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Digital finance: EU Council adopts proposed regulation on market infrastructures based on DLT

The EU Council has voted to adopt a regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The regime is intended to allow market infrastructures to experiment with restricted uses of

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DLT under exemptions from the requirements of certain financial services legislation.

The EU Parliament adopted the regulation at first reading on 24 March 2022. The regulation will enter into force 20 days after its publication in the Official Journal and will apply, with the exception of a small number of articles, nine months after that.

EU Council agrees its position on European green bond standard

The Committee of Permanent Representatives (Coreper) has approved the EU Council's negotiating position on the EU Commission's proposed regulation on a European green bond standard (EuGBS).

The proposed EuGBS regulation lays down uniform requirements for issuers that wish to use the European green bond (EuGB) designation for environmentally sustainable bonds made available to investors in the EU and establishes a registration system and supervisory framework for external reviewers of European green bonds.

Trilogue negotiations between the Council and Parliament can now commence in order to agree on a final version of the text.

EU Commission consults on Money Market Funds Regulation Review

The EU Commission has published a targeted consultation on the functioning of the Money Market Funds Regulation (MMFR).

The consultation forms part of the Commission's MMF review and seeks feedback and economic data from investors and asset managers on the use of MMFs.

The consultation is intended to complement information provided by the European Securities and Markets Authority (ESMA) in its opinion dated 14 February 2022 and by the European Systemic Risk Board (ESRB) in its policy recommendation dated 2 December 2021.

Comments are due by 13 May 2022. The Commission is due to publish its review in the summer.

MiFID2/MiFIR: Delegated Regulation amending RTS 2 published in Official Journal

Delegated Regulation (EU) 2022/629 amending the regulatory technical standards (RTS) laid down in Delegated Regulation (EU) 2017/583 (RTS 2) to move to the next stage for average daily number of trades (ADNT) liquidity thresholds for bonds and trade percentiles used to determine the pre-trade size specific to the financial instrument (SSTI) threshold for bonds has been published in the Official Journal.

The amendments were recommended by the European Securities and Markets Authority (ESMA) in its July 2021 MiFID2/MiFIR annual review report. In that report, ESMA did not recommend moving to the next stage for the trade percentiles for other non-equity instruments due to insufficient data.

Delegated Regulation (EU) 2022/629 enters into force on 3 May 2022.

Securitisation Regulation: EBA publishes final draft RTS specifying risk retention requirements for originators, sponsors, original lenders and servicers

The European Banking Authority (EBA) has published its final draft regulatory technical standards (RTS) specifying the requirements for originators, sponsors, original lenders and servicers related to risk retention under Article 6(7) of the Securitisation Regulation and as amended by the Capital Markets Recovery Package (CMRP).

The draft RTS specify in greater detail the risk retention requirements, including:

- requirements on the modalities of retaining risk;
- the measurement of the level of retention;
- the prohibition of hedging or selling the retained interest;
- the conditions for retention on a consolidated basis;
- the conditions for exempting transactions based on a clear, transparent and accessible index;
- the modalities of retaining risk in case of traditional securitisations of non-performing exposures; and
- the impact of fees paid to the retainer on the effective material net economic interest.

The RTS are intended to ensure a better alignment of interests between the originators, sponsors and original lenders and investors.

Several modifications have been made to the 2018 EBA RTS on risk retention to ensure consistency with the new mandate and to provide further clarity on some specific aspects, namely the adverse selection of assets by originators.

The modifications due to the CMRP focus on the modalities of risk retention in non-performing exposure (NPE) securitisations and the impact of fees payable to retainers on the risk retention requirement. In addition, the RTS provide further clarity on the application of the risk retention requirement to resecuritisations, as well as the treatment of synthetic excess spread as a possible form of compliance.

While the RTS will replace the Commission Delegated Regulation (EU) No 625/2014, the Securitisation Regulation contains transitional provisions regarding the application of the existing Delegated Regulation to those securitisations whose securities were issued before its application date.

BoE consults on FMI outsourcing and third party risk management

The Bank of England (BoE) has published three consultations on its proposals around outsourcing and third party risk management in financial market infrastructures (FMIs).

The consultations concern three draft supervisory statements (SSs) for central counterparties (CCPs), central securities depositaries (CSDs) and recognised payment system operators (RPSOs) and specified service providers (SSPs). The consultation for RPSOs and SSPs also includes a draft outsourcing and third party risk management chapter of the Code of Practice.

The consultations aim to:

- facilitate greater resilience and adoption of the cloud and other new technologies as set out in the BoE's response to the Future of Finance (FoF) report;
- set out the BoE's requirements and expectations in relation to outsourcing and third party risk management in FMIs; and
- complement the BoE's SSs on FMI operational resilience.

CRR: PRA publishes statement on capital arbitrage transactions

The Prudential Regulation Authority (PRA) has published a statement updating its approach on capital arbitrage transactions.

