

Payments & FinTech

News | July 2022



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Hot Topic

Deal struck on MiCAR and TFR

At the end of June 2022, the EU has reached an agreement on both the Markets in Crypto-assets Regulation (**MiCAR**) and the Transfer of Funds Regulation (**TFR**), two legislative centrepieces shaping the regulatory landscape for crypto assets. The new regulations constitute a comprehensive regulatory framework for the EEA's crypto market.

In the following pages, we briefly explain the aims, scope and key elements of these regulations, and highlight some of the most notable implications.

1. MiCAR

Currently, crypto assets that do not qualify as securities under MiFID II or e-money under the E-Money Directive are not in scope of the existing regulatory framework. MiCAR is therefore intended as an EEA-wide regulatory framework which, in part, adopts existing rules such as transparency and disclosure as well as licence requirements and measures to prevent market abuse to crypto-asset markets.



Crypto-assets that fall under the scope of MiCAR

MiCAR will cover crypto-assets that are not regulated by the existing financial services legislation, including unbacked crypto-assets (such as bitcoin), and so-called stablecoins (which MiCAR calls 'asset-referenced tokens'), as well as trading venues and the wallets where crypto-assets are held.

Crypto-assets that are already covered by existing regulation are carved-out from the scope of MiCAR, namely

- (i) financial instruments and structured deposits under MiFID II;
- (ii) electronic money under EMD2 (unless they qualify as e-money tokens under MiCAR);
- (iii) deposits under DSGD; and
- (iv) securitisation under the Securitisation Regulation.

Key provisions for businesses issuing and trading crypto-assets cover transparency, disclosure, authorisation and supervision of transactions. Regulated crypto businesses will be required to obtain, store, and disclose information on people engaged in crypto transfers when requested by national competent authorities (**NCA**s).



Licence requirement for CASPs

Crypto exchanges designated as so-called crypto-asset service providers (**CASPs**) will generally need a licence under MiCAR and, as a general rule, will be supervised by their relevant NCAs. Additionally, NCAs must share any data they collect on crypto companies that have more than 15 million users with ESMA, which will have an 'intervention power' if it considers there is a threat to market integrity, investor protection or financial stability. The licence will include a 'passporting' mechanism, meaning that once a CASP receives a licence in one EEA Member State, it will be able to carry out its activities throughout the EEA.

Furthermore, credit institutions licenced under the CRD and investment firms licenced for the corresponding MiFID service under MiFID II will not require a separate licence under MiCAR, and will only be subject to limited further requirements. This will provide relief to investment firms which, in Germany, cannot currently combine their MiFID services with crypto custody services as regulated by the German Banking Act (*Kreditwesengesetz* – **KWG**).



Consumer protection and legal liability

To strengthen consumer protection, issuers of stablecoins, among other obligations, will have to maintain liquid reserves with a 1:1 ratio to prevent insolvency, and stablecoin holders will have the right to claim payment from the issuer at any time based on the same ratio. In addition to this, investments performed by stablecoin issuers will have to be in low-risk and secure scenarios. Issuers of stablecoins based on a non-EU currency will generally require a registered office within the EEA. Furthermore, there will be a EUR 200 million cap on daily stablecoin transactions.

In terms of liability, MiCAR makes CASPs liable for any damages or losses of investors' crypto-assets, unless the damage or loss could not have been prevented.

Additionally, as a general rule, all issuers will have to publish an information document (a so-called 'white paper') with mandatory disclosure requirements for all offered tokens, and will be liable for the information they provide. Furthermore, for certain tokens they will need to obtain prior approval.



NFTs (partially) exempted from MiCAR rules

After much debate, it appears that non-fungible tokens (**NFTs**) will be excluded from MiCAR's scope 'except if they fall under existing crypto-asset categories'. According to the EU legislators, they are unique and, unlike cryptocurrencies, not traded or exchanged at equivalency. While we would expect the exemption to comprise all sorts of NFTs offered to the public at a fixed price (e.g. cinema tickets, digital collectibles from clothing brands, or in-game items in computer games), some uncertainty remains as to when such NFTs fall under any of the existing crypto-asset categories, e.g. because they ultimately serve investment purposes. This is the case in particular for NFTs that are part of a collection such as the Bored Ape Yacht Club, where the cheapest NFT currently trades at ETH 85.828 (≈ EUR 146,000 at the time of writing). Furthermore, where NFTs are fractionalised, the tokens representing such fractions (e.g. under the ERC-20 standard) should be fungible again and thus be qualified as investment tokens. The EU thus plans to review this general exemption at the start of 2024.



Blacklist for non-compliant CASPs

To counter money-laundering risks, MiCAR will come with a so-called 'blacklist', a public register that will be set up by ESMA which will list non-compliant CASPs that provide services in the EU without authorisation.



No proof of work ban

Finally, a lot of discussion around MiCAR in the last stages of the legislative process focussed around a potential (de-facto) ban on so-called proof of work protocols such as bitcoin, due to their high energy consumption in the so-called mining, the creation of new blocks of transactions that are added to the chain. This mining is commonly associated with a considerable carbon footprint (assuming that most of this energy stems from fossil fuels). While a requirement to phase out such proof of work consensus algorithms had been included in one of the discussion drafts at the last minute, it was not included in the final text. However, CASPs will have to disclose their energy consumption and the consensus mechanism they use, based on regulatory technical standards to be developed by ESMA.

