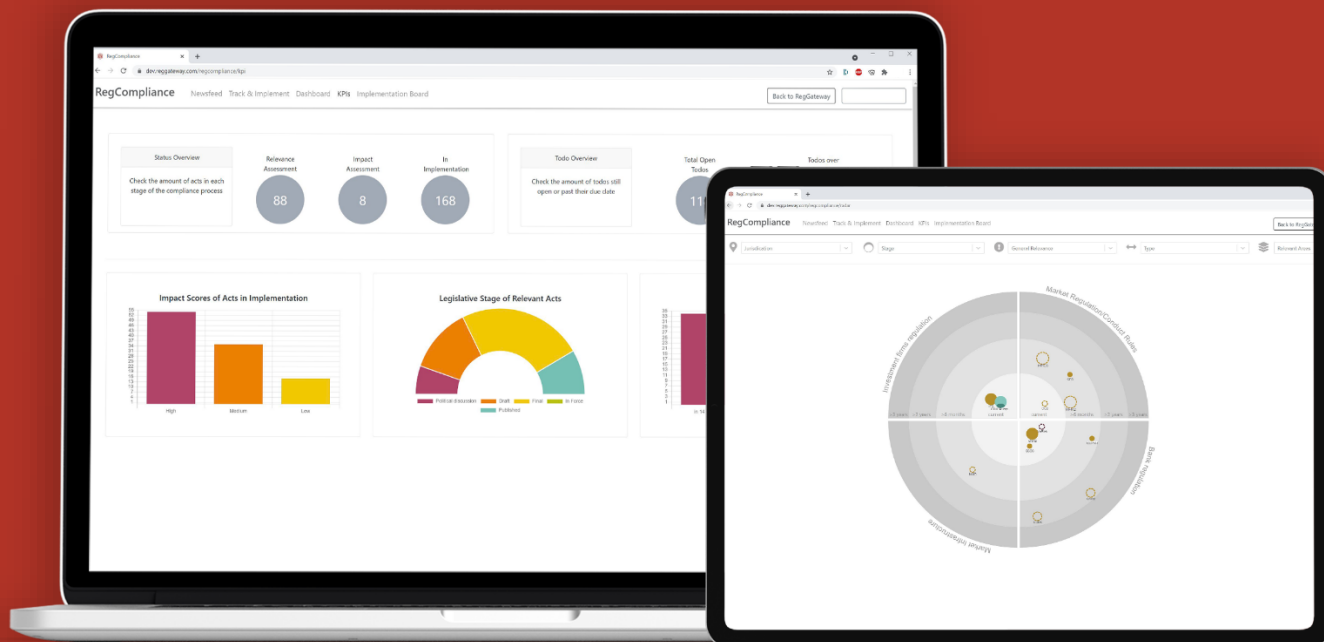


Regulatory monitoring

Newsletter

July 2021





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Features

HORIZON SCANNING / REGULATORY MONITORING

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

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) Germany

BaFin: Relief for small and non-complex institutions

Status: Final

BaFin published a press release announcing relief for smaller institutions. The new rules are a consequence of CRR II and apply to all companies that are classified as a small and non-complex institution (SNCI). Around 1,150 credit institutions in Germany can take advantage of operational relief with immediate effect. The facilitations are purely operational in nature and are intended to relieve the administrative burden on SNCIs - they are not capital- or liquidity-saving measures. IN its press release, BaFin states that it will inform institutions about the classification it has undertaken.

Date of publication: 02/07/2021

(ii) EU

EBA: Final Guidelines on the monitoring of the threshold for establishing an intermediate EU parent undertaking

Status: Final

The EBA published its final guidelines on the monitoring of the threshold for establishing an IPU as laid down in CRD. The Guidelines specify how third-country groups should calculate and monitor the total value of their assets in the EU in order to ensure timely application of the IPU requirement. The guidelines: (i) clarify the relevant data for the calculation of the total value of the assets in the EU, taking into account the fluctuation in the value of assets; and (ii) specify that for the purpose of the application of the IPU requirement, the total value of assets in the EU of the third-country group should be calculated as an average over the last four quarters – this value should be monitored on a quarterly basis and communicated to relevant competent authorities. The EBA notes that to meet the IPU requirement in a timely manner, institutions belonging to third-country groups must apply a forward-looking approach – the Guidelines specify that they should assess at least annually whether the threshold is expected to be reached within the three-year horizon, based on the strategic planning of the third-country group and the forecast of assets. In addition, the Guidelines specify certain procedural aspects related to the monitoring of the threshold by competent authorities and the establishment of the IPU where necessary. In particular, clarification is provided on the notifications, to be provided to the EBA on an annual basis.

The EBA Guidelines apply to competent authorities across the EU as well as to financial institutions belonging to third-country groups operating in the Union.

Date of publication: 28/07/2021

EBA: Discussion paper on proportionality assessment methodology

Status: Consultation

Deadline for the submission of comments: 22/10/2021

The EBA published a discussion paper aiming at gathering some preliminary input on how to standardise the proportionality assessment methodology for credit institutions and investment firms. The EBA notes that the proportionality assessment methodology entails two separate steps: (i) the definition of four different classifications; and (ii) the definition of the metrics applicable to the different categorisations in view of assessing whether there is need for proportional treatment of the different categories of institutions. The first step proposes three different categorisations for credit institutions and a categorisation for investment firms. The EBA already uses part of the proposed classifications in its work involved with the Basel III monitoring

exercise (that is, classifications I and classification II). However, it has identified the need to expand the classifications to align them with those provided by the CRR II (classification III) and the Investment Firms Regulation (classification IV). Although all categorisations comprise a different mixture of size and risk profile discriminatory criteria, the discrimination according to size is more predominant in two categorisations of credit institutions (classification I and classification III), while the business model categorisation (classification II) addresses the risk profile of credit institutions based on the stock of exposures, international activity and systemic importance. Finally, the categorisation of investment firms (classification IV) constitutes a well-balanced mixture of size and risk profile discriminatory factors.

After addressing the comments of market participants, the EBA intends to finalise this document and make it a point of reference for proportionality assessment.

Date of publication: 22/07/2021

ESRB: General Board 42nd regular meeting on key systemic risks in the EU

Status: Final

The European Systemic Risk Board (ESRB) published a press release in relation to the 42nd regular meeting of its General Board, which took place on 24 June 2021. The General Board assessed the key systemic risks in the EU and the public policy priorities to address them. Among other things, the General Board: (i) highlighted that the improved economic outlook has reduced the probability of severe scenarios and the risk of the Covid-19 crisis spilling over to the financial system. The General Board noted that the ESRB Recommendation on restriction of distributions could be allowed to lapse at the end of September if economic and financial sector conditions do not deteriorate materially. The General Board will consider this matter at its next meeting on 23 September 2021; (ii) emphasised that the recovery still relies on continued monetary policy and fiscal policy support measures, which have so far helped avoid a surge in insolvencies - the ESRB continues to monitor the financial stability implications of national fiscal measures implemented to safeguard the economy against the pandemic; (iii) noted that potential spillovers from the non-financial private sector to the banking sector, most notably through the channel of deteriorating asset quality, remain a risk that needs to be monitored closely, it also highlighted the importance for banks to appropriately reflect credit risk in their loan classification and provisioning. The General Board noted the increase in asset repricing risk amid rising inflation expectations and long-term bond yields in the US, which could spill over to European bond markets and affect non-bank financial institutions with high duration, liquidity and credit risk; (iv) discussed vulnerabilities related to the EU residential and commercial real estate markets; and (v) considered the financial stability implications of climate change for the EU financial system.

Date of publication: 01/07/2021

(iii) International

BCBS: G-SIB assessment methodology review process

Status: Consultation

Deadline for the submission of comments: 03/09/2021

BCBS published a consultation paper on a technical amendment to the Basel Framework to reflect a new process for reviewing the G-SIB assessment methodology. BCBS plans to replace the existing three-year review cycle with a process of ongoing monitoring and review. The proposed process will include monitoring: (i) recent developments in techniques or new indicators that can be used for the assessment of systemic risk; (ii) emerging evidence on the effectiveness of the G-SIB regime; and (iii) structural changes that could impact the effectiveness of the regime – only if this monitoring work reveals evidence of material unintended consequences or material deficiencies with respect to the framework's objectives will BCBS consider changes to the regime.

Date of publication: 20/07/2021

(b) Solvency/Own funds issues

(i) EU

EBA: Final Report on Guidelines on criteria for the use of data inputs in the risk-measurement model

Status: Final

Date of application: 01/01/2021

The EBA finalised its guidelines on criteria for the use of data inputs (used to determine the scenarios of future shocks applied to the modellable risk factors) in the risk-measurement model referred to in Article 325bc under Article 325bh(3) of the CRR. Institutions using the alternative Internal Model Approach for market risk are required to compute the expected shortfall risk measure for their modellable risk factors, ie for those risk factors for which a sufficient amount of verifiable prices is available. The guidelines set out criteria in relation to the accuracy, appropriateness, frequency for updating and completeness of the data inputs used by institutions. These criteria aim at ensuring that data inputs are calibrated to historical data reflective of prices observed or quoted in the market, that they capture, where relevant, both general and specific risks, that their update is performed frequently enough and whenever changes in market conditions so require, and that any missing or inconsistent values in those data inputs are properly replaced. Some amendments have been made to the draft guidelines, following feedback from stakeholders, to clarify certain provisions.

The Guidelines are relevant for all institutions which apply an internal model for market risk or intend to do so.

Date of publication: 13/07/2021

EBA: Decision confirms quality of unsolicited credit assessments

Status: Final

The EBA published a revised Decision confirming the quality of unsolicited credit assessments assigned by certain External Credit Assessment Institutions (ECAIs) for calculating institutions' capital requirements. Under Article 138 of the CRR, institutions may use unsolicited credit assessments of an ECAI for determining their capital requirements only if the EBA has confirmed that those unsolicited ratings do not differ in quality from solicited ratings of that same ECAI. Since the last EBA Decision, two additional ECAIs have been recognised, and three ECAIs have been de-registered or de-certified. In addition, a registered ECAI has been renamed.

The new Decision states that it will enter into force 20 days after it has been published in the OJ.

Date of publication: 01/07/2021

(c) Securitisation

(i) EU

EC: Targeted consultation on the functioning of the EU securitisation framework

Status: Consultation

Deadline for the submission of comments: 17/09/2021

The EC published a targeted consultation on the functioning of the EU securitisation framework. In order to deliver on the EC's commitment in the Capital Markets Union action plan to review the regulatory framework for securitisation, and in order to prepare the mandated report, the consultation seeks stakeholders' feedback on a broad range of issues. The consultation covers the areas mandated by Article 46 of the Securitisation Regulation, namely: (i) the effects of the Securitisation Regulation; (ii) private securitisations; (iii) the need for an equivalence regime in the area of simple, transparent, and standardised securitisations; (iv) disclosure of information on environmental performance and sustainability; and (v) the need for establishing a system of limited licensed banks performing the functions of securitisation special purpose entities. The consultation will be followed by a roundtable event for which a separate invitation will be issued in due course.

Date of publication: 23/07/2021

EBA: Consultation on RTS on risk retention requirements under the Securitisation Regulation**Status:** Consultation**Deadline for the submission of comments:** 30/09/2021

The EBA began consulting on draft regulatory technical standards (RTS) specifying the requirements for originators, sponsors, original lenders and servicers related to risk retention, in line with the Securitisation Regulation. The draft RTS specify in greater detail the risk retention requirements and, in particular: (i) requirements on the modalities of retaining risk; (ii) the measurement of the level of retention; (iii) the prohibition of hedging or selling the retained interest; (iv) the conditions for retention on a consolidated basis; (v) the conditions for exempting transactions based on a clear, transparent and accessible index; (vi) the modalities of retaining risk in case of traditional securitisations of non-performing exposures; and (vii) the impact of fees paid to the retainer on the effective material net economic interest. The draft RTS have been drafted in such a way as to ensure the alignment of interest (risks) and information between the securitisation sponsors, originators, original lenders, and, in the case of traditional NPE securitisations, servicers, on one hand, and the investors buying the securitisation positions on the other hand. Furthermore it aims to facilitate the implementation of the risk retention requirements by the sponsor, originator, original lender and servicer. The RTS carry over a substantial amount of provisions from the EBA RTS on risk retention submitted to the EC in July 2018.

A public hearing will take place on 2 September.

Date of publication: 30/06/2021**(d) Liquidity****(i) EU****EBA: Consultation to amend the technical standards on currencies with constraints on the availability of liquid assets****Status:** Consultation**Deadline for the submission of comments:** 16/10/2021

The EBA published a consultation on amendments to its Implementing Technical Standards (ITS) on currencies with constraints on the availability of liquid assets in the context of the liquidity coverage ratio, supplementing the CRR. Based on the updated data analysis, which demonstrates that there is no longer a shortage in the supply of liquid assets in the Norwegian Krone (NOK) currency, the EBA proposes to amend the ITS by removing NOK from the list. The EBA states that since this amendment will lead to an empty list, in order to keep its regulatory efforts proportionate to their impact, it will not update the corresponding regulatory technical standards. Such an update will be proposed if during a future assessment the EBA observes that a currency will have to be added to the list.

Date of publication: 16/07/2021**(e) Risk management/SREP/Pillar 2/Outsourcing/NPL****(i) EU****CoEU: Text of proposed Directive on credit servicers and credit purchasers****Status:** Final

The Council of the EU (CoEU) published a letter sent to the EP on the proposed Directive on credit servicers and credit purchasers. The Council state that should the EP adopt its position at first reading, the Council would approve the EP's position and the Directive shall be adopted in the wording corresponding to the EP's position. The text of the Directive on which the Council and the EP have reached political agreement is set out in the Annex.

