

# Regulatory monitoring

Newsletter

February 2024





# 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.

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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).

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

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# 1. Bank regulation

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## 1.1 Prudential regulation

### (a) General

#### (i) EU

##### **ECB: Memorandum of Cooperation between ECB and CAs on third-country bank supervision**

Status: Final

The ECB has published a Memorandum of Cooperation (MoC) between the ECB and competent authorities (CAs) in relation to the supervision of third-country banking groups and branches. The MoC's aims include to: (i) ensure cooperation by the authorities with the aim of comprehensively supervising all activities of third-country groups in the EU. It seeks to strengthen the supervisory framework established by the CRD and the CRR that applies to third-country groups in the Union, to prevent the circumvention of its requirements, and to prevent any detrimental impact on the financial stability of the EU; (ii) foster the supervisory framework within which the authorities cooperate and coordinate actions on credit institutions with head offices in third countries that establish one or more third-country branches in the EU; (iii) facilitate the exchange of information between the authorities on third-country groups and third-country branches, and specify the timing and means of such exchange; and (iv) facilitate the building of consensus on supervisory approaches taken by the authorities, to the extent possible.

Date of publication: 19/02/2024

#### (ii) International

##### **BCBS: Revisions to Basel Core Principles, consultation on addressing window-dressing in the G-SIB framework, and reaffirmation of expectation about Basel III implementation**

Status: Final

BCBS has published a statement following a meeting to take stock of recent market developments and risks to the global banking system, and to discuss a range of policy and supervisory initiatives. The meeting explored the risks to and vulnerabilities of the global banking system. In particular, it discussed the outlook for the global banking system in the light of recent economic and financial market developments, and analysed the role of scenario analysis in assessing the resilience of banks' business models, strategies and overall risk profile on a range of plausible climate-related pathways. The Committee also evaluated the comments received through its consultation on revisions to the Core principles for effective banking supervision (Basel Core Principles). The Committee approved the final revisions to the Core Principles, which draw on supervisory insights and structural changes to the banking system since the previous update in 2012. The final standard will be published following the International Conference of Banking Supervisors on 24-25 April 2024.

The Committee also looked at a range of empirical analyses that highlights window-dressing behaviour by some banks in the context of the framework for global, systemically important, banks (G-SIBs). Such regulatory arbitrage behaviour seeks to temporarily reduce banks' perceived systemic footprint around the reference dates used for the reporting and public disclosure of the G-SIB scores, thereby risking disruption of the operations of financial markets. To that end, the Committee agreed to consult on potential measures aimed at reducing window-dressing behaviour. Furthermore, BCBS took stock of the implementation status of the outstanding Basel III standards, which were finalised in 2017, and discovered good but uneven progress. Members unanimously reaffirmed their expectation of implementing all aspects of the Basel III framework in full, consistently and as soon as possible. They also approved a workplan for the jurisdictional assessments of the implementation of these standards as part of the Committee's Regulatory Consistency Assessment Programme.

Date of publication: 29/02/2024

## (b) Solvency/Own funds issues

### (i) EU

#### **EBA: Consultation on three technical standards for business indicator test under CRR III**

Status: Consultation

Deadline for the submission of comments: 21/05/2024

The EBA has launched a consultation on two sets of draft RTS and one draft ITS aiming to clarify the new business indicator required for the operational risk capital requirements calculation, to map the business indicator items to financial reporting (FINREP) items, and to highlight possible adjustments to the business indicator in case of specific operations. CRR III replaced the previous calculation of regulatory capital for operational risk with the business indicator component. The draft RTS on the specification on the business indicator items provide a list of typical items developed for each component of the business indicator, in line with the work provided in the EBA Policy Advice on the Basel III Reform. They also include subsequent amendments to accounting standards and clarify the elements to be excluded from the business indicator. The draft ITS, where possible, map the typical items of the business indicator to their corresponding reporting cells in FINREP. The draft RTS on business indicator adjustments require institutions to use the actual three-year historical data or a limited number of alternative methodologies following an operation. In the context of disposals, the draft RTS specify the conditions under which permission to exclude business indicator items related to disposed entities or activities may be granted. In parallel with the consultation, the EBA will carry out a quantitative analysis based on data requested as part of the Basel III monitoring quantitative impact study to assess the impact of the proposed amendments, as well as to inform the calibration of certain aspects of the new framework.

Date of publication: 20/02/2024

#### **ECB: Guide to internal models**

Status: Final

The ECB has published a revised version of its Guide to internal models under the Single Supervisory Mechanism (SSM). The new version incorporates the ECB's proposals set out in its June 2023 consultation and the subsequent industry feedback. The Guide is intended to provide transparency on how the ECB understands the CRR rules relating to internal models and how it intends to apply them when assessing whether institutions meet the requirements. The revisions, among other changes: (i) clarify how banks should go about including material climate-related and environmental risks in their models; (ii) clarify how banks can revert to the standardised approach for calculating their risk-weighted assets; (iii) in relation to credit risk, aim to help all banks to move towards a common definition of default and a consistent treatment of massive disposals; (iv) in relation to market risk, detail how to measure default risk in trading book positions; and (v) provide clarifications regarding counterparty credit risk. The ECB has published a related FAQ on the changes.

Date of publication: 19/02/2024

#### **EBA: Consultation on draft RTS on the exemption from the residual risk add-on own funds requirements for certain type of hedges under Article 325u(4a) CRR II**

Status: Consultation

Deadline for the submission of comments: 03/05/2024

The EBA has launched a consultation on draft RTS on the exemption from the residual risk add-on own funds requirements for certain type of hedges under Article 325u(4a) CRR II within the new fundamental review of the trading book (FRTB) framework. The RRAO charge is calculated for instruments where the risk is not sufficiently covered by the sensitivity-based method (SbM) and the default risk charge (DRC). Under the draft RTS, institutions would need to identify whether the RRAO charge relates to a non-SbM risk factor, and then verify that, as a result of the hedge, the sensitivity towards that non-SbM risk factor is significantly reduced. Where the RRAO charge is due to reasons other than the presence of a non-SbM risk factor, the draft RTS allow the instrument to be recognised as a hedge exempted from the RRAO charge if the RRAO risk stemming from the hedged instruments is completely offset.

Date of publication: 01/02/2024

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

### (i) Germany

#### **BaFin: Protocol on the virtual meeting of the expert committee for the MaRisk (*Protokoll zur virtuellen Sitzung des Fachgremiums MaRisk*)**

Status: Final

BaFin has published a protocol on the virtual meeting of the expert committee for the MaRisk. The meeting discussed, among other things, the (i) exchange on options for the adoption of future EBA Guidelines; (ii) leverage ratio P2R for LSIs; (iii) assessment of the ability to capital services for real estate consumer loans.

Date of publication: 07/02/2024

## (d) Cyber security

### (i) EU

#### **Commission Implementing Regulation (EU) 2024/482 laying down rules for the application of the Cyber Security Regulation as regards the adoption of the EUCC**

Status: Published in the OJ

Date of application: 27/02/2024

The Commission Implementing Regulation (EU) 2024/482 laying down rules for the application of the Cyber Security Regulation as regards the adoption of the European Common Criteria-based cybersecurity certification scheme (EUCC) has been published in the OJ. It aims to specify the roles, rules and obligations, as well as the structure, of the EUCC in accordance with the European cybersecurity certification framework set out in the Cyber Security Regulation. The EUCC builds on the Mutual Recognition Agreement (MRA) of Information Technology Security Certificates of the Senior Officials Group Information Systems Security (SOG-IS) using the Common Criteria, including the group's procedures and documents.