2. TFR

TFR is aimed at preventing money laundering, terrorist financing and other criminal activities. While it originally only covered transaction generally carried out by electronic means (e.g. credit transfer, direct debit and money remittance), its recast now also comprises the first EU rules for tracing transfers of crypto-assets such as bitcoins and electronic money tokens, to ensure they can be traced in the same way as traditional money transfers. The TFR is part of the EU's new anti-money laundering legislative package of July 2021, which we have considered in more detail in our [blog post on the new ECB opinions on the EU anti-money laundering package](#). Similar rules had already been introduced in Germany through the German Crypto Asset Transfer Regulation (*Verordnung über verstärkte Sorgfaltspflichten bei dem Transfer von Kryptowerten – KryptoWTransferV*). However, the KryptoWTransferV provided for a transition period and will expire upon TFR's entry into force.



Travel rule for crypto-assets

Most notably, TFR extends the so-called 'travel rule', already existing in traditional finance, to cover transfers in crypto assets. This rule requires that information on the source of the asset and its beneficiary travels with the transaction and is stored on both sides of the transfer. CASPs will be obliged to provide this information to NCAs if an investigation is conducted into money laundering and terrorist financing. Additionally, providers themselves will have to verify that the source of the asset is not subject to restrictive measures or sanctions, and there are no risks of money laundering or terrorism financing, before making any crypto-assets available to beneficiaries. In contrast to its original proposal and despite a considerable amount of criticism, the TFR does not include any minimum thresholds or de-minimis exemptions.



TFR also applies to un-hosted wallets

TFR will also cover transfers to or from so-called un-hosted wallets (i.e. wallets where the private keys are stored by the end user as opposed to a (custodial) service provider; this form of storage is also referred to as self-custody of crypto assets) when they interact with hosted wallets managed by CASPs.

For such transfers to or from un-hosted wallets exceeding EUR 1,000, CASPs will also need to verify the effective owner's identity. This threshold is relatively low, meaning that even for small- and medium-sized businesses the identification requirement will be obligatory.



No application to person-to-person transfers

The TFR rules do not apply to person-to-person transfers conducted without a provider, i.e. between two un-hosted wallets, or among providers acting on their own behalf.

3. Next steps

MiCAR and TFR will now have to be fully approved by the EU before they become applicable. Both regulations will be directly binding in all Member States after their publication in the Official Journal of the EU, replacing any existing national rules. Unlike TFR, MiCAR will come with a transitional period of 18 months, becoming applicable probably around 2024.

The full implications of both legislative acts will become clearer once the final texts are published, and ESMA has published its respective guidelines. In terms of implementation effort for CASPs, this will to some degree depend on what the current regulatory status in their respective jurisdiction is. While CASPs are already subject to a broad range of regulatory requirements in Germany, they are only subject to AML provisions under the respective implementation of AMLD V in other jurisdictions. Companies operating within the crypto markets may therefore want to start preparing as soon as possible for taking the necessary steps to comply with the new regulatory framework.

In particular, exchanges that offer a plethora of different crypto currencies should be well prepared for the ESMA regulatory technical standards, as, depending on how strict these standards will be, the requirement to disclose the type of consensus mechanism for each offered currency could become very costly and time-consuming.

Although the EU is one of the first jurisdictions to provide such comprehensive regulatory regime for crypto-assets, it is to be expected that other countries, most notably the UK and the US, will follow suit very soon, as has already been indicated by the UK proposing two new pieces of legislation (the Financial Services and Markets Bill and the Economic Crime and Corporate Transparency Bill) as well as President Biden's Executive Order on Ensuring Responsible Development of Digital Assets of 9 March 2022.

Regulatory Updates

Payments



Germany

BaFin: New reporting procedure for major operational and security incidents (*Künftiges Meldeverfahren für schwerwiegende Betriebs- und Sicherheitsvorfälle*)

The German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*) has **announced** that it has now activated a test environment on its electronic reporting and publication platform (*Melde- und Veröffentlichungsplattform – MVP*) in order to provide payment service providers subject to new reporting requirements in line with **Circular 03/2022** on the reporting of major payments security incidents pursuant to Section 54(1) of the German Payment Services Supervision Act (*Zahlungsdienstleistungsaufsichtsgesetz – ZAG*) with the opportunity to familiarise themselves with this amended procedure prior to the official start of this reporting function on 1 October 2022. This announcement is accompanied by a **Guide** on how to submit this type of report.

Date of publication: 06/07/2022



EU

EBA: Decision concerning reporting of payment fraud data under PSD2

The European Banking Authority (**EBA**) has published a **decision**, dated 24 June, concerning the reporting of payment fraud data under the PSD2 by competent authorities. The decision covers the reporting to the EBA of aggregated statistical data on fraud from competent authorities designated under the PSD2 in accordance with Article 96(6) of the PSD2 and the EBA Guidelines on fraud reporting under the PSD2. Competent authorities shall report payment fraud data to the EBA under the PSD2, as specified in the EBA Guidelines on fraud reporting,

via the European Centralised Infrastructure of Data (**EUCLID**), and according to the EBA Data Point Model (**DPM**). This decision allows for data to be submitted by the relevant competent authorities via the ECB to the EBA, with the aim of providing a streamlined submission of data and avoiding a burden of double reporting for competent authorities to both the EBA and the ECB. This is also the case for other data transmitted under the EUCLID decision, provided that the data submitted by the competent authorities is in accordance with the data breakdowns and validation rules set out by the EBA and in line with the format and timelines set out in the decision.