The PRA is aware of some PRA-regulated firms conducting, or considering conducting, deficit reduction transactions with their defined benefit pension schemes that are structured to limit the regulatory capital impact that would otherwise result. It has reminded firms that, in line with the Basel Committee on Banking Standards (BCBS) 2016 statement, they should not engage in transactions that have the aim of offsetting regulatory adjustments.

The BCBS statement emphasises that these types of transactions pose a number of risks and can be complex, artificial, and opaque. They can include legal risk and be untested in their ability to fully address the underlying rationale for the regulatory adjustment. Furthermore, they can have the effect of overestimating eligible capital or reducing capital requirements, without commensurately reducing the risk in the financial system, thus undermining the calibration of minimum regulatory capital requirements.

The PRA has warned firms that entering into such transactions may not be compatible with their obligations under the PRA's Fundamental Rules and has drawn attention to its approach to banking supervision.

The PRA intends to scrutinise transactions in light of the BCBS statement, the PRA's Fundamental Rules, and its approach to banking supervision. This includes any transactions that would allow firms to avoid regulatory capital deductions under Article 36(1) Capital Requirements Regulation (CRR), as transposed into PRA rules. It will look to agree a reasonable timeline for firms to unwind existing transactions where this is necessary.

Swiss Federal Department of Finance consults on revision of Banking Ordinance

The Swiss Federal Department of Finance (FDF) has launched a consultation on the revision of the Banking Ordinance. The proposed amendments relate mainly to insolvency provisions and deposit protection and are a consequence of the revision of the Banking Act.

The proposed revisions include:

- requirements for banks on how they must prepare to ensure the rapid payout of secured deposits in the event of insolvency;
- cantonal banks being enabled to issue special financial instruments tailored to their special position in the event of a restructuring;

- financial and organisational requirements for non-supervised companies that belong to a systemically important banking group and are important for its business are also specified; and
- the discount on certain capital requirements for large banks being replaced by an incentive system.

The consultation ends on 15 July 2022.

CSSF issues communiqué on EU restrictive measures in response to situation in Ukraine and on anti-money laundering and counter-terrorist financing measures

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué on the EU restrictive measures in response to the current situation in Ukraine and anti-money laundering and counter-terrorist financing measures.

In its communiqué, the CSSF draws the attention of the financial sector professionals under its supervision to certain upcoming key dates as well as to certain deadlines linked to the application of exceptions in relation to certain prohibitions, provided for in the context of the EU financial restrictive measures in response to the current situation in Ukraine.

In particular, as of 12 April 2022, several financial restrictive measures must be put in place by professionals. The CSSF notes also other key dates after 12 April 2022 for restrictive measures provided for by certain Articles of Regulation (EU) 833/2014 of 31 July 2014, as amended, as well as by Council Regulation (EU) 263/2022 of 23 February 2022 concerning restrictive measures in reaction to the recognition of the areas of the Ukrainian oblasts of Donetsk and Luhansk not controlled by the Government and to the order given to the Russian armed forces to enter these areas.

The CSSF asks finance professionals also to respect restrictive measures of third countries, to the extent applicable to them in light of the international dimension of their activities.

Finally, the CSSF reminds professionals of their suspicious transaction reporting obligations that may arise in this context, where primary offences would be committed or a suspicion would therefore exist, as well as of the cyber-attack aspects and resulting consequences for the person concerned and financial crime committed in this context that may constitute a primary offence.

Luxembourg law on granting of State guarantee to credit lines contracted by Luxembourg Deposit Guarantee Fund published

A law in the area of deposit protection schemes has been published in the Luxembourg official journal (Mémorial A).

The main purpose of the law is to amend the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms (as amended) to introduce an additional safety net for the benefit of the Luxembourg Deposit Guarantee Fund (FGDL), and thus further strengthen depositor protection, by means of a guarantee granted by the Luxembourg State to credit lines contracted by the FGDL.

The new guarantee will facilitate the implementation of financing mechanisms by the FGDL in the event of short-term needs by making it easier to obtain the funds necessary to honour its commitments.

The law authorises the Government to grant a State guarantee for credit lines contracted by the FGDL in return for appropriate remuneration. The State guarantee is capped at a maximum total amount of EUR 1 billion.

With this law, the Government also intends to address the concerns raised by the Luxembourg State Council (Conseil d'Etat) and the International Monetary Fund respectively on the need for a special law and the establishment of adequate financing mechanisms for the FGDL.

The law entered into force on 15 April 2022.

Grand Ducal Regulation on fees associated with processing of a consignment request under Inactive Accounts Law published

A new Grand Ducal Regulation dated 6 April 2022 on the fees for the processing of a file related to the submission and examination of a consignment request within the framework of the law of 30 March 2022 on inactive accounts, inactive safe-deposit boxes and unclaimed insurance payments (the Inactive Accounts Law) has been published in the Luxembourg official journal (Mémorial A).

