

Regulatory monitoring

Newsletter

March 2024





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).

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.

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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.

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

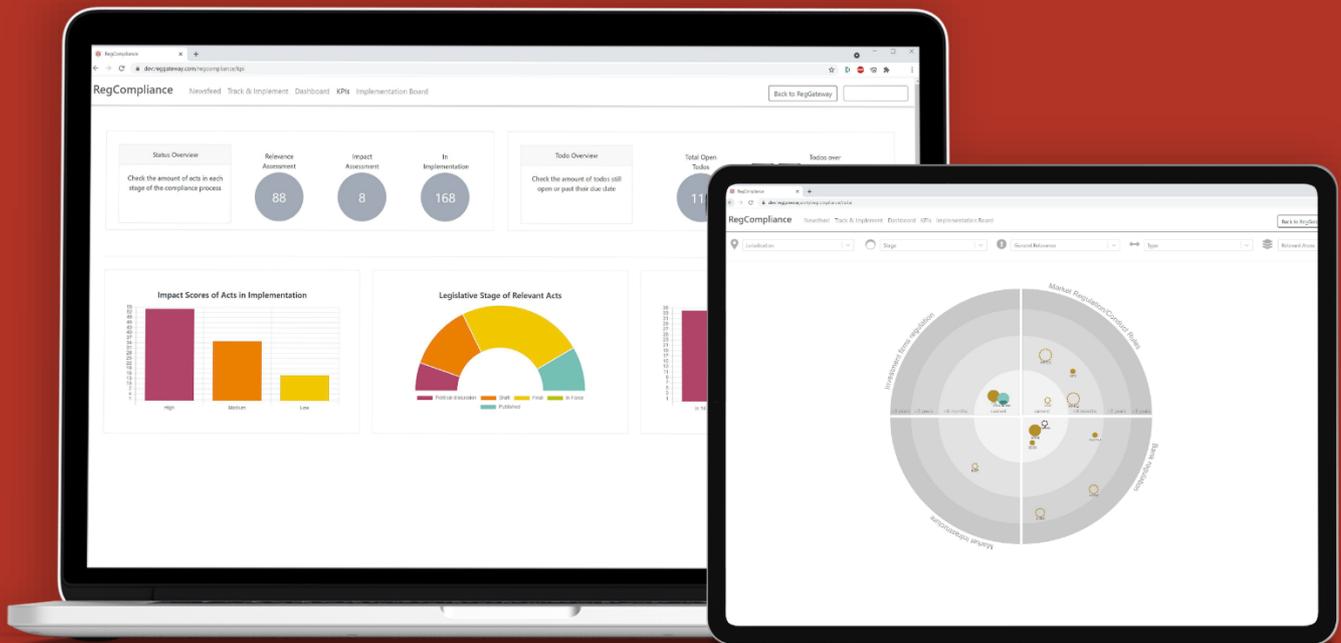
26 October 2022

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.

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

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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.

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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.

Contents

1.	Bank regulation	11
1.1	Prudential regulation.....	11
(a)	General	11
	BCBS: Basel III monitoring report.....	11
(b)	Solvency/Own funds issues	11
	EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on the assessment methodology under which competent authorities verify an institution's compliance with the requirements to use internal models for market risk..	11
	EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the conditions under which institutions are allowed to calculate K_{IRB} in relation to the underlying exposures of a securitisation transaction.....	11
	EBA: Consultation on draft RTS on the allocation of off-balance sheet items and UCC considerations under CRR III.....	12
	BCBS: Consultation on global systemically important banks – revised assessment framework	12
(c)	Securitisation	13
	Commission Delegated Regulation (EU) 2024/920 supplementing the Securitisation Regulation with regard to RTS specifying the performance-related triggers and the criteria for the calibration of those triggers	13
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2020/1732 as regards harmonisation of certain aspects of fees charged by the ESMA to securitisation repositories.....	13
	EC: Commission Delegated Regulation (EU) .../... supplementing the Securitisation Regulation with regard to RTS specifying, for STS non-ABCP traditional securitisation, and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors	13
(d)	Risk management/SREP/Pillar 2/Outsourcing/NPL	14
	BaFin: Supervisory note on the Secondary Credit Market Act regarding the authorisation procedure for financial services institutions (<i>Aufsichtsmittteilung zum Kreditzeitmarktgesetz über das Erlaubnisverfahren für Kreditdienstleistungsinstitute</i>)	14
	BaFin: Overview of the documents to be submitted for an application for permission to provide credit services pursuant to Section 10 of the Secondary Credit Market Act (<i>Übersicht der einzureichenden Unterlagen bei Stellung eines Antrags auf Erlaubnis zum Erbringen von Kreditdienstleistungen nach § 10 Kreditzeitmarktgesetz</i>).....	14

	BaFin: Protocol on the 18. meeting of the IRRBB expert committee (<i>Ergebnisprotokoll der 18. Sitzung des Fachgremiums IRRBB</i>)	14
	EBA: Guidelines on the establishment and maintenance of national lists or registers of credit servicers.....	15
(e)	Cyber security.....	15
	Council of the EU/EP: Provisional agreement on Cyber Solidarity Act	15
(f)	Supervisory reporting	15
	EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Implementing Regulation (EU) 2021/451 as regards rules on the supervisory reporting of interest rate risk in the banking book	15
(g)	Disclosure.....	16
	Commission Implementing Regulation (EU) 2024/796 amending the ITS laid down in Implementing Regulation (EU) No 650/2014 as regards the information to be disclosed by competent authorities in accordance with CRD IV	16
1.2	Recovery and resolution	16
	BaFin: Guidance notice on the suspension of trading at non-exchanges in the context of resolution (<i>Merkblatt zur Handelsaussetzung an Nicht-Börsen im Rahmen der Abwicklung</i>).....	16
	Council of the EU: Adoption of Directive amending the BRRD and SRMR as regards certain aspects of the MREL (“daisy chain” proposal)	16
	ECON: Draft reports on CMDI framework proposals	17
	Commission Delegated Regulation (EU) 2024/895 amending Delegated Regulation (EU) 2015/63 as regards the calculation of eligible liabilities and the transitional regime	17
	SRB: Consultation on the minimum bail-in data template.....	17
	FSB: Revised version of Guidance on arrangements to support operational continuity in resolution	18
1.3	Stress tests/Macroprudential topics	18
	Commission Implementing Regulation (EU) 2024/348 amending the ITS laid down in Commission Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) CRD IV	18
2.	Investment firms regulation	19
	EC: Commission Delegated Regulation (EU) .../... on supplementing IFR with regard to RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group.....	19
3.	Market regulation/Conduct rules	20
3.1	Benchmarks	20

	ECON: Report on proposed Regulation amending BMR	20
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of fees charged by the ESMA to certain benchmark administrators	20
	EMMI: Feedback to consultation on enhancements to Euribor benchmark methodology	20
3.2	Credit rating agencies	21
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) No 272/2012 as regards harmonisation of certain aspects of fees charged by the ESMA to CRAs	21
3.3	Market abuse	21
	Council of the EU: Adoption of Regulation on market manipulation in wholesale energy markets	21
3.4	MiFID/MiFIR	21
	BaFin: Announcement that BaFin will not prosecute violations of PFOF regarding the domestic market for the time being (<i>Mitteilung, dass BaFin zunächst keine Verstöße gegen das PFOF bei Aufträgen aus Deutschland verfolgt</i>)	21
	BaFin: Updated MaComp Circular (<i>Aktualisiertes MaComp Rundschreiben</i>)	22
	EC: Draft interpretive note on the transitional provision of the MiFIR review	22
	ESMA: Public statement on the transition for the application of the MiFID II/MiFIR review	22
	ECON: Draft reports on proposed retail investment package	23
	ESMA: Statement on the transition to the revised MiFIR rulebook	23
	Regulation (EU) 2024/791 amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow (MiFIR II).....	23
	Directive (EU) 2024/790 amending MiFID II (MiFID III)	24
	ESMA: Results of the annual transparency calculations for equity and equity-like instruments	24
3.5	Packaged retail and insurance-based investment products (PRIIPs)	24
	ECON: Report on proposed Regulation amending PRIIPs Regulation.....	24
	ECON: Draft reports on proposed retail investment package	24
	ESAs: Consolidated Q&A on the PRIIPs KID	25
3.6	Securities financing transactions	25
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2019/360 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under the SFTR.....	25

4.	Market infrastructure	26
4.1	Custody rules	26
	ESMA: Feedback statement on the call for evidence on shortening the settlement cycle	26
4.2	EMIR	26
	ESMA: Public statement on the deprioritisation of supervisory actions on the EMIR clearing obligation for third-country pension scheme arrangements in light of the agreement on the EMIR review	26
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) No 1003/2013 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under EMIR	27
	Commission Delegated Regulation (EU) 2024/818 amending the RTS laid down in Delegated Regulation (EU) No 153/2013 as regards the extension of temporary emergency measures on CCP collateral requirements	27
5.	Anti-money laundering	28
	Council of the EU: Compromise text on proposed Directive amending Directive (EU) 2019/1153, as regards access of competent authorities to centralised bank account registries through the single access point	28
	EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 as regards adding Kenya and Namibia to the table in point I of the Annex and deleting Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates from that table	28
	EBA: Call for advice by EC on RTS and Guidelines under the future AML/CFT framework	28
	EC: Report to the EP and the Council on the implementation of the MLD4	29
	FATF: Status of implementation of Recommendation 15 by FATF members and jurisdictions with materially important VASP activity	29
	FATF: Guidance on beneficial ownership and transparency of legal arrangements	29
6.	Payments	30
6.1	Payment services/E-money	30
	Regulation (EU) 2024/886 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro	30
	ECON: Reports on PSD3 and PSR	30
6.2	Payment accounts	30
	BaFin: Entry into force of the comparison website reporting regulation (<i>Inkrafttreten der Vergleichswebsitemeldeverordnung</i>)	30

