

# Regulatory monitoring

Newsletter

September 2023





# ECB in focus

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

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

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

## Some of our recent posts

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

*22 June 2023*

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

[Read more →](#)

### **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.

[Read more →](#)

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

*26 October 2022*

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

[Read more →](#)



More information  
under [reggateway.com](http://reggateway.com)

# RegGateway

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

## Features

### HORIZON SCANNING / REGULATORY MONITORING

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

### FINANCIAL REGULATORY LAW SOURCEBOOK

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

### IMPLEMENTATION MANAGEMENT

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

### CHANGE ANALYSIS AND PREVIEW OF RULES

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

# Contents

1.	Bank regulation .....	8
1.1	Prudential regulation.....	8
(a)	General .....	8
	EBA: Report on Basel III monitoring exercise results .....	8
	EBA: EU-wide transparency exercise 2023 .....	8
	ECB: Speech on how culture drives risk in banks and what supervisors can do about it ..	8
	ESAs: Autumn 2023 Joint Committee Report on risks and vulnerabilities in the EU financial system.....	9
	BCBS: Basel III monitoring report.....	9
	UNEP FI: Second progress report on implementation of UN Principles for Responsible Banking .....	9
(b)	Solvency/Own funds issues.....	10
	Commission Implementing Regulation (EU) 2023/2056 amending the ITS laid down in Implementing Regulation (EU) No 945/2014 as regards an update of the list of relevant appropriately diversified indices in accordance with the CRR .....	10
	EBA: Opinion on measures in accordance with Article 124 CRR.....	10
	EC: Commission Implementing Regulation (EU) 2023/1718 amending the ITS laid down in Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR.....	10
(c)	Securitisation .....	10
	ESMA: TRV Risk Analysis on the EU securitisation market .....	10
	IOSCO: Consultation report on leveraged loans and CLOs – good practices for consideration .....	11
(d)	Risk management/SREP/Pillar 2/Outsourcing/NPL .....	11
	BaFin: Consultation on a Circular regarding minimum requirements for risk management of ZAG institutes ( <i>Konsultation des Rundschreibens zu den Mindestanforderungen an das Risikomanagement von ZAG-Instituten – ZAG-MaRisk</i> )	11
	Commission Implementing Regulation (EU) 2023/2083 laying down ITS for the application of Article 16(1) of Directive (EU) 2021/2167 with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book .....	11
(e)	Large exposures/Limits to shadow banking entities.....	12
	EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) CRR.....	12



(f)	Accounting/Prudential filter/Audit.....	12
	Commission Regulation (EU) 2023/1803 adopting certain international accounting standards in accordance with the IAS Regulation.....	12
1.2	Recovery and resolution .....	12
	EP: Draft report on proposal for Directive amending the BRRD and SRM Regulation .	12
	SRB: Second resolvability heat-map.....	13
	FSB: Consultation on a report on financial resources and tools for CCP resolution.....	13
2.	Market regulation/Conduct rules.....	14
2.1	General.....	14
	BReg: Updated government draft of the Financing for the Future Act ( <i>Erneuter Regierungsentwurf des Zukunftsfinanzierungsgesetzes</i> ) .....	14
	IOSCO: Final report on a thematic analysis regarding emerging risks in private finance .....	14
2.2	Consumer protection rules .....	14
	Council of the EU: Publication of the CCD II text.....	14
	EP: Adoption at first reading of proposed Directive on credit agreements for consumers and repealing the CCD .....	15
2.3	Securities financing transactions .....	15
	ESMA: ESEF Reporting Manual .....	15
3.	Market infrastructure.....	16
3.1	EMIR .....	16
	ISDA: Trade associations call for deletion of active account proposal in EMIR 3.0.....	16
4.	Anti-money laundering .....	17
	BMF: Minister’s bill on a law strengthening the fight against financial crime ( <i>Referentenentwurf eines Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität</i> ).....	17
	BReg: Updated government draft on the law on strengthening the risk-based branch of the central financial transaction investigation office ( <i>Erneuter Regierungsentwurf zum Gesetz zur Stärkung der risikobasierten Arbeitsweise der Zentralstelle für Finanztransaktionsuntersuchungen</i> ) .....	17
	Commission Delegated Regulation (EU) 2023/2070 amending Delegated Regulation (EU) 2016/1675 to add Cameroon and Vietnam to the list of high-risk third countries .	17
5.	Payments .....	18
5.1	Payment services/E-money.....	18
	FSB: Stocktake of international data standards relevant to cross-border payments.....	18
	FSB: Letters to G20 leaders ahead of the New Delhi summit.....	18



6.	Institutional supervisory framework .....	19
	ESMA: Annual Work Programme 2024 .....	19
	ECB: Publication of indicative operational calendars for 2024 .....	19
	EBA: Opinion on the 2021 discharge report of the EP .....	19
7.	Investment funds .....	20
7.1	Product regulation.....	20
	(a) AIF .....	20
	EP: Announcement of the date to consider the proposed AIFMD II .....	20
	(b) UCITS .....	20
	EP: Announcement of the date to consider the proposed AIFMD II .....	20
7.2	Prudential regulation.....	20
	(a) Compliance.....	20
	FSB: Annual progress report on enhancing the resilience of non-bank financial intermediation (NBFi).....	20
8.	Special rules for real estate financing and covered bonds.....	21
8.1	Mortgage credits .....	21
	ESRB: Issues note on policy options to address risks in corporate debt and real estate investment funds from a financial stability perspective .....	21
8.2	Covered bonds .....	21
	BaFin: FAQ on the appointment and on the extension of the appointment of trustees and representatives at a Pfandbriefbank pursuant to Sections 7 et seq. of the German Pfandbrief Act ( <i>FAQs zur Bestellung und Verlängerung der Bestellung von Treuhändern und Stellvertretern bei einer Pfandbriefbank gemäß §§ 7 ff. des Pfandbriefgesetzes</i> ) .....	21
9.	Special topics .....	22
9.1	FinTech/Digital finance .....	22
	EBA: Technical advice on two delegated acts under MiCA concerning certain criteria for the classification of ARTs and EMTs as significant and the fees that are to be charged by EBA to issuers of significant ARTs and EMTs.....	22
	ESAs: Joint technical advice on two delegated acts specifying further criteria for CTPPs and determining oversight fees levied on such providers under Articles 31 and 43 of DORA.....	22
	ESAs: Report on the landscape of ICT third-party providers in the EU .....	23
	EC: Communication on Guidelines on the application of Article 4(1) and (2) of the NIS 2 Directive to financial services entities within scope of DORA.....	23
	IOSCO: Consultation on policy recommendations for decentralised finance (DeFi) .....	23

