

Payments & FinTech

News | January 2024



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More information under
reggateway.com

RegGateway

The **All-in-One** compliance solution for payment service providers

Features

HORIZON SCANNING / REGULATORY MONITORING

Identify new regulatory developments easily and tailored to **payment service providers**, so that only relevant changes appear.

FINANCIAL REGULATORY LAW SOURCEBOOK

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

IMPLEMENTATION MANAGEMENT

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

CHANGE ANALYSIS AND PREVIEW OF NEW RULES

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

Regulatory Updates

Payments



EU

ECON: Opinion on the proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third country undertakings

The ECON has published an **Opinion** on the proposal for a Decision amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third country undertakings.

Date of publication: 12/01/2024



EU

Commission Delegated Regulation (EU) 2023/2772 supplementing the Accounting Directive as regards sustainability reporting standards

The **Commission Delegated Regulation (EU) 2023/2772** supplementing the Accounting Directive as regards European sustainability reporting standards (ESRS) has been published in the OJ. The ESRS in this first set apply to all undertakings under the scope of the Corporate Sustainability Reporting Directive (CSRD) regardless of which sector or sectors the undertaking operates in. The EC will monitor the implementation of the standards contained in this delegated act to ensure that they lead to the disclosure of relevant, reliable and comparable sustainability information. In future

years, the EC is expected to adopt additional delegated acts for additional sets of standards.

Date of publication: 22/12/2023



EU

ECON: Draft report on the proposal for a Regulation on a framework for Financial Data Access

The ECON has published a **draft report** on the proposed Regulation on a framework for financial data access (FiDA). The report sets out the ECON Rapporteur's proposed amendments to the EC's draft text. The Rapporteur's key amendments relate to: (i) enhancing customer trust – the changes include more clearly circumscribing the categories of personal data that can be made available under FiDA and removing the possibility for undertakings that are not established in the EU to benefit from an authorisation as a financial information service provider; (ii) promoting innovation – the changes include adapting the narrative to focus the FiDA framework on a customer's data access right, rather than sharing the customers' data. The Rapporteur also suggests more closely aligning provisions on compensation with the market-driven approach under the Data Act; and (iii) improving interoperability and supervision – the modifications include a closer alignment of FiDA with the GDPR, the Data Act and Data Governance Act and also a further strengthening of ESA's role vis-à-vis that of NCAs.

Date of publication: 15/12/2023

FinTech/Digital finance



Germany

BT: Government draft on the Law on the digitalisation of the financial market (*Regierungsentwurf des Finanzmarktdigitalisierungsgesetzes – FinmadiG*)

The German government has published its **draft** on the Law on the digitalisation of the financial market (*Finanzmarktdigitalisierungsgesetz – FinmadiG*). The draft law is intended to incorporate the MiCA Regulation, the new version of the Transfer of Funds Regulation and carry out or implement the DORA package summarised in a FinmadiG. The MiCA Regulation establishes an independent and innovative European regulatory framework for markets for crypto-assets, which replaces the previous national framework for the regulation of crypto-assets. The draft law stipulates that the MiCA regulation can be implemented in Germany by means of a new Crypto Market Supervision Act (*Kryptomärkteaufsichtsgesetz – KMAG*). It bundles the supervisory powers of BaFin over crypto-assets and crypto-asset service providers into one law.

Date of publication: 22/12/2023



Germany

BaFin: Protocol on the special IT sector meeting regarding cloud/exit (*Protokoll Sonderfachgremium IT zum Cloud/Ausstieg*)

BaFin has published its **protocol** on the special IT sector meeting regarding cloud/exit. The protocol summarises the key discussion aspects and results from this meeting. It sets out the procedures to ensure the exit from significant outsourcing of IT activities to cloud providers.