7.	Banking union	31
7.1	Single Supervisory Mechanism (SSM).....	31
	ECB: Decision on total amount of supervisory fees for 2023	31
7.2	European Deposit Insurance Scheme (EDIS)	31
	ECON: Draft report on the proposal for a Regulation amending the SRMR in order to establish an EDIS	31
8.	Institutional supervisory framework	32
	BaFin: Call to submit documents separate and electronically (<i>Aufruf der BaFin zur Einreichung von Unterlagen getrennt und elektronisch</i>)	32
	ECB/EBA: MoU on the establishment of the Joint Bank Reporting Committee between ECB and EBA	32
	EP: Adoption of proposed Regulation to streamline reporting obligations and reduce the administrative burden for the European Union’s financial sector	32
9.	Investment funds	33
9.1	Product regulation.....	33
(a)	AIF	33
	BaFin: Guidance notice on data maintenance regarding registered AIF management institutes (<i>Merkblatt zur Datenpflege registrierter AIF-Verwaltungsgesellschaften</i>).....	33
	Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs.....	33
	Commission Implementing Regulation (EU) 2024/913 laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of alternative investment fund managers and the exchange of information between competent authorities on cross-border notification letters.....	33
	Commission Delegated Regulation (EU) 2024/912 supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of AIFMs.....	34
	ECON: Draft reports on proposed retail investment package	34
(b)	UCITS	35
	Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs.....	35
	Commission Implementing Regulation (EU) 2024/910 laying down ITS for the application of the UCITS Directive with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on	

	cross-border notification letters, and amending Commission Regulation (EU) No 584/2010.....	35
	Commission Delegated Regulation (EU) 2024/911 supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS	35
	ECON: Draft reports on proposed retail investment package	36
9.2	Prudential regulation	36
(a)	Compliance	36
	BReg: Government draft on the second law on the reform of the Capital Market Model Cases Act (<i>Regierungsentwurf des zweiten Gesetzes zur Reform des Kapitalanleger-Musterverfahrensgesetzes</i>)	36
	ESMA: Official translation on Guidelines on stress test scenarios under the MMF Regulation	36
	EC: Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the ELTIF Regulation with regard to RTS specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480.....	36
10.	Special rules for real estate financing and covered bonds	38
10.1	Mortgage credits	38
	BaFin: Announcement that systemic risk buffer for mortgage credits remains unchanged (<i>Mitteilung über unverändertes Fortbestehen des Systemrisikopuffers für Wohnimmobilienkredite</i>)	38
11.	Special topics	39
11.1	FinTech/Digital finance	39
	ESMA: Consultation on technical standards specifying certain requirements of MiCA (third package).....	39
	ESMA: Final report on draft technical standards specifying requirements for cooperation, exchange of information, and notification between competent authorities, ESAs, and third countries under MiCA.....	39
	ESMA: Final report on draft technical standards specifying certain requirements of MiCA (first package).....	39
	EBA: Final report on draft RTS to specify the requirements, templates and procedures for handling complaints under Article 31 MiCA Regulation	40
	EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework.....	40

	EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers.....	40
	EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents.....	40
	EBA: Consultation on Guidelines on redemption plans under the MiCA Regulation	41
11.2	AI	41
	EP: Adoption of the AI Regulation	41
11.3	Sustainable finance	41
	BMJ: Minister’s bill on the law implementing the CSRD (<i>Referentenentwurf zum Gesetz zur Umsetzung der CSRD</i>).....	41
	BaFin: Market study on the collection and handling of ESG data and ESG rating procedures by asset management companies (<i>Marktstudie zur Erhebung von und zum Umgang mit ESG-Daten und -Ratingverfahren durch Kapitalverwaltungsgesellschaften</i>)	42
	ESMA: Consultation on RTS on the European Green Bond Regulation	42
	Council of the EU: Compromise text for the Corporate Sustainability Due Diligence Directive	42
	UNEP FI: Updated Guidelines for climate target setting for banks	42
12.	German Omnibus Acts (<i>Artikelgesetze</i>).....	44
	BMJ: Minister’s bill on the law implementing the CSRD (<i>Referentenentwurf zum Gesetz zur Umsetzung der CSRD</i>).....	44
13.	Contacts.....	45

1. Bank regulation

1.1 Prudential regulation

(a) General

(i) International

BCBS: Basel III monitoring report

Status: Final

BCBS has published its latest monitoring report setting out the impact of the Basel III framework, based on data as of 30 June 2023. It shows that initial Basel III capital ratios for a sample of the largest global banks were largely stable and above pre-pandemic levels in the first half of 2023, and that the leverage ratio rose further in Europe after declining in all regions during the pandemic. In the same period, the profit after tax of large internationally active banks increased to a record EUR 279 billion.

Date of publication: 06/03/2024

(b) Solvency/Own funds issues

(i) EU

EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on the assessment methodology under which competent authorities verify an institution's compliance with the requirements to use internal models for market risk

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation supplementing the CRR with regard to RTS on the assessment methodology under which competent authorities verify compliance with the requirements to use internal models for market risk. The RTS identify all elements that are to be assessed by the competent authority when granting the approval to use an internal model approach to compute the own funds requirements for market risk. They are constituted by three main chapters: (i) assessment of qualitative requirements; (ii) assessment of the internal risk-measurement model used to compute the expected shortfall measure; and (iii) the stress scenario risk measure, assessment of the internal default risk model used to compute the additional own funds requirement for default risk. The RTS also specify concrete assessment techniques.

The Delegated Regulation will enter into force on the twentieth day following its publication in the OJ, with the exception of Article 18(1)(a) (as regards the environmental risk), Article 18(1)(c)(vii) and Article 18(2)(b)(v), which will apply from 1 January 2025; and Article 21(1)(b), which will apply from 1 January 2026.

Date of publication: 13/03/2024

EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS specifying the conditions under which institutions are allowed to calculate K_{IRB} in relation to the underlying exposures of a securitisation transaction

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation supplementing the CRR with regard to RTS specifying the conditions under which institutions are allowed to calculate K_{IRB} in relation to the underlying exposures of a securitisation transaction. K_{IRB} is the key input of the SEC-IRBA approach for calculation of the capital requirements on securitisation positions, in line with Article 255(4) CRR. This Delegated act further specifies the conditions to allow credit institutions to calculate K_{IRB} for the pools of underlying exposures in line with the CRR's provisions on the IRB approach for the calculation of capital requirements for purchased receivables, in particular with regard to: (i) internal credit policy and models for calculating K_{IRB} for securitisations;

(ii) use of different risk factors relating to the underlying pool and, where sufficient accurate or reliable data on the underlying pool is not available, of proxy data to estimate probability of default (PD) and loss given default (LGD); and (iii) due diligence requirements to monitor the actions and policies of sellers of receivables or other originators.

Date of publication: 13/03/2024

EBA: Consultation on draft RTS on the allocation of off-balance sheet items and UCC considerations under CRR III

Status: Consultation

Deadline for the submission of comments: 04/06/2024

The EBA has launched a public consultation on its draft RTS under the CRR3 regarding off-balance sheet items under the standardised approach of credit risk. These RTS provide the criteria that institutions shall use to classify off-balance sheet items, unless explicitly specified in Annex 1 of the CRR. Further, they specify the factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments. These RTS are part phase 1 of the EBA roadmap on the implementation of the EU banking package.

Under the standardised approach of credit risk, the exposure values of off-balance exposure depend on the application of certain percentages, which in turn depend on a bucket classification. The CRR3 is set to introduce amendments to update the calibration of applicable percentages, which results in the introduction of an adjusted weighting scheme and an additional bucket, increasing the number of risk buckets from 4 to 5, and the conversion factor possibilities to 10%, 20%, 40%, 50% or 100%. These RTS specifies the criteria that institutions shall use to classify off-balance sheet items, unless explicitly specified in the Level 1 text. Further, they specify factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments. The public hearing on these draft RTS will take place on 22 April.

Date of publication: 04/03/2024

(ii) International

BCBS: Consultation on global systemically important banks – revised assessment framework

Status: Consultation

Deadline for the submission of comments: 07/06/2024

BCBS has launched a consultation on revisions to the global systemically important bank (G-SIB) assessment framework aimed at mitigating “window-dressing” behaviour by some banks in the context of the G-SIB framework. The BCBS has found that the G-SIB framework is sensitive to the year-end values of the indicators reported by banks that participate in the annual exercise. These indicators are used to determine the scores for banks that in turn determine the list of G-SIBs and the applicable higher loss absorbency requirements. The BCBS has also found evidence that some banks take steps to temporarily lower the values of certain indicators at year-end, leading to an underestimate of the systemic importance of these banks.

The proposed revisions aim at constraining banks' ability to lower their G-SIB scores through window-dressing. This will be achieved by requiring banks participating in the G-SIB assessment exercise to report and disclose most G-SIB indicators based on an average of values over the reporting year, rather than year-end values. An accompanying [working paper](#) sets out the analysis supporting the consultation. In parallel, BCBS has published a [working paper](#) assessing G-SIB score dynamics over the past decade.

Date of publication: 07/03/2024

(c) Securitisation

(i) EU

Commission Delegated Regulation (EU) 2024/920 supplementing the Securitisation Regulation with regard to RTS specifying the performance-related triggers and the criteria for the calibration of those triggers

Status: Published in the OJ

Date of entry into force: 11/04/2024

The Commission Delegated Regulation (EU) 2024/920 supplementing the EU Securitisation Regulation with regard to RTS specifying the performance-related triggers and the criteria for the calibration of those triggers has been published in the OJ. The triggers being specified are triggers which allow a switch from non-sequential to sequential amortisation systems, which (if included in an on-balance-sheet securitisation) may mean the securitisation is eligible for the STS label. The RTS set out: (i) the two mandatory triggers referred to in point (a) of Article 26c(5) of the third subparagraph of the EU Securitisation Regulation; (ii) the additional mandatory backward-looking trigger under point (b) of the same subparagraph; and (iii) the mandatory forward-looking trigger under point (c) of the same subparagraph. The RTS also set out criteria to be fulfilled by the parties to the securitisation in order to set the level of the mandatory triggers.

Date of publication: 22/03/2024

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2020/1732 as regards harmonisation of certain aspects of fees charged by the ESMA to securitisation repositories

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) 2020/1732 as regards harmonisation of certain aspects of fees charged by the ESMA to securitisation repositories. This Delegated Regulation supplements the Securitisation Regulation. The EC aims to harmonise and simplify technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. It will enter into force on the twentieth day following its publication in the OJ and will apply from 1 January 2025.

Date of publication: 11/03/2024

EC: Commission Delegated Regulation (EU) .../... supplementing the Securitisation Regulation with regard to RTS specifying, for STS non-ABCP traditional securitisation, and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors

Status: Adopted by the EC

The EC has adopted a Commission Delegated Regulation supplementing the Securitisation Regulation with regard to RTS specifying, for simple, transparent and standardised (STS) non-ABCP traditional securitisation, and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors. The Capital Markets Recovery Package amended the Securitisation Regulation to provide originators of STS securitisations with the option to disclose available information related to the principal adverse impacts on sustainability factors of the assets financed by residential loans, auto loans or leases. The Delegated Regulation aims to standardise the type and presentation of information an originator may opt to disclose about the adverse impacts of assets financed by underlying exposures, on the environment and other sustainability factors. The Delegated Regulation also seeks to ensure as much consistency as possible with the ESAs' work in respect of sustainability-related disclosures in financial services under the SFDR.

Date of publication: 05/03/2024

(d) Risk management/SREP/Pillar 2/Outsourcing/NPL

(i) Germany

BaFin: Supervisory note on the Secondary Credit Market Act regarding the authorisation procedure for financial services institutions (*Aufsichtsmitteilung zum Kreditzeitmarktgesetz über das Erlaubnisverfahren für Kreditdienstleistungsinstitute*)

Status: Final

BaFin has published a supervisory note on the Secondary Credit Market Act (*Kreditzeitmarktgesetz* – KrZwMG) regarding the authorisation procedure for financial services institutions. In particular, the law aims to promote a high level of protection for borrowers, which is why BaFin points out the meaning of consumer-related organisational requirements for financial services institutions: pursuant to Section 14(1)(1) KrZwMG, a financial services institution is required to have proper business organisation that ensures compliance with statutory provisions and business requirements. This includes, in particular, the requirements set out in Section 14(2) to (4) KrZwMG. In accordance with Section 10(3)(1)(7)(c) KrZwMG, applicants must provide information on this for authorisation procedures as part of their viable business plan in order to enable an assessment of the proper business organisation.

