

A&O SHEARMAN



Regulatory monitoring: EU Version

NEWSLETTER

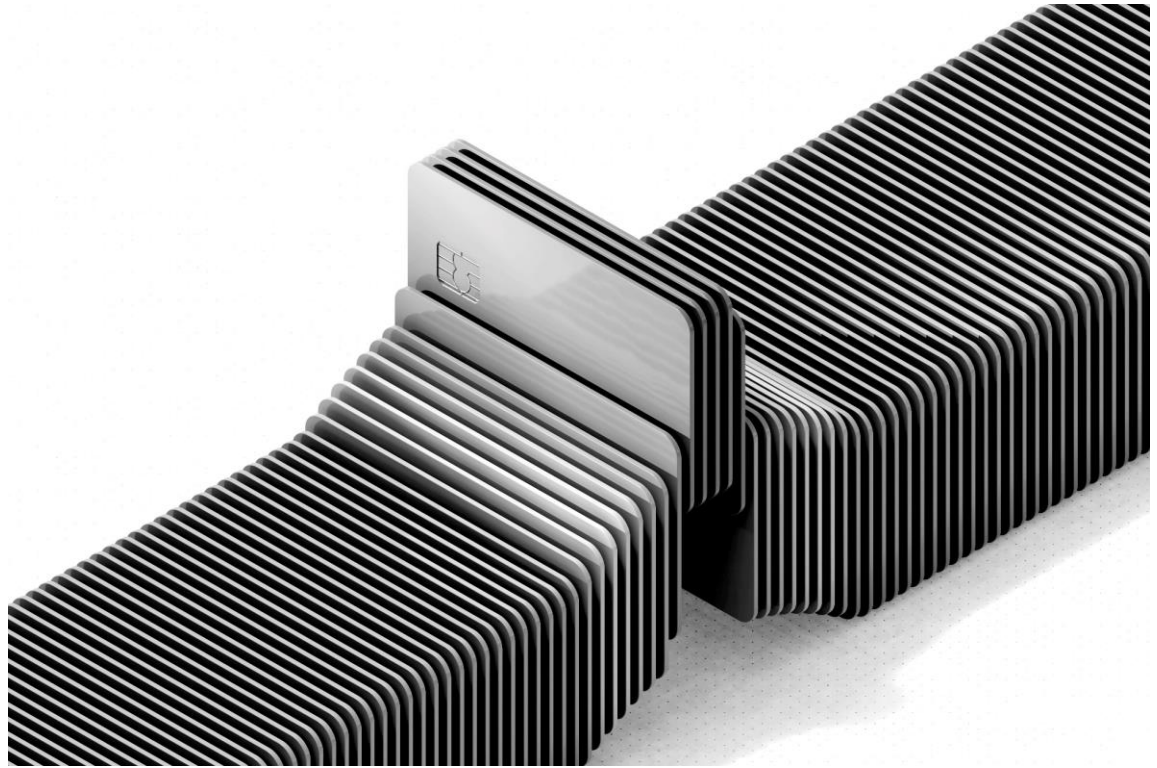
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FEATURES

HORIZON SCANNING/REGULATORY MONITORING

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

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF RULES

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

1. Bank regulation

1.1 PRUDENTIAL REGULATION

a) General

(i) EU

EC: Report on the future of European competitiveness

Status: Final

The EC has published a report on the future of European competitiveness, prepared by Mario Draghi, former President of the ECB. The report aims to set out a new industrial strategy for Europe to overcome barriers to the EU's competitive strength. It sets out priority proposals in the short and medium term in key strategic sectors. For financial regulation, the report focuses on the completion of the Capital Markets Union and the Banking Union.

