

# Regulatory monitoring

Newsletter September 2023





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# ECB in focus

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

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

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

## Some of our recent posts

### ECB 2022 Annual Report on banking supervision - Key topics and implications for banks

22 June 2023

The ECB published its 2022 annual report on banking supervision on 21 March 2023, highlighting the main supervisory activities in the past year. The Annual Report also outlines the supervisory priorities for 2023-2025, which aim to ensure that banks are resilient, well governed, and prepared for emerging risks.

[Read more →](#)

### ECB publishes supervisory priorities 2023-25

4 January 2023

The ECB has published its supervisory priorities for 2023-2025. They include three strategic priorities that will form the basis of the ECB's supervisory activity: (1) strengthening resilience to immediate macro-financial and geopolitical shocks; (2) addressing digitalisation challenges and strengthening governance capabilities; and (3) stepping up efforts in addressing climate change.

[Read more →](#)

### ECB warns banks that failure to comply with leveraged lending guidance may result in capital charges

26 October 2022

In her recent speech Elizabeth McCaul, member of the ECB's Supervisory Board, threatened to apply capital charges to significant banks with very high risk exposures to leveraged finance. The extent of banks' exposures to leveraged lending has long been a thorn in the ECB's side.

[Read more →](#)

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#### Financial Regulatory Law Sourcebook

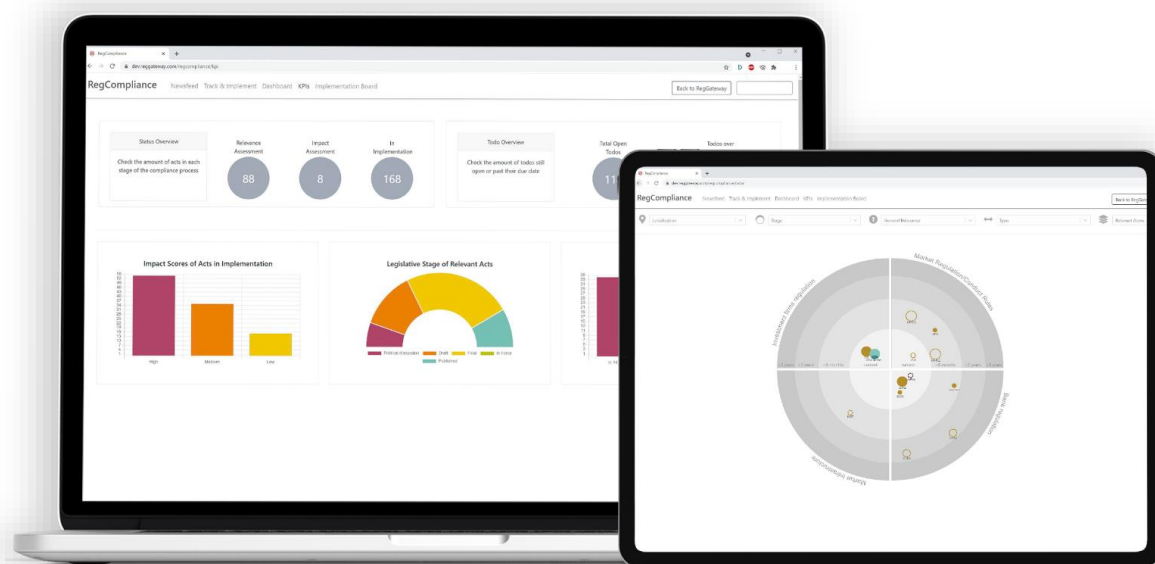
A categorised collection of all laws in the field of financial regulatory law for Europe and Germany (constantly being expanded), which can be compiled as an obligation register and commented on as desired.

#### 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.



# Bank regulation

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## Prudential regulation

### General

(a) EU

#### **EBA: Report on Basel III monitoring exercise results**

**Status: Final**

The EBA has published its second mandatory Basel III monitoring report which assesses the impact that Basel III full implementation will have on EU banks in 2028. According to this assessment, which uses a sample of 157 banks for the point-in-time analysis, in terms of minimum Tier 1 capital the impact has significantly decreased in relation to the previous reference date of December 2021. In terms of estimated capital shortfall, the impact of the reform has been nearly fully absorbed.

*Date of publication: 26/09/2023*

#### **EBA: EU-wide transparency exercise 2023**

**Status: Final**

The EBA has announced that it had launched its annual EU-wide transparency exercise, as part of its efforts to monitor risks and vulnerabilities and to reinforce market discipline. As with previous exercises, it is exclusively based on supervisory reporting data, which will keep the burden for the banks to a minimum. The EBA has started the interaction with the 124 banks participating in the transparency exercise; this interaction envisages the verification of pre-populated templates and any data quality correction that will be done through the supervisory reporting channel. The EBA expects to release around 1 million data points, up to 10,000 data points per bank. The EBA expects to publish the results at the beginning of December, together with the annual Risk Assessment Report.

*Date of publication: 22/09/2023*

#### **ECB: Speech on how culture drives risk in banks and what supervisors can do about it**

**Status: Final**

The ECB has published a speech by Frank Elderson, ECB Vice-Chair of the Supervisory Board and Member of the Executive Board, on how culture drives risk in banks and what supervisors can do about it. Points of interest include: (i) Mr Elderson considers the renewed focus on behaviour and culture in supervision is a call for banking supervisors to view the complex financial ecosystem from multiple angles; (ii) when supervising behaviour and culture, the ECB looks at both the "hardware" of banks' governance (their policies, management body set-up and composition) and at the "software" (how people behave within the governance structures); (iii) in the ECB's recent review of management body effectiveness, a culture of constructive challenge was often found lacking; (iv) one way in which the ECB assesses risk culture is to look at the "tone from the top", as this plays a crucial role in establishing a culture of prudent risk-taking

within the institution. The ECB looks at whether board members include the bank's declared set of values and norms in their decision-making. Mr Elderson also notes that while it is for banks themselves to define their culture and values, it is the role of the supervisor to assess whether the culture they define is aligned with prudent risk-taking; (v) in response to a common criticism that prudential supervisors are overstepping their mandate in assessing culture and behaviour, Mr Elderson identifies various legal sources including the Basel Committee on Banking Supervision's Corporate governance principles for banks and the CRD, in which it is enshrined; and (vi) the ECB is considering how culture and behavioural patterns can be further incorporated into its supervisory approach to governance. In Q4 2024, the ECB plans to publish a Guide on governance and risk culture that will set out in detail its supervisory expectations on governance, risk management and risk culture and will include a set of good practices that it has observed across the industry.