Date of publication: 29/06/2021

(ii) Eurozone

ECB: Blog on credit risk management practices of banks

Status: Final

The ECB published a blog on credit risk management practices of banks in the single supervisory mechanism. The ECB notes that not all the banks that it supervises have sufficiently strong credit risk practices in place to make the European banking sector resilient. The ECB is worried that some of these issues seem structural, relevant not just in the context of the pandemic but also in the future when we are back to business as usual – the issues also affect banks that have not suffered significant credit risk impacts in previous years. The ECB is asking banks to act now to avoid lasting problems down the road to ensure the economic recovery is as strong as possible. The blog outlines the best practices that the ECB would like to see more broadly adopted. Furthermore, the blog notes the eight areas of deficiencies in a number of banks giving cause for concern emerging from the ECB's detailed assessment, including: (i) early warning systems that are not sufficiently granular, where indicators are mainly backward-looking, thresholds are frequently not well calibrated and regular back-testing of indicators and triggers is not being performed as frequently as required; (ii) a significant number of banks do not always include clear and granular criteria in their policies to effectively identify financial difficulties; (iii) banks that have not collected updated information in a structured way or adopted additional unlikely-to-pay (UTP) triggers that would make it possible to capture pandemic specificities; (iv) concern as to whether banks are assigning loans consistently to stage 2 whenever there is evidence of a significant increase in credit risk; (v) banks using biased approaches which artificially stabilise provisions; (vi) a number of banks lack the robust governance and high-quality risk management frameworks needed to properly estimate overlays; (vii) banks not complying with the ECB's NPL guidance on frequently monitoring and updating immovable collateral valuations when warranted and lacking a clear linkage between their market risk reviews and effective collateral revaluations; and (viii) some inadequate practices in the way banks include the potential impact of Covid-19 in their strategic and business planning, which could have an impact on their preparation for an increase in distressed debtors.

Date of publication: 19/07/2021

(f) Remuneration

(i) EU

EBA: Final revised Guidelines on sound remuneration policies

Status: Final

Date of entry into force: 31/12/2021

The EBA published revised guidelines on sound remuneration policies under CRD V. The guidelines have been updated to reflect amendments introduced by CRD V, requiring remuneration policies to be gender neutral. Furthermore, the guidelines specify in detail the respective governance arrangements and processes that should be applied when remuneration policies are implemented. Also, the guidelines on severance pay, retention bonuses and discretionary pension benefits have been clarified to avoid such payments being used to circumvent remuneration requirements. Within two years of the date of publication of the guidelines on gender-neutral remuneration policies, the EBA will issue a report on the application of gender-neutral remuneration policies by institutions.

Date of publication: 02/07/2021

(g) Internal governance/"Authorised Persons Regime"

(i) EU

EBA: Final Report on Guidelines on internal governance under Directive 2013/36/EU

Status: Final

Date of entry into force: 31/12/2021

Following [consultation](#) in July 2020, the EBA published a final report on its updated guidelines on internal governance under CRD IV. The guidelines have been updated to reflect amendments introduced by CRD V and the Investment Firms Directive

(IFD). Specifically, the guidelines: (i) clarify that identifying, managing and mitigating money laundering and financing of terrorism risk is part of sound internal governance arrangements and credit institutions' risk management framework; (ii) specify measures that should be implemented by institutions to prudently manage conflicts of interests that may arise from granting loans to and entering into other transactions with members of the management body and their related parties; and (iii) contain guidance so that credit institutions take necessary measures to avoid discrimination, ensure equal opportunities to staff of all genders, and monitor the gender pay-gap. The original guidelines, published in September 2017, will be repealed.

Date of publication: 02/07/2021

EBA and ESMA: Final guidance on fit and proper requirements

Status: Final

Date of entry into force: 31/12/2021

Following consultation in July 2020, ESMA and EBA published a final report on their updated guidelines on the assessment of suitability of management body members and key function holders in accordance with CRD IV and MiFID II. The guidelines have been updated to reflect amendments introduced by CRD V and the IFD. Specifically, the guidelines: (i) clarify that the knowledge, experience and skill requirements of at least the member of the management body who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Anti-Money Laundering Directive include identifying, managing and mitigating money laundering and financing of terrorism risk; (ii) emphasise the importance of a gender-balanced composition of the management body; and (iii) take into account the recovery and resolution framework introduced by BRRD, and provide further guidance on it. The original guidelines, published in September 2017, will be repealed.

Date of publication: 02/07/2021

(h) Large exposures/Limits to shadow banking entities

(i) Germany

BaFin: Circular specifying the conditions for the application of the alternative treatment of institutions' exposures in the context of "triparty repurchase agreements" under Article 403(3) of Regulation (EU) No 575/2013 for large exposures purposes (Rundschreiben zu Tripartite-Rückkaufsvereinbarungen)

Status: Final

BaFin published a Circular specifying the conditions for the application of the alternative treatment of institutions' exposures in the context of "triparty repurchase agreements" under Article 403(3) of Regulation (EU) No 575/2013 for large exposures purposes. With this Circular, BaFin incorporates the [Guidelines](#) of the European Banking Authority (EBA) specifying the conditions for the application of the alternative treatment of institutions' exposures in the context of "triparty repurchase agreements" pursuant to Article 403(3) of Regulation (EU) No 575/2013 for large exposures purposes into its administrative practice as of 28 June 2021.

Date of publication: 05/07/2021

(ii) EU

EBA: Consultation on technical standards to identify shadow banking entities

Status: Consultation

Deadline for the submission of comments: 26/10/2021

The EBA published a consultation paper on draft regulatory technical standards (RTS) setting out criteria for the identification of shadow banking entities under CRR for the purposes of reporting large exposures. The EBA notes that entities that offer banking services and perform banking activities, as defined in the draft RTS but are not regulated and are not being supervised in accordance with any of the acts that form the regulated framework, are identified as shadow banking entities. Furthermore, considering the characteristics of funds regulated under the Undertakings for the Collective Investment in Transferable Securities Directive and the Alternative Investment Fund Managers Directive, special provisions are included in the draft RTS.

In view of the severe liquidity issues that affected money market funds (MMFs) during the Covid-19 pandemic and the ongoing discussions at EU and international level to strengthen their regulation, MMFs are identified as shadow banking entities. In addition, the draft RTS consider the situation of entities established in third countries and provide for a treatment that distinguishes between banks and other entities.

Date of publication: 26/07/2021

ECON: Study on shadow banking

Status: Final

A study entitled “Shadow Banking: what kind of Macroprudential Regulation Framework?” commissioned by ECON was published. The study considers theoretical contributions and empirical data to then suggest possible policy options. The report concludes that the macroprudential regulation of shadow banking can be improved in several ways including: (i) “low-volatility net asset value” mutual funds could be reformed to impose gates and redemption fees to slow down and discourage withdrawals; (ii) similar mechanisms can be introduced for open-ended funds investing in less liquid assets; (iii) closed-end funds should be limited from providing investors with an expectation that their shares can be liquidated; (iv) simple, transparent and standardised (STS) securitisations can be further encouraged by enhancing the regulatory benefits they bring to institutional investors (v) minimum haircuts and margins should be imposed on securities financing transactions and derivatives; (vi) bank-related regulations can help discipline shadow banking through measures aimed at cutting back red tape on traditional banks, while ensuring that capital buffers imposed on traditional lenders are mirrored by similar measures for non-bank entities; (vii) structural limitations on the size and operating latitude of mega-banks should be brought back into the policy debate, as there is still a risk that large institutions use their too-big-to-fail status to provide mispriced implicit support to shadow banking entities; (viii) FinTech lenders should be covered by fully harmonised EU-wide regulations; and (ix) stablecoin issuers investing in assets other than those to which their “coins” are pegged should be treated like banks or subjected to a simplified regime that closely mimics banking supervision.

Date of publication: 06/07/2021

1.2 Recovery and resolution

(i) Germany

BaFin: Leaflet on external bail-in implementation on non-exchanges (Merkblatt zur externen Bail-in-Implementierung an Nicht-Börsen – MeHNB)

Status: Consultation

Deadline for the submission of comments: 25/08/2021

BaFin published a leaflet on external bail-in implementation on non-exchanges for consultation. The draft leaflet deals with the suspension or halting of trading by systematic internalisers (within the meaning of Article 4(1) No 20 of MiFID II) as well as multilateral and organised trading facilities (within the meaning of Article 4(1) Nos 22 and 23 of MiFID II) which are not operated by an exchange within the meaning of Article 2 of the Stock Exchange Act (*Börsengesetz* – BörsG).

This draft leaflet supplements the leaflet on external bail-in implementation, which deals, among other things, with the suspension or halt of trading on exchanges. Furthermore, the leaflet describes which information beyond the resolution order the resolution authority provides to the addressees for the above purpose at which point in time and what it expects from the addressees in terms of implementation.

The background to the draft leaflet is the Risk Reduction Act, which came into force on 28 December 2020. The Risk Reduction Act (*Risikoreduzierungsgesetz* – RiG) has extended BaFin's authority to suspend or halt trading to all trading venues and systematic internalisers.

Date of publication: 28/07/2021

BaFin: New MREL circular**Status: Final**

BaFin published a new circular on Minimum Requirement for Own Funds and Eligible Liabilities (MREL). The new circular amends and replaces the previous MREL Circular 12/2019 (A) "Determination of the minimum amount of own funds and eligible liabilities for institutions for which the implementation of insolvency proceedings as a resolution strategy is credible and feasible". The background for the revision of the circular is comprehensive changes in the law that came into force at the end of 2020 (in particular BRRD II). According to these, BaFin must change its administrative practice for determining the MREL and sets this out in the new MREL circular.

The circular concerns institutions and group companies for which the resolution plan provides for liquidation within the scope of insolvency proceedings.

Date of publication: 26/07/2021

BaFin: New version of the circular on the minimum requirements for the feasibility of a bail-in (Neufassung des Rundschreibens zu den Mindestanforderungen zur Umsetzbarkeit eines Bail-in – MaBail-in)**Status: Consultation****Deadline for the submission of comments: 18/08/2021**

BaFin published a new version of its circular on the minimum requirements for the feasibility of a bail-in. With this update, BaFin plans to extend the minimum requirements for the feasibility of a bail-in in principle to institutions and group-affiliated entities for which the resolution plan does not yet provide for resolution measures, provided they are part of a resolution group or relevant third-country subsidiaries. So far, MaBail-in has only included general and specific requirements for institutions and group entities designated as resolution entities in the resolution plan. BaFin now intends to expand its circular to ensure the transfer of losses within the resolution group (from subsidiaries to the resolution entity) or within the third-country group (from third-country subsidiaries established in Germany to the respective legal entity in the third country).

Date of publication: 21/07/2021

(ii) EU**ESMA: Measures on CCP recovery and resolution****Status: Consultation****Deadline for the submission of comments: 20/09/2021**

ESMA began seven consultations on how to implement its central counterparty (CCP) recovery mandates. The consultations are on: (i) draft guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event; (ii) draft guidelines on the consistent application of the triggers for the use of early intervention measures; (iii) draft RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources; (iv) draft guidelines on CCP recovery plan indicators; (v) draft RTS on order of compensation under Art. 20; (vi) draft guidelines on CCP recovery plan scenarios; and (vii) draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan.

ESMA will organise an open hearing on the consultations on 14 September 2021. ESMA will consider the responses to this consultation with a view to publishing the final reports by Q4 2021/Q1 2022.

- Draft RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (Article 9(15) of CCPRRR)
- Draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan (Article 10(12) CCPRRR)
- Draft RTS specifying the conditions for recompense (Article 20(2) of CCPRRR)
- Draft Guidelines on CCP recovery plan indicators (Article 9(5) CCPRRR)
- Draft Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR)

- Draft Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRRR)
- Draft Guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a of EMIR

Date of publication: 12/07/2021

Commission Delegated Regulation (EU) 2021/1118 supplementing the BRRD with regard to RTS specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of the CRD IV and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive

Status: Published in the OJ

Date of entry into force: 28/07/2021

Commission Delegated Regulation (EU) 2021/1118 was published in the OJ. This supplements the BRRD with regard to RTS specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of CRD IV, as well as the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under CRD IV. Specifically, the Regulation covers: (i) estimation of the additional own funds requirement; (ii) adjustments for the estimation of the additional own funds requirement; and (iii) methodology for the estimation of the combined buffer requirement of resolution entities.

Date of publication: 08/07/2021

(iii) Eurozone

SRB: Information requirements for applications for permission in line with the draft RTS on own funds and eligible liabilities, Section 2 Subsection 2 – “Permission for reducing eligible liabilities instruments”

Status: Final

The SRB published guidance on its approach to prior permissions for eligible liabilities, in line with upcoming regulatory changes. The SRB explains that banks need authorisation under Articles 77 and 78a of CRR to redeem eligible liabilities – Article 78a(3) of CRR provides for the development of regulatory technical standards (RTS) to specify certain elements of that authorisation. The EC will finalise the draft RTS by adopting them in the form of a Delegated Regulation and notifying them to the Parliament and Council, which will most likely not be achieved by January 2022. To contribute to a smooth transition to the framework in the upcoming Delegated Regulation, and to limit the need for banks to re-submit a second authorisation application for General Prior Permissions (GPP) within the same calendar year (i.e. once the Delegated Regulation enters into force), the SRB will amend its provisional policy in line with Section 2 - Subsection 2 – “Permission for reducing eligible liabilities instruments” of the draft RTS for all permissions effective as of 1 January 2022. This means that applications for permission for redemptions of eligible liabilities should be compliant with the requirements in the RTS. Exceptionally, banks can file their applications until the end of September 2021, to allow them to familiarise themselves with the details. The draft RTS includes some material changes on the conditions for authorisation compared to the SRB provisional policy, in particular regarding the authorised envelope for redemptions (the “pre-determined amount”) and the need to deduct it upfront from banks’ MREL resources. The SRB also notes that banks’ applications for authorisations from 1 January 2022 should be based on the list of information requirements as referred to in Articles 32(d) and (e) of the draft RTS. An additional communication on the new regime will be published in early September. The guidance covers: (i) what information institutions need to provide the SRB to support their application; (ii) additional information needed for a permission application for a replacement of eligible liability instruments; (iii) additional information required where permission is being sought to replace eligible liability instruments with own funds instruments; and (iv) specific information required for the SRB to assess if a GPP should be granted.