Date of publication: 07/02/2024

## (e) Qualifying holdings

### (i) EU

#### **EBA: Peer review follow-up report on prudential assessment of the acquisition of qualifying holdings**

Status: Final

The EBA has published a follow-up report to the EBA 2021 peer review report on the application of the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings. The review assesses the adequacy and effectiveness of the actions undertaken by the competent authorities subject to the previous review and finds good progress in remedying the deficiencies identified in 2021. The follow-up report focuses on the 17 competent authorities assessed as having at least one supervisory benchmark that was not 'fully applied' in the 2021 report. All 17 competent authorities were found to have responded to the assessment of the initial peer review seriously and most have adopted measures to remedy the deficiencies identified. Improvements were identified in the areas of assessment of the financial soundness of proposed acquirers and of suspicions of money laundering/terrorist financing issues.

Date of publication: 12/02/2024

## (f) Disclosure

### (i) EU

#### **EBA: Consultation on draft ITS amending Commission Implementing Regulation (EU) 2021/637 on public disclosures by institutions of the information on operational risk under Article 446 CRR II**

Status: Consultation

Deadline for the submission of comments: 30/04/2024

The EBA has launched a consultation on the draft ITS amending Commission Implementing Regulation (EU) 2021/637 on public disclosures by institutions of the information on operational risk under Article 446 CRR II, aiming to implement the CRR3 reporting and disclosure requirements linked to the introduction of the revised framework for the calculation of own-funds requirements for operational risk. The consultation is part of phase 1 of the implementation of the EU Banking Package, which also includes the two consultations published in December 2023 covering the disclosure and reporting requirements for output floor, credit risk (also IP Losses), credit valuation adjustment (CVA), market risk and leverage ratio. With these ITS, the EBA aims to bring under one single document both the reporting and disclosure requirements for operational risk and the broader Pillar 3 disclosures and supervisory reporting CRR3 changes (already under consultation) so as to provide certainty to banks as soon as possible.

Date of publication: 20/02/2024

#### **EBA: Consultation on draft ITS amending Commission Implementing Regulation (EU) 2021/451 on supervisory reporting under Article 430 (7) CRR II concerning operational risk**

Status: Consultation

Deadline for the submission of comments: 30/04/2024

The EBA has launched a consultation on draft ITS amending Commission Implementing Regulation (EU) 2021/451 on supervisory reporting under Article 430 (7) CRR II concerning operational risk, aiming to implement the CRR3 reporting and disclosure requirements linked to the introduction of the revised framework for the calculation of own-funds requirements for operational risk. The consultation is part of phase 1 in the implementation of the EU Banking Package, which also includes the two consultations published in December 2023 covering the disclosure and reporting requirements for output floor, credit risk (also IP Losses), credit valuation adjustment (CVA), market risk and leverage ratio. With these ITS, the EBA aims to bring under one single document both the reporting and disclosure requirements for operational risk and the broader Pillar 3 disclosures and supervisory reporting CRR3 changes (already under consultation) so as to provide certainty to banks as soon as possible.

Date of publication: 20/02/2024

## (g) Accounting/Prudential filter/Audit

### (i) International

#### **IOSCO: Announcement of strong progress in the implementation of recommendations to strengthen the international audit, assurance, ethics, and independence standard-setting system**

Status: Final

The IOSCO monitoring group is pleased to report strong progress in the implementation of recommendations to strengthen the international audit, assurance, ethics, and independence standard-setting system. In July 2020, the group issued its [Recommendations Strengthening the International Audit and Ethics Standard-Setting System](#). Its objectives are the implementation of a more independent and inclusive multi-stakeholder standard-setting system that is more responsive to the public interest, and an accelerated pace of change in the development of timely, high-quality audit, assurance, ethics, and independence standards.

Date of publication: 06/02/2024

## 1.2 Recovery and resolution

### (i) Germany

#### **BaFin: Circular 03/2024 on MaStructural resolution tools (*Rundschreiben 03/2024 zu MaStrukturellen Abwicklungsinstrumenten*)**

Status: Final

BaFin has published circular 03/2024 on minimum requirements for implementing transfers during a resolution (MaStructural resolution tools). It aims to operationalise resolution strategies that provide for a transfer: a company sale instrument (asset and share deal), a transfer instrument to a bridge institution (asset and share deal), and a transfer instrument to an asset management company. The draft initially contains a general presentation of the transfers. The requirements differ depending on the type of instrument and whether it is an asset or share deal. In addition, the draft contains the structure of a transfer manual for each instrument, which must be created as part of the resolution planning.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutes and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 16/02/2024

#### **BaFin: Circular 02/2024 on minimum requirements for the implementation of a bail-in (*Rundschreiben 02/2024 zu Mindestanforderungen für die Umsetzbarkeit eines Bail-in*)**

Status: Final

BaFin has published circular 02/2024 on minimum requirements for the implementation of a bail-in (MaBail-in). This is an expansion of the previous Circular of the same name published in 2021 (Circular 14/2021). The new version includes the requirement to create a bail-in manual. In addition, the previous data requirements are expanded by adding new data fields. These are used in particular for the external bail-in implementation of structured bonds. Furthermore, descriptions of the data fields have been revised and the appendix to FAQs has been expanded.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutes and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 16/02/2024

#### **BaFin: Circular 01/2024 on MaResolvability (*Rundschreiben 01/2024 zur MaAbwicklungsfähigkeit*)**

Status: Final

BaFin has published its Circular on minimum requirements for resolvability within the scope of resolution planning (MaResolvability). This is an expansion of the previous Circular of the same name published in 2022 (Circular 08/2022). The new version contains a detailed introduction that is intended to strengthen the understanding of the affected institutions and the interested public for the resolution planning of less significant institutions in Germany. In particular, it shows the connections between the in-depth circulars and their requirements.

The Circular is directed at all institutions within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1)(1)-(3) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) with their registered office in Germany for which the SRB is not responsible. This circular generally does not apply to institutes and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings.

Date of publication: 16/02/2024



**BaFin: Consultation on the revision of MaRisk to implement the EBA Guidelines on IRRBB and CSRBB**  
*(Konsultation 02/2024 über die Überarbeitung der MaRisk zur Umsetzung der EBA Leitlinien zu IRRBB und CSRBB)*

Status: Consultation

Deadline for the submission of comments: 14/03/2024

BaFin has launched a consultation on the revision of MaRisk to implement the EBA Guidelines on interest rate risks (IRRBB) and credit spread risks (CSRBB) in the banking book (EBA/GL/2022/14), which came into force last year on German administrative practice. Although the majority of the requirements for IRRBB have already been reflected explicitly or implicitly in MaRisk, some additions are necessary to ensure a complete transfer of the EBA's relevant Guidelines into MaRisk. Furthermore, by setting up more specific Guidelines for CSRBB, the EBA has largely broken new ground. These requirements are also fully addressed in the MaRisk revision by way of integrating a new module on credit spread risks (BTR 5) in the attached draft, whereby the approach chosen for this is already familiar from the previous MaRisk revision.