*Date of publication: 19/09/2023*

#### **ESAs: Autumn 2023 Joint committee report on risks and vulnerabilities in the EU financial system**

**Status: Final**

The ESAs have published the Autumn 2023 Joint committee report on risks and vulnerabilities in the EU financial system. The Report underlines the continued high economic uncertainty. The ESAs warn national supervisors of the financial stability risks stemming from the heightened uncertainty, and call for vigilance from all financial market participants.

***Date of publication: 18/09/2023***

#### **(b) International**

#### **BCBS: Basel III monitoring report**

**Status: Final**

The BCBS has published its latest update on the Basel III monitoring report. The report sets out the impact of the Basel III framework, including the December 2017 finalisation of the Basel III reforms and the January 2019 finalisation of the market risk framework. In particular, it shows that the Initial Basel III capital ratios increased above pre-pandemic levels in the second half of 2022 and liquidity coverage ratios declined but remained above pre-pandemic levels. The report also displays that the average impact of the final Basel III framework on Tier 1 minimum required capital of the largest global banks (+3.0%) increased by 20 basis points since the first half of 2022 (+2.8%).

*Date of publication: 26/09/2023*

#### **UNEP FI: Second progress report on implementation of UN Principles for Responsible Banking**

**Status: Final**

The UN Environment Programme Finance Initiative (UNEP FI) has published its second biennial progress report on the implementation of UN Principles for responsible banking. The report shows that member banks have made considerable progress understanding and disclosing how

their portfolios and businesses relate to key environmental and social impacts, with the majority of member banks having set targets to address their most significant portfolio impact, driving alignment with and contributing to the UN Sustainable Development Goals and the goals of the Paris Agreement. The report also found that member banks have also integrated sustainability oversight into their governance structures, primarily at the board and CEO levels, evidencing effective governance for embedding sustainability across the entire organisation. However, the report highlights that there is still more to be done. Banks are encouraged to build upon governance and structural changes to drive concrete action, realising more real-world impact while respecting national regulations, cultural norms, and contextual variations. Moving forward, UNEP FI will continue to collaborate with banks on their Principles for Responsible Banking journey, with new guidance on nature and climate change adaptation expected to be released in Q4 2023. The next progress report is expected to be published in 2025.

- Second biennial progress report
- Four-year update

*Date of publication: 12/09/2023*

## Solvency/Own funds issues

(a) EU

**Commission Implementing Regulation (EU) 2023/2056 amending the ITS laid down in Implementing Regulation (EU) No 945/2014 as regards an update of the list of relevant appropriately diversified indices in accordance with the CRR**

Status: Published in the OJ

Date of application: 17/10/2023

The Commission Implementing Regulation (EU) 2023/2056 amending the ITS laid down in Commission Implementing Regulation (EU) No 945/2014 as regards an update of the list of relevant appropriately diversified indices in accordance with the CRR, has been published in the OJ. The Regulation replaces the Annex to Implementing Regulation (EU) No 945/2014, to ensure that the stock indices listed in the Annex continue to meet the conditions for their specific risk to be ignored. The EBA has reassessed the relevant indices in light of the latest available data, which is the data relative to the year 2022, which showed the need to update the list.

*Date of publication: 27/09/2023*

**EBA: Opinion on measures in accordance with Article 124 CRR**

Status: Final

The EBA has published an opinion following notification by the Ministry of Finance of Poland of its intention to extend a measure originally introduced in March 2022. The measure aims to limit risks associated with foreign currency housing loans by encouraging banks to enter in settlements with borrowers. Based on the evidence submitted, the EBA does not object to the temporary extension of the measure until the next periodical assessment takes place, in accordance with the CRR.

*Date of publication: 12/09/2023*



**EC: Commission Implementing Regulation (EU) 2023/1718 amending the ITS laid down in Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR**

Status: Published in the OJ

Date of entry into force: 01/10/2023

The Implementing Regulation (EU) 2023/1718 amending the ITS laid down in Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with the CRR, was published in the OJ. The Regulation replaces the text of the Annex to Implementing Regulation (EU) 2015/2197, to ensure that the currency pairs reflect the actual correlation between the relevant currencies based on recent data. The data refers to 31 March as the end date for calculating the three and five year data series required to assess the currency pairs.

Date of publication: 11/09/2023

**Securitisation**

(a) EU

**ESMA: TRV Risk Analysis on the EU securitisation market**

Status: Final

The ESMA has published a study setting out the details of the EU securitisation market. In particular, it sets out that the size of the European securitisation market has decreased significantly since the EUR 2tn it reached at the end of 2010. At end-2022, there were 390 individual securitised products outstanding in the EU as reported to the registered securitisation repositories, amounting to EUR 540bn.

