

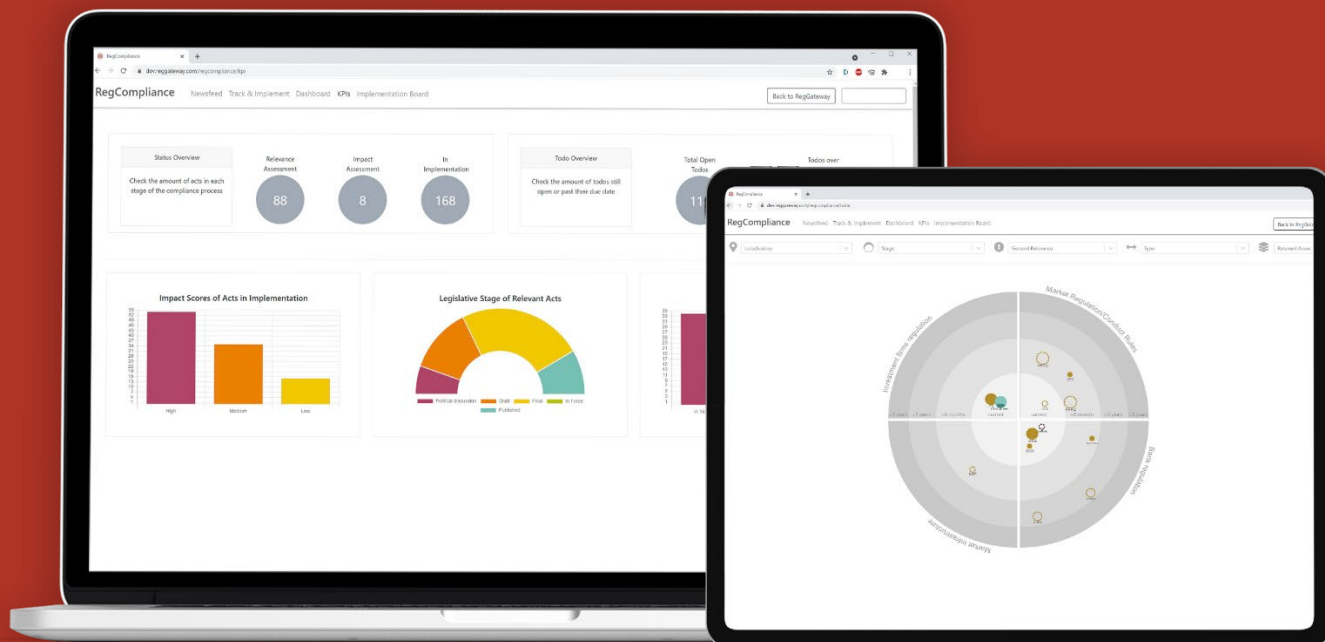
Payments & FinTech

News | March 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: Reports on PSD3 and PSR

ECON has published two reports which include the adopted texts of the proposed PSD3 and PSR. ECON adopted the reports in February. The EP is expected to vote on both texts during the first plenary session in April, to be held on 10 and 11 April. Negotiations between the EP and the Council of the EU are then expected to start after the EP elections.

- **PSD3 report**
- **PSR report**

Date of publication: 05/03/2024



EU

Council of the EU: Adoption of Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

The Council of the EU has **adopted** a Regulation that aim to make instant payments fully available in euro to consumers and businesses in the EU and in EEA countries. The new rules are directed at improving the strategic autonomy of the European economic and financial sector by reducing excessive reliance on third-country financial institutions and infrastructures. Improving the possibilities to mobilize cash-flows will bring benefits for citizens and companies and allow for innovative added value services. In particular, the instant payments Regulation will allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU member state. Payment service providers such as banks, which provide standard credit transfers in euro, will be required to offer the

service of sending and receiving instant payments in euro while not being allowed to apply higher charges than those for standard credit transfers.

The new rules will enter into force after a transition period that will be faster in the euro area and longer in the non-euro area, that needs more time to adjust.

