

Regulatory monitoring: EU Version

Newsletter

May 2023





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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.

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

EBA: Consultation on two RTS and ITS on supervisory colleges

Status: Consultation

Deadline for the submission of comments: 30/08/2023

The EBA has launched a consultation on two RTS and ITS on the functioning of supervisory colleges under the CRD. These new technical standards will ensure that the Level 2 framework for the functioning of supervisory colleges is better aligned with the Level 1 regulation and able to promote a more efficient and effective supervision of cross-border banking groups. The main updates covered the following areas: (i) enhanced information exchange within the college, as well as with observers, in going concern and in emergency situations; (ii) effective identification of emerging risks in case of an event of adverse material impact on the risk profile of the group or its entities; and (iii) appropriate use of the possibility for “entrustment of tasks and delegation of responsibility”, when it facilitates efficient and effective supervision of cross-border banking groups.

Date of publication: 30/05/2023

Council of the EU: Information notes on proposed CRD VI and CRR III

Status: Draft

The Council of the EU has published two information notes, from the General Secretariat to the Delegations, containing tables comparing the negotiating positions of the EC, the Council of the EU and the EP on the respective proposals, ahead of trilogues. The first information note (8854/23) addresses the proposal for a Directive amending the CRD IV as regards supervisory powers, sanctions, third-country branches, and ESG risks. The second information note (8855/23) covers the proposal for a Regulation amending the CRR as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor.

- [Information note \(8854/23\)](#)
- [Information note \(8855/23\)](#)

Date of publication: 05/05/2023

(b) Solvency/Own funds issues

(i) EU

EBA: Peer Review on excluding transactions with non-financial counterparties established in a third country from CVA risk

Status: Final

The EBA has published its Peer Review on excluding transactions with non-financial counterparties established in a third country from credit valuation adjustment (CVA) risk. The Review found that the competent authorities targeted in this review assessed CVA risk sufficiently although some elements of such an assessment were missing. The EBA, therefore, has set out a series of follow-up-measures to address these deficiencies. In particular, the peer review focused on the transactions exempted from own funds requirements for CVA risk specified in Article 382(4) CRR, and more specifically, on the procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for CVA risk. Reviewing this area is important in ensuring alignment of treatment of non-financial counterparties established in a third

country with those established in the EU, taking into account the global nature of derivative markets. The Peer Review focused on four competent authorities and found that, overall, they assessed CVA risk sufficiently, using different approaches which were fit for purpose in satisfying the regulatory requirements and the EBA Guidelines on Supervisory Review and Evaluation Process (SREP). However, the Review also highlighted some areas where supervision could be strengthened by all competent authorities. For that, the EBA has adopted follow-up measures for competent authorities which it will review in two years' time.

Date of publication: 30/05/2023

EBA: Report on standardised approaches under counterparty credit risk

Status: Final

The EBA has published a report on standardised approaches under counterparty credit risk. It presents the impact and relative calibration of the three new standardised approaches to calculate the exposure values (EV) of derivative transactions introduced by CRR2: (i) the Standardised Approach to Counterparty Credit Risk (SA-CCR), replacing both the Mark-to-Mark Method (MtM) and the Standardised Method (SM) for calculating the exposure value of derivatives transactions; (ii) a simplified version of SA-CCR; and (iii) a revised version of the 'old' Original Exposure Method (OEM) for institutions with a smaller derivative business.

Date of publication: 30/05/2023

EBA: Report on holdings of eligible liabilities issued by G-SII and O-SII (Article 504a CRR II)

Status: Final

The EBA has published a report on the holdings by EU banks of minimum requirement for own funds and eligible liabilities (MREL) instruments issued by global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs), as mandated by Article 504a CRR II. The EBA's findings include: (i) that as of 31 December 2021, these holdings appear small and potential direct contagion risks are, therefore, limited. In particular, more than half of the resolution banks in the sample have exposures to eligible liabilities issued by G-SIIs and O-SIIs below 2% of MREL and 0.6% of the total risk exposure amount; (ii) overall, the largest EU banks do not rely on other banks to place their MREL instruments. As a consequence of these limited exposures, direct spill over effects from a possible bail-in appear limited. The EBA considers that although the current level of holdings of eligible liabilities does not appear to represent a source of concern, some measures could be envisaged to ensure that such situation is appropriately crystallised. Exposures to eligible liabilities could be curtailed at low levels using several tools. For instance, higher risk weights could be imposed on MREL-eligible instruments, specific limits could be introduced or a full deduction regime could be implemented. However, each of these options would need to be carefully considered so as to optimise the cost-benefit ratio. The EBA will consider how to enhance the availability of standardised data either for the purpose of regulator monitoring or for resolution planning.

Date of publication: 16/05/2023

(c) Securitisation

(i) EU

EBA: Final report on draft RTS with regard to the content, methodologies and presentation of disclosures in respect of the sustainability indicators in relation to adverse impacts of the assets financed by the underlying exposures for STS securitisations on the climate and other ESG-related adverse impacts pursuant to Article 22(6) and 26d(6) of the Securitisation Regulation

Status: Final

The EBA has published a final report on draft RTS with regard to the content, methodologies and presentation of disclosures in respect of the sustainability indicators in relation to adverse impacts of the assets financed by the underlying exposures for simple, transparent and standardised (STS) securitisations on the climate and other ESG-related adverse impacts pursuant to Article 22(6) and 26d(6) of the Securitisation Regulation. These final draft RTS aim to help market participants make informed decisions about the sustainability impact of their investments. The key proposals included in the technical standards specify ESG disclosures which would apply to STS securitisations where the underlying exposures are residential loans, auto loans and leases.

They aim to ensure consistency with those developed under the Sustainable Finance Disclosure Regulation (SFDR) which distinguish between the publication of available information on mandatory indicators (e.g., energy efficiency) and on additional indicators (e.g., emissions).

Date of publication: 25/05/2023

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

Status: Consultation

Deadline for the submission of comments: 26/06/2023

The ESAs have launched a consultation on amendments to the Implementing Regulations on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs) for credit risk. The CRR establishes that risk weights under the Standardised Approach should be based on the exposure class to which the exposure is assigned and, if applicable, its credit quality determined by reference to the credit assessments of ECAIs. The ESAs are mandated to provide a correspondence ('mapping') between relevant credit assessments of ECAIs and Credit Quality Steps where reference is made to the relevant risk weights for the calculation of credit risk capital requirements under the Standardised Approach. Mappings should be specified for all ECAIs. The proposed amendments to the ITS reflect: (i) the outcome of a monitoring exercise on the adequacy of existing mappings, namely those to the credit quality steps allocation for four ECAIs; (ii) the introduction of new credit rating scales for seven ECAIs; and (iii) the withdrawal of the registration of one ECAI.

Date of publication: 25/05/2023

(d) Cyber security

(i) EU

Council of the EU: Council conclusions on the EU policy on cyber defence

Status: Final

The Council of the EU has approved conclusions on the EU policy on cyber defence, stressing the need for the EU and its member states to further strengthen their resilience to cyber threats and enhance their common cyber security and cyber defence against malicious behaviour and acts of aggression in cyberspace. The conclusions welcome the Joint Communication of the European Commission and the High Representative on the EU Policy on Cyber Defence of November 2022, and emphasise the importance of investing substantially, both individually and collaboratively, in enhanced resilience and in the deployment of full-spectrum defensive cyber defence capabilities. EU cooperation frameworks and financial incentives can be of key importance in this context.

Date of publication: 22/05/2023

(e) Deposit protection

(i) EU

EBA: Final Report on revised Guidelines on methods for calculating contributions to deposit guarantee schemes under DGSD

Status: Final

The EBA has revised its final report on Guidelines on methods for calculating contributions to deposit guarantee schemes under the DGSD, which was published in February. The revised report amends paragraph 13 of the Guidelines to state that: (i) the 2015 Guidelines on the methods for calculating contributions to deposit guarantee schemes under the DGSD, which the 2023 Guidelines shall replace, are repealed with effect from the date of the application of the 2023 Guidelines, that is, 3 July 2024; and

(ii) Paragraph 21 of the Guidelines on the delineation and reporting of available financial means of deposit guarantee schemes is also deleted with effect from this date, as this has been incorporated into the new Guidelines.