Date of publication: 21/09/2023

(b) International

**IOSCO: Consultation report on leveraged loans and CLOs – good practices for consideration**

Status: Consultation

Deadline for the submission of comments: 15/12/2023

The IOSCO has launched a consultation on leveraged loans and CLOs good practices for consideration. The consultation report: (i) provides an overview of the leveraged loan and CLO markets and their evolution since the global financial crisis; (ii) explains why the vulnerabilities identified in the leveraged loan and CLO markets could impact IOSCO's objectives of protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk; and (iii) describes the twelve proposed good practices grouped into five themes: (a) origination and refinancing based on a sound business premise; (b) EBITDA and loan documentation transparency; (c) strengthening alignment of interest from loan origination to end investors; (d) addressing interests of different market participants throughout the intermediation chain; and (e) disclosure of information on an ongoing basis. The consultation seeks feedback on the proposed good practices and the consultation questions.

*Date of publication: 14/09/2023*

## **Risk management/SREP/Pillar 2/Outsourcing/NPL**

(a) EU

**Commission Implementing Regulation (EU) 2023/2083 laying down ITS for the application of Article 16(1) of Directive (EU) 2021/2167 with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book**

**Status: Published in the OJ**

**Date of application: 19/10/2023**

The Commission Implementing Regulation (EU) 2023/2083 laying down ITS for the application of Article 16(1) of the Non-performing Loans (NPL) Directive with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book has been published in the OJ. The ITS aim to provide credit institutions with a standardised template for NPL transactions in the EU. The EC believes that applying such data templates to credit agreements would reduce information asymmetries between prospective buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the EU

*Date of publication: 29/09/2023*

## **Large exposures/Limits to shadow banking entities**

(a) EU

**EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) CRR**

**Status: Adopted by the EC**

The EC has adopted a Commission Delegated Regulation supplementing the CRR with regard to RTS specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) CRR. Under this Article, credit institutions are required to report their largest exposures to shadow banking entities that carry out banking activities outside the regulated framework on a consolidated basis. The draft RTS specify: (i) the criteria for identifying both shadow banking and non-shadow banking entities; (ii) the definition of banking activities and services; and (iii) the criteria for excluding entities established in third countries from being deemed as shadow banking entities. They are aligned with the Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under the CRR.

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

*Date of publication: 06/09/2023*

## Accounting/Prudential filter/Audit

(a) EU

### **Commission Regulation (EU) 2023/1803 adopting certain international accounting standards in accordance with the IAS Regulation**

Status: Published in the OJ

Date of application: 16/10/2023

The Commission Regulation (EU) 2023/1803 adopting certain international accounting standards (IAS) in accordance with Article 4 of the IAS Regulation has been published in the OJ. In particular, this Regulation sets out that EU companies should have the option to exempt inter-generationally mutualised and cash flow matched contracts from the annual cohort requirement of IFRS 17. This exemption should be reviewed by the EC by 31 December 2027, taking into account the IASB post-implementation review of IFRS 17.

*Date of publication: 26/09/2023*

## Recovery and resolution

(a) EU

### **EP: Draft report on proposal for Directive amending the BRRD and SRM Regulation**

Status: Draft

The EP has published a draft report on the EC's proposal for a Directive amending the BRRD and SRM Regulation as regards certain aspects of the minimum requirement for own funds and eligible liabilities (MREL). The draft report contains a draft EP legislative resolution, comparing the text proposed by the EC and the suggested amendments.

*Date of publication: 12/09/2023*

(b) Eurozone

### **SRB: Second resolvability heat-map**

Status: Final

The SRB has published its second assessment of bank's resolvability across the Banking Union, covering the year 2022. The report takes stock of the progress made by banks in being considered resolvable, implementing the SRB Expectations for Banks and building up MREL

*Date of publication: 19/09/2023*

(c) International

### **FSB: Consultation on a report on financial resources and tools for CCP resolution**

Status: Consultation

Deadline for the submission of comments: 20/11/2023

The FSB has launched a consultation report on the financial resources and tools for CCP resolution. The report presents the outcome of the FSB's qualitative analysis of a set of financial

resources and tools for resolution: (i) bail-in bonds; (ii) resolution funds; (iii) resolution-specific insurance; (iv) resolution-specific third-party contractual support; (v) resolution cash calls; (vi) statutory or contractual variation margin gains haircutting for resolution; and (vii) equity in a first-loss position. The analysis finds that resolution authorities may benefit from having access to a combination of complementary resources and tools to achieve a successful CCP resolution. This is because resources and tools have different strengths and weaknesses. They are also likely to have different effects on financial stability. The report sets out a proposal for a toolbox approach as a global standard for CCP financial resources and tools for resolution. In this approach, home resolution authorities for systemically important CCPs should have access to a set of readily available resolution-specific resources and tools to support resolution, in addition to the use of available recovery resources and tools. Jurisdictions should disclose their approach to calibrating one or more of the resolution-specific resources in the resolution toolbox. The FSB will monitor implementation for CCPs that are systemically important in more than one jurisdiction (SI>1 CCPs) through the FSB's annual Resolvability Assessment Process and Crisis Management Group monitoring.

The findings will be published in the FSB's annual resolution report.

Date of publication: 19/09/2023

# Market regulation/Conduct rules

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## General

### (a) International

#### **IOSCO: Final report on a thematic analysis rearding emerging risks in private finance**

**Status: Final**

IOSCO has published a final report on a thematic analysis rearding emerging risks in private finance. The report deals with the benefits and challenges posed by the current rapid growth of private finance. In particular, IOSCO has undertaken this work to better understand the potential vulnerabilities that might arise from private financing activities, including the ways in which risks in this sphere could touch on public capital markets and IOSCO's objectives, including potential harm to investors, risks to market integrity, or potentially giving rise to financial instability and systemic risk.

Date of publication: 14/09/2023

## Consumer protection rules

### (a) EU

#### **Council of the EU: Publication of the CCD II text**

**Status: Final**

The Council of the EU has published the text of the proposed Directive on consumer credits (CCD II). The Council has stated that following the EP's adoption at first reading on 12 September, it should be in a position to adopt the proposal. CCD II revises and replaces the current CCD. Once adopted the proposal shall be published in the OJ and will enter into force 20 days after publication. It will apply three years after its publication in the OJ. Member States shall have two years after its publication to adopt and publish laws, regulations and administrative provisions necessary to comply with CCD II.

