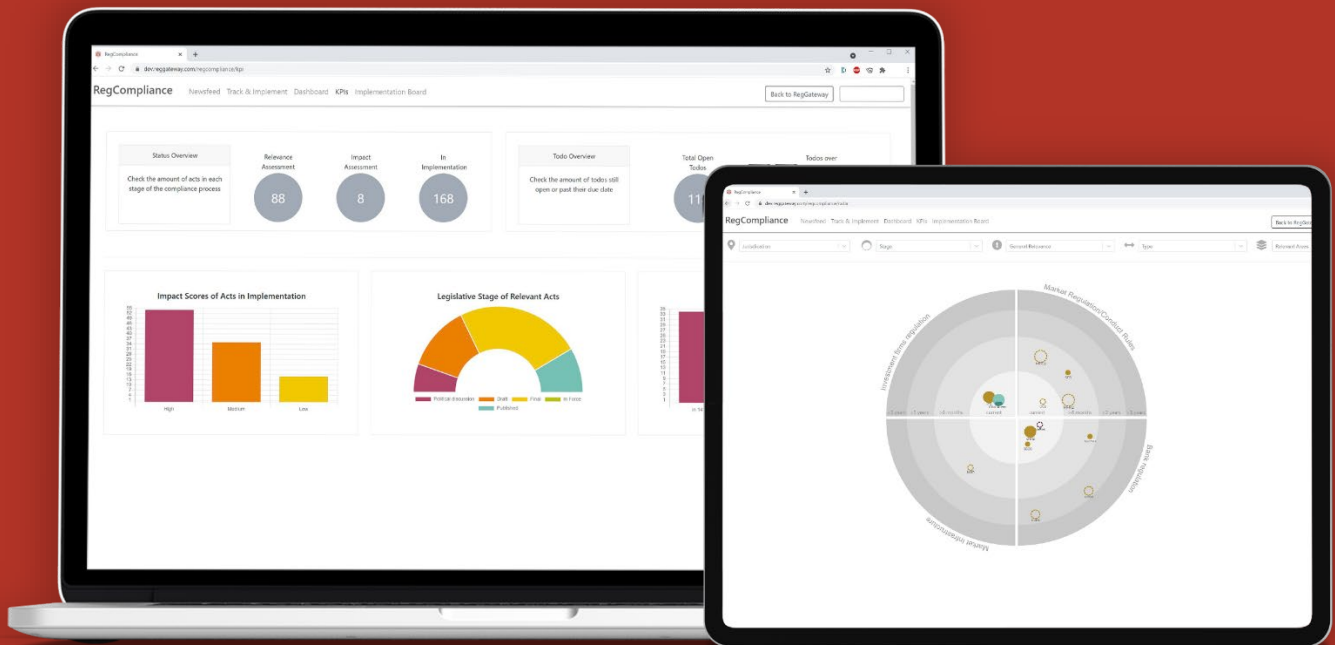


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Newsletter

June 2021





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CHANGE ANALYSIS AND PREVIEW OF RULES

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

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) Germany

Law on strengthening financial market integrity (Finanzmarktintegritätsstärkungsgesetz – FISG)

Status: Published in the Federal Gazette

Date of entry into force: 01/07/2021

The law on strengthening financial market integrity (*Finanzmarktintegritätsstärkungsgesetz* – FISG) has been published in the German Federal Gazette. The law is essentially a reaction to the Wirecard scandal. It aims to fight manipulation of the balance sheets of capital market companies, which shook confidence in the German financial market and caused serious damage. In particular, the draft law (i) grants BaFin direct power to control the balance sheet of capital markets oriented companies, including a right to inform the public, (ii) strengthens the independence of the external auditors by establishing an obligatory rotation after 10 years for capital markets companies and separating audit and advisory functions in certain cases and tightening civil law liability and (iii) changes the supervisory structures and strengthens the powers of BaFin, including relating to outsourcing by financial services companies.

We can provide you with Delta Views/mark-ups (*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: 10/06/2021

(ii) EU

EBA: Report on the treatment of incoming third-country branches (TCB)

Status: Final

The EBA published a report, based on Article 21b(10) of the CRD, on the treatment of incoming third-country branches (TCB) under the national law of member states. The report, which is addressed to the EP, EC and Council of the EU, illustrates the results of a stock-taking exercise conducted with competent authorities about their national regulatory law/regulations and supervisory practices and a mapping of the TCBs established in member states. Considering the increased volume of activities carried out by TCBs in a context of regulatory fragmentation across the EU, the report lays down 14 high-level policy recommendations for further harmonisation of EU law. The EBA report considers: (a) whether and to what extent supervisory practices under national law for third-country branches differ between member states; (b) whether different treatment of third-country branches could result in regulatory arbitrage; and (c) whether further harmonisation of national regimes for third-country branches would be necessary and appropriate, especially with regard to significant third-country branches.

The EC will, if appropriate, submit a legislative proposal to the EP and to the Council of the EU, based on the recommendations made by the EBA.

Date of publication: 23/06/2021

(b) Solvency/Own funds issues

(i) EU

EBA: Consultation to amend technical standards on credit risk adjustments

Status: Consultation

Deadline for the submission of comments: 24/09/2021

The EBA published a consultation paper on amendments to its Regulatory Technical Standards (RTS) on credit risk adjustments in the context of the calculation of the Risk Weight (RW) of defaulted exposures under the Standardised Approach (SA). The proposed amendments follow up on the EC's Action Plan to tackle non-performing loans in the aftermath of Covid-19, which indicated the need for a revision of the treatment of defaulted exposures under the SA. The EBA notes that the update is necessary to ensure the prudential framework does not disincentivise the sale of non-performing assets. Furthermore, the EBA states that the proposed amendment to the existing RTS on credit risk adjustments introduces a change to the recognition of total credit risk adjustments, which ensures that the risk weight can remain the same in both cases. In particular, the price discount stemming from the sale will be recognised as a credit risk adjustment for the purposes of determining the risk weight. However, the EBA also recommends that the treatment set out in this RTS be included in the EC's considerations as part of the revised Capital Requirements Regulation (CRR3) proposal, which is expected at a later stage.

Date of publication: 24/06/2021

EC: Final one-year extension of the transitional regime for capital requirements for non-EU central counterparties (CCPs)

Status: Final

The EC extended, by one additional year, the current transitional regime regarding the capital requirements that EU banks and investment firms must maintain when exposed to non-EU CCPs. This transitional regime will therefore continue to apply until 28 June 2022. The EC notes that this is the last and final extension possible under the CRR – exposures to those non-EU CCPs which will not be recognised by ESMA by 28 June 2022 will no longer be eligible for lower capital requirements after that date.

Date of publication: 24/06/2021

EBA: Update on monitoring of Additional Tier 1 instruments

Status: Final

The EBA published its updated report on the monitoring of AT1 instruments, including an update on the monitoring of the implementation of the EBA's Opinion on legacy instruments and its considerations on ESG capital bonds. The EBA notes that the objective of the update is to further strengthen the robustness and quality of EU institutions' own funds and eligible liabilities instruments. The updates to the report reflect: (i) the amendments to the Capital Requirements Regulation (CRR2); (ii) the monitoring of the implementation of the EBA Opinion on legacy instruments; and (iii) observations on new market trends, such as ESG-linked capital instruments. As a result of the high standardisation of the AT1 issuances, only limited new observations have been added to the report since its last update. However, in the context of the end of the transitional period for legacy instruments, the EBA draws attention to the need to keep the capital structure simple and avoid additional layers within a capital class that would increase complexity. Therefore, further clarification on the implementation of the options in the EBA Opinion on legacy instruments is provided in the report. In addition, the EBA has identified differences in the clauses of the environmental, social and governance (ESG) issuances made for capital/loss absorbency purposes. The EBA has provided best practices or practices that should be avoided for these issuances.

Date of publication: 24/06/2021

Commission Delegated Regulation (EU) 2021/930 supplementing the CRR with regard to RTS specifying the nature, severity and duration of an economic downturn referred to in Article 181(1), point (b), and Article 182(1), point (b), of that Regulation

Status: Published in the OJ

Date of entry into force: 30/06/2021

Date of application: 01/01/2021

Commission Delegated Regulation (EU) 2021/930, which contains RTS on the specification of the nature, severity and duration of an economic downturn referred to in Article 181(1) (b), and Article 182(1) (b) of the CRR. This is to be taken into account in downturn loss given default (LGD) and downturn conversion factor (CF) estimation, where these parameters are estimated under the IRB approach. Given the interplay with other EU acts relevant for own-LGD and own-CF estimations, the date of application of this Delegated Regulation has been deferred until 1 January 2021. In particular, institutions will need to comply with the revised materiality threshold set by competent authorities in accordance with Commission Delegated Regulation (EU) 2018/171.

Date of publication: 10/06/2021

Commission Delegated Regulation (EU) 2021/931 supplementing the CRR with regard to RTS specifying the method for identifying derivative transactions with one or more than one material risk driver for the purposes of Article 277(5) of that Regulation

Status: Published in the OJ

Date of entry into force: 30/06/2021

Commission Delegated Regulation (EU) 2021/931 was published in the OJ. The Delegated Regulation contains RTS, supplementing the CRR and: (i) specifying the method for identifying derivative transactions with one or more than one material risk driver for the purposes of Article 277(5); (ii) the formula for calculating the supervisory delta of call and put options mapped to the interest rate risk category; and (iii) the method for determining whether a transaction is a long or short position in the primary risk driver or in the most material risk driver in the given risk category for the purposes of Article 279a(3)(a) and (b) in the standardised approach for counterparty credit risk.

Date of publication: 10/06/2021

EBA: Updated technical standards in view of its 2022 benchmarking of internal approaches

Status: Final

The EBA published an update to its Implementing Technical Standards (ITS) on the benchmarking of internal approaches. The EBA notes that the updated ITS include all benchmarking portfolios and metrics that will be used for the 2022 benchmarking exercise, which is an essential supervisory tool to enhance the quality of internal models, and is particularly important in a stressed economic situation. The EBA states that: (i) for the market risk benchmarking, the framework has been extended to allow the collection of new information, in particular as regards sensitivity-based measures (SBM), in relation to the Fundamental Review of the Trading Book (FRTB) SBM for own funds requirements. Some instruments have been updated and clarified, while the overall composition of the portfolio has marginally changed with respect to the 2021 exercise; (ii) for credit risk, a limited number of additional data fields was added to understand the level of conservatism incorporated in the risk estimates and the resulting risk-weighted exposures amounts; (iii) for the IFRS9 portfolios, a limited number of additional data fields has been included to collect information on additional IFRS9 parameters, in particular the Loss Given Default (LGD) – this is in line with the staggered approach communicated in the EBA IFRS9 roadmap published in July 2019; and (vi) the update includes changes and clarifications that the EBA introduced based on its consultation that was published on 17 December 2020.