Date of publication: 15/02/2024

**(ii) Eurozone**

**SRB: SRM Vision 2028 strategy**

Status: Final

The SRB has published its SRM Vision 2028 strategy. The strategy marks a clear shift for the SRM, as it begins a new phase of work that takes into account the evolving risk landscape. The SRB and national resolution authorities (NRAs) are moving from the key elements of resolution planning and preparation to include a new focus on operationalisation, resolution testing and crisis readiness. This will ensure that each plan and preferred resolution strategy for each bank can be implemented, and at short notice, making it even more crisis-ready and resilient. The strategy was developed over the past 12 months, with a total of seven different consultations, both internally as well as with NRAs and industry. The strategy covers three key areas: (i) core business; (ii) governance, organisation and tools; and (iii) human resources. It has nine strategic objectives with 20 actions to be implemented between now and the end of 2028. The specific activities and performance indicators will be included in the upcoming SRB's Multi-Annual Plan.

Date of publication: 13/02/2024

**SRB: List of upcoming consultations and requests to industry**

Status: Final

The SRB has for the first time published a list of all public consultations, data requests and deliverables stemming from the Expectations for Banks (EfB) planned over the course of the year 2024. The list covers several types of consultation and request to the industry, and takes into account resolution-related requests to the extent possible. The first table provides an overview of the public (voluntary) consultations on different policy topics that have a material impact on banks' activities envisaged in 2024 and consultations foreseen by Union law. The second table features regular data requests and deliverables rooted in the EfB. The data requests stem either from the SRB or EBA and feed into our teams' assessment of bank resolvability and compliance with MREL requirements. Moreover, the second table includes deliverables introduced via the EfB, which the SRB requests depending on the resolution strategy endorsed in the plan and risk profile of the bank. The SRB reserves the right to announce additional consultations and (non-bank-specific) requests throughout the year in case of unforeseen circumstances.

Date of publication: 07/02/2024

## 2. Market regulation/Conduct rules

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### 2.1 Credit rating agencies

#### (i) EU

##### ESMA: Q&A on the CRA Regulation

Status: Final

ESMA has updated its Q&As on the CRA Regulation in relation to the level of transparency that should be provided when a credit rating is discontinued or withdrawn. ESMA's previous Q&A document has not been updated (as of 31 December 2023) and the Q&As are instead now accessible via ESMA's Q&A IT-tool.

Date of publication: 02/02/2024

### 2.2 Market abuse

#### (i) EU

##### ESMA: Warning about social media investment recommendations

Status: Final

ESMA has published a warning for people posting investment recommendations on social media. The warning aims to raise awareness of the relevant MAR requirements and also of the risks of market manipulation when posting on social media. The warning provides information on topics including: (i) what is an investment recommendation under MAR; (ii) the consequences of non-compliance; (iii) who can produce recommendations and the different MAR recommender categories; and (iv) the MAR requirements relating to investment recommendations. ESMA also provides practical examples of different types of recommendation and unlawful disclosure of inside information.

Date of publication: 06/02/2024

### 2.3 MiFID/MiFIR

#### (i) Germany

##### BaFin: Updated Circular 05//2018 on minimum requirements for the compliance function – MaComp (Aktualisiertes MaComp-Rundschreiben)

Status: Final

BaFin has published its Circular 05//2018 on minimum requirements for the compliance function and the further conduct, organisation and transparency obligations for investment service providers (*Mindestanforderungen an die Compliance-Funktion und die weiteren Verhaltens-, Organisations- und Transparenzpflichten für Wertpapierdienstleistungsunternehmen – MaComp*). The reason for this update is the publication of the ESMA Guidelines on certain aspects of the MiFID II remuneration requirements, which have now been incorporated into part BT 8 of the MaComp without content-related changes. These remuneration requirements set out in the ESMA Guidelines aim to avoid conflicts of interest and ensure good-conduct rules and corporate governance.

Date of publication: 28/02/2024

## **(ii) EU**

### **Council of the EU: Adoption on new rules to strengthen market data transparency under MiFIR and MiFID II**

**Status: Draft**

The Council of the EU has announced that it has adopted the proposed Regulation and Directive amending MiFID II and MiFIR to strengthen market data transparency. Changes to the existing framework include: (i) the establishment of consolidated tapes to provide investors with up-to-date transaction information for the whole EU; (ii) the imposition of a general ban on 'payment for order flow', a practice through which brokers receive payments for forwarding client orders to certain trading platforms. Member States in which the practice already existed may allow investment firms under its jurisdiction to be exempt from the ban, provided that the practice happens only in the context of services to clients in that Member State, but the practice must be phased out by 30 June 2026; and (iii) the introduction of new rules on commodity derivatives.

The texts will now be published in the OJ and enter into force 20 days later. The Regulation will apply immediately in all EU countries, whereas Member States will have 18 months to bring into force the laws, regulations and administrative provisions necessary to comply with the directive.

Date of publication: 20/02/2024

### **ESMA: Public statement on the deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review**

**Status: Final**

ESMA has issued a public statement on the deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review. ESMA expects NCAs not to prioritise supervisory actions towards investment firms relating to the periodic RTS 28 reporting obligation, from 13 February until the forthcoming transposition into national legislation in all Member States of the MiFID II review. Under the reviewed MiFID II/MiFIR framework, investment firms are no longer required to annually report detailed information on trading venues and execution quality through RTS 28 reports, and the statement will promote coordinated action by NCAs under MiFID II.

Date of publication: 13/02/2024

### **ESMA: Updated Q&A on MiFIR**

**Status: Final**

ESMA has updated its Q&As on MiFIR in relation to transaction reporting, specifically how different national identifiers specified in Annex II of RTS 22 are represented. The Q&A is available in ESMA's Q&A IT tool, rather than the previous Q&A document.

Date of publication: 02/02/2024

### **Council of the EU: Publication of texts of proposed Directive and Regulation on MiFID II financial market data transparency**

**Status: Draft**

The Council of the EU has published the texts of the proposed Directive amending MiFID II and the proposed Regulation amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow. The new provisions aim to reduce information asymmetries between market participants and improve orderly trading in commodity derivatives concerning energy and food. To

protect investors from suboptimal trading decisions, the practice of receiving payments for forwarding client orders for execution will be banned across the EU.

The Council of the EU will now need to adopt the proposed legislation before it is published in the OJ. Both texts will then enter into force on the twentieth day following this publication.

- Regulation amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow
- Directive amending MiFID on markets in financial instruments

Date of publication: 02/02/2024

## 2.4 Prospectus regulation

### (i) Germany

#### **BaFin: FAQs on investment prospectuses (*FAQs über Prospekte für Vermögensanlagen*)**

Status: Final

BaFin has published FAQs on investment prospectuses, including 24 questions and answers regarding this topic. Most of these FAQs have previously been published on BaFin's website as FAQs on capital investment prospectuses and capital investment information sheets (*Vermögensanlagen-Informationenblätter – VIBs*).

Date of publication: 27/02/2024

## 3. Market infrastructure

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### 3.1 EMIR

#### (i) EU

##### **ESMA: Final report on technical advice to the EC on fees charged to Tier 1 third-country CCPs under EMIR**

Status: Final

ESMA has published a final report on technical advice to the EC on fees charged to Tier 1 third-country CCPs under EMIR. This report aims to: (i) allocate the annual fees among all recognised Tier 1 CCPs via a weighting factor which depends on their global turnover; (ii) introduce a basic minimum annual fee of EUR 50,000 per Tier 1 TC-CCP, and a maximum annual fee of EUR 250,000; and (iii) introduce an incentive scheme for Tier 1 TC-CCPs failing to submit annual audited turnover figures. It also aims to ensure that the annual fees charged to Tier 1 TC-CCPs are more proportionate and accurately reflect the differences in size and activity across all Tier 1 TC-CCPs.