Date of publication: 20/09/2023

#### **EP: Adoption at first reading of proposed Directive on credit agreements for consumers and repealing the CCD**

**Status: Adopted by the EP**

The EP has announced that it has adopted the proposed Directive on consumer credits (CCD II) at first reading. In a related press release, the EP explains that the CCD II aims to make the credit markets function smoothly while ensuring a high level of consumer protection. The legislation will require, among other things: (i) a creditor, prior to concluding a credit agreement, to make a thorough assessment of a consumer's creditworthiness, in the consumer's interest and to prevent irresponsible lending practices and over-indebtedness; (ii) non-bank creditors and credit intermediaries (except micro enterprises and SMEs) to be subject to an admission process, and registration and supervision by national independent authorities; (iii) credit

advertising to always contain a clear and prominent warning that borrowing money costs money; and (iv) member states to ensure that consumers have the right to withdraw from a credit agreement without any reason within 14 days.

The Council of the EU now needs to adopt the CCD II. Following that, the CCD II will enter into force 20 days after its publication in the OJ. Member states will then have two years to adopt the necessary laws and administrative provisions and three years to apply them.

Date of publication: 12/09/2023

## Securities financing transactions

(a) EU

### ESMA: ESEF Reporting Manual

Status: Final

ESMA has published its reporting manual on the European Single Electronic Format (ESEF). It updated the manual to provide technical improvements, such as: (i) clarifying the formats of images embedded in the xHTML document; (ii) updating Data Type Registry references; (iii) clarifying ESMA's position on the application of Calculations 1.1 specification in the context of ESEF; and (iv) fixing previously identified errors. ESMA provides additional clarifications on how the elements included in the 2023 IFRS Taxonomy update can be used on a voluntary basis by using the extension mechanism. This follows the decision to postpone to 2024 the amendment of the ESEF RTS in order to formally incorporate the 2023 IFRS Taxonomy update.

Date of publication: 31/08/2023

# Market infrastructure

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## EMIR

(a) EU

### ISDA: Trade associations call for deletion of active account proposal in EMIR 3.0

Status: Final

A number of trade associations (EFAMA, BFPI Ireland, EACB, FIA EPTA, Federation of the Dutch Pension Funds, Finance Denmark, Nordic Securities Association, AIMA, ICI Global, FIA and ISDA) has issued a joint statement urging EU policymakers to delete the proposed Active Account Requirement in the EMIR 3.0 proposal. This would require all market participants to hold active accounts at EU CCPs for clearing at least a portion of certain systemic derivatives contracts. The trade associations believe efforts should instead focus on streamlining the supervisory framework for EU CCPs across member states while making the EU CCPs' offering for clearing in the EU more attractive and innovative. The trade associations set out the potential detrimental outcomes of the proposal, including: (i) introducing fragmentation and a loss of netting benefits; (ii) creating a competitive disadvantage for EU firms compared to third-country firms that will remain able to transact in global markets without restriction; and (iii) the requirement's quantitative thresholds may lead to a large, volatile, and unpredictable price difference between CCPs, which would significantly increase the cost and risk of hedging for EU clients. The statement considers that location policies are inappropriate tools to mitigate financial stability risks arising from third-country CCPs and that critical areas in which to enhance supervisory cooperation with third-country authorities, such as recovery and resolution planning and an enhanced cooperation framework particularly during times of market stress could be further developed in the EMIR 3.0 proposal.

Date of publication: 07/09/2023

# Anti-money laundering

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(a) EU

## **Commission Delegated Regulation (EU) 2023/2070 amending Delegated Regulation (EU) 2016/1675 to add Cameroon and Vietnam to the list of high-risk third countries**

**Status:** Published in the OJ

**Date of application:** 18/10/2023

The Commission Delegated Regulation amending Delegated Regulation (EU) 2016/1675 amending the list of high-risk third countries with strategic AML and CTF deficiencies produced under MLD4 has been published in the OJ. The list of countries is amended periodically to take account of information from international organisations and standard setters in the field of AML/CTF, such as the FATF. The Delegated Regulation will add Cameroon and Vietnam to the table of third countries that have been identified as having strategic AML and CTF deficiencies in point I of the Annex to Delegated Regulation (EU) 2016/1675.

*Date of publication:* 28/09/2023



# Payments

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## Payment services/E-money

### (a) International

#### FSB: **Stocktake of international data standards relevant to cross-border payments**

**Status: Final**

The FSB has published its stocktake of international data standards relevant to cross-border payments. The stocktake looks at national and regional data frameworks relevant to the functioning, regulation and supervision of cross-border payment arrangements. The FSB identified a number of frictions from data frameworks that pose significant challenges to improving the cost, speed, transparency and access of cross border payments. Frictions include: (i) fragmentation among data framework requirements and their implementation, most notably across the data needed to accompany a cross-border payment transaction; (ii) uncertainty among payment providers on how to balance the various obligations under different data frameworks; and (iii) challenges arising from restrictions on the flow of data across borders. The stocktake and stakeholder outreach offered a range of ideas for improving data frameworks to facilitate cross-border payments and the report discusses five possible areas for further consideration.

The FSB invites stakeholders to submit case studies on these issues by 20 October. The case studies will be considered by the FSB as it develops its recommendations for promoting alignment and interoperability across data frameworks applicable to cross-border payments, which will be issued for public consultation in early 2024.