Date of publication: 01/07/2022



EU

EPC: Publication of the SRTP Scheme Rulebook

The European Payments Council (**EPC**) has published a new version of the SEPA Request-To-Pay (**SRTP**) **Scheme Rulebook**, which covers the operating rules and technical elements that allow a payee to request the initiation of a payment from a payer in a wide range of physical or online use cases. The change introduced in this version has no operational impact at this stage but specifies that as of 30 November 2023 the scheme participants will have the obligation to, at the minimum, exchange messages based on application programming interfaces (**APIs**) in order to ensure full reachability. However, the EPC specifies that the scheme participants can also decide to use their APIs immediately. Alongside this publication, the EPC has released further **preliminary information on SRTP-related API specifications**.

Date of publication: 30/06/2022



EU

EBA: Opinion on its technical advice on the review of PSD2

The EBA has published its [opinion](#) and report in response to the EC's call for advice on the review of the Second Payment Services Directive (**PSD2**). The opinion, together with its annexed report, outlines a large number of issues identified in the implementation and application of the PSD2, and specific proposals on how to address these issues.

The EBA observes that, overall, the objectives of the PSD2 have started to materialise; however, many issues and challenges still need to be addressed. The EBA's key proposals include: (i) merging the PSD2 and the Second Electronic Money Directive (**EMD2**); (ii) clarifying the application of SCA and the transactions in scope; (iii) addressing new security risks for customers, such as social engineering fraud, where customers are tricked into initiating a payment transaction; (iv) addressing concerns about authentication approaches that have led to exclusion of certain groups of society from using payment services online; (v) addressing underlying issues and obstacles to the provision of payment initiation services (**PIS**) and account information services (**AIS**), including the proposals for AIS providers to apply their own SCA with their customers instead of relying on the authentication procedures by banks, empowering customers to remain in control of their data, and supporting the development of high-quality interfaces across the EU; (vi) moving from 'Open Banking' to 'Open Finance', or the expansion from access to payment accounts data towards access to other types of financial data, which is an opportunity to build on the sharing of data enabled by the PSD2; (vii) addressing the enforcement shortcomings in relation to the implementation and application of SCA for e-commerce card-based transactions and the removal of obstacles to the provision of AIS and PIS; (viii) addressing unwarranted de-risking practices by banks affecting payment and e-money institutions; and (ix) adjusting the prudential requirements, in particular in relation to initial capital, own funds, the use of professional indemnity insurance, the proposal for recovery and wind-down for significant

payment institutions and possible consolidation group supervision.

Date of publication: 23/06/2022



EU

EPC: Ten Implementation Guidelines on SEPA rules for 2023

The EPC has published ten Implementation Guidelines regarding the Single Euro Payments Area (**SEPA**) rules for 2023; these cover various topics.

- (i) [SEPA Direct Debit Business-to-Business Inter-PSP Implementation Guidelines 2023 version 1.0](#)
- (ii) [SEPA Direct Debit Core Customer-to-PSP Implementation Guidelines 2023 version 1.0](#)
- (iii) [SEPA Direct Debit Core E-Mandate Service Implementation Guidelines 2023 version 1.0](#)
- (iv) [SEPA Direct Debit Core Inter-PSP Implementation Guidelines 2023 version 1.0](#)
- (v) [SEPA Credit Transfer Inter-PSP Implementation Guidelines 2023 version 1.0](#)
- (vi) [SEPA Direct Debit Business-to-Business Customer-to-PSP Implementation Guidelines 2023 version 1.0](#)
- (vii) [SEPA Direct Debit Business-to-Business E-Mandate Service Implementation Guidelines 2023 version 1.0](#)
- (viii) [SEPA Credit Transfer Customer-to-PSP Implementation Guidelines 2023 version 1.0](#)
- (ix) [SEPA Instant Credit Transfer Customer-to-PSP Implementation Guidelines 2023 version 1.0](#)
- (x) [SEPA Instant Credit Transfer Inter-PSP Implementation Guidelines 2023 version 1.0](#)

Date of publication: 22/06/2022



International

BCBS: Joint report on options for access to and interoperability of CBDCs for cross-border payments

The Committee on Payments and Market Infrastructures (CPMI), the BIS Innovation Hub, the International Monetary Fund and the World Bank have published a [joint report](#) on the options for access to and interoperability of Central bank digital currencies (CBDCs) for cross-border payments. As central banks have varying motivations for exploring or developing CBDCs, they are likely to adopt different CBDC designs and cross-border arrangements. In this light, the report identifies and analyses different options for foreign access to CBDCs and their interoperability that could improve cross-border payments, including how they can interconnect with non-CBDC payment arrangements.

The report assesses these options based on five criteria: (i) do no harm, (ii) enhancing efficiency, (iii) increasing resilience, (iv) assuring coexistence and interoperability with non-CBDC systems, and (v) enhancing financial inclusion. The report concludes that there is no 'one size fits all' model for access to and interoperability of CBDCs. Accordingly, the report serves as a tool for central banks to assess how to best leverage CBDCs to enhance cross-border payments in the context of their own objectives. The report considers that even jurisdictions not planning to issue a CBDC ought to be involved in this work as they will still be part of this new potential cross-border payments landscape.