Date of publication: 28/07/2021

2. Investment firms regulation

(i) EU

EBA: Technical standards on cooperation and information exchange between competent authorities involved in prudential supervision of investment firms

Status: Final

The EBA published its final draft RTS and ITS on cooperation and information exchange between competent authorities involved in prudential supervision of investment firms. The EBA notes that these draft standards, developed in consultation with ESMA, provide a solid framework for: (i) cooperation in the supervision of investment firm groups through colleges of supervisors; and (ii) information exchange for investment firms operating within the EU through branches or the free provision of services. The draft standards are part of the phase 2 mandates of the EBA roadmap on investment firms. The final draft RTS on colleges of supervisors for investment firm groups specify the conditions under which colleges of supervisors exercise their tasks – these draft RTS are structured around four main sections: (a) establishment of colleges; (b) functioning of colleges; (c) planning and coordination of supervisory activities in going concern situations; and (d) planning and coordination of supervisory activities in preparation for and during emergency situations. The final draft RTS and ITS on information exchange between the competent authorities of home and host member states complement the RTS on colleges of supervisors and address situations where investment firms operate in another member state through branches or the free provision of services, where colleges may not be established. In particular, the final draft RTS specify the information that competent authorities in the host member state and those in the home member state shall exchange, whereas the final draft ITS establish standard forms, templates, and procedures for sharing the information specified in the RTS. The final draft RTS will be submitted to the EC for adoption. Following the submission, the RTS will be subject to scrutiny by the EP and the Council of the EU before being published in the OJ. The draft ITS will be submitted to the EC for endorsement before being published in the OJ.

- [Final Report on draft RTS on colleges of supervisors for investment firm groups under Article 48\(8\) of the IFR](#)
- [Final Report on draft ITS and RTS on information exchange between competent authorities of home and host Member States under IFR/IFD](#)

Date of publication: 05/07/2021

EBA: Clarification on the implementation of the new prudential regime for investment firm

Status: Final

The EBA published an Opinion on appropriate supervisory and enforcement practices for the process of authorising investment firms as credit institutions under Article 8a of CRD IV in order to ease the implementation of the Investment Firms Regulation/Investment Firms Directive (IFR/IFD). The IFR/IFD classify investment firms according to their business model and size, the latter of which is benchmarked on various thresholds. For the vast majority of investment firms, sufficient clarity already exists with regards to the prudential regime which applies to them. However, in a few cases, especially for investment firms of third-country groups, the Opinion provides guidance on the actions to be taken in case of uncertainty on whether these investment firms should apply for authorisation as a credit institution in the absence of the delegated act establishing the methodology for the calculation of the highest threshold (the EUR 30bn threshold), on which the EBA opened a second public consultation, which closes on 17 July 2021. In general, the EBA advises competent authorities to apply a pragmatic approach for those investment firms, where the relevant EUR 30bn threshold for the identification of the prudential regime to be applied to the investment firm cannot be determined without the guidance provided in the EBA regulatory technical standards (RTS) currently being consulted on. More specifically, the EBA advises supervisors not to prioritise any supervisory or enforcement action in relation to the identification of investment firms, until six months after the final methodology is in place.

The EBA is not expecting to finalise the draft RTS for submission to the EC before the end of October 2021. It requests the EC to adopt the RTS as quickly as possible after submission by the EBA.

Date of publication: 01/07/2021

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

ESMA: Updated Q&As on Benchmark Regulation (BMR)

Status: Final

On 16 July 2021, ESMA published an updated version of its Q&As on the BMR. This includes a new Q&A in respect of EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks. Specifically, the question addresses the disclosure requirements that an administrator of an EU Climate Transition Benchmark (EU CTB) or an EU Paris-aligned Benchmark should comply with.

On 29 July 2021, ESMA published another update on its BMR Q&As. The update provides the EC's answer to whether supervised entities in the Union can use benchmarks provided by third-country public authorities after the end of the transitional period that applies to third-country benchmarks.

Date of publication: 29/07/2021

ESMA: Recommendations from the Working Group on Euro Risk-Free Rates (RFRWG) on the switch to risk-free rates in the interdealer market

Status: Final

ESMA published recommendations from the RFRWG on the switch to risk-free rates in the interdealer market. At its meeting on 1 July, the RFRWG discussed two initiatives about the switch to risk-free rates for trading and quoting conventions in the interdealer market. The first initiative related to a recommendation for interdealer brokers to switch from EONIA to €STR at a common date (€STR First Initiative). The second related to the RFRWG's support for the initiative coordinated between international RFR Working Groups on a common start date to switch the quoting convention for cross-currency swaps involving non-Euro currencies (Cross-Currency Swaps Initiative). The RFRWG has approved the following statements for each initiative: (i) in regard to the €STR First Initiative, the RFRWG recommends as market best practice, that interdealer brokers change RFR swap trading conventions from EONIA to €STR from 18 October 2021, in line with the CCP transition from EONIA to €STR on that weekend; and (ii) in respect of the Cross-Currency Swaps Initiative, the RFRWG fully supports the recommendation of a common start date of 21 September for a switch of quoting conventions in the interdealer market for USD, GBP, CHF and JPY legs of cross-currency swaps and encourages Euro Area market participants to adopt this market practice subject to supportive market conditions at the time. For cross-currency swaps with a EUR denominated leg, the RFRWG will continue to monitor the development of market liquidity and the demand from end users.

Date of publication: 26/07/2021

(ii) International

FSB: Progress Report to the G20 on LIBOR Transition Issues

Status: Final

The FSB published a progress report to the G20 on LIBOR transition and remaining issues. The FSB: (i) encourages authorities to set globally consistent expectations and milestones that firms will rapidly cease the new use of LIBOR, regardless of where those trades are booked or in which currency they are denominated – market participants are urged to cease new use of LIBOR in all currencies as soon as practicable, respecting national working group timelines and supervisory guidance where applicable, and in any case no later than the end of this year; (ii) strongly urges market participants to act now to complete the steps set out in its Global Transition Roadmap – financial and non-financial institutions need to accelerate adoption of robust benchmark rates in new contracts, as well as active conversion of legacy LIBOR-referencing contracts to directly reference risk-free rates and/or insert robust fallback language; (iii) notes that supervisory authorities should step up their efforts for active and adequate

communication to increase awareness of the scope and urgency of relevant IBOR transitions for all clients; (iv) will undertake work to support transition in emerging market and developing economies, where engagement with financial institutions on transition planning is in general lagging; (v) stresses that collaboration and coordination remain crucial in expediting transition progress, on the international front; and (vi) notes that loan markets remain an area of concern, with much new lending still linked to LIBOR, increasing the stock of contracts affected by its discontinuation – the FSB stresses that the tools necessary to complete the transition are currently available, and have been for some time, and market participants must not wait for the development of additional tools.

Date of publication: 06/07/2021

3.2 Consumer protection rules

(i) Germany

Law to further strengthen investor protection (Gesetz zur weiteren Stärkung des Anlegerschutzes – AnlSchStG)

Status: Published in the Federal Gazette

Date of entry into force: 16/08/2021

The law to further strengthen investor protection has been published in the German Federal Gazette. The amendments primarily concern the area of asset investments. The draft implements the remaining points requiring implementation from the “[Package of Measures to Further Strengthen Investor Protection](#)”, which was developed by the Federal Ministry of Justice (*Bundesjustizministerium* – BMJV) and the BMF against the background of the insolvency of the container provider P&R and published in August 2019.

To this end, the law contains, in particular, the following rules: (i) prohibition of blind pool investments for retail investors; (ii) restriction of the distribution of investments to supervised investment advisors or financial investment intermediaries; (iii) improved possibility of auditing the financial reporting of investment issuers; (iv) introduction of a control of the use of funds; and (v) abolition of the mere registration possibility for closed-end public funds.

We can provide you with Delta Views/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide Delta Views of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 16/07/2021

BMF: Regulation on the Amendment of Regulations under the Asset Investment Act (Verordnung zur Änderung von Verordnungen nach dem Vermögensanlagengesetz)

Status: Consultation

Deadline for the submission of comments: 27/07/2021

The law to further strengthen investor protection (*Gesetz zur weiteren Stärkung des Anlegerschutzes* – AnlSchStG) (see entry above) added a number of investor-protection regulations to the Asset Investment Act. These changes make it necessary to amend the provisions of the Asset Investment Prospectus Regulation and the Asset Investment Publication and Notification Obligations Regulation accordingly.

Therefore, the German Ministry of Finance (*Bundesfinanzministerium* – BMF) published a draft Regulation on the Amendment of Regulations under the Asset Investment Act. The draft thus includes in particular the new provisions on the prohibition of blind pools, on the distribution of investments by supervised investment advisors or financial investment intermediaries and on the control of the use of funds in the respective provisions of the sales prospectus. In addition, individual further investor-protection regulations as well as editorial corrections will be made.

Date of publication: 13/07/2021

(ii) EU

EBA: Methodological guide to mystery shopping (MS)

Status: Final

The EBA published a methodological guide to MS. The guide has been developed based on the findings and good practices identified in the EBA report on MS activities of national competent authorities (NCAs) published earlier this year and aims to support NCAs in the design and implementation of MS activities. The EBA notes that the guide sets out in seven steps how MS activities can be conceived and carried out, how NCAs can use the guide as a complement to other existing supervisory tools, and how to adapt such activities to the particular circumstances, goals and MS powers conferred on an NCA under national law and/or EU law, such as the EU Consumer Protection Cooperation Regulation.

The guide applies irrespective of whether the activity is carried out directly by the supervisors or outsourced to an external provider. In addition, the guide applies to both online and on-site MS activities but focuses on the latter, due to the type of activities on which the knowledge and experiences of NCAs, and therefore this guide, is based. Furthermore, the guide aims to support those NCAs that are, under their respective national legal framework, in a position to carry out MS activities in designing and implementing MS activities, thus facilitating the coordination of their MS activities and enhancing their ability to assess the retail conduct of financial institutions in their jurisdictions.

As the guide is addressed to NCAs only, it does not require implementation by financial institutions.

Date of publication: 21/07/2021

EC: Proposal for new Directive on consumer credits

Status: Draft

The EC published a new proposal for a Directive on consumer credits, to repeal and replace the Consumer Credit Directive (CCD), together with an [impact assessment](#) and [factsheet](#) on the consumer credit review. The EC explain that the evaluation for the CCD that was published in 2020 found that the aims of the CCD have only been partially met and that consumers still face avoidable detriment. The review identified a number of issues including: (i) fragmentation across the EU and imprecise wording in the CCD; and (ii) new products and market players such as peer-to-peer lending platforms have emerged, which are not clearly regulated and allow exploitation of consumers. Digitalisation has changed the decision-making process and habits of consumers, by creating new ways of disclosing information and assessing the creditworthiness of consumers using automated decision-making systems and non-traditional data. The review found that the most effective option in reducing the consumer detriment and risks in taking out loans in a changing market and to facilitate a cross-border provision of consumer credit and the competitiveness of the internal market, was an extensive amendment of the Directive to include new provisions in line with existing EU acquis. In the factsheet, the EC summarise some of the changes, which include to: (a) include risky loans currently not in scope of the EU regulation, such as loans of less than EUR 200, interest-free credit and overdraft facilities; (b) adapt information requirements to make sure they cater for digital devices; (c) make information related to credit offers more clear and avoid information overload for consumers; (d) address practices that exploit consumer behaviour such as product tying, pre-ticked boxes or unsolicited credit sales; (e) improve rules on the assessment of consumer creditworthiness; (f) cap the cost of the credit for consumers; (g) support consumers who experience financial difficulties through forbearance measures and debt advice services; and (h) introduce requirements for businesses to put consumers' needs first and act ethically while ensuring that their staff have an appropriate knowledge and competence on credit.

Date of publication: 30/06/2021

3.3 Credit rating agencies

(i) EU

ESMA: Updated Q&As on the implementation of the Credit Rating Agencies Regulation (CRAR)

Status: Final

ESMA published an updated version of its Q&As on the implementation of CRAR. The update provides a new Part VII, which discusses interactions between the Market Abuse Regulation (MAR) and CRAR, specifically in respect of: (i) whether credit ratings, rating outlooks and information relating thereto, pursuant to article 10(2a) of CRAR, is presumed to be inside

information until disclosure to the public, or whether a case-by-case assessment of the conditions in Article 7 of MAR should be anyhow carried out; (ii) whether where a credit rating agency discloses credit ratings, rating outlooks and related information on its public website, if such disclosure suffices to consider them no longer inside information under MAR; (iii) where a CRA distributes its credit ratings by subscription, if disclosure of credit ratings only to its subscribers would constitute “disclosure to the public” within the meaning of Article 10(2a) and if subscribers would be permitted to trade on the basis of these credit ratings.

Date of publication: 29/07/2021

3.4 Market abuse

(i) EU

ESMA: Review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision

Status: Consultation

Deadline for the submission of comments: 27/08/2021

ESMA began consulting on the review of its guidelines on delayed disclosure of inside information under MAR in relation to its interaction with prudential supervision. ESMA explains that issuers, under MAR, can delay the disclosure of inside information where immediate disclosure is likely to prejudice an issuer's legitimate interest, the delay of disclosure is not likely to mislead the public and confidentiality is ensured. The ESMA MAR Guidelines include a list of legitimate interests of issuers that are likely to be prejudiced by immediate disclosure of inside information. ESMA intends to build and expand on these guidelines, in the context of the interaction between the MAR transparency obligations vis-à-vis inside information and the prudential supervisory framework.

ESMA expects to publish a final report with the amended guidelines by the end of 2021.

Date of publication: 08/07/2021

3.5 MiFID/MiFIR

(i) Germany

BaFin: Updated Circular on the Minimum Requirements for the Compliance Function and the Further Conduct, Organisation and Transparency Obligations for Investment Firms (MaComp)

Status: Final

BaFin updated its Circular on the Minimum Requirements for the Compliance Function and the Further Conduct, Organisation and Transparency Obligations for Investment Firms (*Rundschreiben zu den Mindestanforderungen an die Compliance-Funktion und die weiteren Verhaltens-, Organisations- und Transparenzpflichten für Wertpapierdienstleistungsunternehmen – MaComp*). The background to the amendment are adjustments to the guidelines on certain aspects of the MiFID II compliance function requirements of the European Securities and Markets Authority (ESMA), which BaFin has transposed in the special part (BT) 1 of MaComp. ESMA had revised its guidelines published in 2012 and published the new version in [English](#) on 5 June 2020 and in [German](#) on 6 April 2021.