	FSB: Synthesis paper with IMF on policies for crypto-assets.....	24
9.2	<b>Sustainable finance</b> .....	24
	BaFin: Updated Guidance Notice on Guidelines concerning the statutory definition of crypto custody business ( <i>Angepasstes Merkblatt über Hinweise zum Tatbestand des Kryptoverwahrgeschäfts</i> ) .....	24
	BAFA: Note on the application of the LkSG on the credit and insurance sector ( <i>Handrechnung zur Anwendung des LkSG auf die Kredit- und Finanzwirtschaft</i> ).....	24
	ESAs: Joint report on the extent of voluntary disclosure of principal adverse impacts under SFDR.....	25
	ESRB: Advice on the prudential treatment of environmental and social risks .....	25
	EP/Council: Provisional agreement on banning greenwashing and improving consumer information on product durability .....	25
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2019/856 supplementing the EU ETS Directive with regard to the operation of the Innovation Fund .....	25
	EC: SFDR Review Consultations.....	26
	EC: Proposal for amending delegated directive on adjustments to thresholds in the Accounting Directive .....	26
	ECB: Results of the second economy-wide climate stress test .....	26
	ECB: Speech on the risks of climate and environment-related litigation for the banking sector .....	27
	GFANZ: Consultation on transition finance strategies and measuring the impact on emissions .....	27
	TNFD: Recommendations on nature-related risk management and disclosure .....	27
	NGFS: Conceptual framework for nature-related financial risks.....	28
	NGFS: Two reports on climate-related litigation risks .....	28
10.	<b>German Omnibus Acts (<i>Artikelgesetze</i>)</b> .....	29
	BMF: Minister's bill on a law strengthening the fight against financial crime ( <i>Referentenentwurf eines Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität</i> ).....	29
	BReg: Updated government draft of the Financing for the Future Act ( <i>Erneuter Regierungsentwurf des Zukunftsfinanzierungsgesetzes</i> ) .....	29
11.	<b>Contacts</b> .....	30



# 1. Bank regulation

---

## 1.1 Prudential regulation

### (a) General

#### (i) EU

##### **EBA: Report on Basel III monitoring exercise results**

Status: Final

The EBA has published its second mandatory Basel III monitoring report, which assesses the impact that the full implementation of Basel III will have on EU banks in 2028. According to this assessment, which uses a sample of 157 banks for a point-in-time analysis, in terms of minimum Tier 1 capital, the impact has significantly decreased in relation to the previous reference date of December 2021. In terms of estimated capital shortfall, the impact of the reform has been almost fully absorbed.

Date of publication: 26/09/2023

##### **EBA: EU-wide transparency exercise 2023**

Status: Final

The EBA has announced that it has launched its annual EU-wide transparency exercise as part of its continued efforts to monitor risks and vulnerabilities, and to reinforce market discipline. 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 started the interaction with the 124 banks participating in the transparency exercise; this interaction envisages the verification of pre-populated templates and any data quality correction that will be done through the supervisory reporting channel. The EBA expects to release around 1 million data points – up to 10,000 data points per bank. It expects to publish the results at the beginning of December 2023, together with the annual Risk Assessment Report.

Date of publication: 22/09/2023

##### **ECB: Speech on how culture drives risk in banks and what supervisors can do about it**

Status: Final

The ECB has published a speech by Frank Elderson, ECB Vice-Chair of the Supervisory Board and Member of the Executive Board, on how culture drives risk in banks and what supervisors can do about it. Points of interest include: (i) Mr Elderson considers the renewed focus on behaviour and culture in supervision to be a call for banking supervisors to view the complex financial ecosystem from multiple angles; (ii) when supervising behaviour and culture, the ECB looks at both the “hardware” of banks’ governance (i.e. policies, management body set-up and composition) and at the “software” (how people behave within the governance structures); (iii) in the ECB’s recent review of the effectiveness of management bodies, a culture of constructive challenge was often found lacking; (iv) one way in which the ECB assesses risk culture is to look at the “tone from the top”, as this plays a crucial role in establishing a culture of prudent risk-taking within the institution. The ECB looks at whether board members include the bank’s declared set of values and norms in their decision-making. Mr Elderson also notes that while it is for banks themselves to define their culture and values, it is the role of the supervisor to assess whether the culture they define is aligned with prudent risk-taking; (v) in response to a common criticism that prudential supervisors are overstepping their mandate in assessing culture and behaviour, Mr Elderson identifies various legal sources, including the Basel Committee on Banking Supervision’s Corporate Governance Principles for banks and the CRD, in which the mandate is enshrined; and (vi) the ECB is considering how culture and behavioural patterns can be further incorporated into its supervisory approach to governance. In Q4 2024, the ECB plans to publish a guide on governance and risk culture that will set out in detail its



supervisory expectations on governance, risk management and risk culture, and will include a set of good practices that it has observed across the industry.

Date of publication: 19/09/2023

### **ESAs: Autumn 2023 Joint Committee Report on risks and vulnerabilities in the EU financial system**

Status: Final

The ESAs have published the Autumn 2023 Joint Committee Report on risks and vulnerabilities in the EU financial system. The Report underlines the continued high economic uncertainty. The ESAs warn national supervisors of the financial stability risks stemming from this heightened uncertainty, and call for vigilance from all financial market participants.

Date of publication: 18/09/2023

## **(ii) International**

### **BCBS: Basel III monitoring report**

Status: Final

The BCBS has published its latest update on the Basel III monitoring report. The report details the impact of the Basel III framework, including the December 2017 finalisation of the Basel III reforms and the January 2019 finalisation of the market risk framework. In particular, it shows that the Initial Basel III capital ratios increased to above pre-pandemic levels in the second half of 2022 and liquidity coverage ratios declined, though remained above pre-pandemic levels. The report also notes that the average impact of the final Basel III framework on Tier 1 minimum required capital of the largest global banks (+3.0%) has increased by 20 basis points since the first half of 2022 (+2.8%).

Date of publication: 26/09/2023

### **UNEP FI: Second progress report on implementation of UN Principles for Responsible Banking**

Status: Final

The UN Environment Programme Finance Initiative (UNEP FI) has published its second biennial progress report on the implementation of the UN Principles for Responsible Banking. The report shows that member banks have made considerable progress in understanding and disclosing how their portfolios and businesses relate to key environmental and social impacts, with the majority of member banks having set targets to address their most significant portfolio impact, driving alignment with and contributing to the UN Sustainable Development Goals and the aims of the Paris Agreement. The report also found that member banks have integrated sustainability oversight into their governance structures, primarily at the board and CEO levels, evidencing effective governance for embedding sustainability across their entire organisations. However, the report highlights that there is still more to be done; banks are encouraged to build upon governance and structural changes to drive concrete action, realising more of a real-world impact while also respecting national regulations, cultural norms, and contextual variations. Moving forward, UNEP FI will continue to collaborate with banks on their Principles for Responsible Banking journey, with new guidance on nature and climate change adaptation expected to be released in Q4 2023. The next progress report is expected to be published in 2025.

- [Second biennial progress report](#)
- [Four-year update](#)

Date of publication: 22/09/2023

## (b) Solvency/Own funds issues

### (i) EU

#### **Commission Implementing Regulation (EU) 2023/2056 amending the ITS laid down in Implementing Regulation (EU) No 945/2014 as regards an update of the list of relevant appropriately diversified indices in accordance with the CRR**

Status: Published in the OJ

Date of application: 17/10/2023

Commission Implementing Regulation (EU) 2023/2056 amending the ITS laid down in Commission Implementing Regulation (EU) No 945/2014 as regards an update of the list of relevant appropriately diversified indices in accordance with the CRR has been published in the OJ. The Regulation replaces the Annex to Implementing Regulation (EU) No 945/2014, to ensure that the stock indices listed in the Annex continue to meet the conditions for their specific risk to be ignored. The EBA has reassessed the relevant indices in light of the latest available data (relative to the year 2022) which showed the need to update the list.

Date of publication: 27/09/2023

#### **EBA: Opinion on measures in accordance with Article 124 CRR**

Status: Final

The EBA has published an opinion following notification by the Ministry of Finance of Poland of its intention to extend a measure originally introduced in March 2022. The measure aims to limit risks associated with foreign currency housing loans by encouraging banks to enter into settlements with borrowers. Based on the evidence submitted, the EBA does not object to a temporary extension of the measure until the next periodical assessment takes place, in accordance with the CRR.