The report on these Guidelines has since been amended by way of a Corrigendum published on 24 May 2023. The corrigendum applies to paragraph 13 in the section Repeal and states that paragraph 21 of the related Guidelines on the delineation and reporting of available financial means (AFM) of DGS will be deleted. The paragraph has been deleted to avoid unnecessary duplication as it is now included in paragraph 17 of the more recent Guidelines on DGS contributions. This deletion had already been announced in paragraph 22 of the rationale section Guidelines on DGS contributions but had not been included yet in the Guidelines themselves.

Date of publication: 15/05/2023

(f) Qualifying holdings

(i) EU

ECB: Guide on qualifying holding procedures

Status: Final

The ECB has published a guide on qualifying holding procedures (dated March 2023). The guide aims to clarify the supervisory approach taken by NCAs and the ECB in the assessment of qualifying holding procedures, in the hopes of making supervisory actions more predictable and to support applicants intending to acquire a qualifying holding in banks. It covers: (i) the scope of the persons required to undergo an assessment; (ii) how the assessment criteria are applied; and (iii) further guidance on some of the key documentation required in the assessment of qualifying holding procedures. It also provides more information on complex acquisition structures, the application of proportionality and specific procedural aspects. The ECB also published the [feedback statement](#) to the public consultation on the guide.

Date of publication: 23/05/2023

(g) Supervisory reporting

(i) EU

EBA: New supervisory reporting signposting tool

Status: Final

The EBA has launched a new signposting tool for supervisory reporting to assist banks in identifying and understanding the reporting requirements and templates that are applicable to them. The interactive tool particularly benefits small and non-complex institutions by reducing complexity and establishing a common business logic. Whilst the EBA shall make all efforts to have the tool up to date, it is meant to be used solely for orientation purposes and has no legal effect.

Date of publication: 02/05/2023

1.2 Recovery and resolution

(i) Eurozone

SRB: Booklet on the resolution planning cycle 2023

Status: Final

The SRB has published this year's booklet on the resolution planning cycle (RPC). The booklet informs stakeholders about the SRB's resolution planning activities and describes the main processes and phases of the current Resolution Planning Cycle. To safeguard the resolution objectives, the resolution plans are updated on an annual basis taking into account changes in the market and in banks themselves, to make sure that there are ready-to-go plans that can be immediately operational if needed. To

this end, the RPC aligns the resolution planning of the banks under the SRB remit on the same 12-month cycle running from April to March.

Date of publication: 16/05/2023

SRB: MREL policy report

Status: Final

The SRB has published its minimum requirement for own funds and eligible liabilities (MREL) policy report for 2023 and its MREL dashboard for Q4 2022. The SRB has decided to maintain its policy on the calibration of MREL (total and subordinated component) with minimal changes this year to reflect amendments to the CRR made by Regulation 2022/2036, the “Daisy Chain Regulation”. These changes are: (i) the SRB has reduced the size threshold for credit institutions considered to be Relevant Legal Entities from EUR 10bn to EUR 5bn, keeping the other thresholds unchanged, from now on; and (ii) the SRB may decide to set internal MREL for certain intermediate financial holdings companies not subject to prudential requirements after a case-by-case assessment, where it is deemed instrumental to ensure a sound execution of the resolution strategy. The MREL dashboard presents the evolution of MREL targets and shortfalls for resolution (external MREL) and non-resolution entities (internal MREL) as well as the level and composition of resources of resolution entities in that quarter. In addition, it highlights recent developments in the cost of funding and provides an overview of gross issuances of MREL-eligible instruments in Q4 2022.

Date of publication: 15/05/2023

SRB: Note on the application of the Commission Delegated Regulation (EU) 2023/827 on the prior permission regime from 9 May 2023

Status: Final

The SRB has published a note on the entry into force of the Commission Delegated Regulation (EU) 2023/827 on the prior permission regime on 9 May 2023. It specifies that this Delegated Regulation will apply to all applications filed after 9 May, and that it does not affect permission decisions already granted by the SRB - which continue to be valid until they expire - nor applications which have already been filed but which are still being processed by the SRB.

Date of publication: 08/05/2023

2. Investment firms regulation

(i) EU

ESMA: Statement highlighting the risks arising from the provision of unregulated products and/or services by investment firms

Status: Final

ESMA has published a statement highlighting the risks arising from the provision of unregulated products and/or services by investment firms. ESMA issued a public statement to warn investors of the risks that arise when investment firms offer both regulated and unregulated products and/or services. NCAs and ESMA have observed investment firms offering products and/or services which are outside the scope of financial services regulation, but that are offered to investors as investment alternatives to financial instruments, including crypto-assets, real estate, gold, raw materials and certain non-transferable securities. ESMA is concerned that retail investors often rely solely on the reputation of a regulated investment firm, which makes them susceptible to overlooking potential risks of the unregulated products and/or services, which is referred to as the 'halo effect'. This is especially so where the unregulated products have a purpose similar to financial instruments regulated under MiFID II (investment or hedge). ESMA reminds investment firms: (i) of the behaviours they are expected to adopt in such circumstances, including disclosure and appropriate documentation, to make investors fully aware of the unregulated status of these products and services and of the fact that they may not benefit from the regulatory protections that apply to investments in a regulated product; (ii) that they should take into consideration the impact that their unregulated activities may have on the firm's business activity as a whole when it comes to risk management systems and policies; and (iii) that they should have a full understanding and comprehensive view of the risks connected with both their regulated and unregulated activities, including the risks to clients, to markets and the risk to the investment firm itself.

Date of publication: 25/05/2023

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

Status: Adopted by the EC

The EC has adopted a draft Delegated Regulation setting out RTS relating to the determination of additional capital requirements for risks or elements of risk that are not covered, or not sufficiently covered, by Part Three or Part Four of the IFR. The RTS provide a comprehensive methodology described as being proportionate to the nature, scope and complexity of the activities performed by investment firms. It aims to identify, assess and quantify material risks that investment firms are exposed to or pose to their counterparties or to the wider market in which they operate. Based on this methodology, competent authorities must ensure that investment firms hold adequate own funds to cover such material risks, including those risks that are explicitly excluded from the own funds requirements set out in Part Three (Capital Requirements) or Part Four (Concentration Risk) of the IFR.

If the EP and the Council do not object, the RTS will be published in the OJ and enter into force 20 days following the date of its publication.

Date of publication: 25/05/2023

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

Status: Adopted by the EC

The EC has adopted a Delegated Regulation on RTS on specific liquidity measurement under the IFD. The draft RTS specify the specific liquidity measurements for investment firms to provide a harmonised approach on how a competent authority should assess the liquidity risk and elements of liquidity risk when adopting the decision to impose specific liquidity requirements

on an investment firm under Article 42 of the IFD. The assessment aims to ensure that an investment firm maintains adequate levels of liquid resources to address liquidity risk that may affect the investment firm itself and ultimately markets and clients.

The draft RTS set out comprehensive elements that may raise major concerns about investment firms' liquidity risk and that the competent authorities must consider when assessing the materiality of those risks. Competent authorities are required to assess: (i) all services that an investment firm performs, including ancillary services; and (ii) all specific aspects of the investment firm's funding, external events, operational and reputational events, internal governance, and group structure, when relevant to liquidity risks.