Within the authorisation procedure, BaFin expects submission of the following documents as proof of compliance with the requirements relating to consumer protection: (i) corporate governance rules and internal control procedures adopted by the management and set out in writing or in electronic form for the purpose of respecting the rights of borrowers and protecting personal data; (ii) principles adopted by the management and set out in writing or electronically for the purpose of protecting and ensuring appropriate treatment of borrowers; and (iii) internal procedures for recording and processing borrower complaints. These are not new requirements, but rather a reference to the particular importance of these documents in the authorisation procedure. In addition, BaFin refers to the previously published [Guidance Notice by the Bundesbank](#) on the granting of a licence to provide credit services pursuant to Section 10(1) KrZwMG.

Date of publication: 26/03/2024

BaFin: Overview of the documents to be submitted for an application for permission to provide credit services pursuant to Section 10 of the Secondary Credit Market Act (*Übersicht der einzureichenden Unterlagen bei Stellung eines Antrags auf Erlaubnis zum Erbringen von Kreditdienstleistungen nach § 10 Kreditzeitmarktgesetz*)

Status: Final

BaFin has published an overview of the documents to be submitted for an application for permission to provide credit services pursuant to Section 10 of the Secondary Credit Market Act (*Kreditzeitmarktfortführungsgesetz* – KrZwMG). It aims to provide companies that want to apply for such a licence with assistance as to which documents generally need to be submitted from a supervisory perspective. It supplements the “Guidance Notice on the granting of permission to provide credit services in accordance with Section 10(1) KrZwMG”, published by the German Federal Bank, but similarly does not claim to be complete. In particular, references are made to BaFin’s right to request additional information pursuant to Section 10(1)(3) KrZwMG.

Date of publication: 22/03/2024

BaFin: Protocol on the 18. meeting of the IRRBB expert committee (*Ergebnisprotokoll der 18. Sitzung des Fachgremiums IRRBB*)

Status: Final

BaFin has published the Protocol on the 18. meeting of the IRRBB expert committee. The committee serves as a forum for close exchange between banking supervision and the banking industry. BaFin reports on current developments and discussions, including from relevant working groups at European and international level. The IRRBB is a key risk category for German credit institutions. Not least due to the period of low interest rates, it has become the subject of various regulatory initiatives in recent years and has increasingly triggered risk limitation through operational supervisory action.

Date of publication: 31/01/2024

(ii) EU

EBA: Guidelines on the establishment and maintenance of national lists or registers of credit servicers

Status: Final

The EBA has published its final Guidelines on national lists or registers of credit servicers. The Guidelines are addressed to competent authorities managing the lists or registers and specify: (i) the content of the lists or registers; (ii) how they should be made accessible; and (iii) the deadlines for updating them. Furthermore, the lists or registers should facilitate borrowers' access to information on complaint handling procedures offered by competent authorities. In particular, the Guidelines specify that: (a) the lists or registers should be accessible 24 hours a day, seven days a week, on the website of the competent authority or another electronic tool; (b) they should not require the user's prior registration as a precondition for access; and (c) they should be free of charge. The Guidelines also set the deadlines by which competent authorities have to update the lists or registers, i.e. one week for regular updates and two working days for critical updates on the withdrawal of authorisation or the banning to receive and hold funds from borrowers.

Date of publication: 05/03/2024

(e) Cyber security

(i) EU

Council of the EU/EP: Provisional agreement on Cyber Solidarity Act

Status: Draft

The Council of the EU and the EP have published a provisional agreement on the 'cyber solidarity act' as well as on a targeted amendment to the cybersecurity act (CSA) to strengthen EU's solidarity and capacities to detect, prepare for and respond to cybersecurity threats and incidents and enhance its cyber resilience. This new regulation mainly aims to: (i) support detection and awareness of significant or large-scale cybersecurity threats and incidents; (ii) bolster preparedness and protect critical entities and essential services, such as hospital and public utilities; (iii) strengthen solidarity at EU level, concerted crisis management and response capabilities across member states; and (iv) contribute to ensuring a safe and secure digital landscape for citizens and businesses.

Date of publication: 06/03/2024

(f) Supervisory reporting

(i) EU

EC: Commission Implementing Regulation (EU) .../... amending the ITS laid down in Implementing Regulation (EU) 2021/451 as regards rules on the supervisory reporting of interest rate risk in the banking book

Status: Adopted by the EC

The EC has adopted Commission Implementing Regulation amending the ITS laid down in Implementing Regulation (EU) 2021/451 as regards rules on the supervisory reporting of interest rate risk in the banking book (IRRBB), under the CRR. The ITS specify the reporting templates to provide supervisors with the data they need to monitor IRRBB and the impact on institutions caused by changes in policy rates, including the interaction of the IRRBB with the management of interest rate risks by institutions, and the identification of outliers within both the Supervisory Outlier Test (SOT) on economic value of equity, and the SOT on net interest income. The ITS include simplified templates for small and noncomplex institutions (SNCIs) and institutions other than large institutions and SNCIs to bring the data quality required for assessing IRRBB risks on a scale proportionate to institutions' size. The content of the ITS has been streamlined and simplified to fit the purpose of the underlying regulation.

The Implementing Regulation will enter into force 20 days following its publication in the OJ. It will apply from 1 September.

Date of publication: 15/03/2024

(g) Disclosure

(i) EU

Commission Implementing Regulation (EU) 2024/796 amending the ITS laid down in Implementing Regulation (EU) No 650/2014 as regards the information to be disclosed by competent authorities in accordance with CRD IV

Status: Published in the OJ

Date of entry into force: 28/03/2024

The Commission Implementing Regulation (EU) 2024/796 amending the ITS laid down in Implementing Regulation (EU) No 650/2014 as regards the information to be disclosed by competent authorities in accordance with CRD IV has been published in the OJ. The Implementing Regulation (EU) No 650/2014 specifies the format, structure, contents list, and annual publication date of the information to be published by competent authorities pursuant to Article 143 CRD IV. The amendments reflect the changes made by CRD V and CRR II. They remove information related to investment firms that are not subject to the CRR following the adoption of the equivalent ITS for investment firms under the IFD. Article 5 of that Implementing Regulation requires competent authorities to update the information referred to in Article 143(1), points (a), (b) and (c), of that Directive regularly, and by 31 July of each year, unless there is no change in the information published.

Date of publication: 08/03/2024

1.2 Recovery and resolution

(i) Germany

BaFin: Guidance notice on the suspension of trading at non-exchanges in the context of resolution (*Merkblatt zur Handelsaussetzung an Nicht-Börsen im Rahmen der Abwicklung*)

Status: Final

BaFin has published a Guidance notice on the suspension of trading at non-exchanges in the context of resolution. This Guidance notice is dedicated to the suspension and cessation of trading by a systematic internaliser and by multilateral and organised trading facilities that are not operated by an exchange within the meaning of Section 2 of the German Stock Exchange Act (*Börsengesetz – BörsG*). It is addressed to all legal entities in Germany that: (i) operate multilateral and/or organised trading systems that are not part of an exchange; and/or (ii) are authorised as systematic internalisers. The suspension and cessation of trading on relevant exchanges or their organised markets and multilateral and/or organised trading systems are beyond the scope of this Guidance notice and are instead dealt with in the Guidance notice on external bail-in implementation. The Guidance notice embeds the suspension and cessation of trading in the context of a resolution by the addressees in the overall process for external bail-in implementation in Germany and describes which information beyond the resolution order is made available to the addressees by the resolution authority for the above purpose and at what point in time, and what expectations are placed on them with regard to implementation.

Date of publication: 07/03/2024

(ii) EU

Council of the EU: Adoption of Directive amending the BRRD and SRMR as regards certain aspects of the MREL (“daisy chain” proposal)

Status: Draft

The Council of the EU has adopted the Directive amending the BRRD and SRMR as regards certain aspects of the minimum requirement for own funds and eligible liabilities (MREL), also called the “daisy chain” proposal. It aims to include targeted proportionality requirements to the treatment of ‘internal MREL’ in bank resolution groups. The “daisy chains” Directive sets out the concept and scope of liquidation entities and provides the conditions for the application of the consolidated treatment of ‘internal MREL’. It aims to: (i) remove the obligation for resolution authorities to set MREL for liquidation entities in specific

circumstances; and (ii) give resolution authorities the discretionary power to set internal MREL on a consolidated basis to a subsidiary of a resolution entity.

The EP adopted the proposed Directive in February, and the Council of the EU published the text of the Directive it has adopted on 13 March. The text will now be published in the OJ and enter into force 20 days later. Member States will then have six months from the date of entry into force to adopt and publish measures implementing the Directive and to apply those measures from the following day. The amendments to the SRMR will also apply one day after the transposition date.

Date of publication: 26/03/2024

ECON: Draft reports on CMDI framework proposals

Status: Draft

ECON has adopted draft reports on the proposals relating to the review of the EU bank crisis management and deposit insurance (CMDI) framework. The proposals include amendments to the BRRD, the SRMR and the DGSD. Changes highlighted by ECON include: (i) application of the resolution framework to any bank, where it is assessed that there is public interest to do so, irrespective of its size. Tax-payer funded extraordinary financial support could be granted only to remedy a serious disturbance in the economy of a Member State of an exceptional or systemic nature and to preserve financial stability; (ii) a two-tiered approach where deposits of retail clients as well as microenterprises and SMEs benefit from a higher priority ranking over eligible deposits of large enterprises and central and regional governments; and (iii) harmonisation of the DGS' functions. The number of discretions under national law should be limited and all DGSs should be able to finance resolution measures, preventive measures and other alternative measures to the payout of depositors. On top of the coverage of EUR 100 000 per depositor and bank, MEPs want deposits resulting from certain events such as a real estate transaction to be protected in the EU (as a minimum to an amount of EUR 500 000 and as a maximum to an amount of EUR 2 500 000 for a harmonised duration of six months).

The Plenary is expected to vote on the texts during its second session in April. The file will be followed up by the new Parliament after the upcoming European elections.

Date of publication: 20/03/2024

Commission Delegated Regulation (EU) 2024/895 amending Delegated Regulation (EU) 2015/63 as regards the calculation of eligible liabilities and the transitional regime

Status: Published in the OJ

Date of entry into force: 21/03/2024

Date of application: 21/03/2024

Commission Delegated Regulation (EU) 2024/895 amending Delegated Regulation (EU) 2015/63 as regards the calculation of eligible liabilities and the transitional regime under the BRRD, has been published in the OJ. The Amending Delegated Regulation makes the following amendments to the BRRD: (i) provisions relating to MREL and the definition of eligible liabilities will be revised to reflect the amendments made by BRRD II; (ii) the period during which Member States have the possibility to allow smaller institutions to contribute to national resolution funds under a lump-sum regime will be extended until 31 December; and (iii) in the 2024 contribution period, institutions had to provide resolution authorities with the relevant information by 29 February 2024, and the resolution authorities must notify the institutions of their decisions determining the annual contribution due by each institution by 31 May 2024.

