

# Regulatory monitoring

Newsletter

May 2022





# ECB in focus

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

## Some of our recent posts

### **ECB REPORTS THAT BANKS' CLIMATE RISK DISCLOSURE FALLS FAR SHORT OF EXPECTATIONS**

*28 April 2022*

In March 2022, the ECB published its second report on the state of significant banks' climate-related and environmental risk disclosures. While the ECB sees improvements since last year's assessment, no bank currently fully meets the supervisory expectations.

[Read more →](#)

### **NEW ECB OPINIONS ON EU ANTI-MONEY LAUNDERING PACKAGE**

*17 March 2022*

The ECB published two new opinions on the upcoming EU AML/CTF legislative package addressing the AMLA Regulation, AML Regulation and AMLD6 of the package. While it welcomes the legislative proposals and strongly supports the strengthening of the AML/CTF regime in the EU, it recommends a number of amendments to the Commission's proposals.

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

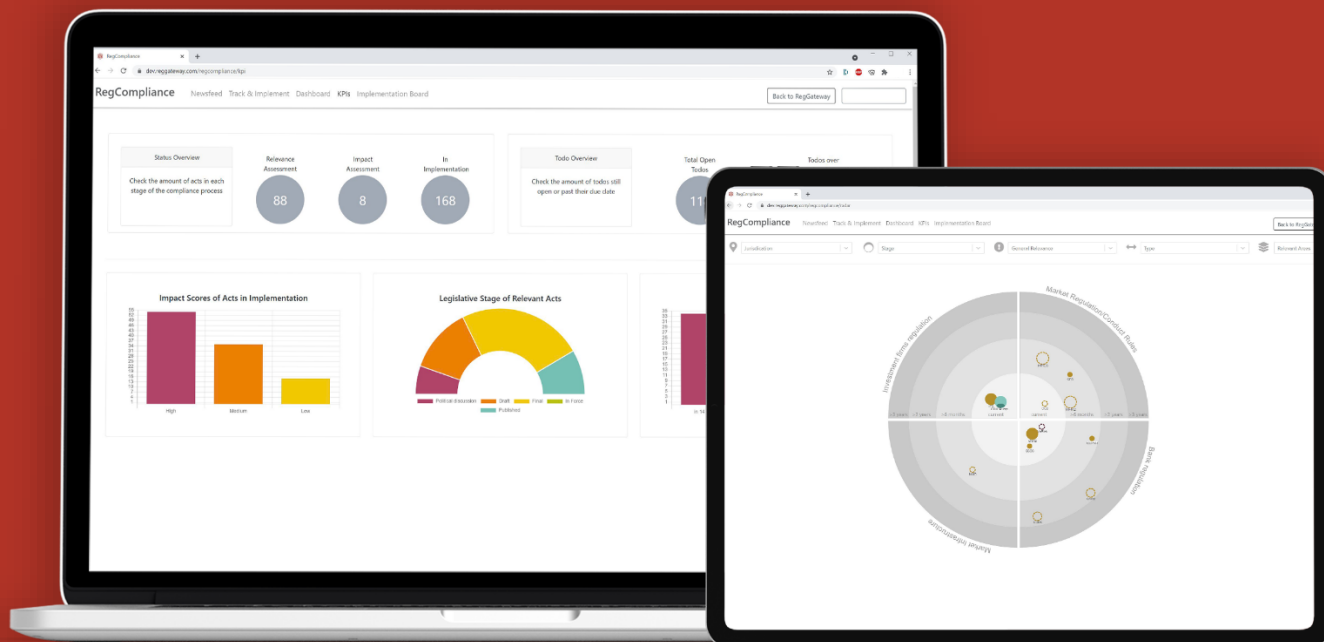
For enquiries regarding Allen & Overy's ECB in focus blog, please contact us.

### **EU GENERAL COURT HOLDS THAT INDICTMENT OF A CONTROLLING SHAREHOLDER MAY JUSTIFY WITHDRAWAL OF BANK LICENCE**

*18 May 2022*

The EU General Court dismissed an action brought by Malta's Pilatus Bank, confirming the legality of the ECB's 2018 decision to withdraw the bank's licence after an indictment of its sole shareholder. The court held that the qualifying shareholder ceasing to fulfil the suitability criteria was a valid ground for withdrawing a bank's licence and that on the present facts, the negative public perception of the shareholder's reputation meant that it was justified.

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### 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 .....	10
1.1	Prudential regulation.....	10
(a)	General .....	10
	BaFin: Note on cyber security advice for the financial sector in light of the war in Ukraine .....	10
	ESRB: Recommendation amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures .....	10
	EBA: Decision concerning supervisory reporting for IPU threshold monitoring .....	10
	EBA: Final report on Guidelines on the equivalence of confidentiality and professional secrecy regimes of third country authorities.....	11
(b)	Solvency/Own funds issues.....	11
	ECB: Call for more effective capital buffer framework in Financial Stability Review ..	11
	EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on emerging markets and advanced economies .....	12
	EC: Commission Implementing Regulation (EU).../...amending the ITS laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of the CRD.....	12
	EBA: Final report on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under the CRD.....	12
(c)	Securitisation .....	13
	EBA: Amended final report on draft ITS amending Implementing Regulation (EU) 2016/1801 on the mapping of ECAIs' credit assessments for securitisation in accordance with the CRR .....	13
	ESAs: Joint consultation on draft RTS with regard to the content, methodologies and presentation of STS securitisations-related sustainability disclosures pursuant to Articles 22(4) and 26d(4) of the Securitisation Regulation .....	13
(d)	Liquidity .....	14
	Amendments to Commission Delegated Regulation (EU) 2022/786 on liquidity coverage requirement .....	14
	Commission Delegated Regulation (EU) 2022/786 amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to liquidity coverage requirement for credit institutions .....	14
(e)	Risk management/SREP/Pillar 2/Outsourcing/NPL .....	14

	BaFin: English version of the revised Circular 10/2021 on Minimum requirements for risk management ( <i>Englische Version des angepassten Rundschreibens 10/2021 über die Mindestanforderungen an das Risikomanagement – MaRisk</i> ) .....	11
	EBA: Report on the peer review on supervision of NPE management .....	14
	EBA: Consultation Paper on draft ITS specifying the templates to be used by credit institutions for the provision of information referred to in Article 15(1) of the NPL Directive (NPL Transactions Data Templates) .....	15
(f)	<b>Large exposures/Limits to shadow banking entities</b> .....	15
	EBA: Final report on draft RTS on criteria for the identification of shadow banking entities under Article 394(4) of the CRR .....	15
(g)	<b>Deposit protection</b> .....	15
	SRB: Addendum to the public interest assessment on DSGs Considerations .....	15
(h)	<b>Supervisory reporting</b> .....	16
	ESMA: Public statement on the implications of Russia’s invasion of Ukraine on half-yearly financial reports .....	16
1.2	<b>Recovery and resolution</b> .....	16
	BaFin: Consultation 03/2022 on the draft Circular regarding the minimum requirements for resolution capability in the context of resolution planning ( <i>Konsultation 03/2022 über den Entwurf eines Rundschreibens zu den „Mindestanforderungen an die Abwicklungsfähigkeit im Rahmen der Abwicklungsplanung“</i> ) .....	16
2.	<b>Market regulation/Conduct rules</b> .....	18
2.1	<b>Benchmarks</b> .....	18
	Commission Delegated Regulation (EU) 2022/804 supplementing the Benchmark Regulation by specifying rules of procedure for measures applicable to the supervision by the ESMA of certain benchmark administrators .....	18
	Commission Delegated Regulation (EU) 2022/805 supplementing the Benchmark Regulation by specifying fees applicable to the supervision by the ESMA of certain benchmark administrators .....	18
	EC: Targeted consultation on the regime applicable to the use of benchmarks administered in a third country.....	18
	Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts.....	19
	Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts.....	19
2.2	<b>Consumer protection rules</b> .....	19

	EC: Proposal for a Directive amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing the Distance Marketing of Financial Services Directive.....	19
	EC: Call for evidence on retail investment regarding a new package of measures to increase consumer participation in capital markets .....	20
2.3	<b>Market abuse</b> .....	20
	ESMA: Response to EC’s proposed amendments on its draft RTS on liquidity contracts for SME GM issuers and draft ITS on insider lists .....	20
2.4	<b>MiFID/MiFIR</b> .....	21
	BaFin: Expired supplement to the public statement of ESMA on the application of MiFID II to the recording of telephone communications ( <i>Ausgelaufene Ergänzung zum Public Statement der ESMA zur Anwendung von MiFID II zur Aufzeichnung der Telefonkommunikation</i> ).....	21
	ESMA: Final report on the review of the MiFID II framework on best execution reports by investment firms .....	21
	Commission Delegated Regulation (EU) 2022/803 supplementing MiFIR by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the ESMA regarding data reporting service providers.....	21
	ESMA: Q&A on MiFID II and MiFIR transparency topics.....	22
	Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts.....	22
2.5	<b>Packaged retail and insurance-based investment products (PRIIPs)</b> .....	22
	ESAs: Joint supervisory statement on expectations regarding the ‘What is this product?’ section of the KID for packaged retail and insurance-based investment products.....	22
	ESAs: Response to call for advice on the review of the PRIIPs Regulation.....	22
3.	<b>Market infrastructure</b> .....	24
3.1	<b>Custody rules</b> .....	24
	ESMA: Q&A on the Central Securities Depositories Regulation (CSDR).....	24
3.2	<b>EMIR</b> .....	24
	ESMA: Final report on highly liquid financial instruments for CCP investment policies under EMIR.....	24
	ESMA: Four public consultations on draft Guidelines for the CCP resolution regime ..	24
	Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts.....	25
	ESMA: Final reports on CCP resolution regime .....	25

4.	Anti-money laundering .....	26
	Germany BT: Adoption of a draft of the first Sanctions Enforcement Act ( <i>Verabschiedung des Entwurfs eines ersten Sanktionsdurchsetzungsgesetzes</i> ) .....	26
	BaFin: Results from the evaluation of the video identification procedures pursuant to the Circular 3/2017 ( <i>Ergebnis der Evaluierung des Videoidentifizierungsverfahrens i. S. d.</i> <i>Rundschreibens 3/2017</i> ) .....	26
	BaFin: Note on the automated retrieval of account information pursuant to Section 24c of the German Banking Act ( <i>Hinweise zum automatisierten Abruf von</i> <i>Kontoinformationen gemäß § 24c KWG</i> ) .....	27
5.	Payments .....	28
5.1	Payment services/E-money .....	28
	EPC: Updated SEPA payment scheme rulebooks .....	28
	EC: Targeted consultation on the review of PSD2 .....	28
5.2	Payment and settlement systems .....	29
	BCBS: Final report on extending and aligning payment system operating hours for cross-border payments .....	29
6.	Banking union .....	30
6.1	Single Supervisory Mechanism (SSM) .....	30
	ECB: Blog post on the updated desks mapping review – integrating Brexit banks into European banking supervision .....	30
6.2	European Deposit Insurance Scheme (EDIS) .....	30
	ECB: Speech on the incomplete nature of the Banking Union .....	30
7.	Institutional supervisory framework .....	32
	BMF/BaFin: Principles of cooperation ( <i>Grundsätze der Zusammenarbeit</i> ) .....	32
	EC: Report on the operation of the ESAs .....	32
	ESMA: Overview of planned consultation papers 2022 .....	32
	EBA: Report on convergence of supervisory practices in 2021 .....	33
8.	Investment funds .....	34
8.1	Product regulation .....	34
(a)	AIF .....	34
	Germany BaFin: Consultation 04/2022 on the draft Regulation amending the Regulation on the rules of conduct and organisational rules pursuant to the Investment Code ( <i>Konsultation 04/2022 des Entwurfs der Verordnung zur Änderung der Kapitalanlage-</i> <i>Verhaltens- und –Organisationsverordnung</i> ) .....	34
	ESMA: Q&A on the application of the AIFMD .....	34