The report presents three ways to achieve interoperability: (a) compatibility - individual CBDC systems using common standards, such that the operational burden on payment service providers for participating in multiple systems is reduced; (b) interlinking - establishing a set of contractual agreements, technical links, standards, and operational components between CBDC systems allowing participants to transact with each other without participating in the same system. CBDCs could be interlinked via different models – a single access point, bilateral link or 'hub and spoke' model;

and (c) a single system - an arrangement that uses a single common technical infrastructure hosting multiple CBDCs. Other considerations that are relevant to the design of cross-border CBDC solutions include ensuring compliance with AML/CFT rules while safeguarding privacy and promoting competition. International cooperation and coordination are needed in the early stages of CBDC design to avoid any unintended barriers at a later stage. Any system must be built with the flexibility to adapt both to a changing world and the different CBDC designs likely to be chosen by central banks.

Date of publication: 11/07/2022



International

BCBS: Interlinking payment systems and the role of application programming interfaces: a framework for cross-border payments

The CPMI has published a [report](#) setting out a framework for interlinking payment systems for cross-border payments and discussing the role of application programming interfaces (APIs). The CPMI states that there are numerous benefits to interlinking arrangements: enhancing cross-border payments by shortening transaction chains, supporting the harmonisation of data formats and facilitating data exchanges through the use of dedicated applications, as well as by reducing funding costs, limiting redundant compliance checks, and increasing competition in the provision of cross-border payment services. Depending on the design of the interlinked systems as well as the interlinking arrangement, cross-border settlement risk could also be reduced. Interlinking may face challenges and risks that need careful consideration and planning by operators and authorities considering such arrangements. Challenges include strategic and political factors, possible high start-up costs, divergent legal, regulatory and oversight frameworks, misaligned access criteria, differences in service level requirements, and operational risk management. These challenges and risks need to be carefully considered before establishing an interlinking arrangement and on an ongoing basis once the arrangement is in operation. This report

provides a framework to help payment system operators and authorities understand and evaluate the benefits, challenges and risks of interlinking arrangements. It also provides an overview of important trends in interlinking arrangements and adoption of APIs by payment systems, drawing on recent CPMI surveys.

Date of publication: 08/07/2022



International

FSB: Report on options to improve adoption of the LEI, in particular for use in cross-border payments

The Financial Stability Board (FSB) has published a **report** exploring options to improve the adoption of the legal entity identifier (LEI), in particular for use in cross-border payments. The G20 roadmap to enhance cross-border payments has launched several initiatives to reduce friction in data processes, including promoting the use of common message formats, data exchange protocols, conversion and mapping approaches from legacy formats and standardised data. To address data handling issues and improve compliance processes, it is also examining the scope for a global unique identifier that links to account information in payment transactions. As part of this work, the FSB has been requested to explore options to improve the LEI's adoption. This report, which was produced in close coordination with the Global LEI Foundation (GLEIF), the LEI Regulatory Oversight Committee (ROC) and national authorities, sets out a series of recommendations for promoting the use of the LEI in cross-border payments and highlights the potential benefits of the LEI in supporting straight-through processing and assisting in KYC. The recommendations are addressed to FSB member jurisdictions, the FSB itself, ROC and GLEIF, relevant standard-setting bodies, and international organisations. Achieving these goals will depend on promoting uptake of the LEI among non-financial corporates as well as financial institutions. The FSB will review progress in implementing the recommendations and publish a progress report by the end of 2024, together with a review of progress

in implementing the recommendations of the LEI peer review.

Date of publication: 07/07/2022



International

FSB: Interim report on developing the implementation approach for the cross-border payments targets

The FSB has published an **interim report** on the approach for monitoring progress towards meeting the targets for the G20 roadmap for enhancing cross-border payments. The report makes preliminary recommendations about key performance indicators (KPIs) that could be used to monitor progress over time and identifies existing and potential sources of data for calculating those KPIs. In October 2021, the FSB set quantitative global targets for addressing the four challenges faced by cross-border payments (cost, speed, access, transparency) as a key foundational step in the G20 roadmap. These targets were set for each of the three main segments of the market (wholesale, retail and remittances). However, measuring progress towards these targets will not be straightforward because no comprehensive data sources currently exist.

The FSB invites feedback on the preliminary proposals in this report, and, in particular, on the following questions: (i) has the FSB identified appropriate potential sources of data for efficiently monitoring progress towards the roadmap's targets? What, if any, additional or alternative public or private data sources should the FSB also consider and for what KPIs? (ii) Has the FSB defined the KPIs appropriately, such that they are closely and meaningfully tied to the relevant target? What, if any, additional considerations should inform the calculation of the KPIs so that they provide sufficiently representative measurements of progress toward the targets without being overly burdensome? And (iii) the FSB is evaluating the use of proxies for monitoring progress towards some of the targets. Are the proxies proposed appropriate? What, if any, additional or alternative proxies should the FSB consider that are sufficiently representative and simplify monitoring?

The responses will help to inform the FSB's report in October to the G20 and to the public with further details of the implementation approach and the KPIs.

Date of publication: 06/07/2022

FinTech/Digital finance



Germany

BaFin: Note on the progress in the triologue negotiations regarding MiCAR and DORA (*Notiz zu Fortschritten bei den Trilog-verhandlungen um MiCAR und DORA*)

BaFin has published a [note](#) welcoming the provisional agreements reached in the triologue negotiations regarding the Regulation on Markets in Crypto Assets (**MiCAR**) and the Digital Operational Resilience Act (**DORA**) throughout the last two months.