Date of publication: 17/05/2023

EBA: Final report on draft RTS on the scope and methods of consolidation of an investment firm group under Article 7(5) IFR

Status: Final

The EBA has published a final report on draft RTS on the scope and methods of consolidation of an investment firm group under Article 7(5) IFR. The IFR requires investment firm groups to identify a parent undertaking and those of its subsidiaries that are subject to the IFR to carry out the consolidation of the group. Particular attention is given to the setting up of a proper organisational structure and appropriate internal control mechanisms to ensure that the data required for consolidation are duly processed and reported. These RTS address in detail the four main elements that come into play when carrying out prudential consolidation for investment firm groups: (i) the scope of consolidation; (ii) the methods of consolidation; (iii) the methodology for the prudential consolidation of the capital requirements; and (iv) the rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation. The EBA states that it has leveraged, where possible, the existing work on the prudential consolidation of credit institutions, although differences exist based on the legal texts (i.e. IFR vs CRR). Therefore, the scope of consolidation for investment firm groups is more limited than that of banking groups and calls for a closer alignment with Article 22 of the Accounting Directive in terms of entities within the scope of consolidation, as well as on the methods for consolidation available to investment firm groups. As a result of this only two consolidation options are available for investment firms: full consolidation and the aggregation method. The EC also notes that the RTS are the final regulatory products of the EBA Roadmap on Investment Firms.

Date of publication: 12/05/2023



3. Market regulation/Conduct rules

3.1 General

(i) EU

ESMA: Report on risks and trends in the EU natural gas derivatives markets

Status: Final

ESMA has published a report on risks and trends in the EU natural gas derivatives markets. In the study, ESMA reports that the annual turnover of natural gas derivatives on EU futures exchanges reached EUR 4,150bn in 2022, and open positions of EU counterparties amounted to around EUR 500bn at the end of 2022, underlining the importance of natural gas derivatives. According to ESMA, the market is characterised by a high degree of concentration of market participants active in clearing and trading activity, and some energy firms hold relatively large derivative positions. In that context, liquidity and concentration risks are among the main vulnerabilities identified, along with data fragmentation and data gaps. The recent migration of some of the activity from exchange-traded to over-the counter derivatives trading raises concerns due to more limited transparency and more bespoke margin and collateral requirements in that market segment.

Date of publication: 12/05/2023

3.2 Benchmarks

(i) EU

ESMA: Final report on the review of the RTS on the information to be provided in an application for authorisation and registration under the Benchmarks Regulation

Status: Final

ESMA has published a final report on the review of the RTS on the information to be provided in an application for authorisation and registration under the Benchmarks Regulation (BMR). The review is necessary to ensure alignment of these RTS with the changes to the RTS on the recognition that ESMA proposed in its [final report on the review of the RTS on recognition](#) published on 28 November 2022. Such alignment will ensure an equal treatment between EU based and third country-based administrators when they submit their application under the BMR to the respective competent authorities. In this report, ESMA is suggesting requesting additional information or further specifying some of the information already requested in the existing RTS in order to allow NCAs and ESMA to properly assess whether the applicant has established all the necessary arrangements to meet the requirements of the BMR.

Date of publication: 30/05/2023

ESMA: Guidance for corporate lending products for implementing the recommendations on EURIBOR fallback trigger events and €STR-based EURIBOR fallback rates

Status: Final

ESMA has published the Guidance for corporate lending products for implementing the recommendations on EURIBOR fallback trigger events and €STR-based EURIBOR fallback rates, authored by the working group on euro risk-free rates. In May 2021, the working group published recommendations for EURIBOR fallback trigger events and €STR-based EURIBOR fallback rates, however these recommendations were not generally adopted in corporate lending products. In this Guidance, the working group reminds firms that robust fallbacks are a requirement of the EU Benchmarks Regulation and that now forward-

looking €STR rates are available alongside the already existing backward-looking €STR, the working group believes there is no impediment to the full implementation of the May 2021 recommendations.

The Guidance includes: (i) a reiteration of working group recommendations for corporate lending products; (ii) guidance on conventions for corporate lending products when using compounded €STR in arrears; and (iii) information on the availability of term €STR and the use of term €STR as part of a two-level waterfall solution. The guidance is specific to corporate lending products, addressed to all parties active in EURIBOR-referencing corporate lending products, including lenders, borrowers, investors, advisers and legal firms. It does not apply to any other cash products covered by the May 2021 recommendations. On 3 May, the working group also published a comparative table of available term €STR rates. The document aims to inform market participants about the €STR-based forward-looking term structure rates which are or may become available, it is purely an overview of key features. The table includes the key attributes of the Term €STR rates provided by the benchmark administrators.

Date of publication: 02/05/2023

3.3 Consumer protection rules

(i) EU

EP: Vote in favour of proposal for a Directive on Consumer Credits

Status: Final

The EP's Internal Market and Consumer Protection Committee voted in favour of and published the text (dated 27 April) of the proposed second Directive on Consumer Credits on which a provisional agreement has been reached between the co-legislators. The text will now be put to the vote in plenary.

Date of publication: 23/05/2023

ESAs: Factsheet on the effects of inflation and the rise in interest rates for consumers

Status: Final

The ESAs have published a factsheet for consumers explaining the effects of inflation and the rise in interest rates on their money. This includes the financial products and services that consumers currently hold or plan to buy, such as loans, savings, financial investments, insurance and pensions.

Date of publication: 15/05/2023

Council of the EU: Political agreement on the Consumer Credit Directive Review

Status: Draft

The Council of the EU has published the final four-column table containing the result of the political agreement reached with the EP on the proposed Directive on consumer credits, to revise and replace the Consumer Credit Directive. The text will be finalised during the legal-linguistic revision, which will also ensure consistency in the terminology.

Date of publication: 02/05/2023

Council of the EU: Negotiating position on the Directive on financial services contracts concluded at a distance

Status: Draft

The Council of the EU has published a provisional version of the 4-column document, comparing the positions of the EC, Council and EP in relation to the proposed Directive on financial services contracts concluded at a distance. The Council's accompanying note explains that the European Parliament text has not yet been adopted in plenary and is therefore still subject to changes.

Date of publication: 02/05/2023

3.4 Market abuse

(i) EU

ESMA: Letter to EC on deprioritisation of 2023 ESMA deliverables

Status: Final

ESMA has published a letter (dated 27 April) to the EC on the prioritisation of its 2023 deliverables. The letter explains that following an assessment of ESMA's tasks and commitments that were outlined in its 2023 Annual Work Programme submitted to the European Institutions in September 2022, ESMA has identified among its planned work a set of deliverables, which could be deprioritised or postponed. The annex to the letter sets out the EC deliverables for 2023 that ESMA has deprioritised. These include: (i) annual reports to the EC on CSDR implementation; (ii) the annual report on administrative and criminal sanctions and other administrative measures imposed under MAR; (iii) the report on EMIR supervisory measures and penalties under EMIR; (iv) annual reports on transparency waivers and the use of deferred publication arrangements under MiFIR; and (v) the 2023 CCP peer reviews.

Date of publication: 10/05/2023

3.5 MiFID/MiFIR

(i) EU

EC: Proposal for a Directive amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

Status: Draft

The EC has published a proposal for a Directive amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules (Omnibus Directive), which aims to revise existing rules set out in MiFID II. It is part of the [Retail Investment Package](#), adopted by the EC, "that places the consumers' interests at the centre of retail investing". The aim of this package is to empower retail investors to make investment decisions that are aligned with their needs and preferences, ensuring that they are treated fairly and duly protected. The EC believes that the package will enhance retail investors' trust and confidence to safely invest in their future and take full advantage of the EU's Capital Markets Union. The package's aims include: (i) improving the way information is provided to retail investors about investment products and services, in ways that are more meaningful and standardised; (ii) increasing transparency and comparability of costs by requiring the use of a standard presentation and terminology on costs; (iii) addressing potential conflicts of interest in the distribution of investment products by banning inducements for "execution-only" sales (i.e. where no advice is provided) and ensuring that financial advice is aligned with retail investors' best interests.; (iv) preserving high standards of professional qualifications for financial advisors; and (v) reducing administrative burdens and improving the accessibility of products and services for sophisticated retail investors, by making the eligibility criteria to become a professional investor more proportionate.