	ESMA: Consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of AIFs and UCITS .....	34
	ESMA: ESMA released public statement reminding fund managers of their obligations to investors amid war in Ukraine.....	35
(b)	UCITS .....	35
	BaFin: Consultation 04/2022 on the draft Regulation amending the Regulation on the rules of conduct and organisational rules pursuant to the Investment Code ( <i>Konsultation 04/2022 des Entwurfs der Verordnung zur Änderung der Kapitalanlage-Verhaltens- und –Organisationsverordnung</i> ) .....	35
	ESMA: Q&As on the application of the UCITS Directive .....	36
	ESMA: Consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of AIFs and UCITS .....	36
	ESMA: Public statement reminding fund managers of their obligations to investors amid war in Ukraine .....	36
8.2	Prudential regulation.....	36
(a)	Compliance.....	36
	Council of the EU: Adoption of its position to improve the ELTIFs Regulation.....	36
	ESMA: Official translation of Guidelines on stress test scenarios under the MMF Regulation .....	37
9.	Special rules for real estate financing and covered bonds.....	38
9.1	Covered bonds .....	38
	BaFin: Revocation of the General Administrative Act pursuant to Section 4(1)(4) (now: Section 4(1)(5)) of the Pfandbrief Act on the admission of domestic credit institutions with credit rating level 2 to cover under the Pfandbrief Act ( <i>Aufhebung der Allgemeinverfügung nach § 4 Absatz 1 Satz 4 (jetzt: Satz 5) des PfandBG zur Zulassung von inländischen Kreditinstituten der Bonitätsstufe 2 zur Deckung nach dem PfandBG</i> ) .....	38
10.	Special topics .....	39
10.1	Covid-19 .....	39
(a)	Other.....	39
	FSB: Thematic peer review on out-of-court corporate debt workouts .....	39
10.2	FinTech/Digital finance .....	39
	ECB: Report on decrypting financial stability risks in cryptoasset markets .....	39
	ESMA: Q&A on the European crowdfunding service providers for business Regulation .....	39
	ESMA: Final report on Technical Advice to the Commission on the possibility to extend the transitional period pursuant to Article 48(3) of the EU Crowdfunding Regulation ..	40



	EBA: Final report on draft RTS on credit scoring and pricing disclosure, credit risk assessment and risk management requirements for crowdfunding service providers under Article 19(7) of the EU Crowdfunding Regulation.....	40
	Council of the EU: Political agreement reached on DORA .....	40
	EC: Call for evidence regarding the open finance framework on enabling data sharing and third party access in the financial sector .....	41
	EC: Targeted consultation on open finance framework and data sharing in the financial sector .....	41
	EC: Public consultation regarding the open finance framework on enabling data sharing and third party access in the financial sector .....	41
	EBA: Final report in response to the non-bank lending request from the CfA on digital finance .....	42
10.3	<b>Sustainable finance</b> .....	42
	ESMA: ESMA publishes supervisory briefing on sustainability risk and disclosure in the area of investment management .....	42
	ECB: Report on climate-related risks to financial stability .....	42
	ESMA: EC decision on the adoption of answers to questions submitted by the ESAs regarding the SFDR.....	43
	ESAs: Queries on SFDR and Taxonomy Regulation interpretation forwarded to the EU .....	43
	EC: Requests directed at ESAs to review SFDR Delegated Regulation .....	43
	EBA: Discussion paper on the role of environmental risks in the prudential framework .....	44
11.	<b>German Omnibus Acts (<i>Artikelgesetze</i>).....</b>	<b>45</b>
	BT: Adoption of a draft of the first Sanctions Enforcement Act ( <i>Verabschiedung des Entwurfs eines ersten Sanktionsdurchsetzungsgesetzes</i> ).....	45
12.	<b>Contacts.....</b>	<b>46</b>

# 1. Bank regulation

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## 1.1 Prudential regulation

### (a) General

#### (i) Germany

##### **BaFin: Note on cyber security advice for the financial sector in light of the war in Ukraine**

Status: Final

BaFin has published a note addressed to the German financial sector to advise them on its perception of an increased danger of cyber attacks in connection with the war in Ukraine. In this context, BaFin refers the financial sector to the “[Security Note for the Economy](#)” published by the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) and to a recent [speech](#) by BaFin President Mark Branson touching on this topic.

Date of publication: 19/05/2022

#### (ii) EU

##### **ESRB: Recommendation amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures**

Status: Published in the OJ

The Recommendation of the European Systemic Risk Board (ESRB) amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures has been published in the OJ. The framework set out in Recommendation ESRB/2015/2 aims to ensure that all exposure-based macroprudential policy measures activated in one Member State are reciprocated in other Member States.

Date of publication: 23/05/2022

##### **EBA: Decision concerning supervisory reporting for IPU threshold monitoring**

Status: Final

The EBA has adopted a decision concerning supervisory reporting for EU parent undertaking (IPU) threshold monitoring for those entities belonging to third country groups, including third country branches. The decision sets out that competent authorities are supposed to report to the EBA information on the total value assets held by these entities within the scope of their jurisdiction in the format specified in the Annexes to the Decision. In return, the EBA sets out that it will provide feedback to the relevant competent authorities for each third country group in order to facilitate cooperation between the competent authorities and support their IPU decision process. The monitoring and calculation of this information should be based on [Guidelines](#) previously published by the EBA.

The decision is directed at competent authorities across the EU as well as to financial institutions belonging to third country groups operating in the Union.

Date of publication: 18/05/2022

## **EBA: Final report on Guidelines on the equivalence of confidentiality and professional secrecy regimes of third country authorities**

Status: Final

The EBA has published a final report setting out its updated Guidelines on the equivalence of confidentiality and professional secrecy regimes of third country authorities. Over the past few years, the EBA has assessed the confidentiality regimes of third country authorities to facilitate their participation in EU supervisory colleges, in accordance with Article 116(6) of the CRD IV. Under the EBA Regulation, the EBA has the task of establishing a closer link between equivalence and cooperation with authorities from equivalent third countries through cooperation arrangements. The EBA has updated its Guidelines to allow for: (i) a wider scope of the equivalence assessment, to include all relevant provisions in the CRD IV, PSD2, BRRD and MLD4, as applicable to the specific third country authorities; and (ii) a wider purpose, to support cooperation arrangements and facilitate participation in supervisory, resolution and AML colleges. In addition, the EBA has also updated the document showing how the principles that govern the EU confidentiality regime are reflected in the EU framework as defined by the relevant provisions in the CRD IV, BRRD, MLD4 and PSD2.

The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply two months after the publication date at the latest.

Date of publication: 03/05/2022

## **(b) Solvency/Own funds issues**

### **(i) Germany**

#### **BaFin: English version of the revised Circular 10/2021 on Minimum requirements for risk management (*Englische Version des angepassten Rundschreibens 10/2021 über die Mindestanforderungen an das Risikomanagement – MaRisk*)**

Status: Final

BaFin has published an English version of the revised Circular 10/2021 on Minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement – MaRisk*). In particular, this amendment implements the following EBA Guidelines: the Guidelines on management of non-performing and forborne exposures (EBA/GL/2018/06), the revised Guidelines on Outsourcing Arrangements (EBA/GL/2019/02) and individual requirements from the Guidelines on Information and Communications Technology (ICT) and Security Risk Management (EBA/GL/2017/17).

Date of publication: 04/05/2022

### **(ii) EU**

#### **ECB: Call for more effective capital buffer framework in Financial Stability Review**

Status: Final

The ECB has published its May 2022 Financial Stability Review. In the review, the ECB assesses financial stability vulnerabilities and their implications for financial markets, debt sustainability, bank resilience, the non-bank financial sector and macroprudential policies. Among other conclusions, the ECB considers that the resilience of the financial system would benefit from a more effective capital buffer framework. As recently proposed by the ECB in its response to the EC's review of the EU macro-prudential framework, higher buffers that can be released in periods of stress would improve the ability of banks to absorb losses and maintain lending. The ECB proposes that regulation to address risks in the non-bank financial sector, stemming for example from liquidity mismatches, leverage or margining practices, also needs to be strengthened.

Date of publication: 25/05/2022

## **EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on emerging markets and advanced economies**

**Status: Adopted by the EC**

The EC has adopted a Delegated Regulation with regard to RTS on emerging markets and advanced economies under the CRR. The RTS identify the countries that are considered advanced economies for the purpose of identifying the appropriate risk weight to capture equity risk under the market risk framework. Under the RTS, advanced economies include: (i) EU member states; (ii) overseas countries and territories that have special relations with Denmark, France or The Netherlands; (iii) third countries, which are parties to the Agreement on the European Economic Area; and (iv) Australia, Canada, Hong Kong, Japan, Mexico, New Zealand, Singapore, Switzerland, the UK and the U.S. All countries not listed should be regarded as emerging markets.

The Council and the EP will now scrutinise the Delegated Regulation. If neither object, it will enter into force 20 days after its publication in the OJ.

**Date of publication: 17/05/2022**

## **EC: Commission Implementing Regulation (EU).../...amending the ITS laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of the CRD**

**Status: Adopted by the EC**

The EC has adopted an Implementing Regulation amending Implementing Regulation (EU) 2016/2070. Commission Implementing Regulation (EU) 2016/2070 specifies the reporting requirements for institutions to enable the EBA and competent authorities to monitor the range of risk weighted exposure amounts or own funds requirements for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions and to assess those approaches in the annual benchmarking exercises. The amendments update the reporting requirements in line with the EBA's proposals for the 2022 exercise. Two new Annexes (one with templates and one with instructions for the templates) have also been added to reflect the impact of the new rules for the measurement of credit losses introduced by IFRS9.

The amending regulation will enter into force 20 days after its publication in the OJ. Please see below for the EBA report regarding these draft ITS.

**Date of publication: 24/05/2022**

## **EBA: Final report on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under the CRD**

**Status: Final**

The EBA has published a final report on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models. Article 78 of the CRD IV requires competent authorities to conduct an annual assessment of the quality of internal approaches used for the calculation of own funds requirements. Commission Implementing Regulation (EU) 2016/2070 contains ITS which specify the benchmarking portfolios, templates and definitions to be used as part of the annual benchmarking exercises.

For the 2023 benchmarking exercise, the following changes are suggested: (i) for credit risk, no changes are proposed with respect to the data collection templates, and two minor changes have been made to the portfolio's definition. However, in order to improve further the data collection and benchmarking analysis, some further clarifications are included in the instructions; (ii) for market risk, in order to keep the exercise updated and informative for supervisors, the set of instruments is proposed to be extended. Therefore, to the previous set of instruments, which are mostly plain vanilla, the proposal is to add a more complex set of instruments that could provide additional information and analysis insights to supervisors and banks; and (iii) for IFRS 9,

no changes to existing templates are envisaged. The annexes to the draft ITS replace or are added to the existing set of templates in order to create a consolidated version of the updated draft ITS package.

The draft ITS will be submitted to the EC for endorsement before being published in the OJ. Please see above for the adoption of this draft ITS by the EC.

Date of publication: 05/05/2022

## (c) Securitisation

### (i) EU

#### **EBA: Amended final report on draft ITS amending Implementing Regulation (EU) 2016/1801 on the mapping of ECAIs' credit assessments for securitisation in accordance with the CRR**

Status: Final

The EBA has published a final report containing final draft amended ITS on the mapping of credit assessments of external credit assessment institutions (ECAIs) for securitisation in accordance with the CRR set out in Commission Implementing Regulation (EU) 2016/1801. Commission Implementing Regulation (EU) 2016/1801 specifies the mapping tables' correspondence with the credit quality steps set out in the CRR, as applicable before 1 January 2019. The CRR amendments brought about by the new Securitisation Framework make it necessary to update Commission Implementing Regulation (EU) 2016/1801 accordingly. Further, Article 270e of the CRR states that 'mappings' should be specified for all ECAIs, which are defined according to Article 4(1)(98) of the CRR as Credit Rating Agencies (CRAs) registered or certified in accordance with the CRA Regulation or a central bank issuing credit ratings that are exempt from the application of the CRA Regulation. Since the draft ITS on the mapping of credit assessments of ECAIs for securitisation positions were drawn up, one additional CRA has been established in the EU with methodologies and processes in place for producing credit assessments for securitisation instruments, while two existing ECAIs have extended their credit assessments to cover securitisations. Additionally, ESMA has withdrawn the registration of a CRA that was previously reflected in the mapping tables. The mapping tables will therefore be updated to reflect these changes accordingly. Individual mapping reports are also published on the EBA website to enhance transparency.

The final draft ITS will be submitted to the EC for endorsement before being published in the OJ. The technical standards will apply 20 days after their publication in the OJ.