Date of publication: 20/03/2024

(iii) Eurozone

SRB: Consultation on the minimum bail-in data template

Status: Consultation

Deadline for the submission of comments: 08/05/2024

The SRB has launched a consultation on the minimum bail-in data template (MBDT). The template collects bail-in data in the event of a bank failure or for dry-runs and testing exercises. The MBDT is expected to replace the SRB Bail-in Data Set instructions and represent the sole standard to follow for reporting relevant data. The MBDT has been designed for use in a

crisis or for testing exercises during the resolution planning phase, and the consultation is seeking views on the following topics: (i) content of the MBDT documentation; (ii) data point model and format; and (iii) data collection process.

Date of publication: 13/03/2024

(iv) International

FSB: Revised version of Guidance on arrangements to support operational continuity in resolution

Status: Final

The FSB has updated its Guidance on arrangements to support operational continuity in resolution, originally published in 2016. The Guidance assists supervisory and resolution authorities and financial institutions to evaluate whether financial institutions that are subject to resolution planning requirements have appropriate arrangements to support operational continuity if the firm enters resolution. It covers legal, contractual and governance frameworks, resourcing, management information systems and financial resources. The FSB has now included a supplementary note on the digitalisation of critical shared services as an addendum. The supplementary note does not create any new guidance or requirements. Rather, it specifies, for each section of the 2016 Guidance, how authorities and firms should think about the continuity of critical shared services in resolution when those services are digital.

Date of publication: 18/03/2024

1.3 Stress tests/Macroprudential topics

(i) EU

Commission Implementing Regulation (EU) 2024/348 amending the ITS laid down in Commission Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) CRD IV

Status: Published in the OJ

Date of entry into force: 28/03/2024

The Commission Implementing Regulation (EU) 2024/348 amending the ITS laid down in Commission Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78(2) CRD IV has been published in the OJ. Institutions are required to submit to their competent authority, at least annually, the results of the calculations of their risk weighted exposure amounts or own fund requirements under their internal approaches for exposures or positions that are included in the benchmark portfolios, to enable that competent authority to assess the quality of those internal approaches. The amendments, among other things, reflect changes in the focus of the competent authorities' assessments and of the EBA's reports on the benchmarking exercise and the related reporting requirements.

Date of publication: 08/03/2024

2. Investment firms regulation

(i) EU

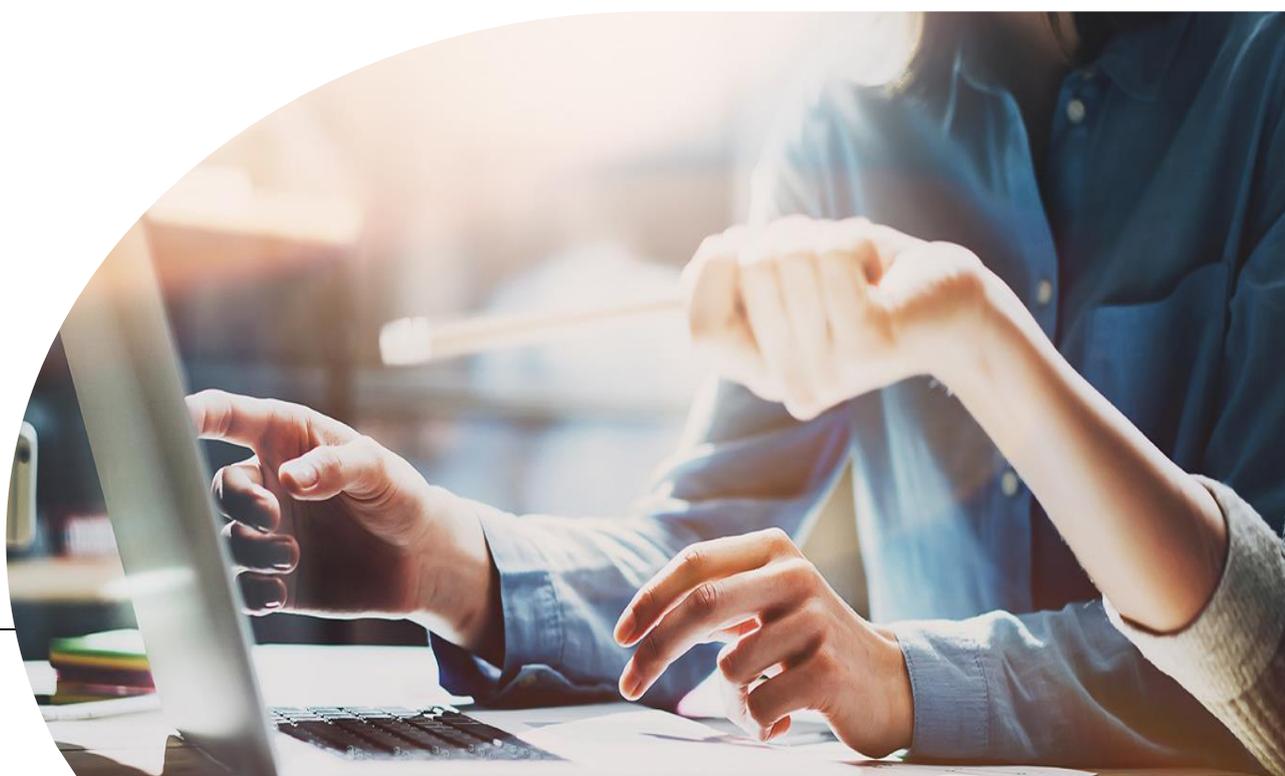
EC: Commission Delegated Regulation (EU) .../... on supplementing IFR with regard to RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group

Status: Adopted by the EC

The EC has adopted a Delegated Regulation supplementing the IFR with regard to RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group. The draft RTS specify the detail of the scope of and methods for prudential consolidation of investment firm groups, in particular for calculating the fixed overheads requirement, the permanent minimum capital requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement Article 7(2) of the IFR, pursuant to Article 7(5) of that Regulation. The technical standards aim to ensure that the proposed regulatory requirements ensure a proportionate and technically consistent framework for prudential consolidation of investment firm groups. The draft RTS cover four key aspects: (i) the scope of prudential consolidation; (ii) the methods for prudential consolidation; (iii) the methodology for prudential consolidation; and (iv) the rules applicable to minority interests and additional Tier 1 and Tier 2 instruments issued by subsidiaries as part of prudential consolidation.

The draft RTS will now be reviewed by the Council of the EU and the EP, if neither object, it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 13/03/2024



3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

ECON: Report on proposed Regulation amending BMR

Status: Final

ECON has published its report on the proposed Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third-country, and certain reporting requirements. The report includes the text adopted by ECON, indicating where it has made amendments to the EC's proposal. The EP is expected to vote on the report in the plenary session to be held between 22 and 25 April. ECON expects that trialogue negotiations between the EP and Council will start after the Parliamentary elections in June.

Date of publication: 19/03/2024

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of fees charged by the ESMA to certain benchmark administrators

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of fees charged by the ESMA to certain benchmark administrators. This harmonisation and simplification of technical aspects of ESMA's fee collection system aims to make fee collection less complex and more uniform across sectors. It will enter into force on the twentieth day following its publication in the OJ and will apply from 1 January 2025.

Date of publication: 11/03/2024

EMMI: Feedback to consultation on enhancements to Euribor benchmark methodology

Status: Final

The European Money Markets Institute (EMMI) has published feedback to its consultation on proposed enhancements to the Euribor benchmark's methodology. The EMMI states that it received broad support to the proposals set out in the consultation. The EMMI also highlights that while the enhancements will result in a material change to the Euribor's hybrid methodology, this should not be interpreted as a change in Euribor's underlying interest. These enhancements should not be considered as an automatic trigger event for the activation of fallback provisions in contracts referencing Euribor. The implementation of the enhancements will take place in the course of 2024. The EMMI has opted for a gradual approach in migrating the Euribor Panel Banks from the current methodology to the one incorporating the enhancements. The phase-in process is expected to begin in May and is expected to finalise after approximately six months.

Date of publication: 06/03/2024

3.2 Credit rating agencies

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) No 272/2012 as regards harmonisation of certain aspects of fees charged by the ESMA to CRAs

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) No 272/2012 as regards harmonisation of certain aspects of fees charged by the ESMA to credit rating agencies. This harmonisation and simplification of technical aspects of ESMA's fee collection system aims to make fee collection less complex and more uniform across sectors. It will enter into force on the twentieth day following its publication in the OJ and will apply from 1 January 2025.

Date of publication: 11/03/2024

3.3 Market abuse

(i) EU

Council of the EU: Adoption of Regulation on market manipulation in wholesale energy markets

Status: Adopted by the Council

The Council of the EU has formally adopted at first reading a Regulation amending the REMIT Regulation and the Regulation establishing the EU Agency for the Cooperation of Energy Regulators (ACER) as regards improving the EU's protection against market manipulation on the wholesale energy market. Among other changes, the Regulation: (i) creates clearer and stricter requirements for market participants in the EU who are resident in a third country. They will have to designate a representative in a member state in which the market participants are active in the wholesale energy market. The representative must be designated by a written mandate and authorised to act on behalf of the market participant; (ii) covers new trading practices, such as algorithmic trading, and strengthens provisions on reporting and monitoring to protect consumers from market abuses; (iii) gives ACER the right to investigate cases with a cross-border dimension, where at least two member states are affected; and (iv) introduces new tools for ACER to use for conducting investigations – for example, it will be able to conduct on-site inspections and issue requests for information, and it will be authorised to take statements.

After being signed by the Presidents of the EP and the Council, the Regulation will be published in the OJ and enter into force 20 days after publication.

Date of publication: 18/03/2024

3.4 MiFID/MiFIR

(i) Germany

BaFin: Announcement that BaFin will not prosecute violations of PFOF regarding the domestic market for the time being (*Mitteilung, dass BaFin zunächst keine Verstöße gegen das PFOF bei Aufträgen aus Deutschland verfolgt*)

Status: Final

BaFin has announced that it will not take any measures in the next few months if investment firms violate the EU ban on Payment for Order Flow (PFOF) with regard to domestic customers. This applies until the German legislative process regulating the national exception to the PFOF ban has been completed. With PFOF, investment firms are paid by third parties to forward

orders from customers. The EU prohibited this on 8 March 2024 in Article 39a(1) MiFIR. The ban will apply 20 days following publication in the OJ. However, Member States may deviate from the prohibition until 30 June 2026 (Article 39a(2) MiFIR).

The **Federal Ministry of Finance (BMF)** has declared on 21 March 2024 that Germany would allow PFOF for securities orders from customers based or established in Germany until June 30, 2026. The national exemption is contained in the draft of Section 138a of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*). BaFin does not exempt the supervised institutions from complying with the requirements of Article 39a(1) MiFIR. However, as long as the legislative process has not been completed, it will generally not prosecute violations provided that the firm in question would be included in the planned exception. However, PFOF is no longer possible for forwarding orders from customers abroad. The existing funding regime continues to apply to PFOF (including Section 70 WpHG).