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

Date of publication: 03/06/2021

(c) Securitisation

(i) EU

EC: Clarity on pillar 1 backstop and non-performing loan securitisation under CRR

Status: Final

Mairead McGuinness, European Commissioner for financial stability, financial services and the capital markets union, answered a question on behalf of the EC in relation to the pillar 1 backstop and non-performing loan securitisation under Article 47(a) of the CRR. Ms McGuinness states that where an institution has transferred significant credit risk of securitised non-performing exposures to third parties in accordance with the CRR, and has also de-recognised the securitised exposures from its balance sheet in accordance with the applicable accounting standards, the transferred part is not subject to the minimum coverage requirements under that Regulation. The EC services do not consider that legislative changes would be necessary to clarify this treatment.

Date of publication: 17/06/2021

(d) Authorisation and passporting

(i) EU

EBA: Draft RTS on the reclassification of investment firms as credit institutions in accordance with Article 8a (6)(b) of the CRD

Status: Consultation

Deadline for the submission of comments: 17/07/2021

The EBA published a second consultation on its draft RTS on the calculation of the threshold for investment firms. The EBA explains that the identification of large investment firms, which will be subject to the application of the CRR and CRD, depends on the size of the investment firms and of the groups they belong to. The EBA notes, that based on the feedback received in the first consultation (published on 4 June 2020), it became clear that further consideration needed to be given to ensure a level playing field for firms, irrespective of where they are domiciled. Thus, the amended proposals included in the second consultation aim at ensuring that the framework is neutral with regard to geographical limitations. Furthermore, the draft RTS set out a proportionate and technically consistent methodology for the calculation of the level of total assets to be compared to the €30 billion threshold and further clarify the notion of relevant entity. In addition, the draft RTS clarify elements related to the application of accounting standards, the treatment of branches, and the treatment of intragroup exposures. The EBA intends to finalise the RTS and submit them to the EC in early Q4 of 2021.

Date of publication: 07/06/2021

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

(i) EU

EBA: Draft Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing under Directive 2013/36/EU

Status: Consultation

Deadline for the submission of comments: 28/09/2021

The EBA published a consultation paper on draft guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing under the CRD IV Directive. The consultation sets out proposals for revisions to the EBA's current guidelines. The main amendments implement requirements contained in the CRR II Regulation and the CRD V Directive and include: (i) the categorisation of institutions and the application of the minimum engagement model have been revised by reflecting the new definitions on small and non-complex and large institutions with a view to better reflecting the principle of proportionality; (ii) the assessment of the risk of money laundering and terrorist

financing have been incorporated across the text, in line with the EBA's November 2020 opinion; (iii) the provisions on Pillar 2 capital add-ons and the Pillar 2 guidance have been reviewed in accordance with Articles 104a and 104b of the CRD IV Directive to ensure they reflect a microprudential perspective; (iv) to reflect the separate stack of own funds requirements based on the leverage ratio, clarifications have been added on the related separate supervisory assessment of Pillar 2 capital add-ons and the Pillar 2 guidance to address the risk of excessive leverage; and (v) the requirements for the assessment of the interest rate risk in the non-trading book, as well as the assessment of liquidity risk and liquidity adequacy have been adjusted to align with the current regulatory framework.

Date of publication: 28/06/2021

EC: Targeted consultation on improving transparency and efficiency in secondary markets for non-performing loans (NPLs)

Status: Consultation

Deadline for the submission of comments: 08/09/2021

The EC began consulting on improving transparency and efficiency in secondary markets for non-performing loans (NPLs). The EC explains that one of the key actions in fostering secondary markets for NPLs is to improve the quantity, quality and comparability of NPL data. Secondary markets can be broader and more efficient if market participants have more and better data. As part of its strategy to leverage data sources, the EC is therefore consulting on changes of Pillar 3 disclosure requirements under the CRR. The EC requests feedback on the merits of additional disclosures concerning recovery cash flows and the costs associated with the recovery process, as well as on the costs for firms that any might require additional disclosures. It also seeks views on the possibility of extending disclosure requirements to entities other than credit institutions, such as credit purchasers and credit servicers operating in the secondary market.

The EC is also consulting on establishing an EU-level central data hub to act as a data repository underpinning the NPL market. Such a hub could store anonymised data on NPL transactions and provide post-trade transaction details. Such disclosures could raise the transparency, and thereby the functioning, of secondary markets of NPLs. As a result, the proposed changes should limit market failures in terms of information asymmetries, lead to increasing liquidity, lower bid/ask spreads and hence create more efficient NPL markets.

Date of publication: 16/06/2021

EP: Political agreement on proposed Directive on credit servicers and credit purchasers – Non-Performing Loans (NPLs) Directive

Status: Final

The EP announced that EP negotiators agreed with the Council on common EU standards regulating the transfer of bad loans from banks to secondary buyers while protecting borrowers' rights. The negotiators agreed on harmonised binding minimum provisions that ensure that borrowers are not worse off following the transfer of their credit agreement. Member states will be able to maintain or introduce stricter rules in order to protect consumers. The measures foster the development of professional secondary markets for credit agreements originally issued by banks and qualified as non-performing – third parties (credit purchasers) would be able to buy such NPLs across the EU. The EP, Council and EC are now working on the technical aspects of the text – thereafter, the agreement must be approved by the Economic and Monetary Affairs Committee and the EP as a whole.

Date of publication: 07/06/2021

EBA: Updated methodological guide on risk indicators and detailed risk analysis tools (DRATs)

Status: Final

The EBA published an updated version of its methodological guide on risk indicators and DRATs. The EBA notes that the update includes additional indicators on the topics of Covid-19, funding plans, resolution, and remuneration, as well as updates to other indicators, which are used to better understand institutions' profitability, exposures to sovereign counterparties and own funds requirements for operational risk. The updated guidance is based on the EBA reporting framework version 2.10. The EBA has also published an updated list of EBA risk indicators and DRATs.

Date of publication: 07/06/2021

(ii) International

FSB: Overview of responses to consultation on outsourcing and third-party relationships

Status: Final

The FSB published an overview of responses to its discussion paper on regulatory and supervisory issues relating to outsourcing and third-party relationships. Respondents generally welcomed the paper and agreed with the challenges and issues identified such as: (i) constraints on the rights to access, audit and obtain information from third parties; and (ii) concentration risks in the provision of certain critical services that are very difficult to substitute. Additional challenges identified as deserving of attention include: (a) treatment of intra-group outsourcing; (b) fragmentation of regulatory, supervisory and industry practices across sectors and borders; (c) restrictive data localisation requirements; (d) cyber and data security; and (e) resource constraints at financial institutions and supervisory authorities. To address these challenges, respondents suggested measures that can be categorised into five areas: (1) the development of global standards on outsourcing and third-party risk management; (2) the adoption of consistent definitions and terminology; (3) pooled audits, certificates and reports; (4) dependency mapping and enhanced supervisory oversight; and (5) enhanced cross-border cooperation and dialogue with stakeholders.

Date of publication: 14/06/2021

(f) Remuneration

(i) EU

Commission Delegated Regulation (EU) 2021/923 supplementing the CRD with regard to RTS setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities

Status: Published in the OJ

Date of entry into force: 14/06/2021

Commission Delegated Regulation (EU) 2021/923, which contains RTS supplementing the remuneration provisions in CRD IV, was published in the OJ. The RTS set out criteria: (i) to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile; and (ii) for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of CRD IV.

The Delegated Regulation repeals Commission Delegated Regulation (EU) No 604/2014, except with regard, to investment firms, to which it continues to apply until 26 June. For all other firms, the Delegated Regulation enters into force on 14 June.

Date of publication: 09/06/2021

(g) Internal governance/“Authorised Persons Regime”

(i) Eurozone

ECB: Public consultation on draft Fit and Proper Guide and new Fit and Proper Questionnaire

Status: Consultation

Deadline for the submission of comments: 02/08/2021

The ECB began consulting on the draft of a revised and more comprehensive version of its Guide to fit and proper assessments and a new Fit and proper questionnaire. The enhancements contained in the documents aim to raise the bar, increase transparency and improve the quality and efficiency of fit and proper assessments and processes. They also introduce supervisory expectations on climate-related and environmental risks and explain the ECB's approach to diversity. Additionally, the Fit and proper questionnaire has been updated to incorporate new policies and practices developed since 2016. By

streamlining the necessary requests for information, it increases efficiency and harmonisation across the Single Supervisory Mechanism and enhances data quality.

The deadline for submitting questions and registration for a public hearing on 15 July is 5 July.

Date of publication: 15/06/2021

(h) Large exposures/Limits to shadow banking entities

(i) Germany

Third Regulation Amending the Large Exposures and Million Exposures Regulation (Dritte Verordnung zur Änderung der Großkredit- und Millionenkreditverordnung – GroMiKV)

Status: Published in the Federal Gazette

Date of entry into force: 28/06/2021

The Third Regulation Amending the Large Exposures and Million Exposures Regulation (*Dritte Verordnung zur Änderung der Großkredit- und Millionenkreditverordnung – GroMiKV*) has been published in the German Federal Gazette. The regulation serves to adapt the supervisory law to the so-called EU banking package and therefore implements the necessary adjustments to the GroMiKV required by CRR II. These changes concern the changed capital base for the calculation of the large exposure limits and the prohibition of the simultaneous application of the exceptions set out in Article 400 paragraphs 1 and 2 to the same risk position. In addition, this regulation is intended to facilitate the raising of capital by regional credit institutions or central credit institutions listed in Section 2 (5) GroMiKV.

Date of publication: 25/06/2021

BaFin: Consultation on the application of EBA Guidelines on tri-party repos for large exposures purposes (Rundschreiben zur Anwendung von EBA-Leitlinien über Triparty-Rückkaufsvereinbarungen)

Status: Consultation

Deadline for the submission of comments: 16/06/2021

BaFin published a consultation on the application of [EBA Guidelines](#) on tri-party repos for large exposures purposes. BaFin has informed the European Banking Authority (EBA) that it intends to adopt the guidelines in its administrative practice by 28 June 2021. The draft of the corresponding circular is now being put out for public consultation.