Date of publication: 03/05/2022

#### **ESAs: Joint consultation on draft RTS with regard to the content, methodologies and presentation of STS securitisations-related sustainability disclosures pursuant to Articles 22(4) and 26d(4) of the Securitisation Regulation**

Status: Consultation

Deadline for the submission of comments: 02/07/2022

The Joint Committee of the ESAs have launched a joint consultation on draft RTS with regard to the content, methodologies and presentation of Simple, Transparent and Standardised (STS) securitisations-related sustainability disclosures pursuant to Articles 22(4) and 26d(4) of the Securitisation Regulation. The proposed draft RTS aim to: (i) facilitate disclosure by the originators of the principal adverse impacts of assets financed by STS securitisations on ESG factors; (ii) supplement the single rulebook under the Securitisation Regulation as amended by the Capital Markets Recovery Package; and (iii) draw upon the ESAs' work in respect of sustainability-related disclosures in the financial services under the SFRD.

Date of publication: 02/05/2022

## (d) Liquidity

### (i) EU

#### Amendments to Commission Delegated Regulation (EU) 2022/786 on liquidity coverage requirement

Status: Published in the OJ

Date of entry into force: 09/06/2022

Date of application: 08/07/2022

An amended version of the Commission Delegated Regulation (EU) 2022/786 amending Commission Delegated Regulation ((EU) 2015/61) on the liquidity coverage requirement (LCR) has been published in the OJ. The amendments seek to address issues arising from the interaction between the LCR Delegated Regulation and the Covered Bond Directive. Please see below for the initial publication of this act.

Date of publication: 20/05/2022

#### Commission Delegated Regulation (EU) 2022/786 amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to liquidity coverage requirement for credit institutions

Status: Published in the OJ

Date of entry into force: 09/06/2022

Date of application: 08/07/2022

The Commission Delegated Regulation (EU) 2022/786 amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to liquidity coverage requirement (LCR) for credit institutions has been published in the OJ. The amendments seek to: (i) better align the text with the LCR standard agreed at international level by the Basel Committee on Banking Supervision; (ii) insert a reference to official export credit agencies (ECAs) so as to ensure equal treatment of securities issued by ECAs guaranteed by the central government of a Member State, irrespective of the organisational structure of the respective ECA; and (iii) add several additional changes to the LCR Delegated Regulation to align it with Article 129 of the CRR. Please see above for the amended version of this act.

Date of publication: 20/05/2022

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

### (i) EU

#### EBA: Report on the peer review on supervision of NPE management

Status: Final

The EBA has the conclusion of its peer review on the supervision of non-performing exposures (NPE) management. The peer review focused on the supervision of management of NPE by prudential and consumer protection authorities, including the implementation of the EBA guidelines on the management of non-performing and forborne exposures, and aimed at understanding the readiness of national competent authorities (NCAs) (and, to the extent possible, credit institutions) for dealing with potential post Covid-19 NPE increases. The analysis suggests that NCAs applied a risk-based approach to the supervision of NPE management. The rigour and comprehensiveness of the supervisory review and supervisory resources allocated to these tasks by NCAs is in line with the magnitude of the NPE level in the jurisdiction or institutions. The findings also suggest that the EBA guidelines have been largely implemented by the NCAs and applied in their supervisory practices. No significant concerns regarding NPE supervision practices were identified by the review. However, the report makes a number of general recommendations for further improvements. It also includes recommendations to the EBA to incorporate a number of identified best practices into the guidelines on management of non-performing and forborne exposures, when the guidelines are next reviewed.

Date of publication: 17/05/2022

## **EBA: Consultation Paper on draft ITS specifying the templates to be used by credit institutions for the provision of information referred to in Article 15(1) of the NPL Directive (NPL Transactions Data Templates)**

Status: Consultation

Deadline for the submission of comments: 31/08/2022

The EBA has launched a consultation on draft ITS specifying the templates to be used by credit institutions for the provision of information referred to in Article 15(1) of the Non-Performing Loans (NPL) Directive. The objective of the draft ITS is to provide a common standard for NPL transactions across the EU, enabling cross-country comparison and thus reducing information asymmetries between sellers and buyers of NPL. The data templates will be used by credit institutions to provide detailed information on their credit exposures in the banking book to credit purchasers for the analysis, financial due diligence and valuation of a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself. The draft ITS are built around the templates to be used for the provision of loan-by-loan information regarding counterparties related to NPL, contractual characteristics of the loan itself, any collateral and guarantee provided with the associated enforcement procedures and the historical collection and repayment schedule of the loan. The draft ITS set different information requirements depending on the size of NPL, the nature of the borrower and whether the loan is secured or not.

Following the consultation period, the draft ITS will be finalised and submitted to the EC by the end of 2022.

Date of publication: 16/05/2022

## **(f) Large exposures/Limits to shadow banking entities**

### **(i) EU**

## **EBA: Final report on draft RTS on criteria for the identification of shadow banking entities under Article 394(4) of the CRR**

Status: Final

The EBA has published its final report on draft RTS specifying the criteria for the identification of shadow banking entities for the purposes of reporting large exposures under Article 394(4) of the CRR. The RTS clarify that entities carrying out banking activities or services and which have been authorised and supervised in accordance with the EU prudential framework, shall not be considered as shadow banking entities. For those entities established in a third country, the final draft RTS differentiate between: (i) institutions – these are not identified as shadow banking entities provided that they are authorised and supervised by a supervisory authority that applies banking regulation and supervision based on at least the Basel core principles for effective banking supervision; and (ii) other entities – these are not identified as shadow banking entities provided that they are subject to a regulatory regime recognised as equivalent to the one applied in the EU for such entities in accordance with the equivalence provisions of the relevant EU legal act. Undertakings included in the consolidated supervision of an institution are out of the scope of these RTS. In addition, the RTS clarify that CCPs are not identified as shadow banking entities when performing only clearing as defined in EMIR.

The draft RTS will be submitted to the EC for endorsement following which they will be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 23/05/2022

## **(g) Deposit protection**

### **(i) EU**

## **SRB: Addendum to the public interest assessment on DSGs Considerations**

Status: Final

The SRB has published an addendum to the public interest assessment (PIA) policy in resolution planning to bring further clarity to the PIA in relation to Deposit Guarantee Schemes (DGSs) pertaining to Resolution Objectives 2 and 4. In the context of resolution planning, Resolution Objective 4, the protection of covered depositors, should not be considered at risk on the

basis of DGSs' inadequacies. However, should raising extraordinary contributions from the remaining DGS members or third parties place other Resolution Objectives (namely, Resolution Objective 2) at risk, there might be instances in which covered depositors might be at risk as a consequence of the failure of an institution. This would constitute an instance in which Resolution Objective 4 – to protect depositors covered by the DGSD would be at risk. Equally, even though the DGSD contemplates a competent authority deferring, in whole or in part, a credit institution's payment of extraordinary ex-post contributions to the DGS, if the contributions would jeopardise the liquidity or solvency of the credit institution, it is possible that raising ex-post contributions could have a material impact on the solvency or the liquidity of the banking sector and thus, in certain cases, could have a significant adverse impact on financial stability. In these instances, Resolution Objective 2 – to avoid significant adverse effects on financial stability would be at risk. The addendum contains a schematic for the assessment of these DGS-related considerations in the PIA.

Date of publication: 20/05/2022

## (h) Supervisory reporting

### (i) EU

#### **ESMA: Public statement on the implications of Russia's invasion of Ukraine on half-yearly financial reports**

Status: Final

ESMA has published a public statement on the implications of the events in Ukraine on half-yearly financial reports. The statement provides overarching messages to issuers and auditors, including: (i) a reminder of the main IFRS requirements that may be applicable in the context of Russia's invasion of Ukraine, including in relation to impairment of non-financial assets, impairment of financial instruments and other financial risks, and loss of control; (ii) ESMA's expectations regarding disclosures in financial statements in a number of areas, including judgements made, significant uncertainties, and going concern risks. ESMA highlights the need for issuers to provide information that is useful to users and adequately reflects the current and, to the extent possible, expected impact of Russia's invasion of Ukraine on the financial position, performance and cash flows of issuers. ESMA also highlights the importance of providing information on the identification of the principal risks and uncertainties to which issuers are exposed; (iii) ESMA's expectations regarding disclosures in interim management reports. ESMA calls for consistency between the information disclosed in the interim management report and interim financial statements. ESMA recommends that issuers provide, where relevant and to the extent possible, detailed and entity specific information in their interim management reports regarding the direct and indirect impact that Russia's invasion of Ukraine and sanctions imposed had on issuers' strategic orientation and targets, operations, financial performance, financial position and cash flows, measures taken to mitigate the impacts, and cybersecurity risks; and (iv) a reminder of issuers' obligations to disclose as soon as possible any relevant material information about the impact of Russia's invasion of Ukraine on their fundamentals, prospects or financial situation in accordance with their transparency obligations under EU MAR.

ESMA expects issuers (in particular their management and supervisory bodies) and their auditors to consider the messages of the statement when preparing and, where applicable, reviewing interim financial reports.

Date of publication: 13/05/2022

## 1.2 Recovery and resolution

### (i) Germany

#### **BaFin: Consultation 03/2022 on the draft Circular regarding the minimum requirements for resolution capability in the context of resolution planning (*Konsultation 03/2022 über den Entwurf eines Rundschreibens zu den „Mindestanforderungen an die Abwicklungsfähigkeit im Rahmen der Abwicklungsplanung“*)**

Status: Consultation

Deadline for the submission of comments: 01/07/2022

BaFin has launched a consultation 03/2022 on the draft Circular regarding the minimum requirements for resolution capability in the context of resolution planning. The draft Circular is based on the "SRB Expectations for Banks" and also implements the



“EBA Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 BRRD (Resolvability Guidelines) (EBA/GL/2022/01)”. It is intended to set minimum requirements that institutions or affiliated group entities must meet in order to be considered resolvable with regard to the categories set out in Article 26(3) of the Delegated Regulation (EU) 2016/1075. These minimum requirements are divided into the following seven dimensions in order to enhance the resolvability of entities: Governance, Loss Absorption and Recapitalisation Capacity, Liquidity and Funding, Operational Continuity and Access to Financial Market Infrastructure Services, Information Systems and Data Requirements, Communication, Severability and Restructuring.

The draft Circular is aimed at all entities within the meaning of Article 2 of the Single Resolution Mechanism (SRM) Regulation and entities within the meaning of Section 1(1) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* - SAG) with their registered office in Germany for which the SRB is not responsible.

Date of publication: 20/05/2022

## 2. Market regulation/Conduct rules

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### 2.1 Benchmarks

#### (i) EU

##### **Commission Delegated Regulation (EU) 2022/804 supplementing the Benchmark Regulation by specifying rules of procedure for measures applicable to the supervision by the ESMA of certain benchmark administrators**

Status: Published in the OJ

Date of entry into force: 27/05/2022

The Commission Delegated Regulation (EU) 2022/804 supplementing the Benchmark Regulation (BMR) by specifying rules of procedure for measures applicable to the supervision by the ESMA of certain benchmark administrators has been published in the OJ. In particular, this Delegated Regulation specifies the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including the rights of the defence, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of penalties.

Date of publication: 24/05/2022

##### **Commission Delegated Regulation (EU) 2022/805 supplementing the Benchmark Regulation by specifying fees applicable to the supervision by the ESMA of certain benchmark administrators**

Status: Published in the OJ

Date of entry into force: 27/05/2022

The Commission Delegated Regulation (EU) 2022/805 supplementing the Benchmark Regulation (BMR) by specifying fees applicable to the supervision by the ESMA of certain benchmark administrators has been published in the OJ. Specifically, this document addresses the authorisation and recognition fees and annual fees associated with the performance of ESMA's supervisory tasks.

Date of publication: 24/05/2022

##### **EC: Targeted consultation on the regime applicable to the use of benchmarks administered in a third country**

Status: Consultation

Deadline for the submission of comments: 18/08/2022

The EC has launched a targeted consultation seeking views on potential improvements in the functioning of the BMR, specifically as regards the rules applicable to non-EEA benchmarks and the impact on market participants of the full entry into application of the third country regime as of 1 January 2024. In particular, the EC is seeking input from benchmark administrators located in the EU or elsewhere, from supervised entities using benchmarks and from citizens and businesses who are the end-users of financial benchmarks. The outcome of this public consultation will help the EC prepare a proposal to review the rules, which it intends to publish in Q4. The EC also notes that other aspects of the BMR are subject to ongoing reflection, notably in the area of sustainability. This includes a study currently being carried out on the feasibility, minimum standards and transparency requirements of an EU ESG Benchmark, on which the EC will provide a follow-up after its delivery at the end of 2022.