Date of publication: 26/02/2024



EU

EPC: Consultation on Verification of payee scheme rulebook

The EPC has launched a **consultation** on its proposed Verification of Payee (VoP) Scheme Rulebook and the proposed EPC recommendations for the matching processes under the VoP Scheme Rulebook. This proposed version of the VoP Scheme Rulebook focuses to predominantly fulfil the EU legislative requirements set out by the proposed EU Instant Payments Regulation (IPR) amending the SEPA Regulation. This means that for the time being, and to allow PSPs in the EEA to comply with the new regulatory requirements within the given deadlines, the rulebook limits itself to verifications of a payee related to a SEPA Credit Transfer or a SEPA Instant Credit Transfer. The EPC states that future versions of the VoP scheme rulebook could cover other payment instruments as well, depending on market needs or interest.

The EPC intends to publish the final version of the rulebook by the end of September 2024 in time for the expected implementation date of September/October 2025 for the IPR.

Date of publication: 20/02/2024



EU

ECON: Adoption of draft reports on proposed PSD3 and PSR

ECON has **announced** that it had adopted draft reports on the EC's legislative proposals for: (i) a Directive on payment services and electronic money services in the internal market (PSD3). ECON highlights proposed amendments to PSD3 relating to better access to cash, the ability of new types of payment services to enter the EU payment service sector and the authorisation process for undertakings intending to provide payment services or electronic money services; and (ii) a Regulation on payment services in the internal market (PSR). ECON highlights proposed amendments to the PSR relating to the security of transfers (including changes relating to unique identifiers and strong customer authentication, the security of personal data and disclosures concerning charges prior to the initiation of a payment transaction. The EP is expected to vote on both texts during the first plenary session in April, to close the first reading without agreement with the Council of the EU. Negotiations between the EP and the Council of the EU are then expected to start after the elections.

Date of publication: 14/02/2024

FinTech/Digital finance



Germany

BaFin: Extension of the website monitoring FAQ on DORA (Erweiterung der Info-Seite zu DORA)

BaFin has **extended** its website compiling and monitoring FAQ on the Digital Operational Resilience Act (DORA). This Regulation aims to harmonise rules on cybersecurity, information and communications technology (ICT) risks and digital operational resilience across the financial sector, thus contributing significantly to strengthening the European financial market against cyber risks and ICT incidents. The website includes an overview of DORA as well as updates on the current state of consultations conducted by the ESAs relating to DORA. In particular, the website: (i) lists the criteria for an ICT; (ii) explains why the supervision of critical ICT services by BaFin does not replace their supervision by financial companies; and (iii) sets out when an ICT issue needs to be reported.

Date of publication: 19/02/2024



EU

EBA: Consultation on Guidelines on redemption plans under the MiCA Regulation

The EBA has launched a **consultation** on the Guidelines for the plans to orderly redeem asset-referenced or e-money tokens in the event that the issuer fails to fulfil its obligations under the MiCA Regulation. The Guidelines specify the content of the redemption plan, the timeframe for review and the triggers for its implementation. The Guidelines are addressed to issuers of asset-referenced tokens (ART) and of e-money tokens (EMT), and to competent authorities under the MiCA Regulation. The consultation will run until 10 June 2024.

Date of publication: 08/03/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing DORA by determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid

The EC has adopted a **Commission Delegated Regulation** supplementing DORA by determining the amount of the oversight fees to be charged by the Lead Overseer (LO) to critical ICT third-party service providers (CTPPs) and the way in which those fees are to be paid. To ensure that LOs have the necessary resources to effectively carry on the oversight tasks under DORA, Article 43 DORA empowers them to charge fees to each designated CTPP to cover all the expenditure incurred by the LOs in relation to the conduct of oversight tasks. More specifically, the fees collected from CTPPs would need to cover the necessary expenditure in relation to the conduct of oversight tasks, including the costs which may be incurred because of the work carried out by the joint examination teams, and the cost of advice provided by independent experts in relation to matters falling under the remit of direct oversight activities. The fees charged to CTPPs shall be proportionate to the turnover of the critical ICT third party service providers concerned.

Date of publication: 22/02/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing DORA by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities

The EC has adopted a **Commission Delegated Regulation** supplementing DORA by specifying the criteria for the designation of ICT third-party service providers (CTPPs) as critical for financial entities pursuant to Article 31(6) DORA. It aims to further specify the criteria for the designation of ICT third-

party service providers as critical. More specifically, the designation criteria have to be further specified in relation to the following: (i) the systemic impact that a failure or operational outage of an ICT third-party service provider could have on the financial entities to which it provides ICT services; (ii) the systemic character or importance by taking into account the number of global systemically important institutions (G-SIIs) or other systemically important institutions (O-SIIs) that rely on the ICT third-party service provider; (iii) the criticality or importance of the functions supported by the ICT services provided by the ICT third-party service provider; and (iv) the degree of substitutability of the ICT third party provider by taking into account the number of ICT third-party service providers active on a given market, as well as the costs of migrating data and ICT workloads to other ICT third-party service providers.