The processing fee relating to the submission and examination of a consignment request is set at EUR 50 per file when such a request is submitted to the Consignment Office (Caisse de Consignation) by a credit institution or insurance undertaking. This amount is doubled when an application for certain exemptions is made. The payment of the fees has to be made electronically.

The new Regulation entered into force on 15 April 2022.

CNMV consults on draft circular on collective investment schemes prospectus and key investor document registration

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has launched a public consultation on a draft circular on the collective investment schemes (CIS) prospectus and the key investor document (KID) registration, amending Circular 2/2013 of 9 May, on the KID and the prospectus of CIS.

The main objective of the draft circular is to:

- remove all provisions relating to the content of the KID included in Circular 2/2013, as this document is already regulated under Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and to govern the format, content, and update of the prospectus and also the submission of the prospectus and of the PRIIPs KID;
- remove certain information from the prospectus content which is not required under Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), which shall be included in the PRIIPs KID; and

- remove or amend certain essential elements. The draft circular also refers to procedure for sending the sustainability disclosure obligations of the prospectus.

The draft circular will be open for comments until 27 May 2022.

Bank of Spain issues Circular 3/2022 amending Circulars 2/2016, 2/2014, and 5/2012

The Bank of Spain (BoS) has issued Circular 3/2022, dated 30 March, amending (i) Circular 2/2016, dated 2 February; Circular 2/2014, dated 31 January; and (iii) Circular 5/2015, dated 27 June.

By virtue of Circular 3/2022, the BoS has:

- further implemented the updates operated under Act 10/2014, dated 26 June (by virtue of Royal Decree-Act 7/2021, dated 27 April) and Royal Decree 84/2015 (by virtue of Royal Decree 970/2021, dated 8 November), pursuant to the domestic implementation of Directive (EU) 2019/878 (CRD5);
- adapted domestic legislation in line with Regulation 2019/876 (CRR2);
- exercised the specific CRD5/CRR2-driven national options and discretions falling within its scope and authority;
- incorporated into Spanish domestic legislation several recommendations contained in the European Banking Authority (EBA)'s guidelines on outsourcing arrangements; and
- developed specific information disclosure and transparency obligations for those BoS-supervised entities offering (i) consumer credit agreements with an indefinite term; and/or (ii) consumer revolving facilities.

Changes to Circulars 2/2016 and 4/2014 entered into force on 7 April 2022, while the changes to Circular 5/2012 will enter into force in October 2022.

Ministry of Economic Affairs and Digital Transformation publishes pre-draft bill creating Independent Administrative Authority for the Defence of Financial Services Clients

The Ministry of Economic Affairs and Digital Transformation has initiated a public hearing on a pre-draft bill creating the Independent Administrative Authority for the Defence of Financial Services Clients.

The pre-draft bill is intended to implement a long-awaited overhaul of the current alternative dispute resolution (ADR) mechanisms for financial services clients by creating a new independent administrative authority, the Independent Administrative Authority for the Defence of Financial Services Clients (Spanish FS Ombudsman), which shall have competence over all pecuniary disputes (FS Disputes) arising between:

- Spain-based financial services clients or potential clients (FS Clients); and
- financial service providers operating within Spain, understood as (i) any regulated entity subject to conduct of business supervision by the Spanish competent authorities, based in or operating in Spain through a permanent establishment; (ii) any entity subject to the Spanish implementation of Directive 2002/65/EC; (iii) any entity subject to the Spanish implementation

of Directive 2008/48/EC; (iv) any entity subject to Act 2/2009; (v) any entity subject to the Spanish implementation of Directive 2014/17/EU; and (vi) the future Regulation of the European Parliament and of the Council on Markets in Cryptoassets (FS Providers).

Once created and duly funded, the Spanish FS Ombudsman will absorb the functions currently carried out by the complaints handling teams of the Bank of Spain, the Spanish Securities Market Commission (i.e., CNMV) and the Insurance and Pension Funds General Directorate.

From a procedural perspective, the pre-draft Bill provides that:

- eligibility to access the Spanish FS Ombudsman's ADR mechanism is dependent on FS Clients first raising their claims/complaints with the relevant FS Provider's internal complaints handling team and having it dismissed or rejected;
- assessment of claims/complaints shall be based on the reversal of the burden of proof; i.e., FS Providers must prove they complied with applicable conduct of business rules and relevant business practices;
- claims/complaints should be resolved by the Spanish FS Ombudsman within 90 calendar days, although extensions may apply (these timeframes shall not apply to payment services);
- the filing of claims/complaints with the Spanish FS Ombudsman suspends the FS Client's ability to file an in-court lawsuit against the FS Provider; and
- resolutions affecting claims/complaints for amounts less than EUR 20,000 shall be binding on the FS Provider, which shall be required to comply within 30 calendar days;

Finally, the pre-draft bill envisages that the Spanish FS Ombudsman shall be vested with the ability to initiate administrative infringement proceedings against FS Providers that fail to comply with its ADR mechanism and its resolutions.

The public hearing regarding the pre-draft bill will be open for comments until 12 May 2022.

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