Date of publication: 20/07/2022



Germany

BMJ: Measures to modernise the capital market and to facilitate access to the capital market for companies (*Maßnahmen zur Modernisierung des Kapitalmarkts und zur Erleichterung des Kapitalmarktzugangs für Unternehmen*)

The German Ministry of Justice (*Bundesjustizministerium – BMJ*) has published a [press release](#) on the official presentation of the key points for a so-called Future Financing Law (*Zukunftsfinanzierungsgesetz*) with changes in the areas of company law, capital market law and tax law. This new law is aimed at making the German financial centre more competitive for companies by way of further increasing the efficiency of the German capital market. This, in turn, is supposed to expand the mobilisation of sufficient private capital to add to the extensive public funds made available for tackling the enormous task of shaping the digital shift and the transformation towards a climate-neutral economy. Various legal measures are intended to improve the financing of future investments and facilitate access to capital markets for companies, especially start-ups, growth companies and SMEs. This Law includes the following key points: (i) facilitated access to the capital market for companies, in particular by

way of reducing the minimum capital for an IPO from currently EUR 1.25 million to EUR 1 million; (ii) improved legal framework for financial instruments and transactions, especially with regard to the financing options for start-ups, growth companies and SMEs; (iii) digitalisation of the capital market, for example by enabling the issuing of shares as electronic securities and possibly also by improving the transferability of crypto assets; (iv) improved opportunities for raising equity by facilitating capital increases and enabling dual class shares; (v) strengthened supervision by removing obstacles to digitalisation and improving the framework for English-language communication with BaFin; (vi) enhanced tax attractiveness of share and capital investments, in particular by promoting share savings; (vii) significant improvement in the tax framework for employee share ownership and greater employee participation in the success of their company; and (viii) commitment to continuation of the INVEST programme beyond 2022.

This law is intended to enter into force in the first half of the legislative term so that the economy, employees and savers will soon be able to benefit from these measures.

Date of publication: 29/06/2022



EU

EC: Adoption of thirteen Delegated and Implementing Regulations under Crowdfunding Regulation

The EC has adopted the following Delegated Regulations supplementing the Crowdfunding Regulation with regard to RTS: (i) on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds, in accordance with Article 6; (ii) specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider, under Article 12; (iii) specifying conflicts of interest requirements for crowdfunding

service providers, produced under Article 8(7); (iv) specifying the methodology for calculating default rates of loans offered on a crowdfunding platform, produced under Article 20(3); (v) specifying the measures and procedures for crowdfunding service providers' business continuity plan, produced under Article 12(16); (vi) for the key investment information sheet together with an Annex, produced under Article 23(16); (vii) specifying the requirements, standard formats and procedures for complaint handling, together with an Annex, produced under Article 7(5); (viii) specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects, together with an Annex, produced under Article 28(5) of the ECSPR; and (ix) for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business, produced under Article 31(8).

The EC also adopted four Implementing Regulations laying down ITS for the application of the Crowdfunding Regulation with regard to: (a) data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms, together with an Annex, produced under Article 16(3); (b) standard forms, templates and procedures for the co-operation and exchange of information between competent authorities concerning European crowdfunding service providers for business, together with an Annex, produced under Article 31(9); (c) the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA, together with an Annex, produced under Article 28(5); and (d) standard forms, templates and procedures for the co-operation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business, together with an Annex, produced under Article 32(4). All of the Regulations will come into force on the 20th day following their publication in the OJ. The Council and the EP will now scrutinise the Delegated Regulations.

- (i) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds](#)
- (ii) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider](#)
- (iii) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying conflicts of interest requirements for crowdfunding service providers](#)
- (iv) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the methodology for calculating default rates of loans offered on a crowdfunding platform](#)
- (v) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the measures and procedures for crowdfunding service providers' business continuity plan](#)
- (vi) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS for the key investment information sheet](#)
- (vii) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the requirements, standard formats and procedures for complaint handling](#)
- (viii) [Commission Delegated Regulation \(EU\) .../... supplementing the Crowdfunding](#)

Regulation with regard to RTS specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects

- (ix) Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business
- (x) Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms
- (xi) Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business
- (xii) Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA
- (xiii) Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business

Date of publication: 13/07/2022



EU

ECB: Speech on digital technology and fighting financial crime

The ECB has published a **speech** by Elizabeth McCaul, Supervisory Board Member on digital technology and financial crime. Ms McCaul emphasises that technology is neither a panacea nor a poison, but a tool that can serve multiple purposes. For more information, please see section 5 above.

Date of publication: 13/07/2022



EU

EC: Adoption of Delegated Regulation extending transitional period for crowdfunding services under national law

The EC has adopted a **Delegated Regulation** extending the transitional period for continuing to provide crowdfunding services in accordance with national law as referred to in Article 48(1) of the Crowdfunding Regulation. The EC proposes to extend the transitional period for crowdfunding services provided in accordance with national law (i.e. authorised before 10 November 2021), by one year until 10 November 2023. The Crowdfunding Regulation does not allow further extensions after 10 November 2023, and crowdfunding service providers that have not received authorisation by this date will have to put operations on hold until such authorisation is granted.

The proposed Regulation shall enter into force the day following its publication in the OJ. The Council and the EP will now scrutinise the Delegated Regulation.