*Date of publication: 25/09/2023*

#### FSB: **Letters to G20 leaders ahead of the New Delhi Summit**

**Status: Final**

The FSB has published two letters sent to the G20 leaders ahead of their New Delhi Summit this weekend which: (i) outline recent work the FSB has undertaken in relation to the non-bank financial intermediation (NBFI) sector, digitalisation and climate change. The letter calls on authorities to closely monitor asset quality in those sectors most sensitive to higher interest rates, such as real estate. The letter highlights concerns over the build-up of leverage in the NBFI sector, described in a report delivered to the summit (see the Prudential Regulation section), and notes that addressing these risks will be a major focus of NBFI policy work next year. The FSB and IMF have also delivered to the Summit a synthesis paper that brings together the macroeconomic and financial stability crypto-asset-related risks identified by each institution and how they interact. The paper also includes a roadmap for future work on crypto-assets (see the Fintech section); and (ii) provide an update on the G20 Cross-border Payments Roadmap. The letter underscores the need for continued further political support and sustained effort by the public and private sectors in order to meet the G20 targets by 2027.

- **Letter on recent workstreams**
- **Letter on Cross-border Payments Roadmap**

*Date of Publication: 05/09/2023*

# Institutional supervisory framework

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(a) EU

ESMA: [Annual Work Programme 2024](#)

**Status: Final**

ESMA has published its work programme for 2024. The work programme describes objectives and outputs for each of ESMA's strategic priorities and thematic drivers and for each of the sectors within ESMA's remit. Outputs are divided into three categories: (i) ongoing work; (ii) annual outputs; and (iii) 2024 specific outputs, which are known at this stage.

Key legislative files impacting ESMA in 2024 include: (a) in 2024, ESMA will be mandated to expand the single rulebook for sustainable finance as part of the new European Green Bond Regulation and will deliver its final report on greenwashing; (b) ESMA will deliver technical standards for the ESAP and continue preparatory work on the necessary IT infrastructure which will support ESAP; (c) several technical standards and guidelines will be delivered in relation to the MiCA regulation and DORA, as well as preparatory work for oversight responsibilities related to DORA; and (d) under MiFID and MiFIR, ESMA will begin the process of selecting and authorising Consolidated Tape Providers (CTPs) in the EU, in addition to developing technical standards and Guidelines.

*Date of publication: 28/09/2023*

ECB: [Publication of indicative operational calendars for 2024](#)

**Status: Final**

The ECB has published indicative calendars for the Eurosystem's 2024 regular tender operations and reserve maintenance periods. In particular, these calendars include an alignment of allotment and settlement dates of regular three-month longer-term refinancing operations with dates of main refinancing operations

*Date of publication: 15/09/2023*

EBA: [Opinion on the 2021 discharge report of the EP](#)

**Status: Final**

The EBA has published an opinion in response to the observations made by EP in its 2021 Discharge Report. Out of 30 observations, which cover the areas of budget and financial management, performance, staff policy, procurement, prevention and management of conflicts of interest and transparency, internal control, digitalisation and green transition, business continuity along crisis, the EBA considers that 26 have already been implemented or do not require follow-up action. For four observations the follow-up is deemed to be an ongoing consideration.

*Date of publication: 14/09/2023*

# Special rules for real estate financing and covered bonds

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## Mortgage Credits

(a) EU

**ESRB: Issues note on policy options to address risks in corporate debt and real estate investment funds from a financial stability perspective**

**Status: Final**

The ESRB has published an issues note describing a high-level approach to addressing risks in investment funds that invest in assets which are either inherently illiquid or might become illiquid in times of stress, in particular, investment funds with large exposures to corporate debt and real estate. The ESRB's conclusions include: (i) structural vulnerabilities in investment funds that invest in assets, which are either inherently illiquid or might become illiquid in times of stress are not fully addressed in the current regulatory framework. Further regulatory adjustments are required to address fund vulnerabilities than those already proposed in the AIFMD and UCITS Directive amendments; (ii) as a first line of defence, certain policy tools already present in the regulatory framework could be enhanced to better serve financial stability purposes. For example, structural liquidity mismatch in real estate funds and other funds, which invest in inherently illiquid assets can be reduced by ensuring closer alignment between the fund's redemption terms and its investment strategy; (iii) there is merit in analysing and exploring further avenues to enhance the policy toolkit for investment funds from a financial stability perspective. As the incentives of fund managers and financial stability goals might not always align, there is a need to discuss the merits of the authorities playing a more prominent role in addressing shocks triggered, transmitted and/or amplified by (the collective action of) investment funds. In the next phase of this ongoing work, the ESRB will refine the policy options set out in this issues note and will be mindful of the findings of the AIFMD and UCITS Directive review process and wider international efforts currently under way. The ESRB states that the issues note will inform the FSB's consultation on policies to address vulnerabilities from liquidity mismatch in open-ended funds, which closed on 4 September.

*Date of publication: 04/09/2023*

# Special topics

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## FinTech/Digital finance

(a) EU

**EBA: Technical advice on two delegated acts under MiCA concerning certain criteria for the classification of ARTs and EMTs as significant and the fees that are to be charged by EBA to issuers of significant ARTs and EMTs**

**Status: Final**

An EC communication setting out Guidelines has been published in the OJ, which clarify how the NIS 2 Directive applies to financial services entities which are also subject to DORA. The NIS 2 Directive provides that where sector-specific EU legislation requires essential or important entities to adopt cybersecurity risk-management measures or to notify significant incidents that are at least equivalent to their NIS 2 obligations, then NIS 2 shall not apply. The areas where DORA displaces the application of NIS 2 are: (i) information and communication technology (ICT) risk management (Article 6); (ii) management of ICT-related incidents, especially major ICT-related incident reporting (Article 17); (iii) digital operational resilience testing (Article 24); (iv) information-sharing arrangements (Article 25); and (v) ICT third-party risk (Article 28).