Date of publication: 20/05/2022

## Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

Status: Published in the OJ

Date of entry into force: 18/05/2022

The Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts has been published in the OJ. It focuses on the clearing obligation and on the derivative trading obligation under MiFIR. In particular, these RTS specify the classes of OTC derivatives denominated in Euro, Pound Sterling and U.S. Dollar subject to the derivatives trading obligation referred to under MiFIR.

Date of publication: 17/05/2022

## Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

Status: Published in the OJ

Date of entry into force: 18/05/2022

The Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts has been published in the OJ. It focusses on the clearing obligation and on the derivative trading obligation under EMIR. In particular, these RTS specify the classes of OTC interest rate derivatives denominated in Euro, Pound Sterling, Japanese Yen and US Dollar that are subject to the clearing obligation under EMIR.

Date of publication: 17/05/2022

## 2.2 Consumer protection rules

### (i) EU

#### EC: Proposal for a Directive amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing the Distance Marketing of Financial Services Directive

Status: Final

The EC has adopted a proposal for a Directive amending the Consumer Rights Directive (2011/83/EU) concerning financial services contracts concluded at a distance and repealing the current Distance Marketing Directive (2002/65/EC – DMD). The REFIT review of the DMD found that it had limited effectiveness due to: (i) many aspects of the DMD now being covered by product-specific legislative acts; and (ii) changes within the market, including the increasing digitalisation of services. Therefore, the proposal intends to simplify and modernise the legislative framework, repealing the DMD and including the relevant aspects within the scope of the horizontally applicable Consumer Rights Directive.

Among other things, the proposal introduces: (a) easier access to 14-day withdrawal right for distance contracts for financial services; (b) clear and modernised rules on what, how and when pre-contractual information is to be provided; (c) rules tailored specifically to protect consumers when concluding financial services contracts online: financial services contracts might be complex to understand, in particular, if negotiated at a distance; (d) strengthening enforcement measures. Penalties will apply to financial service contracts concluded at a distance in case of widespread cross-border infringements, with a maximum penalty of at least 4% of annual turnover; and (e) full legal harmonisation.

The EC's proposal will now be discussed by the Council and the EP.

Date of publication: 11/05/2022

## **EC: Call for evidence on retail investment regarding a new package of measures to increase consumer participation in capital markets**

Status: Consultation

Deadline for the submission of comments: 31/05/2022

The EC has launched a call for evidence on retail investment regarding a new package of measures to increase consumer participation in capital markets as part of its Retail Investment Strategy. The purpose of the measures is to ensure that the legal framework for retail investments empowers consumers, enhances their participation in the capital markets and helps ensure improved market outcomes. The initiative aims to increase the level of retail investor participation in the EU's capital markets and ensure that retail investors can take full advantage of capital markets, achieve better outcomes and better cater for their long-term financial needs. The call for evidence indicates that the types of measures the EC could explore to address identified problems include: (i) making improvements to the current disclosure regimes and promoting efforts at national level to enhance financial literacy (including on sustainability aspects); (ii) addressing conflicts of interest in the advisory and non-advisory process and improving professional standards of advisers; (iii) reducing the administrative burden for retail investors with sufficient financial capacity and knowledge and experience; (iv) shifting the focus of current suitability and appropriateness regimes from a product-centric approach to a client-centric approach; (v) adapting rules to embrace the safe development of digital technology and its deployment in retail investing; and (vi) streamlining and ensuring consistency of rules across the different sectoral legislative instruments.

Responses will help inform an impact assessment on the proposed package of measures, scheduled to be submitted to the EC's Regulatory Scrutiny Board in September. The EC plans to potentially adopt initiatives in Q4 2022.

Date of publication: 03/05/2022

## 2.3 Market abuse

### (i) EU

#### **ESMA: Response to EC's proposed amendments on its draft RTS on liquidity contracts for SME GM issuers and draft ITS on insider lists**

Status: Final

ESMA has published two Opinions on the EC's proposed amendments: (i) to ESMA's draft RTS on liquidity contracts for SME Growth Market (GM) Issuers adopted under MAR; and (ii) to the draft ITS on the precise format of insider lists and for updating insider lists, initially adopted by ESMA under MAR in October 2020. ESMA disagrees with the EC's proposal to exempt SME GM issuers from the obligation to create different sections of the insider list for each piece of inside information and with the deletion of personal phone numbers from these insider lists, which would make market abuse investigations more difficult. ESMA agrees with the two additions proposed by the EC to the RTS on liquidity contracts for SME GM issuers, whereby liquidity providers would have to post orders at prices that follow the independent trading interest and would not be obliged to post buy/sell orders in exceptional circumstances.

Following the adoption of these opinions, the EC may adopt the ITS and the RTS with the amendments it considers relevant or reject them. The EP and the Council of the EU may object to the RTS adopted by the EC within a period of three months.

- [Opinion on the EC's proposed amendments to ESMA's draft RTS on liquidity contracts for SME Growth Market Issuers adopted under MAR](#)
- [Opinion on the EC's proposed amendments to the draft ITS on the precise format of insider lists and for updating insider lists adopted under MAR](#)

Date of publication: 02/05/2022

## 2.4 MiFID/MiFIR

### (i) Germany

**BaFin: Expired supplement to the public statement of ESMA on the application of MiFID II to the recording of telephone communications (*Ausgelaufene Ergänzung zum Public Statement der ESMA zur Anwendung von MiFID II zur Aufzeichnung der Telefonkommunikation*)**

Status: Final

BaFin has published a note indicating that the clarification by ESMA regarding its position on call taping under MiFID II as of 20 March 2020 has now been marked as expired by ESMA. Accordingly, the statement published by BaFin in response to this clarification has become insubstantial.

Date of publication: 09/05/2022

### (ii) EU

**ESMA: Final report on the review of the MiFID II framework on best execution reports by investment firms**

Status: Final

ESMA has published its final report (dated 16 May 2022) on the review of the MiFID II framework on best execution reports by investment firms. ESMA explains that due to the EC's proposals to remove best execution reporting requirements for venues under RTS 27, as part of the MiFID II framework review, it has looked solely at reporting requirements for investment firms under RTS 28. Among other things, ESMA proposes possible improvements: (i) deleting the obligation to report, as part of the list of top five venues used by a firm, the percentage of the executed orders that were passive and aggressive orders, as this information provided only little added value in revealing firms' execution quality; (ii) to require firms to explicitly confirm in their summaries of execution quality, if they do not report on the required parameters; (iii) requiring firms to publish the quantitative information of RTS 28 reports in the CSV format in order to facilitate end users' access and comparison of this data; and (iv) clarifying the reporting obligations both for firms executing client orders and for firms providing the services of reception and transmission. ESMA notes that some proposals would require potential changes to the Level 1 legislation (Article 27(6) of MiFID II).

ESMA will send the final report to the EC in order to provide initial support to the EC in its assessment of the adequacy of the best execution reporting obligation for investment firms, and any subsequent technical work to shape a well-functioning reporting regime.

Date of publication: 16/05/2022

**Commission Delegated Regulation (EU) 2022/803 supplementing MiFIR by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the ESMA regarding data reporting service providers**

Status: Published in the OJ

Date of entry into force: 27/05/2022

The Commission Delegated Regulation (EU) 2022/803 supplementing MiFIR by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the ESMA regarding data reporting service providers (DRSPs) under its supervision has been published in the OJ. It includes provisions on the rights of the defence, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

Date of publication: 24/05/2022

## **ESMA: Q&A on MiFID II and MiFIR transparency topics**

**Status:** Final

ESMA has updated its Q&A on MiFID II and MiFIR transparency topics by way of updating Q&As relating to non-equity transparency.

Date of publication: 20/05/2022

## **Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts**

**Status:** Published in the OJ

**Date of entry into force:** 18/05/2022

The Commission Delegated Regulation (EU) 2022/749 amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts has been published in the OJ. For more information, please see section 2.1 above.

Date of publication: 17/05/2022

## 2.5 Packaged retail and insurance-based investment products (PRIIPs)

### **(i) EU**

#### **ESAs: Joint supervisory statement on expectations regarding the ‘What is this product?’ section of the KID for packaged retail and insurance-based investment products**

**Status:** Final

The Joint Committee of the European Supervisory Authorities (ESAs) has published a joint supervisory statement setting out their expectations regarding the ‘What is this product?’ section of the key information document (KID) for packaged retail and insurance-based investment products (PRIIPs). The ESAs have identified a range of poor practices in how PRIIP manufacturers describe products under this section. Most issues relate to a general lack of clarity in the text, which makes it difficult for retail investors to understand the key features of products. The supervisory statement provides an overview of these issues and sets out the authorities’ expectations in each area to ensure that information is presented to retail investors in an adequate, clear and accessible manner.

The main issues identified include: (i) the use of overly broad, general categories when specifying the type of product; (ii) poor practices regarding the overall clarity of the language and layout of the text, including as a result of automation in creating such texts; (iii) insufficient information regarding capital protection levels and potential losses for the investor; (iv) imprecise description of early termination features; (v) lack of clarity concerning the nature and timing of the coupon payments; (vi) limited information about the specific nature of the underlying assets to which investors are exposed; (vii) inadequate description of any leverage factors and the risks related to them; and (viii) undifferentiated and abstract descriptions for the ‘intended retail investor’.

Date of publication: 10/05/2022

#### **ESAs: Response to call for advice on the review of the PRIIPs Regulation**

**Status:** Final

The ESAs have published a report setting out technical advice to the EC in response to a call for advice on the EC’s review of the PRIIPs Regulation. The ESAs recommend significant changes to the PRIIPs Regulation and encourage the EC to consider a broad review of the PRIIPs framework, as well as undertaking appropriate consumer testing before proposals are made to change the PRIIPs Regulation. The recommended changes aim to improve the presentation of information provided to consumers and make it easier for them to compare different products. The advice addresses all the issues requested by the EC, including how to better adapt the key information document (KID) to the digital age and whether to extend the scope of the

PRIIPs Regulation to other financial products. Additionally, the advice presents the ESAs' recommendations on a range of other issues where analysis has shown that changes are needed to achieve optimal outcomes for retail investors. In particular, the ESAs are of the opinion that the KID would prove more useful to retail investors if presented in a much simpler and more user-friendly format.

The ESAs recommend: (i) harnessing the opportunities of digital disclosure, such as by allowing information to be presented in a "layered" format and making it possible to use the KID as an interactive tool; (ii) not extending the scope of the PRIIPs Regulation to additional financial products at this stage, but further specifying the existing scope, such as by developing and including in the PRIIPs Regulation a significantly longer non-exhaustive list of products that are in or out of scope and by clarifying the application of the scope to non-financial services companies; (iii) allowing different approaches for different types of products where this is necessary to ensure the appropriate understanding of retail investors; (iv) allowing more flexibility on the information provided in the performance section of the KID including the indication of past performance; (v) changing the rules for multi-option products to better facilitate comparison between different investments; and (vi) introducing a new section in the KID to give prominence to sustainable objectives. This report will serve as input to the EC's work to develop a strategy for retail investments and to make appropriate adjustments to the PRIIPs legislative framework.

Also, some ESG-related changes are addressed by the ESAs. In particular, the ESAs recommend to include a new section in the KID to show prominently where, in line with SFDR, a PRIIP has sustainable investment as its objective or where it promotes environmental or social characteristics. This could be done via: (i) the inclusion of a new point in Article 8(3) of the PRIIPs Regulation along the lines of "information on whether the product has sustainable investment as its objective or it promotes environmental or social characteristics under a section titled Does this product have a sustainable investment objective?", and (ii) the deletion of the following text from the existing Article 8(3)(c)(iii) of the PRIIPs Regulation, "including, where applicable, specific environmental or social objectives targeted by the product".

Date of publication: 02/05/2022

## 3. Market infrastructure

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### 3.1 Custody rules

#### (i) EU

##### **ESMA: Q&A on the Central Securities Depositories Regulation (CSDR)**

Status: Final

ESMA has updated its Q&As on implementation of the Central Securities Depositories Regulation (CSDR). Specifically, it has added a Q&A relating to the review and evaluation of central securities depositories.