Its recommendations include: (i) introducing a European Security Exchange Commission. ESMA should transition into the single common regulator for all EU security markets, with exclusive supervisory powers over large multinational issuers, major regulated markets with trading platforms in various jurisdictions and CCPs; (ii) creating a pan-European multi-located stock market by reducing regulatory complexity for IPOs and for companies going public, harmonising the rules across EU markets and aligning the rules with non-EU markets. Dual-class shares should be allowed; (iii) creating a single CCP and a single CSD for all security trades; (iv) assessing whether further changes to the Solvency II capital requirements are warranted by further reducing the capital charges on equity investments held for the long term; (v) reforming existing securitisation regulation. In particular, the EC should adopt a legislative proposal to adjust prudential requirements for securitised assets. The report also recommends establishing a securitisation platform to deepen the securitisation market; and (vi) creating a separate jurisdiction for European banks with substantial cross-border operations that would be "country blind" from the regulatory, supervisory and crisis management viewpoints. There should be a separate deposit insurance system for these groups, contributed by the groups themselves.

- ◆ [Part A: A competitiveness strategy for Europe](#)
- ◆ [Part B: In-depth analysis and recommendations](#)

Date of publication: 10/09/2024

ESAs: Joint Committee Report on risks and vulnerabilities in the EU financial system

Status: Final

The ESAs have issued their Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system. The Report underlines ongoing high economic and geopolitical uncertainties. The ESAs warn national supervisors of the financial stability risks stemming from these uncertainties and call for continued vigilance from all financial market participants. For the first time, the Report also includes a cross-sectoral deep dive into credit risks in the financial sector.

Against the backdrop of the identified risks and vulnerabilities, the ESAs advise national competent authorities, financial institutions and market participants to take the following policy actions: (i) financial institutions and supervisors should remain prepared to face the impacts of continued high interest rates on the real economy;

(ii) credit risk should continue to be monitored and carefully managed as its potential materialisation remains a concern. This underlines the need for adequate provisioning levels and forward-looking provisioning policies, while maintaining prudent and up-to-date collateral valuation; (iii) financial institutions need to be flexible and agile and have proper plans and processes in place to address unexpected short-term multi-fold challenges; (iv) financial institutions and supervisors should remain vigilant regarding the impact of inflation on product development; and (v) financial institutions and supervisors should remain vigilant to operational and financial stability risks that could arise from cyber-risks, as exemplified by the global IT disruption in July from the failed software update of a widely used cybersecurity company.

Date of publication: 10/09/2024

EBA: Launch of 2024 EU-wide transparency exercise

Status: Final

The EBA has launched the 2024 EU-wide transparency exercise, which is intended to offer preliminary and valuable insights into the health and resilience of Europe's banking sector ahead of the 2025 EU stress tests. The transparency exercise will cover capital positions, profitability, financial assets, risk exposure amounts, sovereign exposures and asset quality. The results will be published at the end of November, together with the release of the Risk Assessment Report.

Date of publication: 09/09/2024

(ii) International

BCBS: Approval of annual G-SIB assessment and follow-up response to 2023 banking turmoil

Status: Final

BCBS has published the outcomes of its annual meeting, including: (i) a discussion of recent episodes of market and operational disruptions; (ii) the approval of the annual assessment exercise for global systemically important banks (G-SIBs); and (iii) the finalisation of an analytical report on liquidity risk insights from the 2023 banking turmoil which will be published next month.

Date of publication: 24/09/2024

b) Securitisation

(i) EU

EC: Report on the future of European competitiveness

Status: Final

The EC has published a report on the future of European competitiveness, prepared by Mario Draghi, former President of the ECB. For more information, please see section a) above.

Date of publication: 10/09/2024

(ii) International

FSB: Public responses to consultation on the evaluation of the effects of the G20 financial regulatory reforms on securitisation

Status: Draft

The FSB has published the public responses to its [consultation on the evaluation of the effects of the G20 financial regulatory reforms on securitisation](#), launched on 2 July 2024. The evaluation aims to: (i) assess the extent to which risk retention and higher bank prudential requirements implemented to date have achieved their financial stability objectives; and (ii) examine broader effects (positive or negative) of these reforms on the functioning and structure of the securitisation markets and on the financing of the real economy.

The FSB will review the responses and expects to publish a final report towards the end of 2024.

Date of publication: 16/09/2024

c) Cyber security

(i) EU

EC: Approval of legislative proposal for the Cyber Resilience Act under corrigenda procedure

Status: Draft

The EP has approved the final texts of 20 proposals for new laws under the corrigenda procedure. The proposals were formally adopted in the spring, however due to the recess for the European elections there was not enough time to complete the lawyer-linguist reviews of the texts. As such, the new legislature had to approve the texts under the corrigenda procedure. The approved proposals include the corrigendum to the EP position with a view to the adoption of a Regulation on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) 2019/1020 and Directive (EU) 2020/1828 (Cyber Resilience Act) (2022/0272(COD)).

