

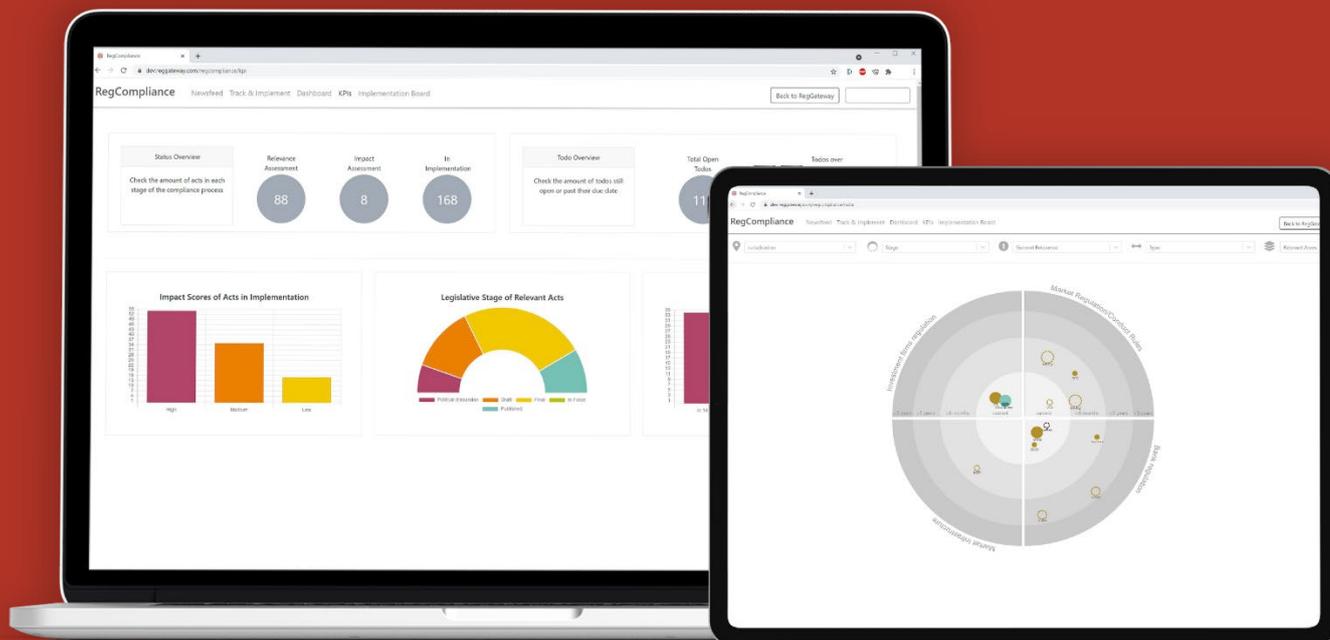
# Payments & FinTech

News | April 2024



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### HORIZON SCANNING / REGULATORY MONITORING

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

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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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# Regulatory Updates

## Payments



### Germany

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

BaFin's Regulation on reporting on payment accounts for the comparison website (*Vergleichsweb-sitemeldeverordnung – 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



### 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**

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



## International

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### **BCBS: Project Agorá aiming to explore tokenisation of cross-border payments**

The BCBS, together with seven central banks, announced **plans for a private-public project named Project Agorá** to explore how tokenisation can enhance the functioning of the monetary system. The project builds on the unified ledger concept proposed by the BIS and will investigate how tokenised commercial bank deposits can be seamlessly integrated with tokenised wholesale central bank money in a public-private programmable core financial platform. This could enhance the functioning of the monetary system and provide new solutions using smart contracts and programmability, while maintaining its two-tier structure. The project will seek to overcome several structural inefficiencies in how payments happen today, especially across borders, which add a layer of challenges, including: (i) different legal, regulatory and technical requirements; (ii) operating hours and time zones; and (iii) the increased complexity of carrying out financial integrity controls (e.g. against money laundering and customer verification), which today are often repeated several times for the same transaction, depending on the number of intermediaries involved. The BIS will issue a call for expressions of interest to private financial institutions to join Project Agorá. The Institute of International Finance (IIF) will act as the intermediary and convener of private sector participants. It is envisaged that several regulated financial institutions will participate representing each of the seven currencies. Specific instructions and requirements will be issued in due course. Being a member of the IIF is not a requirement to participate.

Date of publication: 03/04/2024

# FinTech/Digital finance



## EU

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

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



## EU

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**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**

The EC has adopted a **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



## EU

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**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**

The EC has adopted a **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



## EU

**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**

The EC has adopted a **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



## EU

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

ESMA has launched **consultation** on its third consultation package on draft RTS and guidelines specifying certain requirements of MiCAR 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 MiCAR; (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



## EU

**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**

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 MiCAR. 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



EU

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

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



EU

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**ESMA: Letter to EU institutions on DLT Pilot Regime Implementation**