Date of publication: 22/03/2024

BaFin: Updated MaComp Circular (*Aktualisiertes MaComp Rundschreiben*)

Status: Final

BaFin has updated Circular 05/2018 on minimum requirements regarding the compliance function and other conduct, organisation and transparency obligations for investment service providers (*Mindestanforderungen an die Compliance-Funktion und die weiteren Verhaltens-, Organisations- und Transparenzpflichten für Wertpapierdienstleistungsunternehmen – MaComp*).

Date of publication: 05/03/2024

(ii) EU

EC: Draft interpretive note on the transitional provision of the MiFIR review

Status: Draft

The EC has published a communication on a draft interpretative notice to provide clarity to market participants on the transitional provision of the MiFIR review. The EC explains that several provisions in the MiFIR review need to be supplemented by EC delegated regulations to become fully operational. To ensure legal certainty for market participants on the regime applicable until these new EC delegated regulations enter into application, it is necessary to clarify the interpretation and implementation of the transitional provision laid down in Article 54(3) MiFIR as amended by Article 1(47)(b) MiFIR review. The draft EC notice clarifies that, pursuant to Article 54(3) MiFIR, the existing EC delegated regulations, as applicable before 28 March, continue to apply, together with the provisions that they supplement, in all cases where the MiFIR provisions are to be supplemented by new or amended EC delegated regulations to become fully operational and cannot be supplemented adequately by the existing EC delegated regulations only. This means, for example, that the current double volume cap will remain in place until the new EC delegated regulations covering the single volume cap enter into application. The text of the draft notice can be found in the Annex to the communication. Subject to formal EC approval, the notice will be published at a later date in the OJ.

Date of publication: 27/03/2024

ESMA: Public statement on the transition for the application of the MiFID II/MiFIR review

Status: Final

ESMA has published a statement including practical guidance supporting the transition and the consistent application of the revised MiFIR. This statement complements the EC's interpretative draft notice on the transitional provision of the MiFIR review (see item above) and aims at providing practical guidance on some key areas in order to contribute to the orderly transition and consistent application of MiFIR as amended by the MiFIR review. Notably, this statement provides further guidance on the new rules that need to be supplemented by delegated regulations and those rules that are "self-executing" and do not need to be supplemented by delegated regulations to be effective. This statement covers the following areas: (i) volume cap (double/single); (ii) equity transparency; (iii) non-equity transparency; (iv) the SIs regime; (v) designated publishing entities (DPEs); and (vi) reporting. ESMA may issue further and more detailed guidance on the topics covered in the statement at a later stage, if needed. It is planning to establish a dedicated webspace tracking the development of draft EC delegated regulations and clarifying which provisions are applicable to market participants at a given time.

Date of publication: 27/03/2024

ECON: Draft reports on proposed retail investment package

Status: Draft

ECON has announced that it has adopted draft reports on: (i) the proposed Regulation amending the PRIIPs Regulation as regards the modernisation of the key information document. ECON wishes to ensure comparability between PRIIPs products and to develop an independent online comparison tool of the different investment options available in the EU market; and (ii) the proposed Directive amending MiFID II, the IDD, Solvency II, the UCITS Directive and AIFMD, as regards the EU retail investor protection rules.

Areas of agreement relating to the proposed Directive highlighted by ECON include: (a) when providing portfolio management or insurance-based investment products, investment firms would not be allowed to accept fees, commissions or any monetary or non-monetary benefits paid or provided by any third party in relation to the provision of the service; (b) to facilitate the comparison of investment products, ESMA and EIOPA should develop common European benchmarks for products manufactured and distributed in two or more member states; and (c) financial advisors should be required to follow professional training each year, part of which should be dedicated to sustainability issues.

The texts, which constitute the EP's negotiating mandates, will be tabled for approval during the first plenary session in April. The file will be followed up by the new Parliament after the upcoming European elections.

Date of publication: 21/03/2024

ESMA: Statement on the transition to the revised MiFIR rulebook

Status: Final

ESMA has published a statement in light of the entry into force on 28 March of the changes introduced by the MiFIR review. ESMA explains that it has received numerous questions from stakeholders on the provisions applicable on the date of entry into force of the revised MiFIR. ESMA acknowledges that public guidance is necessary, notably, on the application of Article 54(3) MiFIR which foresees the continued application of the delegated acts in place beyond 28 March until these delegated acts have been revised. ESMA, in close coordination with the EC, is performing a thorough assessment of the provisions that may merit further guidance. ESMA is aware that the EC is working on an interpretive notice on the application of the transitional provision. Building on such interpretive notice, ESMA will undertake to provide as much clarity as possible on the transition to the revised MiFIR, including the impact on the ESMA IT-systems and registers and as soon as possible. However, ESMA expects that further and more detailed guidance going beyond the topics covered in the initial communication is likely to be necessary. ESMA will proceed with developing draft technical standards in a swift and transparent manner, thereby contributing to the alignment of the Commission delegated regulations with the revised MiFIR as soon as possible.

Date of publication: 21/03/2024

Regulation (EU) 2024/791 amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow (MiFIR II)

Status: Published in the OJ

Date of entry into force: 28/03/2024

Date of application: 28/03/2024

The Regulation (EU) 2024/791 amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow (MiFIR II) has been published in the OJ. The Regulation seeks to enhance market data transparency, remove obstacles to the emergence of a consolidated tape, optimise the trading obligations and prohibit payments for forwarding client orders. Key changes made include: (i) the establishment of consolidated tapes to provide investors with up-to-date transaction information for the whole EU; (ii) the imposition of a general ban on 'payment for order flow', a practice through which brokers receive payments for forwarding client orders to certain trading platforms. Member States in which the practice already existed may allow investment firms under its jurisdiction to be exempt from the ban, provided that the practice only happens in the context of services to clients in that Member State, but the practice must be phased out by 30 June 2026; and (iii) the introduction of new rules on commodity derivatives.

Date of publication: 08/03/2024

Directive (EU) 2024/790 amending MiFID II (MiFID III)

Status: Published in the OJ

Date of entry into force: 28/03/2024

Date of application: 29/09/2025

The Directive (EU) 2024/790 amending MiFID II (MiFID III) has been published in the OJ. Most of the amendments contained in the MiFID II proposal relate to the proposed changes to MiFIR. Key changes made include: (i) the establishment of consolidated tapes to provide investors with up-to-date transaction information for the whole EU; (ii) the imposition of a general ban on ‘payment for order flow’, a practice through which brokers receive payments for forwarding client orders to certain trading platforms. Member States in which the practice already existed may allow investment firms under its jurisdiction to be exempt from the ban, provided that the practice only happens in the context of services to clients in that Member State, but the practice must be phased out by 30 June 2026; and (iii) the introduction of new rules on commodity derivatives.

Date of publication: 08/03/2024

ESMA: Results of the annual transparency calculations for equity and equity-like instruments

Status: Final

ESMA has published the results of the annual transparency calculations for equity and equity-like instruments, which will apply from 1 April 2024. The calculations made available include: (i) the liquidity assessment as per Articles 1 to 5 of CDR 2017/567; (ii) the determination of the most relevant market in terms of liquidity as per Article 4 of CDR 2017/587; (iii) the determination of the average daily turnover relevant for the determination of the pre-trade and post-trade large in scale thresholds; (iv) the determination of the average value of the transactions and the related standard market size; and (v) the determination of the average daily number of transactions on the most relevant market in terms of liquidity relevant for the determination of the tick-size regime.

Date of publication: 01/03/2024

3.5 Packaged retail and insurance-based investment products (PRIIPs)

(i) EU

ECON: Report on proposed Regulation amending PRIIPs Regulation

Status: Draft

ECON has published a report that it has adopted the proposal for a Regulation amending the PRIIPs Regulation. The report was prepared by Rapporteur Stéphanie Yon-Courtin and contains the text of the draft EP legislative resolution which sets out suggested amendments to the proposed Regulation. ECON voted to adopt the report on 20 March. According to the procedure file for the proposed Regulation, the EP is expected to vote on the report in the plenary session to be held between 22 and 25 April.

Date of publication: 25/03/2024

ECON: Draft reports on proposed retail investment package

Status: Draft

ECON has announced that it has adopted draft reports on: (i) the proposed Regulation amending the PRIIPs Regulation as regards the modernisation of the key information document. ECON wishes to ensure comparability between PRIIPs products and to develop an independent online comparison tool of the different investment options available in the EU market; and (ii) the proposed Directive amending MiFID II, the IDD, Solvency II, the UCITS Directive and AIFMD, as regards the EU retail investor protection rules. For more information, please see section 3.4 above.

Date of publication: 21/03/2024

ESAs: Consolidated Q&A on the PRIIPs KID

Status: Final

The ESAs have updated their Q&A on the PRIIPs Regulation Key Information Document (KID). Q&A have been added in relation to issues including: (i) clarifying the term “PRIIPs open to subscription”; (ii) the difference between a “benchmark” and a “proxy” under the PRIIPs Delegated Regulation; (iii) the types of product category with regard to market risk assessments; (iv) summary risk indicators; and (v) performance scenarios.

Date of publication: 15/03/2024

3.6 Securities financing transactions

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2019/360 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under the SFTR

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) 2019/360 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under SFTR. This harmonisation and simplification of technical aspects of ESMA’s fee collection system aims to make fee collection less complex and more uniform across sectors. It will enter into force on the twentieth day following its publication in the OJ and will apply from 1 January 2025.

Date of publication: 11/03/2024

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Feedback statement on the call for evidence on shortening the settlement cycle

Status: Final

ESMA has published a feedback statement on the call for evidence on shortening the settlement cycle. ESMA summarises the feedback from market participants during the consultation which focused on four areas: (i) operational impacts; (ii) potential costs and benefits; (iii) how and when a shorter settlement cycle could be achieved; and (iv) the need for a proactive approach to adapt to the transition to T+1 in other jurisdictions. Some responses warned about potential infringements due to the misalignment of the EU and North America settlement cycles, that ESMA is currently assessing. ESMA will continue assessing the responses received, including the demands for regulatory/supervisory guidance. ESMA flags several questions that remain to be further assessed and better understood. These include the impacts on securities lending and borrowing, market making, and the repo market; FX trading; cross-border activities; corporate actions standards; and benefits resulting from margin reductions for cleared transactions. ESMA also aims to clarify the possible implications of T+1 for retail investors and smaller market players. It will draw upon lessons learnt from the North American move to T+1 as well as any further feedback received from stakeholders in the APAC region, from small and medium market participants and retail investors and their representatives.

ESMA intends to deliver its final assessment to the EP and to the Council in Q3 or Q4, ahead of the 17 January 2025 deadline. Given the feedback received on T+0, with which ESMA agrees, ESMA will focus its work on shortening the settlement cycle to T+1.

Date of publication: 21/03/2024

4.2 EMIR

(i) EU

ESMA: Public statement on the deprioritisation of supervisory actions on the EMIR clearing obligation for third-country pension scheme arrangements in light of the agreement on the EMIR review

Status: Final

ESMA has published a public statement on the deprioritisation of supervisory actions on the EMIR clearing obligation for third-country pension scheme arrangements (TC PSA) in light of the agreement on the EMIR review, pending the finalisation of the review of EMIR. During this period, and in view of the challenges that market participants would face, ESMA has announced that it expects NCAs not to prioritise supervisory actions in relation to the clearing obligation for derivative transactions conducted with TC PSAs exempted from the clearing obligation under their third-country's national law. Additionally, ESMA recommends that NCAs apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

The Council and the EP reached a provisional agreement on 7 February 2024. The political agreement on the text for EMIR 3 provides for an exemption regime from the EMIR clearing obligation when the TC PSA is exempted from the clearing obligation under that third country's national law.