*Date of publication: 29/09/2023*

**ESAs: Joint technical advice on two delegated acts specifying further criteria for CTPPs and determining oversight fees levied on such providers under Articles 31 and 43 of DORA**

**Status: Final**

The ESAs have published a report on joint technical advice on two delegated acts specifying further criteria for critical ICT third-party service providers (CTPPs) and determining oversight fees levied on such providers, under Articles 31 and 43 of DORA.

In relation to the criticality criteria, the ESAs propose 11 quantitative and qualitative indicators along with the necessary information to build up and interpret such indicators following a two-step approach. The ESAs also put forward minimum relevance thresholds for quantitative indicators, where possible and applicable, to be used as starting points in the assessment process to designate critical third-party providers. This joint response does not include any details of the designation procedure nor of the related methodology as these are out of the scope of this Call for Advice. However, the ESAs plan to define these details no later than six months after the adoption of the delegated act by the Commission.

Regarding the oversight fees, the ESAs make proposals for determining the amount of the fees to be levied on CTPPs and the way in which they are to be paid. The ESAs' proposals cover the types of estimated expenditures (for both the ESAs and the competent authorities) that shall be covered by oversight fees as well as the basis for the expenditures' calculation and the available information for determining the applicable turnover of the CTPPs (the basis of fee calculation) and the method of fee calculation together with other practical issues regarding the collection of fees. In addition, the advice proposes a financial contribution for voluntary opt-in requests. The ESAs aim to specify other practical

aspects on the estimation of oversight expenditures and operational aspects in the context of the implementation of the oversight framework.

*Date of publication: 29/09/2023*

#### **ESAs: Report on the landscape of ICT third-party providers in the EU**

**Status: Final**

The ESAs have published a report on the landscape of information and communication technology (ICT) third-party providers (TPPs) in the EU. The analysis was undertaken to inform preparations for the application of DORA and aims to map the provision of ICT services by TPPs to financial entities in the EU. It is intended to support the ESAs' policymaking process in light of the EC's call for advice to further specify the criteria for critical ICT TPPs and to determine oversight fees. The data collection exercise on which the report is based was the first of its kind, covering ICT-related contractual arrangements for entities across the financial sector. Overall, the exercise has identified around 15,000 ICT TPPs directly serving financial sector entities across the EU. It found that the most frequently used ICT TPPs support critical or important functions for their clients in a wide range of services. In addition, most critical services were classified as non-substitutable by financial institutions. The data collection exercise also revealed some valuable lessons for the implementation of DORA. For instance, it has underlined the importance of ensuring that financial entities provide unique identifiers in the data submitted and the need to develop an appropriate ICT services taxonomy.

*Date of publication: 27/09/2023*

#### **EC: Communication on Guidelines on the application of Article 4(1) and (2) of the NIS 2 Directive to financial services entities within scope of DORA**

**Status: Final**

An EC communication setting out Guidelines has been published in the OJ, which clarify how the NIS 2 Directive applies to financial services entities which are also subject to DORA. The NIS 2 Directive provides that where sector-specific EU legislation requires essential or important entities to adopt cybersecurity risk-management measures or to notify significant incidents that are at least equivalent to their NIS 2 obligations, then NIS 2 shall not apply. The areas where DORA displaces the application of NIS 2 are: (i) information and communication technology (ICT) risk management (Article 6); (ii) management of ICT-related incidents, especially major ICT-related incident reporting (Article 17); (iii) digital operational resilience testing (Article 24); (iv) information-sharing arrangements (Article 25); and (v) ICT third-party risk (Article 28).

*Date of publication: 18/09/2023*

(b) International

#### **IOSCO: Consultation on policy recommendations for decentralized finance (DeFi)**

**Status: Consultation**

**Deadline for the submission of comments: 19/10/2023**

IOSCO has launched a consultation on nine policy recommendations to address market integrity and investor protection concerns arising from Decentralised Finance (DeFi). While recognising the value of responsible innovation, IOSCO seeks to make clear that market regulators globally should apply a "same activity, same risk, same regulatory outcome" approach to financial markets, regardless of the

technology that may be used to deliver financial products and services. The report: (i) describes the state of the DeFi market and why it presents significant investor and market risks, arising through participants operating in non-compliance with, or outside of, existing investor and market protection regulatory frameworks; (ii) describes the common products and services offered in the DeFi markets, demonstrating that they do not materially differ from products and services offered in traditional financial markets, and that they present the same risks, along with additional risks due to the way they are offered; (iii) identifies the types of persons and entities typically involved in the development and provision of products and services using DLT-based components and offers ways to analyse their involvement to determine potential regulatory touchpoints; and (iv) provides recommendations and guidance to regulators as they examine the application of IOSCO Standards, and existing or new frameworks within their own respective jurisdictions, to DeFi products, services, arrangements, and activities. IOSCO intends to finalise its recommendations by the end of 2023.

*Date of publication: 18/09/2023*

#### **FSB: Synthesis paper with IMF on policies for crypto-assets**

**Status: Final**

IOSCO has launched a consultation on nine policy recommendations to address market integrity and investor protection concerns arising from Decentralised Finance (DeFi). While recognising the value of responsible innovation, IOSCO seeks to make clear that market regulators globally should apply a “same activity, same risk, same regulatory outcome” approach to financial markets, regardless of the technology that may be used to deliver financial products and services. The report: (i) describes the state of the DeFi market and why it presents significant investor and market risks, arising through participants operating in non-compliance with, or outside of, existing investor and market protection regulatory frameworks; (ii) describes the common products and services offered in the DeFi markets, demonstrating that they do not materially differ from products and services offered in traditional financial markets, and that they present the same risks, along with additional risks due to the way they are offered; (iii) identifies the types of persons and entities typically involved in the development and provision of products and services using DLT-based components and offers ways to analyse their involvement to determine potential regulatory touchpoints; and (iv) provides recommendations and guidance to regulators as they examine the application of IOSCO Standards, and existing or new frameworks within their own respective jurisdictions, to DeFi products, services, arrangements, and activities. IOSCO intends to finalise its recommendations by the end of 2023.