ESMA has published a **letter to the EC, EP and the Council of the EU** with an interim update on the DLT by FMI in the context of the DLT Pilot Regime. The DLT Pilot Regime Regulation requires ESMA to publish annual interim reports and the first report was due by 24 March 2024. Given that no DLT market infrastructures have been authorised, however, ESMA does not intend to publish such a report but instead provides an update on the status of applications submitted so far and highlights the main challenges observed. ESMA states that four official applications have been submitted, which are currently under assessment by the respective NCAs, who have also raised questions arising from the applications for discussion at ESMA's DLT Working Group. Around eight other potential applications may be submitted during the course of this year. With one year of experience navigating the Pilot Regime, one of the conclusions by ESMA is that the novelty of this particular regime may explain its relatively slow uptake. ESMA has identified some challenges for further consideration by the relevant EC services. ESMA considers that it would be worthwhile if the EC could clarify some aspects to support the increased uptake of the regime, such as those related to innovative solutions for cash settlement, the use of self-hosted wallets, the scope and the thresholds of admitted DLT financial instruments, and the duration of the DLT Pilot Regime.

Date of publication: 04/04/2024

# News from the Courts

## FinTech/Digital finance



### Germany

**Federal Court of Justice,  
10 January 2024 - III ZR 57/23:  
State liability in capital market  
supervisory law (“Wirecard”)**

The Federal Court of Justice (BGH) refused to provide a final clarification of the question of official liability in the Wirecard case, as the focus was on an interpretation of Union law and a referral to the ECJ would have been necessary. The discussion covered the scope of BaFin's official duty in the two-stage enforcement procedure and the protection of individual investors. The BGH argued that even with an expanded interpretation of BaFin's official duties in the Wirecard case, there was no breach of official duty, as its measures were justifiable. Criticism was expressed about the test standard applied, as a complete legality review should have been carried out. Nevertheless, the BGH's conclusion that there is no claim for official liability against BaFin was convincing, as it acts in the public interest in accordance with Section 4 (4) FinDAG. Investors who suffered damage in the Wirecard case see their chances of compensation greatly reduced, and future official liability proceedings against BaFin could also be affected. Overall, the BGH receives a mixed review, as it reached the correct conclusion but missed the opportunity to provide final clarification by referring the matter to the ECJ.



### EU

**ECJ 14 March 2024 - C-536/22:  
Interpretation of Article 25 of  
Directive 2014/17: Loss of profit of  
the lender in the event of early  
repayment of a residential property  
credit agreement by a consumer**

The European Court of Justice (ECJ) has ruled that Article 25(3) of Directive 2014/17 requires Member States to ensure that the calculation of lost profits in the case of early repayment of consumer loans relating to residential property is appropriate. The compensation must be objective and not exceed the financial loss suffered by the lender. However, the Directive gives Member States flexibility as to how this calculation should be made and does not explicitly require that the actual use of the amounts repaid must be considered. The method used to calculate the return, such as the asset-liability method, must comply with the requirements of the Directive. The ruling specifies that the calculation of lost profits should be made taking into account the flat rate return on the amount repaid in order to ensure that the compensation is appropriate and objective and does not constitute a contractual penalty for the consumer. The ruling confirms the importance of a balanced and appropriate calculation of lost profits in the case of early repayment of loans and gives Member States some flexibility in setting specific rules in this regard.



## International

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**Munich Regional Court I, 14  
February 2024 - 27 O 3001/22:  
International jurisdiction in  
securities transactions**

The Munich Regional Court ruled that German courts lack jurisdiction in a case involving two claims against a Czech defendant. A German securities trading bank and one of its intermediaries sued the defendant for damages before the Czech Ombudsman for Financial Transactions. The arbitration award required the plaintiffs to compensate the defendant. In their Munich actions, the plaintiffs challenged the obligation, contending the defendant wasn't a consumer, and the Czech procedure didn't bar German claims. The court rejected the claims, deeming the defendant a consumer as he managed private assets, not for professional purposes. Per Brussels Ia-Regulation (EU) No 1215/2012, claims fell under the defendant's state court jurisdiction. The court found actions didn't fall under Article 18(2) due to unclear contract existence. It also dismissed an alternative damages claim, not falling under Article 7(2) jurisdiction.



# ECB in focus

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

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

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

## Some of our recent posts

### EU COURT'S JUDGMENT SHEDS NEW LIGHT ON HOW THE ECB SHOULD APPLY NATIONAL ADMINISTRATIVE

*04 April 2024*

The General Court of the European Union recently delivered its judgment on a dispute between an Austrian bank (BAWAG) and the ECB over the imposition of an administrative measure for breaching the...

[Read more →](#)

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

*07 March 2024*

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

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# Fintech and Digital Assets Talk

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

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- Cybersecurity
- IP protection
- Fundraising
- M&A activity

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

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

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## Our newest post

### **PAVING THE WAY FOR THE FUTURE OF PAYMENTS: NEW INSTANT PAYMENTS REGULATION PUBLISHED AND PAYMENTS PACKAGE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT (MARCH 2024 UPDATE)**

*20 March 2024*

The Instant Payments Proposal has been published in the Official Journal and revisions to the PSD III package have been adopted by the European Parliament's Economic and Monetary Affairs Committee – here are the latest developments in the EU's initiatives to improve and modernise payment services.

[Read more →](#)

# Contacts

## Payments and FinTech Regulatory

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## Derivatives and Structured Finance, Debt Capital Markets

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