Date of publication: 24/05/2023

Commission Delegated Regulation (EU) 2023/960 amending the RTS laid down in Delegated Regulation (EU) 2017/588 as regards the annual application date of the calculations of the average daily number of transactions for shares, depository receipts and exchange-traded funds for the purposes of the tick sizes

Status: Published in the OJ

Date of entry into force: 05/06/2023

The Commission Delegated Regulation (EU) 2023/960 amending RTS laid down in Delegated Regulation (EU) 2017/588, which supplements MiFID II in relation to the tick size regime for shares, depository receipts and exchange-traded funds, has been published in the OJ. For the purposes of the tick size regime, trading venues must use the calculations of the average daily number of transactions that competent authorities publish on 1 March. The application date of the data published by competent

authorities is changed from 1 April, to the first Monday of April, to allow trading venues the weekend to make necessary adaptations to their IT systems and infrastructures.

Date of publication: 16/05/2023

Commission Delegated Regulation (EU) 2023/945 amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards certain transparency requirements applicable to transactions in non-equity instruments

Status: Published in the OJ

Date of entry into force: 05/06/2023

The Commission Delegated Regulation (EU) 2023/945 amending the RTS laid down in Delegated Regulation (EU) 2017/583 as regards certain transparency requirements applicable to transactions in non-equity instruments has been published in the OJ. These amendments to the RTS aim to clarify, improve and simplify the transparency regime for non-equity instruments by way of specifying the MiFIR transparency requirements. In a deviation from the general application date, certain provisions have a delayed application until 1 January 2024.

Date of publication: 16/05/2023

Commission Delegated Regulation (EU) 2023/944 amending and correcting the RTS laid down in Delegated Regulation (EU) 2017/587 as regards certain transparency requirements applicable to transactions in equity instruments

Status: Published in the OJ

Date of entry into force: 05/06/2023

The Commission Delegated Regulation (EU) 2023/944 amending and correcting the RTS laid down in Delegated Regulation (EU) 2017/587 as regards certain transparency requirements applicable to transactions in equity instruments has been published in the OJ. It follows the EC's proposed amendments to the RTS, which inter alia suggest introducing a new flag, amending the definitions of certain fields in the post-trade transparency reporting as well as transitional provisions including postponing the application date of certain provisions to 1 January 2024.

Date of publication: 16/05/2023

ESMA: Letter to EC on deprioritisation of 2023 ESMA deliverables

Status: Final

ESMA has published a letter (dated 27 April) to the EC on the prioritisation of its 2023 deliverables. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 10/05/2023

ESMA: Annual transparency calculations for non-equity instruments, bond liquidity data and quarterly SI calculations

Status: Final

ESMA has published: (i) the annual transparency calculations for non-equity instruments – the transparency requirements based on the results of the annual transparency calculations for non-equity instruments which apply from 1 June 2023 until 31 May 2024; (ii) a new quarterly liquidity assessment of bonds – this will apply from 16 May to 15 August 2023; and (iii) the quarterly systematic internaliser (SI) calculations – the data covers the period 1 October 2022 to 31 March 2023. SI firms must perform the SI test by 15 May.

Date of publication: 28/04/2023

3.6 Packaged retail and insurance-based investment products (PRIIPs)

(i) EU

EC: Proposal for a Regulation amending Regulation (EU) No 1286/2014 as regards the modernisation of the KID

Status: Draft

The EC has published a proposal for a Regulation amending the PRIIPS Regulation as regards the modernisation of the key information document (KID). It is part of the [Retail Investment Package](#), adopted by the EC, “that places the consumers' interests at the centre of retail investing”. For more information on this package, please see section **Error! Reference source not found.** above.

Date of publication: 24/05/2023

ESAs: Consolidated Q&A on the PRIIPs KID

Status: Final

The ESAs have consolidated a set of Q&As on the Regulation on key information document (KID) requirements for packaged retail and insurance-based investment products (the PRIIPs Regulation) and its Delegated Acts. The consolidated document combines responses given by the EC to questions requiring the interpretation of Union Law, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of the PRIIPs Regulation and its Delegated Acts, which are not colour coded.

Date of publication: 17/05/2023

3.7 Securities financing transactions

(i) EU

ESMA: Postponement of the annual IFRS amendment of the ESEF to 2024

Status: Final

ESMA has announced that it will postpone the annual amendment of the RTS regarding the European Single Electronic Format (ESEF) to 2024. This decision is in part due to the limited changes in the 2023 update to the International Financial Reporting Standards (IFRS) Taxonomy. Throughout 2023, ESMA has noted that it will monitor the implementation of the ESEF requirements, assess how to improve digital reporting and develop the ESEF sustainability taxonomy and requirements.

Date of publication: 10/05/2023

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Letter to EC on deprioritisation of 2023 ESMA deliverables

Status: Final

ESMA has published a letter (dated 27 April) to the EC on the prioritisation of its 2023 deliverables. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 10/05/2023

4.2 EMIR

(i) EU

ESMA: Final report on the framework for the 5th ESMA stress test exercise for CCPs

Status: Final

ESMA has launched its fifth Stress Test Exercise for Central Counterparties (CCPs) under the EMIR. The CCP Stress Test framework is complemented by an adverse market scenario provided by the ESRB. Fourteen CCPs authorised in the EU and two UK CCPs classified as Tier 2 are included in this exercise.

Date of publication: 31/05/2023

ESMA: Final report on market outages

Status: Final

ESMA has published a final report on guidance on market outages, together with ESMA's opinion as given to NCAs on market outages. The opinion sets out ESMA's expectations on how NCAs should ensure that trading venues have appropriate communication protocols in place, to avoid an outage affecting the closing auction, and how trading venues should ensure the market is provided with an official closing price. ESMA expects NCAs to ensure that trading venues have in place an appropriate outage plan ready to be deployed in case of an outage. NCAs are also expected to require trading venues to assess their arrangements and procedures against the opinion and to consider whether any changes need to be made.

Date of publication: 24/05/2023

Corrigendum to Implementing Regulation on ITS under EMIR with regard to standards, formats, frequency and methods and arrangements for reporting

Status: Published in the OJ

A corrigendum to Implementing Regulation (EU) 2022/1860, laying down ITS under EMIR with regard to the standards, formats, frequency and methods and arrangements for reporting, has been published in the OJ. The corrigendum inserts the date of application, 29 April 2024, of the ITS in Article 10 which relates to the date by which derivative contracts are to be reported.

Date of publication: 11/05/2023

ESMA: Letter to EC on deprioritisation of 2023 ESMA deliverables**Status: Final**

ESMA has published a letter (dated 27 April) to the EC on the prioritisation of its 2023 deliverables. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 10/05/2023

ESMA: Recognition of four new Third Country CCPs**Status: Final**

ESMA has announced that it has recognised four additional third country CCPs (TC-CCPs) under Article 25 EMIR, bringing the total number of TC-CCPs recognised by ESMA to 39. The newly recognised TC-CCPs are: (i) Bursa Malaysia Derivatives Clearing Berhad (Malaysia); (ii) Taiwan Futures Exchange Corporation (Taiwan); (iii) Cámara de Riesgo Central de Contraparte de Colombia S.A. (Colombia); and (iv) Tel-Aviv Stock Exchange Clearing House Ltd (Israel). The recognition of these four TC-CCPs follows the conclusion of standard MoUs between ESMA and their respective supervisory authorities. ESMA also announces the withdrawal of recognition of six TC-CCPs established in India on 30 April. ESMA has updated its [list of recognised TC-CCPs](#) accordingly.