*Date of publication: 07/09/2023*

## **Sustainable finance**

(a) EU

#### **ESAs: Joint report on the extent of voluntary disclosure of principal adverse impacts under SFDR**

**Status: Final**

The Joint Committee of the ESAs has published their second annual report on the extent of voluntary disclosure of principal adverse impacts under Article 18 of the SFDR. Similar to the approach adopted for the 2022 Report, the ESAs launched a survey of NCAs to assess the current state of entity-level and product-level voluntary principal adverse impact disclosures under the SFDR, and have developed a preliminary, indicative and non-exhaustive overview of good practices and areas that need improvement. The results show an overall improvement compared to the previous year, although there is still

significant variation in the extent of compliance with the requirements and in the quality of the disclosures both across financial market participants and jurisdictions. The ESAs also found that disclosures were easier to find on websites compared to the previous year. When financial market participants do not consider principal adverse impacts, the ESAs conclude that they should better explain the reasons for not doing so. Additionally, they note that even though they are encouraged to do so under the SFDR, financial market participants are generally not disclosing to what extent their investments align with the Paris Agreement. The report also includes a set of recommendations for the EC to consider ahead of the next comprehensive assessment of the SFDR.

*Date of publication: 28/09/2023*

#### **ESRB: Advice on the prudential treatment of environmental and social risks**

**Status: Final**

The ESRB has issued advice on the prudential treatment of environmental and social risks. The advice explains that the EBA has a mandate to assess, after consulting the ESRB, whether a dedicated prudential treatment of exposures related to assets, including securitisations, or activities associated substantially with environmental and/or social objectives would be justified. The ESRB's advice contributes to the assessment required from the EBA by looking at the issue from a systemic risk perspective as opposed to a microprudential risk management perspective. It highlights: (i) the specificity of risks related to climate change, which can be expected to become an important driver of broader environmental and social risks; and (ii) the challenges of tackling such risks in the existing prudential framework. In concluding, the advice finds that the response to the question of whether a dedicated prudential treatment for environmental and social risks is needed, and how best to deal with these risks in the existing framework, may evolve over time. The immediate priority must be to consider how existing micro- and macroprudential tools can be used, and how this can be done consistently and transparently, both in the EEA and globally through the Basel Committee on Banking Supervision. The challenge will therefore be to develop a precautionary approach on the basis of risk materialisation scenarios and the growing evidence on exposures to climate risks.

*Date of publication: 27/09/2023*

#### **EP/Council: Provisional agreement on banning greenwashing and improving consumer information on product durability**

**Status: Draft**

The EP and Council of the EU have reached a provisional agreement on banning greenwashing by way of misleading advertisements and improving consumer information on product durability. The agreement updates the existing EU list of banned commercial practices and adds to it several problematic marketing habits related to greenwashing and early obsolescence of goods. The aim of the new rules is to protect consumers from misleading practices and help them make better purchasing choices.

*Date of publication: 19/09/2023*

#### **EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2019/856 supplementing the EU ETS Directive with regard to the operation of the Innovation Fund**

**Status: Adopted by the EC**



The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) 2019/856 supplementing the EU Emissions Trading System (ETS) Directive with regard to the operation of the Innovation Fund. It aims to implement changes to the Innovation Fund (IF) to be agreed in the ETS revision, notably the use of competitive bidding. Competitive bidding will complement the IF's current arrangement of awarding grants based on a scoring system, considering: (i) the increased budget (as proposed in the ETS revision); (ii) the greater need for efficiency and market-based funding instruments; (iii) the increasing maturity of projects needing support; and (iv) reducing the administrative burden.

*Date of publication: 15/09/2023*

#### **EC: SFDR Review Consultations**

**Status: Consultation**

**Deadline for the submission of comments: 15/12/2023**

The EC has published a targeted consultation and a public consultation seeking feedback on the SFDR. The consultations aim to assess potential shortcomings within the SFDR framework. These relate to legal certainty, the useability of the legislation and its ability to stop greenwashing. The EC is particularly interested in understanding how the SFDR has been implemented and what issues stakeholders have faced, including its interaction with other parts of the European sustainable finance framework.

The EC intends to adopt a report on the SFDR in Q2 2024.

- Targeted Consultation
- Public Consultation

*Date of publication: 14/09/2023*

#### **EC: Proposal for amending delegated directive on adjustments to thresholds in the Accounting Directive**

**Status: Consultation**

**Deadline for the submission of comments: 06/10/2023**

The EC has published a draft delegated directive amending the Accounting Directive as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups. In view of the inflation trend in the euro area in recent years, the EC considers it necessary to amend the size criteria in the Accounting Directive by 25% to adjust for the effects of inflation. The increase would result in micro, small and medium-sized enterprises not being subject to many EU financial and sustainability reporting provisions applicable to larger companies under the CSRD and the Taxonomy Regulation. The EC explains that the adjustments to the monetary size criteria aim to maintain the status quo, i.e. to avoid a situation where due to inflation, micro and small companies in particular would become unwittingly subject to the more demanding requirements applicable to larger companies.

*Date of publication: 19/09/2023*

#### **ECB: Results of the second economy-wide climate stress test**

**Status: Final**

The ECB has published the results of its second economy-wide climate stress test. Conclusions drawn from the results include: (i) that the best way to achieve a net-zero economy for firms, households and



banks in the euro area is to accelerate the green transition to a rate that is faster than under current policies; (ii) while a speedier transition initially involves greater investment and higher energy costs, financial risks decrease significantly in the medium term. Both profits and purchasing power are less negatively affected as the frontloaded investment in renewable energy pays off earlier and ultimately reduces energy expenses; and (iii) further delaying transition means missing Paris Agreement goals and exacerbating impacts of costly physical risks. If firms are at risk, so are the banks that lend to them. Banks are exposed to the highest credit risk if the transition has to be rushed at a later stage and investment is required quickly at higher costs.