Date of publication: 12/07/2022



EU

ESMA: Consultation on guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure

ESMA began consulting on [guidelines](#) to establish standard forms, formats and templates to apply for permission to operate a distributed ledger technology (DLT) market infrastructure under the Regulation on a pilot regime for market infrastructures based on DLT (DLTR). Under the DLTR, market infrastructures can request limited exemptions from specific requirements in MiFID II and CSDR, provided they comply with the conditions attached to those exemptions and compensatory measures requested by the relevant NCA. The guidelines set out the minimum instructions that NCAs should provide to market participants and how applicants should provide the requested information.

ESMA intends to finalise the guidelines ahead of the application date of the DLTR on 23 March 2023.

Date of publication: 11/07/2022



EU

ECB: A deep dive into crypto financial risks: stablecoins, DeFi and climate transition risk

The ECB has published a [new issue](#) of the Macroprudential Bulletin, taking a deep dive into the risks and policy implications of several segments of the crypto-asset market. It sets out that the financial stability risks stemming from crypto-assets are rising, and the crypto-asset ecosystem has become more complex and interconnected. One central element is stablecoins, whose growth, innovation and increasing global use cases call for the urgent implementation of appropriate regulatory, supervisory and oversight frameworks before significant further interconnectedness with the traditional financial system occurs. Another fast-growing segment within the crypto ecosystem is

decentralised finance (DeFi), whose novel way of providing financial services without relying on centralised intermediaries entails specific financial stability risks and regulatory challenges. Lastly, this issue highlights the climate transition risk for the financial sector stemming from the significant carbon footprint of certain crypto-assets like bitcoin and proposes potential measures that can be taken by authorities.

Date of publication: 11/07/2022



EU

ESAs: Mandate on digital operational resilience

The European Supervisory Authorities (ESAs) have published the [mandate](#) for the sub-committee on digital operational resilience. The Committee's primary objective is to assist the ESAs in fulfilling their policy mandates under the Regulation on digital operational resilience for the financial sector (DORA). The Committee shall: (i) contribute to, and coordinate where needed, the ESAs' input to any aspects of the EU regulatory process relating to digital operational resilience, including developing technical advice, draft technical standards, guidelines and recommendations where mandated by the EC or by legislation, in particular by DORA; (ii) conduct preparatory work for the gradual development of an effective Union-level coordinated response in the event of a cross-border major cyber incident or related threat that could have a systemic impact on the Union's financial sector, as envisaged by the European Systemic Risk Board's December 2021 recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities; and (iii) coordinate the monitoring of digital operational resilience practices and threats, ensure cross-sectoral coordination and exchange of information with a view to promoting the safety and soundness of markets and convergence of regulatory and supervisory practice.

Date of publication: 08/07/2022



EU

Council of the EU: Provisional agreement on the MiCAR proposal

The Council of the EU has reached a **provisional agreement** with the EP on the markets in crypto-assets (**MiCAR**) proposal which covers issuers of unbacked crypto-assets, and so-called ‘stablecoins’, as well as the trading venues and the wallets where crypto-assets are held. This regulatory framework is intended to protect consumers investing in crypto-assets and preserve financial stability, while facilitating innovation and increasing the attractiveness of the crypto-asset sector in a harmonised way across the EU member states. This provisional agreement is subject to approval by the Council and the European Parliament prior to the formal adoption procedure. For details on MiCAR, see our ‘Hot Topic’ section above.

Date of publication: 30/06/2022



EU

Council of the EU: Provisional agreement on the proposal for a Regulation regarding transparency of crypto-asset transfers

The Council of the EU has reached a **provisional agreement** with the EP on the proposal for a Regulation regarding transparency of crypto-asset transfers (**TFR**), which aims to make the misuse of crypto currencies for criminal purposes increasingly difficult. In particular, the proposal has been updated with regard to the newly introduced ‘travel rule’, which will ensure financial transparency on exchanges in crypto-assets and will provide the EU with a solid and proportional framework that complies with the most demanding international standards on the exchange of crypto-assets. These standards include recommendations 15 and 16 of the Financial Action Task Force (**FATF**), the global money laundering and terrorist financing watchdog. For details on the TFR, see our ‘Hot Topic’ section above.

Date of publication: 29/06/2022



EU

Council of the EU: Agreement of its position on the European Single Access Point (ESAP)

The Council of the EU has **agreed its position on three proposals creating the European Single Access Point (ESAP)** with the aim of providing investors with easier access to corporate information by way of creating a single point of digital access to public financial and sustainability-related information about EU companies and EU investment products. This is the first action in the Capital Markets Union (**CMU**) Action Plan and is intended to further the objectives of the Digital Finance Strategy. It does not impose any additional information reporting requirements on European companies. The Council has now agreed on a gradual phasing in of the ESAP platform between 2026 and 2030 to allow for a robust implementation. Its position also provides for flexibility at member state level regarding the collection of information in line with existing schemes. Subsequently, the Council will commence negotiations with the European Parliament on the basis of this position.

Date of publication: 29/06/2022



International

FATF: Report on data protection, technology and private sector information sharing

The FATF has published a **report** on the fight against financial crime, with a focus on data protection, technology and private sector information sharing. For more information, please see section 5(iii) above.