Date of publication: 02/05/2023

ECB: Opinion on EMIR 3 package**Status: Draft**

The ECB has published an opinion on the legislative proposals for the EMIR 3 package. While the ECB supports the package generally, it makes some specific observations on subjects including: (i) joint supervisory teams (JSTs) – while the ECB supports the introduction of JSTs in the supervision of authorised EU CCPs, it does not consider it necessary to establish a new supervisory body for this purpose, as this may lead to greater institutional complexity. The ECB proposes to rely on existing cooperation within the college framework; (ii) supervision of recognised third-country CCPs – the ECB supports introducing more proportionality into the recognition process of third-country CCPs, but suggests further clarifying the scope of the consultation of the central bank of issue in relation to the supervisory activities and procedures regarding Tier 2 third-country CCPs; (iii) collateral requirements – the ECB emphasises that it does not support allowing uncollateralised commercial bank guarantees to be eligible collateral on a permanent basis; (iv) procedures for the authorisation and extension of services – the ECB considers extending the proposed timeline from two to ten working days for the competent authority to confirm completeness of a CCP's application; (v) non-objection procedures for non-material changes – the ECB considers the proposed criteria in relation to the application of the new non-objection procedure for granting a request for extension of activities or services for non-material service changes are too high level and that ESMA should issue more granular guidance based on draft RTS; and (vi) the active account requirement. Among other things, the ECB considers it crucial to calibrate this requirement gradually, in terms of the proportions of exposures cleared at accounts at EU CCPs.

Date of publication: 28/04/2023

(ii) International**BCBS: Analysis of margin dynamics in centrally cleared commodities markets in 2022****Status: Final**

The BCBS, CPMI and IOSCO have published a report analysing margin dynamics in centrally cleared commodities markets during the high-volatility episode in 2022. Key findings of the report include: (i) CCPs are sensitive to the impact of margin calls on market participants and many either maintain or have introduced measures to help limit the speed and size of initial margin requirement increases; (ii) the market turmoil of 2022 exceeded some of the biggest shocks foreseen in the scenarios CCPs used to size their default funds and consequently some are adjusting their approach to stress testing for commodity derivatives; (iii) end users of commodities derivatives are concerned about the current level of transparency and predictability of CCPs' margin requirements, in particular for intraday margin calls; and (iv) many end users of commodity derivatives believe that there is scope to improve the transparency and predictability of additional margin requirements applied by their clearing brokers on top of the initial CCP margin (referred to as "add-ons" or "margin multipliers"). The findings from the report support the case for, and will

help inform, current international policy work aimed at enhancing the transparency of initial margin requirements and evaluating margin responsiveness to market stress.

Date of publication: 24/05/2023

BCBS: OTC derivatives statistics at end-December 2022

Status: Final

BCBS has published a report on OTC derivatives statistics at end-December 2022. In particular, it found that the gross market value of OTC derivatives, formed from the aggregate of contracts with positive and negative values, grew by 13% in the second half of 2022 to reach \$20.7 trillion at year-end. Interest rate derivatives drove this increase amid higher inflation and rising rates. Furthermore, the gross market value of commodities derivatives fell by 45% in the second half of 2022, reflecting a drop in energy and food prices.

Date of publication: 17/05/2023

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

(i) EU

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

Status: Adopted by the EC

The EC has adopted a Delegated Regulation specifying the circumstances in which a person is deemed to be independent from the resolution authority and from the central counterparty, the methodology for assessing the value of assets and liabilities of a central counterparty, the separation of the valuations, the methodology for calculating the buffer for additional losses to be included in provisional valuations, and the methodology for carrying out the valuation for the application of the "no creditor worse off" principle.

The Delegated Regulation will now be scrutinised by the Council and the EP.

Date of publication: 03/05/2023

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

Status: Adopted by the EC

The EC has adopted a Delegated Regulation specifying the conditions under which compensation, cash equivalent of such compensation or any proceeds that are due pursuant to Article 63(1) of the CCP Recovery and Resolution Regulation (CCPRRR) are to be passed on to clients and indirect clients and the conditions under which passing on is to be considered proportionate.

The Delegated Regulation will now be scrutinised by the Council and the EP.

Date of publication: 03/05/2023

5. Anti-money laundering

(i) EU

EBA: Consultation on Guidelines amending Guidelines EBA/2021/02 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) MLD4

Status: Consultation

Deadline for the submission of comments: 31/08/2023

The EBA has launched a consultation on amendments to its Guidelines on money laundering and terrorist financing (ML/TF) risk factors. The proposed changes extend the scope of these Guidelines to crypto-asset service providers (CASPs). Like other credit and financial institutions, CASPs are exposed to ML/TF risks. In the case of CASPs, these risks can be high and arise from their distinctive features, such as the use of technology that allows instant transfers of crypto assets across the world, services that contain privacy-enhancing features and the ability to onboard customers in different jurisdictions. The EBA is proposing to amend its ML/TF risk factors Guidelines to set common, regulatory expectations of the steps that CASPs should take to identify and mitigate these risks effectively.

Date of publication: 31/05/2023

Council of the EU: Provisional agreement on three proposals creating the ESAP

Status: Draft

The Council of the EU has reached a provisional agreement on three proposals creating the European Single Access Point (ESAP), which is part of the Capital Markets Union (CMU) Action Plan. It aims to, inter alia, facilitate the decision-making process for a broad range of investors, including retail investors by increasing the circulation of information, also across borders, and by increasing the digital use of that information. ESAP is intended not to impose any additional information reporting requirements on European companies, as it will provide access to information already made public in application of the relevant European directives and regulations. Under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation.

Date of publication: 23/05/2023

EBA: Revised templates for reporting of deposits under Russia and Belarus sanctions

Status: Final

The EBA has updated templates to be used for the second annual reporting of information on deposits subject to the Russia and the Belarus Economic Sanctions Regulations. The EBA is making the template available for voluntary use by the relevant NCAs and by the EC, with the aim of promoting a convergent approach and reducing any associated reporting costs, especially for cross-border banks.

Date of publication: 22/05/2023

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 as regards adding Nigeria and South Africa to the table in point I of the Annex and deleting Cambodia and Morocco from that table

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries with strategic deficiencies under MLD4. The Delegated Regulation adds Nigeria and South Africa to Table I of the Annex to Delegated Regulation (EU) 2016/1675, as they are considered to have strategic deficiencies in

their regimes on AML/CFT that pose significant threats to the financial system of the Union. The Regulation also removes Cambodia and Morocco from that table, as they are no longer considered to have such strategic deficiencies.

The Council and the EP will scrutinise the Delegated Regulation and if neither objects, it will enter into force 20 days following its publication in the OJ.

Date of publication: 17/05/2023

Council of the EU: Adoption of the recast revised WTR

Status: Adopted by the Council of the EU

The Council of the EU has announced that it has formally adopted the recast revised WTR. The Regulation will now be published in the OJ. The recast revised WTR will enter into force 20 days after publication and apply 18 months after that. The Council has also published the [voting result](#) for adoption of the Regulation.

Date of publication: 16/05/2023

Council of the EU: Trilogue negotiating positions on AMLR, MLD6 and AMLA Regulation

Status: Draft

The Council of the EU published tables setting out the negotiating positions taken by the EC, the Council and the EP ahead of the commencement of the trilogue negotiations on the AMLR, MLD6 and the AMLA Regulation.

- [AMLR table](#)
- [MLD6 table](#)
- [AMLA Regulation table](#)

Date of publication: 15/05/2023

Council of the EU: Note on proposed Directive on cross-border law enforcement access to bank account registries through the single access point

Status: Draft

The Council of the EU has published a four-column table on the proposal for a Directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through the single access point, comparing the Commission proposal of 20 July 2021, the amendments adopted by the EP on 13 February, and the mandate approved by the Permanent Representative Committee on 29 March.

Date of publication: 03/05/2023

6. Payments

6.1 Payment services/E-money

(i) EU

EPC: Adherence Guide on the SEPA credit transfer scheme, the SEPA instant credit transfer scheme, one-leg out instant credit transfer scheme and the SEPA direct debit schemes

Status: Final

The EPC has published its “Adherence Guide” on the Single Euro Payments Area (SEPA) credit transfer scheme, the SEPA instant credit transfer scheme (SCT Inst), one-leg out (OLO) instant credit transfer scheme rulebook (OCT Inst) and the SEPA direct debit schemes. This new scheme allows payment service providers (PSPs) to handle the Euro Leg of an international cross-border and/or cross currency (instant) credit transfer, maximising the synergies with existing SEPA payment ‘rails’. These SEPA ‘rails’ include procedures, features and standards, which are reflected in arrangements with which the SEPA PSPs are already familiar (such as the SCT Inst scheme and the existing SEPA payment infrastructures). Through the OCT Inst scheme, the PSPs in SEPA can process incoming and outgoing OLO credit transfers instantly through highly automated and instant funds transfer systems available in the Euro Leg and via similar systems in the respective non-Euro Leg countries or jurisdictions.