Date of publication: 02/06/2021

(i) Supervisory reporting

(i) EU

EBA: Consultation on amendments to reporting on securitisation, asset encumbrance and G-SIIs

Status: Consultation

Deadline for the submission of comments: 23/09/2021

The EBA published a consultation paper to amend its Implementing Technical Standards (ITS) on Supervisory Reporting with regard to COREP and asset encumbrance reporting, as well as the reporting for the purposes of identifying G-SIIs. The EBA notes that the consultation aims to enhance proportionality in the area of asset encumbrance reporting, as recommended by the EBA's Report on the Study on the Cost of compliance with supervisory reporting requirements (CoC report). The EBA states that following the proposals for enhanced proportionality on asset encumbrance reporting, small and non-complex institutions will be exempted from the reporting of more granular data, as proposed in the CoC report. Furthermore, the EBA has suggested changing the definition of the level of asset encumbrance. Regarding the reporting of information for determining G-SIIs and assigning G-SII buffer rates, the EBA is proposing to slightly expand the scope of application of the reporting obligation, to include standalone entities, and not only banking groups, that meet the relevant criteria. The EBA expects to submit the draft

ITS to the EC in Q4 2021 or Q1 2022. The revised requirements are intended to apply from the reference date 31 December 2022.

Date of publication: 23/06/2021

EBA: Recommendations for reducing supervisory reporting costs

Status: Final

The EBA published a report which analyses EEA credit institutions' experience with the EBA supervisory reporting requirements and process. The report focuses on the costs and challenges they face in that process and sets out 25 recommendations to further improve the proportionality that already exists in the supervisory reporting. The report also considers the benefits of standardised supervisory reporting to the public authorities using that information to carry out their role. The EBA states that the combined effect of the identified recommendations could reduce the reporting costs faced by up to 15-24%. The recommendations address four broad areas: (i) changes to the development process for the EBA reporting framework; (ii) changes to the design of EBA supervisory reporting requirements and reporting content; (iii) coordination and integration of data requests and reporting requirements; and (iv) changes to the reporting process, including the wider use of technology. The report discusses the recommendations across four dimensions: (a) potential qualitative impact on the overall reporting costs; (b) time to take effect on costs once implemented; (c) quantitative estimate of the potential impact on the reporting costs of small and non-complex institutions; and (d) potential impact on the reported data points, in relation to supervisory reporting requirements. The EBA Board of Supervisors agrees with the recommendations in this report – the EBA will incorporate the recommendations into its work programme and gradually implement them as part of the ongoing work. The EBA notes that certain recommendations would lead to specific policy products, such as amendments to the ITS on supervisory reporting, or guidelines/recommendations for the resubmission policies.

Date of publication: 07/06/2021

(ii) Eurozone

ECB: Regulation (EU) 2021/943 amending Regulation (EU) 2015/534 on reporting of supervisory financial information

Status: Published in the OJ

Date of entry into force: 19/06/2021

Date of application: 28/06/2021

ECB Regulation (EU) 2021/943 was published in the OJ. The Regulation amends ECB Regulation (EU) 2015/534 on the reporting of supervisory financial information (Financial Reporting Regulation) to: (i) reflect the repeal and replacement of Commission Implementing Regulation (EU) 680/2014 by Commission Implementing Regulation (EU) 2021/451, with effect from 28 June; and (ii) update cross-references to refer to Commission Implementing Regulation (EU) 2021/451.

Date of publication: 14/06/2021

(iii) International

BCBS: Frequently asked questions on Basel III monitoring

Status: Final

The BCBS updated its FAQ on Basel III monitoring by adding a question on the scope of transactions to be reported in rows 52 and 53 of the “CCR and CVA” worksheet.

Date of publication: 01/06/2021

(j) Disclosure**(i) EU****Commission Implementing Regulation (EU) 2021/1018 amending the ITS laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of indicators of global systemic importance, and repealing Implementing Regulation (EU) No 1030/2014**

Status: Published in the OJ

Date of entry into force: 24/06/2021

Date of application: 28/06/2021

Commission Implementing Regulation (EU) 2021/1018, amending the ITS laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of indicators of global systemic importance and repealing Implementing Regulation (EU) No 1030/2014, was published in the OJ. Article 441 of CRR, as amended by CRR II, requires global systemically important institutions (G-SIIs) to disclose, on an annual basis, the values of the indicators used for determining their score in accordance with the identification methodology referred to in Article 131 of CRD IV, as amended by CRD V. The Implementing Regulation (EU) 2021/1018 amends Commission Implementing Regulation (EU) 2021/637 by adding a new Article 6a, incorporating the Article 441 disclosure provisions into the ITS on institutions' public disclosures of the information referred to in Part 8 of CRR. In addition, the Implementing Regulation repeals Commission Implementing Regulation (EU) 1030/2014, given the Implementing Regulation (EU) 2021/637 was adopted on the basis of Article 434a of CRR (introduced by CRR II) and lays down new disclosure requirements as opposed to those set out in Commission Implementing Regulation (EU) 1030/2014. To ensure a seamless transfer from Commission Implementing Regulation (EU) 1030/2014, the date of application of the Implementing Regulation needs to be the same as the date of application of Commission Implementing Regulation (EU) 2021/637.

Date of publication: 24/06/2021

1.2 Recovery and resolution**(i) Germany****BaFin: Draft Circular on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL) (Entwurf des Rundschreibens zur Festlegung der Mindestanforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten (MREL))**

Status: Consultation

Deadline for the submission of comments: 30/06/2021

BaFin published a draft circular on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL). The new circular is intended to amend and replace the previous MREL circular dated 20 August 2019 (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 main changes are based on the Risk Reduction Act (*Risikoreduzierungs-gesetz* – RiG), which came into force on 28 December 2020. Among other things, the RiG contains new rules for calculating the minimum requirements for own funds and eligible liabilities.

Date of publication: 02/06/2021

(ii) EU

SRB: Speech on the challenges of resolving mid-sized banks

Status: Final

The SRB published a speech by Pedro Machado (Director of Resolution Planning and Decisions) on the challenges of resolving mid-sized banks. The speech notes that, in the absence of a credible insolvency legal framework for mid-sized banks, the problem tends to be rooted in the liability structure of these banks – this makes their loss-absorption capacity in resolution rather thin and hampers ultimately the very implementation of their resolution strategy. Pedro Machado notes that no matter what the size of a bank, to ensure financial stability there is a need for an implementable solution should mid-sized banks get into difficulty – to end publicly funded bail-outs, Europe must ensure that the solution for this cohort of banks is one that is fiscally neutral. The speech sets out some of the challenges and potential solutions in respect of resolving mid-sized banks, which include: (i) defining mid-size; (ii) applying resolution tools; (iii) delivering on depositor protection; (iv) delivering on an EU liquidation regime; and (v) delivering on a harmonised insolvency regime. The speech notes that proposals for harmonisation across the board will inevitably be fraught with political perils and resistance – an incremental approach may be a more pragmatic solution, though the ultimate goal must be to put in place an EU liquidation regime alongside an EU resolution regime, something akin to a European Federal Deposit Insurance Corporation (FDIC).

Date of publication: 23/06/2021

SRB: Approach for notifying impracticability to include bail-in recognition clauses in contracts

Status: Final

The SRB published guidance, containing its policy on how banks can notify the authorities when bail-in recognition clauses cannot be added to contracts under third-country law. This explains how the SRB will apply, in practice, the rules set out in Article 55(2) BRRD. The guidance is based on the EBA's final draft regulatory and implementing technical standards on Article 55. The SRB has identified, based on Article 55(7) BRRD, four preliminary categories of liabilities, for which the impracticability notification and assessment are simplified: (i) liabilities resulting from trade finance operations, under internationally agreed frameworks and protocols; (ii) liabilities resulting from project finance activities, under official standardised terms; (iii) liabilities to FMI service providers, where the services are provided on standard terms not susceptible to bilateral negotiation; and (iv) minor operating liabilities, arising from (non-critical) business operations, where the terms of the contract are set by the provider and not bilaterally negotiated. The SRB notes that it is banks' responsibility to make themselves resolvable, including incorporating bail-in recognition clauses in all relevant liabilities that are out of scope of the impracticability regime.

Date of publication: 21/06/2021

(iii) International

FSB: Thematic peer review on corporate debt workouts

Status: Consultation

Deadline for the submission of comments: 09/08/2021

The Financial Stability Board (FSB) published a press release announcing the launch of a thematic peer review on corporate debt workouts. The peer review will examine existing and planned out-of-court debt workouts (OCW) frameworks in FSB jurisdictions. The implications for financial stability will form part of the review.

Date of publication: 28/06/2021

1.3 Stress tests/Macroprudential topics

(i) EU

ESMA: Framework for the 2021 ESMA Stress Test Exercise for Central Counterparties

Status: Final

ESMA published a report setting out the framework for its fourth EU-wide stress test exercise on CCPs. In summary, the 2021 ESMA stress test exercise has the following components: (i) credit stress – assess the sufficiency of CCPs’ resources to absorb losses under a combination of market price shocks and member default scenarios; (ii) concentration risk – assess the impact of liquidation costs derived from concentrated positions; (iii) operational risk – analyse external operational dependencies that are needed by CCPs to provide their critical services; and (iv) reverse stress – for credit, increase the number of defaulting entities and level of shocks to identify at which point resources are exhausted. Similarly, for concentration risk, reverse stress tests will be performed to assess model risk. In addition, the framework includes a new adverse scenario, approved by the European Systemic Risk Board.

The publication is relevant for Central Counterparties only.

Date of publication: 07/06/2021

2. Investment firms regulation

(i) EU

EBA: Final report containing draft ITS on supervisory disclosure under IFD

Status: Final

The EBA published its final report setting out final draft implementing technical standards (ITS) with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Article 57(4) of the Investment Firms Directive (IFD). The draft ITS, set out in section 3 of the report, contain information on supervisory approaches and aggregate statistical data concerning the new prudential requirements that competent authorities will have to disclose publicly for all types of investment firms authorised under the MiFID II Directive. The EBA explains that the draft ITS will ensure that the disclosed information is comprehensive and comparable across all member states.

The EBA will submit the draft ITS to the European Commission for endorsement. The draft ITS state that they will enter into force 20 days after publication in the Official Journal of the European Union (OJ). They also state that competent authorities will be required to disclose this information for the first time by 30 June 2022.

Date of publication: 25/06/2021

EBA and ESMA: Provisional list of instruments and funds for the smallest investment firms under IFR

Status: Final

The EBA and ESMA published a provisional list of additional instruments and funds that competent authorities may allow to use as own funds for some of the smallest investment firms under the Investment Firm Regulation (IFR). Smaller investment firms include only non-legal persons or joint-stock companies, or those that meet the conditions for qualifying as small and non-interconnected investment firms as defined in the Investment Firm Regulation (IFR). This provisional list is based on the information received from National Competent Authorities (NCAs) across the EU, and includes instruments and funds that NCAs may permit to use as own funds in addition to the instruments included in the Common Equity Tier 1 (CET1) list published by the EBA in accordance with the CRR. Therefore, instruments and funds of investment firms will be allocated either to this new list or the existing CET1 list, depending on their nature. The EBA, together with ESMA, will assess the terms and conditions of all instruments and funds included in this provisional list against regulatory provisions at a later stage, and, subsequently, will update, maintain and publish the list on a regular basis.

