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## **EU Council agrees negotiating position on CSDR Refit**

The EU Council's Committee of Permanent Representatives (Coreper) has [agreed](#) its negotiating position on the EU Commission's proposal for a Regulation amending the Central Securities Depositories Regulation (CSDR Refit).

The proposed new rules seek to:

- simplify passporting requirements to increase the provision of cross-border settlement and improve supervision;
- streamline mandatory buy-in rules; and
- enable CSDs' access to banking-type ancillary services to facilitate settlement in non-domestic currencies.

Following the EU Parliament's adoption of its position, the co-legislators will enter trilogue negotiations in order to agree on a final version of the text.

### **EU Council agrees negotiating position on IRRD**

Coreper has [agreed](#) its negotiating position on the EU Commission's proposal for an Insurance Recovery and Resolution Directive (IRRD).

The proposed IRRD seeks to introduce a harmonised minimum European framework for the recovery and resolution of insurance undertakings, including:

- harmonised resolution tools and procedures for national authorities; and
- requiring Member States to set up insurance resolution authorities.

The co-legislators will enter trilogue negotiations in order to agree on a final version of the text in due course.

### **EU Council agrees negotiating position on MiFIR2/MiFID3**

Coreper has [agreed](#) its negotiating position on the EU Commission's proposals for a Regulation and Directive amending the Markets in Financial Instruments Regulation and Directive (MiFIR2/MiFID3).

The proposed new rules seek to:

- establish a consolidated tape to improve price transparency and access to trading data;
- introduce a restriction on payment for order flow (PFOF), while providing Member States with a discretion to allow the practice in their territory;
- clarify the limitation on dark trading by introducing a new single volume cap with an EU-wide threshold set at 10%; and
- modify the deferral times for the size and liquidity profile of transactions in bonds, structure products and emission allowances.

The co-legislators will enter trilogue negotiations in order to agree on a final version of the text in due course.

### **EU Commission updates list of high-risk third countries**

The EU Commission has adopted a [delegated regulation](#) to add the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates (UAE) and to delete Nicaragua, Pakistan and Zimbabwe from table I of the Annex to Delegated Regulation (EU) 2016/1675.

Delegated Regulation (EU) 2016/1675 identifies a number of third countries that have strategic deficiencies in their anti-money laundering (AML) and counter-terrorist financing (CTF) regimes that pose significant threats to the financial system of the EU. Since the last amendment to Delegated

Regulation (EU) 2016/1675, the Financial Action Task Force (FATF) has updated its list of 'Jurisdictions under Increased Monitoring' to:

- add the UAE and delete Zimbabwe from its list in March 2022;
- add Gibraltar to its list in June 2022; and
- add the Democratic Republic of the Congo, Mozambique and Tanzania and delete Nicaragua and Pakistan from its list in October 2022.

The delegated regulation will enter into force 20 days after it is published in the Official Journal.

## **Sustainable finance: Corporate Sustainability Reporting Directive published in OJ**

The [Corporate Sustainability Reporting Directive](#) (Directive (EU) 2022/2464) has been published in the Official Journal.

The CSRD amends the Non-financial Reporting Directive (NFRD) to introduce more detailed reporting requirements for companies on how their business model affects their sustainability and on how external sustainability factors influence their activities.

The directive enters into force on 5 January 2023 and will start applying in four stages:

- reporting in 2025 on the financial year 2024 for companies already subject to the NFRD;
- reporting in 2026 on the financial year 2025 for companies that are not currently subject to the NFRD;
- reporting in 2027 on the financial year 2026 for listed SMEs except micro undertakings, small and non-complex credit institutions and captive insurance undertakings; and
- reporting in 2029 on the financial year 2028 for third-country undertakings.

Article 4 of the Directive will apply from 1 January 2024 for financial years starting on or after 1 January 2024.

## **Foreign Subsidies Regulation published in OJ**

[Regulation \(EU\) 2022/2560](#) on foreign subsidies distorting the internal market has been published in the Official Journal.

The regulation is intended to remedy the potential distortive effects of foreign subsidies by establishing a framework for the EU Commission to examine any economic activity benefiting from a subsidy granted by a non-EU country on the internal market.

The Regulation will apply from 12 July 2023 and the notification obligation will apply from 12 October 2023.

## **CRR: ITS on public disclosures as regards ESG risks published in OJ**

[Commission Implementing Regulation \(EU\) 2022/2453](#) amending the implementing technical standards (ITS) laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of environmental, social and governance (ESG) risks has been published in the Official Journal.

Implementing Regulation (EU) 2021/637 sets out ITS on the public disclosure by institutions of the information required under Titles II and III of Part Eight of the Capital Requirements Regulation (CRR). Implementing Regulation (EU) 2022/2453 adds to these existing uniform disclosure formats and associated instructions by setting out additional uniform disclosure formats and associated instructions for the disclosures of ESG risks.

Implementing Regulation (EU) 2022/2453 enters into force on 8 January 2023.