Date of publication: 22/02/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the fees charged by the EBA to issuers of significant asset-referenced tokens and issuers of significant e-money tokens

The EC has adopted a **Commission Delegated Regulation** supplementing the MiCA Regulation by specifying the fees charged by the EBA to issuers of significant asset-referenced tokens and issuers of significant e-money tokens, pursuant to Article 137(3) MiCA Regulation. This act aims to further specify types of fees, the matters for which fees are due, the amount of fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity that EBA can charge.

Date of publication: 22/02/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the criteria and factors to be taken into account by the ESMA, the EBA and competent authorities in relation to their intervention powers

The EC has adopted a **Commission Delegated Regulation** supplementing the MiCA Regulation by specifying the criteria and factors to be taken into account by the ESMA, the EBA and competent authorities in relation to their intervention powers, pursuant to Articles 103(8), 104(8) and 105(7) MiCA Regulation. The MiCA Regulation stipulates the conditions under which ESMA, EBA and competent authorities may take such product intervention measures. These conditions include a requirement, that the proposed prohibition or restriction addresses either: (i) a significant investor protection concern; or (ii) a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of either the EU or at least one Member State. The delegated act aims to specify the criteria and factors to be taken into account by ESMA, EBA and competent authorities when determining whether this requirement has been met.

Date of publication: 22/02/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant

The EC has adopted a **Commission Delegated Regulation** supplementing the MiCA Regulation by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant. This delegated act aims to specify the criteria that are explicitly referred to in the empowerment, notably the 'significance of the activities of the issuer of the asset-referenced token on an international scale, including the use of the asset-referenced token for payments and remittances' and 'the interconnectedness of the asset-referenced token or its issuers with the financial system'. Other criteria set out in Article 43(1) are sufficiently clear and precise to be directly applicable. There is therefore no need at this stage to further specify them in the delegated act. The content and format of information provided by competent authorities to EBA and ECB under Article 43(4) and Article 56(3), which includes, if applicable, the information received under Article 22 MiCA Regulation, will be set out in a subsequent delegated act that is to be adopted after the reporting obligations under Article 22 have been specified by the technical standards and further experience has been gained.

Date of publication: 22/02/2024



EU

EC: Commission Delegated Regulation (EU) .../... supplementing the MiCA Regulation by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

The EC has adopted a **Commission Delegated Regulation** supplementing the MiCA Regulation by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens, pursuant to Article 134 of MiCA Regulation. The delegated act aims to further specify the rules of procedures for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

Date of publication: 22/02/2024

News from the Courts

Payments



Germany

**Federal Court of Justice,
29 November 2023 – XII ZB 141/22:
Banking secrecy not limitless**

The Federal Court of Justice ruled that a bank cannot use the principle of banking secrecy pursuant to Sec. 383(1) no. 6 of the German Code of Civil Procedure (*Zivilprozessordnung*) as a reason to deny providing original documents when the significance of presenting such evidence outweighs the bank's confidentiality obligations. In this specific case, verifying the authenticity of signatures on a deed of suretyship and a property declaration necessitated access to the original documents held by the savings bank. The court underscored that the scope of banking secrecy has its limits, and in this case, prioritised the plaintiff's right to gather and present evidence.



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

OUTSOURCING ON THE RISE: ECB WARNS OF INCREASED RELIANCE ON THIRD PARTY PROVIDERS

07 March 2024

In its recent Supervisory Newsletter the ECB highlights the jump in the number of outsourcing contracts as banks have increased their reliance on non-EU providers for IT-related services.

[Read more →](#)

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 and how the ECB goes about assessing banks' culture.

[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:

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- 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.

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Our newest post

THE CASP LICENSING REGIME UNDER MICAR

29 February 2024

As preparations continue for the implementation of the Regulation on Markets in Crypto-assets (MiCAR), we bring you the latest insights from our “MiCAR under the Microscope” bulletin series.

[Read more →](#)

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

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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