Date of publication: 31/05/2021

(ii) Eurozone

ECB: Supervision of systemic investment firms

Status: Final

Date of application: 26/06/2021

The ECB announced that it is taking over the supervision of systemic investment firms. From 26 June 2021, the ECB will supervise the largest and most systemic investment firms under new European Union (EU) legislation. These investment firms must apply for a banking licence and as a consequence will be supervised by the European Central Bank. The new legal framework aims to better address the specific activities and risks posed by investment firms. The EU legislation defines systemic investment firms as those that trade financial instruments on their own account or place financial instruments on a firm commitment basis and have total consolidated assets above €30 billion.

Date of publication: 25/06/2021

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

EC, ECB, EBA and ESMA: Encouraging market participants to cease all LIBOR settings

Status: Final

The EC, ECB Banking Supervision, EBA and ESMA published a joint statement strongly encouraging market participants to use the time remaining until the cessation or loss of representativeness of USD LIBOR, GBP LIBOR, JPY LIBOR, CHF LIBOR and EUR LIBOR to substantially reduce their exposures to these rates. The statement also encourages market participants to cease using the 35 LIBOR settings, including USD LIBOR, as a reference rate in new contracts as soon as practicable and by 31 December 2021 at the latest. Participants are also called on to limit the use of any LIBOR setting published under a changed methodology (also known as “synthetic” LIBOR) only to contracts that are particularly difficult to amend ahead of LIBOR’s cessation (commonly referred to as “tough legacy”), and to include robust fallback clauses nominating alternative rates in all contracts referencing LIBOR.

Date of publication: 24/06/2021

ESMA: Supervisory briefing on Benchmark administrators’ presence in their Member States of location and outsourcing

Status: Final

ESMA published a supervisory briefing, entitled “Benchmark administrators’ presence in their member states of location and outsourcing”. ESMA explains that the briefing focuses on the presence of an administrator in its Member States of location and the outsourcing of functions or relevant services and activities for which supervisory guidance is needed to ensure a consistent application of the BMR across the EU. It provides additional guidance on how national competent authorities should effectively supervise administrators that are part of a group which may include or have links with non-EU entities, applying for authorisation or registration in their Member States of location and on appropriate outsourcing arrangements, in particular where the service provider is located outside the EU.

Date of publication: 28/05/2021

(ii) International

FSB and IOSCO: Statements on smooth and timely transition away from LIBOR

Status: Final

The FSB issued a set of statements and reports to support a smooth transition away from LIBOR by the end of 2021: (i) an updated global transition roadmap that, drawing on national working group recommendations, summarises the high-level steps firms will need to take now and over the course of 2021 to complete their transition; (ii) a paper reviewing overnight risk-free rates and term rates, building on the concept that the tools necessary to complete the transition are currently available. The FSB cautions market participants against waiting for the development of additional tools, in particular forward-looking term risk-free rates; (iii) a statement on the use of the ISDA spread adjustments in cash products, to support transition, particularly in loan markets, which remains an area of concern with much new lending still linked to LIBOR; and (iv) a statement encouraging authorities to set globally consistent expectations that regulated entities should cease the new use of LIBOR in line with the relevant timelines for that currency, regardless of where those trades are booked. Given the limited time available until the end of 2021, the FSB strongly urges market participants to act now to complete the steps set out in its global transition roadmap. The FSB plans to produce its next full report on progress in November 2021.

The FSB also welcomes the statement by IOSCO, also published on 2 June, reiterating the importance of ensuring a smooth and timely transition. In light of the significant use of USD LIBOR globally, including in more than 100 emerging markets and

across a wide range of products and financing purposes, IOSCO is cognisant of the importance of reinforcing the transition message and timeline on a global scale. Therefore, IOSCO encourages all global market participants to discontinue new use of USD LIBOR-linked contracts, as soon as practicable and no later than the end of 2021, to avoid the safety and soundness risks associated with the continued use.

- [FSB statement](#)
- [IOSCO statement](#)

Date of publication: 02/06/2021

3.2 Capital markets union

(i) EU

EC: Indicators for monitoring progress on capital markets union

Status: Final

The EC published a toolkit of indicators for monitoring progress on the capital markets union (CMU) and the key CMU objectives: (i) making financing more accessible to EU companies; (ii) making the EU an even safer place for individuals to save and invest long term; and (iii) integrating national markets into a genuine single market. The EC explains that the CMU indicators will complement evaluations and impact assessments of individual measures under the CMU action plans. The purpose is to: (a) monitor progress towards the CMU objectives; (b) provide a framework for the analysis of capital market development and an empirical basis for future analysis of the overall impact of past CMU measures; and (c) help identify the areas where existing policies may need to be adjusted or new policies may need to be developed. The EC envisages updating the indicators once per year.

Date of publication: 09/06/2021

3.3 Consumer protection rules

(i) Germany

BaFin: General ruling regarding interest rate adjustment clauses for premium savings contracts (Allgemeinverfügung bezüglich Zinsanpassungsklauseln bei Prämiensparverträgen)

Status: Final

BaFin published a general ruling regarding interest rate adjustment clauses for premium savings contracts as per Section 4(1a) Financial Services Supervision Act (*Finanzdienstleistungsaufsichtsgesetz – FinDAG*). In it, BaFin orders all affected consumers, with whom a long-term premium savings contract with an unrestricted unilateral right to determine performance with regard to the contractual interest rate has been concluded, to be informed of the invalidity of the interest rate adjustment clause contained therein, as well as the lack of a generally binding judicial supplementary contractual interpretation, and to combine this with a) the irrevocable promise to make a supplementary contractual interpretation still to be expected from the civil courts the basis for a recalculation of the previous interest rate calculation since the beginning of the contract; or b) the offer to agree on an appropriate interest rate adjustment clause within the framework of an individual amendment agreement, taking into account the requirements of the Federal Court of Justice (*Bundesgerichtshof – BGH*) in its ruling of 13 April 2010 – XI ZR 197/09.

Date of publication: 21/06/2021

(ii) EU**EC: Review of the Directive on Distance Marketing of Consumer Financial Services (DMD)****Status:** Consultation**Deadline for the submission of comments:** 28/09/2021

Following its [roadmap](#) of 28 May 2021, the EC now published a consultation on the DMD. The EC explains that, since the DMD came into force in 2002, the retail financial sector has become increasingly digital and several EU laws pertinent to financial services have been adopted or updated – thus, although the DMD had clear value added when it entered into force, many of its substantial elements have been taken over by sectoral legislation that has been adopted afterwards, such as in the context and aftermath of the financial crisis. Following the consultation on the DMD that ran from 9 April to 2 July 2019 (leading to the Evaluation Study of the DMD) and the fact that the adjusted EC 2020 Work Programme listed the DMD as subject to a “regulatory fitness” exercise, the EC is running the consultation to gather views on an initiative that it plans to propose in Q1 2022. The consultation is an opportunity for consumers, retail financial services professionals, national authorities and other interested stakeholders to express their views on the general and technical aspects of the DMD.

Date of publication: 22/06/2021

3.4 Credit rating agencies

(i) EU**ESMA: Final Report providing technical advice to the European Commission on the supervisory fees charged to Credit Rating Agencies (CRAs)****Status:** Final

ESMA published its final report providing technical advice to the EC on the supervisory fees charged to CRAs. The report is based on feedback from ESMA’s recent consultation, and it proposes changes to the calculation and the collection of supervisory fees set out in the current Commission Delegated Regulation (EU) No 272/2012. ESMA proposes to charge: (i) a fixed registration fee of EUR40,000; and (ii) an annual supervisory fee of 0.5% of turnover to CRAs with annual revenues of between EUR4,000,000 and EUR15,000,000. ESMA states that the proposed changes will ensure that it meets the regulatory obligation to charge fees that cover its costs while remaining proportionate to the revenues of the firms supervised. ESMA has not recommended changes to the calculation of annual supervisory fees paid by CRAs with annual revenues of over EUR15 million, as these fees are already calculated proportionately to cover the regulator’s costs. ESMA also recommends a number of changes to streamline the fee collection process and to align ESMA’s approach across its supervisory mandates – these include the requirement for supervisory fees to be paid in a single instalment in the first quarter of the financial year to ensure that ESMA has funds available for its ongoing supervision.

Date of publication: 21/06/2021

3.5 Market abuse

(i) Germany**BaFin: Guidelines for credit and financial institutions on ad hoc disclosure requirements (Leitlinien für Kredit- und Finanzinstitute zu Ad-hoc-Publizitätspflichten)****Status:** Final

BaFin has supplemented Module C of its Issuers’ Guide (*Emittentenleitfaden*) with guidelines specifically for credit and financial institutions. They deal with the question of which ad hoc disclosure obligations exist for credit and financial institutions whose financial instruments are admitted to trading on an organised market or are included with their consent in trading on a

multilateral trading facility (MTF) or an organised trading facility (OTF) if they are the addressee of supervisory requirements and measures.

In Module C, the Issuers' Guide explains BaFin's administrative practice regarding the concept of inside information pursuant to Article 7 of the Market Abuse Regulation and the ad hoc publicity obligation pursuant to Article 17 of this Regulation with regard to all issuers.

Not all issuers are subject to ongoing supervision by BaFin. For institutions under ongoing supervision, further specific questions on insider information arise in the areas of banking supervision and resolution, the publication of which under Article 17 of the Market Abuse Regulation can have significant consequences not only for the credit and financial institutions themselves, but also, where applicable, for the financial market.

The guidelines on Module C, which have now been published, are aimed exclusively at credit and financial institutions and provide assistance in determining potential inside information. Thus, the practical fields of application from the areas of banking supervisory action (including supervisory organisation, recovery planning and banking supervisory measures) and resolution are examined in more detail.

Date of publication: 10/06/2021

3.6 MiFID/MiFIR

(i) EU

ESMA: Final Report on Guidelines on the MiFID II/MiFIR obligations on market data

Status: Final

ESMA published its final report on guidelines on the MiFID II/MiFIR obligations on market data. The guidelines are in relation to the requirements to publish market data on a reasonable commercial basis and to make market data available free of charge 15 minutes after publication. The Guidelines are set to apply from 1 January 2022 to allow for an adequate period of implementation by market participants.

Date of publication: 01/06/2021

4. Market infrastructure

4.1 EMIR

(i) EU

Commission Delegated Regulation (EU) 2021/962 of 6 May 2021 extending the transitional period referred to in Article 89(1), first subparagraph, of EMIR

Status: Published in the OJ

Date of entry into force: 17/06/2021

Commission Delegated Regulation (EU) 2021/962 extending the transitional period for exempting Pension Scheme Arrangements (PSAs) from the clearing obligation under EMIR Article 89(1), first subparagraph, was published in the OJ. This follows a recommendation from ESMA in its report published on 17 December 2020, that further development of the solutions to mitigate challenges faced by PSAs is needed before the clearing obligation applies. The transitional period is extended until 18 June 2022.