Date of publication: 20/05/2022

### 3.2 EMIR

#### (i) EU

##### **ESMA: Final report on highly liquid financial instruments for CCP investment policies under EMIR**

Status: Final

ESMA has published a final report on highly liquid financial instruments for the investment policies of central counterparties (CCPs) under EMIR. ESMA was mandated to submit a report to the EC on whether the list of financial instruments that are considered highly liquid with minimal market and credit risk for CCP investments, in accordance with Article 47 of EMIR, could be extended and whether that list could include one or more money market funds (MMFs) authorised in accordance with the Money Market Funds Regulation (MMF Regulation). ESMA concludes that further work is to be done to determine whether to extend the list of eligible financial instruments to certain public entities and potentially to covered bonds. ESMA also concludes that it would be premature to allow CCP investments in MMFs, as no category of MMFs currently meets all the conditions that define highly liquid financial instruments. The forthcoming review of the MMF Regulation is expected to assess possible changes to the regulatory framework that might make EU MMFs adequate for CCP investments. ESMA will pursue further work within the CCP Supervisory Committee to ensure a common supervisory approach regarding CCP investment practices. The report has been submitted to the EC. ESMA reserves the right to propose potential changes to the relevant RTS or additional implementing guidance such as Q&As or opinions, if and when necessary.

Date of publication: 19/05/2022

##### **ESMA: Four public consultations on draft Guidelines for the CCP resolution regime**

Status: Consultation

Deadline for the submission of comments: 01/08/2022

ESMA has launched four public consultations on its proposed Guidelines relating to the central counterparty (CCP) recovery and resolution regime introduced by the Regulation on the Recovery and Resolution of CCPs (CCPRRR). ESMA is consulting on: (i) draft Guidelines on the assessment of resolvability under Article 15(5) of CCPRRR. ESMA, in close cooperation with the ESRB, is required to issue Guidelines by 12 August 2022 to promote the convergence of the resolution practices regarding the assessment of the 26 matters set out under Section C of the Annex of CCPRRR that the resolution authorities are to consider when assessing the resolvability of a CCP; (ii) draft Guidelines on the types and content of the provisions of Cooperation Arrangements under Article 79 of CCPRRR. Article 79(4) CCPRRR mandates ESMA to develop Guidelines specifying the types and content of the provisions included in cooperation arrangements between authorities of member states and third-country authorities to ensure effective planning, decisionmaking and coordination in respect of internationally active CCPs; (iii) draft Guidelines on the summary of resolution plans under Article 12(7)(a) of CCPRRR. These Guidelines provide resolution authorities with guidance as to the type of information that should be included in the summary (and a template of the summary) that would be shared with the CCP in accordance with Article 12(8) of the CCPRRR; and (iv) draft Guidelines on written



arrangements and procedures for the functioning of resolution colleges. These Guidelines relate to the content of written arrangements between members of resolution colleges under the CCPRRR and the draft Commission Delegated Regulation relating to RTS specifying the content of the written arrangements and procedures for the functioning of the resolution colleges.

For each consultation, ESMA will consider the feedback received in Q3 and expects to publish the Guidelines and the final report by Q4.

- [Draft Guidelines on the assessment of resolvability \(Article 15\(5\) of CCPRRR\)](#)
- [Draft Guidelines on the types and content of the provisions of Cooperation Arrangements \(Article 79 of CCPRRR\)](#)
- [Draft Guidelines on the summary of resolution plans \(Article 12\(7\)\(a\) of CCPRRR\)](#)
- [Draft Guidelines on written arrangements and procedures for the functioning of resolution colleges](#)

Date of publication: 19/05/2022

### **Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts**

Status: Published in the OJ

Date of entry into force: 18/05/2022

The Commission Delegated Regulation (EU) 2022/750 amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts has been published in the OJ. For more information, please see section 2.1 above.

Date of publication: 17/05/2022

### **ESMA: Final reports on CCP resolution regime**

Status: Final

ESMA has published six final reports on RTS and Guidelines on the central counterparties (CCPs) resolution regime under the CCP Recovery and Resolution Regulation (CCPRRR). The final reports, all dated 12 May 2022, include: (i) Guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail (Article 22(6) of CCPRRR); (ii) draft RTS on resolution colleges (Article 4(7) of the CCPRRR); (iii) draft RTS on the content of CCP resolution plans (Article 12(9) of CCPRRR); (iv) Guidelines for the methodology to value each contract prior to termination (Article 29(7) of the CCPRRR); (v) draft RTS specifying the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the ‘no creditor worse off’ principle (Articles 25(6), 26(4) and 61(5) of CCPRRR); and (vi) draft RTS on safeguards for clients and indirect clients (Article 63(2) of CCPRRR).

The EC now has three months to decide whether to endorse the proposed RTS under a delegated regulation. ESMA will translate the Guidelines into all official languages of the EU, and competent authorities must inform ESMA of whether they comply or intend to comply, or do not comply and do not intend to comply together with their reasons for non-compliance within two months from the date of publication of the Guidelines in all official EU languages on ESMA’s website.

- [Draft Guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail \(Article 22\(6\) of the CCPRRR\)](#)
- [Draft RTS on the resolution colleges \(Article 4\(7\) of the CCPRRR\)](#)
- [Draft RTS on the content of resolution plans \(Article 12\(9\) of the CCPRRR\)](#)
- [Draft Guidelines for the methodology to value each contract prior to termination \(Article 29\(7\) of the CCPRRR\)](#)
- [Draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the ‘no creditor worse off’ principle \(Articles 25\(6\), 26\(4\) and 61\(5\) of the CCPRRR\)](#)
- [Draft RTS on the safeguards for clients and indirect clients \(Article 63\(2\) of the CCPRRR\)](#)

Date of publication: 16/05/2022

## 4. Anti-money laundering

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### (i) Germany

#### Germany BT: Adoption of a draft of the first Sanctions Enforcement Act (*Verabschiedung des Entwurfs eines ersten Sanktionsdurchsetzungsgesetzes*)

**Status: Draft**

The German Cabinet has adopted a draft of the first Sanctions Enforcement Act (*Erstes Sanktionsdurchsetzungsgesetz – SDG I*). This draft law is intended to ensure effective enforcement in Germany of sanctions agreed upon within the EU against Russia, including the freezing of assets of listed persons, travel restrictions, restrictions on economic cooperation and import and export restrictions. Therefore, the draft aims to improve the legal basis for the agencies responsible for enforcement of these sanctions, including the BaFin, to access administrative information that is already available. This entails, among others, amendments to the German Money Laundering Act (*Geldwäschegesetz – GwG*), the Banking Act (*Kreditwesengesetz – KWG*) and the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*). The draft law also includes clarifications of the legal situation as well as adjustments and extensions of the authorities' responsibilities and powers for sanctions enforcement. It expands the ability to clarify ownership, seize assets, and includes a penalty-based requirement that listed persons report their assets. The draft will now be forwarded to the coalition factions.

Date of publication: 10/05/2022

#### BaFin: Results from the evaluation of the video identification procedures pursuant to the Circular 3/2017 (*Ergebnis der Evaluierung des Videoidentifizierungsverfahrens i. S. d. Rundschreibens 3/2017*)

**Status: Final**

BaFin has published a statement setting out the results from the evaluation of the video identification procedures pursuant to the Circular 3/2017 (GW). Pursuant to Section 11(1) of the Money Laundering Act (*Geldwäschegesetz – GwG*), obligated parties must identify the contracting party, any persons acting on behalf of the contracting party and beneficial owners before the business relationship is established or before the transaction is carried out. This verification procedure can either take place in person or in another manner, provided that this process is equally suitable and provides an equivalent level of security. The Circular 3/2017 has established requirements for the use of a video identification procedure as available verification procedure. This Circular has now been evaluated with the aim to determine whether it still satisfies the requirements for verification procedures under the GwG in the light of advances in technology and experience with this procedure, or whether further adjustments or additional requirements are necessary.

This evaluation has now resulted in the decision that the video identification procedure will be continued as a bridging technology. The procedure will continue to be reviewed to determine whether the requirements under money laundering law for the implementation of the procedure are still to be considered sufficient in light of the progress of technology and further findings on this procedure or whether adjustments or additional requirements are necessary. The use of artificial intelligence is also being examined. In addition to evidence of protection against attempted fraud, the criteria of transparency, comprehensibility and explicability are to be considered in particular. It will also be examined whether a regulation should be issued pursuant to Section 13(2) GWG or whether the continuation of the procedure within the framework of the circular will be maintained.

Date of publication: 09/05/2022

**BaFin: Note on the automated retrieval of account information pursuant to Section 24c of the German Banking Act (*Hinweise zum automatisierten Abruf von Kontoinformationen gemäß § 24c KWG*)**

Status: Final

BaFin has published a note on the automated retrieval of account information pursuant to Section 24c of the German Banking Act (*Kreditwesengesetz* – KWG). It sets out that, pursuant to Section 24c KWG, credit institutions are obliged to keep an up-to-date file of all IBAN accounts, securities accounts and safe deposit boxes held by them in Germany. In this file, the respective numbers, the date of establishment and closure, the names and dates of birth of the respective holders and authorised signatories as well as the names and addresses of the deviating beneficial owners are to be stored. However, no account balances or account movements are recorded. The account retrieval procedure according to Section 24c KWG is often wrongly referred to as an account records centre, where BaFin would keep all account information in a file. Instead, the account data is still kept by the obligated credit institutions or the computer centres commissioned by them and is only transmitted to BaFin in the case of an account retrieval.

Date of publication: 04/05/2022



# 5. Payments

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## 5.1 Payment services/E-money

### (i) EU

#### **EPC: Updated SEPA payment scheme rulebooks**

Status: Published

Date of entry into force: 19/11/2023

The European Payments Council (EPC) has published version 1.0 of the 2023 EPC SEPA payment scheme rulebooks: (i) 2023 SEPA Direct Debit Core rulebook – applicable up to and including 22 November 2025; (ii) 2023 SEPA Direct Debit Business-to-Business rulebook – applicable up to and including 22 November 2025; (iii) 2023 SEPA Instant Credit Transfer rulebook – applicable up to 23 November 2025, including a document setting the maximum amount per instruction that can be processed under SEPA instant credit transfer scheme, which forms a binding supplement to the 2023 SEPA Instant Credit Transfer rulebook; (iv) 2023 SEPA Credit Transfer rulebook – applicable up to and including 22 November 2025; (v) SEPA Payment Scheme Management Rules (version 4.5). This version comes into effect on 25 April 2023 and will remain effective until further notice.

The EPC also published two guidance documents: (a) Guidance on the migration to the 2019 version of the ISO 20022-based XML messaging standard. This informs SEPA payment scheme participants and payment service users on how to prepare themselves for and to handle the change-over to the 2019 version of ISO 20022 by 19 November 2023; and (b) Guidance to improve transparency for retail payment end-users.

- [2023 SEPA Direct Debit Core rulebook and implementation Guidelines](#)
- [2023 SEPA Direct Debit Business-to-Business rulebook and implementation Guidelines](#)
- [2023 SEPA Instant Credit Transfer rulebook and implementation Guidelines](#)
- [2023 SEPA Credit Transfer rulebook and implementation Guidelines](#)
- [Guidance on the migration to the 2019 version of the ISO 20022-based XML messaging standard](#)
- [Guidance to improve transparency for retail payment end-users](#)

Date of publication: 25/05/2022

#### **EC: Targeted consultation on the review of PSD2**

Status: Consultation

Deadline for the submission of comments: 05/07/2022

The EC has launched a targeted consultation on the review of PSD2 to gather input from professional stakeholders that have more in-depth (technical) knowledge and/or (working) experience in the field of payments, such as PSPs, national- and EU authorities and international organisations, other players in the payments market (e.g. operators of payment systems, card schemes, outsourcing companies, technical services providers) etc.. This consultation will inform the EC on the application and impact of PSD2 taking into consideration developments in the payment market, payment user needs and the need for possible amendments. The review aims to cover, among other things: (i) an assessment of risks stemming from unregulated payment services; (ii) a stocktaking of the impact of strong customer authentication on the level of payment fraud; and (iii) an assessment of new business models based on sharing payment account data, such as payment initiation services and account information services. The EC intends to adopt the review report in Q4 2022 and any legislative proposal for amendments, if deemed appropriate in Q1/Q2 2023.