Date of publication: 27/02/2024

##### **Council of the EU: Political agreement on EMIR 3.0**

Status: Draft

The Council of the EU has published the compromise texts for the following proposals: (i) a Regulation amending EMIR, the CRR and the MMF Regulation as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets (EMIR 3.0); and (ii) a Directive amending the UCTIS Directive, CRD IV and the IFD as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions (Amending Directive). In an accompanying [T item note](#), the Council of the EU explains that the compromise texts reflect the provisional political agreement reached by the Council of the EU and the EP on 7 February. The provisional political agreement is subject to approval by the Council of the EU and the EP before going through the formal adoption procedure.

- [EMIR 3.0](#)
- [Amending Directive](#)

Date of publication: 14/02/2024

##### **Council of the EU/EP: Provisional political agreement on EMIR 3.0**

Status: Draft

The Council of the EU and the EP have announced that they have reached provisional political agreement on EMIR 3.0. The proposed EMIR review contains several measures designed to improve EU clearing services, notably by streamlining and shortening procedures, improving consistency between rules, strengthening CCP supervision and requiring market participants of substantial systemic importance, who are subject to a clearing obligation, to have an operationally active account at an EU CCP. The authorities highlight that agreement was reached on topics including: (i) supervisory processes – supervisory authorities will be able to apply streamlined supervisory processes, such as authorisation and validation procedures; (ii) strengthening ESMA's role – ESMA will provide a coordination role in emergency situations, while ultimate decision making powers are the responsibility of the NCAs. ESMA will also take the role of co-chair of supervisory colleges together with the relevant NCAs, who will keep ultimate decision making powers; (iii) active account requirement – this will require certain financial and non-financial counterparties to have an account at an EU CCP, and regularly clear through it at least five trades in each of the most relevant subcategories per class of derivative contract, defined by ESMA. An account is considered active if it posts initial and daily variation margins, has in place the necessary IT connectivity, internal processes, legal documentation, and stress tests, and can demonstrate that its functioning would not be affected in the event of a significant and sudden increase in clearing activity. A Joint Monitoring Mechanism has been created to keep track of this new requirement; (iv) non-financial counterparties (NFC) – for an NFC to be a part of a group that benefits from the intragroup reporting exemption, its EU parent



undertaking would report net aggregate positions of that NFC by class of derivatives to its competent authority. The competent authority would then share the information with ESMA; and (v) transparency – clients of EU CCPs, as well as recognised third-country CCPs, should be informed about an option to clear a derivative contract at an EU CCP, which should be transparent on fees, risks associated with the service provided and volumes of cleared transactions.

The provisional political agreement is subject to approval by the Council and the EP before going through the formal adoption procedure and entering into force.

Date of publication: 07/02/2024

### **ESAs: Confirmation of ESMA's decision to withdraw the recognition of Dubai Commodities Clearing Corporation**

**Status: Final**

The ESA's Board of Appeal has published its unanimous decision to dismiss the Dubai Commodities Clearing Corporation's (DCCC) appeal in relation to ESMA's intention to withdraw the recognition of DCCC as a Tier 1 third-country CCP under EMIR. In December 2022, the EC added the UAE to the list of countries that have strategic deficiencies in their national AML/CTF frameworks, and that pose significant threats to the financial system of the EU, and thus ESMA was required to withdraw recognition. DCCC did not challenge ESMA's decision to withdraw recognition as such, but requested an extension of the adaptation period from three months to two years and a suspension of the contested decision until the outcome of the Appeal. The Board of Appeal could not find any evidence that the adaptation period of three months was disproportionate. Given the resignation of DCCC's only EU clearing member and the fact that DCCC has not requested any maintenance of the suspension beyond the date of the decision disposing of the Appeal, the Board of Appeal also unanimously decided that it is appropriate to allow the suspension to expire on the date of publication of the present decision.

Date of publication: 06/02/2024

### **ESMA: Q&A on the implementation of EMIR**

**Status: Final**

ESMA has updated its Q&As on EMIR in relation to: (i) exchange traded derivatives (ETD) reporting; (ii) reporting under the Settle-to-Market/Collateralise-to-Market model; (iii) updating client codes; (iv) reporting of a counterparty falling within scope of Article 1(4)(a) and (b); (v) portability of schedules; and (vi) subsidiaries. Apart from the Q&A on ETD reporting, the Q&As are available in ESMA's Q&A IT tool, rather than the previous Q&A document.

Date of publication: 02/02/2024

### **ECB: Results of the December 2023 survey on credit terms and conditions in euro-denominated securities financing and OTC derivatives markets (SESFOD)**

**Status: Final**

The ECB has published the results of the December 2023 survey on credit terms and conditions in euro-denominated securities financing and OTC derivatives markets (SESFOD). It concluded that overall credit terms and conditions offered to different counterparty types remained on balance unchanged between September and November 2023, contrasting with the expectations of further tightening expressed in the September 2023 survey. Survey respondents expected overall credit terms to tighten over the period from December 2023 to February 2024.

Date of publication: 02/02/2024

## (ii) International

### IOSCO/CPMI: Report on streamlining variation margin in centrally cleared markets – examples of effective practices

Status: Consultation

Deadline for the submission of comments: 14/04/2024

The Committee on Payments and Market Infrastructures (CPMI) and IOSCO have published a joint report on examples of effective practices for streamlining variation margin (VM) in centrally cleared markets. The report sets out eight examples of effective practices for CCPs and their clearing members (CMs) regarding VM processes and transparency. The examples of effective practices include (i) scheduled and ad hoc intraday VM calls; (ii) the use of excess collateral held at CCPs to meet VM requirements; (iii) the pass-through of VM by CCPs; and (iv) CCP-CM and CM-client transparency regarding VM processes. These examples of effective practices are intended to inform CCPs as they design their VM call-and-collection processes in line with the PFMI and the CPMI-IOSCO 2017 guidance on the resilience of CCPs. The effective practices have been informed by the responses to three surveys issued by CPMI-IOSCO to CCPs, CMs and end user clients. They are not intended to create additional standards for FMIs, nor to provide guidance on existing standards. The CPMI-IOSCO findings do not represent an assessment of current CCP practices.

Date of publication: 14/02/2024

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

### (i) EU

#### ESMA: Official translations of Guidelines on CCP resolution and resolvability assessments

Status: Final

Date of application: 09/04/2024

ESMA has published the official translations of guidelines on the summary of resolution plans of CCPs and resolvability assessments under the CCPRRR: (i) Guidelines on the assessment of resolvability, which establish a common set of aspects for resolution authorities to consider when applying the 26 matters provided in Section C to the Annex of CCPRRR during the conduct of resolvability assessments; and (ii) Guidelines on the summary of resolution plans of CCPs, which provide clarity on the key elements of the resolution plan that should be included in the summary referred to in Article 12(7), point (a), of the CCPRRR and disclosed to the CCP in accordance with Article 12(8) of the CCPRRR.

Within two months of the date of publication on ESMA's website, competent authorities are required to inform ESMA whether they comply, do not comply but intend to comply, or do not comply and do not intend to comply, with the Guidelines.