Date of publication: 16/06/2021

ESMA: Statement on implementation of FRANDT commercial terms to provide clearing services

Status: Final

ESMA issued a statement on the implementation of the fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms, which, under EMIR, clearing members and clients are required to implement from 18 June. ESMA explains that the Delegated Regulation, specifying the conditions under which commercial terms are to be considered FRANDT, is still being scrutinised by the EP and the Council, and it is therefore unlikely to be published in the OJ and enter into force before 18 June. Therefore, while ESMA encourages market participants to anticipate and get ready to comply with the upcoming regulatory obligations set out in Article 4(3a) of EMIR, it also expects competent authorities not to prioritise their supervisory actions towards clearing members and clients expected to provide clearing services in accordance with FRANDT commercial terms before the date the Delegated Regulation will apply, and to generally carry out their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

Date of publication: 11/06/2021

EC: Delegated Regulation specifying commercial terms for clearing services for OTC derivatives

Status: Adopted by the EC

The EC adopted a Delegated Regulation specifying the conditions under which commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT). To facilitate access to clearing for clients, especially those that have a limited volume of activity in the OTC derivatives market, clearing members and clients which provide clearing services must provide those services on the FRANDT terms provided for in Article 4(3a) of EMIR. It is hoped the Delegated Regulation will: (i) increase transparency of the on-boarding process and of prices and other commercial terms on offer; (ii) ensure that commercial terms are related to costs and risks, that prices, fees and discounts are based on objective criteria and that fees passing on costs to clients are transparent; (iii) increase transparency of commercial terms in general, and of conditions for acceptance of clearing orders, the suspension of clearing services and close-out of client positions specifically; and (iv) ensure that notice periods for the termination of clearing services or material changes to commercial terms are fair and give clients sufficient time to find another clearing service provider, if necessary. The Delegated Regulation will now be subject to the scrutiny of the EP and of the Council. The Delegated Regulation will start to apply six months from its entry into force in relation to new clients. Commercial terms in contracts with existing clients will have to be brought in line with the requirements laid down in the Delegated Regulation within 12 months from its entry into force.

Date of publication: 02/06/2021

5. Anti-money laundering

(i) Germany

Law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (Gesetz zur europäischen Vernetzung der Transparenzregister und zur Umsetzung der Richtlinie 2019/1153 zur Nutzung von Finanzinformationen für die Bekämpfung von Geldwäsche, Terrorismusfinanzierung und sonstigen schweren Straftaten)

Status: Published in the Federal Gazette

Date of entry into force: 01/08/2021

The law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (*Gesetz zur europäischen Vernetzung der Transparenzregister und zur Umsetzung der Richtlinie 2019/1153 zur Nutzung von Finanzinformationen für die Bekämpfung von Geldwäsche, Terrorismusfinanzierung und sonstigen schweren Straftaten – Transparenz- und Finanzinformationsgesetz – TraFinG*) has been published in the German Federal Gazette. The law converts the German transparency register from the previous catch-all register to a full register. This means that from now on – unlike the previous catch-all register solution, which referred to other registers for the majority of German companies – the beneficial owner of all legal entities in Germany can be directly and immediately identified from the register. This not only creates data requirements for the European interconnection of the transparency registers, but is also aimed at increasing the practical and digital usability of the transparency register.

Directive (EU) 2019/1153 (EU Financial Information Directive) aims to make bank account and financial intelligence unit (FIU) information usable for the purposes of preventing and prosecuting serious crime, including outside the field of money laundering and terrorist financing. The Directive requires Member States to specifically designate competent police and law enforcement authorities for account register and FIU access and provides for an exchange of data with Europol via the designated authorities. Since German law has long granted the police and prosecution authorities comprehensive access to the account retrieval procedure as well as to the FIU data exchange, only the designation of the Federal Criminal Police Office (*Bundeskriminalamt*) and the Federal Office of Justice (*Bundesamt für Justiz*) for access to the account retrieval procedure and the designation of the Federal Criminal Police Office for access to the FIU data exchange are required to implement the Directive. Following on from this, the corresponding powers for the subsequent exchange of data with Europol are standardised.

Date of publication: 30/06/2021

BaFin: Interpretation and application notes on the Money Laundering Act for credit institutions (Auslegungs- und Anwendungshinweise zum Geldwäschegesetz für Kreditinstitute)

Status: Final

BaFin has published its interpretation and application notes – Special Part for Credit Institutions – which it supervises pursuant to Section 50 No. 1 lit a Money Laundering Act (*Geldwäschegesetz – GwG*).

The notes specify the legal provisions which are intended to support the credit institutions obliged under Section 2 (1) no. 1 GwG in the implementation of their duties.

The instructions serve the proper implementation of the legally prescribed due diligence obligations as well as the internal security measures and follow a risk-based approach. For example, the areas of correspondent banking relationships and monitoring systems are explained in detail. In addition, the results of the [first national risk analysis](#) are taken up and rules are made in this regard.

Date of publication: 08/06/2021

(ii) International

FATF: Guidance on assessing and mitigating proliferation financing risk

Status: Final

The Financial Action Task Force (FATF) published guidance on proliferation financing risk assessment and mitigation. The guidance explains how both public and private sectors should conduct risk assessments in the context of proliferation financing, and how identified risks can be mitigated. The source of proliferation financing risks depends on factors such as: (i) the risk of a potential breach or non-implementation of targeted financial sanctions; and (ii) the risk of evasion of targeted financial sanctions.

Date of publication: 29/06/2021

FATF: Report on money laundering from environmental crime

Status: Final

The Financial Action Task Force (FATF) published a report (dated July 2021) on money laundering (ML) from environmental crime. Environmental crime covers a wide range of activities, including illegal extraction and trade of forestry and minerals, as well as illegal land clearance and waste trafficking. Perpetrators of environmental crime rely on both the financial and non-financial sector to launder their proceeds. In the report, the FATF notes that the “low risk, high reward” nature of environmental crime makes for a lucrative and safe source of revenue for criminals. This is partly due to a regulatory and legal environment that is not always consistent globally and does not fully address the financial aspects and ML risks of these crimes. The report follows the FATF conducting a study (building on its 2020 report on financial flows from the illegal wildlife trade) on ML from environmental crime. It identifies the significant role of trade-based fraud and misuse of shell and front companies to launder gains and shows that criminals frequently co-mingle legal and illegal goods early in the resource supply chains to conceal their illicit source. This can make it difficult to detect suspicious financial flows later in the value chain, to an extent the FATF has not previously examined.

Date of publication: 28/06/2021

FATF: Potential amendments to recommendation 24 on transparency and beneficial ownership of legal persons

Status: Consultation

Deadline for the submission of comments: 20/08/2021

The Financial Action Task Force (FATF) published for consultation a white paper on potential amendments to recommendation 24 on transparency and beneficial ownership (BO) of legal persons. The FATF aims to strengthen the international standard on BO of legal persons to ensure greater transparency about their ultimate ownership and control and to take more effective action to mitigate the risks of misuse. To achieve this, the FATF is consulting several potential amendments to recommendation 24, including in the following areas: (i) risk-based approach for foreign legal persons; (ii) multi-pronged approach to collection of BO information; (iii) adequate, accurate and up-to-date information; (iv) access to information; and (v) bearer shares and nominee arrangements.

Date of publication: 25/06/2021

6. Payments

6.1 Payment services/E-money

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing Directive (EU) 2015/2366 with regard to RTS specifying the framework for cooperation and the exchange of information between competent authorities of the home and the host Member States in the context of supervision of payment institutions and electronic money institutions exercising cross-border provision of payment services

Status: Adopted by the EC

The EC published a draft Delegated Regulation (adopted on 18 June) and accompanying Annex supplementing PSD2 with RTS on the framework for home-host cooperation and information exchange, endorsing the EBA's draft RTS, whose final report on the matter was already published on 31 July 2018. The RTS specify (i) the framework for cooperation and for exchanging information between the competent authorities of the home member state and of the host member state under Title II (Payment service providers) of PSD2; and (ii) how to monitor compliance with national law transposing Titles III (Transparency of Conditions and Information Requirements) and IV (Rights and obligations in relation to provision and use of payment services) of PSD2. The Council of the EU and the EP will now scrutinise the draft Delegated Regulation.

The Regulation will enter into force on the 20th day following its publication in the OJ.

Date of publication: 21/06/2021

EP: Report on proposal for Regulation on cross-border payments

Status: Final

The EP's Legal Affairs Committee published a report on the EC's legislative proposal for a Regulation on cross-border payments in the EU. The purpose of the proposal is to codify the existing Regulation on cross-border payments. The new Regulation, which will preserve the content of the existing Regulation as amended, will repeal and replace the existing Regulation. The report states that the EP should adopt the EC's legislative proposal for the proposed Regulation as its own position at first reading, as adapted to the recommendations of the Consultative Working Party of the legal services of the EP, the Council and the EC (as set out in the [Annex](#) to the draft report). The report contains a draft EP legislative resolution setting out this position.

The EP's procedure file for the proposed Regulation indicates that it will be considered in plenary on 23 June.

Date of publication: 17/06/2021

EBA: Report on data provided by PSPs on their readiness to apply SCA for e-commerce

Status: Final

The EBA published a report on the data provided by payment service providers (PSPs) on their readiness to apply strong customer authentication (SCA) for e-commerce card-based payment transactions. The EBA observes that significant progress has been made with regard to SCA-compliance: (i) 99% of EU merchants are able to support SCA; (ii) 94% of all payment cards in the EU are SCA-enabled; (iii) 82% of all payment service users are enrolled into an SCA solution; (iv) 92% of e-commerce card-based authentication requests reported by acquirers are compliant with the SCA requirements; and (v) 87% of initiated e-commerce card-based payment transactions reported by issuers are compliant with the SCA requirements. The EBA notes that this progress also coincided with a significant reduction of the volume and value of fraudulent e-commerce card-based payment transactions in the EU over the same period. However, points of concern remain, namely that PSPs in some jurisdictions are lagging behind others in applying SCA and the volume of SCA non-compliant transactions remain relatively high in some jurisdictions.

Date of publication: 11/06/2021

EBA: Final revised Guidelines on major incident reporting under PSD2**Status:** Final**Date of application:** 01/01/2022

The EBA published its final revised guidelines on major incident reporting under PSD2. The revised guidelines introduce changes to some of the original classification criteria and introduce a new criterion on the breach of security of network or information systems, which, following the feedback from the public consultation, was narrowed down in scope from “breach of security measures”, as originally proposed. This new criterion focuses on malicious actions that have compromised network or information systems related to the provision of payment services and would allow the reporting of additional security incidents that would be of interest to supervisors. To reduce the reporting burden on PSPs, the EBA has removed steps from the reporting process and allowed more time for the submission of the final report. The EBA also simplified and optimised the standardised reporting template. The EBA estimates that these changes will result in a reduction of the reportable incidents by more than 10%.