The Council of the EU is expected to formally adopt this proposal at its upcoming meetings, after which it will be published in the OJ.

Date of publication: 17/09/2024

ECB: Speech on banks' operational resilience

Status: Final

The ECB has published a speech by Frank Elderson, ECB Executive Board member and Supervisory Board Vice-Chair, on banks' operational resilience. Operational resilience has become a key priority for regulators globally. Mr Elderson notes that the EU's Digital Operational Resilience Act, which applies from 17 January 2025, will significantly enhance IT and cyber risk management. However, the ECB's cyber resilience stress test earlier this year illustrated that there is scope for improvement, and the ECB appeals to Eurozone banks to prioritise operational and cyber resilience. Mr Elderson also referred to cloud outsourcing risk where, in order to gain better insight into risk controls at cloud service providers (CSPs), ECB banking supervision has started conducting on-site inspections of CSPs.

The ECB recently consulted on a draft [guide on outsourcing cloud services to cloud service providers](#), with the aim of clarifying the ECB's expectations for the banks it supervises. Noting that concentration risk may arise where

financial institutions outsource critical functions to a common critical service provider, the ECB encourages prudential supervisors to coordinate with other supervisory authorities, such as competition authorities, to understand the dynamic market forces at play. Coordination is crucial for ensuring that the drive towards digitalisation, which may result in an increase in market concentration, does not undermine financial stability. Cloud outsourcing risk affects multiple jurisdictions, and as such the ECB has teamed up with other prudential authorities to conduct a joint review into cloud outsourcing practices. This will enable them to better understand how banks are adopting cloud technology and the risks it may pose.

Finally, Mr Elderson emphasised that banks must continue investing in building their operational resilience by, for instance, replacing legacy systems with state-of-the-art IT infrastructure, including in the areas of IT risk management and cyber hygiene, as well as ensuring that business continuity plans and third-party dependency management are implemented consistently. In addition, banks must ensure that employees at all levels of the organisation have the appropriate skillset, whether they are experts or managers, including boards and management bodies.

Date of publication: 04/09/2024

d) Accounting/Prudential filter/Audit

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2019/815 as regards the 2024 update of the taxonomy for the single electronic reporting format

Status: Draft

The EC has published a draft Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2019/815 as regards the 2024 update of the taxonomy for the single electronic reporting format (the European Single Electronic Format – ESEF). This RTS aims to amend the existing RTS on ESEF to reflect, in combination, the 2023 and 2024 updates of the IFRS Accounting taxonomies.

Date of publication: 26/09/2024

1.2 RECOVERY AND RESOLUTION

(i) Eurozone

SRB: Adaption of MREL policy in accordance with the Daisy Chain Act

Status: Final

The SRB has published a communication on the changes to its MREL policy to be implemented in line with the Daisy Chain Act, which was adopted earlier this year. This Act allows resolution authorities more flexibility in setting internal minimum requirements for own funds and eligible liabilities (MREL) in banking groups, in order to ensure sufficient loss-absorbing capacity. It also simplifies MREL treatment for liquidation entities and related prior permissions.

In particular, the amendments to Article 12d SRMR introduced by Article 2, points (1) and (2) of the Daisy Chain Act will apply from 14 November 2024. As a result, the SRB has announced that, in the course of the 2024 resolution planning cycle, it will issue the necessary instructions to the relevant national resolution authorities to repeal MREL

in respect of the liquidation entities for which the SRB had previously adopted decisions setting MREL at the level equal to the loss absorption amount.