- [Guidelines on the assessment of resolvability](#)
- [Guidelines on the summary of resolution plans](#)

Date of publication: 09/02/2024

#### Commission Delegated Regulation (EU) 2024/450 supplementing the CCPRRR with regard to RTS specifying the minimum elements to be included in a business reorganisation plan and the criteria to be fulfilled for its approval by the resolution authority

Status: Published in the OJ

Date of application: 27/02/2024

The Commission Delegated Regulation (EU) 2024/450 supplementing the CCP Recovery and Resolution Regulation (CCPRRR) with regard to RTS specifying the minimum elements to be included in a business reorganisation plan and the criteria to be fulfilled for its approval by the resolution authority has been published in the OJ. This Delegated act sets out the content of the business reorganisation plan submitted by the CCP within one month after the resolution authority applied the write-down and conversion tool in accordance with Article 32 of the CCPRRR. Amongst the minimum elements that must be included are: (i)

the factors or circumstances that caused the CCP to fail or to be likely to fail; (ii) a description of the measures to be adopted to restore the CCP's long-term viability; and (iii) a timetable for implementing these measures. The criteria to be fulfilled for the approval of the plan include viability performance criteria, financial performance criteria, awareness and commitment criteria, credibility, awareness, and appropriateness.

Date of publication: 07/02/2024

## ESMA: Official translations of Guidelines under CCPRRR

Status: Final

Date of application: 02/04/2024

ESMA has published the official translations of its Guidelines on: (i) the types and content of the provisions of cooperation arrangements under Article 79 of the CCP Recovery and Resolution Regulation (CCPRRR); and (ii) written arrangements and procedures for the functioning of resolution colleges. NCAs must notify ESMA by the application date whether they comply, do not comply but intend to comply, or do not intend to comply, with the Guidelines.

- Official translation of Guidelines on the types and content of the provisions of Cooperation Arrangements (Article 79 of CCPRRR)
- Official translation of Guidelines on written arrangements and procedures for the functioning of resolution colleges

Date of publication: 02/02/2024



## 4. Anti-money laundering

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### (i) EU

#### Council of the EU: Announcement that Frankfurt will host the AMLA

Status: Final

The Council and the EP have reached an agreement on the seat of the future European authority for anti-money laundering and countering terrorist financing (AMLA): it will be based in Frankfurt and begin operations mid-2025. It will have over 400 staff. The new authority is the centrepiece of the reform of the EU's anti-money-laundering framework. AMLA will have direct and indirect supervisory powers over obliged entities and the power to impose sanctions and measures. Regarding the location of the authority, the Council and the Parliament worked together to ensure a selection process that is transparent, fair and equitable to all candidates. The final agreement on the location of AMLA's seat was made by the co-legislators in an informal inter-institutional meeting at political level, where the Parliament's and the Council's representatives voted together at the same time with 27 votes attributed to each co-legislator.

Date of publication: 22/02/2024

#### Council of the EU: Text of political agreement on proposed AMLA Regulation

Status: Draft

The Council of the EU has published the final compromise text reflecting the provisional political agreement reached with the EP on the proposed Regulation establishing the AML Authority (AMLA Regulation). The provisional political agreement is still subject to formal approval by the Council and the EP. The location of the seat of the AML Authority is yet to be determined.

Date of publication: 20/02/2024

#### Commission Delegated Regulation (EU) 2024/595 supplementing the EBA Regulation 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) EBA Regulation

Status: Published in the OJ

Date of application: 07/03/2024

The Commission Delegated Regulation (EU) 2024/595 supplementing the EBA Regulation 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) EBA Regulation has been published in the OJ. The RTS relate to EuReCa, the EU's central database of information for AML/CFT launched in January 2022. Primarily, the RTS specify: (i) when weaknesses are material; (ii) which information competent authorities have to report and how they have to report it; (iii) how the EBA will analyse this information and make it available to competent authorities; and (iv) the rules that will apply to ensure confidentiality and the protection of personal data contained in the database.

Date of publication: 16/02/2024

#### Council of the EU: Political agreement on proposed MLD6 and AML Regulation

Status: Draft

The Council of the EU has published the compromise texts for the following proposals: (i) a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing MLD5 (MLD6); and (ii) a Regulation on the prevention of the use of the financial system for

the purposes of money laundering or terrorist financing (AML Regulation). In an accompanying [T item note](#), the Council of the EU explains that the compromise texts reflect the provisional political agreement reached by the Council and EP in January.

- [MLD6](#)
- [AML Regulation](#)

Date of publication: 14/02/2024

## (ii) International

### FATF: Methodology for the fifth round of mutual evaluations

Status: Final

The FATF has published a methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT/CPF systems. In preparation for the upcoming fifth round of mutual evaluations, it has now finalised its modifications to this assessment methodology to reflect the recent revisions to the FATF Standards to protect non-profit organisations from potential abuse for terrorist financing.

The next round of mutual evaluations will be a six-year cycle, and therefore significantly shorter than earlier rounds which lasted 10 years on average. It aims to strengthen the focus on effectiveness, in order to ensure that countries are implementing and making use of the laws, regulations and policies that are in place. There will also be a greater emphasis on the major risks and context in order to ensure that countries, and the assessors reviewing them focus on the areas where the risks are highest. Mutual evaluations in the next round are aimed at assessing the effectiveness of the financial sector and the non-financial businesses and professions separately in order to provide a clearer overview of the level of effectiveness of these distinct areas, and stronger, more targeted recommendations for improvement. In addition, recommendations from the mutual evaluation reports are expected to be more results-oriented by focusing on specific actions and timelines to tackle money laundering, terrorist financing and the financing of weapons of mass destruction.

So far, the methodology is published for information only and not yet in force.

Date of publication: 26/02/2024

### FATF: Consultation on recommendation 16 on payment transparency

Status: Consultation

Deadline for the submission of comments: 03/05/2024

The FATF has launched a consultation on a range of options for potential changes to Recommendation 16, its Interpretive Note on wire transfers and the related Glossary of specific terms. The proposed revisions seek to adapt FATF Standards to the changes in payment systems' business models and messaging standards and to ensure that they remain technology-neutral and follow the principle of 'same activity, same risk, same rules'. These proposed revisions also aim to help make cross-border payments faster, cheaper, more transparent and inclusive whilst remaining safe and secure. The Explanatory Memorandum also presents 18 questions for consultation across various issues that include: (i) additional transparency requirements on exemption for purchase of goods and services using cards; (ii) the removal of the withdrawal or purchase of cash or a cash equivalent from R.16 exemption, subject to certain conditions; (iii) improving the content and quality of basic originator and beneficiary information in payment messages; (iv) obligations on beneficiary financial institutions to check alignment of beneficiary information in payment messages; and (v) definition of payment chain and conditions for net settlement.

Date of publication: 26/02/2024

### FATF: 2024 plenary outcomes

Status: Final

The FATF has published a statement on the outcomes of its fifth plenary. Among the key outcomes is a new risk-based guidance for the implementation of Recommendation 25 on the beneficial ownership and transparency of legal arrangements. This completes the FATF's body of work to enhance transparency of beneficial ownership globally and prevent criminals and terrorists from hiding their activities and funds behind complex corporate structures and legal arrangements such as trusts. In addition, the FATF has identified jurisdictions with materially important virtual asset activity, to support them in implementing



the FATF's requirements to supervise and regulate this activity. It has also updated the statements identifying high-risk and other monitored jurisdictions and removed four countries from its increased monitoring list following successful on-site visits.

**Date of publication:** 23/02/2024

# 5. Payments

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## 5.1 Payment services/E-money

### (i) Germany

#### **BaFin: Guidance Notice on notes regarding the Payment Services Oversight Act (*Merkblatt über Hinweise zum Zahlungsdiensteaufsichtsgesetz*)**

Status: Final

BaFin has updated its Guidance Notice on notes regarding the Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). In particular, the update has adjusted the section on the purpose card in order to align it with statements from the German ministry of finance (*Bundesfinanzministerium – BMF*) published in a letter of 15 March 2022.