Date of publication: 10/05/2022

## 5.2 Payment and settlement systems

### (i) International

#### BCBS: Final report on extending and aligning payment system operating hours for cross-border payments

Status: Final

The BCBS has published a report by the CPMI on extending and aligning payment system operating hours for cross-border payments. The report focuses on the operating hours of real-time gross settlement (RTGS) systems, which are considered key to enhancing cross-border payments. It builds on a public consultation conducted in late 2021. Key points in the final report include: (i) an extension of RTGS systems' operating hours across jurisdictions could speed up cross-border payments, improve liquidity management, reduce settlement risk and enhance the performance of ancillary payment systems that may be used for cross-border payments; (ii) extending the operating hours of RTGS systems cannot, by itself, address slow speed or other challenges affecting cross-border payments; (iii) the realisation of the enhancements to cross-border payments relies on progress across the building blocks in the G20 cross-border payments programme. The extension and greater alignment of the operating hours of RTGS systems will contribute to addressing the slow speed and other challenges affecting cross-border payments, as well as enabling the impact of other building blocks.

The final report also presents three potential scenarios for extending RTGS system operating hours ("end states") and associated operational, risk and policy considerations. The three scenarios range from an incremental increase in operating hours on current operating days (standard working days), to an increase to include current non-operating days (weekends and holidays) and finally an extension to full 24-hour and seven-day-a-week operations.

The report also proposes the "global settlement window" – a new concept reflecting the time period during which the largest number of RTGS systems are simultaneously operating – as a key consideration for central banks assessing potential end states for RTGS operating hours. At present, the global settlement window is best characterised as the time period from 06:00 to 11:00 Greenwich Mean Time (GMT) on working days. This is broadly the five-hour period when, on average, the highest number of CPMI and non-CPMI RTGS systems are concurrently operating across all jurisdictions. When evaluating an extension of RTGS operating hours, in addition to domestic considerations, individual jurisdictions may consider the resulting aggregate outcome in terms of the overall global overlap as reflected in the global settlement window.

Date of publication: 12/05/2022

## 6. Banking union

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### 6.1 Single Supervisory Mechanism (SSM)

#### (i) EU

##### **ECB: Blog post on the updated desks mapping review – integrating Brexit banks into European banking supervision**

Status: Final

The ECB has published a blog post by Andrea Enria, ECB Supervisory Board Chair, as part of the ECB's desks-mapping review, discussing integrating Brexit banks into European banking supervision. Mr Enria provides a reminder that from the EU's perspective, the UK is now a third country. He explains that after Brexit, several international banks decided to relocate business from London to subsidiaries in the euro area - standalone EU legal entities subject to supervision under the Single Supervisory Mechanism (SSM entities). The ECB therefore launched a desks-mapping review, covering booking and risk management practices across trading desks active in market-making activities, treasury and derivative valuation adjustments. This is part of the supervisory work aimed at ensuring that third country subsidiaries have adequate governance and risk management capabilities and do not operate as empty shells.

Mr Enria discusses the results of the first phase of the review, launched in spring 2020. This found that the incoming banks do not yet retain full control of their balance sheets, as prescribed in the ECB's 2018 expectations. Based on a quantitative assessment of the materiality of the prudential risks originated by the SSM entities' trading desks, the ECB concluded that 21% of the 264 desks assessed during the first phase warranted targeted supervisory action. For the desks identified as material, the ECB will issue individual binding decisions to the incoming banks. These decisions may require the bank to: (i) appoint a head of desk within the euro area legal entity with clearly defined reporting lines and a compensation structure linked to the performance of that entity; (ii) ensure the desk has the adequate infrastructure and number and seniority of traders to manage risk locally; (iii) establish a solid governance and internal control framework of remote booking practices with parent affiliates; and (iv) ensure limited reliance on intragroup hedging.

Date of publication: 19/05/2022

### 6.2 European Deposit Insurance Scheme (EDIS)

#### (i) EU

##### **ECB: Speech on the incomplete nature of the Banking Union**

Status: Final

The ECB has published a speech by Andrea Enria, Chair of the Supervisory Board of the ECB, on the incomplete nature of the Banking Union. He argues that the banking union while consisting of three pillars (single supervisory mechanism, single resolution mechanism and single deposit guarantee scheme) these should be seen as parts of one unitary framework. While European banking supervision is fully operational already, the single resolution mechanism with its intergovernmental aspects is yet to be concluded. The third pillar, a fully integrated deposit guarantee scheme that would provide the same degree of protection to all depositors within the EU, still faces opposition from some national governments. Therefore, Mr Enria suggests upgrading the crisis management framework for mid-sized banks by expanding the pool of banks qualifying for resolution, introducing a harmonised administrative liquidation framework for banks that do not qualify for resolution and eliminating limitations on the deployment of resources from the Single Resolution Fund (SRF). This could help build trust in a functioning EU crisis management framework, even in the absence of a fully-fledged European deposit insurance scheme (EDIS). In addition, Mr Enria stresses the importance of increased cross-border consolidation in the European banking sector. This could be achieved by all Member States entrusting the supervisory authorities, the ECB and SRB, with powers to ensure an appropriate

balance of prudential requirements for cross-border groups, which would be tailored to the specific business models. According to Mr Enria, the implementation of these steps could ultimately lead to the establishment of a single deposit insurance scheme.

Date of publication: 17/05/2022



## 7. Institutional supervisory framework

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### (i) Germany

#### **BMF/BaFin: Principles of cooperation (*Grundsätze der Zusammenarbeit*)**

Status: Final

The Federal Ministry of Finance (*Bundesfinanzministerium* – BMF) and the BaFin have published new principles of cooperation, governing their joint exercise of legal and technical supervision of the financial sector: principle-driven, goal-oriented and focused on risk. With a view to the common goal of a stable, functioning and trustworthy financial market, these principles aim to strengthen the operational independence of BaFin in its supervisory decisions and ensure a risk-oriented exchange of information within the framework of legal and technical supervision.

In the course of modernising German financial supervision, the BMF and BaFin had agreed in 2021 to fundamentally revise the previous “Principles for the Exercise of Legal and Professional Supervision by the BMF over BaFin”. This will be implemented with the new principles of cooperation now presented. In addition to the stronger anchoring of the operational independence of BaFin and the close cooperation between BMF and BaFin in national, European and international regulation, the new principles also aim to realign the legal and technical supervision of the ministry.

Date of publication: 17/05/2022

### (ii) EU

#### **EC: Report on the operation of the ESAs**

Status: Final

The EU Commission has published a report on the operation of the ESAs. The report focuses on the main areas under review: (i) supervisory convergence; (ii) governance; (iii) direct supervision; and (iv) funding. It also includes a section on the single rulebook. The EC concludes that since the last ESA review in 2019, the ESAs have continued to perform their tasks efficiently and effectively, including during the recent challenging circumstances caused by the Covid-19 pandemic. The EC takes this as a clear indication that the overall architecture of the European System of Financial Supervision – with its key role for the three ESAs – is largely adequate and works well. Feedback to the consultation on the changes introduced by the last ESA review in 2019 was positive overall. Issues were highlighted in relation to the governance of the ESAs – the EC remains mindful of the fact that the governance arrangements of the ESAs – with decisions being taken by 27 national supervisors – are not always conducive to ensuring that the convergence tools and other instruments at the disposal of the ESAs are used in the most effective way. Since the changes to the ESA Regulations only became applicable in 2020, the EC considers that more time is needed to assess the full impact of the latest review before considering any new amendments to the ESA Regulations. However, if necessary, the EC may suggest targeted changes in sector legislation to improve supervisory convergence and supervision and the EC will also work together with the ESAs to assess whether and in which areas non-legislative measures are warranted.

Date of publication: 23/05/2022

#### **ESMA: Overview of planned consultation papers 2022**

Status: Final

ESMA has published an overview of its planned consultation papers for 2022. Among others, the topics include: (i) benchmarks, with RTS on the Clearing Obligation and the Derivative Trading Obligations regarding the benchmark transition in Q3; (ii) CCP Resolution, with three Guidelines expected in Q2 and RTSs to specify the minimum elements that should be included in a business reorganisation plan and the criteria that a business reorganisation plan is to fulfil in Q3; (iii) SFDR, with the Review of Principal Adverse Impact indicators in Q2 or Q3; and (iv) MiFID II, with the Guidelines on MiFID II product governance requirements (sustainability) expected in July.

Date of publication: 11/05/2022



## EBA: Report on convergence of supervisory practices in 2021

Status: Final

The EBA has published its annual report on convergence of supervisory practices for 2021. The core of the supervisory attention in 2021 focused on the key topic of capital and liability management and asset quality and credit risk management, due to the close monitoring of the impact of the Covid-19 pandemic on institutions' credit quality and the levels of their non-performing exposures. Among other things, the EBA reports that: (i) Competent Authorities (CAs) made progress in the implementation of the EBA Guidelines on supervisory review and evaluation process (SREP); (ii) while there was consistent implementation into supervisory practices of the key supervisory priorities for 2021, the EBA expects additional efforts from CAs on topics such as ICT risks, namely cyber risk and business model challenges and the respective digital transformation. In addition, the report highlights the need for more harmonised practices in the determination of capital add-ons; (iii) Pillar 2 Requirements are now legally binding across the EU and consistently considered when calculating the trigger point for the maximum distributable amount restrictions. CAs also ensured communication to all institutions under their remit of the total SREP capital requirement; (iv) there is still room for further convergence in the use of internal capital adequacy assessment as well as in the consistent treatment of risks across the EU and in the setting of the Pillar 2 Guidance; (v) CAs have made considerable efforts in the group risk assessment process in supervisory colleges, but some important shortcomings have been observed in some colleges.

Date of publication: 11/05/2022

## 8. Investment funds

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### 8.1 Product regulation

#### (a) AIF

##### (i) Germany

**Germany BaFin: Consultation 04/2022 on the draft Regulation amending the Regulation on the rules of conduct and organisational rules pursuant to the Investment Code (*Konsultation 04/2022 des Entwurfs der Verordnung zur Änderung der Kapitalanlage-Verhaltens- und –Organisationsverordnung*)**

Status: Consultation

Deadline for the submission of comments: 08/06/2022

BaFin has launched a consultation on the draft Regulation amending the Regulation on the rules of conduct and organisational rules (*Kapitalanlage-Verhaltens- und Organisationsverordnung* – KAVerOV) pursuant to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). The amendments aim to implement the [Delegated Directive \(EU\) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS](#) with regard to the KAVerOV. Amendments to the KAVerOV will be limited to cases in which it does not refer to [Delegated Regulation \(EU\) No. 231/2013 \(AIFM Level 2 Delegated Regulation\)](#) or the provisions therein do not correspond to the amendments made by [Delegated Directive \(EU\) 2021/1270](#). The Regulation amending the KAVerOV requires capital management companies of public investment funds to take sustainability risks into account in their proper business organisation and in their risk management. They must have the necessary resources and expertise to do so.

Date of publication: 25/05/2022

##### (ii) 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 way of updating several Q&As, and adding a new Q&A which relates to ESMA's [Guidelines on performance fees in UCITS and certain types of AIFs](#).

Date of publication: 20/05/2022

**ESMA: Consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of AIFs and UCITS**

Status: Consultation

Deadline for the submission of comments: 09/09/2022

ESMA has launched a consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of alternative investment funds (AIFs) and UCITS. This consultation paper sets out the draft RTS under the UCITS Directive and the AIFMD to specify the information to be notified by management companies and AIFMs to the relevant national competent authorities (NCAs) when notifying their intention to carry out their activities in other member states together with draft ITS specifying the form and content of the notification letters.

ESMA expects to publish a final report by the beginning of 2023.

Date of publication: 17/05/2022

## ESMA: ESMA released public statement reminding fund managers of their obligations to investors amid war in Ukraine

Status: Final

ESMA has issued a public statement for fund managers on their obligations owed to investors amid Russia's invasion of Ukraine. The statement aims to promote investor protection and convergence, and provides overarching messages to fund managers including high-level guidance on: (i) the appropriate action in case of exposures to Russian, Belarusian and Ukrainian assets, given valuation and liquidity uncertainties; (ii) the process fund managers should follow when evaluating these assets; and (iii) whether fund managers may consider using side pockets or similar arrangements to segregate these assets. ESMA expects fund managers of investment funds with exposures to assets facing liquidity issues to assess whether a fair value of these assets can still be determined and adapt the valuation without undue delay. This statement concerns in particular the obligations of: (a) authorised external AIFMs and internally managed AIFs subject to the AIFM Directive; (b) EuVECA managers subject to the European Venture Capital Funds (EuVECA) Regulation; (c) EuSEF managers subject to the European Social Entrepreneurship Funds (EuSEF) Regulation; and (d) UCITS management companies and self-managed UCITS investment companies subject to the UCITS Directive.