Date of publication: 30/09/2024

SRB: Report on resolution planning and crisis management for less significant institutions in 2023 and 2024

Status: Final

The SRB has published a report on resolution planning and crisis management for less significant institutions (LSIs) in 2023 and 2024. The report focuses on the 2023 resolution planning cycle, and sets out the progress made by LSIs in terms of the build-up of MREL and resolvability. All LSIs that had to comply with their final MREL targets as of 1 January 2024 met their obligations, while the remaining MREL shortfalls are attributed to entities with extended transitional periods. The report shows that national resolution authorities (NRAs) continue to phase in and proportionately implement the SRB's Expectations for Banks, including its resolvability assessment (heatmap) approach. At this stage, the report identifies good progress by the LSIs on the resolvability capabilities prioritised by their respective NRAs in 2022-2023.

Date of publication: 11/09/2024

2. Market regulation/ Conduct rules

2.1 CAPITAL MARKETS UNION

(i) EU

EC: Approval of legislative proposals under corrigenda procedure

Status: Draft

The EP approved the final texts of 20 proposals for new laws under the corrigenda procedure. The proposals were formally adopted in spring, however due to the recess for the European elections there was not enough time to complete the lawyer-linguist reviews of the texts. As such, the new legislature had to approve the texts under the corrigenda procedure. The proposals approved include the following three Regulations and Directives.

The Council of the EU is expected to formally adopt these proposals at its upcoming meetings, after which they will be published in the OJ.

- ◆ Corrigendum to the EP position with a view to the adoption of a Directive amending the MiFID II Directive to make public capital markets in the Union more attractive for companies and to facilitate access to capital for SMEs and repealing Directive 2001/34/EC (2022/0405(COD))
- ◆ Corrigendum to the EP position with a view to the adoption of a Directive on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility (2022/0406(COD))
- ◆ Corrigendum to the EP position with a view to the adoption of a Regulation amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for SMEs (2022/0411(COD))

Date of publication: 17/09/2024

EC: Report on the future of European competitiveness

Status: Final

The EC has published a report on the future of European competitiveness, prepared by Mario Draghi, former President of the ECB. For more information, please see section 1.1a) above.

Date of publication: 10/09/2024

2.2 MIFID/MIFIR

(i) EU

ESMA: Announcement on next steps for the selection of Consolidated Tape Providers

Status: Final

ESMA has announced that it will publish additional details on the selection of Consolidated Tape Providers (CTPs) for bonds and for shares and Exchange-Traded Funds (ETFs). It will launch the selection procedure for the CTP for bonds on Friday 3 January 2025, as set out in Article 27da(1) MiFIR. ESMA intends to adopt a reasoned decision on the selected applicant within six months of the launch, i.e. by early July 2025. In June 2025, ESMA will launch the selection procedure for the CTP for shares and ETFs with the objective to adopt a reasoned decision on the selected applicant by the end of 2025.

ESMA explains that each selection procedure will be launched with the publication of a contract notice and procurement documents on the EU Funding & Tenders Portal. Prospective applicants are invited to register and familiarise themselves with the Portal. In the coming weeks, ESMA intends to share additional guidance on the assessment of exclusion criteria. This announcement aims to foster a successful competition with multiple solid offers in transparent and fair selection procedures.

Date of publication: 30/09/2024

3. Market infrastructure

3.1 CLEARING, SETTLEMENT, AND CCPS RELATED RULES OTHER THAN IN THE CONTEXT OF DERIVATIVES

(i) EU

EC: Report on the future of European competitiveness

Status: Final

The EC has published a report on the future of European competitiveness, prepared by Mario Draghi, former President of the ECB. For more information, please see section 1.1a) above.

Date of publication: 10/09/2024



4. Payments

4.1 PAYMENT SERVICES/E-MONEY

(i) EU

EC: Commission Delegated Regulation (EU) .../... correcting Commission Delegated Regulation (EU) 2017/2055 supplementing PSD2 with regard to RTS for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions

Status: Draft

The EC has adopted a Delegated Regulation correcting Commission Delegated Regulation (EU) 2017/2055 which supplements PSD2 with regard to RTS for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions. Annex I to Commission Delegated Regulation (EU) 2017/2055 specifies the format of the relevant unique identification number for each Member State. According to Annex I, for Denmark the ID number type for a natural person is the personal registration number (CPR number). The Delegated Regulation amends Annex I to Commission Delegated Regulation (EU) 2017/2055 to clarify that a Danish 'sole proprietorship' shall use the company registration number (CVR number) and not the CPR number.