The EBA acknowledges the ongoing negotiations of the EC’s proposal for an EU regulatory framework on digital operational resilience (DORA), which contains, inter alia, a proposal to harmonise and streamline the reporting of ICT-related incidents, not only for payment services but across the entire EU finance sector. Depending on their outcome, the EBA guidelines may eventually be repealed and replaced with the DORA Regulation, which is currently estimated to apply from 2024.

Date of publication: 10/06/2021

6.2 Payment and settlement systems

(i) International

FSB: Proposal for quantitative targets for enhancing cross-border payments**Status:** Consultation**Deadline for the submission of comments:** 16/07/2021

The FSB published a consultative document setting out quantitative global targets for addressing the challenges of cost, speed, transparency and access faced by cross-border payments. The consultation: (i) describes the principles of, and key design features underpinning the targets and target metrics; (ii) proposes three market segments – wholesale payments, retail payments (involving non-financial corporates or public sector entities and other person-to-person (P2P) payments), and (as a separate category of P2P payments) remittances – for which targets are to be set across the four challenges; (iii) considers factors in setting the targets; and (iv) proposes a set of high-level, simple targets that are focused on end-users.

The final recommendations, taking on feedback from the public consultation, will be delivered for endorsement at the G20 Summit in October 2021 and published.

Date of publication: 31/05/2021

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

CoEU: Progress report on the strengthening of the Banking Union

Status: Final

The Council of the EU published a Presidency progress report on the strengthening of the Banking Union (dated 2 June). The report summarises the discussions held at meetings of the Ad hoc Working Party on the strengthening of the Banking Union between February and May. The main focus was on the technical elements of the design of a credible and effective European Deposit Insurance Scheme (EDIS), building upon the previous discussions and recent political guidance. Using a set of guiding principles as a backdrop, the Presidency initially assessed the design of the hybrid model based on a liquidity-only EDIS that covers the mandatory functions of the deposit guarantee schemes (DGSs) set out in the Deposit Guarantee Schemes Directive (DGSD). In this regard, views were divergent, with several members advocating for a fully fledged EDIS with loss sharing, while some members argued that EDIS would not require different phases or loss coverage, claiming that these would be contingent on a political agreement also involving preconditions. The need for a simple and efficient model, which promotes the alignment of liability and control, was broadly supported. Subsequently, several other building blocks were addressed: (i) the treatment of different entities (non-CRD/CRR entities, third-country branches, and Institutional Protection Schemes (IPS) and their members). The majority of members supported the inclusion of IPSs recognised as DGSs and all members of IPSs in the scope of EDIS; (ii) the interaction between EDIS and the Options and National Discretions (ONDs) provided for in the DGSD. The majority of members considered that ONDs should, whenever possible, be harmonised and covered, at least to a certain degree, by EDIS; (iii) several members argued in favour of harmonising the substantive regimes on the use of preventive and/or alternative measures in EDIS. The latter was complemented by a debate on the possible articulation between EDIS and the revision of the Crisis Management and Deposit Insurance framework; and (iv) the risk-based contributions under EDIS, including the question of adding potential sovereign exposures indicators to their calculation methodology. While there was some support for using indicators based on concentration exposures, the idea of relying on indicators based on credit risks raised concerns.

Date of publication: 17/06/2021

(ii) Eurozone

ECB: Draft revisions to options and discretions policies

Status: Consultation

Deadline for the submission of comments: 23/08/2021

The ECB has published a consultation paper on draft revisions to the ECG guide on O&D available in EU law, together with an [explanatory memorandum](#) on the review of its policies concerning the exercise of O&D. It has also published the following draft revised instruments for comment: (i) [draft ECB Regulation](#) amending Regulation (EU) 2016/445 on the exercise of O&D available in EU law; (ii) [draft ECB Recommendation](#) amending the ECB Recommendation ECB/2017/10 on common specifications for the exercise of some O&D available in Union law by national competent authorities in relation to less significant institutions; and (iii) [draft ECB Guideline](#) amending Guideline (EU) 2017/697 of the ECB on the exercise of O&D available in EU law by national competent authorities relating to less significant institutions.

The ECB has also published a [Q&A](#) on its consultation proposals.

Date of publication: 29/06/2021

8. Institutional supervisory framework

(i) Germany

BMF: Fifth Regulation Amending the Regulation on the Statutes of the Federal Financial Supervisory Authority (Fünfte Verordnung zur Änderung der Verordnung über die Satzung der Bundesanstalt für Finanzdienstleistungsaufsicht)

Status: Published

Date of entry into force: 01/07/2021

As a result of the Wirecard scandal, the Federal Government (*Bundesregierung*) commissioned an extensive external investigation of BaFin's organisational structures, workflows and resources with the aim of identifying instruments that can be implemented promptly to strengthen supervision in this area as well. Based on the results of the study, the Federal Minister of Finance (*Bundesfinanzministerium* – BMF) presented a [seven-point plan](#) for reforming BaFin, which is intended to comprehensively modernise BaFin's organisation. The goal is to make BaFin's supervisory structure more effective and efficient. The main part of the measures necessary to strengthen the supervisory structure is of an organisational nature. The basis of the modernisation is a further development of the management structure of BaFin, which more clearly reflects the responsibilities of the members of the Board of Directors and strengthens the central steering function of the President of BaFin. Provisions of the Financial Services Supervision Act (*Finanzdienstleistungsaufsichtsgesetzes* – FinDAG) that are fundamental to this further development are to be adapted within the framework of the Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität* – FISG). Accordingly, consequential amendments are also to be made to the statutes.

In addition, according to the reform plan of the BMF, it is also intended to strengthen investor and consumer protection through the supervisory activities of BaFin. BaFin's mandate of collective consumer protection is to be strengthened. Existing and new instruments for exercising this mandate are to be used more proactively. In addition, investor and consumer protection is to be given greater weight at the level of the Board of Directors.

Date of publication: 30/06/2021

Twenty-fifth regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (Fünfundzwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht – FinDABefugV)

Status: Published in the Federal Gazette

Date of entry into force: 30/06/2021

The Twenty-fifth regulation amending the regulation on the transfer of powers to issue statutory regulations to the Federal Financial Supervisory Authority (*Fünfundzwanzigste Verordnung zur Änderung der Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht* – FinDABefugV) has been published in the German Federal Gazette. The amendment includes a new Section 1d empowering the BaFin to issue statutory regulations based on the Law on the supervision of investment firms (*Gesetz zur Beaufsichtigung von Wertpapierinstituten* – *Wertpapierinstitutsgesetz* – WpIG).

Date of publication: 29/06/2021

BMF: First Regulation amending the Regulation on Reporting Infringements to the Federal Financial Supervisory Authority (Erste Verordnung zur Änderung der Verordnung zur Meldung von Verstößen bei der Bundesanstalt für Finanzdienstleistungsaufsicht)

Status: Draft

The German Ministry of Finance (*Bundesfinanzministerium* – BMF) published a Minister's Bill on a draft Regulation amending the Regulation on Reporting Infringements to the Federal Financial Supervisory Authority (*Erste Verordnung zur Änderung der Verordnung zur Meldung von Verstößen bei der BaFin*). 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: 08/06/2021



9. Investment funds

9.1 Product regulation

(a) AIF

(i) EU

ESMA: Guidelines on Article 25 of Directive 2011/61/EU

Status: Final

ESMA published guidelines on Article 25 of the AIFMD. ESMA notes that the objectives of the 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 Article 25 of the AIFMD. In particular, they relate to the assessment of leverage-related systemic risk and aim to ensure that competent authorities adopt a consistent approach when assessing whether the condition for imposing leverage-related measures are met.

The guidelines will apply from two months after the date of publication of the guidelines on ESMA's website in the EU official languages and are relevant for competent authorities.

Date of publication: 23/06/2021

9.2 Prudential regulation

(a) Authorisation

(i) Germany

Fund Jurisdiction Act (Fondsstandortgesetz – FoG)

Status: Published in the Federal Gazette

Date of entry into force: 01/07/2021

The law to strengthen Germany as a fund jurisdiction and to implement Directive (EU) 2019/1160 amending Directives 2009/65/EC and 2011/61/EU with regard to the cross-border distribution of undertakings for collective investments (*Fondsstandortgesetz* – FoG) has been published in the German Federal Gazette. The Fund Jurisdiction Act is intended to bundle regulatory and tax measures to strengthen Germany's fund location. In addition to the adjustment to European legal requirements, the law contains further amendments to make Germany more attractive as a fund jurisdiction.

In terms of capital markets law, the new act essentially contains: (i) further reduction of bureaucracy for fund managers, among others abolition of the use of a permanent data carrier to inform investors, unless provided for by EU law, abolition of numerous written form requirements, more flexibility for fund managers when changing fund rules; (ii) further digitisation of supervision; (iii) more flexibility for real estate fund managers; (iv) expansion of the product range for fund managers; (v) introduction of regulations to revoke the cross-border distribution of investment funds (Directive implementation); and (vi) introduction of regulations for the pre-marketing of investment funds (Directive implementation).

In addition, the KAGB and the WpHG are adapted to European legal Regulations (Disclosure Regulation and Taxonomy Regulation) in terms of greater consideration of sustainability aspects in the investment decisions of financial market players.

We can provide you with Delta Views/mark-ups (*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: 10/06/2021

(b) Compliance

(i) EU

ESMA: Guidelines on stress test scenarios under the MMF Regulation

Status: Final

ESMA published its final Guidelines on stress test scenarios under the MMF Regulation. The [final report](#) on these Guidelines had been published on 16 December 2020. Now the Guidelines have been translated into all official languages of the EU.

Date of publication: 29/06/2021

EC: Delegated Regulation on requirements for assets received by MMFs as part of reverse repurchase agreements

Status: Adopted by EC

The EC adopted a Delegated Regulation amending Commission Delegated Regulation (EU) 2018/990 in respect of requirements for assets received by money market funds (MMFs) as part of reverse repurchase agreements. In accordance with Article 2 of Commission Delegated Regulation (EU) 2018/990, eligible investments in reverse repurchase agreements by managers of MMFs are subject to supplementary qualitative and quantitative requirements, including a specific adjustment to the value of an asset. However, those requirements do not apply to transactions entered into with credit institutions, investment firms and insurance undertakings that are established in the EU or that are covered by an equivalence decision. The amending Regulation specifies the relevant provisions in the CRR, MiFID II and Solvency II on which equivalence decisions should be adopted for the exemption to be applied in relation to these entities. The EC states that it adopted the Amending Regulation following a request by ESMA to clarify the legal bases for the references to equivalence in Article 2(6).