### **CRR: ITS regarding own funds, asset encumbrance, liquidity and reporting for identifying global systemically important institutions published in OJ**

[Commission Implementing Regulation \(EU\) 2022/1994](#) amending the ITS laid down in Implementing Regulation (EU) 2021/451 as regards own funds, asset encumbrance, liquidity and reporting for the purposes of identifying global systemically important institutions has been published in the Official Journal.

Implementing Regulation (EU) 2021/451 sets out the ITS relating to supervisory reporting and specifies the modalities according to which institutions are required to report information relevant to their compliance with the CRR. Implementing Regulation (EU) 2022/1994 amends the ITS to reflect the elements introduced by CRR2.

Implementing Regulation (EU) 2022/1994 will enter into force on 11 January 2023 and apply from 11 July 2023.

### **CRR: EBA updates list of diversified indices**

The European Banking Authority (EBA) has published a [draft implementing regulation](#) amending the ITS to update the list of relevant exchange traded and appropriately diversified indices for which specific risk incorporated in a stock index can be ignored under the CRR.

The list, which was originally published in 2013 and previously updated in 2019, has been submitted to the EU Commission for endorsement.

### **CRR: EBA publishes final draft RTS on connected clients**

The EBA has published its [final report](#) on draft regulatory technical standards (RTS) on the identification of a group of connected clients under the CRR.

This follows a consultation launched in June 2022.

The draft RTS, in conjunction with the EBA's guidelines on connected clients, provide the complete framework for the identification of two or more natural or legal persons who are so closely linked by idiosyncratic risk factors that it is prudent to treat as a single risk.

In particular, the following conditions lead to the identification of two or more legal persons as connected:

- if they are part of the same consolidated financial statements, even in the absence of exposures towards the natural or legal person that controls the group. The draft RTS also provide a non-exhaustive list of circumstances of control criteria and control indicators to assess if there is a parent-subsidiary-similar relationship among natural and/or legal persons;
- if it is likely that the financial difficulties of one natural or legal person would spread to other(s) impacting full and timely repayment of liabilities;

- in case control and economic dependencies co-exist within group of connected clients in such a way that all relevant natural and/or legal persons constitute a single risk.

The EBA will submit the final draft RTS to the EU Commission for adoption.

## **Financial Conglomerates Directive: ITS on reporting of intragroup transactions and risk concentration published in OJ**

[Commission Implementing Regulation \(EU\) 2022/2454](#) laying down ITS for the application of the Financial Conglomerates Directive (FICOD) with regard to supervisory reporting of risk concentrations and intra-group transactions has been published in the Official Journal.

The ITS set out the scope, frequency and format of reporting on significant intra-group transactions and risk concentrations.

The Implementing Regulation will enter into force on 8 January 2023 and apply from 31 December 2023.

## **NPLs: EBA publishes draft ITS on standardised information requirements**

The EBA has published its [final report](#) on draft ITS specifying the requirements for the information that credit institutions selling non-performing loans (NPLs) should provide to prospective buyers.

This follows a consultation launched in May 2022.

The objective of the draft ITS is to provide a common data standard for NPL sales or transfers across the EU, enabling cross-country comparison and reducing information asymmetries between the sellers and buyers of NPL, thus improving the functioning of NPL secondary markets.

The draft ITS are built around the templates to be used for the provision of loan-by-loan information for the sale or transfer of NPL portfolios. The templates cover information regarding counterparties related to the loan, contractual characteristics of the loan itself, any collateral and guarantee provided, any legal procedures and enforcement procedures in place, and the historical collection of loan repayment.

The draft ITS are based on proportionality arrangements, focusing on the sales of portfolios of NPL and setting different information requirements depending on the nature of the borrowers and of the loans included in the portfolios to be sold, by specifying mandatory data fields. Proportionality is further reinforced by allowing all data fields to be treated as not mandatory for certain types of transactions.

The EBA has submitted the draft ITS to the EU Commission for adoption. The ITS will apply 20 days after publication in the Official Journal.

## **ECB publishes second progress report on digital euro investigation phase**

The European Central Bank (ECB) has published its second [progress report](#) on the investigation phase of a digital euro. The report provides an overview of developments since the September 2022 progress report and sets out a second set of design and distribution options that were recently endorsed by

the Governing Council. It also describes the roles of the Eurosystem and supervised intermediaries in the digital euro ecosystem as follows:

- the role of intermediaries, responsible for the onboarding of end-users, AML checks and consumer-facing services, such as payment initiation solutions;
- the settlement model, which defines who will settle online or offline transactions;
- the way in which funding and defunding will take place to allow users to convert cash and money from a bank account into digital euro; and
- the distribution model – the ECB envisages a digital euro scheme, which it considers to be best suited to guaranteeing that all euro area citizens can pay and be paid in digital euro.

In 2023 the ECB will further assess a number of design and distribution options and in the second half of the year present the overall design of a digital euro to the Governing Council.