The Delegated Regulation now has to be adopted by the EP and the Council of the EU, after which it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 13/09/2024

ECB: Opinion on the proposed FIDA Regulation

Status: Final

The ECB has published an Opinion (dated 30 August) on the proposed Regulation on a framework for Financial Data Access (FIDA). Overall, the ECB welcomes the objective of the proposed Regulation regarding the introduction of a framework for access to and use of customer data. However, it would like the ECB's role under the proposed Regulation, in terms of its prudential supervisory competence, to be further clarified. The ECB notes that the proposed Regulation provides that the ECB supervises significant credit institutions' compliance with the new framework. However, it is concerned that the proposed Regulation thereby assigns to the ECB supervisory tasks which are not prudential in nature, but rather relate to consumer protection. In addition, the proposed Regulation pursues the objective of consumer protection and not of ensuring the safety and soundness of credit institutions. Therefore, the ECB is of the opinion that the text of the proposed Regulation should unambiguously clarify that the ECB is not designated as competent authority entrusted with any consumer protection tasks, including in its role as consolidating supervisor. The ECB also emphasises the need to provide a clear legal basis to ensure cooperation, including facilitating relevant information exchanges between the ECB and the competent authorities designated under the proposed Regulation. On that basis, the ECB suggests that Articles 3(4) and 17(4), Article 18(1), point (b)(v), and Article 26(1) of the proposed Regulation should be amended to ensure that the ECB's competences reflect the tasks conferred on it by the Treaty and the SSM Regulation. The proposed amendments can be found at the end of the Opinion.

Date of publication: 03/09/2024

(ii) International

FSB: Public responses to two consultations on cross-border payment services

Status: Draft

The FSB has published the public responses to its two consultations on cross-border payment services: (i) the consultation on [Recommendations for Regulating and Supervising Bank and Non-bank Payment Service Providers Offering Cross-border Payment Services](#); and (ii) the consultation on [Recommendations to Promote Alignment and Interoperability Across Data Frameworks Related to Cross-border Payments](#), both launched on 16 July 2024.

The FSB will review the responses and expects to publish a final report towards the end of 2024.

- ◆ [Public responses to consultation on Recommendations for Regulating and Supervising Bank and Non-bank Payment Service Providers Offering Cross-border Payment Services](#)
- ◆ [Public responses to consultation on Recommendations to Promote Alignment and Interoperability Across Data Frameworks Related to Cross-border Payments](#)

Date of publication: 24/09/2024

5. Institutional supervisory framework

(i) EU

EC: Report on the future of European competitiveness

Status: Final

The EC has published a report on the future of European competitiveness, prepared by Mario Draghi, former President of the ECB. For more information, please see section 1.1a) above.

Date of publication: 10/09/2024



6. Investment funds

6.1 PRUDENTIAL REGULATION

a) Compliance

(i) EU

Publication of corrigendum to Regulation amending ELTIF Regulation

Status: Published in the OJ

A corrigendum to Regulation 2023/606, which amends the ELTIF Regulation, has been published in the OJ. Regulation 2023/606 amends the ELTIF Regulation as regards the requirements pertaining to the investment policies and operating conditions of ELTIFs and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules. The corrigendum amends an error in Article 1(11)(b) of Regulation 2023/606, which inserts a new Article 19(2a) in the ELTIF Regulation, correcting 'existing' investors to 'exiting' investors.

Date of publication: 17/09/2024

7. Special topics

7.1 FINTECH/DIGITAL FINANCE

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation with regard to RTS specifying the requirements, templates and procedures for the handling of complaints relating to ARTs

Status: Draft

The EC has published a draft Delegated Regulation supplementing the MiCA Regulation with regard to RTS specifying the requirements, templates and procedures for the handling of complaints relating to asset referenced tokens (ARTs). These RTS set out the handling of complaints and requirements related to the complaints management policy and function, and the provision of information to holders of ARTs and other interested parties. The RTS continue with requirements on templates and recording of complaints and measures taken in response, the languages, the procedure to investigate complaints and to communicate the outcome of the investigations to complainants, and specific provisions for complaints handling involving third-party entities.