If neither the EP nor the Council object, the amending Regulation will be published in the OJ and enter into force 20 days later.

Date of publication: 15/06/2021

Commission Implementing Regulation (EU) 2021/955 laying down ITS for the application of Regulation (EU) 2019/1156 with regard to the forms, templates, procedures and technical arrangements for the publications and notifications of marketing rules, fees and charges, and specifying the information to be communicated for the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS, as well as the forms, templates and procedures for the communication of such information

Status: Published in the OJ

Date of entry into force: 05/07/2021

Date of application: 02/08/2021

Commission Implementing Regulation (EU) 2021/955 laying down implementing technical standards (ITS) for the application of the Regulation on the cross-border distribution of investment funds was published in the OJ. The ITS: (i) determine standard forms, templates and procedures for the publications and notifications that national competent authorities (NCAs) are required to make in relation to national provisions concerning marketing requirements applicable within their jurisdiction (Article 5(3)); (ii) determine standard forms, templates and procedures for the publications and notifications that NCAs are required to make in relation to national provisions concerning fees and charges levied by them in relation to activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies; and (iii) specify the information to be communicated, as well as the standard forms, templates and procedures for communication of the information by the NCAs which is necessary for the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS and the technical arrangements necessary for the functioning of the notification portal into which each NCA shall upload all documents necessary for the creation and maintenance of such central database.

The ITS are addressed to the NCAs and does therefore not require implementation by market participants.

Date of publication: 15/06/2021

(ii) International

FSB: Policy Proposals to Enhance Money Market Fund Resilience

Status: Consultation

Deadline for the submission of comments: 16/08/2021

The Financial Stability Board (FSB) published a consultation report on policy proposals to enhance money market fund (MMF) resilience. The report forms part of the FSB's work programme on non-bank financial intermediation (NBFII). It considers the likely effects of a broad range of policy options to address MMF vulnerabilities by examining how these options would affect the behaviour of MMF investors, fund managers and sponsors. The FSB also examines the broader effects on short-term funding markets, including through impacts on the use of potential substitutes for MMFs.

Date of publication: 30/06/2021

10. Special topics

10.1 Covid-19

(a) Prudential regulation

(i) Germany

BaFin: Renewed leverage ratio relief

Status: Final

Date of application: 28/06/2021

Against the background of the Corona pandemic, BaFin allows institutions under its direct supervision to temporarily disregard certain risk positions vis-à-vis central banks of the Eurosystem when calculating the leverage ratio.

This measure applies from 28 June 2021 and is limited in time until 31 March 2022. Details of the regulation, the conditions for its use and also the requirement to meet an adjusted leverage ratio can be found on the internet.

Pursuant to Article 429a of the European Capital Requirements Regulation (CRR), BaFin declares, after consultation with the European Central Bank (ECB), that exceptional circumstances exist which justify this exclusion. Furthermore, BaFin declares that the exceptional circumstances have existed since 31 December 2019.

Date of publication: 22/06/2021

(ii) Eurozone

ECB: Decision (EU) [2021/XX] 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

Status: Final

Date of application: 28/06/2021

The ECB adopted a decision to extend the temporary exclusion of certain exposures to central banks from the leverage ratio TEM. In view of Covid-19, the ECB determined on 16 September 2020 (through Decision (EU) 2020/1306) 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. Article 500b, which was introduced by CRR II, will cease to apply on 27 June 2021, with its provisions on the exclusion of central bank exposures replicated in new Article 429a inserted by CRR II. The ECB has decided to extend the effect of the exclusion as it has determined that exceptional circumstances exist that warrant the exclusion of the central bank exposures listed in points (i) and (ii) of Article 429a(1)(n) of CRR II from the total exposure measure, in order to facilitate the implementation of monetary policies. The decision will apply in relation to any institution that is a significant supervised entity established in a euro area member state.

The decision applies for a period starting on 28 June 2021 and ending on 31 March 2022. The decision also repeals Decision (EU) 2020/1306 with effect from 28 June 2021.

Date of publication: 18/06/2021

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

Status: Final

The ECB published another update on its FAQ on supervisory measures in reaction to the coronavirus.

Date of publication: 18/06/2021

10.2 FinTech/Digital finance

(i) Germany

BaFin: Implementing ESMA's Guidelines on outsourcing to cloud service providers

Status: Final

BaFin announced that it will implement ESMA's [Guidelines on outsourcing to cloud service providers](#) that were published on 10 May 2021. The guidelines cover (i) outsourcing risk analysis and due diligence; (ii) the procedures and internal principles to ensure the requirements for governance, control and documentation (e.g. decision to outsource, choice of cloud provider, monitoring of outsourced activities); (iii) the essential elements of the contractual outsourcing agreement to cloud providers including the exit strategies; and (iv) the notification requirements to the competent authorities.

Date of publication: 29/06/2021

BaFin: Principle paper on big data and artificial intelligence

Status: Final

BaFin has published supervisory principles for the use of algorithms in decision-making processes of financial institutions (also available in [English](#)). They are intended to lead to a responsible use of Big Data and Artificial Intelligence (BDAI) and to enable the control of the associated risk. Background to the principles paper: Technologies such as BDAI are increasingly being used by institutions in the financial market. In its 2018 study "[Big Data meets Artificial Intelligence](#)", BaFin had already pointed out that this would result in opportunities for institutions, but also for consumers, but that it was also important to manage the risks that BDAI applications would bring with them.

Date of publication: 15/06/2021

Law on the accompanying implementation of Regulation (EU) 2020/1503 and the implementation of Directive (EU) 2020/1504 regulating crowdfunding service providers (Schwarmfinanzierung-Begleitgesetz)

Status: Published in the Federal Gazette

Date of entry into force: 11/06/2021

The law on the accompanying implementation of Regulation (EU) 2020/1503 and the implementation of Directive (EU) 2020/1504 regulating crowdfunding service providers (*Gesetz zur begleitenden Ausführung der europäischen Verordnung 2020/1503 und der Umsetzung der EU-Richtlinie 2020/1504 zur Regelung von Schwarmfinanzierungsdienstleistern – Schwarmfinanzierung-Begleitgesetz*) has been published in the German Federal Gazette.

The law essentially serves to implement several legal acts of the European Union: (i) Regulation (EU) 2020/1503 and Directive (EU) 2020/1504 of 7 October 2020 on European Crowdfunding Service Providers; (ii) Regulation (EU) 2019/1238 of 20 June 2019 on a Pan-European Private Pension Product – PEPP (PEPP – VO); (iii) Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties; and (iv) Directive (EU) 2019/2177 of 18 December 2019 amending rules on data reporting services, and amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

We can provide you with Delta Views/mark-ups (*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: 10/06/2021

Law on the introduction of electronic securities (Gesetz zur Einführung von elektronischen Wertpapieren)

Status: Published in the Federal Gazette

Date of entry into force: 10/06/2021

The law on the introduction of electronic securities has been published in the German Federal Gazette. The core of this law is the Electronic Securities Act (*Gesetz über elektronische Wertpapiere – eWpG*). The introduction of electronic securities is intended to

make the German financial market more viable in the future and, at the same time, to protect the integrity, transparency and functioning of the markets. The eWpG will enter into force on the day after its promulgation.

In line with other European countries, Germany now also makes it possible to issue electronic securities – including cryptosecurities based on the blockchain technology. The central point of the new provisions is the abandonment of the requirement of the documentary securitisation of securities, which can be replaced henceforth by an entry in an electronic securities register. To preserve the legal certainty of the acquisition and transfer of securities which has grown in practice and theory over the decades, electronic securities will be legally equated with securities securitised in documentary form.

The eWpG, in a first step, allows the issuance of electronic bearer bonds as well as, in a limited form, of unit certificates for special assets, and it does allow for a future extension to cover other bearer instruments, e.g. stocks. At the same time, it will remain possible to issue securities securitised in a documentary form. Issuers will thus have the choice to either securitise newly issued securities in a documentary form or to issue electronic securities.

We have compiled all relevant information on the eWpG for you in a client bulletin. Click on the link below to find out more about the background and content as well as our evaluation and outlook.

- [Client Bulletin in German](#)
- [Client Bulletin in English](#)

Date of publication: 09/06/2021

(ii) EU

EBA: Analysis of RegTech in the EU financial sector

Status: Final

The EBA published a report outlining the results and conclusions of its market analysis of the current RegTech landscape in the EU. The report is based on surveys and interviews with financial institutions, RegTech providers and competent authorities, and assesses the benefits and challenges faced by financial institutions and RegTech providers in the use of RegTech, and the potential risks of RegTech solutions that supervisors will need to address. The report concludes that a lack of regulatory standards for technical requirements and data-related standards, or a lack of harmonisation of legal and regulatory requirements across member states, could pose certain barriers for wider market adoption of RegTech solutions across the single market.

The EBA has also published an “at a glance” [factsheet](#) on RegTech and steps firms can take.

Date of publication: 29/06/2021

EBA: Draft RTS on crowdfunding service providers

Status: Consultation

Deadline for the submission of comments: 04/09/2021

The EBA published a consultation paper on draft RTS on individual portfolio management of loans offered by crowdfunding service providers under Article 6(7) of the European Crowdfunding Service Providers Regulation. The EBA states that the draft RTS specify the information that crowdfunding service providers offering individual portfolio management of loans shall provide to investors in relation to the method to assess credit risk, and on each individual portfolio. The EBA explains that the draft RTS require crowdfunding service providers to show that the measurement techniques used for credit risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying: (i) the single projects; (ii) the portfolio; and (iii) the project owners. Furthermore, the draft RTS set out the information that crowdfunding platforms must disclose referring to several key characteristics of each loan included in a certain portfolio. In addition, the draft RTS specify adequate policies, procedures and governance arrangements that providers should have in place when managing, either directly or through a third-party provider, contingency funds.