Date of publication: 27/03/2024

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) No 1003/2013 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under EMIR

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation amending Delegated Regulation (EU) No 1003/2013 as regards harmonisation of certain aspects of fees charged by the ESMA to trade repositories under EMIR. This harmonisation and simplification of technical aspects of ESMA's fee collection system aims to make fee collection less complex and more uniform across sectors. It will enter into force on the twentieth day following its publication in the OJ and will apply from 1 January 2025.

Date of publication: 11/03/2024

Commission Delegated Regulation (EU) 2024/818 amending the RTS laid down in Delegated Regulation (EU) No 153/2013 as regards the extension of temporary emergency measures on CCP collateral requirements

Status: Published in the OJ

Date of entry into force: 07/03/2024

Commission Delegated Regulation (EU) 2024/818 amending the RTS laid down in Delegated Regulation (EU) 153/2013 as regards the extension of temporary emergency measures on CCP collateral requirements under EMIR has been published in the OJ. The Delegated Regulation was previously amended on 28 November 2022 to temporarily expand the pool of eligible collateral by CCPs to uncollateralised bank guarantees for non-financial counterparties acting as clearing members, and to public guarantees for all types of counterparties. These measures expired on 29 November 2023. The amending Delegated Regulation extends these measures for a further six months. This bridges the gap between the date the temporary measures are currently set to expire and the date the co-legislators are expected to finalise the review of EMIR.

Date of publication: 06/03/2024

5. Anti-money laundering

(i) EU

Council of the EU: Compromise text on proposed Directive amending Directive (EU) 2019/1153, as regards access of competent authorities to centralised bank account registries through the single access point

Status: Draft

The Council of the EU has published an TP item note on the proposal for a Directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through the single access point. The note explains that while the objective of the initial EC proposal was to extend the access to the bank account registers (BAR) single access point to the designated authorities competent for the prevention, detection, investigation or prosecution of criminal offences, the co-legislators added new elements during the negotiations, namely the harmonisation of bank statement formats, invitation to Europol to support Financial Investigation Units to carry out joint analysis and extension of the definition of bank account information. The transposition period of the proposed Directive reflects only the initial scope of the proposal limited to the access to the BAR through the single access point and did not consider the new elements added by the co-legislators. As the proposed Directive is part of the AML package, the new harmonisation of bank statement format and extension of definition of bank account information were further elaborated in the revised AML Directive and Regulation. Therefore, to align the transposition periods with those in the AML Directive and Regulation, the Council of the EU suggests that the transposition periods should be five years solely for the provisions related to the access to the BAR single access point, and a transposition period of three years for all the other provisions. The Council of the EU invites the Permanent Representatives Committee (COREPER) to confirm its first reading agreement on the final compromise text and inform the EP that, if it adopts its position at first reading on the text set out in the Annex to the note, the Council of the EU will approve the EP's position and the act will be adopted in the wording which corresponds to the EP's position.

Date of publication: 27/03/2024

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2016/1675 as regards adding Kenya and Namibia to the table in point I of the Annex and deleting Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates from that table

Status: Adopted by the EC

The EC has adopted a Delegated Regulation updating the list of third-country jurisdictions that have been identified as having strategic deficiencies in their AML and CTF regimes, that pose significant threats to the EU financial system, by amending Delegated Regulation (EU) 2016/1675. The delegated regulation removes Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates from the list and adds Kenya and Namibia to the table in point I of the Annex. These amendments reflect the amendments FATF made in February to its list of 'Jurisdictions under Increased Monitoring'.

The Delegated Regulation will now be submitted to the Council of the EU and the EP for review. If neither object, it will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 14/03/2024

EBA: Call for advice by EC on RTS and Guidelines under the future AML/CFT framework

Status: Final

The EBA has published a final report on the draft RTS that set out the requirements, templates and procedures for handling complaints received by issuers of asset-referenced tokens (ARTs). The draft RTS coverage includes: (i) complaints handling; (ii) the provision of information to ART holders and other interested parties; (iii) templates and recording; (iv) languages; (v) procedure for complaints investigation; and (vi) complaints handling in relation to third parties. Following responses to last

year's consultation, the EBA made a small number of targeted amendments to provide clarity and to align with ESMA, in relation to languages, data protection and electronic complaint submission.

The draft RTS will be submitted to the EC for endorsement by 30 June, following which they will be subject to scrutiny by the EP and the Council of the EU before being published in the OJ.

Date of publication: 12/03/2024

EC: Report to the EP and the Council on the implementation of the MLD4

Status: Draft

The EC has published a report to the EP and the Council on the implementation of MLD4. The report is based on information gathered from various sources and considers information up to 15 September 2023. The EC also published a staff working document, which includes summaries of the results of the surveys and contributions used in the production of the report. The report covers the following: (i) the transposition of MLD4 and MLD5; (ii) risk assessment and risk mitigation; (iii) NCAs and financial intelligence units, information access and co-operation, including at international level; (iv) beneficial ownership information regarding non-EU entities; (v) PEPs and enhanced due diligence measures; and (vi) fundamental rights. The report notes the EC's reaction to the level of change to the risk environment in recent years and the EBA's contribution to harmonisation and supervisory convergence, including substantial improvements regarding information exchange and co-operation between AML and CTF supervisors in the financial sector.

Date of publication: 11/03/2024

(i) International

FATF: Status of implementation of Recommendation 15 by FATF members and jurisdictions with materially important VASP activity

Status: Final

The FATF has published a report on the status of implementation of Recommendation 15 by FATF members and jurisdictions with materially important virtual assets and virtual asset service providers (VASPs) activity, following the evaluation of a stocktake of current levels of implementation across the global network. It found that many countries have yet to fully implement the FATF's requirements on VASPs to prevent their misuse for illicit finance. The lack of implementation of these requirements leaves significant loopholes globally, that criminals and terrorists exploit.

Date of publication: 28/03/2024

FATF: Guidance on beneficial ownership and transparency of legal arrangements

Status: Final

The FATF has updated its Guidance on beneficial ownership and transparency of legal arrangements following the February 2023 revisions to FATF Recommendation 25. The Guidance aims to help stakeholders from the public and private sectors to implement the new requirements more effectively, and should assist countries and the private sector to understand how requirements apply and include practical guidance. It explains FATF's requirements to obtain adequate, accurate and up-to-date beneficial ownership information for express trusts and similar legal arrangements, and mechanisms to verify this information. The guidance also highlights the importance of international co-operation. FATF plans to assess countries' implementation of these requirements during its upcoming round of mutual evaluations.

Date of publication: 11/03/2024

6. Payments

6.1 Payment services/E-money

(i) EU

Regulation (EU) 2024/886 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro

Status: Published in the OJ

Date of entry into force: 08/04/2024

The Regulation (EU) 2024/886 amending the SEPA Migration Regulation, the Cross Border Payments Regulation, the SFD and PSD2 as regards instant credit transfers in euro, has been published in the OJ. The Regulation mandates EU payment service providers (PSPs) to offer 24-hour euro-transfers within ten seconds to their customers at no extra charge compared to standard transfers.

Once in force, PSPs located in the eurozone will have nine months to be ready to receive instant credit transfers in euro and 18 months to send them. PSPs located in non-eurozone Member States have a longer transition period to comply. Member States have 12 months to make changes to the PSD2 and the SFD, as transposed.

Date of publication: 19/03/2024

ECON: Reports on PSD3 and PSR

Status: Draft

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

6.2 Payment accounts

(i) Germany

BaFin: Entry into force of the comparison website reporting regulation (*Inkrafttreten der Vergleichswebsitesmeldeverordnung*)

Status: Final

BaFin's Regulation on reporting on payment accounts for the comparison website (*Vergleichswebsitesmeldeverordnung* – VglWebMV) has entered into force. It also specifies the comparison criteria and data that payment service providers must report to BaFin. The aim of this website, which will be available to consumers free of charge, is to create more transparency so that consumers in Germany can better compare different payment account offers. The comparison website thus contributes to collective consumer protection. With this Regulation, BaFin supplements the legal regulations in the Payment Accounts Act (*Zahlungskontengesetz* – ZKG, §§ 16 ff.) and specifies the reporting obligation of payment service providers that offer payment accounts for consumers.

Date of publication: 15/03/2024

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

ECB: Decision on total amount of supervisory fees for 2023

Status: Published in the OJ

Date of entry into force: 26/03/2024

The Decision (EU) 2024/871 of the ECB on the total amount of annual supervisory fees for 2023 has been published in the OJ. The total amount of annual supervisory fees for 2023 will be approximately EUR 653.7 million.

Date of publication: 21/03/2024

7.2 European Deposit Insurance Scheme (EDIS)

(i) EU

ECON: Draft report on the proposal for a Regulation amending the SRMR in order to establish an EDIS

Status: Draft

The ECON has published a draft report on the proposal for a Regulation amending the SRMR in order to incorporate and respectively take into account the establishment of a European Deposit Insurance Scheme (EDIS). While key steps have been made towards ensuring the efficient functioning of the Banking Union, with the Single Supervisory Mechanism (SSM) ensuring that the Union's policy relating to the prudential supervision of credit institutions in the euro area Member States and those non-euro area Member States who choose to participate in the SSM is implemented in a coherent and effective manner and with the Single Resolution Mechanism (SRM) ensuring a consistent framework for the resolution of banks that are failing or likely to fail in the participating Member States, further steps are still needed to complete the Banking Union. The establishment of an EDIS, with decision-making, monitoring and enforcement powers centralised and entrusted to the Single Resolution and Deposit Insurance Board, will be essential in achieving the objective of a harmonised deposit guarantee framework.

Date of publication: 04/03/2024

8. Institutional supervisory framework

(i) Germany

BaFin: Call to submit documents separate and electronically (*Aufruf der BaFin zur Einreichung von Unterlagen getrennt und elektronisch*)

Status: Final

BaFin has published a note asking for documents relating to persons, companies or facts to be submitted only separately, each with a separate postal cover letter or separate email. The reason for this is that BaFin is obliged to maintain the integrity of incoming documents and to comply with data protection requirements. In the case of collective submissions, it cannot comply with these provisions during internal processing. BaFin also calls on companies and institutes to only submit documents electronically if possible, unless the written form is required by law, in order to speed up processes and make them more efficient.

Date of publication: 06/03/2024

(ii) EU

ECB/EBA: MoU on the establishment of the Joint Bank Reporting Committee between ECB and EBA

Status: Final

The ECB and EBA have published an MoU on the establishment of the Joint Bank Reporting Committee (JBRC). The Committee is tasked with helping to develop common definitions and standards for the data that banks are required to report for statistical, supervisory and resolution purposes. This is aimed at harmonising and integrating data reporting by the banking industry with the goal of improving efficiency and reducing the associated costs. The EC and the SRB will also be part of the Committee, as will the relevant authorities with the power to issue supervisory, resolution and statistical reporting requirements in EEA Member States. The Committee was established through an MoU. The [SRB has announced](#) that it welcomes this plan.

