration of activities and functions; (b) market manipulation, insider trading and fraud; (c) custody and client asset protection; (d) cross-border risks and regulatory cooperation; (e) operational and technological risk; and (f) retail distribution. Though not addressed to them, all crypto-asset market participants are encouraged to carefully consider the expectations and outcomes articulated through the recommendations and the respective supporting guidance.

Date of publication: 16/11/2023

9.2 Sustainable finance

(i) Germany

BRat: Call for a conciliation committee on the growth opportunity act (*Anrufung des Vermittlungsausschusses über das Wachstumschancengesetz*)

Status: Draft

The Bundesrat has called for a conciliation committee (*Vermittlungsausschuss*) regarding the draft growth opportunity act (*Wachstumschancengesetz*). This follows the [adoption of this act](#) by the German Federal Parliament (BT) on 17 November and the [resolution recommendation](#) published by its Finance Committee on 15 November 2023. The law aims to increase Germany's competitiveness through a modernised tax system, in particular by supporting investments that aim to increase energy efficiency with transformation bonuses and by incentivising rental housing through additional possibilities of depreciation.

In the call for a conciliation committee, the federal states request a fundamental revision of the law. They criticise that the version adopted by the BT only incorporated a small selection of the many suggestions set out by the Bundesrat in its comprehensive opinion during the first reading and that it instead included several other additions to the draft law on short notice.

Date of publication: 24/11/2023

(ii) EU

Regulation (EU) 2023/2631 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds

Status: Published in the OJ

Date of entry into force: 20/12/2023

Date of application: 21/12/2024

The Regulation (EU) 2023/2631 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds has been published in the OJ. The Regulation lays down uniform requirements for issuers of bonds that wish to use the designation 'European green bond' or 'EuGB'. European green bonds will be aligned with the EU taxonomy for sustainable activities and made available to investors globally. It is a further step in implementing the EU's strategy on financing sustainable growth and the transition to a climate-neutral, resource-efficient economy. It believes that the new standard will foster consistency and comparability in the green bond market, benefitting both issuers and investors of green bonds, as the regulation establishes a registration system and supervisory framework for external reviewers of European green bonds. In the hope of preventing greenwashing in the green bonds market in general, the Regulation also provides for some voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU.

Date of publication: 30/11/2023

EBA: Environmental statement in the context of COP28

Status: Final

The EBA has published its environmental statement in the context of the 2023 United Nations Climate Change Conference (COP28). It sets out that ESG remain one of the EBA's priorities. The EBA highlighted its effort to integrate sustainability aspects in many areas of its work, including risk management, disclosures, supervisory practices, climate stress testing and the Pillar 1 framework.

Date of publication: 30/11/2023

ESMA: Three explanatory notes on key topics of the sustainable finance framework

Status: Final

ESMA has published three explanatory notes covering key topics of the sustainable finance framework. These include: (i) the definitions of sustainable investments in the SFDR and of environmentally sustainable economic activities in the Taxonomy Regulation; (ii) the application of “do no significant harm” (DNSH) requirements that are a key element in the Taxonomy Regulation, the SFDR and the Benchmark Regulation; and (iii) the use of ‘estimates’ and ‘equivalent information’ and the conditions under which these are allowed as sources of data to prepare mandatory ESG metrics for the compliance of regulated entities with their obligations. The notes aim to set out factual information regarding these concepts and provide helpful aid to stakeholders to navigate and better understand the sustainable finance legislative framework. These documents are purely descriptive and not intended to replace relevant legal texts or to provide guidance on the application of relevant provisions.

- [Concepts of sustainable investments and environmentally sustainable activities in the EU Sustainable Finance framework](#)
- [‘Do No Significant Harm’ definitions and criteria across the EU Sustainable Finance framework](#)
- [Concept of estimates across the EU Sustainable Finance framework](#)

Date of publication: 22/11/2023

Taxonomy Environmental Delegated Act

Status: Published in the OJ

Date of application: 01/01/2024

The Taxonomy Environmental Delegated Act (EU) 2023/2486 has been published in the OJ. It sets out the technical screening criteria for economic activities that contribute substantially to the sustainable use and protection of water and marine resources, to the transition to a circular economy, to pollution prevention and control, and to the protection and restoration of biodiversity and ecosystems. The Delegated Act will apply from 1 January 2024.

Date of publication: 21/11/2023

Amending Taxonomy Climate Delegated Act

Status: Published in the OJ

Date of application: 01/01/2024

The Amending Taxonomy Climate Delegated Act (EU) 2023/2485 has been published in the OJ. It sets out additional technical screening criteria for economic activities that may contribute substantially to climate change mitigation or climate change adaptation without significantly harming other environmental objectives, but which are currently not covered by the Taxonomy Climate Delegated Act. These includes the manufacturing activities associated with components for low carbon vehicles and electrical equipment. While the amending Delegated Act predominantly applies from 1 January 2024, some provisions apply from 1 January 2025.

Date of publication: 21/11/2023

EBA: Final templates for climate-related data from EU banks

Status: Final

The EBA has published the final templates that will be used to collect climate-related data from EU banks in the context of the one-off Fit-for-55 climate risk scenario analysis. The templates are accompanied by guidance, which includes definitions and rules for compiling the templates. The templates are designed to collect data from 110 EU banks and gather climate-related and financial information on credit risk, market and real estate risks. The data collection will start on 1 December and will be completed on 12 March 2024. Banks are asked to report aggregated and counterparty level data as of December 2022. Collecting counterparty level data will allow the EBA to assess concentration risk of large climate exposures, as well as to capture amplification mechanisms and assess second round effects. Aggregated data will inform climate-related risks of the banking sector more broadly.