Date of publication: 30/05/2023

Council of the EU: Agreement on its position on the instant payments proposal

Status: Draft

The Council of the EU has announced it had agreed its position on the instant payments proposal, which aims to improve the availability of instant payment options in euro to everyone who owns a bank account in the EU and in EEA countries. Under the proposed rules, payment service providers such as banks, which provide standard credit transfers in euro, will be required to also offer the service of sending and receiving instant payments in euro. The charges they apply (if any) must not be higher than the charges they apply for standard credit transfers. The Council’s position specifies that for payment service providers located in member states outside the euro area, there will be a phased implementation time, to address concerns that payment service providers outside the euro area could face challenges in gaining access to euro liquidity outside regular business hours. The sending of instant payments in euro from non-euro accounts will be only mandatory during business hours for those payment service providers that also provide standard transfers in euro.

Now that the Council has set its position on the proposal, it is ready to start negotiations with the EP in order to agree on a final version of the text.

Date of publication: 22/05/2023

EP: Response to question on push payment fraud

Status: Final

The EP has published a response from the Commission to a [written question](#) regarding APP fraud, posed by an MEP. The Commission was asked whether it will take action when revising the PSD to shift the burden of proof away from the victim and make the payment service provider offer greater protections and whether the Commission could outline if Member States are free to bring in regulations that would allow victims of authorised push payment fraud to be compensated. Ms McGuinness, on behalf of the Commission, responds to the questions explaining that following consultations held in the context of PSD2, evidence suggests that the introduction of strong customer authentication, while successful in reducing the level of fraud related to unauthorised payment transactions, has been insufficient in preventing APP fraud. As such, the Commission was assessing the possibility of introducing some targeted amendments to the PSD2 liability and refund rules as part of the PSD2 review, which is scheduled for adoption in Q2. In response to the second question, Ms McGuinness explained that Member States are

free to introduce such regulations at national level, a possibility that is also open to payment service providers on a voluntary basis.

Date of publication: 04/05/2023

(ii) International

BCBS: Handbook for offline payments with CBDC

Status: Final

BCBS has published a handbook on key issues related to how central bank digital currencies (CBDCs) could work offline. Among the issues addressed are security, privacy, risks, solution types and operational factors. Further work on the practical aspects of implementing security and resilient CBDC systems is ongoing.

Date of publication: 11/05/2023

6.2 Payment accounts

(i) EU

EC: Report on the application of the Payment Accounts Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

Status: Final

The EC has published a report on the application of the Payments Account Directive (PAD). The EC's conclusions include that the PAD: (i) in general, has helped to create transparency and comparability of payment account fees. However, some Member States have created an additional layer of new legislation when transposing the PAD, rather than replacing existing legislation, and this makes the national and EU regulatory framework more fragmented. This has also caused the duplication of documents on fee levels of payment accounts in Member States where documents with the same information already existed. Some aspects of the measures of the comparative sites also require improvement as cross-border transparency and comparison are not yet possible due to differences in the terminology used and to language barriers; (ii) has ensured that consumers have access to payment accounts with basic features which are offered by all or many credit institutions in each Member State; and (iii) has enabled all EU consumers to easily switch accounts domestically, although there are considerable differences between the different Member States in the number of yearly switches. Therefore additional measures could be useful, particularly to raise consumers' awareness of their right to switch. In view of these conclusions, the EC does not present any legislative proposal. It states that whether the PAD needs to be amended will need to be considered in further detail and in line with better regulation standards at a later stage and taking into account, in particular, the EBA Guidelines on the interaction between PAD and AML rules.

Date of publication: 12/05/2023

EC: Report assembling specific payment account related data from Member States as required by Article 27 of the Payment Accounts Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

Status: Final

The EC has published its first report in relation to compliance with the Payments Account Directive (PAD) covering the period from 2016 to 2021, as mandated by Article 27. The EC notes that the timespan of the data collected and the differences in data collection methods makes it difficult to draw definitive conclusions on the impact of the PAD. The report confirms however that the main measures of the PAD, regarding transparency and comparability, the switching service, and the right to a payment account with basic features (PABF), have all generally been put in place.

The EC's findings include that: (i) in some Member States the figures for account switching are very low; (ii) in most Member States, all credit institutions that provide standard payment accounts have to offer PABF. However in some Member States only certain credit institutions are obliged; (iii) the data shows that a considerable number of PABFs have been opened during the

period reported, albeit only few in some Member States. Nevertheless, there has been a significant uptake in some Member States with a previously higher percentage of unbanked population. In order to ensure more complete availability and comparability of data going forward, the EC is working with Member States to agree the relevant data sets to be collected/provided.

Date of publication: 12/05/2023

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

ECA: Report on the EU supervision of banks' credit risk

Status: Final

The European Court of Auditors (ECA) has published a report on the ECB's supervision of banks' credit risk under the SSM. Overall the ECA concludes that the ECB stepped up its efforts in supervising banks' credit risk, and in particular non-performing loans (NPLs). However, more needs to be done for the ECB to gain increased assurance that credit risk is properly managed and covered. The ECA's findings include: (i) with the exception of some shortcomings, the assessments of the banks' credit risk level and control environment were of good quality with proper use of benchmarking tools. However, in the context of the Supervisory Review and Evaluation Process (SREP), the ECB made inefficient use of its existing tools and supervisory powers to ensure appropriate coverage of credit risk; (ii) the Pillar 2 methodology applied from 2021 has not provided assurance that the banks' various individual risks were appropriately covered. Moreover, the ECB did not apply its methodology consistently as it did not impose proportionally higher Pillar 2 requirements the higher the risks faced by a bank; (iii) the ECB did not escalate its supervisory measures for some banks even in the presence of high and sustained credit risk and persistent control weaknesses; (iv) supervision suffered to some extent from the fact that several national supervisors fell short of their commitments to provide staff resources; and (v) with regard to legacy NPLs, the ECB's approach to use a Pillar 2 add-on, by design, did not resolve the issue at once, as it gave banks years to comply. Moreover, not all banks acted as proactively as the ECB had expected. Further the approach resulted in an unequal treatment of banks, as those with a higher share of NPLs were given more time. To enhance operational efficiency, the ECA recommends that the ECB should: (a) strengthen the risk assessments of banks; (b) streamline the SREP; and (c) apply supervisory measures that better ensure sound coverage and management of risks by banks.

Date of publication: 16/05/2023

ECB: Revised manual on the methodology for phase 2 of asset quality review

Status: Final

The ECB has revised its manual on the methodology for phase 2 of its asset quality review (AQR) as part of the assessment of relevant banks under the SSM, together with a set of related FAQs. The main changes relate to the credit file review, collateral valuation and collective provisioning chapters. The ECB states that the aim of the changes is to reduce the complexity of the AQR exercise and to incorporate the latest regulatory expectations. In particular, for the credit file review: (i) the samples will be more risk-based and will focus on the parts of portfolios with more historical reclassifications; (ii) the cash-flow multiples have been recalculated, allowing additional segmentation by sectors; (iii) collateral haircuts used for AQR purposes will incorporate the recovery strategy of each individual bank; and (iv) ECB supervisory coverage expectations for non-performing exposures have been incorporated as a floor. With regard to collective provisioning, the loss-given-loss for residential real estate portfolios will be estimated based on historical recoveries. It will be estimated using not only exposures that have incurred a write-off but also open defaults which should have been fully provisioned in accordance with the supervisory expectations in the addendum to the ECB guidance to banks on non-performing loans.