Date of publication: 20/07/2022



International

FSB: Letter to G20 on Covid-19 exit strategies, crypto-assets and the climate roadmap

The FSB has published a **letter** sent to G20 finance leaders and central bank governors providing an update on a number of areas of its recent work ahead of their 15-16 July summit, including: (i) exit

strategies and addressing scarring effects from Covid-19 – recent economic and financial developments have made it more challenging for policy makers to support a strong, equitable and inclusive recovery from Covid-19. Policies to contain economic scarring from the pandemic will therefore be an important contributor to financial resilience and sustainable economic growth. Exit strategies need to reflect specific domestic economic conditions and avoid excessive financial market reactions, which may limit the scope to engineer a fully synchronised exit across jurisdictions. The FSB will deliver a final report on exit strategies in November; (ii) crypto-assets – recent turmoil highlights the importance of advancing the ongoing work to address the risks posed by crypto-assets. This turmoil brings into sharp focus their intrinsic volatility, structural vulnerabilities and the issue of their increasing interconnectedness with the traditional financial system. The FSB will deliver a consultative report on its review of the FSB High-Level Recommendations for ‘global stablecoins’ and a consultative report with recommendations on regulatory and supervisory approaches to other crypto-assets in October; (iii) the FSB’s climate roadmap – the FSB will publish: (a) its joint work with the NGFS on climate scenarios in November; (b) the final version of its report on supervisory and regulatory approaches to climate change in October; and (c) a report on the progress by the ISSB in developing the global minimum baseline disclosures standards as well as by individual jurisdictions and firms in improving climate disclosures, in October.

Date of publication: 13/07/2022



International

FSB: Statement on International Regulation and Supervision of Crypto-asset Activities

The FSB has issued a **statement** on international regulation and supervision of crypto-asset activities. Highlights include: (i) crypto-assets, including stablecoins, are fast-evolving – the recent turmoil in crypto-asset markets highlights their intrinsic volatility, structural vulnerabilities and the issue of their increasing interconnectedness with the

traditional financial system. An effective regulatory framework must ensure that crypto-asset activities posing risks similar to traditional financial activities are subject to the same regulatory outcomes, while taking account of novel features of crypto-assets and harnessing potential benefits of the technology behind them; (ii) crypto-assets and markets must be subject to effective regulation and oversight, commensurate to the risks they pose, both at the domestic and international level; (iii) stablecoins should be captured by robust regulations and supervision by relevant authorities if they are to be adopted as a widely used means of payment or otherwise play an important role in the financial system; and (iv) the FSB will report to the G20 in October on regulatory and supervisory approaches to stablecoins and other crypto-assets.

The FSB will submit public consultation reports on: (a) the review of its high-level recommendations for the regulation, supervision and oversight of ‘global stablecoin’ arrangements, including how existing frameworks may be extended to close gaps and implement the high-level recommendations; and (b) recommendations for promoting international consistency of regulatory and supervisory approaches to other crypto-assets and crypto-asset markets and strengthening international cooperation and coordination.

Date of publication: 11/07/2022



International

IOSCO: Application of the principles for financial market infrastructures to stablecoin arrangements

The CPMI and the International Organization of Securities Commissions (**IOSCO**) have finalised their **guidance** on the application of the Principles for Financial Market Infrastructures (**PFMI**) to systemically important stablecoin arrangements (**SAs**), including the entities integral to such arrangements. The guidance highlights that the transfer function of an SA is comparable to the transfer function performed by other types of FMI. As a result, an SA that performs this transfer function is considered an FMI for the purpose of applying the PFMI and, if determined by relevant authorities to be

systemically important, the SA as a whole would be expected to observe all relevant principles in the PFMI. SAs may present some notable and novel features as compared with existing FMs. These notable features relate to: (i) the potential use of settlement assets that are neither central bank money nor commercial bank money and carry additional financial risk; (ii) the interdependencies between multiple SA functions; (iii) the degree of decentralisation of operations and/or governance; and (iv) a potentially large-scale deployment of emerging technologies such as DLT. Given these features, the guidance elaborates aspects related to: governance, framework for the comprehensive management of risks, settlement finality and money settlements. The guidance also provides considerations to assist authorities in determining whether a stablecoin arrangement is systemically important. The guidance emphasises that in order to address these broader challenges in a holistic manner, the regulation, supervision and oversight of stablecoin arrangements alone may not be sufficient and will need to be complemented by other private or public sector efforts such as improvements in existing payment infrastructures and exploration or development of central bank digital currency. There is also a need for global cooperation.

Date of publication: 11/07/2022



International

IOSCO: Crypto-Asset Roadmap for 2022-2023

The IOSCO has published its [crypto-asset roadmap](#) for 2022-2023. The roadmap sets out its regulatory policy agenda and work programme for the sector over the next 12 to 24 months, which will be overseen and taken forward by its Fintech Taskforce (FTF). The FTF, established in March, is tasked with developing, overseeing, delivering, and implementing IOSCO's regulatory agenda with respect to Fintech and crypto-assets, and coordinating IOSCO's engagement with the FSB and other standard-setting bodies on Fintech and crypto-related matters. This work will be initially divided into two workstreams: the first, covering Crypto and Digital Assets (CDA) will be led by the FCA, while the

second covers Decentralised Finance (DeFi) and will be led by the US Securities and Exchange Commission. Both workstreams will primarily focus on analysing and responding to market integrity and investor protection concerns within the crypto-asset space. The FTF will nonetheless ensure that the two workstreams are connected and adopt a coherent and coordinated cross-sectoral approach in developing policy in response to crystallised and emerging risks across the sector. The key elements and deliverables for each of the workstreams are summarised in the workplan: (i) the CDA workstream will primarily focus on issues relating to market integrity and investor protection. This will entail looking closely at fair, orderly trading, transparent markets, suitability and market manipulation (Part 1), and safekeeping, custody and soundness (Part 2); and (ii) the DeFi workstream will examine how IOSCO principles and standards could apply to common activities, products, and services in DeFi (Part 1). The DeFi workstream will also continue to explore and highlight the links between DeFi, stablecoins, and crypto-asset trading, lending and borrowing platforms, as well as the interactions of DeFi with broader financial markets (Part 2). Both workstreams are aiming to publish a report with policy recommendations by the end of 2023. The FTF will explore suitable junctures in 2023 where interim reports could be published to keep markets apprised of its ongoing work.