Date of publication: 31/01/2024

### (ii) EU

#### **Council of the EU: Adoption of Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro**

Status: Adopted by the Council of the EU

The Council of the EU has adopted a Regulation that is aimed at making instant payments fully available in euro to consumers and businesses in the EU and in EEA countries. The new rules are directed at improving the strategic autonomy of the European economic and financial sector by reducing excessive reliance on third-country financial institutions and infrastructures. Improving the possibilities to mobilise cash-flows will bring benefits for citizens and companies and allow for innovative added value services. In particular, the instant payments Regulation will allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU member state. Payment service providers such as banks, which provide standard credit transfers in euro, will be required to offer the service of sending and receiving instant payments in euro while not being allowed to apply higher charges than those for standard credit transfers.

The new rules will enter into force after a transition period that will be faster in the euro area and longer in the non-euro area, which needs more time to adjust.

Date of publication: 26/02/2024

#### **EPC: Consultation on Verification of payee scheme rulebook**

Status: Consultation

Deadline for the submission of comments: 19/05/2024

The EPC has launched a consultation on its proposed Verification of Payee (VoP) Scheme Rulebook and the proposed EPC recommendations for the matching processes under the VoP Scheme Rulebook. This proposed version of the VoP Scheme Rulebook focuses on predominantly fulfilling the EU legislative requirements set out by the proposed EU Instant Payments Regulation (IPR) amending the SEPA Regulation. This means that for the time being, and to allow PSPs in the EEA to comply with the new regulatory requirements within the given deadlines, the rulebook limits itself to verifications of a payee related to a SEPA Credit Transfer or a SEPA Instant Credit Transfer. The EPC states that future versions of the VoP scheme rulebook could cover other payment instruments as well, depending on market needs or interest.

The EPC intends to publish the final version of the rulebook by the end of September 2024 in time for the expected implementation date of September/October 2025 for the IPR.

Date of publication: 20/02/2024

## **ECON: Adoption of draft reports on proposed PSD3 and PSR**

### **Status: Draft**

ECON has announced that it had adopted draft reports on the EC's legislative proposals for: (i) a Directive on payment services and electronic money services in the internal market (PSD3). ECON highlights proposed amendments to PSD3 relating to better access to cash, the ability of new types of payment services to enter the EU payment service sector and the authorisation process for undertakings intended to provide payment services or electronic money services; and (ii) a Regulation on payment services in the internal market (PSR). ECON highlights proposed amendments to the PSR relating to the security of transfers (including changes relating to unique identifiers and strong customer authentication, the security of personal data and disclosures concerning charges prior to the initiation of a payment transaction). The EP is expected to vote on both texts during the first plenary session in April, to close the first reading without agreement with the Council of the EU. Negotiations between the EP and the Council of the EU are then expected to start after the elections.

Date of publication: 14/02/2024

## 6. Institutional supervisory framework

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### (i) Germany

**BaFin: Press release on close cooperation between Germany and Ukraine in the future, with financial market supervision** (*Pressemitteilung zur künftig engen Zusammenarbeit Deutschlands und der Ukraine in der Finanzmarktaufsicht*)

Status: Final

BaFin has published a press release on close cooperation between Germany and Ukraine in the future, with financial market supervision. It sets out that BaFin and the Ukrainian National Securities and Stock Market Commission (NSSMC) plan to work together closely in future. A joint online workshop on the topic of virtual assets on 30 January marked an important milestone in their cooperation.

Date of publication: 01/02/2024

### (ii) EU

**ESRB: Follow-up report on vulnerabilities in the residential real estate sectors of the EEA countries**

Status: Final

The ESRB has published a follow-up report on vulnerabilities in the residential real estate (RRE) sectors of EEA countries. Key findings include: (i) the level of accumulated vulnerabilities remains significant in most EEA countries; (ii) forward-looking risk assessments remain scenario-dependent, but in a baseline scenario, an orderly correction of RRE prices and reduction in loan growth may continue in the next few quarters. In the long term, this may benefit financial stability. Over the medium term, economic growth is expected to pick up and inflation is expected to moderate, meaning RRE vulnerabilities may build up. To avoid such a build-up, national authorities would need to be ready to activate all necessary macroprudential tools; (iii) since 2021, several countries have been activating macroprudential policies, in particular using capital buffers, to mitigate RRE risks and increase lender and borrower resilience. The ESRB reminds countries that have received recommendations or warnings previously to continue addressing RRE vulnerabilities with macroprudential policies, as well as other measures.

Date of publication: 01/02/2024

**ECON: Report on proposed Regulation amending ESAs and ESRB Regulations to facilitate data sharing and re-use by financial sector authorities**

Status: Final

ECON has published a report on the proposal for a Regulation amending the ESRB Regulation, EBA Regulation, EIOPA Regulation, ESMA Regulation and InvestEU Regulation as regards certain reporting requirements in the fields of financial services and investment support. The proposal aims to reduce reporting burdens on companies by reducing duplicative reporting and increasing the sharing and reuse of data amongst financial services authorities. ECON adopted the report on 29 January. It contains the draft legislative text, indicating amendments to the EC's proposal.

Date of publication: 02/02/2024

**ESMA: Peer review methodology**

Status: Final

ESMA has published an updated version of its peer review methodology, dated 24 January. ESMA is required to periodically organise and conduct a peer review of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, ESMA develops methods to allow for objective assessment and comparison and for assessing the adequacy and effectiveness of NCA actions in response to the peer review findings. The methodology sets out the methods and tools used and is divided into five titles: (i) Title I - Overview of the peer review framework and process; (ii) Title

II - The topics for peer reviews; (iii) Title III - The peer review process; (iv) Title IV - Framework for the follow-up to peer reviews; and (v) Title V – Fast track peer review. The methodology was last updated in May 2020.

**Date of publication:** 01/02/2024



# 7. Investment funds

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## 7.1 Product regulation

### (a) AIF

#### (i) EU

##### Council of the EU: Adoption of the Directive amending the AIFMD and the UCITS Directive

Status: Adopted by the Council of the EU

The Council has adopted a Directive on new rules to improve European capital markets and strengthen investor protection in the EU. The Directive amends the AIFMD which governs managers of hedge funds, private equity funds, private debt funds, real estate funds and other alternative investment funds in the EU. It also modernises the framework for UCITS, i.e. plain-vanilla EU-harmonised retail investment funds such as unit trusts and investment companies. The new rules aim to enhance the integration of asset management markets in Europe and modernise the framework for key regulatory aspects. They are expected to improve the availability of liquidity management tools, with new requirements for managers to provide for the activation of these instruments. This will help ensure that fund managers are well equipped to deal with significant outflows in times of financial turbulence.

The amending Directive also covers an EU framework for loan-originating funds, i.e. funds that provide credit to companies, supplemented with several requirements to alleviate risks to financial stability and to ensure an appropriate level of investor protection. The Directive introduces enhanced rules for delegation by investment managers to third parties, which should enable them to better tap the best resources from market specialists, subject to reinforced supervision and preserving market integrity. Other key components of the new rules include improved data sharing and cooperation between authorities, and new measures to identify undue costs that could be charged to funds, and hence their investors, as well as preventing possible misleading names to better protect investors.

The Directive will now be published in the EU's official Journal and enter into force 20 days later.

Date of publication: 26/02/2024

### (b) UCITS

#### (i) EU

##### Council of the EU: Adoption of the Directive amending the AIFMD and the UCITS Directive

Status: Adopted by the Council of the EU

The Council has adopted a Directive on new rules to improve European capital markets and strengthen investor protection in the EU. The Directive amends the AIFMD which governs managers of hedge funds, private equity funds, private debt funds, real estate funds and other alternative investment funds in the EU. For more information, please see section 7.1(a) above.