The revised ESMA guidelines take into account in particular the product governance regime and the resulting changes for the compliance function. BaFin has therefore, in particular, supplemented the requirements for supervisory actions, advisory tasks and the involvement of the compliance function in processes in BT 1. It has also comprehensively revised the requirements for the annual compliance report. They reflect the ESMA guidelines almost unchanged.

Date of publication: 15/07/2021

(ii) EU

ESMA: MiFID II/MiFIR Annual Report under Commission Delegated Regulation (EU) 2017/583 (RTS 2)

Status: Final

ESMA published its MiFID II/MiFIR annual review report on Commission Delegated Regulation (EU) 2017/583 (regulatory technical standards (RTS 2)). ESMA has suggested to the EC to: (i) move to stage three for the average daily number of trades threshold used for the quarterly liquidity assessment of bonds; (ii) move to stage three for the pre-trade size specific to the instrument threshold for bonds; and (iii) not to move to stage two for the pre-trade size specific to the instrument threshold for the other non-equity instruments – ESMA considered that the level of completeness and the quality of the data were still insufficient to perform the annual transparency calculations in 2020 for a number of instrument classes and therefore it was considered premature to move to the next stage. The proposals to move to stage three are expected to improve the currently limited pre- and post-trade transparency available to market participants in the bond market. In order for the move to stage three to take effect, the EC has to endorse the amended RTS – following such endorsement, they are then subject to a non-objection procedure by the EP and the Council of the EU.

Date of publication: 28/07/2021

ESMA: Results of the 2020 Common Supervisory Action (CSA) on MiFID II suitability requirements

Status: Final

ESMA published the results of its 2020 CSA on MiFID II suitability requirements. ESMA states that the 2020 CSA has shown that firms overall comply with key elements of the suitability requirements that were already regulated under MiFID I, such as the understanding of products and clients and their processes and procedures to ensure the suitability of investments. However, shortcomings and areas of improvement have emerged about some of the new requirements introduced by MiFID II, notably the requirement to consider the cost and complexity of equivalent products, the costs and benefits of switching investments and suitability reports. ESMA, based on the results of the CSA, will update, in 2021/2022, its guidelines on suitability to address, where needed, some areas where a lack of convergence has emerged or/and to further clarify some of the new MiFID II requirements. It will also look to complement the guidelines with relevant examples of good and poor practices which emerged from the CSA. Furthermore, based on the results of the CSA, NCAs will undertake follow-up actions on individual cases, where needed, to ensure that regulatory breaches as well as other shortcomings or weaknesses identified are remedied.

Date of publication: 21/07/2021

ESMA: Draft guidelines on certain aspects of the MiFID II remuneration requirements

Status: Consultation

Deadline for the submission of comments: 19/10/2021

ESMA published a consultation paper on draft guidelines on certain aspects of the MiFID II remuneration requirements. ESMA notes that the purpose of the draft guidelines is to enhance clarity and foster convergence in the implementation of certain aspects of the new MiFID II remuneration requirements, replacing the existing ESMA guidelines on the same topic, issued in 2013. The consultation builds on the text of the 2013 guidelines, which have been substantially confirmed (as well as clarified and refined where necessary). In addition, the consultation takes into account new requirements under MiFID II and the results of supervisory activities conducted by national competent authorities on the topic. By pursuing the objective of ensuring a consistent and harmonised application of the requirements, the proposed guidelines will make sure that the objectives of MiFID II can be efficiently achieved. ESMA believes that the implementation of these guidelines should strengthen investor protection.

ESMA expects to publish the final report and guidelines by the end of Q1 2022.

Date of publication: 19/07/2021

ESMA: Report on sanctions and measures imposed under MiFID II in 2020

Status: Final

ESMA published a report providing an overview of the applicable legal framework and the sanctions and measures imposed by national competent authorities (NCAs) under the MiFID II framework in 2020. The data reported for 2020, and included in this Report, shows that NCAs' activity on imposing sanctions and measures under MiFID II has increased compared to the past two

years both in terms of sanctions and measures and pecuniary amounts. However, ESMA notes that there are still differences in the identification of sanctions and measures for the purpose of the reporting to ESMA, and the distinction among them. As a result, ESMA states that the figures in the report on the number of imposed sanctions and measures imposed should be read cautiously. The information reported to ESMA and included in this report will, amongst other things, inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the MiFID II framework and contribute to ESMA's goal to develop an EU outcome-focused supervisory and enforcement culture.

Date of publication: 19/07/2021

ESMA: Updated Q&As on MiFIR data reporting

Status: Final

ESMA updated its Q&As on MiFIR data reporting. ESMA has amended question 6 in respect of the legal entity identifier of the issuer. Amongst other amendments to the question, an additional sub-paragraph (b) has been added, addressing if in case of a financial instrument issued by an umbrella fund that is an alternative investment fund or an undertaking for the collective investment in transferable securities, which LEI code should be reported in the field 5 (issuer or operator of the trading venue identifier) of regulatory technical standard (RTS) 23 and related RTS, as well as implementing technical standard under Article 4 of the Market Abuse Regulation (MAR).

Date of publication: 19/07/2021

EC: Final Delegated Regulation specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level under MiFID II

Status: Final

The EC published the final version of the Delegated Regulation, supplementing MiFID II and repealing Delegated Regulation (EU) 2017/592, specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level. The EC explains that the Ancillary Activity Exemption has been amended and therefore this Delegated Regulation deletes the Overall Market Size Test of Article 2 of Delegated Regulation 2017/592 and introduces the new De-Minimis Threshold Test. The amended Ancillary Activity Exemption does not change the established calculation methodology of the Trading Test and Capital Employed Test. The only change to these two tests is the level of the corresponding threshold as set out in Directive (EU) 2021/338. The EC explains that this Delegated Regulation continues to apply the established calculation methodologies and principles of the Delegated Regulation 2017/592. These are already implemented by non-financial firms and accordingly supervised by financial regulators. The EC explain that this guarantees an efficient transition to the new Ancillary Activity Exemption regime and avoids additional implementation efforts by non-financial firms and national competent authorities. In order to address the legal uncertainty that would arise for those non-financial groups that do not have a complete and representative set of data covering their main and ancillary activities, a calculation period of three years is also maintained from Delegated Regulation 2017/592.

This Regulation shall enter into force on the 20th day following that of its publication in the OJ.

Date of publication: 15/07/2021

ESMA: Statement on supervisory approach on the MiFIR open access provisions for ETDs

Status: Final

ESMA issued a statement with regards to its supervisory approach on the MiFIR open access provisions for exchange traded derivatives (ETDs). ESMA explains that a number of national competent authorities (NCAs) had, under Article 54(2), temporarily exempted trading venues and CCPs from the MiFIR access provisions for ETDs, which expired on 3 July 2021. ESMA states that the Council and the EP have indicated support for an extension to 3 July 2023, in the form of a draft amendment as part of the Proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology.

Date of publication: 13/07/2021

ESMA: Warning firms and investors about risks arising from payment for order flow

Status: Final

ESMA issued a statement to remind firms that the receipt of payment for order flow (PFOF) touches upon a number of key MiFID II obligations aimed at ensuring that they act in their clients' best interest when executing their orders. In light of the serious investor protection concerns raised by PFOF and the multiple requirements applying to it, ESMA states that it is in most cases unlikely that the receipt of PFOF by firms from third parties would be compatible with MiFID II and its delegated acts. PFOF is the practice of brokers receiving payments from third parties for directing client order flow to them as execution venues. ESMA states that the receipt of PFOF from third parties by a firm executing client orders causes a clear conflict of interest between the firm and its clients because it incentivises the firm to choose the third party offering the highest payment, rather than the best possible outcome for its clients. ESMA states that PFOF received from third parties when executing client orders constitutes an inducement for the purposes of MiFID II. It highlights that firms receiving PFOF when executing client orders must comply with the quality enhancement and best interest requirements and clearly disclose the existence, nature and amount of PFOF to the client. ESMA also reminds "zero-commission brokers" that as their clients will always incur costs (e.g. implicit costs and third party payments received by the firm), the marketing of the service as "cost-free", will infringe the firm's compliance with the MiFID requirements and it could incentivise retail investors' gaming or speculative behaviour due to the incorrect perception that trading is free. ESMA requests National Competent Authorities (NCAs), especially in those Member States in which PFOF has been observed, to prioritise this topic in their supervisory activities for 2021 or early 2022.

Date of publication: 13/07/2021

ESMA: Review of the RTS on transparency requirements under MiFIR

Status: Consultation

Deadline for the submission of comments: 01/10/2021

ESMA began consulting on its review of the regulatory technical standards (RTS) on equity and non-equity transparency requirements under MiFIR. Given the parallel work of the EC on reviewing MiFIR, the review is limited in scope and focuses on technical issues and topics that do not require amendments to the Level 1 text, including: (i) providing more clarity on non-price forming transactions and the reporting of such transactions which will help obtain a better picture of the actual split between trading activity executed on trading venues and OTC trading; (ii) a recalibration of the regime for commodity derivatives, ensuring better tailored transparency requirements for this class of derivatives; (iii) providing further clarity on the reporting fields for post-trade transparency and the reporting of reference data with the overall objective of improving the quality of post-trade transparency data; (iv) providing clarification on the pre-trade transparency requirements for new types of trading systems; and (v) increasing the pre- and post-trade large in scale thresholds for the trading of exchange traded funds (ETFs) to achieve a more meaningful level of transparency in the ETF market. The proposals reflect the findings and recommendations of various MiFID review reports published by ESMA in 2019 and 2020 as well as the feedback provided by stakeholders on necessary amendments to the two RTS over the last years.

ESMA aims to publish a final report and submit draft RTS to the EC for adoption in Q1 2022.

Date of publication: 09/07/2021

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

(i) EU

EC: Consultation on proposed Regulation to extend exemption from KID requirement under PRIIPs Regulation

Status: Consultation

Deadline for the submission of comments: 09/09/2021

The EC began consulting on a draft Regulation amending the PRIIPs Regulation to provide for an extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, UCITS and non-UCITS. The EC explains that the PRIIPs Regulation requires PRIIPs manufacturers to comply with a uniform set of product disclosure

requirements and provide retail investors with a key information document (KID) on each PRIIP they offer. The PRIIPs Regulation provides for a temporary exemption from the requirement to provide retail investors with a KID for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS until 31 December 2021. The ESAs are currently in the process of developing regulatory technical standards (RTS) specifying the presentation and the content of the KID, its standard format, the methodology for presenting risk and reward and calculating costs, the conditions and minimum frequency for reviewing the information in the KID and the conditions on providing the KID to retail investors. In order to give the time needed to complete the legislative procedure of the RTS, allow their implementation and to reduce legal uncertainty, the EC proposes in the draft Regulation to extend the transitional arrangement to 30 June 2022.

Date of publication: 15/07/2021

3.7 Prospectus regulation

(i) EU

ESMA: Update on Prospectus Q&A

Status: Final

On 16 July, ESMA published an updated version of its Q&As on the Prospectus Regulation. ESMA has added five new Q&As. Firstly, two new Q&As have been added on updating the information in a tripartite prospectus after a registration document (RD) or universal registration document (URD) has expired, specifically: (i) if it is possible to update the RD information in a tripartite prospectus after the RD or URD has expired; and (ii) how an issuer should include information from a new RD or URD in an existing tripartite prospectus. Secondly, a new Q&A has been added on the application of Article 1(6b) (reverse acquisition), specifically asking whether if a securities issuance leads to a reverse acquisition, whether a prospectus should be produced when the listed issuer is an empty shell and not a business. Thirdly, ESMA has addressed the application of Article 3(2) and if it is possible to make an offer of securities to the public in more than one member state using the exemption in Article 3(2). Finally, ESMA has clarified the application of Level 3 guidance to EU Recovery Prospectuses, in regard to whether it applies to the EU Recovery Prospectus.

On 27 July, ESMA published another update. The Q&As have been updated with answers provided by the EC in accordance with Article 16b(5) of the ESMA Regulation, in respect of: (i) public offer – offer of securities to the public; (ii) choice of the home member state; (iii) interim financial information; (iv) financial information – profit estimate; (v) restrictions on the transferability of shares; (vi) secondary issuance prospectus for issuers listed on SME Growth markets; (vii) offers of warrants; and (viii) redeemable debt securities.

Date of publication: 27/07/2021

3.8 Securities financing transactions

(i) International

BCBS: Final technical amendments for minimum haircut floors for securities financing transactions

Status: Final

BCBS finalised two technical amendments to the standard on minimum haircut floors for securities financing transactions (SFTs). The first technical amendment addresses an interpretative issue relating to collateral upgrade transactions and the second corrects a misstatement of the formula used to calculate haircut floors for netting sets of SFTs. The amendments were published for consultation in January and have been finalised as originally proposed.

BCBS expects its members to implement its standards on minimum haircut floors for SFTs by 1 January 2023.

Date of publication: 01/07/2021

3.9 Short selling

(i) EU

EC: Delegated Act on the adjustment of the threshold for the notification of significant net short positions in shares

Status: Consultation

Deadline for the submission of comments: 12/08/2021

The EC began consulting on a draft Delegated Regulation amending the Short Selling Regulation (SSR) as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares. The explanatory memorandum explains that on 16 March 2020, ESMA made use of its emergency intervention powers under Article 28 of the SSR and issued a decision to lower the notification threshold for net short positions in shares admitted to trading on a regulated market from 0.2% to 0.1% for a period of three months. ESMA subsequently renewed that decision in June, September and December 2020. The events following the Covid-19 outbreak and the increased visibility obtained by competent authorities on volumes of net short positions have convinced ESMA that the notification threshold should be established at 0.1% on a permanent basis. The explanatory memorandum also sets out ESMA's reasoning, which it provided to the EC in an opinion in May.