Date of publication: 16/05/2023

8. Institutional supervisory framework

(i) EU

ESAs: Joint Committee Annual Report 2022

Status: Final

The Joint Committee of the ESAs has published its Annual Report 2022. It focused on issues of cross-sectoral relevance, such as joint risk assessment, sustainable finance, digitalisation, consumer protection, securitisation, financial conglomerates, and central clearing. The Committee's main deliverables concerned the Sustainable Finance Disclosure Regulation (SFDR) and the Digital Operational Resilience Act (DORA).

Date of publication: 23/05/2023

EBA: Report on convergence of supervisory practices in 2022

Status: Final

The EBA has published a report on the convergence of supervisory practices in 2022. The conclusions include that: (i) although the goal for most of the supervisory priorities set in the EBA European Supervisory Examination Programme (ESEP) for 2022 was met, competent authorities are still in the process of building up their capacity to review the risks associated with the digital transformation and ESG; (ii) supervisors showed an ability to react to macro events that affected the financial situation of institutions under their supervision, although timely information exchange and cooperation should be enhanced; and (iii) supervisors consciously applied proportionality in their supervisory practices. In its follow up in 2023, priority will be given to the high risk and not fully covered areas of the 2022 ESEP, while the EBA will also facilitate and monitor the implementation of qualitative KPIs for supervisory colleges in 2023.

Date of publication: 04/05/2023

9. Investment funds

9.1 Product regulation

(a) AIF

(i) EU

ESMA: Q&A on the application of the AIFMD

Status: Final

ESMA has updated its Q&A on the application of the AIFMD by adding a new section on marketing. So far, this section includes the question as to whether non-EU AIFMs are allowed to carry out pre-marketing activities pursuant to Article 30a AIFMD, clarifying that this is not the case.

Date of publication: 26/05/2023

ESMA: Final report on the 2022 CSA on valuation

Status: Final

ESMA has published a report on the Common Supervisory Action (CSA) on the supervision of the asset valuation rules under the UCITS and AIFM Directives. The report found room for improvement in the following areas: (i) the appropriateness of valuation policies and procedures; (ii) valuation under stressed market conditions; (iii) independence of the valuation function and use of third-party valuers; and (iv) early detection mechanisms for valuation errors and compensation to investors. ESMA notes that the current macroeconomic outlook, combined with the tightening of financial conditions, heightened inflation and increased interest rates level, compounds challenges for ensuring a fair valuation of assets at all times and especially under stressed market conditions. The report stresses the importance that NCAs address the deficiencies identified in the course of the CSA exercise. NCAs should keep paying close attention to potential valuation issues arising from less liquid assets, whose nature can amplify the structural liquidity mismatches of certain types of investment funds. Building on these findings, ESMA plans to facilitate discussions among NCAs on the topic of asset valuation to ensure that both market participants and NCAs are better prepared to address valuation-related challenges in future periods of stress.

Date of publication: 24/05/2023

ESMA: Opinion on undue costs of UCITS and AIFs

Status: Final

ESMA has published an opinion with suggested clarifications of the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of “undue costs”. ESMA explains that the initiative was prompted by one of the findings of the ESMA 2021 Common Supervisory Action on costs and fees, which showed divergent market practices around what industry reported as “due” or “undue” costs in funds. ESMA’s proposal is to take as a basis the supervisory expectations enshrined in the 2020 supervisory briefing on the supervision of costs and ground these expectations into clearer legal requirements. This would clarify the notion of due/undue costs for UCITS and AIFs and provide national competent authorities with a stronger legal basis on which to take supervisory and enforcement actions. ESMA is of the view that the EC: (i) should clarify the eligibility of costs in light of the list of costs included in the PRIIPs Regulation. ESMA could be empowered to develop draft RTS in order to: specify the circumstances in which the costs included in the PRIIPs list should be considered as undue/not eligible and specify under which conditions NCAs may authorise additional cost categories; (ii) should consider introducing the notion of undue cost in Article 14 of the UCITS Directive and Article 12 of the AIFMD. Where a manager has intentionally or negligently committed an infringement, the manager should be sanctioned with a fine that is proportionate to the harm caused to investors; and (iii) should consider introducing obligations for managers to develop a pricing process. ESMA states that its opinion will be taken into account by the EC in the context of the EC’s Retail Investment Strategy and subsequent legislative proposals.

Date of publication: 17/05/2023

(b) UCITS**(i) EU****ESMA: Final report on the 2022 CSA on valuation****Status: Final**

ESMA has published a report on the Common Supervisory Action (CSA) on the supervision of the asset valuation rules under the UCITS and AIFM Directives. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 24/05/2023

ESMA: Opinion on undue costs of UCITS and AIFs**Status: Final**

ESMA has published an opinion with suggested clarifications of the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of “undue costs”. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 17/05/2023

9.2 Prudential regulation

(a) Compliance**(i) EU****ESMA: Consultation on draft RTS under the revised ELTIF Regulation****Status: Consultation****Deadline for the submission of comments: 24/08/2023**

ESMA has launched a consultation on draft RTS under the revised ELTIF Regulation. ESMA published a consultation paper on draft RTS under the revised ELTIF Regulation. The RTS will specify the way the new requirements of the revised ELTIF Regulation, in particular the redemption policy and matching mechanism, will apply. ESMA is seeking stakeholders' views on: (i) the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF; (ii) the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors; and (iii) the costs disclosure.

ESMA expects to publish a final report and submit the draft technical standards to the commission for endorsement by 10 January 2024.

Date of publication: 23/05/2023

(ii) International**IOSCO: Final report on good practices relating to the implementation of the IOSCO principles for ETFs****Status: Final**

IOSCO has published a final report setting out good practices to support the implementation of its Principles for exchange traded funds (ETFs) covering effective product structuring, disclosure, liquidity provision, and volatility control mechanisms. The good practices: (i) highlight issues for regulators, responsible entities and/or trading venues to consider when putting into practice the ETF Principles and other relevant IOSCO standards and guidance; (ii) take account of the differences among

jurisdictions in the way that ETFs operate, the way they are regulated, and the markets in which they trade; and (iii) are broadly categorised under four themes that encompass the full life cycle of ETF products: (a) effective product structuring, including range of assets, strategies for ETF offerings, effective arbitrage mechanisms; (b) disclosure requirements, including on fees and on clear differentiation of ETFs from other exchange traded products and collective investment schemes; (c) liquidity provisions, including market monitoring and ensuring orderly trading; and (d) volatility control mechanisms, including communication between trading venues.

Date of publication: 12/05/2023

10. Special topics

10.1 Brexit

(i) EU

EC/HMT: Draft UK-EU MoU on regulatory cooperation in financial services text published

Status: Final

The UK and EU Commission have published the joint text of the draft MoU on regulatory cooperation in financial services. The MoU sets out a framework for financial services regulatory cooperation between the EU and the UK. Based on a shared objective of preserving financial stability, market integrity, and the protection of investors and consumers, the arrangements should provide for: (i) bilateral exchanges of views and analysis relating to regulatory developments and other issues of common interest; (ii) transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions; (iii) bilateral exchanges of views and analysis relating to market developments and financial stability issues; and (iv) enhanced cooperation and coordination including in international bodies as appropriate.

The MoU is still subject to the internal processes of the EU, after which the EC and HMT will sign the MoU.

Date of publication: 19/05/2023

10.2 FinTech/Digital finance

(i) EU

ESAs: Joint discussion paper on DORA delegated acts

Status: Consultation

Deadline for the submission of comments: 23/06/2023

The ESAs have launched a consultation with a joint discussion paper on advice to the EC on two proposed 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 the Regulation on Digital Operational Resilience for the Financial Sector (DORA).

The feedback collected in this consultation will inform the technical advice that the ESAs will deliver to the EC by 30 September 2023.

Date of publication: 26/05/2023

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

Status: Final

ESMA has updated its Q&A on the European crowdfunding service providers for business Regulation (ECSPR) by adding questions to the section on the use of Special Purpose Vehicles (SPV) regarding the scope of the definition of SPV and the participation of Crowdfunding Service Providers (CSPs) in an SPV. It also includes a new question on proof of own funds of CSPs within the section on authorisation and supervision of CSPs.