Date of publication: 12/12/2023



Germany

BaFin: Protocol on the special IT sector meeting regarding cloud/IT-emergency management (*Protokoll Sonderfachgremium IT zum Cloud/IT-Notfallmanagement*)

BaFin has published its **protocol** on the special IT sector meeting regarding cloud/IT-emergency management. The protocol summarises the key discussion aspects and results from this meeting. It sets out the procedures that ensure the continuation and recovery of time-critical IT activities and processes of the financial organisation that are dealt with in Chapter 10 of BAIT/VAIT.

Date of publication: 12/12/2023



EU

ESMA: Q&A on the European crowdfunding service providers for business Regulation

ESMA has updated its **Q&A** on the European crowdfunding service providers for business Regulation, updating questions within the following chapters: (i) general provisions; (ii) provisions of crowdfunding services and organisational and operational requirements; and (iii) investor protection and marketing communications. ESMA has added new questions in relation to: (i) whether a crowdfunding service provider can only accept sophisticated investors; (ii) how placement without a firm commitment and reception and transmission of orders as referred to in Article 2(1) of the Crowdfunding Regulation should be understood in the context of the Crowdfunding Regulation; and (iii) how NCAs should apply Article 11(2)(c) of the Crowdfunding Regulation at the point of authorisation and how and to what extent can an insurance policy be combined with own funds.

Date of publication: 15/12/2023



International

IOSCO: Final report with policy recommendations for decentralised finance (DeFi)

IOSCO has finalised its **policy recommendations** for decentralised finance (DeFi). The nine policy recommendations follow a 'lifecycle' approach in addressing the key risks identified and cover six key areas: (i) understanding DeFi arrangements and structures; (ii) achieving common standards of regulatory outcomes; (iii) identification and management of key risks; (iv) clear, accurate and comprehensive disclosures; (v) enforcement of applicable laws; and (vi) cross-border cooperation. They are principles-based and outcomes-focused, and aimed at DeFi products, services, activities, and arrangements by applying IOSCO's widely accepted global standards for securities markets regulation. IOSCO aims to address market integrity and investor protection concerns arising from DeFi by supporting greater consistency of regulatory frameworks and oversight in member jurisdictions.

Their interoperability with IOSCO's policy recommendations for crypto and digital assets markets is set out in the 'Umbrella Note', also published.

Date of publication: 19/12/2023



International

BCBS: Consultation on crypto-asset standard amendments

BCBS has published a **consultation paper** on proposed targeted adjustments to its standard on banks' exposures to crypto-assets. The proposals expand the criteria on the composition of the reserve assets that back stablecoins, covering issues such as the credit quality, maturity and liquidity of the reserve assets. The requirements determine whether the stablecoins to which banks may be exposed will be eligible for inclusion in the Group 1b category of crypto-assets, and thus benefit from a preferential regulatory treatment. Under the proposals, banks would also be required to perform due diligence to ensure that they have an adequate understanding of the stabilisation mechanisms of stablecoins to which they are exposed, and the effectiveness of those mechanisms. As part of the due diligence performed, banks would be required to conduct statistical or other tests demonstrating that the stablecoin maintains a stable relationship in comparison to the reference asset. The consultation also includes various proposed technical amendments and a set of answers to frequently asked questions, to help promote a consistent understanding of the crypto-asset standard.

Date of publication: 14/12/2023

News from the Courts

Payments



Germany

**Federal Court of Justice,
4 October 2023 – 6 StR 258/23:
Fraud in the case of illicit direct
debit practices using a point-of-sale
terminal**

The Federal Court of Justice has ruled that a customer commits fraud against a payment service provider immediately upon entering into a contract for the usage of a point-of-sale terminal. This holds true, as per the court's decision, when the payment service provider bears the default risk for chargebacks arising from electronic direct debit transactions, and the customer conceals during contract negotiations their intention to use the terminal in violation of the contract for illicit direct debit practices.



Germany

**Federal Court of Justice,
19 September 2023 – XI ZR 343/22:
Validity of authorisations in the
context of online gambling**

The Federal Court of Justice has again examined the validity of authorised payments in the context of online gambling, addressing the prohibition on payment service providers to participate in payments related to illegal gambling under German gambling law. The court ruled that a violation of this prohibition does not render the corresponding authorisation void, thereby confirming its decision of 13 September 2022 (XI ZR 515/21), which we have covered in our **June 2023 Payments & FinTech Newsletter**.