Date of publication: 12/09/2023

#### **EC: Commission Implementing Regulation (EU) 2023/1718 amending the ITS laid down in Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR**

Status: Published in the OJ

Date of entry into force: 01/10/2023

Implementing Regulation (EU) 2023/1718 amending the ITS laid down in Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR was published in the OJ. The Regulation replaces the text of the Annex to Implementing Regulation (EU) 2015/2197, to ensure that the currency pairs reflect the actual correlation between the relevant currencies based on recent data. The data refers to 31 March as the end date for calculating the three- and five-year data series required to assess the currency pairs.

Date of publication: 11/09/2023

## (c) Securitisation

### (i) EU

#### **ESMA: TRV Risk Analysis on the EU securitisation market**

Status: Final

The ESMA has published a study setting out the details of the EU securitisation market. In particular, it notes that the size of the European securitisation market has decreased significantly since the EUR2 trillion it reached at the end of 2010. At end-2022, there were 390 individual securitised products outstanding in the EU, as reported to the registered securitisation repositories, amounting to EUR540 billion.

Date of publication: 21/09/2023

## (ii) International

### IOSCO: Consultation report on leveraged loans and CLOs – good practices for consideration

Status: Consultation

Deadline for the submission of comments: 15/12/2023

IOSCO has published a consultation report on good practices for consideration in leveraged loans and CLOs. The consultation report: (i) provides an overview of the leveraged loan and CLO markets and their evolution since the global financial crisis; (ii) explains why the vulnerabilities identified in the leveraged loan and CLO markets could impact IOSCO's objectives of protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk; and (iii) describes 12 proposed good practices grouped into five themes, namely: (a) origination and refinancing based on a sound business premise; (b) EBITDA and loan documentation transparency; (c) strengthening alignment of interest from loan origination to end investors; (d) addressing the interests of different market participants throughout the intermediation chain; and (e) disclosure of information on an ongoing basis. IOSCO seeks feedback on the proposed good practices and the consultation questions.

Date of publication: 14/09/2023

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

### (i) Germany

#### BaFin: Consultation on a Circular regarding minimum requirements for risk management of ZAG institutes (*Konsultation des Rundschreibens zu den Mindestanforderungen an das Risikomanagement von ZAG-Instituten – ZAG-MaRisk*)

Status: Consultation

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

BaFin has launched a consultation on a Circular regarding minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement – MaRisk*) of ZAG institutes under the German Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). Based on Section 27(1) ZAG, the Circular provides institutions with a flexible and practical framework for structuring a business organisation. In addition, it specifies requirements for security (Sections 17 and 18 ZAG) and outsourcing (Section 26 ZAG). The Circular is aimed at all institutions that are supervised under ZAG.

Date of publication: 27/09/2023

### (ii) EU

#### Commission Implementing Regulation (EU) 2023/2083 laying down ITS for the application of Article 16(1) of Directive (EU) 2021/2167 with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book

Status: Published in the OJ

Date of application: 19/10/2023

Commission Implementing Regulation (EU) 2023/2083 laying down ITS for the application of Article 16(1) of the Non-performing Loans (NPL) Directive with regard to the templates to be used by credit institutions in providing buyers with information on their credit exposures in the banking book has been published in the OJ. The ITS aim to provide credit institutions with a standardised template for NPL transactions in the EU. The EC believes that applying such data templates to credit agreements would reduce information asymmetries between prospective buyers and sellers of credit agreements and thus contribute to the development of a functioning secondary market in the EU.

Date of publication: 29/09/2023

## (e) Large exposures/Limits to shadow banking entities

### (i) EU

#### EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) CRR

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) CRR. Under this Article, credit institutions are required to report their largest exposures to shadow banking entities that carry out banking activities outside the regulated framework on a consolidated basis. The draft RTS specify: (i) the criteria for identifying both shadow banking and non-shadow banking entities; (ii) the definition of banking activities and services; and (iii) the criteria for excluding entities established in third countries from being deemed as shadow banking entities. The RTS are aligned with the Guidelines for limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under the CRR.

The Council and the EP will now scrutinise the Delegated Regulation; if neither objects, the regulation will enter into force and apply 20 days after its publication in the OJ.

Date of publication: 06/09/2023

## (f) Accounting/Prudential filter/Audit

### (i) EU

#### Commission Regulation (EU) 2023/1803 adopting certain international accounting standards in accordance with the IAS Regulation

Status: Published in the OJ

Date of application: 16/10/2023

Commission Regulation (EU) 2023/1803 adopting certain international accounting standards (IAS) in accordance with Article 4 of the IAS Regulation has been published in the OJ. This Regulation sets out, in particular, that EU companies should have the option to exempt intergenerationally mutualised and cash flow matched contracts from the annual cohort requirement of IFRS 17. This exemption should be reviewed by the EC by 31 December 2027, taking into account the IASB post-implementation review of IFRS 17.

Date of publication: 26/09/2023

## 1.2 Recovery and resolution

### (i) EU

#### EP: Draft report on proposal for Directive amending the BRRD and SRM Regulation

Status: Draft

The EP has published a draft report on the EC's proposal for a Directive amending the BRRD and SRM Regulation as regards certain aspects of the minimum requirement for own funds and eligible liabilities (MREL). The draft report contains a draft EP legislative resolution, comparing the text proposed by the EC and the suggested amendments.

Date of publication: 12/09/2023

## **(ii) Eurozone**

### **SRB: Second resolvability heat-map**

**Status:** Final

The SRB has published its second assessment of banks' resolvability across the Banking Union, covering the year 2022. The report takes stock of the progress made by banks in being considered resolvable, implementing the SRB Expectations for Banks and building up MREL

**Date of publication:** 19/09/2023

## **(iii) International**

### **FSB: Consultation on a report on financial resources and tools for CCP resolution**

**Status:** Consultation

**Deadline for the submission of comments:** 20/11/2023

The FSB has launched a consultation report on the financial resources and tools for CCP resolution. The report presents the outcome of the FSB's qualitative analysis of a set of financial resources and tools for resolution: (i) bail-in bonds; (ii) resolution funds; (iii) resolution-specific insurance; (iv) resolution-specific third-party contractual support; (v) resolution cash calls; (vi) statutory or contractual variation margin gains haircutting for resolution; and (vii) equity in a first-loss position. The analysis finds that resolution authorities may benefit from having access to a combination of complementary resources and tools to achieve a successful CCP resolution. This is because resources and tools have different strengths and weaknesses. They are also likely to have different effects on financial stability. The report sets out a proposal for a toolbox approach as a global standard for CCP financial resources and tools for resolution. In this approach, home resolution authorities for systemically important CCPs should have access to a set of readily available resolution-specific resources and tools to support resolution, in addition to the use of available recovery resources and tools. Jurisdictions should disclose their approach to calibrating one or more of the resolution-specific resources in the resolution toolbox. The FSB will monitor implementation for CCPs that are systemically important in more than one jurisdiction (SI>1 CCPs) through the FSB's annual Resolvability Assessment Process and Crisis Management Group monitoring.

The findings will be published in the FSB's annual resolution report.