ESMA will continue to closely monitor the situation and take or recommend any measures necessary to mitigate the impact of the Russian invasion of Ukraine on investment funds. ESMA will, where necessary, reassess any potential need to supplement the guidance provided in this statement or provide additional guidance on other issues arising from this crisis.

Date of publication: 16/05/2022

## (b) UCITS

### (i) Germany

## BaFin: Consultation 04/2022 on the draft Regulation amending the Regulation on the rules of conduct and organisational rules pursuant to the Investment Code (*Konsultation 04/2022 des Entwurfs der Verordnung zur Änderung der Kapitalanlage-Verhaltens- und –Organisationsverordnung*)

Status: Consultation

Deadline for the submission of comments: 08/06/2022

BaFin has launched a consultation on the draft Regulation amending the Regulation on the rules of conduct and organisational rules (*Kapitalanlage-Verhaltens- und Organisationsverordnung – KAVerOV*) pursuant to the German Investment Code (*Kapitalanlagegesetzbuch – KAGB*). The amendments aim to implement the [Delegated Directive \(EU\) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS](#) with regard to the KAVerOV. Amendments to the KAVerOV will be limited to cases in which it does not refer to [Delegated Regulation \(EU\) No. 231/2013 \(AIFM Level 2 Delegated Regulation\)](#) or the provisions therein do not correspond to the amendments made by [Delegated Directive \(EU\) 2021/1270](#). The Regulation amending the KAVerOV requires capital management companies of public investment funds to take sustainability risks into account in their proper business organisation and in their risk management. They must have the necessary resources and expertise to do so.

Date of publication: 25/05/2022

### (ii) EU

## ESMA: Report on the Common Supervisory Action (CSA) on costs and fees for investment funds

Status: Final

ESMA has published a report on the Common Supervisory Action (CSA) on costs and fees for investment funds, that was carried out with National Competent Authorities (NCAs) during 202. The report highlights the importance of supervision in ensuring investors are not charged with undue costs. ESMA stresses that investors should be adequately compensated in such cases, even where calculation errors resulted in a financial detriment for investors and invites NCAs to use this opportunity to also consider enforcement actions in the cases where a significant regulatory breach was identified.

Date of publication: 31/05/2022

## ESMA: Q&As on the application of the UCITS Directive

Status: Final

ESMA has published a new version of the Q&As on the application of the UCITS Directive. Therein, it has updated the Q&A on the performance reference period for the benchmark model, and has inserted a new Q&A on the performance reference period for the hurdle rate model.

Date of publication: 20/05/2022

## ESMA: Consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of AIFs and UCITS

Status: Consultation

Deadline for the submission of comments: 09/09/2022

ESMA has launched a consultation on draft RTS and ITS on the notifications for cross-border marketing and cross-border management of AIFs and UCITS. For more information, please see section 8.1(a) above.

Date of publication: 17/05/2022

## ESMA: Public statement reminding fund managers of their obligations to investors amid war in Ukraine

Status: Final

ESMA has issued a public statement for fund managers on their obligations owed to investors amid Russia's invasion of Ukraine. The statement aims to promote investor protection and convergence, and provides overarching messages to fund managers including high-level guidance on: (i) the appropriate action in case of exposures to Russian, Belarusian and Ukrainian assets, given valuation and liquidity uncertainties; (ii) the process fund managers should follow when evaluating these assets; and (iii) whether fund managers may consider using side pockets or similar arrangements to segregate these assets. ESMA expects fund managers of investment funds with exposures to assets facing liquidity issues to assess whether a fair value of these assets can still be determined and adapt the valuation without undue delay. This statement concerns in particular the obligations of: (a) authorised external AIFMs and internally managed AIFs subject to the AIFM Directive; (b) EuVECA managers subject to the European Venture Capital Funds (EuVECA) Regulation; (c) EuSEF managers subject to the European Social Entrepreneurship Funds (EuSEF) Regulation; and (d) UCITS management companies and self-managed UCITS investment companies subject to the UCITS Directive.

ESMA will continue to closely monitor the situation and take or recommend any measures necessary to mitigate the impact of the Russian invasion of Ukraine on investment funds. ESMA will, where necessary, reassess any potential need to supplement the guidance provided in this statement or provide additional guidance on other issues arising from this crisis.

Date of publication: 16/05/2022

## 8.2 Prudential regulation

### (a) Compliance

#### (i) EU

### Council of the EU: Adoption of its position to improve the ELTIFs Regulation

Status: Draft

The Council of the EU has announced that it has agreed on a negotiating mandate for the proposed Regulation containing amendments to the Regulation on European long-term investment funds (ELTIFs), designed to tackle the issue that only a limited number of ELTIFs have been launched due to significant constraints in the distribution process and stringent rules on portfolio composition. In its position, the Council underlined three priorities: (i) channel more financing to SMEs and long-term projects, including by removing existing constraints on the portfolio composition of ELTIFs, especially for those distributed solely to professional investors; (ii) enhance the role of retail investors by making ELTIFs more attractive to them, and by lifting

the barriers to entry which did not take into account the profile and objectives of each investor; and (iii) maintain high investor protection standards and provide retail investors with all the relevant information so that they can take informed decisions.

The Council will now await the EP's adoption of its negotiating mandate for negotiations to begin.

Date of publication: 24/05/2022

### **ESMA: Official translation of Guidelines on stress test scenarios under the MMF Regulation**

Status: Final

Date of application: 04/07/2022

ESMA has published translations in the official EU languages of its updated Guidelines on stress test scenarios under the Regulation on money market funds (MMF Regulation). The purpose of these Guidelines is to ensure common, uniform and consistent application of the provisions in Article 28 of the MMF Regulation. In particular, and as specified in Article 28(7) of the MMF Regulation, they establish common reference parameters of the stress test scenarios to be included in the stress tests taking into account the following factors specified in Article 28(1) of the MMF Regulation.

The updates to the Guidelines apply to competent authorities, MMFs and managers of MMFs as defined in the MMF Regulation.

Date of publication: 04/05/2022

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

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### 9.1 Covered bonds

#### (i) Germany

**BaFin: Revocation of the General Administrative Act pursuant to Section 4(1)(4) (now: Section 4(1)(5)) of the Pfandbrief Act on the admission of domestic credit institutions with credit rating level 2 to cover under the Pfandbrief Act (*Aufhebung der Allgemeinverfügung nach § 4 Absatz 1 Satz 4 (jetzt: Satz 5) des PfandBG zur Zulassung von inländischen Kreditinstituten der Bonitätsstufe 2 zur Deckung nach dem PfandBG*)**

Status: Final

Date of revocation: 08/07/2022

BaFin has revoked the General Administrative Act pursuant to Section 4(1)(4) (now: Section 4(1)(5)) of the German Pfandbrief Act (*Pfandbriefgesetz* – PfandBG) on the admission of domestic credit institutions with credit rating level 2 to cover under the PfandBG, which has initially been published on 22 December 2014. According to this Act, credit balances and monetary claims against domestic credit institutions with credit rating level 2 pursuant to Table 3 to Article 120(1) CRR were eligible for Pfandbrief cover insofar as they exceeded an original maturity of 100 days. Section 4(1)(3) no. 3 letter b PfandBG in the version applicable from 8 July 2022 will allow these receivables to be covered by Pfandbriefe irrespective of their original maturity. On the same date, the legal basis for this General Administrative Act will cease to apply. In line with Section 4(1)(7) PfandBG, this Act must therefore be revoked as of 8 July 2022.

Date of publication: 03/05/2022

## 10. Special topics

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### 10.1 Covid-19

#### (a) Other

##### (i) EU

#### **FSB: Thematic peer review on out-of-court corporate debt workouts**

Status: Final

The FSB has published a thematic review on out-of-court corporate debt workouts (OCWs) in order to support Covid-19 response efforts by examining FSB member jurisdictions' practices, experiences and lessons from OCWs, and the implications for financial stability. The review finds that FSB jurisdictions have adopted various approaches to complement in-court insolvency proceedings and facilitate restructurings through out-of-court frameworks. Most of these frameworks were in place before Covid-19, but some are new or have been amended. However, scarce data about the use and outcomes of workouts make it difficult to compare the performance of different frameworks within and across jurisdictions. The report recommends that FSB jurisdictions should consider assessing the efficiency of their OCW frameworks, collecting data and developing metrics for these assessments, reviewing and reducing any significant barriers.

Date of publication: 09/05/2022

### 10.2 FinTech/Digital finance

##### (i) EU

#### **ECB: Report on decrypting financial stability risks in cryptoasset markets**

Status: Final

The ECB has explored the financial stability risks stemming from cryptoasset markets, as part of the ECB's Financial Stability Review. The ECB provides an update on cryptoasset market developments and a general overview of risks stemming from unbacked cryptoassets and decentralised finance, given the way in which they have evolved and their specific characteristics and risks. The ECB concludes that if the present trajectory of growth in the size and complexity of the cryptoasset ecosystem continues, and if financial institutions become increasingly involved with cryptoassets, then cryptoassets will pose a risk to financial stability. The ECB urges that MiCA should be approved by the co-legislators as a matter of urgency. It also emphasises the need to establish standardised reporting or disclosure requirements in order to close regulatory and data gaps in the cryptoasset ecosystem and enable financial stability risks from developments to be more accurately monitored.

Date of publication: 24/05/2022

#### **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 updating Q&As relating to general and investor provisions.

Date of publication: 20/05/2022

## **ESMA: Final report on Technical Advice to the Commission on the possibility to extend the transitional period pursuant to Article 48(3) of the EU Crowdfunding Regulation**

**Status: Final**

ESMA has published a final report on Technical Advice to the Commission on the possibility to extend the transitional period pursuant to Article 48(3) of the EU Crowdfunding Regulation (2020/1503 – ECSPR). Article 48(1) of the ECSPR allows crowdfunding service providers to continue, in accordance with the applicable national law, to provide crowdfunding services that are included within the scope of the ECSPR until 10 November or until they are granted an authorisation pursuant to Article 12 of the ECSPR, whichever is sooner. Article 48(3) of the ECSPR provides that the EC, after consulting ESMA, will assess whether an extension of the transitional period set out in Article 48(1) is desirable. While an extension of the transitional period would delay the application of harmonised investor protection rules, it appears that the risks at stake for the European crowdfunding market as a whole are significant if no extension is implemented. For this reason, ESMA supports granting the extension of the transitional period. In addition, ESMA notes that it seems likely that a number of crowdfunding providers will not be authorised pursuant to the ECSPR before 10 November, and that these providers will consequently need to put their business activities on hold while continuing to bear their fixed operating costs. The interruption of existing crowdfunding services may also affect investors, including non-sophisticated investors, who invested in crowdfunding projects offered on platforms of crowdfunding service providers benefiting from the transitional period.

At the same time, ESMA is of the view that such extension shall be designed (i) to avoid that it triggers any further unjustified delay in the transition to the ECSPR, while (ii) ensuring that no existing crowdfunding provider with a pending authorisation request ends-up getting its activities suspended. ESMA suggests that the EC explores the possibility to extend the transitional period only to the benefit of crowdfunding service providers currently operating under national law and that have applied for authorisation pursuant to the ECSPR before the end of the current transitional period. It suggests that the extension applies to crowdfunding providers that have applied for authorisation pursuant to the ECSPR by 1 October.

Date of publication: 19/05/2022

## **EBA: Final report on draft RTS on credit scoring and pricing disclosure, credit risk assessment and risk management requirements for crowdfunding service providers under Article 19(7) of the EU Crowdfunding Regulation**

**Status: Final**

The EBA has published a final report on draft RTS on credit scoring and pricing disclosure, credit risk assessment and risk management requirements for crowdfunding service providers under Article 19(7) of the EU Crowdfunding Regulation (2020/1503). The EBA has developed these draft RTS with the view to addressing the potential information gap between crowdfunding service providers and investors, through the disclosure of an adequate amount of information. The draft RTS, set out in section 3 of the final report, cover: (i) the elements, including the format, that are to be included in the description of the method to calculate credit scoring and to suggest loan pricing; (ii) the information and factors that crowdfunding service providers need to consider when carrying out a credit risk assessment and conducting a valuation of a loan; (iii) the factors that a crowdfunding service provider must consider when ensuring that the price of a loan it facilitates is fair and appropriate; and (iv) the minimum contents and governance of the policies and procedures required for information disclosure and of the risk management framework for credit risk assessment and loan valuation.