Furthermore, the court asserts in its decision that in non-cash payment transactions, a payment service provider is primarily focused on ensuring technically flawless, easy, and swift transaction processing, and is thus generally not obligated to consider other interests of its customers. Exceptions arise only when circumstances necessitate not executing a payment order without prior consultation with the customer to safeguard them from potential harm. An exceptional case may arise, for instance, when a bank has substantial reasons to assume criminal activities during non-cash payment transaction.

Contacts

Payments and FinTech Regulatory



Dr Alexander Behrens

Partner

Tel +49 69 2648 5730

alexander.behrens@allenoverly.com



Martina Stegmaier

Counsel

Tel +49 69 2648 5605

martina.stegmaier@allenoverly.com



Lukas Wagner

Tel +49 69 2648 5000

lukas.wagner@allenoverly.com



Judith Bremer

Associate

Tel +49 69 2648 5526

judith.bremer@allenoverly.com



Niklas Germayer

Associate

Tel +49 69 2648 5973

niklas.germayer@allenoverly.com



Suzana Cvejic

Associate

Tel +49 69 2648 5868

suzana.cvejic@allenoverly.com



Katharina Wollmert

Associate

Tel +49 69 2648 5553

katharina.wollmert@allenoverly.com



Lisa Huber

Professional Support Lawyer

Tel +49 69 2648 5467

lisa.huber@allenoverly.com

Derivatives and Structured Finance, Debt Capital Markets



Martin Scharnke

Head of ICM Germany

Tel +49 69 2648 5835

martin.scharnke@allenoverly.com



Sascha Fröhlig

Associate

Tel +49 69 2648 5463

sascha.froehlig@allenoverly.com



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

CULTURE MATTERS - THE ECBS APPROACH TO ASSESSING BANKS' CULTURE AND RISK BEHAVIOUR

26 September 2023

A recent speech by Frank Elderson, Vice-Chair of the ECB Supervisory Board, places culture firmly on the supervisory agenda. Mr Elderson considers how culture can drive risk behaviour in banks how the ECB goes about assessing banks' culture.

[Read more →](#)

ECB DRAWS LESSONS FROM ARCHEGOS COLLAPSE IN REPORT ON COUNTERPARTY

18 July 2023

The collapse of Archegos in 2021 was a wake-up call for regulators as to banks' vulnerabilities to counterparty credit risk. In response, the ECB conducted a targeted review and published a report on sound practices in CCR governance and management.

[Read more →](#)



Fintech and Digital Assets Talk

Our blog, **Fintech and Digital Assets Talk**, provides our insights on the issues and developments that shape these rapidly evolving sectors.

We explore a wide range of business, legal and regulatory issues including:

- New product trends
- Legal and regulatory reforms
- Compliance
- Fraud and financial crime
- Data protection
- Cybersecurity
- IP protection
- Fundraising
- M&A activity

We will also analyse the impact of litigation and regulatory enforcement.

Our insights will come from our global network of fintech and digital assets experts who advise the full spectrum of market players, from growth companies to established multinationals, and who regularly engage with policymakers, regulators and supranational bodies.

Subscribe →

Our newest post

DECONSTRUCTING CRYPTO - AI AND THE GAMIFICATION OF FINANCIAL MARKETS

05 January 2024

Todd Fishman and Gene Ingoglia are back with the first episode of Deconstructing Crypto in 2024. In this new episode, Todd and Gene review the rapid transformation of financial markets in 2023 and the opportunities and challenges driven by two interrelated forces: the gamification of trading and the rise of artificial intelligence.

Read more →

For more information, please contact:

Frankfurt

Allen & Overy LLP
Bockenheimer Landstraße 2
60306 Frankfurt am Main
Germany

Tel +49 69 2648 5000

Fax +49 69 2648 5800

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