*Date of publication: 06/09/2023*

#### **ECB: Speech on the risks of climate and environment-related litigation for the banking sector**

**Status: Final**

The ECB has published a speech by Frank Elderson, ECB Supervisory Board Vice-Chair and Executive Board Member, on addressing the risks of climate and environment-related litigation in the banking sector. Points of interest include: (i) climate-related litigation is becoming a major source of risk that needs to be properly anticipated and addressed by both non-financial and financial companies, including banks; (ii) cases have been brought against financial institutions and the trustees of pension funds for greenwashing; (iii) Mr Elderson outlines some questions for board members and general counsels to consider in order to ensure they are up to speed with the current trends. He cautions that banks need to be aware that in certain jurisdictions the impact of climate-related litigation could dig right down into the viability of their business models. He recommends therefore that banks put in place Paris-aligned, realistic, transparent and credible transition plans; and (iv) Mr Elderson cautions that environment-related litigation (not purely focused on greenhouse gas emissions) is also likely to gather momentum as legislation on supply chains enters into force – namely the Deforestation Regulation and the proposed Corporate Sustainability Due Diligence Directive.

*Date of publication: 04/09/2023*

(b) International

#### **GFANZ: Consultation on transition finance strategies and measuring the impact on emissions**

**Status: Consultation**

**Deadline for the submission of comments: 02/11/2023**

The Glasgow Financial Alliance for Net Zero (GFANZ) Secretariat has launched a consultation on its work to further refine the definitions of its transition finance strategies and support financial institutions to forecast the impact of these strategies on reducing emissions. The consultation seeks feedback on a principles-based approach to segment portfolios by GFANZ's key strategies and highlights potential approaches to estimate associated decarbonisation contribution impact, drawing on existing methodologies and concepts. The principles outlined in the consultation are designed to be voluntary, pan-sector and globally applicable. To provide further clarity around transition finance activities, GFANZ proposes emerging technical approaches for measuring the decarbonisation contribution of transition finance activities. It also introduces the concept of Expected Emissions Reductions. This concept is applicable across GFANZ's key financing strategies but employs distinct approaches for each, allowing

financial institutions to quantify the “emissions return” of their transition finance activities more effectively.

The final report will be published by COP28.

*Date of publication: 19/09/2023*

#### **TNFD: Recommendations on nature related risk management and disclosure**

**Status: Final**

The Taskforce on Nature-related Financial Disclosures (TNFD) has finalised its recommendations for nature-related risk management and disclosure. The recommendations build on those of the Task Force on Climate-related Financial Disclosures and are consistent with the global sustainability standards of the International Sustainability Standards Board and the impact materiality approach used by the Global Reporting Initiative and incorporated into the new European Sustainability Reporting Standards. This provides reporting organisations with a set of nature-related guidance that enables their reporting requirements across jurisdictions with the different approaches to materiality now in use.

The TNFD will now encourage and support voluntary market adoption of the recommendations. The TNFD will track voluntary market adoption on an annual basis through an annual status update report beginning in 2024. An accompanying package of eight guidance papers has also been released to help market participants get started with integrated assessment and corporate reporting related to nature.

*Date of publication: 19/09/2023*

#### **NGFS: Conceptual framework for nature-related financial risks**

**Status: Final**

The Network for Greening the Financial System (NGFS) has published a beta version of its conceptual framework for nature-related financial risks to guide policies and action by central banks and financial supervisors. The framework aims to: (i) define nature-related financial risks and related concepts that are needed for a high-level understanding of these risks; (ii) to help central banks and supervisors identify and assess nature-related financial risks. The principle-based risk assessment framework consists of three phases: identify sources of physical and transition risks; assess economic risks; assess risk to, from and within the financial system; and (iii) outline the next steps to be taken by the NGFS Taskforce, including bridging the modelling and data gaps (notably on the development of nature-related scenarios), and using emerging datasets to support the alignment of policies on environmental sustainability and inform the assessment of nature-related financial risks.

*Date of publication: 07/09/2023*

#### **NGFS: Two reports on climate-related litigation risks**

**Status: Final**

The NGFS has published two complementary reports on climate-related litigation risks discussing: (i) recent trends and developments – the NGFS outlines a rapid growth in climate-related litigation in terms of volume of cases, the nature, scope and diversity of addressees of legal action. Several cases have already been brought directly against defendants in the financial sector, including the first cases against a credit institution in 2023. The NGFS expects in the future for some litigation to become more closely linked to the development of climate-related legislation, particularly in the fields of greenwashing, climate disclosures and corporate due diligence; and (ii) micro-prudential supervision of climate-related litigation risks – the NGFS highlights the growing relevance of climate-related litigation to micro-prudential supervision. The NGFS suggests that supervisors: (a) need to identify risks drivers, transmission channels and exposures to properly assess ensuing financial risks to a financial institution, which can lead to direct (e.g. damages, fines, legal and administrative fees) and indirect (e.g. insurance pay-outs, credit losses or adverse business impacts) costs for financial institutions; (b) adopt a risk-based approach to better prioritise their supervisory activity. Providing a reliable estimate and prediction of the future evolutions of climate litigation risks will be a challenge for supervisors as these risks continue to develop with a high degree of diversity by jurisdiction, political environment, and claim type and size; and (c) should continue to explore and strengthen their methodologies and assessment of such risks.

- Climate-related litigation: recent trends and developments
- Report on micro-prudential supervision of climate-related litigation risks

*Date of publication: 01/09/2023*

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