Date of publication: 15/07/2021

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Report to the EC on the provision of banking-type ancillary services under CSDR

Status: Final

ESMA published a report (dated 8 July 2021) to the EC on the provision of banking-type ancillary services under CSDR. ESMA explains that in the context of the targeted review of CSDR launched by the EC at the end of 2020, it was asked to provide an assessment of the conditions under which banking-type ancillary services can be provided under CSDR. To facilitate the assessment, ESMA has addressed a survey on banking-type ancillary services in February 2021 to authorities and relevant market participants. The purpose of the report is to present the findings of this survey and ESMA's proposals on this issue for the CSDR Targeted Review. In regard to the authorisation process to provide banking-type ancillary services, ESMA's main conclusions are that: (i) only five authorisation procedures have been launched and four of them have been completed so far, and at this stage no other central securities depository (CSD) intends to apply; and (ii) no major shortfall was detected, and the main concerns were raised by consulted authorities, in particular as to the one-month consultation period currently foreseen in CSDR, which appears too short – thus, ESMA suggests extending it to three months, in line with the main CSDR authorisation process. In regard to the conditions under which banking-type ancillary services can be provided, ESMA's main conclusion is that the main concern appears to be the strictness of the conditions governing the access by nonbanking CSDs to banking services, given that no designated credit institution has been created and that the threshold applying to the provision of such services by regular commercial banks does not allow to satisfy certain CSDs' needs in commercial bank money, in particular to be able to offer settlement in foreign currencies. ESMA therefore makes several proposals for consideration in the context of the CSDR Targeted Review: (a) allowing banking CSDs to provide banking-type ancillary services to non-banking CSDs; (b) modifying the approach to access commercial banks; and (c) imposing less stringent requirements to non-banking CSDs offering only settlement in foreign currencies as banking-type services.

As the next step, the Commission is expected to prepare a legislative proposal by the end of 2021.

Date of publication: 16/07/2021

EC: Adopted report on CSDR review

Status: Final

The EC published a report to the EP and the Council following a review of the EU rules on central securities depositories (CSDs) under Article 75 of the CSDR. Article 81(2c) of the ESMA Regulation also requires the EC to assess the potential supervision of third-country CSDs by ESMA. In broad terms, the EC has found that the CSDR is achieving its original objectives to enhance the efficiency of settlement in the EU and the soundness of CSDs. In some areas, the introduction of significant changes to the CSDR would be premature considering the relatively recent application of requirements. Nevertheless, stakeholders have expressed concerns on the implementation of specific rules that already apply (i.e. on cross-border provision of services, access to commercial bank money, framework for third-country CSDs). The Final Report of the High Level Forum on the Capital Markets Union also recommended that the EC conduct a targeted review of the CSDR to strengthen the CSD passport and improve supervisory convergence among national competent authorities, to enhance the cross-border provision of settlement services in the EU, foster competition and generate cost savings. Concerns were also raised about the proportionality of the settlement discipline regime and its impact on financial stability. The EC notes that pressure put on markets by the Covid-19 pandemic seems to shed light on some of those concerns. This report summarises the main areas under review to ensure fulfilment of the objectives of the CSDR in a more proportionate, efficient and effective manner. Stakeholders' feedback does not point to a need to make fundamental changes to most core requirements of CSDR, which are integral to ensuring transparency and mitigating systemic risks in settlement. Nevertheless, based on the input received, further consideration is needed for the issues identified in this report. As announced in the 2020 CMU Action Plan and the 2021 Commission Work Programme, the EC will consider proposing a REFIT legislative review of CSDR, subject to an impact assessment.

Date of publication: 01/07/2021

4.2 EMIR

(i) EU

ESMA: Third annual report on supervisory measures and penalties under Articles 4, 9, 10 and 11 of EMIR

Status: Final

ESMA published its third annual report on the penalties imposed by competent authorities, including supervisory measures, fines and periodic penalty payments, covering the period from January 2019 to December 2020. The report highlights among other aspects: (i) an increase in the use of EMIR data for supervisory purposes; (ii) greater clarity on which counterparties are subject to the clearing obligation thanks to the expanded clearing threshold notification mechanism introduced under EMIR Refit; (iii) some challenges in looking at group activities; (iv) a need for more supervisory measures regarding third-country entities with a link to the EU; and (v) the benefits of exchanges among national competent authorities, facilitated by ESMA with initiatives such as workshops to discuss supervisory cases. In addition, the report also includes reference to enforcement cases, which for the period covered, resulted in the imposition of sanctions in France, Italy, Liechtenstein and Luxembourg.

Date of publication: 15/07/2021

ESMA: Consultation on draft Guidelines for derivatives reporting under EMIR

Status: Consultation

Deadline for the submission of comments: 30/09/2021

ESMA began consulting on draft guidelines for reporting trades in derivatives under Article 9 of EMIR and on obligations for trade repositories (TRs) under Articles 78 and 81. The consultation includes draft guidelines on a range of topics related to reporting, data quality and data access under EMIR Refit. ESMA has also published validation rules that clarify dependencies between data fields, as well as their applicability in the different use cases. The consultation focuses on: (i) how reports should be constructed and in what circumstances reports should be made; (ii) reporting logic, including the use of action and event types; (iii) reporting in the case of delegation as well as under provisions on allocation of responsibility for reporting; (iv) the population of specific sections of fields; and (v) the correct population of fields for different reporting scenarios and different products. The draft guidelines clarify important aspects of the procedures to be implemented by reporting entities and TRs to enhance data quality. The consultation also clarifies certain operational aspects concerning data access.

ESMA expects to publish a final report in Q4 2021/Q1 2022 (subject to the adoption of the draft technical standards on reporting by the EC).

Date of publication: 13/07/2021

ESMA: Methodology for assessing third-country CCPS systemic importance

Status: Final

ESMA published its methodology for assessing whether a third-country central counterparty (TC-CCP) or some of its clearing services are of such substantial systemic importance that the TC-CCP should not be recognised to provide certain clearing services or activities in the EU. The methodology includes: (i) an extended tiering methodology; (ii) reflections to identify how compliance with the conditions for TC-CCPs recognition would not sufficiently address EU financial stability risks; and (iii) a set of elements to take into consideration in the analysis of costs, benefits, and consequences, including a comprehensive analysis of risks related to both recognition and non-recognition.

Date of publication: 13/07/2021

ESMA: Technical advice to EC on simplification and harmonisation of fees to TRs under EMIR and SFTR

Status: Final

ESMA published a report providing technical advice to the EC to review the Commission Delegated Regulations on fees for trade repositories (TRs) under EMIR and SFTR.

Date of publication: 13/07/2021

ESMA: Review of the RTS specifying classes of derivatives subject to the clearing (CO) and trading obligations (DTO)

Status: Consultation

Deadline for the submission of comments: 02/09/2021

ESMA began consulting on the review of the regulatory technical standards (RTS) specifying the classes of derivatives subject to the clearing obligation and trading obligations (DTO) under Article 5(2) of EMIR and Article 32 of MiFIR, respectively. The draft RTS relate to the benchmark transition away from EONIA and LIBOR and on to new Risk-Free Rates such as €STR, SONIA and SOFR, in the OTC interest rate derivatives market. There are currently three Commission Delegated Regulations on the clearing obligation and one on the DTO, which mandate a range of interest rate and credit derivative classes to be cleared, and for a subset of these, to also be traded on venue. In view of this transition, there is a need to review the scope of the clearing obligation and the DTO for the classes and currencies impacted by these changes, namely interest rate derivative classes in EUR, GBP, JPY and USD.

ESMA expects to finalise the draft RTS in the autumn, to then be submitted to the EC for endorsement.

Date of publication: 09/07/2021

EU equivalence of risk mitigation rules under EMIR in new jurisdictions

Status: Published in the OJ

Date of entry into force: 26/07/2021

Six equivalence decisions relating to EMIR risk mitigation requirements were published in the OJ. Specifically, the decisions recognise the legal, supervisory and enforcement arrangements as equivalent to certain requirements of Article 11 of EMIR, in: (i) the USA – Commission Implementing Decision (EU) 2021/1108; (ii) Brazil – Implementing Decision (EU) 2021/1103; (iii) Canada – Implementing Decision (EU) 2021/1104; (iv) Singapore – Implementing Decision (EU) 2021/1105; (v) Australia – Implementing Decision (EU) 2021/1106; and (vi) Hong Kong – Implementing Decision (EU) 2021/1107.

- [Decision 2021/1103](#)
- [Decision 2021/1104](#)
- [Decision 2021/1105](#)
- [Decision 2021/1106](#)
- [Decision 2021/1107](#)
- [Decision 2021/1108](#)

Date of publication: 06/07/2021

ESMA: Official translations of Guidelines on written agreements between members of CCP colleges

Status: Final

Date of application: 01/07/2021

ESMA published the official translations of its guidelines on written agreements between members of CCP colleges. These guidelines are based on Article 16(1) of the ESMA Regulation and replace the guidelines adopted by ESMA on 4 June 2013. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform and consistent application of Articles 18 and 19 of EMIR and of the Delegated Regulation on colleges. In particular, they aim to propose a standard written agreement to ensure the timely establishment and smooth functioning of a CCP college. The guidelines apply from 1 July 2021. NCAs must make every effort to comply with the guidelines by incorporating them into the written agreements for establishment and functioning of a CCP college. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, NCAs must notify ESMA whether they comply, or intend to comply, with them. Reasons must be given for non-compliance.

The Guidelines are relevant for CCPs only. Also, the focus of the Guidelines is on cooperation between regulatory bodies, and thus there is no direct need for implementation.

Date of publication: 01/07/2021

5. Anti-money laundering

(i) Germany

BaFin: Repeal of circulars on money laundering prevention

Status: Final

BaFin announced the repeal of several circulars on money laundering prevention. The repeal serves the purpose of clarification, as many circulars have become obsolete in the meantime. This concerns, for example, circulars on outdated FATF statements or information reports, circulars whose content is otherwise regulated by a later circular or by interpretation and application notes, and circulars whose regulatory content can now be found in the law in the course of amendments to the legal requirements concerning the prevention of money laundering and terrorist financing.

A list of the repealed circulars can be found [here](#).

Date of publication: 30/07/2021

(ii) EU

EC: Consultations on guidance on existing rules in respect of public-private partnerships (PPPs) preventing and fighting money laundering (ML) and terrorist financing (TF)

Status: Consultation

Deadline for the submission of comments: 02/11/2021

The EC published a consultation document on its proposed guidance on the rules applicable to the use of PPPs in the framework of preventing and fighting ML and TF. The consultation aims to obtain information with regard to, for example, the: (i) types of public-private partnerships currently operating in the EU member states in the area of preventing and fighting money laundering and terrorist financing; (ii) public authorities (such as financial intelligence units, law enforcement, and supervisory authorities) and private sector entities which participate; (iii) types of information exchanged within those partnerships and the measures put in place to guarantee the preservation of fundamental rights; (iv) mechanisms put in place to measure the effectiveness and success of those partnerships (such as key performance indicators or any other performance metrics); (v) impacts and added value of the various public-private partnerships in the fight against money laundering and the financing of terrorism; (vi) impacts on fundamental rights, including the presumption of innocence, as well as on the due process of criminal proceedings; (vii) good practices in the development and operation of public-private partnerships; and (viii) potential obstacles to the exchange of information and challenges faced by the authorities and entities participating in PPPs in the area of preventing and fighting money laundering and terrorist financing and what they pertain to.

The EC will issue best practices in Q4.

Date of publication: 27/07/2021

EC: Proposals to strengthen the EU's AML and CFT rules

Status: Consultation

Deadline for the submission of comments: 17/09/2021

The EC published a package of legislative proposals to strengthen the EU's AML and CFT rules. The package consists of four legislative proposals: (i) Regulation establishing a new EU AML/CFT Authority – this will be the central authority, which will coordinate national supervisors and enhance cooperation among financial intelligence units; (ii) Regulation on AML/CFT, containing directly-applicable rules, including in the areas of Customer Due Diligence and Beneficial Ownership; (iii) the sixth Directive on AML/CFT (AMLD6), replacing the existing AMLD4 (as amended by MLD5), containing provisions that will be transposed into national law, such as rules on national supervisors and Financial Intelligence Units in Member States; and (iv) revision of the 2015 Regulation on Transfers of Funds to trace transfers of crypto-assets (Regulation 2015/847/EU). The EC states that the aim of this package is to improve the detection of suspicious transactions and activities, and to close loopholes used by criminals to launder illicit proceeds or finance terrorist activities through the financial system. Furthermore, the EC

notes that the proposals enhance the existing EU framework by taking into account new and emerging challenges linked to technological innovation. These include virtual currencies, more integrated financial flows in the Single Market and the global nature of terrorist organisations. The proposals will help to create a much more consistent framework to ease compliance for operators subject to AML/CFT rules, especially for those active cross-border. The legislative package will now be discussed by the EP and the Council of the EU. The EC looks forward to a speedy legislative process. The future AML/CFT Authority should be operational in 2024 and will start its work of direct supervision slightly later, once the Directive has been transposed and the new regulatory framework starts to apply.

The EC has also published: (a) a [FAQs](#); (b) an [impact assessment](#); and (c) a [factsheet](#).

- [Proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations \(EU\) No 1093/2010, \(EU\) 1094/2010, \(EU\) 1095/2010](#)
- [Proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#)
- [Proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive \(EU\) 2015/849](#)
- [Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets \(recast\)](#)

Date of publication: 20/07/2021

EC: Proposal for a Directive amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point

Status: Adopted by the EC

The EC adopted a legislative proposal amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through the single access point. The EC explains that pursuant to Article 32a of AMLD5, member states are to put in place centralised automated mechanisms, such as central registers or central electronic data retrieval systems, to allow the identification of any natural or legal persons holding or controlling payment accounts, bank accounts and safe-deposit boxes. Directive (EU) 2019/1153 already at present requires member states to designate authorities competent for the prevention, detection, investigation or prosecution of criminal offences in order for them to access and search the centralised automated mechanisms. It also requires member states to include asset recovery offices among their designated competent authorities and enables member states to designate tax authorities and anti-corruption agencies as competent authorities to the extent that these are competent for the prevention, detection, investigation or prosecution of criminal offences under national law. The deadline for transposing the Directive is 1 August. Furthermore, pursuant to the EC's proposal for a new anti-money laundering directive, member states shall ensure that the information from centralised bank account registries is available through the bank account registers (BAR) single access point to be developed and operated by the EC – the new anti-money laundering directive will provide access to the BAR single access point only to financial intelligence units (FIUs), the national body which receives suspicious transaction reports from obliged entities and forwards them, as appropriate, to criminal investigation authorities. However, the EC states that in the interest of combatting serious crime and, in particular, carrying out effective financial investigations, authorities competent for the prevention, detection, investigation or prosecution of criminal offences also need to have access to the BAR single access point allowing them to identify, analyse and interpret the financial information relevant for criminal proceedings. Thus, the proposal seeks to extend access to the BAR single access point, as introduced by the new anti-money laundering directive, to the authorities competent for the prevention, detection, investigation or prosecution of criminal offences that are designated as competent authorities pursuant to Article 3(1) of Directive (EU) 2019/1153.