Date of publication: 18/03/2024

EP: Adoption of proposed Regulation to streamline reporting obligations and reduce the administrative burden for the European Union's financial sector

Status: Adopted by the EP

The EP has announced that it had adopted at first reading the proposed regulation amending the ESRB Regulation, EBA Regulation, EIOPA Regulation, ESMA Regulation and InvestEU Regulation as regards certain reporting requirements in the fields of financial services and investment support. The proposed regulation aims to: (i) facilitate the sharing of reported data between national and EU authorities where both authorities already have the right to collect the data, to avoid duplicative requests and to facilitate the sharing of clean or processed versions of such data; (ii) require authorities to regularly review reporting requirements, remove any redundant or obsolete ones, and minimise the reporting burden; and (iii) allow, under strict confidentiality and data protection conditions, the sharing of data held by authorities with financial institutions, researchers, and other entities, for research and innovation purposes. The file will be followed up by the EP after the European elections in June.

The Council of the EU will then need to adopt the regulation. It will enter into force on the twentieth day following its publication in the OJ.

Date of publication: 13/03/2024

9. Investment funds

9.1 Product regulation

(a) AIF

(i) Germany

BaFin: Guidance notice on data maintenance regarding registered AIF management institutes (*Merkblatt zur Datenpflege registrierter AIF-Verwaltungsgesellschaften*)

Status: Final

BaFin has published its Guidance notice on data maintenance regarding registered AIF management institutes. It is directed at AIF capital management institutes that are registered pursuant to Section 2(4) Capital Investment Act (*Kapitalanlagegesetz – KAGB*). It examines reporting requirements, reporting on data maintenance and the submission of audit reports and explains the reporting procedure. The Guidance notice does not consider questions as to the content or legal matters.

Date of publication: 01/03/2024

(iii) EU

Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs

Status: Published in the OJ

Date of entry into force: 15/04/2024

Date of application: 16/04/2026

The Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs has been published in the OJ. The Directive amends the AIFMD which governs managers of hedge funds, private equity funds, private debt funds, real estate funds and other alternative investment funds in the EU. It also modernises the framework for UCITS, i.e. plain-vanilla EU-harmonised retail investment funds such as unit trusts and investment companies. The new rules aim to enhance the integration of asset management markets in Europe and modernise the framework for key regulatory aspects. They are expected to improve the availability of liquidity management tools, with new requirements for managers to provide for the activation of these instruments. This will help ensure that fund managers are well equipped to deal with significant outflows in times of financial turbulence.

The amending Directive also covers an EU framework for loan-originating funds, i.e. funds that provide credit to companies, supplemented with several requirements to alleviate risks to financial stability and to ensure an appropriate level of investor protection. The Directive introduces enhanced rules for delegation by investment managers to third parties, which should enable them to better tap the best resources from market specialists, subject to reinforced supervision and preserving market integrity. Other key components of the new rules include improved data sharing and cooperation between authorities, and new measures to identify undue costs that could be charged to funds, and hence their investors, as well as on preventing possible misleading names to better protect investors. Member States are required to apply the measures from 16 April 2026, except for the measures transposing Article 1(12), and those transposing Article 2(7) with regard to Article 20a of the UCITS Directive, which they must apply from 16 April 2027.

Date of publication: 26/03/2024

Commission Implementing Regulation (EU) 2024/913 laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border

activities of alternative investment fund managers and the exchange of information between competent authorities on cross-border notification letters

Status: Published in the OJ

Date of entry into force: 14/04/2024

Date of application: 14/04/2024

The Commission Implementing Regulation (EU) 2024/913 laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of alternative investment fund managers and the exchange of information between competent authorities on cross-border notification letters has been published in the OJ. The exchange of information between competent authorities is part of the administrative procedures in relation to the notifications of alternative investment funds managers (AIFMs) wishing to carry out marketing or management activities, to provide services or to establish a branch in host Member States. To close those administrative procedures in a smooth, fast, unbureaucratic, and reliable way, it is necessary to specify and harmonise the exchange of information between competent authorities by the development of harmonised forms, templates, cooperation procedures and the implementation of communication by electronic means. While such information might be provided by email, it should be possible to provide that information also by other, potentially more advanced electronic technology. It is therefore necessary to set out a detailed procedure for those electronic transmissions and for dealing with technical problems that might occur in the process of the transmission of the information between the competent authorities. The provisions in this draft are closely linked since they deal with the form and content of the information to be exchanged between AIFMs and the national competent authorities of home and host Member States where the AIFM intends to provide cross-border services.

Date of publication: 25/03/2024

Commission Delegated Regulation (EU) 2024/912 supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of AIFMs

Status: Published in the OJ

Date of entry into force: 14/04/2024

Date of application: 25/06/2024

The Commission Delegated Regulation (EU) 2024/912 supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of AIFMs, under Article 33 of the AIFMD, has been published in the OJ. In order to foster convergence and to standardise the transmission of notifications for cross-border marketing and the cross-border management activities of AIFs throughout the EU, the AIFMD may be supplemented with RTS for the exchange of information and related communication between NCAs, specifying the information to be provided, as well as the content and format of notification letters that AIFMs submit to NCAs if they wish to undertake cross-border marketing or cross-border management activities and provide services in host Member States. These draft RTS also aims to further specify the procedure for the communication of the notification file by the relevant home NCA to the host NCA of the Member States where these activities are envisaged.

Date of publication: 25/03/2024

ECON: Draft reports on proposed retail investment package

Status: Draft

ECON has announced that it has adopted draft reports on: (i) the proposed Regulation amending the PRIIPs Regulation as regards the modernisation of the key information document. ECON wishes to ensure comparability between PRIIPs products and to develop an independent online comparison tool of the different investment options available in the EU market; and (ii) the proposed Directive amending MiFID II, the IDD, Solvency II, the UCITS Directive and AIFMD, as regards the EU retail investor protection rules. For more information, please see section 3.4 above.

Date of publication: 21/03/2024

(b) UCITS

(i) EU

Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs

Status: Published in the OJ

Date of entry into force: 15/04/2024

Date of application: 16/04/2026

The Directive (EU) 2024/927 amending the AIFMD and UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by AIFs has been published in the OJ. For more information, please see section 9.1(a) above.

Date of publication: 26/03/2024

Commission Implementing Regulation (EU) 2024/910 laying down ITS for the application of the UCITS Directive with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Commission Regulation (EU) No 584/2010

Status: Published in the OJ

Date of entry into force: 14/04/2024

Date of application: 14/07/2024

The Commission Implementing Regulation (EU) 2024/910 laying down ITS for the application of the UCITS Directive with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Commission Regulation (EU) No 584/2010 has been published in the OJ.

Date of publication: 25/03/2024

Commission Delegated Regulation (EU) 2024/911 supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS

Status: Published in the OJ

Date of entry into force: 14/04/2024

Date of application: 25/06/2024

The Commission Delegated Regulation (EU) 2024/911 supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS, under Articles 17, 18 and 20 of the UCITS Directive, has been published in the OJ. In order to foster convergence and to standardise the transmission of notifications for cross-border marketing and the cross-border management activities of UCITS throughout the EU, the UCITS Directive contains provisions mandating the ESMA to develop draft RTS and ITS for the exchange of information and related communication between NCAs. This includes the RTS specifying the information to be provided, as well as the content and format of notification letters that management companies submit to NCAs if they wish to undertake cross-border marketing or cross-border management activities and to provide services in host Member States. The RTS also aims to further specify the procedure for the communication of the notification file by the relevant home NCA to the host NCA of the Member States where these activities are envisaged.

Date of publication: 25/03/2024

ECON: Draft reports on proposed retail investment package

Status: Draft

ECON has announced that it has adopted draft reports on: (i) the proposed Regulation amending the PRIIPs Regulation as regards the modernisation of the key information document. ECON wishes to ensure comparability between PRIIPs products and to develop an independent online comparison tool of the different investment options available in the EU market; and (ii) the proposed Directive amending MiFID II, the IDD, Solvency II, the UCITS Directive and AIFMD, as regards the EU retail investor protection rules. For more information, please see section 3.4 above.

Date of publication: 21/03/2024

9.2 Prudential regulation

(a) Compliance

(i) Germany

BReg: Government draft on the second law on the reform of the Capital Market Model Cases Act (Regierungsentwurf des zweiten Gesetzes zur Reform des Kapitalanleger-Musterverfahrensgesetzes)

Status: Draft

The German Federal Government (*Bundesregierung* – BReg) has published a government draft on the Second law on the reform of the Capital Market Model Cases Act (*Kapitalanleger-Musterverfahrensgesetz* – KapMuG). The KapMuG provides a special civil model case procedure before the higher regional courts, in particular for claims based on false, misleading or omitted public capital market information. Questions of fact or law that arise equally in several individual proceedings before the regional courts are submitted to the Higher Regional Court (*Oberlandesgericht*) and are heard and decided in a single procedure if parties in at least ten of these individual proceedings so request. Following the model decision, the individual proceedings before the regional courts are brought to a conclusion on the basis of this decision. This law is to be retained as a special code of procedure with its current scope of application. While keeping its basic procedural structures, it will be further developed into an effective instrument for both the judiciary and individual legal protection in dealing with mass proceedings relating to capital market law and established as such on a permanent basis.

Date of publication: 14/03/2024

(ii) EU

ESMA: Official translation on Guidelines on stress test scenarios under the MMF Regulation

Status: Final

ESMA has published the official translations of its Guidelines on stress test scenarios under the MMF Regulation. The purpose of the Guidelines is to ensure common, uniform and consistent application of the provisions in Article 28 of the MMF Regulation. In particular, they establish common reference parameters of the stress test scenarios to be included in the stress tests. The sections of the Guidelines in red text will apply from 6 May, that is two months after the publication of the official translations. The other parts of the Guidelines already apply from the dates specified in Articles 44 and 47 of the MMF Regulation. The Guidelines need to be updated at least every year to take into account the latest market developments.

Date of publication: 06/03/2024

EC: Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the ELTIF Regulation with regard to RTS specifying obligations concerning hedging

derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480

Status: Adopted by the EC

The EC has adopted the Communication on the intention to adopt with amendments the Commission Delegated Regulation supplementing the ELTIF Regulation with regard to RTS specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480.

Date of publication: 06/03/2024

10. Special rules for real estate financing and covered bonds

10.1 Mortgage credits

(i) **Germany**

BaFin: Announcement that systemic risk buffer for mortgage credits remains unchanged (*Mitteilung über unverändertes Fortbestehen des Systemrisikopuffers für Wohnimmobilienkredite*)

Status: Final

BaFin has announced that the systemic risk buffer for the residential real estate sector will remain unchanged at 2% of the risk-weighted assets. This decision was based on an assessment by BaFin, taking into account analyses and estimates by the Bundesbank. The indicator-based analysis showed that the risks remain high despite the current cyclical weakness of the residential property market. The probability of default, loss given default, lending standards and risk provisioning were the central components of the analysis. BaFin found that the loss potential in the banking sector has not decreased substantially over the past two years. The residential property stress test carried out as a cross-check confirmed this. On 1 April 2022, BaFin set up this systemic risk buffer by way of a General Administrative Act in order to specifically counter the increasing risks on the residential property market. In accordance with Section 10e(2)(3) of the German Banking Act (*Kreditwesengesetz – KWG*), BaFin is required to review this buffer at least every two years.