**Date of publication:** 19/09/2023



## 2. Market regulation/Conduct rules

---

### 2.1 General

#### (i) Germany

**BReg: Updated government draft of the Financing for the Future Act (*Erneuter Regierungsentwurf des Zukunftsfinanzierungsgesetzes*)**

Status: Draft

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

Date of publication: 11/09/2023

#### (ii) International

**IOSCO: Final report on a thematic analysis regarding emerging risks in private finance**

Status: Final

IOSCO has published a final report on a thematic analysis regarding emerging risks in private finance. The report deals with the benefits and challenges posed by the current rapid growth of private finance. In particular, IOSCO has undertaken this work to better understand the potential vulnerabilities that might arise from private financing activities, including the ways in which risks within this sphere could touch on public capital markets and IOSCO's objectives, such as potential harm to investors or risks to market integrity, or potentially giving rise to financial instability and systemic risk.

Date of publication: 14/09/2023

### 2.2 Consumer protection rules

#### (i) EU

**Council of the EU: Publication of the CCD II text**

Status: Final

The Council of the EU has published the text of the proposed Directive on consumer credits (CCD II). The Council has stated that following the EP's adoption at first reading on 12 September, it should be in a position to adopt the proposal. CCD II revises and replaces the current CCD. Once adopted, the proposal shall be published in the OJ and will enter into force 20 days after publication. It will apply for three years following its publication in the OJ. Member states shall have two years after its publication to adopt and publish laws, regulations and administrative provisions necessary to comply with CCD II.

Date of publication: 20/09/2023

## **EP: Adoption at first reading of proposed Directive on credit agreements for consumers and repealing the CCD**

**Status: Adopted by the EP**

The EP has announced that it has adopted the proposed Directive on consumer credits (CCD II) at first reading. In a related press release, the EP explains that CCD II aims to make credit markets function smoothly while ensuring a high level of consumer protection. The legislation will require, among other things: (i) a creditor, prior to concluding a credit agreement, to make a thorough assessment of a consumer's creditworthiness, in the consumer's interest and to prevent irresponsible lending practices and over-indebtedness; (ii) non-bank creditors and credit intermediaries (except micro enterprises and SMEs) to be subject to an admission process, and registration and supervision by national independent authorities; (iii) that credit advertising always contains a clear and prominent warning that borrowing money costs money; and (iv) member states to ensure that consumers have the right to withdraw from a credit agreement (without need for justification) within 14 days.

The Council of the EU now needs to adopt CCD II. Following that, CCD II will enter into force 20 days after its publication in the OJ. Member states will then have two years to adopt the necessary laws and administrative provisions and three years to apply them.

Date of publication: 12/09/2023

## 2.3 Securities financing transactions

**(i) EU**

### **ESMA: ESEF Reporting Manual**

**Status: Final**

ESMA has published its reporting manual on the European Single Electronic Format (ESEF), updating the manual to provide technical improvements, such as: (i) clarifying the formats of images embedded in the (xHTML) document; (ii) updating Data Type Registry references; (iii) clarifying ESMA's position on the application of Calculations 1.1 specification in the context of ESEF; and (iv) fixing previously identified errors. ESMA provides additional clarification on how the elements included in the 2023 IFRS Taxonomy update can be used on a voluntary basis by using the extension mechanism. This follows the decision to postpone to 2024 the amendment of the ESEF RTS in order to formally incorporate the 2023 IFRS Taxonomy update.

Date of publication: 31/08/2023

## 3. Market infrastructure

---

### 3.1 EMIR

#### (i) EU

##### **ISDA: Trade associations call for deletion of active account proposal in EMIR 3.0**

**Status: Final**

A number of trade associations (EFAMA, BFPI Ireland, EACB, FIA EPTA, Federation of the Dutch Pension Funds, Finance Denmark, Nordic Securities Association, AIMA, ICI Global, FIA and ISDA) have issued a joint statement urging EU policymakers to delete the proposed Active Account Requirement in the EMIR 3.0 proposal. This would require all market participants to hold active accounts at EU CCPs in order to clear at least a portion of certain systemic derivatives contracts. The trade associations believe efforts should instead focus on streamlining the supervisory framework for EU CCPs across member states while making the EU CCPs' offering for clearing in the EU more attractive and innovative. The trade associations set out the potential detrimental outcomes of the proposal, including: (i) introducing fragmentation and a loss of netting benefits; (ii) creating a competitive disadvantage for EU firms compared to third-country firms that will remain able to transact in global markets without restriction; and (iii) the requirement's quantitative thresholds may lead to a large, volatile, and unpredictable price difference between CCPs, which would significantly increase the cost and risk of hedging for EU clients. The statement considers that location policies are inappropriate tools to mitigate financial stability risks arising from third-country CCPs and that critical areas in which to enhance supervisory cooperation with third-country authorities, such as recovery and resolution planning, and an enhanced cooperation framework (particularly during times of market stress) could be further developed in the EMIR 3.0 proposal.

Date of publication: 07/09/2023

## 4. Anti-money laundering

---

### (i) Germany

#### **BMF: Minister's bill on a law strengthening the fight against financial crime (*Referentenentwurf eines Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität*)**

Status: Draft

The German Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a Minister's bill on a law strengthening the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz* – FKBG). The draft law contains the essential regulations for the establishment of the Federal Office to Combat Financial Crime (*Bundesamt zur Bekämpfung von Finanzkriminalität* – BBF), its tasks and competencies, and necessary technical legal adjustments, among other things, in the area of money laundering supervision and sanctions. In addition, the draft law includes regulations for the establishment of a real estate transaction register.

Date of publication: 13/09/2023

#### **BReg: Updated government draft on the law on strengthening the risk-based branch of the central financial transaction investigation office (*Erneuter Regierungsentwurf zum Gesetz zur Stärkung der risikobasierten Arbeitsweise der Zentralstelle für Finanztransaktionsuntersuchungen*)**

Status: Draft

The German government has published another version of its draft law on strengthening the risk-based branch of the central financial transaction investigation office (*Zentralstelle für Finanztransaktionsuntersuchungen* – FIU). The draft law makes the necessary legal adjustments to ensure that the FIU's work processes for the analysis and forwarding of suspicious transaction reports are effective as quickly as possible, and to create legal clarity in the performance of tasks and risk-based working methods by the FIU. The proposed amendments to the German Money Laundering Act (*Geldwäschegesetz* – GwG) also provide for legal clarification of the FIU's core task of preventing, detecting and combating money laundering and terrorist financing. In addition, the draft specifies necessary support for the processes of the FIU through automated procedures and aims to simplify procedures for FIU in cooperating with the authorities, in particular to support relevant parties in the identification of facts that must be reported, and in the processing of deadline cases (*Fristfälle*). Finally, the draft aims to ensure increased support for relevant parties with regard to when, and with what information, suspicious activity reports are to be submitted.

Date of publication: 11/09/2023

### (ii) EU

#### **Commission Delegated Regulation (EU) 2023/2070 amending Delegated Regulation (EU) 2016/1675 to add Cameroon and Vietnam to the list of high-risk third countries**

Status: Published in the OJ

Date of application: 18/10/2023

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

Date of publication: 28/09/2023

# 5. Payments

---

## 5.1 Payment services/E-money

### (i) International

#### **FSB: Stocktake of international data standards relevant to cross-border payments**

Status: Final

The FSB has published a stocktake of international data standards relevant to cross-border payments. The stocktake looks at national and regional data frameworks relevant to the functioning, regulation and supervision of cross-border payment arrangements. The FSB identified a number of incompatibilities in data frameworks that pose significant challenges to improving the cost, speed, transparency and access of cross-border payments, including: (i) fragmentation among data framework requirements and their implementation, most notably relating to the data needed to accompany a cross-border payment transaction; (ii) uncertainty among payment providers on how to balance the various obligations under different data frameworks; and (iii) challenges arising from restrictions on the flow of data across borders. The stocktake and stakeholder outreach offered a range of ideas for improving data frameworks to facilitate cross-border payments and the report discusses five possible areas for further consideration.