Date of publication: 26/05/2023

ESRB: Report on crypto-assets and decentralised finance

Status: Final

The ESRB has published a report outlining the systemic implications of crypto-markets and proposing policy options to address the risks stemming from crypto-assets and decentralised finance (DeFi). The report's key findings include that while this past year has been turbulent for crypto-assets and DeFi, systemic impacts on the financial system have not materialised. The crypto market has few interlinkages with the traditional financial sector and the real economy, and none of those links are currently significant. However, given the exponential growth dynamics of crypto-assets seen in the past, the future development of these markets is uncertain and therefore close monitoring will be required. These risks could materialise if, for example, interconnectedness with the traditional financial system increases over time, new connections are not promptly identified, or if similar innovations such as distributed ledger technology are widely adopted in traditional finance. The report proposes three areas on which to focus policy: (i) improve the EU's capacity to monitor potential contagion channels, both between the crypto-asset sector and the traditional financial sector, and within the crypto-asset sector itself. The aim is to improve monitoring capacity through the introduction of regular reporting requirements for financial institutions with exposures to crypto-assets. Given the potential for contagion across trading platforms and other relevant entities; (ii) carry out assessments of risks posed by crypto-asset conglomerates and leverage using crypto-assets. Taking into account market developments following the application of MiCA, it could be useful to identify and assess any risks arising from crypto-asset conglomerates, given the potential for cumulative prudential, reputational or operational risks; and (iii) promote EU-level knowledge exchange and monitoring of market developments, focusing on operational resilience, DeFi, and crypto-asset staking and lending. The use of different underlying technology for crypto-assets may bring about varied novel operational risks that must be considered by regulators and supervisors.

Date of publication: 25/05/2023

Council of the EU: Adoption of MiCA

Status: Adopted by the Council of the EU

The Council of the EU has announced that it has formally adopted MiCA. The Regulation will now be published in the OJ. MiCA shall enter into force 20 days after publication and apply 18 months after that, except for the requirements relating to asset-referenced tokens and e-money tokens which will apply after 12 months. The Council has also published the [voting result](#) for the adoption of the regulation.

Date of publication: 16/05/2023

Council of the EU: Adoption of the recast revised WTR

Status: Adopted by the Council of the EU

The Council of the EU has announced that it has formally adopted the recast revised WTR. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 16/05/2023

(ii) International

BCBS: Ongoing policy perspectives on central bank digital currencies (CBDC)

Status: Final

The BCBS, together with a group of central banks, has published a paper exploring ongoing policy perspectives on CBDCs. Key messages from the paper include that: (i) the development of CBDC work requires careful consideration and engagement with a wide range of stakeholders, including the private sector and legislators; (ii) to successfully meet its public policy objectives, a CBDC ecosystem should allow a wide range of private and public stakeholders to participate and, in doing so, deliver services which benefit end users; (iii) the complex design questions and the potential risks arising from the implementation of any CBDC require careful consideration; and (iv) the evolving payments landscape requires central banks to give some consideration to how CBDCs may be used for wholesale and cross-border use cases. The paper also shares perspectives on how central banks can best

engage industry and the public, the key legal issues related to retail CBDC, the tools that may be needed to manage stressed conditions, and the implications of using blockchain technology and associated concepts in CBDC.

Date of publication: 25/05/2023

IOSCO: Consultation on policy recommendations for crypto and digital asset markets

Status: Consultation

Deadline for the submission of comments: 31/07/2023

IOSCO has launched a consultation on detailed recommendations to jurisdictions across the globe as to how to regulate crypto-assets. The report proposes 18 policy recommendations which aim to support greater consistency with respect to regulatory frameworks and oversight in its member jurisdictions, to address concerns related to market integrity and investor protection arising from crypto-asset activities. The proposed 18 recommendations cover six key areas: (i) conflicts of interest arising from vertical integration of activities and functions; (ii) market manipulation, insider trading and fraud; (iii) cross-border risks and regulatory cooperation; (iv) custody and client asset protection; (v) operational and technological risk; and (vi) retail access, suitability, and distribution. IOSCO plans to finalize the recommendations in early Q4.

Date of publication: 23/05/2023

10.3 AI

(i) EU

EP: Compromise proposal of the AI Regulation

Status: Draft

The EP has approved a compromise proposal of the AI Regulation, the first ever EU transparency and risk-management rules on artificial intelligence. The endorsed amendments to the proposal aim to ensure that AI systems are overseen by people, are safe, transparent, traceable, non-discriminatory, and environmentally friendly. They also intend to include a uniform definition for AI designed to be technology-neutral, so that it can apply to present and future AI systems.

Date of publication: 11/05/2023

10.4 Sustainable finance

(i) EU

EBA: Final report on draft RTS with regard to the content, methodologies and presentation of disclosures in respect of the sustainability indicators in relation to adverse impacts of the assets financed by the underlying exposures for STS securitisations on the climate and other ESG-related adverse impacts pursuant to Article 22(6) and 26d(6) of the Securitisation Regulation

Status: Final

The EBA has published a final report on draft RTS with regard to the content, methodologies and presentation of disclosures in respect of the sustainability indicators in relation to adverse impacts of the assets financed by the underlying exposures for simple, transparent and standardised (STS) securitisations on the climate and other ESG-related adverse impacts pursuant to Article 22(6) and 26d(6) of the Securitisation Regulation. For more information, please see section **Error! Reference source not found.** above.

Date of publication: 25/05/2023

ESAs: Consolidated Q&A on the SFDR and the SFDR Delegated Regulation

Status: Final

The ESAs have consolidated a set of Q&As on the SFDR and the SFDR Delegated Regulation. The consolidated document combines responses given by the EC to questions requiring the interpretation of EU Law, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of SFDR, which are not colour coded.

Date of publication: 17/05/2023

ESMA: Speech on role in enabling the transition to a low carbon economy

Status: Final

ESMA has published a speech by Natasha Cazenave, Executive Director of ESMA, on ESMA's role in enabling the transition to a low carbon economy. In her speech, Ms Cazenave explains the work that ESMA has done to achieve its priority of promoting transparency and tackling greenwashing. Key points of interest include: (i) Ms Cazenave believes that enhanced corporate sustainability reporting is the cornerstone of the sustainable finance framework and is expected to provide much awaited data to be used across the whole sustainable investment value chain; (ii) ESMA is aware that despite all the work that has been done until now to improve the disclosure framework for financial entities and investment products, the framework remains complex and difficult to navigate for investors. Ms Cazenave explains that there could be merit in exploring whether labels could help better channel savings according to investors' needs and preferences and therefore support an orderly transition; and (iii) until there can be further clarity on potential changes to the SFDR or the introduction of labels, ESMA believes that some criteria should be required when naming funds that claim to have sustainability characteristics or goals. To conclude, ESMA's ultimate objective is to support the channelling of the necessary capital flows to meet the EU's decarbonization targets as well as its environmental and social objectives. Ms Cazenave confirms that ESMA stands ready to contribute to further legislative changes and respond to new market developments.

Date of publication: 05/05/2023

11. Contacts

Financial Services Regulatory



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



Brice Henry
Partner | Paris
Tel +33 140065366
brice.henry@allenoverly.com



Gerard Kastelein
Partner | Amsterdam
Tel +31 20 674 1371
gerard.kastelein@allenoverly.com



Sylvia Kierszenbaum
Partner | Brussels/Antwerp
Tel +32 3 287 74 10
sylvia.kierszenbaum@allenoverly.com



Salvador Ruiz Bachs
Partner | Madrid
Tel +34 91 782 99 23
salvador.ruizbachs@allenoverly.com



Henri Wagner
Partner | Luxembourg
Tel +352 44 44 5 5409
henri.wagner@allenoverly.com



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

FOR MORE INFORMATION PLEASE CONTACT

Frankfurt

Bockenheimer Landstraße 2
60306 Frankfurt am Main
Germany

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

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Allen & Overy LLP

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

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