The draft RTS will be submitted to the EC for endorsement, following which they will be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 13/05/2022

## **Council of the EU: Political agreement reached on DORA**

**Status: Draft**

The Council Presidency and the EP have announced that they have reached a provisional agreement on DORA. This act sets uniform requirements for the security of network and information systems of companies and organisations operating in the financial sector as well as critical third parties, which provide ICT-related services to them. It creates a regulatory framework on digital operational resilience whereby all firms need to make sure they can withstand, respond to and recover from all types of ICT-related disruptions and threats. Under the provisional agreement: (i) auditors will not be subject to DORA but will be part of a future review of the regulation within three years; (ii) the ICT risk management framework will take into account significant differences between financial entities in terms of size, nature, complexity and risk profile; (iii) critical third country ICT service



providers to financial entities in the EU will be required to establish a subsidiary within the EU and the ESAs should be informed of any change of their management structure; (iv) the co-legislators agreed to opt for an additional joint oversight network; (v) regarding financial entities' cybersecurity preparedness, one in three tests should be done by an external provider. Penetration tests shall be carried out in functioning mode, and it will be possible to include several member states' authorities in the test procedures; (vi) a single EU Hub for the reporting of major ICT-related incidents will be explored within two years; (vii) as regards the interaction of DORA with the Network and Information Security (NIS) Directive - the NIS Directive continues to apply. DORA builds on the NIS directive and addresses possible overlaps via a *lex specialis* exemption; and (viii) the rules should apply 24 months after they enter into force.

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

Date of publication: 11/05/2022

### **EC: Call for evidence regarding the open finance framework on enabling data sharing and third party access in the financial sector**

Status: Consultation

Deadline for the submission of comments: 07/06/2022

The EC has launched a call for evidence regarding the open finance framework on enabling data sharing and third party access in the financial sector. It thereby seeks views on the broader concept of "open finance". The initiative aims to address the difficulty involved in accessing and reusing customer data and the low levels of interoperability in the financial sector. Policy options to be analysed include: (a) to promote market-driven standardisation to address the existing technical obstacles to data reuse without introducing any new data access rights; (b) to introduce new data access rights in a limited number of areas (eg for savings and securities accounts or similar); and (c) to establish data access rights for customer data across the entire financial sector, in line with the Data Act proposal. The EC intends to adopt a legislative proposal in Q1 2023. In addition, the EC has launched a targeted consultation and a public consultation, as set out below.

Date of publication: 10/05/2022

### **EC: Targeted consultation on open finance framework and data sharing in the financial sector**

Status: Consultation

Deadline for the submission of comments: 05/07/2022

The EC has launched a targeted consultation on open finance framework and data sharing in the financial sector in order to collect views on the broader concept of "open finance". In addition to the details set out in the entry above, these targeted consultations will allow stakeholders with more in-depth and technical knowledge to share their views.

Date of publication: 10/05/2022

### **EC: Public consultation regarding the open finance framework on enabling data sharing and third party access in the financial sector**

Status: Consultation

Deadline for the submission of comments: 02/08/2022

The EC has published a public consultation regarding the open finance framework on enabling data sharing and third party access in the financial sector with the aim to receive information on how the broader concept of "open finance" is viewed. In addition to the details set out two entries above, this public consultation seeks views more broadly on both the PSD2 review and the open finance framework.

Date of publication: 10/05/2022

## **EBA: Final report in response to the non-bank lending request from the CfA on digital finance**

**Status: Final**

The EBA has published a final report on non-bank lending in response to the EC's February 2021 call for technical advice on digital finance and related issues. The EBA's proposals aim at addressing risks arising from the provision of lending by non-bank entities in the areas of supervision, consumer protection, AML/CFT, and macro- and micro-prudential risks. The EBA explains that while the magnitude of non-bank lending in the EU remains limited compared to credit provided by banks, FinTech activity has been increasing over the last years. The trends observed outside the EU also show that BigTechs and other non-traditional operators have already developed, and successfully rolled out, business models for lending. The provision of innovative financial services may bring benefits for consumers and increase competition in the market. However, the analysis of the regulatory regimes currently in place indicates that non-bank lending remains largely unharmonised across the EU, and this may create challenges for stakeholders, including regulators.

In the final report, the EBA identifies the risks related to the provision of credit by non-bank lenders and puts forward some proposals to address them. In particular, the final report highlights the importance of: (i) ensuring that the consumer protection framework remains fit-for purpose in view of new players entering the market. The EBA is proposing to: (a) enhance the disclosure requirements and ensure that they are fair, effective and well-suited for new forms of lending; and (b) strengthen the requirements for creditworthiness assessment, and ensure it is conducted in the interest of consumers, in particular when AI tools are used; (ii) strengthening the provisions on authorisation and admission to activities and to clarify the identification of the prudential perimeter and the supervisory responsibilities for cross-border provision of services, to allow for a more effective oversight; (iii) covering all non-bank lenders in a more comprehensive way in the EU-wide AML/CTF framework, to achieve greater harmonisation and to capture such entities as 'obliged entities'; and (iv) enhancing the monitoring and reporting frameworks to avoid any sudden increase of macroprudential risks remaining unaddressed and considering the introduction of activity-based macroprudential measures to cover all credit providers.

Date of publication: 04/05/2022

## 10.3 Sustainable finance

**(i) EU**

### **ESMA: ESMA publishes supervisory briefing on sustainability risk and disclosure in the area of investment management**

**Status: Final**

The ESMA has published supervisory guidance for NCAs to ensure convergence across the EU in the supervision of investment funds with sustainability features, and in combating greenwashing. The briefing covers guidance for the supervision of fund documentation and marketing material, as well as guiding principles on the use of sustainability-related terms in funds' names as well as guidance for convergent supervision of the integration of sustainability risks by AIFMs and UCITS managers.

Date of publication: 31/05/2022

### **ECB: Report on climate-related risks to financial stability**

**Status: Final**

The ECB has published a report on climate-related risks to financial stability, as part of the ECB's Financial Stability Review. The report analyses disclosure, pricing and greenwashing risks in financial markets, as well as continued monitoring of financial institutions' exposure to transition and physical risks. It concludes that: (i) the development of consistent sustainability disclosures via the Corporate Sustainability Reporting Directive and the IFRS Foundation, as well as the convergence of these requirements in common minimum international standards, are important factors allowing firms, investors and financial institutions to effectively measure and manage transition risk; (ii) regulatory standards on sustainable financial instruments are key to reducing the risk of greenwashing and thus helping to scale up sustainable financing; (iii) based on the systemic aspect and possible amplification mechanisms originating from climate-related physical and transition risks, there should be further reflection on how to close any material gaps in the prudential framework; and (iv) future work will focus on the extent to which

existing macroprudential tools, including the systemic risk buffer, could be readily deployed to capture climate risks. New tools, such as concentration risk measures, may also be needed to address climate-related risks from a systemic perspective.

Date of publication: 23/05/2022

### **ESMA: EC decision on the adoption of answers to questions submitted by the ESAs regarding the SFDR**

Status: Final

The ESMA has published Commission Decision in which the EC adopts a set of answers to questions sent to it by the ESAs (as set out in the entry below) on interpreting provisions in the Taxonomy Regulation and SFDR (C(2022) 3051). The ESAs' questions and EC's answers are set out in the [annex](#) and relate to topics including: (i) disclosing individual financial products principal adverse impacts (PAI); (ii) financial advisers' disclosure obligations; (iii) information financial advisers need to collect on products or instruments it recommends in relation to PAI disclosures; (iv) the types of employees covered by the Article 17 SFDR exemption; (v) whether Articles 6 and 7 SFDR apply to portfolio management financial products existing before the date of application, including those that are no longer made available to investors; (vi) good governance practices under Articles 8 and 9, including in relation to financial products investing solely in government bonds; and (vii) the application of Articles 5 and 6 of the Taxonomy Regulation. ESMA has also published a [letter from the EC](#) requesting that these documents be published.

Date of publication: 25/05/2022

### **ESAs: Queries on SFDR and Taxonomy Regulation interpretation forwarded to the EU**

Status: Final

The Joint Committee of the European Supervisory Authorities (ESAs) published a document setting out various queries for the EC regarding the interpretation of the SFDR and the Taxonomy Regulation. The ten questions focus on: (i) principal adverse impact (PAI) disclosures, and whether a financial market participant is able to not consider PAI at entity level but nevertheless consider PAI under Article 7 of the SFDR for some of the financial products it manages; (ii) financial advisers, disclosures of PAI, recommendations and advices regarding financial products; (iii) the transparency of the integration of sustainability risks and rules for products no longer made available; (iv) good governance practices, including regarding financial product investing solely in government bonds; and (v) the scope of Articles 5 and 6 of the Taxonomy Regulation. Please see the entry above for the answers provided by the EC.

Date of publication: 13/05/2022

### **EC: Requests directed at ESAs to review SFDR Delegated Regulation**

Status: Final

ESMA has published a letter (letter 1) from the EC to the ESAs requesting that they propose amendments to the RTS in Commission Delegated Regulation (C(2022) 1931 final) in relation to the information that should be provided in pre-contractual documents, on websites, and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities. The EC explains that it adopted a Complementary Climate Delegated Regulation (CCDR) covering nuclear and fossil gas activities after the ESAs had completed its draft RTS in October 2021 and therefore those RTS need to be amended to reflect the CCDR. The EC requests the ESAs submit the amendments to these RTS by 30 September. The EC has also in a separate letter (letter 2) requested that the ESAs review the SFDR RTS in order to cater for the increased request for transparency in areas that extend beyond the environment and to strengthen the disclosure and effectiveness of decarbonisation actions. In particular, the review should: (a) aim at broadening the disclosure framework and addressing the main technical issues that have emerged since the SFDR was originally agreed, which concern sustainability indicators in relation to principal adverse impacts as referred to in Article 4(6) and (7) SFDR; (ii) propose amendments in relation to the information provided in relation to financial products in pre-contractual documents, on websites, and periodic reports on decarbonisation targets, including intermediary targets and milestones, where relevant, and actions pursued; and (iii) consider whether the provisions in RTS regarding financial products referred to in Articles 5 and 6 of the Taxonomy Regulation sufficiently address the disclosure and information on environmentally sustainable economic activities.

- [Letter 1 on amendments to RTS under the SFDR](#)
- [Letter 2 on amendments to RTS under the SFDR](#)

Date of publication: 06/05/2022

## **EBA: Discussion paper on the role of environmental risks in the prudential framework**

Status: Consultation

Deadline for the submission of comments: 02/08/2022

The EBA has launched a discussion on the role of environmental risks in the prudential framework for credit institutions and investment firms. The EBA notes that environmental risks are changing the risk picture for the financial sector and will become even more prominent going forward. This affects all traditional risk categories, such as credit, market and operational risks. It also raises the question as to whether the current prudential framework can account for these new risk drivers. The discussion paper provides an analysis of the extent to which environmental risks are already reflected in the Pillar 1 own funds requirements via internal and external ratings, valuation of financial instruments and collateral, or scenario analysis. The EBA takes a risk-based approach to ensure that the prudential framework reflects underlying risks and supports resilience of financial institutions. The purpose of the prudential framework is not to achieve specific environmental objectives. These could be supported by the risk-based framework, particularly if coupled with other policy actions. The discussion paper focuses on Pillar 1 own funds requirements, however, it also highlights the need for a holistic regulatory approach and should be seen as part of the EBA's broader work in the area of ESG risks, which include transparency, risk management, Pillar 2 supervision and macroprudential capital buffers. The discussion paper also highlights interlinkages with the accounting framework.

The EBA is seeking broad feedback from stakeholders to deliver its final report.

Date of publication: 02/05/2022

# 11. German Omnibus Acts (*Artikelgesetze*)

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## (i) **Germany**

**BT: Adoption of a draft of the first Sanctions Enforcement Act (*Verabschiedung des Entwurfs eines ersten Sanktionsdurchsetzungsgesetzes*)**

**Status: Draft**

The German Cabinet has adopted a draft of the first Sanctions Enforcement Act (*Erstes Sanktionsdurchsetzungsgesetz – SDG I*). For more information, please see section 1.1(a) above.

Date of publication: 10/05/2022



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