Date of publication: 20/07/2021

(iii) International

FATF: Second 12-month review of its standards on virtual assets and virtual asset service providers (VASPs)

Status: Final

The FATF published a report on the second 12 month review of its standards on virtual assets and VASPs. The report notes that since the FATF's first 12-month review, there has been clear progress in the implementation of the revised FATF Standards by the public sector. However, there is not yet sufficient implementation of the revised FATF Standards to enable a global anti-money laundering/counter-terrorist financing regime for virtual assets and VASPs. Similarly, while there has been progress, there has not yet been sufficient advancement in the global implementation of the travel rule (the requirement that VASPs and FIs ensure that originators and beneficiaries of virtual asset transfers are identifiable and are not anonymous) or the development of associated technological solutions. Moreover, the report finds strong and rapid growth in the virtual asset sector since the FATF revised its Standards. The report also includes the first market metrics on peer-to-peer transactions of virtual assets, using data from seven blockchain analytic companies. As the FATF found in its first 12-month review, there is no need to amend the revised FATF Standards at this point in time, except for technical amendments to apply the FATF's recent changes on proliferation financing to virtual assets and VASPs. Going forward, the FATF should prioritise promoting rapid and effective implementation of the revised FATF Standards by jurisdictions – all jurisdictions need to implement the revised FATF Standards, including travel rule requirements, as quickly as possible. Therefore, the report recommends that the FATF should: (i) focus on the effective implementation of the current FATF Standards on virtual assets and VASPs across the Global Network. Members of the FATF and its broader Global Network should implement the revised FATF Standards (R.15/INR.15) as a matter of priority. The FATF should publish its revised Guidance on virtual assets and VASPs for the public and private sectors by November 2021. The Virtual Assets Contact Group should engage with the private sector after the publication of the revised FATF Guidance and report to the FATF's Policy Development Group on progress in implementation by June 2022; (ii) accelerate implementation of the travel rule by the private sector as a priority. To facilitate this, the FATF members should implement the travel rule into their domestic legislation as soon as possible, including consideration of a staged approach to implementation as appropriate; and (iii) monitor the virtual asset and VASP sector for any material changes or developments that necessitate further revision or clarification of the FATF Standards considering the fast changing business and technological environment of virtual assets, including through its revised Guidance project.

Date of publication: 05/07/2021

FATF: Report on opportunities and challenges of new technologies for AML/CFT

Status: Final

FATF published a report on the opportunities and challenges of new technologies for AML/CFT to raise awareness of relevant progress in innovation and specific digital solutions. FATF: (i) assessed the persisting challenges and obstacles to new technologies implementation and how to mitigate them. This included the review and analysis of RegTech and SupTech, both of which can improve the effectiveness of FATF Standards; and (ii) identifies emerging and available technology-based solutions. The report highlights the necessary conditions, policies and practices that need to be in place to successfully use these technologies to improve the efficiency and effectiveness of AML/CFT. FATF notes that when used responsibly and proportionally, innovative AML/CFT technologies can help identify risks and focus compliance efforts on existing and emerging challenges, but manual review and human input remains very important. FATF also published a stocktake on data pooling, collaborative analytics and data protection. This stocktake: (a) examines commercially available or emerging technologies that facilitate advanced AML/CFT analytics within regulated entities or collaborative analytics between financial institutions, while respecting data privacy and protection; (b) analyses the intended objectives and drivers for the use of these new technologies and identifies policy considerations and potential solutions raised by respondents to FATF's questionnaire and experts when considering or deploying such technologies; and (c) acknowledges that AML/CFT and data privacy and protection are both significant public interests that serve important objectives, which are neither in opposition nor inherently mutually exclusive. The two reports' findings led to FATF members' adoption of a set of suggested actions for government authorities to advance the responsible development and use of new technologies for AML/CFT: (1) create an enabling environment by both government and the private sector for responsible innovation to enhance AML/CFT effectiveness; (2) ensure privacy and data protection when implementing new technologies; (3) promote AML/CFT innovation which supports financial inclusion by design; (4) develop and communicate policies and regulatory approaches to innovation that are flexible, technology-neutral, outcomes-based and in line with the risk-based approach; (5) exercise informed oversight; and (6) promote and facilitate cooperation.

Date of publication: 01/07/2021

6. Payments

6.1 Payment services/E-money

(i) EU

EBA: Clarifications to the sixth set of issues raised by its industry working group on Application Programming Interfaces under the Payment Services Directive (PSD2)

Status: Final

The EBA published clarifications to a sixth set of issues that had been raised by participants of its Working Group (WG) on Application Programming Interfaces (APIs) under the PSD2. The clarifications respond to issues raised on (i) authentication with electronic signatures, (ii) biometrics and authentication on mobile apps, (iii) preventing social engineering fraud, (iv) ability of payment initiation service providers to refuse a payer's request to initiate a payment transaction, and (v) complexity in the authentication process.

On 11 March, 1 April, 26 April, 26 July and 14 August 2019, the EBA published clarifications to the first five sets of issues that had been raised by the WG. Following an extended hiatus as a result of the COVID-19 pandemic, the WG met again in mid-June 2021, and this publication is the response to a new, sixth set of issues that has been raised by the group. The EBA announced that it will provide further clarifications in the coming months.

Date of publication: 30/07/2021

EBA: Draft Guidelines on the limited network exclusion under the revised Payment Services Directive

Status: Consultation

Deadline for the submission of comments: 15/10/2021

The EBA launched a consultation on draft guidelines providing clarity on the application of the limited network exclusion requirements, which certain payment instruments might benefit from, as laid down in Article 3(k) of PSD2. Given the significant inconsistencies the EBA has identified on how this exclusion is applied across the EU, the proposed guidelines aim at clarifying specific aspects of its application. In particular, the draft guidelines propose requirements, and where relevant, criteria and indicators, aimed at ensuring that excluded payment instruments are used in a limited way, thus reducing potential risks that may arise for the users of such instruments. The topics addressed in the draft guidelines include: (i) how a network of service providers or a range of goods and services should be assessed in order to qualify as 'limited'; (ii) the use of payment instruments within limited networks; (iii) the provision of excluded services by regulated financial institutions; and (iv) the calculation of the thresholds set out in Article 37(2) of PSD2 and the submission of the related notifications to competent authorities.

The consultation runs until 15 October 2021. A public hearing will take place online on 8 September 2021.

Date of publication: 15/07/2021

CoEU: Regulation on cross-border payments in the EU

Status: Final

The Council of the EU published the text of the Regulation on cross-border payments in the EU, codifying and replacing the existing Regulation (EC) No 924/2009 on cross-border payments in the Community. The Council explained that Regulation (EC) No 924/2009 has been substantially amended several times and therefore codification is necessary in the interests of clarity and rationality.

This Regulation shall enter into force on the twentieth day following that of its publication in the OJ.

Date of publication: 14/07/2021

(ii) International

CPMI, BIS, IMF and World Bank: Joint report on Central bank digital currencies (CBDCs) for cross-border payments

Status: Final

The Committee on Payments and Market Infrastructures (CPMI), the BIS Innovation Hub, the International Monetary Fund (IMF) and the World Bank jointly published a report for the G20 on the use of CBDCs for cross-border payments. The report explains that domestic issuance of CBDC will be subject to considerable further economic and practical examination before exploration of cross-border use will gather pace. Furthermore, enhancements in other areas of the cross-border payments programme, such as aligning regulatory, supervisory and oversight frameworks for cross-border payments, AML/CFT consistency, payment vs payment adoption and payment system access, will be critical for cross-border CBDC use. The report concludes that CBDCs have the potential to enhance the efficiency of cross-border payments, as long as their design follows the “Hippocratic Oath for CBDC design” and its premise to “do no harm”. The coordination of national CBDC designs could lead to more efficient cross-currency and cross-border payments, as cross-border CBDCs could offer the opportunity to start with a “clean slate”, and address the frictions inherent in current cross-border payment systems and arrangements from the outset. The enhancements could be made by offering secure settlement, reducing costly and lengthy intermediation chains throughout the payment process, and eliminating operating hour mismatches by being accessible 24/7. The report calls for further exploration on CBDC design choices and their macro-financial implications, in order to achieve the potential benefits for public welfare while preserving financial stability.

Date of publication: 09/07/2021

6.2 Payment and settlement systems

(i) EU

EPC: New version of Clarification Paper on SEPA Credit Transfer and SEPA Instant Credit Transfer rulebooks

Status: Final

The EPC published a new version of Clarification Paper on the SEPA Credit Transfer and SEPA Instant Credit Transfer rulebooks. The objective of this new document is to offer information and recommendations to scheme participants. Among other things, the new version includes clarifications about changes to the SCT inquiry process that is entering into force in November 2021.

Date of publication: 06/07/2021

7. Institutional supervisory framework

(i) Germany

Regulation amending the Regulation on Reporting Infringements to the Federal Financial Supervisory Authority (Verordnung zur Änderung der BaFin-Verstoßmeldeverordnung)

Status: Published in the Federal Gazette

Date of entry into force: 31/07/2021

The Regulation amending the Regulation on Reporting Infringements to the Federal Financial Supervisory Authority has been published in the German Federal Gazette. The revision of the Regulation aims at informing whistleblowers regularly about the status of the processing of their submission, as far as this is possible under consideration of the special confidentiality obligations of BaFin. This is intended to encourage whistleblowers and motivate them to make further submissions or more detailed statements.

In addition, the targeted cooperation between BaFin and other authorities is to be strengthened. For this purpose, corresponding regulations regarding the transfer of data and cooperation with other authorities will be created.

Date of publication: 30/07/2021

BaFin: Updated Organisational Statute for the Federal Financial Supervisory Authority (Organisationsstatut für die Bundesanstalt für Finanzdienstleistungsaufsicht (OsBaFin))

Status: Final

BaFin published the updated Organisational Statute for the Federal Financial Supervisory Authority (OsBaFin). The updated also effects the Rules of Procedure of the Directorate of the Federal Financial Supervisory Authority (*Geschäftsordnung des Direktoriums der Bundesanstalt für Finanzdienstleistungsaufsicht – GoDirBaFin*).

The update does not require any implementation by financial institutions.

Date of publication: 01/07/2021

(ii) Eurozone

ECB: Speech on supervisory work priorities

Status: Final

The ECB published a speech by Andrea Enria, Chair of the Supervisory Board of the ECB on the ECB's supervisory priorities. Points of interest include: (i) as the Covid-19 crisis continues, the ECB's main priority is to ensure that banks are able to identify and manage any credit risks on the horizon at an early stage. While most banks are fully or broadly in line with the ECB's expectations, certain banks, including some that now have fairly low levels of credit risk, need to address significant gaps in their risk control frameworks, which are the most important safeguard against a significant deterioration in asset quality in the future. Mr Enria highlights some areas of potential concern in that some banks have started to reduce and some are taking on more risks by increasing their leveraged lending activities; (ii) the ECB plans to repeal their recommendation on dividends at the end of Q3 2021 and return to reviewing dividends and share buybacks as part of its normal supervisory process; (iii) the ECB is currently benchmarking banks' self-assessments against its supervisory expectations on climate-related and environmental risks. The ECB has already started to work on incorporating these risks into its SREP methodology. Although this year's findings will not be reflected in bank-specific capital requirements, the ECB may need to impose qualitative or quantitative requirements in some specific cases. A full supervisory review (as well as a specific stress test focusing on climate risk) will then follow in 2022; and (iv) Mr Enria points out that the new legislative cycle could provide an opportunity to review the treatment of European branches of third-country banking groups. While third-country banking groups should be free to choose to enter specific markets within the EU via branches or subsidiaries, greater harmonisation of the regulatory and supervisory framework, Mr Enria believes, is warranted.

Date of publication: 01/07/2021

8. Investment funds

8.1 Product regulation

(a) AIF

(i) Germany

BaFin: Application of ESMA Guidelines on Article 25 of the AIFMD

Status: Final

BaFin has announced that it will apply the [Guidelines](#) of the European Securities and Markets Authority (ESMA) on Article 25 of the AIFMD published on 23 June 2021.

The purpose of these guidelines is to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervisors and to ensure a common, consistent and coherent application of Article 25 of the AIFM Directive. The guidelines refer in particular to the assessment of systemic risk in relation to leveraged finance. ESMA intends them to ensure that competent authorities adopt a consistent approach when assessing whether the conditions for taking action in relation to leverage are met.

Date of publication: 22/07/2021

(ii) EU

ESMA: Report on penalties and measures imposed under the AIFMD in 2020

Status: Final

ESMA published two reports on penalties and measures imposed under the AIFMD and UCITS Directive, respectively, in 2020 (regarding the UCITS report, see below). In respect of both reports, ESMA notes that broadly, the data gathered under the sanction reports published so far keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low. ESMA states that work will continue in the future (including by issuing the annual iterations of these reports) to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Date of publication: 20/07/2021

ESMA: Updated AIFMD Q&A

Status: Final

ESMA published an updated version of its Q&As on the application of the AIFMD. New Q&As have been added to the ESMA guidelines on performance fees in UCITS and certain types of alternative investment funds relating to performance fee scenarios.