Date of publication: 26/02/2024

## 7.2 Prudential regulation

### (a) Compliance

#### (i) Germany

##### **BaFin: Guidance Notice on the professional competency by members of supervisory bodies pursuant to the German Investment Code (*Merkblatt zu der fachlichen Eignung von Mitgliedern von Aufsichtsorganen gemäß KAGB*)**

Status: Final

BaFin has published a Guidance Notice on the professional competency by members of supervisory bodies pursuant to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). It is aimed at all companies that are subject to supervision by the BaFin in accordance with the KAGB. With its entry into force, the statements in this Guidance Notice regarding members of administrative or supervisory bodies in accordance with the German Banking Act (*Kreditwesengesetz* – KWG) and KAGB with regard to the KAGB become ineffective. It provides explanations of the supervisory requirements for members of supervisory bodies and the associated reporting obligations in the area of the KAGB.

Date of publication: 07/02/2024

##### **BaFin: FAQ on ELTIF Regulation (*Häufige Fragen zur ELTIF-Verordnung*)**

Status: Final

BaFin has published its FAQ on the amended ELTIF Regulation, as entered into force on 10 January 2024, and its relation to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). The ELTIF financial instrument was introduced by the EU in 2015 to promote long-term investments in the European real economy. With the new rules, since 10 January 2024, private investors have also been able to make long-term, unrestricted investments in infrastructure projects or tangible assets such as wind turbines.

Date of publication: 01/02/2024

#### (ii) International

##### **FSB: Report on thematic peer review on MMF reforms**

Status: Final

The FSB has published its thematic review on Money Market Fund (MMF) reforms. The review takes stock of the measures adopted or planned by FSB member jurisdictions in response to the 2021 FSB report. The review does not assess the effectiveness of those policy measures in addressing risks to financial stability, as this will be the focus of separate follow-up work by the FSB in 2026. The main MMF vulnerability identified by jurisdictions is the mismatch between the liquidity of fund asset holdings and the redemption terms offered to investors, which makes MMFs susceptible to runs from sudden and disruptive redemptions. To address vulnerabilities, the 2021 FSB report provided a menu of policy options including: imposing on redeeming investors the cost of their redemptions; enhancing the ability to absorb credit losses; addressing regulatory thresholds that may give rise to cliff effects; and reducing liquidity transformation.

The review finds that progress in implementing the 2021 FSB policy proposals has been uneven across FSB member jurisdictions. Authorities in all jurisdictions reported that they had implemented policies aimed at addressing MMF vulnerabilities prior to the 2021 FSB Report. Since then, some jurisdictions have introduced new policy tools or recalibrated existing ones (China, India, Indonesia, Japan, Korea, Switzerland, the US), while others are still in the process of developing or finalising their reforms (EU, South Africa, UK). The review concludes that, given the vulnerabilities reported in individual jurisdictions, further progress on implementing the FSB policy toolkit would be needed to enhance MMF resilience and limit the need for extraordinary central bank interventions during times of stress.

Date of publication: 27/02/2024

## 8. Special topics

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### 8.1 FinTech/Digital finance

#### (i) Germany

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

Status: Final

BaFin has 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: 19/02/2024

##### **BReg: Second government draft on the law on the digitalisation of the financial market (*Zweiter Regierungsentwurf zum Finanzmarktdigitalisierungsgesetz*)**

Status: Draft

The German government has published its second draft on the Law on the digitalisation of the financial market. The draft law is intended to incorporate the MiCA Regulation, the new version of the Transfer of Funds Regulation and carry out or implement the DORA package summarised in a FinmadiG. The MiCA Regulation establishes an independent and innovative European regulatory framework for markets for crypto-assets, which replaces the previous national framework for the regulation of crypto-assets. The draft law stipulates that the MiCA Regulation can be implemented in Germany by means of a new Crypto Market Supervision Act (*Kryptomärkteaufsichtsgesetz* – KMAG). It bundles the supervisory powers of BaFin over crypto-assets and crypto-asset service providers in one law.

Date of publication: 07/02/2024

##### **BaFin: Guidelines on applications for authorisation for crypto custody business (*Hinweise zum Erlaubnisantrag für das Kryptoverwahrungsgeschäft*)**

Status: Final

BaFin has updated its Guidelines on applications for authorisation for crypto custody business. These Guidelines provide undertakings for those intending to submit an application for authorisation for crypto custody business within the meaning of Section 1(1a)(2)(6) of the KWG with initial Guidelines on the aspects, which BaFin considers to be particularly important for the authorisation process.

Date of publication: 05/02/2024

##### **BaFin: Supervisory note on outsourcing to cloud providers (*Aufsichtsmitteilung zu Auslagerungen an Cloud-Anbieter*)**

Status: Final

BaFin has published a supervisory note on outsourcing to cloud providers. It is based on the Guidance from November 2018. The Guidance Notice shows in practice how BaFin assesses outsourcing to cloud providers. It also contains assistance for supervised companies.

Date of publication: 01/02/2024

## **(ii) EU**

### **EC: Commission Delegated Regulation (EU) .../... supplementing DORA by determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing DORA by determining the amount of the oversight fees to be charged by the Lead Overseer (LO) to critical ICT third-party service providers (CTPPs), and the way in which those fees are to be paid. To ensure that LOs have the necessary resources to effectively carry on the oversight tasks under DORA, Article 43 DORA empowers them to charge fees to each designated CTPP to cover all the expenditure incurred by the LOs in relation to the conduct of oversight tasks. More specifically, the fees collected from CTPPs would need to cover the necessary expenditure in relation to the conduct of oversight tasks, including the costs which may be incurred because of the work carried out by the joint examination teams, and the cost of advice provided by independent experts in relation to matters falling under the remit of direct oversight activities. The fees charged to CTPPs shall be proportionate to the turnover of the critical ICT third party service providers concerned.

Date of publication: 22/02/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing DORA by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing DORA by specifying the criteria for the designation of ICT third-party service providers (CTPPs) as critical for financial entities pursuant to Article 31(6) DORA. It aims to further specify the criteria for the designation of ICT third-party service providers as critical. More specifically, the designation criteria have to be further specified in relation to the following: (i) the systemic impact that a failure or operational outage of an ICT third-party service provider could have on the financial entities to which it provides ICT services; (ii) the systemic character or importance by taking into account the number of global systemically important institutions (G-SIIs) or other systemically important institutions (O-SIIs) that rely on the ICT third-party service provider; (iii) the criticality or importance of the functions supported by the ICT services provided by the ICT third-party service provider; and (iv) the degree of substitutability of the ICT third party provider by taking into account the number of ICT third-party service providers active on a given market, as well as the costs of migrating data and ICT workloads to other ICT third-party service providers.

Date of publication: 22/02/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the fees charged by the EBA to issuers of significant asset-referenced tokens and issuers of significant e-money tokens**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing the MiCA Regulation by specifying the fees charged by the EBA to issuers of significant asset-referenced tokens and issuers of significant e-money tokens, pursuant to Article 137(3) MiCA Regulation. This act aims to further specify types of fees, the matters for which fees are due, the amount of fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity that EBA can charge.