Date of publication: 28/03/2024

11. Special topics

11.1 FinTech/Digital finance

(i) EU

ESMA: Consultation on technical standards specifying certain requirements of MiCA (third package)

Status: Consultation

Deadline for the submission of comments: 25/06/2024

ESMA has launched consultation on its third consultation package on draft RTS and Guidelines specifying certain requirements of the MiCA Regulation on detection and prevention of market abuse, investor protection and operational resilience. ESMA is seeking input on draft versions of: (i) RTS on arrangements, systems and procedures for detecting and reporting suspected market abuse in crypto-assets; (ii) Guidelines on aspects of the suitability requirements applicable to the provision of advice and portfolio management in crypto-assets and the format of the periodic statement referred to in Article 81(14) of the MiCA Regulation; (iii) Guidelines on the procedures and policies, including the rights of clients, in the context of transfer services for crypto-assets; and (iv) Guidelines on the maintenance of systems and security access protocols in conformity with appropriate European Union standards. ESMA plans to publish a final report based on the feedback received and will submit the draft technical standards to the EC for endorsement by 30 December at the latest.

Date of publication: 25/03/2024

ESMA: Final report on draft technical standards specifying requirements for cooperation, exchange of information, and notification between competent authorities, ESAs, and third countries under MiCA

Status: Final

ESMA has published a final report on draft technical standards specifying requirements for co-operation, exchange of information, and notification between competent authorities, ESAs, and third countries under the MiCA Regulation. The report contains two draft RTS and two ITS relating to: (i) the exchange of information between competent authorities; (ii) procedures, forms and templates for the exchange of information between competent authorities; (iii) procedures, forms and templates for exchange of information between competent authorities and ESMA/EBA; and (iv) the template for co-operation with third-country authorities. ESMA did not conduct a public consultation on the draft technical standards, as this would have been disproportionate in relation to the scope of those standards. ESMA will now submit the final report, as well as the draft RTS and ITS, to the EC. The EC then has three months to decide whether to adopt the technical standards. The EC may extend that period by one month. The regulatory technical standards will also be subject to non-objection by the EP and the Council of the EU.

Date of publication: 25/03/2024

ESMA: Final report on draft technical standards specifying certain requirements of MiCA (first package)

Status: Final

ESMA has published the final report on the first package of draft technical standards specifying certain requirements of the MiCA Regulation. Sections 2 to 5 of the final report set out the feedback statements relating to five of the six draft technical standards related to investor protection topics which were included in the ESMA public consultation. ESMA explains that the final report relating to the technical standards on conflicts of interest for CASPs (in accordance with Article 72(5) of the MiCA Regulation) will be published at a later stage to allow the EBA to conclude its consultation process and therefore allow ESMA and the EBA to cooperate closely and ensure maximum alignment.

The final report, which aims to foster clarity and predictability, promote fair competition between CASPs and a safer environment for investors across the European Union, also includes proposals on: (i) information required for the authorisation of CASPs; (ii) the information required where financial entities notify their intent to provide crypto-asset services; (iii) information required for the assessment of intended acquisition of a qualifying holding in a CASP; and (iv) how CASPs

should address complaints. Section 6 consists of eight annexes, Annexes III to VIII contain the draft RTS and ITS. ESMA has submitted the draft RTS and ITS to the EC which has three months to decide whether to adopt the technical standards.

Date of publication: 25/03/2024

EBA: Final report on draft RTS to specify the requirements, templates and procedures for handling complaints under Article 31 MiCA Regulation

Status: Final

The EBA has published a final report on its draft RTS that set out the requirements, templates and procedures for handling complaints received by issuers of asset reference tokens (ARTs). The draft RTS fulfil a mandate conferred on the EBA in the MiCA Regulation and were developed in close cooperation with the ESMA. The draft RTS set out requirements related to the complaints management policy and function, the provision of information to holders of ARTs and other interested parties, templates, recordings, languages, the procedure to investigate complaints and to communicate the outcome of the investigations to complainants, and specific provisions for complaints handling involving third-party entities. The draft RTS were subject to a public consultation between 12 July 2023 and 12 October 2023. General support was shown by respondents for the approach proposed by the EBA, which they considered to be appropriately balanced. However, some respondents expressed their preference for a more uniform approach between the EBA's RTS and the equivalent RTS by ESMA on complaints handling for crypto asset service providers. Having assessed the responses, the EBA decided to make a small number of targeted amendments with the aim to provide greater clarity and to further align with ESMA, in relation to requirements on languages, data protection and procedure for submitting an electronic complaint.

Date of publication: 13/03/2024

EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation supplementing DORA with regard to RTS specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework. The Council of the EU and the EP will now scrutinise the text. If neither object, it will be published in the OJ and enter into force on the twentieth day following their publication.

Date of publication: 13/03/2024

EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation supplementing DORA with regard to RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers. The Council of the EU and the EP will now scrutinise the text. If neither object, it will be published in the OJ and enter into force on the twentieth day following their publication.

Date of publication: 13/03/2024

EC: Commission Delegated Regulation (EU) .../... supplementing DORA with regard to RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents

Status: Adopted by the EC

The EC has adopted Commission Delegated Regulation supplementing DORA with regard to RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of

major incidents. The Council of the EU and the EP will now scrutinise the text. If neither object, it will be published in the OJ and enter into force on the twentieth day following their publication.

Date of publication: 13/03/2024

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

Status: Consultation

Deadline for the submission of comments: 10/06/2024

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 triggers for implementation. Particular points covered include: (i) clarification of the main principles governing the redemption plan, such as the equitable treatment of token holders; (ii) description of the main steps for orderly and timely implementation, including the communication plan, the content of the redemption claims and the distribution plan; (iii) pooled issuance, where the same token is issued by multiple issuers; and (iv) the triggers for the activation of the plan by the competent authority and cooperation with the prudential and resolution authorities.

Date of publication: 08/03/2024

11.2 AI

(i) EU

EP: Adoption of the AI Regulation

Status: Draft

The EP has adopted the proposed AI Regulation, the first EU transparency and risk-management rules on artificial intelligence. It aims to protect fundamental rights, democracy, the rule of law and environmental sustainability from high-risk AI, while boosting innovation and establishing Europe as a leader in the field. The regulation establishes obligations for AI based on its potential risks and level of impact.

Following final checks and a formal endorsement by the Council of the EU, the Regulation is expected to be adopted before the end of the legislature. It will enter into force 20 days after its publication in the OJ and will be fully applicable 24 months after its entry into force, aside from specified exceptions.

Date of publication: 13/03/2024

11.3 Sustainable finance

(i) Germany

BMJ: Minister's bill on the law implementing the CSRD (*Referentenentwurf zum Gesetz zur Umsetzung der CSRD*)

Status: Draft

The Ministry of Justice (*Bundesministerium für Justiz und Verbraucherschutz* – BMJ) has published a minister's bill on the law implementing the CSRD. This Directive requires Member States to introduce sustainability reporting for companies defined as large, small or medium-sized capital market-oriented companies under accounting law and to audit the corresponding sustainability reports by 6 July 2024.

Date of publication: 22/03/2024

BaFin: Market study on the collection and handling of ESG data and ESG rating procedures by asset management companies (*Marktstudie zur Erhebung von und zum Umgang mit ESG-Daten und -Ratingverfahren durch Kapitalverwaltungsgesellschaften*)

Status: Final

BaFin has published an English translation of the market study on the collection and handling of ESG data and ESG rating procedures by asset management companies (*Kapitalverwaltungsgesellschaften*), as published in February 2024. It presents the results from a survey of 30 asset management companies and six ESG rating providers regarding the status quo of how asset management companies collect and handle ESG data and ratings. It shows that in the provider selection process, the companies pay particular attention to ensuring that the providers' data is high-quality and complete and that the methodology used is transparent. In addition, costs, services and the reputation of the service provider are also relevant.

Date of publication: 18/03/2024

(ii) EU

ESMA: Consultation on RTS on the European Green Bond Regulation

Status: Consultation

Deadline for the submission of comments: 14/06/2024

ESMA has launched a consultation on draft RTS related to the registration and supervision of external reviewers under the EU Green Bond Regulation (EuGB). The proposals relate to the registration and supervision of entities interested in becoming external reviewers of EU Green Bonds and aim to clarify the criteria used for assessing an application for registration by an external reviewer. In its proposals, ESMA aims to standardise registration requirements and contribute to developing a level playing field through lower entry costs for applicants. These relate to: (i) senior management and analytical resources; (ii) sound and prudent management, including avoidance of conflicts of interest; (iii) knowledge and experience of analysts, and (iv) the outsourcing of assessment activities, forms, templates, and procedures for the provision of registration information.

The consultation will be of interest to future external reviewers of green bonds and sustainable debt and sustainability assurance providers. It is also directed at relevant investors, issuers, and trade associations.

Date of publication: 26/03/2024

Council of the EU: Compromise text for the Corporate Sustainability Due Diligence Directive

Status: Draft

The Council of the EU has proposed a compromise text of the Corporate Sustainability Due Diligence Directive (CSDDD) to the EP. The Council failed to formally endorse the previous provisional political agreement that was reached in December last year. Revisions to the text include: (i) a reduction in scope, with less companies required to comply; (ii) the lower thresholds for companies in high-risk sectors have been removed; (iii) the due diligence obligations have been expanded; (iv) directors are no longer subject to a duty of care and are no longer responsible for setting up and overseeing the due diligence obligations; and (v) the timelines for compliance have been extended – the majority will not need to comply until five years after the CSDDD enters into force.

If the EP adopts the revised text, the Council has stated that it will also adopt it, allowing it to be published in the OJ. The revised CSDDD is on the EP plenary agenda for adoption on 24 April.

Date of publication: 15/03/2024

(iii) International

UNEP FI: Updated Guidelines for climate target setting for banks

Status: Final

The United Nations Environment Programme Finance Initiative (UNEP FI) has updated its Guidelines for climate target setting for banks, which now include banks' capital markets activities. The new Guidelines will add, update, and clarify technical language to reflect the evolution of practices, methodologies, and data availability in the three years since the original version was

published, including around policy engagement and transition planning. The updates also reflect changes in science, regulation, data, and methodologies that took place in the last three years. The updated version of the Guidelines will apply to all new targets and any new iterations of existing targets set by Net-Zero Banking Alliance (NZBA) member banks after 22 April. The Guidelines are scheduled to be reviewed every three years.

Date of publication: 13/03/2024

12. German Omnibus Acts (*Artikelgesetze*)

(i) **Germany**

BMJ: Minister's bill on the law implementing the CSRD (*Referentenentwurf zum Gesetz zur Umsetzung der CSRD*)

Status: Draft

The Ministry of Justice (*Bundesministerium für Justiz und Verbraucherschutz* – BMJ) has published a minister's bill on the law implementing the CSRD. For more information, please see section 11.3 above.

Date of publication: 22/03/2024

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