The FSB invites stakeholders to submit case studies on these issues by 20 October. The case studies will be considered by the FSB as it develops its recommendations for promoting alignment and interoperability across data frameworks applicable to cross-border payments, which will be issued for public consultation in early 2024.

Date of publication: 25/09/2023

#### **FSB: Letters to G20 leaders ahead of the New Delhi summit**

Status: Final

The FSB has published two letters sent to the G20 leaders ahead of their New Delhi summit, which: (i) outline recent work the FSB has undertaken in relation to the non-bank financial intermediation (NBFi) sector, digitalisation and climate change; and (ii) provide an update on the G20 Cross-border Payments Roadmap. One letter calls on authorities to closely monitor asset quality in those sectors most sensitive to higher interest rates, such as real estate. This letter highlights concerns over the build-up of leverage in the NBFi sector (described in a report delivered to the summit – see the Prudential Regulation section), and notes that addressing these risks will be a major focus of NBFi policy work next year. The FSB and IMF also delivered to the Summit a synthesis paper that brings together the macroeconomic and financial stability crypto-asset-related risks identified by each institution and how they interact, and also includes a roadmap for future work on crypto-assets (see the Fintech section). The second letter underscores the need for continued further political support and sustained effort by the public and private sectors in order to meet the G20 targets by 2027.

- [Letter on recent workstreams](#)
- [Letter on Cross-border Payments Roadmap](#)

Date of publication: 05/09/2023



## 6. Institutional supervisory framework

---

### (i) EU

#### **ESMA: Annual Work Programme 2024**

**Status: Final**

ESMA has published its work programme for 2024. The work programme describes objectives and outputs for each of ESMA's strategic priorities and thematic drivers, and each of the sectors within ESMA's remit. Outputs are divided into three categories: (i) ongoing work; (ii) annual outputs; and (iii) the 2024-specific outputs that are known at this stage.

Key legislative files impacting ESMA in 2024 include: (a) in 2024, ESMA will be mandated to expand the single rulebook for sustainable finance as part of the new European Green Bond Regulation and will deliver its final report on greenwashing; (b) ESMA will deliver technical standards for ESAP and continue preparatory work on the necessary IT infrastructure to support ESAP; (c) several technical standards and Guidelines that will be delivered in relation to the MiCA regulation and DORA, as well as preparatory work for oversight responsibilities related to DORA; and (d) under MiFID and MiFIR, ESMA will begin the process of selecting and authorising Consolidated Tape Providers (CTPs) in the EU, in addition to developing technical standards and Guidelines.

Date of publication: 28/09/2023

#### **ECB: Publication of indicative operational calendars for 2024**

**Status: Final**

The ECB has published indicative calendars for the Eurosystem's 2024 regular tender operations and reserve maintenance periods. In particular, these calendars include an alignment of the allotment and settlement dates of regular three-month longer-term refinancing operations with the dates of the main refinancing operations.

Date of publication: 15/09/2023

#### **EBA: Opinion on the 2021 discharge report of the EP**

**Status: Final**

The EBA has published an opinion in response to the observations made by the EP in its 2021 Discharge Report. Out of 30 observations covering the areas of: budget and financial management; performance; staff policy; procurement; prevention and management of conflicts of interest and transparency; internal control; digitalisation and green transition; and business continuity throughout a crisis, the EBA considers that 26 have already been implemented or do not require follow-up action. For the other four observations, follow-up is deemed to be an ongoing consideration.

Date of publication: 14/09/2023

## 7. Investment funds

---

### 7.1 Product regulation

#### (a) AIF

##### (i) EU

#### EP: Announcement of the date to consider the proposed AIFMD II

Status: Draft

The EP has updated its procedure file on the proposed Directive amending AIFMD and the UCITS Directive, also known as AIFMD II. The update shows that the EP intends to consider AIFMD II during its plenary session, which will be held on 5 February 2024.

Date of publication: 27/09/2023

#### (b) UCITS

##### (i) EU

#### EP: Announcement of the date to consider the proposed AIFMD II

Status: Draft

The EP has updated its procedure file on the proposed Directive amending AIFMD and the UCITS Directive, also known as AIFMD II. For more information, please see section 7.1(a) above.

Date of publication: 27/09/2023

### 7.2 Prudential regulation

#### (a) Compliance

##### (i) International

#### FSB: Annual progress report on enhancing the resilience of non-bank financial intermediation (NBFI)

Status: Final

The FSB has published its annual progress report on enhancing the resilience of non-bank financial intermediation (NBFI) for the G20 leaders ahead of their New Delhi summit. The report presents findings of analytical work on vulnerabilities in particular entities and activities that may contribute to aggregate liquidity imbalances. It also describes policies being developed by the FSB and standard-setting bodies (SSBs) to reduce excessive and potentially destabilising spikes in liquidity demand, focusing on structural liquidity mismatch in open-ended funds, and margining practices. The report stresses the importance of ensuring that the various policies fit together from a system-wide perspective and warns that until these policies are finalised and fully implemented, the vulnerabilities evident in recent market incidents remain. The FSB also published a report on the financial stability implications of leverage in NBFI. It concludes that there are pockets of high leverage in the NBFI sector, such as in hedge funds. The report identifies a number of data gaps that make it difficult to fully assess the vulnerabilities associated with NBFI leverage and outlines policy actions to address such vulnerabilities.

Date of publication: 06/09/2023

## 8. Special rules for real estate financing and covered bonds

---

### 8.1 Mortgage credits

#### (i) EU

##### **ESRB: Issues note on policy options to address risks in corporate debt and real estate investment funds from a financial stability perspective**

Status: Final

The ESRB has published an issues note describing a high-level approach to addressing risks in investment funds that invest in assets that are either inherently illiquid or might become illiquid in times of stress, in particular investment funds with large exposures to corporate debt and real estate. The ESRB's conclusions include: (i) structural vulnerabilities in investment funds that invest in assets that are either inherently illiquid or might become illiquid in times of stress are not fully addressed in the current regulatory framework. Regulatory adjustments are required to address fund vulnerabilities beyond those already proposed in the AIFMD and UCITS Directive amendments; (ii) as a first line of defence, certain policy tools already present in the regulatory framework could be enhanced to better serve financial stability purposes. For example, structural liquidity mismatch in real estate funds and other funds which invest in inherently illiquid assets can be reduced by ensuring closer alignment between the fund's redemption terms and its investment strategy; and (iii) there is merit in analysing and exploring further avenues to enhance the policy toolkit for investment funds from a financial stability perspective. As the incentives of fund managers and financial stability goals may not always align, there is a need to discuss the merits of the authorities playing a more prominent role in addressing shocks triggered, transmitted and/or amplified by (the collective action of) investment funds. In the next phase of this ongoing work, the ESRB will refine the policy options set out in this issues note and will be mindful of the findings of the AIFMD and UCITS Directive review process and wider international efforts currently underway. The ESRB states that the issues note will inform the FSB's consultation on policies to address vulnerabilities from liquidity mismatch in open-ended funds, which closed on 4 September.