Date of publication: 07/07/2022



International

FATF: Targeted update on implementation of FATF's standards on VAs and VASPs

The FATF has published a [targeted update](#) on implementation of its Standards on virtual assets (VAs) and virtual asset service providers (VASPs), with a focus on FATF's Travel Rule. For more information, please see the anti-money laundering section in the [June 2022 issue of our Regulatory Monitoring Newsletter](#).

Date of publication: 30/06/2022



International

BCBS: Second consultation on the prudential treatment of crypto-asset exposures

The BCBS has launched a **second consultation** on the prudential treatment of crypto-asset exposures, building on the preliminary proposals set out in the Committee's **June 2021 consultation** and the responses received from stakeholders. The proposal broadly maintains its structure, including the division of crypto-assets into: (i) one group of those crypto-assets eligible for treatment under the existing Basel Framework; and (ii) another group including unbacked crypto-assets and stablecoins with ineffective stabilisation mechanisms, which continue to be subject to a conservative prudential treatment.

Following the review of the submissions, the Committee aims to finalise the Standard on the prudential treatment of crypto-asset exposures around the end of 2022.

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ECB in focus

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Some of our recent posts

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

18 May 2022

In *Case T-27/19 Pilatus Bank* the Court dismissed an action brought by Malta's Pilatus Bank, confirming the legality of the ECB's 2018 decision to withdraw the bank's licence after an indictment of its sole shareholder. The court held that the qualifying shareholder ceasing to fulfil the suitability criteria was a valid ground for withdrawing a bank's licence and that on the present facts, the negative public perception of the shareholder's reputation meant that it was justified.

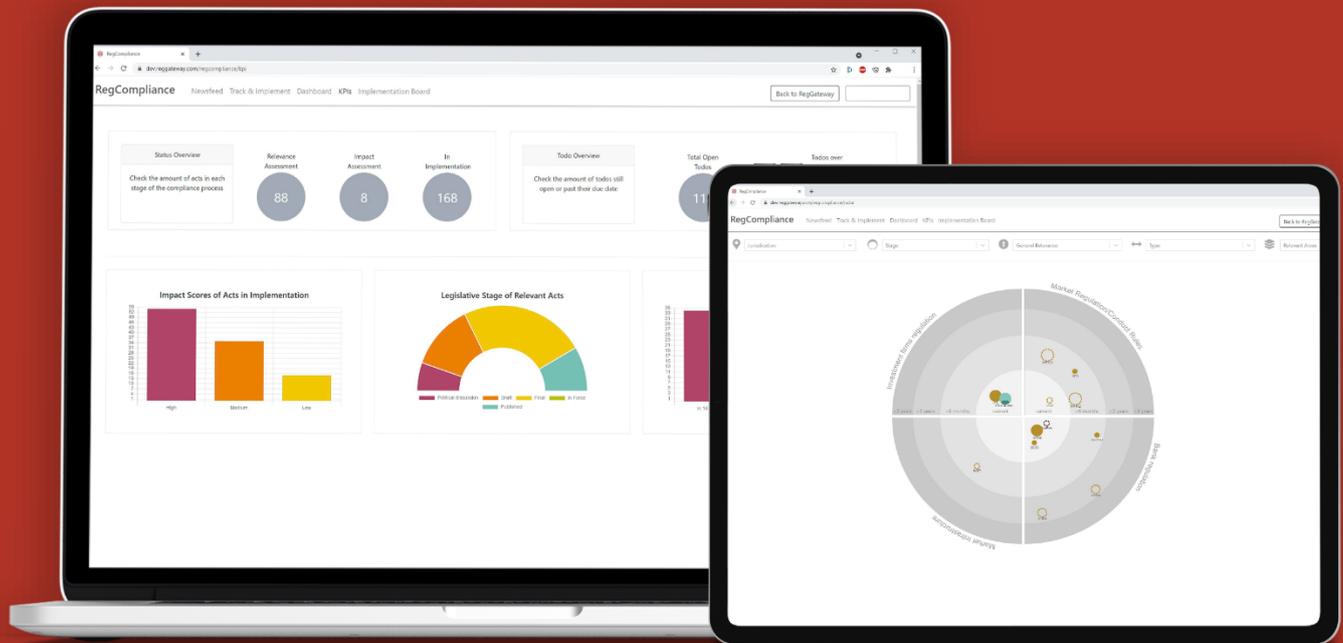
[Read more →](#)

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

28 April 2022

In March 2022 the ECB published its second report on the state of significant banks' climate-related and environmental risk disclosures. While the ECB sees improvements since last year's assessment, no bank currently fully meets the supervisory expectations. Banks received individual feedback letters identifying key gaps and calling them to further action and C&E risk disclosure will continue to be a key part of the ECB's supervisory priorities in the years to come.

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