Date of publication: 16/07/2021

(b) UCITS**(i) EU****ESMA: Report on penalties and measures imposed under the UCITS Directive in 2020****Status: Final**

ESMA published two reports on penalties and measures imposed under the AIFMD and UCITS Directive, respectively, in 2020 (regarding the UCITS report, see above). In respect of both reports, ESMA notes that broadly, the data gathered under the sanction reports published so far keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low. ESMA states that work will continue in the future (including by issuing the annual iterations of these reports) to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Date of publication: 20/07/2021

ESMA: Updated Q&A on the application of the UCITS Directive**Status: Final**

ESMA published an updated version of its Q&As on the application of the UCITS Directive. New Q&As have been added on the ESMA guidelines on performance fees in UCITS and certain types of alternative investment funds relating to performance fee scenarios.

Date of publication: 16/07/2021

8.2 Prudential regulation

(a) Authorisation**(i) EU****ESMA: First report on national rules governing fund marketing****Status: Final**

ESMA published its first report on national rules on marketing requirements and marketing communications under the Regulation on cross-border distribution of collective investment undertakings. Article 8(2) of the Regulation requires that by 30 June 2021 and every second year thereafter, ESMA submit a report to the EP, the Council and the EC, which presents an overview of marketing requirements in all Member States and contains an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received from national competent authorities. Key findings include: (i) national laws, regulations and administrative provisions governing marketing requirements are usually based on the transposition of the AIFMD and the UCITS Directive, although NCAs' responses showed that some additional national requirements may be applicable; (ii) only a very limited number of NCAs carry out ex-ante or ex-post verification or marketing communications; and (iii) it is expected that greater harmonisation of the marketing requirements will be achieved after the transposition of the Directive on cross-border distribution of collective investment undertakings by 2 August 2021.

ESMA will submit a new iteration of the report in two years.

Date of publication: 01/07/2021

ESRB: MMFs issues note**Status: Final**

The ESRB published an issues note on money market funds (MMFs), which sets out the ESRB's analysis of systemic vulnerabilities in MMFs and preliminary policy considerations on how to reform MMFs. The ESRB explains that there is an

underlying tension between the two primary economic functions of MMFs: they offer on-demand liquidity to investors and provide short term funding to borrowers (mainly EU banks), but cannot dispose of their assets easily in all market conditions. This tension might become of systemic concern especially during market stress, as observed at the onset of the Covid-19 pandemic. In such circumstances, MMFs can face both higher redemption requests from investors and a lack of sufficient portfolio liquidity to meet this increased demand. The ESRB policy work will focus on those policy options that would address vulnerabilities within MMFs themselves, being mindful of wider work underway internationally. There are three key desired outcomes of this policy work: (i) to remove first-mover advantages for investors; (ii) not to limit the proposals to specific type of funds but to consider the vulnerabilities of the entire sector; and (iii) to ensure the resilience and functioning of MMFs without the need for central banks to step in during crisis. To inform the EC's review of the MMF Regulation, the ESRB will refine the policy options set out in this issues note, being mindful of wider work underway internationally. The ESRB will further analyse a range of issues, including the wider markets in which MMFs operate, the behaviour and expectations of investors in MMFs, as well as the structure of MMFs and the liquidity management tools available to them, with a view to adopting a Recommendation by the end of 2021.

Date of publication: 01/07/2021

9. Special rules for real estate financing and covered bonds

9.1 Covered bonds

(i) EU

BaFin: Draft of a regulation amending various Pfandbrief regulations (Entwurf einer Verordnung zur Änderung diverser pfandbriefrechtlicher Verordnungen)

Status: Consultation

Deadline for the submission of comments: 15/08/2021

BaFin published the first draft regulation amending various Pfandbrief regulations for consultation. The amendment regulation enacts a Pfandbrief Reporting Regulation (*Pfandbriefrechtliche Meldeverordnung – PfandMeldeV*) and amends the Pfandbrief Cash Value Regulation (*Pfandbrief-Barnwertverordnung*), the Cover Register Regulation (*Deckungsregisterverordnung*), the Regulation on the Determination of the Mortgage Lending Value (*Beleihungswertermittlungsverordnung*), the Regulation on the Determination of the Ship Lending Value (*Schiffsbeleihungswertermittlungsverordnung*), the Regulation on the Determination of the Aircraft Lending Value (*Flugzeugbeleihungswertermittlungsverordnung*) and the Refinancing Register Regulation (*Refinanzierungsregisterverordnung*).

We can provide you with Delta Views/markups (*Lesefassung*) of amendments of affected acts upon request. More generally, we can provide Delta Views of all existing key regulatory acts shortly after the publication of the draft versions on our RegGateway. Please ask for access.

Date of publication: 02/07/2021

10. Special topics

10.1 Covid-19

(a) Prudential regulation

(i) Eurozone

ECB: Recommendation repealing Recommendation ECB/2020/62 on dividend distributions during the COVID-19 pandemic

Status: Published in the OJ

An ECB Recommendation on credit institutions paying out dividends or performing share buybacks aimed at remunerating shareholders, was published in the OJ. On 27 March 2021, the ECB adopted Recommendation ECB/2020/19 which recommended that at least until 1 October 2020 no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by credit institutions and that credit institutions refrain from share buy-backs aimed at remunerating shareholders. On 27 July 2021, the ECB prolonged this recommendation until 1 January 2021 by adopting Recommendation ECB/2020/35. The ECB explains that even with the improvement in macroeconomic conditions and the reduction of economic uncertainty due to the Covid-19 pandemic, the level of uncertainty remained elevated at the end of 2020 with a continued impact on banks' ability to forecast their medium-term capital needs – in view of this persisting uncertainty, the ECB adopted Recommendation ECB/2020/62 repealing Recommendation ECB/2020/35 but recommending extreme prudence when credit institutions decide on or pay out dividends or perform share buybacks aimed at remunerating shareholders. The ECB considers that the reasons underpinning Recommendation ECB/2020/62 are no longer present as the reduced economic uncertainty allows the thorough supervisory assessment of the prudence of banks' plans to distribute dividends and conduct share buybacks on an individual basis with a careful forward-looking assessment of capital plans in the context of the normal supervisory cycle. Thus, the new Recommendation that has been published in the OJ will repeal Recommendation ECB/2020/62 from 30 September.

Date of publication: 29/07/2021

ECB: Updated FAQs on ECB supervisory measures in reaction to the coronavirus

Status: Final

The ECB published another update on its FAQs on supervisory measures in reaction to the Covid-19 coronavirus. pandemic. The FAQs will be further updated depending on developments.

Date of publication: 23/07/2021

ECB: Decision to extend temporary exclusion of certain exposures to central banks from the total exposure measure published in OJ

Status: Published in the OJ

The ECB Decision on the temporary exclusion of certain exposures to central banks from the total exposure measure in view of the Covid-19 pandemic and repealing Decision (EU) 2020/1306, was published in the OJ. In view of the Covid-19 pandemic, the ECB determined on 16 September 2020 that exceptional circumstances exist that warrant the exclusion of the central bank exposures listed in points (a) and (b) of Article 500b(1) of the CRR from the total exposure measure in order to facilitate the implementation of monetary policies. The exclusion of those exposures applied until 27 June 2021. Due to the ongoing pandemic and the resulting and ongoing need for a high degree of monetary policy accommodation, the Governing Council considers that such exceptional circumstances warrant the temporary extension of the exclusion, until 31 March 2022 of certain exposures to Eurosystem central banks from the calculation of institutions' total exposure measures pursuant to Article 429a(5) of the CRR. This decision extends the effect of the exclusion from 28 June 2021 until 31 March 2022.

Date of publication: 30/06/2021

(ii) International**FSB: Lessons Learnt from the Covid-19 Pandemic from a Financial Stability Perspective****Status: Final**

The FSB published its interim report on the lessons learnt from the Covid-19 pandemic from a financial stability perspective. The report identifies preliminary lessons for financial stability and aspects of the functioning of the G20 financial reforms that may warrant attention at the international level. Conclusions drawn by the FSB include: (i) thus far, the financial system has weathered the pandemic thanks to greater resilience, supported by the G20 reforms, and the swift, determined and bold international policy response. Monitoring and coordination, guided by the FSB Covid-19 Principles, has discouraged actions that could distort the level playing field and lead to harmful market fragmentation; (ii) the March 2020 market turmoil has underscored the need to strengthen resilience in non-bank financial intermediation (NBFI). The FSB has developed a comprehensive work programme to enhance the resilience of the NBFI sector while preserving its benefits; (iii) the functioning of capital and liquidity buffers may warrant further consideration; (iv) some concerns about excessive financial system procyclicality remain; (v) the pandemic has highlighted the importance of effective operational risk management arrangements, the need to enhance further crisis management preparedness, and the importance of promoting financial resilience amidst rapid technological change more generally; (vi) one of the legacies of the pandemic may be a build-up of leverage and debt overhang in the non-financial sector; and (vii) the Covid-19 experience reinforces the importance of completing remaining elements of the G20 reform agenda. The FSB will engage with external stakeholders on preliminary findings and issues raised in this report. The final report, to be delivered to the G20 Summit in October 2021, will set out tentative lessons and next steps to address the identified issues.

Date of publication: 13/07/2021

BCBS: Early lessons from the Covid-19 pandemic on the Basel reforms**Status: Final**

The BCBS published an interim report giving a preliminary assessment of the impact of implemented Basel reforms during the pandemic, as part of a broader evaluation of their effectiveness. The report: (i) indicates that the banking system would have faced greater stress during this period had the Basel III reforms not been adopted, and in the absence of extraordinary support measures taken by public authorities to mitigate the impact of the pandemic; (ii) finds that the increased quality and higher levels of capital and liquidity in the global banking system since the adoption of the Basel III reforms helped banks absorb the significant impact of the Covid-19 shock, suggesting that the reforms have achieved their broad objective of strengthening the resilience of the banking system; (iii) notes that throughout the pandemic, banks continued to lend and provide other critical services; and (iv) highlights a number of areas that the Committee intends to continue to monitor. In particular, the report outlines the Committee's initial findings regarding the: (a) overall resilience of the banking system during the pandemic; (b) usability of capital buffers, members' experience with the countercyclical capital policies and price movements of additional tier 1 capital instruments; (c) capital framework – specifically, liquidity buffers; (d) impact of the leverage ratio on financial intermediation; and (e) cyclicality of specific Basel capital requirements. The report's empirical analysis will be updated as additional data regarding the impact of the pandemic becomes available – any updates will be included in a comprehensive evaluation report covering the Basel reforms implemented over the past decade, which the BCBS plans to publish in 2022. The findings will also be reflected in the FSB's interim report on financial stability lessons learnt from the Covid-19 pandemic, which is to be submitted to G20 Finance Ministers and Central Bank Governors.

Date of publication: 06/07/2021

(b) Other**(i) International****FSB: Thematic peer review on corporate debt workouts and seeks stakeholder feedback****Status: Consultation****Deadline for the submission of comments: 09/08/2021**

The FSB launched a thematic peer review on corporate debt workouts, in order to support Covid-19 response efforts by examining FSB member jurisdictions' practices, experiences and lessons from out of court debt workouts (OCWs), and the

implications for financial stability. The peer review will: (i) take stock of existing and planned OCW frameworks in FSB jurisdictions; (ii) examine the experience of particular mechanisms that have been, or are being used, to address corporate stress, including the role of financial sector authorities; and (iii) seek to identify good practices and lessons on how well OCW frameworks have worked in terms of preserving value for viable companies and how useful their debt restructurings are for resolving non-performing loans and dealing with a large number of distressed corporates. The FSB invites feedback from financial institutions, corporates, insolvency practitioners and other stakeholders on OCWs including on: (a) the types of OCW frameworks (e.g. informal workouts, enhanced workouts and hybrid workouts) most often used in their jurisdiction and why; (b) features of OCW frameworks that may be particularly helpful to minimise the economic and financial system damage caused by corporate defaults due to Covid-19; (c) the appropriate role of financial sector authorities in facilitating debt restructuring, including to incentivise the participation of various stakeholders in an OCW; and (d) experiences and challenges in the use of OCWs, including to manage the volume of non-performing loans in the financial system. The deadline for comments is 9 August. The FSB expects to publish the peer review report in early 2022.

Date of publication: 28/06/2021

10.2 FinTech/Digital finance

(i) Germany

BaFin: Machine learning in risk models (Maschinelles Lernen in Risikomodellen)

Status: Consultation

Deadline for the submission of comments: 30/09/2021

BaFin and Deutsche Bundesbank have published their joint discussion paper "Machine Learning in Risk Models - Characteristics and Supervisory Priorities" for consultation (also available in [English](#)). It deals with the concrete use of machine learning (ML) in risk models of Pillars I and II of the regulatory frameworks for banks and insurers. The paper is based on already published principles of BaFin and the Bundesbank for the use of Big Data and Artificial Intelligence (BDAl).

In addition, an accompanying [questionnaire](#) (also available in [English](#)) was published for the consultation of the discussion paper by BaFin and the Deutsche Bundesbank.

Date of publication: 15/07/2021

(ii) EU

ECON: Report on proposed Regulation on a pilot regime for DLT market infrastructures

Status: Final

The EP's Economic and Monetary Affairs Committee (ECON) announced that it had adopted a report on the proposed Regulation on a pilot regime for market infrastructures based on DLT. ECON voted that financial instruments services by DLT market should be limited and subject to value thresholds: (i) shares (market capitalisation of less than EUR 200 million); (ii) bonds including sovereign bonds (issuance size of less than EUR 500 million); (iii) exchange-traded funds (issuance size of less than EUR 500 million); and (iv) units of collective investment undertakings (issuance size of less than EUR 500 million). Additionally, operators of DLT can admit new financial instruments only until their total market value reaches EUR 5 billion. ECON proposes that DLT market infrastructures and their operators must have in place adequate safeguards to ensure the effective protection of investors related to the use of DLT, including clearly defined lines of liability to clients for any losses due to operational failures. ECON notes that new entrants should be able to access the pilot regime provided they ensure compliance with the same requirements as authorised investment firms or market operators. ECON states that ESMA should have a direct supervisory mandate for granting permissions and exemptions to a DLT market infrastructure across the EU, after consulting national competent authorities. During the lifecycle of the DLT pilot regime, ECON proposes that ESMA publishes annual interim reports about the most important trends, risks, and vulnerabilities, with the first report to be published after the first year, and the final report after five years.