Date of publication: 04/09/2023

### 8.2 Covered bonds

#### (i) Germany

##### **BaFin: FAQ on the appointment and on the extension of the appointment of trustees and representatives at a Pfandbriefbank pursuant to Sections 7 et seq. of the German Pfandbrief Act (FAQs zur Bestellung und Verlängerung der Bestellung von Treuhändern und Stellvertretern bei einer Pfandbriefbank gemäß §§ 7 ff. des Pfandbriefgesetzes)**

Status: Final

BaFin has published FAQ on the appointment and on the extension of the appointment of trustees and representatives at a Pfandbriefbank pursuant to Sections 7 et seq. of the German Pfandbrief Act (Pfandbriefgesetz – PfandBG). These FAQ are directed at all Pfandbriefbanken within the meaning of Section 1(1)(1) PfandBG. The FAQ apply accordingly to the appointment or the extension of the appointment of trustees and representatives under Section 7(5) of the DSL Bank-Umwandlungsgesetz and Section 9(5) of the DG Bank-Umwandlungsgesetz. They are intended to provide practical assistance in formally compiling the documents required for the appointment of trustees and their deputies.

Date of publication: 27/09/2023

## 9. Special topics

---

### 9.1 FinTech/Digital finance

#### (i) EU

##### **EBA: Technical advice on two delegated acts under MiCA concerning certain criteria for the classification of ARTs and EMTs as significant and the fees that are to be charged by EBA to issuers of significant ARTs and EMTs**

**Status: Final**

The EBA has published technical advice on two delegated acts under MiCA concerning certain criteria for the classification of asset-referenced tokens (ARTs) and electronic money tokens (EMTs) as significant and the fees that are to be charged by EBA to issuers of significant ARTs and EMTs in response to the EC's call for advice. Therein, the EBA proposes a set of core and ancillary indicators for each significance criterion within the scope of the Call for Advice: financial sector interconnectedness, and activities on an international scale. Such indicators cover diverse elements of interconnectedness (e.g. direct and indirect between the issuer and the financial system, direct between the token and the financial system, and direct between the issuer and other ART/EMT issuers) and international scale (e.g. all types of transactions, or transactions where the token is used as means of exchange) and take account of data availabilities.

Regarding the supervisory fees, the EBA proposes criteria for allocating costs between issuers, as defined in MiCA, and ensures that all costs it will incur in the performance of its supervisory tasks, including the establishment of supervisory colleges and in the context of any delegation of tasks to national competent authorities, can be charged to issuers of significant ARTs and significant EMTs in accordance with the full cost-recovery approach foreseen in MiCA.

Date of publication: 29/09/2023

##### **ESAs: Joint technical advice on two delegated acts specifying further criteria for CTPPs and determining oversight fees levied on such providers under Articles 31 and 43 of DORA**

**Status: Final**

The ESAs have published a report on joint technical advice on two delegated acts specifying further criteria for critical ICT third-party service providers (CTPPs) and determining oversight fees levied on such providers, under Articles 31 and 43 of DORA.

In relation to the criticality criteria, the ESAs propose 11 quantitative and qualitative indicators, along with the necessary information to build up and interpret such indicators, following a two-step approach. The ESAs also put forward minimum relevance thresholds for quantitative indicators, where possible and applicable, to be used as starting points in the assessment process to designate critical third-party providers. This joint response does not include any details of the designation procedure nor of the related methodology, as these are out of the scope of this Call for Advice, however, the ESAs plan to define these details no later than six months after the adoption of the delegated act by the Commission.

Regarding the oversight fees, the ESAs make proposals for determining the amount of the fees to be levied on CTPPs and the way in which they are to be paid. The ESAs' proposals cover the types of estimated expenditures (for both the ESAs and the competent authorities) that shall be covered by oversight fees, as well as the basis for the expenditures' calculation and the available information for determining the applicable turnover of the CTPPs (the basis of fee calculation) and the method of fee calculation, together with other practical issues regarding the collection of the fees. In addition, the advice proposes a financial contribution for voluntary opt-in requests. The ESAs aim to specify other practical aspects of the estimation of oversight expenditures and operational aspects in the context of the implementation of the oversight framework.

Date of publication: 29/09/2023

## **ESAs: Report on the landscape of ICT third-party providers in the EU**

**Status:** Final

The ESAs have published a report on the landscape of information and communication technology (ICT) third-party providers (TPPs) in the EU. The analysis was undertaken to inform preparations for the application of DORA and aims to map the provision of ICT services by TPPs to financial entities in the EU. It is intended to support the ESAs' policymaking process in light of the EC's call for advice to further specify the criteria for critical ICT TPPs and to determine oversight fees. The data collection exercise on which the report is based was the first of its kind, covering ICT-related contractual arrangements for entities across the financial sector. Overall, the exercise has identified around 15,000 ICT TPPs directly serving financial sector entities across the EU. It found that the most frequently used ICT TPPs support critical or important functions for their clients in a wide range of services. In addition, most critical services were classified as non-substitutable by financial institutions. The data collection exercise also revealed some valuable lessons for the implementation of DORA; for instance, it has underlined the importance of ensuring that financial entities provide unique identifiers in the data submitted and the need to develop an appropriate ICT services taxonomy.

**Date of publication:** 27/09/2023

## **EC: Communication on Guidelines on the application of Article 4(1) and (2) of the NIS 2 Directive to financial services entities within scope of DORA**

**Status:** Final

An EC communication setting out Guidelines has been published in the OJ, clarifying how the NIS 2 Directive applies to financial services entities which are also subject to DORA. The NIS 2 Directive provides that where sector-specific EU legislation requires essential or important entities to adopt cybersecurity risk-management measures or to notify significant incidents that are at least equivalent to their NIS 2 obligations, NIS 2 shall not apply. The areas where DORA displaces the application of NIS 2 are: (i) information and communication technology (ICT) risk management (Article 6); (ii) management of ICT-related incidents, especially major ICT-related incident reporting (Article 17); (iii) digital operational resilience testing (Article 24); (iv) information-sharing arrangements (Article 25); and (v) ICT third-party risk (Article 28).

**Date of publication:** 18/09/2023

### **(ii) International**

## **IOSCO: Consultation on policy recommendations for decentralised finance (DeFi)**

**Status:** Consultation

**Deadline for the submission of comments:** 19/10/2023

IOSCO has launched a consultation on nine policy recommendations to address market integrity and investor protection concerns arising from Decentralised Finance (DeFi). While recognising the value of responsible innovation, IOSCO seeks to make clear that market regulators globally should apply a "same activity, same risk, same regulatory outcome" approach to financial markets, regardless of the technology that may be used to deliver financial products and services. The report: (i) describes the state of the DeFi market and why it presents significant investor and market risks arising through participants operating in non-compliance with, or outside of, existing investor and market protection regulatory frameworks; (ii) describes the common products and services offered in the DeFi markets, demonstrating that they do not materially differ from products and services offered in traditional financial markets, and that they present those same risks, along with additional risks due to the way they are offered; (iii) identifies the types of persons and entities typically involved in the development and provision of products and services using DLT-based components, and offers ways to analyse their involvement to determine potential regulatory touchpoints; and (iv) provides recommendations and guidance to regulators as they examine the application of IOSCO Standards, and existing or new frameworks within their own respective jurisdictions, to DeFi products, services, arrangements, and activities. IOSCO intends to finalise its recommendations by the end of 2023.