Date of publication: 04/06/2021

(iii) Eurozone**ECB: Opinion on a proposal for a regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology****Status: Final**

The ECB's opinion, on a proposal for a regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on DLT, was published in the OJ. Key points include that the ECB: (i) welcomes the proposed regulation; (ii) welcomes the limitations that the proposed regulation brings, both in terms of asset classes and market size, as regards the DLT transferable securities available for registration, trading and settlement via DLT multilateral trading facilities (MTFs) and a DLT securities settlement systems (SSS) while facilitating the mitigation of potential risks associated with the use of DLT – nevertheless, the ECB notes that it could be further considered whether to extend the asset classes, while maintaining the thresholds, to include sovereign bonds; (iii) emphasises that its opinion is predicated on the understanding that the specific thresholds set out in the proposed regulation are preserved; (iv) believes that, bearing in mind the level of capital markets' development in some EU member states, it would be advisable to consider providing the national competent authorities with an option to lower the relevant thresholds – consequently, the ECB wishes to be reconsulted on the proposed regulation if there is any material alteration to the thresholds; (v) notes that the proposed regulation does not seem to ensure a level playing field between DLT MTFs and DLT SSSs as well as between these DLT market infrastructures and CSDs operating SSSs based on traditional technology; (vi) believes that while the proposed regulation envisages that an operator of an MTF can settle DLT transferable securities, the opposite possibility of a CSD operating a DLT SSS also operating an MTF should be explored; and (vii) notes that as regards e-money tokens that may be used for the settlement of DLT transferable securities transactions, the proposed regulation does not seem to respect the principle of technological neutrality. In addition, the opinion sets out specific observations on: (a) monetary policy aspects; (b) oversight and systemic/financial stability aspects; and (c) prudential supervisory aspects.

Date of publication: 22/06/2021

ECB: Opinion on a proposal for a regulation of the European Parliament and of the Council on digital operational resilience for the financial sector (DORA)**Status: Final**

The ECB published an opinion on the proposal for DORA. Key general observations include that the ECB: (i) welcomes the proposed regulation, which aims to enhance the cybersecurity and operational resilience of the financial sector – in particular, the ECB welcomes the aim of the proposed regulation to remove obstacles to, and improve the establishment and functioning of, the internal market for financial services by harmonising the rules applicable in the area of information and communication technology (ICT) risk management, reporting, testing and ICT third-party risk; (ii) welcomes the aim of the proposed regulation to streamline and harmonise any overlapping regulatory requirements or supervisory expectations to which financial entities are currently subject under EU law; (iii) suggests that the EU legislative bodies reflect further on potential inconsistencies between the proposed Regulation and the Network and Information Security Directive (NIS Directive) that may hamper the harmonisation and reduction of overlapping and conflicting requirements for financial entities; (iv) suggests that there should be greater coordination between the proposed Regulation and the proposed NIS2 Directive to clarify the exact scope of reporting to which any given financial entity may be subject; (v) welcomes incentivising financial entities to share on a voluntary basis cyber threat intelligence information amongst each other to enhance and bolster their cyber resilience postures; (vi) supports information sharing and cooperation between the competent authorities for the purposes of the proposed regulation, the European Supervisory Authorities, and the Computer Security Incident Response Teams; and (vii) would welcome the introduction under the proposed regulation of rules on personal data and data retention. Furthermore, the opinion sets out specific observations on: (a) oversight and securities clearing and settlement; (b) prudential supervisory aspects; and (c) ICT risk management, incident reporting, operational resilience testing and ICT third-party risk. In addition, where the ECB recommends that the proposed Regulation is amended, it has set out specific drafting proposals in a technical working document accompanied by explanatory text. The ECB states that further clarification and reflection by the EU legislative bodies is warranted on the interplay between the proposed Regulation and the regulatory technical standards supplementing the CSDR to avert the risk of conflicting requirements. Furthermore, the EBA notes that it should be clarified that exemptions granted to CSDs operated by certain public entities under the CSDR are extended under the proposed Regulation.

Date of publication: 04/06/2021

(iv) International

BCBS: Prudential treatment of cryptoasset exposures

Status: Consultation

Deadline for the submission of comments: 10/09/2021

BCBS began consulting on preliminary proposals for the prudential treatment of banks' cryptoasset exposures. The proposed prudential treatment outlined in the consultation divides cryptoassets into two broad groups: (i) those that fulfil a set of classification conditions and as such are eligible for treatment under the existing Basel Framework (with some modifications and additional guidance). These include certain tokenised traditional assets and stablecoins; and (ii) those, such as bitcoin, that do not fulfil the classification conditions. Since these pose additional and higher risks, they would be subject to a new conservative prudential treatment. Central bank digital currencies are not within the scope of the consultation. Given the rapidly evolving nature of this asset class, BCBS believe that policy development for cryptoasset exposures is likely to involve more than one consultation.

Date of publication: 10/06/2021

10.3 Sustainable finance

(i) EU

EBA: Report on management and supervision of ESG risks for credit institutions and investment firms

Status: Final

The EBA published a report providing a comprehensive proposal on how ESG factors and ESG risks should be included in the regulatory and supervisory framework for credit institutions and investment firms, based on feedback that the EBA received on its discussion paper published in November 2020. The report focuses on the resilience of institutions to the potential financial impact of ESG risks across different time horizons – the EBA states that this requires careful assessments by institutions and supervisors who should take a comprehensive and forward-looking view, as well as early, proactive actions. Furthermore, the report: (i) outlines the impact that ESG factors, especially climate change, can have on institutions' counterparties or invested assets, affecting financial risks; (ii) illustrates available indicators, metrics and evaluation methods that are needed for effective ESG risk management and identifies remaining gaps and challenges; (iii) provides recommendations for institutions to incorporate ESG risks-related considerations in strategies and objectives, and governance structures, and to manage these risks as drivers of financial risks in their risk appetite and internal capital allocation process; (iv) recommends developing methodologies and approaches to test the long-term resilience of institutions against ESG factors and risks including the use of scenario analysis; and (v) states that to further enhance the supervisory review and evaluation process (SREP), there is a need to extend the time horizon of the supervisory assessment of the resilience of institutions' business models, applying at least a ten year horizon to capture physical risks, relevant public policies or broader transition trends – the report proposes a phase-in approach, starting with the inclusion of climate-related and environmental factors and risks in the supervisory business model and internal governance analysis.

The EBA will publish Pillar 3 disclosure requirements on ESG risks, transition risks and physical risks, as defined in the report, later this year. The EBA has also published an accompanying [factsheet](#).

Date of publication: 23/06/2021

EC: EU Taxonomy Compass

Status: Final

The EC published a Taxonomy Compass for the EU. The Compass provides a visual representation of the contents of the EU Taxonomy, starting with the Delegated Act on the climate objectives, as adopted on 4 June (The EC does note that the Delegated Act is still being scrutinised by the EP and the Council). It will be updated to include future delegated acts specifying technical screening criteria for additional economic activities substantially contributing to the climate objectives and the other environmental objectives of the Taxonomy Regulation. The EU Taxonomy Compass aims to make the contents of the EU Taxonomy easier to access for a variety of users. It enables users to check which activities are included in the EU Taxonomy, to

which objectives they substantially contribute and what criteria they have to meet. The EU Taxonomy Compass also aims to make it easier to integrate the criteria into business databases and other IT systems.

Date of publication: 16/06/2021

EC: Commission Delegated Regulation (EU) .../... supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives

Status: Adopted by EC

The EC confirmed that it has adopted Commission Delegated Regulation supplementing the Taxonomy Regulation relating to climate change mitigation and adaptation. The text of the Delegated Act, alongside its Annexes, has also been published. The Delegated Act will enter into force 20 days after it has been published in the OJ, and it will apply from 1 January 2022.

Date of publication: 04/06/2021

(ii) International

IOSCO: Report on Sustainability-related Issuer Disclosures

Status: Final

The International Organization of Securities Commissions (IOSCO) published a report on sustainability-related issuer disclosures. The report, developed by IOSCO's Sustainable Finance Taskforce (STF), reiterates the urgent need to improve the consistency, comparability and reliability of sustainability reporting for investors. IOSCO is engaging with the International Financial Reporting Standards (IFRS) Foundation as it establishes the International Sustainability Standards Board (ISSB). The report provides input to the IFRS Foundation on governance features and mechanisms for stakeholder engagement that will be important to the ISSB initiative. IOSCO plans to consider potential endorsement of future standards issued by the ISSB to guide issuers' sustainability-related reporting in their jurisdictions.

Date of publication: 28/06/2021

11. German Omnibus Acts (*Artikelgesetze*)

(i) Germany

Law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (Gesetz zur europäischen Vernetzung der Transparenzregister und zur Umsetzung der Richtlinie 2019/1153 zur Nutzung von Finanzinformationen für die Bekämpfung von Geldwäsche, Terrorismusfinanzierung und sonstigen schweren Straftaten)

Status: Published in the Federal Gazette

Date of entry into force: 01/08/2021

The law on the European interconnection of transparency registers and on the implementation of Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (*Gesetz zur europäischen Vernetzung der Transparenzregister und zur Umsetzung der Richtlinie 2019/1153 zur Nutzung von Finanzinformationen für die Bekämpfung von Geldwäsche, Terrorismusfinanzierung und sonstigen schweren Straftaten – Transparenz- und Finanzinformationsgesetz – TraFinG*) has been published in the German Federal Gazette. For more information please see section 5 above.

Date of publication: 30/06/2021

Fund Jurisdiction Act (Fondsstandortgesetz – FoG)

Status: Published in the Federal Gazette

Date of entry into force: 01/07/2021

The law to strengthen Germany as a fund jurisdiction and to implement Directive (EU) 2019/1160 amending Directives 2009/65/EC and 2011/61/EU with regard to the cross-border distribution of undertakings for collective investments (*Fondsstandortgesetz – FoG*) has been published in the German Federal Gazette. For more information, please see section 9.2(a) above.

Date of publication: 10/06/2021

Law on strengthening financial market integrity (Finanzmarktintegritätsstärkungsgesetz – FISG)

Status: Published in the Federal Gazette

Date of entry into force: 01/07/2021

The law on strengthening financial market integrity (*Finanzmarktintegritätsstärkungsgesetz – FISG*) has been published in the German Federal Gazette. For more information, please see section 1.1(a) above.

Date of publication: 10/06/2021

Law on the accompanying implementation of Regulation (EU) 2020/1503 and the implementation of Directive (EU) 2020/1504 regulating crowdfunding service providers (Schwarmfinanzierung-Begleitgesetz)

Status: Published in the federal Gazette

Date of entry into force: 11/06/2021

The law on the accompanying implementation of Regulation (EU) 2020/1503 and the implementation of Directive (EU) 2020/1504 regulating crowdfunding service providers (*Gesetz zur begleitenden Ausführung der europäischen Verordnung 2020/1503 und der Umsetzung der EU-Richtlinie 2020/1504 zur Regelung von Schwarmfinanzierungsdienstleistern – Schwarmfinanzierung-Begleitgesetz*) has been published in the German Federal Gazette. For more information, please see section 10.2 above.

Date of publication: 10/06/2021

Law on the introduction of electronic securities (Gesetz zur Einführung von elektronischen Wertpapieren)

Status: Published in the Federal Gazette

Date of entry into force: 10/06/2021

The law on the introduction of electronic securities has been published in the German Federal Gazette. For more information, please see section 10.2 above.

Date of publication: 09/06/2021

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