Date of publication: 30/09/2024

ECB: Report on TIBER-EU and DORA requirements

Status: Final

The ECB has published a report outlining how the European framework for threat intelligence-based ethical red teaming (TIBER-EU framework) can help competent authorities and financial entities fulfil their threat-led penetration testing (TLPT) requirements under DORA. TIBER-EU is a common European framework that delivers a controlled, bespoke and intelligence-led red team test of financial entities' critical live production systems. It was established as a tool for testing and improving key elements of the cyber resilience of participating financial entities, while focusing heavily on the learning opportunities provided by the testing. The ECB suggests that guiding and performing TLPT on the basis of the DORA regulatory technical standards alone will be challenging given the high standards required by such tests but that TIBER-EU will alleviate these difficulties to a large extent and provides a framework that can be used to fulfil the DORA TLPT requirements. The paper considers the benefits of the TIBER-EU framework for authorities and financial entities subject to DORA.

Date of publication: 26/09/2024

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation with regard to RTS establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries

Status: Draft

The EC has published a draft Delegated Regulation supplementing the MiCA Regulation with regard to RTS establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries. These draft RTS relate to cooperation agreements between supervisory authorities and as such do not create obligations for market participants.

Date of publication: 26/09/2024

Commission Implementing Regulation (EU) 2024/2494 laying down ITS for the application of the MiCA Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and EBA and ESMA

Status: Published in the OJ

Date of application: 15/10/2024

The Commission Implementing Regulation (EU) 2024/2494 laying down ITS for the application of the MiCA Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and EBA and ESMA has been published in the OJ. The procedure as well as the forms and templates used for the exchange of information and the provision of cooperation should ensure that any information exchanged or transmitted is kept confidential, and that rules with regard to the processing of personal data and the free movement of personal data are complied with.

Date of publication: 25/09/2024

EC: Commission Implementing Regulation (EU) .../... laying down ITS for the application of the MiCA Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities

Status: Draft

The EC has published a draft Delegated Implementing Regulation (EU) .../... laying down ITS for the application of the MiCA Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

Date of publication: 24/09/2024

ECB: Speech on banks' operational resilience

Status: Final

The ECB has published a speech by Frank Elderson, ECB Executive Board member and Supervisory Board Vice-Chair, on banks' operational resilience. For more information, please see section 1.1c) above.

Date of publication: 04/09/2024

EC: Two communications on the intention to adopt with amendments the Commission Delegated Regulation supplementing the MiCA Regulation

Status: Final

The EC has published two types of Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the MiCA Regulation with regard to: (i) RTS specifying the information to be included in an application for authorisation as a crypto-asset service provider; and (ii) RTS specifying the information to be notified by certain financial entities of their intention to provide crypto-asset services.

- ♦ Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the MiCA Regulation with regard to RTS specifying the information to be included in an application for authorisation as a crypto-asset service provider
- ♦ Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the MiCA Regulation with regard to RTS specifying the information to be notified by certain financial entities of their intention to provide crypto-asset services

Date of publication: 03/09/2024

7.2 AI

(i) International

FSB: Summary of roundtable on AI in finance

Status: Final

The FSB has published a summary of its roundtable with the OECD, together with experts from the public and private sectors and with academics to analyse trends and use cases of AI in finance. Roundtable participants discussed opportunities and risks and shared emerging best practices regarding policy frameworks. The roundtable discussed that the growing adoption of AI technologies by banks, insurers, and asset managers is resulting in efficiency gains in areas such as risk modelling, trading, claims handling, fraud detection, and financial crime prevention. Generative AI use in finance does not seem transformational at present, at least for regulated financial institutions, as it focuses on operational efficiency improvements and is largely exploratory. Supervisors are also benefiting from AI, with an enhanced capacity to manage large volumes of data.

Notwithstanding these benefits, the roundtable also pointed out concerns of the use of AI in terms of model risk, data protection, governance, privacy, and ethics. It may also create financial stability risks given its potential to amplify interconnections among financial firms as well as complexity and opacity concerns around models and data. On this basis, the roundtable concluded that policymakers should strive to promote the safe use of AI in financial services, particularly through global cooperation on standards and best practices.

Date of publication: 30/09/2024

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