**Date of publication:** 07/09/2023



## FSB: Synthesis paper with IMF on policies for crypto-assets

Status: Final

The FSB has published a synthesis paper with IMF outlining a comprehensive policy and regulatory response to crypto-asset activities. The report: (i) illustrates macroeconomic and financial stability implications of crypto-asset activities, how they may interact, and how the IMF and FSB's policy recommendations fit together, though does not establish new policies, recommendations or expectations for relevant member authorities; (ii) encourages implementation of the FATF AML/CFT standards to address risks to financial integrity and mitigate criminal and terrorist misuse of the crypto-asset sector; (iii) sets out a roadmap to ensure the effective implementation of the FSB's and IMF's recommendations and standards. The roadmap includes currently planned and ongoing work to: build institutional capacity beyond G20 jurisdictions; enhance global coordination, cooperation, and information sharing; and address data gaps necessary to understand the rapidly changing crypto-asset ecosystem; and (iv) sets out findings including: (a) that a comprehensive policy and regulatory response for crypto-asset is necessary to address the risks of crypto-asset to macroeconomic and financial stability; (b) that, to address macroeconomic risks, jurisdictions should safeguard monetary sovereignty and strengthen monetary policy frameworks, guard against excessive capital flow volatility and adopt unambiguous tax treatment of crypto-assets; and (c) that some jurisdictions, in particular emerging markets and developing economies, may want to take additional targeted measures that go beyond the global regulatory baseline to address specific risks.

Date of publication: 07/09/2023

## 9.2 Sustainable finance

### (i) Germany

#### BaFin: Updated Guidance Notice on Guidelines concerning the statutory definition of crypto custody business (*Angepasstes Merkblatt über Hinweise zum Tatbestand des Kryptoverwahrgeschäfts*)

Status: Final

BaFin has thoroughly updated and restructured its Guidance Notice on Guidelines specifying the legal requirements for the statutory definition of a crypto custody business in accordance with Section 1(1a)(2)(6) of the German Banking Act (*Kreditwesengesetz* – KWG). This term is defined as the custody, management and protection of crypto-assets or private cryptographic keys used to keep, store or transfer crypto-assets for others. The Guidance Notice explains each of these aspects before turning to differentiation from other regulated activities and authorisation requirements for a crypto custody business. The crypto custody business was included as a new financial service in the KWG as of 1 January 2020 by the Act on the implementation of the Fifth European Money Laundering Directive. Since then, companies wishing to provide this service require a licence from BaFin.

Date of publication: 25/09/2023

#### BAFA: Note on the application of the LkSG on the credit and insurance sector (*Handreichung zur Anwendung des LkSG auf die Kredit- und Finanzwirtschaft*)

Status: Final

The German Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* – BAFA) has published a note on the application of the Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz* – LkSG) to the credit and insurance sector. This note aims to support companies with the application of the LkSG, which entered into force on 1 January 2023.

Date of publication: 01/08/2023

## (ii) EU

### **ESAs: Joint report on the extent of voluntary disclosure of principal adverse impacts under SFDR**

**Status:** Final

The Joint Committee of the ESAs has published its second annual report on the extent of voluntary disclosure of principal adverse impacts under Article 18 of the SFDR. Similar to the approach adopted for the 2022 Report, the ESAs launched a survey of NCAs to assess the current state of entity-level and product-level voluntary principal adverse impact disclosures under the SFDR, and have developed a preliminary, indicative and non-exhaustive overview of good practices and areas that need improvement. The results show an overall improvement compared to the previous year, although there is still significant variation in the extent of compliance with the requirements and in the quality of the disclosures across financial market participants and jurisdictions. The ESAs also found that disclosures were easier to find online, compared to the previous year. When financial market participants do not consider principal adverse impacts, the ESAs conclude that they should better explain the reasons for not doing so. Additionally, the ESAs note that even though they are encouraged to do so under the SFDR, financial market participants generally do not disclose to what extent their investments align with the Paris Agreement. The report also includes a set of recommendations for the EC to consider ahead of the next comprehensive assessment of the SFDR.

Date of publication: 28/09/2023

### **ESRB: Advice on the prudential treatment of environmental and social risks**

**Status:** Final

The ESRB has issued advice on the prudential treatment of environmental and social risks. The advice explains that the EBA has a mandate to assess, after consulting the ESRB, whether a dedicated prudential treatment of exposures related to assets (including securitisations) or activities associated substantially with environmental and/or social objectives would be justified. The ESRB's advice contributes to the assessment required from the EBA by looking at the issue from a systemic risk perspective, as opposed to a microprudential risk management perspective. It highlights: (i) the specificity of risks related to climate change, which can be expected to become an important driver of broader environmental and social risks; and (ii) the challenges of tackling such risks in the existing prudential framework. In concluding, the advice finds that the response to the question of whether a dedicated prudential treatment for environmental and social risks is needed, and how best to deal with these risks in the existing framework, may evolve over time. The immediate priority must be to consider how existing micro- and macroprudential tools can be used, and how this can be done consistently and transparently, both in the EEA and globally through the Basel Committee on Banking Supervision. The challenge will therefore be to develop a precautionary approach on the basis of risk materialisation scenarios and the growing evidence on exposures to climate risks.

Date of publication: 27/09/2023

### **EP/Council: Provisional agreement on banning greenwashing and improving consumer information on product durability**

**Status:** Draft

The EP and Council of the EU have reached a provisional agreement on banning greenwashing by way of misleading advertisements and improving consumer information on product durability. The agreement updates the existing EU list of banned commercial practices and adds to it several problematic marketing habits related to greenwashing and early obsolescence of goods. The aim of the new rules is to protect consumers from misleading practices and help them make better purchasing choices.

Date of publication: 19/09/2023

### **EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2019/856 supplementing the EU ETS Directive with regard to the operation of the Innovation Fund**

**Status:** Adopted by the EC

The EC has adopted a Commission Delegated Regulation amending Delegated Regulation (EU) 2019/856 supplementing the EU Emissions Trading System (ETS) Directive with regard to the operation of the Innovation Fund. It aims to implement

changes to the Innovation Fund (IF) to be agreed in the ETS revision, notably the use of competitive bidding. Competitive bidding will complement the IF's current arrangement of awarding grants based on a scoring system, considering: (i) the increased budget (as proposed in the ETS revision); (ii) the greater need for efficiency and market-based funding instruments; (iii) the increasing maturity of projects needing support; and (iv) reducing the administrative burden.

Date of publication: 15/09/2023

## **EC: SFDR Review Consultations**

Status: Consultation

Deadline for the submission of comments: 15/12/2023

The EC has published a targeted consultation and a public consultation seeking feedback on the SFDR. The consultations aim to assess potential shortcomings within the SFDR framework relating to legal certainty, the useability of the legislation and its ability to stop greenwashing. The EC is particularly interested in understanding how the SFDR has been implemented and what issues stakeholders have faced, including its interaction with other parts of the European sustainable finance framework.

The EC intends to adopt a report on the SFDR in Q2 2024.

- Targeted Consultation
- Public Consultation

Date of publication: 14/09/2023

## **EC: Proposal for amending delegated directive on adjustments to thresholds in the Accounting Directive**

Status: Consultation

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

The EC has published a draft delegated directive amending the Accounting Directive as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups. In view of the inflation trend in the euro area in recent years, the EC considers it necessary to amend the size criteria in the Accounting Directive by 25% to adjust for the effects of inflation. The increase would result in micro, small and medium-sized enterprises not being subject to many of the EU financial and sustainability reporting provisions applicable to larger companies under the CSRD and the Taxonomy Regulation. The EC explains that the adjustments to the monetary size criteria aim to maintain the status quo, i.e. to avoid a situation where, due to inflation, micro and small companies in particular would become unwittingly subject to the more demanding requirements applicable to larger companies.