Date of publication: 13/07/2021

ESMA: Letter to EC on interpretation and application date of EU Crowdfunding Regulation**Status: Final**

ESMA published a letter sent to the EC to share its concerns in relation to interpretation issues and issues in relation to the dates of application of the Regulation on the European crowdfunding service providers for business (ECSPR). ESMA requests clarification on: (i) the transitional period set out in Article 48 with respect to crowdfunding services provided in accordance with national law; (ii) the meaning of ‘business activity’ pursuant to point (l) of Article 2(1); (iii) the legal status of the provision of ‘individual portfolio management of loans’ in light of points (a) and (c) of Article 2(1); (iv) the scope of the prohibition to prevent prospective non-sophisticated or non-sophisticated investors from investing in crowdfunding projects pursuant to the second subparagraph of Article 21(6); (v) the scope of the prohibition made to crowdfunding service providers to pay or accept any remuneration, discount or non-monetary benefit for directing investors’ orders to a particular crowdfunding offer made on their crowdfunding platform or to a particular crowdfunding offer made on a third-party crowdfunding platform; and (vi) the respective responsibilities of crowdfunding service providers and project owners regarding the content of the key investment information sheet. ESMA states, with regard to dates of application of technical standards, that it is already unavoidable that the full endorsement process will not be concluded before the ECSPR application date on 10 November. ESMA believes that slightly delaying the date of application of the ECSPR, would enable a more orderly and harmonised application of this new and important piece of legislation.

Date of publication: 09/07/2021

10.3 Sustainable finance

(i) EU**ESMA: EC Decision addressing answers about the application of the SFDR****Status: Final**

ESMA published an EC decision and annex (adopted on 6 July 2021) addressing answers about the application of the SFDR. The answers respond to questions that the European Supervisory Authorities (ESAs) forwarded to the EC in January. The answers cover, among other things: (i) whether the SFDR applies to registered (sometimes referred to as sub-threshold) alternative investment fund managers (AIFMs); (ii) whether the SFDR applies to non-EU AIFMs, for example when they market a sustainable EU Alternative Investment Fund under a National Private Placement Regime; (iii) application of the calculation of the 500-employee threshold to the parent undertaking of a large group – specifically, whether it be applied to both EU and non-EU entities of the group without distinction as to the place of establishment of the group and/or subsidiary, and whether the due diligence statement should include impacts of the parent undertaking only or must it include the impacts of the group at a consolidated level; and (iv) the meaning of “promotion” in the context of products promoting environmental or social characteristics or having sustainable investment as their objectives.

Date of publication: 26/07/2021

EC: Delayed application date of regulatory technical standards (RTS) under SFDR**Status: Final**

The EC published a letter to the European Economic and Financial Affairs Council and the Council of the EU, confirming a six-month delay of the date of application of the RTS under the SFDR to 1 July 2022 (originally 1 January 2022). The EC also confirms that it plans to bundle all 13 of the RTS in a single delegated act.

On 27 July 2021, EIOPA updated its webpage for the [joint ESA supervisory statement on the application of the SFDR](#), stating that supervisory statement should be read in light of the content of the letter published by the EC. The ESAs will revise the supervisory statement in due course to reflect the change in the RTS’ date of application.

Following the joint supervisory statement, BaFin updated its [overview](#) of sustainability-related disclosure requirements for financial market participants (FMPs) and financial advisers (FAs).

Date of publication: 23/07/2021

EC: Platform on Sustainable Finance calls for feedback on social taxonomy and on taxonomy extension options linked to environmental objectives

Status: Consultation

Deadline for the submission of comments: 27/08/2021

The EU Platform on Sustainable Finance published two draft reports for feedback on a social taxonomy, and on taxonomy extension options linked to environmental objectives. The draft report on a social taxonomy: (i) suggests a structure for a social taxonomy; and (ii) considers the relationship between the social and environmental taxonomies and the regulatory environment. The report suggests how to ensure a balance between the two taxonomies, such as by ensuring that minimum environmental safeguards should be part of whatever social taxonomy is decided on. The suggested structure of a social taxonomy would be both vertical and horizontal, with the vertical dimension focusing on products and services for basic human needs and basic infrastructure and the horizontal dimension taking into account impacts on different groups of stakeholders affected by economic activities – workers, including value chain workers, consumers and communities. Sustainable corporate governance is regarded as setting the bar for environmental and social sustainability in economic entities. In this particular area, the focus is on topics such as bribery, taxation and lobbying. The draft report on taxonomy extension options linked to environmental objectives examines the premises, issues and options for and against extending the EU Taxonomy ‘beyond green’ to include significantly harmful activities and no significant impact activities (both in relation to environmental sustainability) within the overall EU sustainable finance framework. The Platform emphasises that this report is a work in progress.

The Platform will submit final reports with their advice to the EC in autumn 2021.

Date of publication: 12/07/2021

EC: Further delay of sustainable finance rules for asset managers under SFDR

Status: Final

In a letter sent to the EP (published by Reuters), the EC announced that a further delay of 6 months was needed for the application of the regulatory technical standards (RTS) on ESG disclosures under the Sustainable Finance Disclosure Regulation (SFDR). The EC states that it plans to bundle all 13 of the RTS (including those that focus on the content and presentation of sustainability disclosures) in a single delegated act to apply from 1 July 2022.

Date of publication: 09/07/2021

EC: Commission Delegated Regulation (EU) .../... supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation

Status: Adopted by EC

The EC adopted a Delegated Act on the information to be disclosed by financial and non-financial companies about how sustainable their activities are, based on Article 8 of the Taxonomy Regulation – this will be transmitted for scrutiny by the EP and the Council of the EU for a period of four months, extendable once by two months. The EC has also published FAQs to accompany the Delegated Act, covering amongst other things the Delegated Act’s interaction with the (i) climate Delegated Act adopted on 4 June; (ii) the future environmental Delegated Act specifying the technical screening criteria for the remaining environmental objectives; (iii) the Non-Financial Reporting Directive and related proposal for a Corporate Sustainability Reporting Directive; and (iv) the SFDR, and the forthcoming Ecolabel and EUGBS. The FAQs also discuss the timeframe for the Delegated Act’s adoption and implementation.

The delegated act is intended to come into application from 1 January 2022.

Date of publication: 06/07/2021

EC: Adopted Sustainable Finance Strategy and a proposal for new European Green Bond Standard (EUGBS)

Status: Adopted by the EC

The EC adopted a number of measures to help improve the flow of money towards financing the transition to a sustainable economy. First, the EC has published a Communication and factsheet on its adoption of the new Sustainable Finance Strategy which sets out several initiatives to tackle climate change, and other environmental challenges. The EC has also published a summary of responses to its previous consultation on the strategy. The Sustainable Finance Strategy includes six sets of actions: (i) extend the existing sustainable finance toolbox to facilitate access to transition finance; (ii) improve the inclusiveness of SMEs and consumers, by giving them the right tools and incentives to access transition finance; (iii) enhance the resilience of the economic and financial system to sustainability risks; (iv) increase the contribution of the financial sector to sustainability; (v) ensure the integrity of the EU financial system and monitor its orderly transition to sustainability; and (vi) develop international sustainable finance initiatives and standards, and support EU partner countries. The EC will report on the Strategy's implementation by the end of 2023. Secondly, the EC adopted a proposal for a new EUGBS, which it notes will create a high-quality voluntary standard for bonds financing sustainable investment. There are four key requirements under the framework for the EUGBS proposal: (a) the funds raised by the bond should be allocated fully to projects aligned with the EU Taxonomy; (b) there must be full transparency on how bond proceeds are allocated through detailed reporting requirements; (c) all EU green bonds must be checked by an external reviewer to ensure compliance with the Regulation and that funded projects are aligned with the Taxonomy; and (d) external reviewers providing services to issuers of EU green bonds must be registered with and supervised by ESMA. The EC has also published an impact assessment on this proposal, as well as the opinion of the Regulatory Scrutiny Board.

- [Webpage](#)
- [Communication](#)
- [Factsheet](#)
- [Responses](#)
- [EUGBS Proposal](#)
- [Impact Assessment](#)
- [Opinion](#)

Date of publication: 06/07/2021

ECB and ESRB: Report on impacts of climate change for the EU financial sector

Status: Final

The ECB and the ESRB published a joint report on how a broadened set of climate change drivers affect financial firms in the EU. It maps out prospective financial stability risks and contributes by further developing the analytical basis for more targeted and effective policy action. The report tackles measurement gaps and, building on previous work in this field, establishes a detailed topology of physical and transition risks arising from climate change across regions, sectors and firms. It also applies a scenario analysis with long-dated financial risk horizons to capture prospective financial losses resulting from the timeliness and effectiveness of climate policies and technologies. The report's granular mapping of financial exposures to climate change drivers finds three forms of risk concentration: (i) exposures to physical climate hazards are concentrated at the regional level. Around 30% of the euro area banking sector's credit exposures to non-financial companies are to firms that are subject to a combination of these physical hazards; (ii) exposures to emission-intensive firms are concentrated not only across but also within economic sectors. Exposures to highly emitting firms occupy 14% of collective euro area banking sector balance sheets; and (iii) exposures to climate risk drivers are concentrated in specific European financial intermediaries. Around 70% of banking system credit exposures to firms subject to high or increasing physical risk over the coming decades are concentrated in the portfolios of just 25 banks. In the projected scenario analysis modelling for EU banks, insurers and investment funds, in the event of an insufficiently orderly climate transition, physical risk losses, particularly for high emitting firms, would become dominant in around 15 years. This could lead to a decline in global GDP of up to 20% by the end of the century should mitigation prove to be insufficient or ineffective.

Date of publication: 01/07/2021

(ii) International

IOSCO: Consultation on ESG Ratings and Data Providers

Status: Consultation

Deadline for the submission of comments: 06/09/2021

The IOSCO published a consultation report on environmental, social and governance (ESG) ratings and data products providers. In the report, IOSCO explores the developments and challenges highlighted during a recent fact-finding exercise it undertook with ESG ratings and data products providers, users of ESG ratings and data products, and the companies that are the subject of these ESG ratings or data products. It also seeks to better understand the implications of the increasingly important role of ESG ratings and data products for financial markets. The report treats ESG ratings and data products providers the same for efficiency. However, not everything stated to apply to ESG rating providers may apply to ESG data products providers, and vice versa, and respondents are encouraged to provide feedback on specific areas where distinctions may be appropriate.

Date of publication: 26/07/2021

FSB: Letter addressing financial stability risks and roadmap addressing climate-related financial risks

Status: Final

The FSB published a letter from its Chair, Randal K. Quarles, to G20 Finance Ministers and Central Bank Governors ahead of their 9-10 July 2021 meeting, which notes mounting evidence of global recovery, even if uneven across regions. Though, the FSB notes that some risks to financial stability remain elevated – there are areas where there is a need to understand better whether the reforms have functioned as intended, and others where the Covid-19 pandemic has surfaced vulnerabilities that need to be addressed with urgency, notably in non-bank financial intermediation, including in money market funds. The letter also reiterates the importance of completing the transition away from LIBOR to robust alternative rates by end-2021. The letter stresses the need for coordinated action to address financial risks posed by climate change, noting the large, and growing, number of international initiatives underway. Moreover, the FSB has submitted to the G20 for endorsement a comprehensive roadmap to address climate-related financial risks. The roadmap outlines the work underway and still to be done by standard-setting bodies and other international organizations over a multi-year period in four key policy areas: disclosures, data, vulnerabilities analysis, and regulatory and supervisory approaches. Alongside the roadmap, the FSB has published two additional reports on: (i) availability of data with which to monitor climate-related financial stability risks and remaining data gaps; and (ii) promoting climate-related disclosures.

- Letter
- Roadmap for Addressing Climate-Related Financial Risks
- Report on Availability of Data
- Report on Promoting Climate-Related Disclosures

Date of publication: 07/07/2021

IOSCO: Consultation on sustainability-related regulatory and supervisory expectations in asset management

Status: Consultation

Deadline for the submission of comments: 15/08/2021

IOSCO began consulting on proposed recommendations about sustainability-related regulatory and supervisory expectations in asset management. The consultation focuses on investor protection issues and proposes that securities regulators consider setting regulatory and supervisory expectations for asset managers regarding sustainability-related risks and opportunities. The recommendations cover five areas: (i) asset manager practices, policies, procedures and disclosure; (ii) product disclosure; (iii) supervision and enforcement; (iv) terminology; and (v) financial and investor education. The recommendations aim to address various challenges, such as existing gaps in skills and expertise and the risk of fragmentation caused by divergent regulatory approaches. These challenges may further contribute to a lack of comparability for sustainability-related products, creating difficulties for investors' monitoring and decision-making, and therefore facilitating greenwashing. IOSCO outlines: (a) the types of greenwashing at the asset manager and product levels; (b) describes the different regulatory approaches taken by securities regulators to address sustainability-related risks and opportunities; (c) provides an overview of the financial and investor

education initiatives conducted by regulators; and (d) asset managers' sustainability-related practices and firm level disclosures, which are broadly categorised into the following areas, consistent with the TCFD Recommendations – governance, strategy, risk management, and metrics and targets. IOSCO highlights a clear need to address the challenges associated with the lack of reliability and comparability of data at the corporate level and the ESG data and ratings provided by third-party providers.

Date of publication: 30/06/2021



11. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

Law to further strengthen investor protection (Gesetz zur weiteren Stärkung des Anlegerschutzes – AnlSchStG)

Status: Published in the Federal Gazette

Date of entry into force: 16/08/2021

The law to further strengthen investor protection has been published in the German Federal Gazette. For more information, please see section 3.2 above.

Date of publication: 16/07/2021

BaFin: Draft of a regulation amending various Pfandbrief regulations (Entwurf einer Verordnung zur Änderung diverser pfandbriefrechtlicher Verordnungen)

Status: Consultation

Deadline for the submission of comments: 15/08/2021

BaFin published the first draft regulation amending various Pfandbrief regulations for consultation. For more information, please see section 9.1 above.

Date of publication: 02/07/2021

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