Date of publication: 22/02/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the criteria and factors to be taken into account by the ESMA, the EBA and competent authorities in relation to their intervention powers**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing the MiCA Regulation by specifying the criteria and factors to be taken into account by the ESMA, the EBA and competent authorities in relation to their intervention powers,

pursuant to Articles 103(8), 104(8) and 105(7) MiCA Regulation. The MiCA Regulation stipulate the conditions under which ESMA, EBA and competent authorities may take such product intervention measures. These conditions include a requirement, that the proposed prohibition or restriction addresses either: (i) a significant investor protection concern; or (ii) a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of either the EU or at least one Member State. The delegated act aims to specify the criteria and factors to be taken into account by ESMA, EBA and competent authorities when determining whether this requirement has been met.

Date of publication: 22/02/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing the MiCA Regulation by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant. This delegated act aims to specify the criteria that are explicitly referred to in the empowerment, notably the ‘significance of the activities of the issuer of the asset-referenced token on an international scale, including the use of the asset-referenced token for payments and remittances’ and ‘the interconnectedness of the asset-referenced token or its issuers with the financial system’. Other criteria set out in Article 43(1) are sufficiently clear and precise to be directly applicable. There is therefore no need at this stage to further specify them in the delegated act. The content and format of information provided by competent authorities to EBA and ECB under Article 43(4) and Article 56(3), which includes, if applicable, the information received under Article 22 MiCA Regulation, will be set out in a subsequent delegated act that is to be adopted after the reporting obligations under Article 22 have been specified by the technical standards and further experience has been gained.

Date of publication: 22/02/2024

### **EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens**

**Status: Adopted by the EC**

The EC has adopted Commission Delegated Regulation supplementing the MiCA Regulation by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens, pursuant to Article 134 of MiCA Regulation. The delegated act aims to further specify the rules of procedures for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

Date of publication: 22/02/2024

### **ESMA: Updates to Q&A on the MiCA Regulation**

**Status: Final**

ESMA has updated its Q&As on the MiCA Regulation in relation to: (i) new cryptoasset service providers established before (and after) 30 December 2024; (ii) passporting rights for entities benefiting from grandfathering; (iii) prohibition of monetary and non-monetary benefits; (iv) provision of cryptoasset services by credit institutions; and (v) notifications under Article 60. As the Q&As have been issued after 1 January, they are now available in ESMA’s Q&A IT tool, rather than the previous Q&A document (which is not being updated as of 31 December 2023).

Date of publication: 02/02/2024

### **ESAs: Joint report on 2023 stocktaking of BigTech direct financial services provision in the EU**

**Status: Final**

The ESAs have published a report on their 2023 stocktake of BigTech direct financial services provision in the EU. The stocktake showed that EU-licensed BigTech subsidiary companies: (i) mainly provide services in the payments, e-money and

insurance sectors; (ii) in limited cases, provide services in the banking sector; (iii) have no reported presence in the securities and markets sector. The ESAs propose establishing a data mapping tool to provide a framework for BigTech's relevance to the EU financial sector. The ESAs will also continue the cross-disciplinary exchanges to foster the exchange of information between financial and non-financial sector authorities involved in monitoring BigTech activities. These ESA actions will be conducted through the European Forum for Innovation Facilitators (EFIF).

Date of publication: 01/02/2024

### **EBA: Speech on digital finance**

Status: Final

The EBA has published a speech by José Manuel Campa, EBA Chair, on digital finance: confidence and resilience as a foundation for well-functioning financial markets. The speech focuses on the financial sector's contribution to EU competitiveness, and the benefits of FinTech in this context. The speech also sets out the EBA's plans in this area for 2024, including: (i) actively engaging with other regulatory authorities to prepare for overseeing critical third-party providers under DORA and in relation to supervision of issuers of asset reference and e-money tokens under MiCAR; (ii) carrying out a stocktake of potential models for deposit tokenisation, with a view to promoting a common understanding of opportunities and risks and developing a common supervisory stance, as well as monitoring DLT use; (iii) exploring the risks of consumer detriment in respect of crypto lending and staking and recommending any supervisory or regulatory actions where necessary; (iv) in light of the new AI Act, perform a mapping of existing and upcoming prudential and consumer protection requirements on the use of AI in the banking sector, focusing on creditworthiness of natural persons, to assess areas where guidance, clarity or harmonisation may be needed; and (v) exploring business models and risks in relation to 'white-label' distribution of banking products.

Date of publication: 30/01/2024

## **(iii) International**

### **FSB: Discussion of implementation of the global framework for crypto-asset activities**

Status: Final

The FSB has published a discussion by its regional consultative group for the Middle East and North Africa (RCG MENA) on global and regional financial stability vulnerabilities, including financial risks arising from the higher interest-rate environment and vulnerabilities in non-bank financial intermediation. The discussion focused on two key areas of the FSB's priorities for 2024: (i) crypto-asset markets and activities; and (ii) lessons learned from the 2023 banking-sector turmoil in the US and Europe, including relevant policy considerations to ensure a more resilient banking sector and effective resolution frameworks in their own jurisdictions.

Date of publication: 06/02/2024

## 8.2 Sustainable finance

### **(i) Germany**

#### **BaFin: Market study on the collection and handling of ESG data and rating procedures by capital management companies (*Marktstudie zur Erhebung von und zum Umgang mit ESG-Daten und -Ratingverfahren durch Kapitalverwaltungsgesellschaften*)**

Status: Final

BaFin has published a market study, setting out the results from its examination on how capital management companies assess sustainability data and ratings. It noticed that ESG ratings are expensive and the data quality needs improvement. For its study, BaFin surveyed 30 German capital management companies and six ESG rating providers. Many of these capital management companies (83 per cent.) use ESG data and ratings from external providers. More than two thirds of them also use multiple providers. In the provider selection process they pay particular attention to ensuring that the providers' data is high quality and

complete and that the methodology used is transparent. Costs, service and the reputation of the service provider are also relevant.

Date of publication: 14/02/2024

## (ii) EU

### Council of the EU: Compromise text on proposed Regulation on the transparency and integrity of ESG rating activities, and amending the SFDR

Status: Draft

The Council of the EU published the compromise text on the proposal for a Regulation on the transparency and integrity of ESG rating activities, and amending the SFDR. In the accompanying [T item note](#), the Council of the EU explains that the compromise text reflects the provisional political agreement reached by the Council of the EU and the EP in February. The provisional political agreement is subject to approval by the Council of the EU and the EP before going through the formal adoption procedure.

Date of publication: 14/02/2024

### Council of the EU/EP: Provisional political agreement on proposed delay of sustainability reporting standards

Status: Draft

The Council of the EU has announced that it has reached a provisional political agreement with the EP on the proposed Directive amending the Corporate Sustainability Reporting Directive (CSRD), as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings. The objective of the agreement is to give two further years for companies to prepare for the sectorial European Sustainability Reporting Standards (ESRS) and for specific standards for large non-EU companies, which will now be adopted on 30 June 2026. This will allow companies to focus on the implementation of the first set of ESRS. It will also allow more time to develop sector-specific sustainability standards as well as standards for specific third-country companies. The provisional agreement modifies the legal nature of the text from a Commission decision to a directive. It also suggests that the EC publishes eight sector-specific reporting standards as soon as they are ready before the new deadline.

The provisional agreement now needs to be endorsed and formally adopted by both the Council and the EP.

Date of publication: 07/02/2024



## 9. German Omnibus Acts (*Artikelgesetze*)

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### (i) **Germany**

**BReg:** [Second government draft on the law on the digitalisation of the financial market](#) (*Zweiter Regierungsentwurf zum Finanzmarktdigitalisierungsgesetz*)

Status: Draft

The German government has published its second draft on the Law on the digitalisation of the financial market. For more information, please see section 8.1 above.

Date of publication: 07/02/2024

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