Date of publication: 13/09/2023

## **ECB: Results of the second economy-wide climate stress test**

Status: Final

The ECB has published the results of its second economy-wide climate stress test. Conclusions drawn from the results include: (i) that the best way to achieve a net-zero economy for firms, households and banks in the euro area is to accelerate the green transition; (ii) while a speedier transition initially involves greater investment and higher energy costs, financial risks decrease significantly in the medium term. Both profits and purchasing power are less negatively affected, as the frontloaded investment in renewable energy pays off earlier and ultimately reduces energy expenses; and (iii) further delaying transition means missing Paris Agreement goals and exacerbating impacts of costly physical risks. If firms are at risk, so are the banks that lend to them. Banks are exposed to the highest credit risk if the transition has to be rushed at a later stage and investment is required quickly at higher costs.

Date of publication: 06/09/2023

## ECB: Speech on the risks of climate and environment-related litigation for the banking sector

Status: Final

The ECB has published a speech by Frank Elderson, ECB Supervisory Board Vice-Chair and Executive Board Member, on addressing the risks of climate and environment-related litigation in the banking sector. Points of interest include: (i) climate-related litigation is becoming a major source of risk that needs to be properly anticipated and addressed by both non-financial and financial companies, including banks; (ii) cases have been brought against financial institutions and the trustees of pension funds for greenwashing; (iii) Mr Elderson outlines some questions for board members and general counsels to consider in order to ensure that they are up to speed with the current trends. He cautions that banks need to be aware that in certain jurisdictions the impact of climate-related litigation could dig right down into the viability of their business models. He recommends therefore that banks put in place Paris Agreement-aligned, realistic, transparent and credible transition plans; and (iv) Mr Elderson cautions that environment-related litigation (not purely focused on greenhouse gas emissions) is also likely to gather momentum as legislation on supply chains enters into force – namely the Deforestation Regulation and the proposed Corporate Sustainability Due Diligence Directive.

Date of publication: 04/09/2023

### (iii) International

## GFANZ: Consultation on transition finance strategies and measuring the impact on emissions

Status: Consultation

Deadline for the submission of comments: 02/11/2023

The Glasgow Financial Alliance for Net Zero (GFANZ) Secretariat has launched a consultation on its work to further refine the definitions of its transition finance strategies and support financial institutions to forecast the impact of these strategies on reducing emissions. The consultation seeks feedback on a principles-based approach to segment portfolios by GFANZ's key strategies, and highlights potential approaches to estimate associated decarbonisation contribution impact, drawing on existing methodologies and concepts. The principles outlined in the consultation are designed to be voluntary, pan-sector and globally applicable. To provide further clarity around transition finance activities, GFANZ proposes emerging technical approaches for measuring the decarbonisation contribution of transition finance activities. It also introduces the concept of Expected Emissions Reductions; this concept is applicable across GFANZ's key financing strategies but employs distinct approaches for each, allowing financial institutions to quantify the "emissions return" of their transition finance activities more effectively.

The final report will be published by COP28.

Date of publication: 19/09/2023

## TNFD: Recommendations on nature-related risk management and disclosure

Status: Final

The Taskforce on Nature-related Financial Disclosures (TNFD) has finalised its recommendations for nature-related risk management and disclosure. The recommendations build on those of the Task Force on Climate-related Financial Disclosures and are consistent with the global sustainability standards of the International Sustainability Standards Board and the impact materiality approach used by the Global Reporting Initiative and incorporated into the new European Sustainability Reporting Standards. This provides reporting organisations with a set of nature-related guidance that enables their reporting requirements across jurisdictions with the different approaches to materiality now in use.

The TNFD will encourage and support voluntary market adoption of the recommendations. The TNFD will track voluntary market adoption on an annual basis through an annual status update report, beginning in 2024. An accompanying package of eight guidance papers has also been released to help market participants get started with integrated assessment and corporate reporting related to nature.

Date of publication: 19/09/2023

## NGFS: Conceptual framework for nature-related financial risks

Status: Final

The Network for Greening the Financial System (NGFS) has published a beta version of its conceptual framework for nature-related financial risks to guide policies and action by central banks and financial supervisors. The framework aims to: (i) define nature-related financial risks and related concepts that are needed for a high-level understanding of these risks; (ii) help central banks and supervisors identify and assess nature-related financial risks. The principle-based risk assessment framework consists of three phases: (a) identify sources of physical and transition risks; (b) assess economic risks; and (c) assess risk to, from and within the financial system; and (iii) outline the next steps to be taken by the NGFS Taskforce, including bridging the modelling and data gaps (notably on the development of nature-related scenarios), and using emerging datasets to support the alignment of policies on environmental sustainability and inform the assessment of nature-related financial risks.

Date of publication: 07/09/2023

## NGFS: Two reports on climate-related litigation risks

Status: Final

The NGFS has published two complementary reports on climate-related litigation risks discussing: (i) recent trends and developments – the NGFS outlines a rapid growth in climate-related litigation in terms of volume of cases, and the nature, scope and diversity of addressees of legal action. Several cases have already been brought directly against defendants in the financial sector, including, in 2023, the first cases against a credit institution. The NGFS expects in the future that some litigation will become more closely linked to the development of climate-related legislation, particularly in the fields of greenwashing, climate disclosures and corporate due diligence; and (ii) micro-prudential supervision of climate-related litigation risks – the NGFS highlights the growing relevance of climate-related litigation to micro-prudential supervision. The NGFS suggests that supervisors: (a) need to identify risks drivers, transmission channels and exposures to properly assess ensuing financial risks to a financial institution, which can lead to direct costs (e.g. damages, fines, legal and administrative fees) and indirect costs (e.g. insurance pay-outs, credit losses and adverse business impacts) for financial institutions; (b) adopt a risk-based approach to better prioritise their supervisory activity. Providing a reliable estimate and prediction of the future evolutions of climate litigation risks will be a challenge for supervisors as these risks continue to develop with a high degree of diversity by jurisdiction, political environment, and claim type and size; and (c) should continue to explore and strengthen their methodologies and assessment of such risks.

- [Climate-related litigation: recent trends and developments](#)
- [Report on micro-prudential supervision of climate-related litigation risks](#)

Date of publication: 01/09/2023

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

---

### (i) Germany

**BMF: Minister's bill on a law strengthening the fight against financial crime (*Referentenentwurf eines Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität*)**

Status: Draft

The German Ministry of Finance (*Bundesfinanzministerium* – BMF) has published a Minister's bill on a law strengthening the fight against financial crime (*Finanzkriminalitätsbekämpfungsgesetz* – FKBG). For more information, please see section 4 above.

Date of publication: 13/09/2023

**BReg: Updated government draft of the Financing for the Future Act (*Erneuter Regierungsentwurf des Zukunftsfinanzierungsgesetzes*)**

Status: Draft

The German government has published another version of its draft law on the Financing for the Future Act (*Zukunftsfinanzierungsgesetz* – ZuFinG). For more information, please see section 2.1 above.

Date of publication: 11/09/2023



# 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 +44 20 3088 8012  
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



## Frankfurt

Bockenheimer Landstraße 2  
60306 Frankfurt am Main  
Germany

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

---

## COPYRIGHT/DISCLAIMER

---

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

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

### Allen & Overy LLP

Dreischeibenhaus 1, 40211 Düsseldorf, Germany | Tel +49 211 2806 7000 | Fax +49 211 2806 7800  
Bockenheimer Landstraße 2, 60306 Frankfurt am Main, Germany | Tel +49 69 2648 5000 | Fax +49 69 2648 5800  
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](http://allenoverly.com)

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [allenoverly.com/global/global\\_coverage](http://allenoverly.com/global/global_coverage).

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales (SRA number 401323).

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

© Allen & Overy LLP 2023.