Date of publication: 17/11/2023

(iii) International

BCBS: Consultation on disclosure of climate-related financial risks

Status: Consultation

Deadline for the submission of comments: 29/02/2024

BCBS EBA has published the final templates that will be used to collect climate-related data from EU banks in the context of the one-off Fit-for-55 climate risk scenario analysis. The templates are accompanied by guidance, which includes definitions and rules for compiling the templates. The templates are designed to collect data from 110 EU banks and gather climate-related and financial information on credit risk, market and real estate risks. The data collection will start on 1 December and will be completed on 12 March 2024. Banks are asked to report aggregated and counterparty level data as of December 2022. Collecting counterparty level data will allow the EBA to assess concentration risk of large climate exposures, as well as to capture amplification mechanisms and assess second round effects. Aggregated data will inform climate-related risks of the banking sector more broadly.

Date of publication: 29/11/2023

BCBS: Newsletter on the implementation of the Principles for the effective management and supervision of climate-related financial risks

Status: Final

BCBS has issued a newsletter on the implementation of the principles for the effective management and supervision of climate-related financial risks. The BCBS has found that the majority of member jurisdictions have taken steps to implement the principles in domestic supervisory frameworks and practices through the issuance of draft or final guidance, or have plans to issue such guidance. However, the BCBS also observed areas of slow progress, particularly in relation to the quantification of climate-related financial risks, data collection and adequate measurement through reliable risk metrics and key risk indicators. While it is recognised that climate-related financial risks will probably be incorporated into banks' internal capital and liquidity adequacy assessments iteratively and progressively, implementation of Principle 5 (capital and liquidity adequacy) was found to generally be at very early stages. Most supervisors noted that there has been no progress by banks to include climate-related capital and liquidity impacts into existing assessment processes.

The BCBS highlights three areas of focus: (i) enhancing data availability and quality. Data limitations were identified as the main impediment for banks and supervisors to implement the principles. The BCBS explains that banks will need to invest in better tools and greater automation to capture climate data and minimise operational risks associated with manual processes; (ii) building capabilities. Supervisors stated that banks did not have sufficient capabilities to fully implement the principles in the first 12 months. In particular, supervised banks lacked the required professional experience and human capital. The Committee encourages banks' ongoing efforts to strengthen their in-house expertise in order to decrease their reliance on external sources, integrate the measurement and mitigation of climate-related risks into their risk management practices and improve client engagement and due diligence; and (iii) applying climate scenario analysis. Supervisory climate scenario exercises have been a catalyst for building banks' resources and capability. They are considered a good complement to banks' internal climate scenario exercises, but not a replacement. These exercises also acknowledge the need and relevance for supervisors and banks to closely collaborate to overcome challenges in addressing climate-related financial risks.

Date of publication: 21/11/2023

10. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

BT: Adoption of the Financing for the Future Act (*Beschlussempfehlung und Bericht über das Zukunftsfinanzierungsgesetz*)

Status: Adopted by the BT

The German Federal Parliament (BT) has adopted the Financing for the Future Act (Zukunftsfinanzierungsgesetz – ZuFinG), following the resolution recommendation published by its Finance Committee on 15 November. For more information, please see section 3.1 above.

Date of publication: 17/11/2023

BRat: Opinion on the draft law promoting secondary credit markets (*Stellungnahme zum Kreditweitmarktförderungsgesetz*)

Status: Draft

Following the [government draft](#) by the German government on 6 November, the Bundesrat has published an opinion on the draft law promoting secondary credit markets and implementing Directive (EU) 2021/2167 on Credit Servicers and Credit Purchasers (*Gesetz zur Förderung geordneter Kreditweitmärkte und zur Umsetzung der Richtlinie (EU) 2021/2167 über Kreditdienstleister und Kreditkäufer sowie zur Änderung weiterer finanzmarktrechtlicher Bestimmungen – Kreditweitmarktförderungsgesetz*). For more information, please see section 1.1(a) above.

Date of publication: 06/11/2023

11. Contacts

Financial Services Regulatory / Funds and Asset Management Capital Markets



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



Dorothee Atwell
Partner
Tel +49 69 2648 5408
dorothee.atwell@allenoverly.com



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



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



Martina Stegmaier
Counsel
Tel +49 69 2648 5605
martina.stegmaier@allenoverly.com



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



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



Judith Bremer
Associate
Tel +49 69 2648 5562
judith.bremer@allenoverly.com



Suzana Cvejic
Associate
Tel +49 69 2648 5868
suzana.cvejic@allenoverly.com



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



Ruth Rawas
Associate
Tel +49 69 2648 5616
ruth.rawas@allenoverly.com



Katharina Wollmert
Associate
Tel +49 69 2648 5553
Katharina.wollmert@allenoverly.com

Derivatives, Structured Finance and Financial Services Regulatory

Derivatives and Structured Finance, Debt Capital Markets



Julius Brauer
Senior Paralegal
Tel +49 69 2648 5504
julius.brauer@allenoverly.com



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



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

FOR MORE INFORMATION PLEASE CONTACT

Frankfurt

Bockenheimer Landstraße 2
60306 Frankfurt am Main
Germany

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

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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
Ballindamm 17, 20095 Hamburg, Germany | Tel +49 40 82 221 2100 | Fax +49 40 82 221 2200
Maximilianstraße 35, 80539 Munich, Germany | Tel +49 89 71043 3000 | Fax +49 89 71043 3800
allenoverly.com

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