The Governing Council is expected to review the outcome of the investigation phase in autumn 2023 and to decide whether to proceed to a realisation phase.

### **EMIR Refit: ESMA publishes guidelines on reporting**

The European Securities and Markets Authority (ESMA) has published its [final report](#) on guidelines for reporting under EMIR.

The guidelines are intended to clarify the legal provisions on reporting and data management under the amended EMIR rules and to provide practical guidance on their implementation.

The guidelines provide clarifications on:

- transition to reporting under the new rules;
- the number of reportable derivatives;
- intragroup derivatives exemption from reporting;
- delegation of reporting and allocation of responsibility for reporting;
- reporting logic and the population of reporting fields;
- reporting of different types of derivatives;
- ensuring data quality by the counterparties and the TRs;
- construction of the Trade State Report and reconciliation of derivatives by the trade repositories; and
- data access.

The report also contains an assessment of the feedback received to the proposals in the consultation paper published in July 2021.

In addition to the guidelines, ESMA has also published validation rules and reporting instructions.

The validation rules document sets out detailed technical rules on how trade repositories should verify the completeness and accuracy of the reported data, as well as the conditions and thresholds to be applied to determine whether

the values reported by both counterparties match or not. The validation rules document also contains a template for notifications of reporting errors and omissions to the national competent authorities (NCAs).

The guidelines enter into application on 29 April 2024.

### **MiFID2/MiFIR Review: ESMA issues opinion on amendments to transparency requirements**

ESMA has published a [positive opinion](#) on the EU Commission's proposed targeted amendments to RTS on equity transparency (RTS 1) and non-equity transparency (RTS 2) under MiFIR.

The opinion endorses proposed further amendments by the Commission to the draft RTS set out in a letter dated 4 November 2022 and annexed to the opinion, including:

- introducing a new flag in RTS 2;
- amending the definitions of certain fields in post-trade transparency reporting; and
- transitional provisions, including postponing the application date of certain provisions to 1 January 2024.

The amendments broadly seek to clarify the pre- and post-trade transparency regime, particularly in view of the establishment of a consolidated tape.

### **UCITS/AIFMs: ESMA publishes technical standards on cross-border marketing and management notifications**

ESMA has published a [final report](#) setting out draft technical standards in relation to the cross-border marketing and management of funds in the EU under the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive and Alternative Investment Fund Managers Directive (AIFMD).

The draft RTS specify the information to be notified by UCITS management companies and AIFMs to carry out their activities, either directly or through a branch, in Member States other than their home Member State.

The draft ITS set out the form and content of notification letters for cross-border marketing and management of AIFs and UCITS, as well as the exchange of information between competent authorities regarding cross-border notifications.

The draft RTS and ITS have been submitted to the EU Commission for adoption.

### **FSB publishes global monitoring report on non-bank financial intermediation for 2022**

The Financial Stability Board (FSB) has published its [2022 report](#) on global trends and risks in non-bank financial intermediation.

The report states that:

- the NBFIs sector exhibited strong growth in 2021, in large part because of higher valuations and inflows into investment funds, which benefited from the economic recovery;



- NBFIs sector growth in 2021 was, once again, mainly driven by investment funds, particularly equity funds; and
- the narrow measure of the NBFIs sector grew by 9.9% to USD 67.8 trillion, representing 28.3% of total NBFIs assets and 14.1% of total global financial assets.

## **FCA extends temporary measures on 10% depreciation notifications**

The Financial Conduct Authority (FCA) has published a [statement](#) announcing a further extension of temporary measures allowing supervisory flexibility regarding firms' ongoing compliance with the requirement to issue 10% depreciation notifications to investors (COBS 16A.4.3 UK).

The measures were put in place initially to help firms support consumers during market volatility linked to COVID-19 and the Brexit transitional period, with the FCA showing supervisory flexibility regarding firms' ongoing compliance with the requirement as long as certain criteria were met.

In 2021 the FCA extended the temporary measures until 31 December 2022 while HM Treasury carried out policy work on the future of the requirement as part of its Wholesale Markets Review (WMR). The FCA notes that the Treasury has now laid before Parliament a statutory instrument (1297/2022) revoking Article 62 of the UK version of the MiFID Org Regulation, which is expected to come into force in January 2023.

The FCA has decided to extend the temporary measures for firms during the interim period, pending the revocation of Article 62, and will not take action for breaches where a firm has:

- issued at least one notification in the current reporting period indicating to retail clients a decrease in the value of their portfolio or position by at least 10%;
- informed those clients that they may not receive a similar notification should that value further decrease by 10%;
- referred those clients to non-personalised communications that outline general updates on market conditions; and
- reminded clients how to check their portfolio value and get in touch with the firm.

## **PRA and FCA consult on removing bonus cap requirements**

The Prudential Regulation Authority (PRA) and the FCA have published a [joint consultation](#) on proposals to remove the current limits on the ratio between fixed and variable components of total remuneration (the bonus cap) (PRA CP15/22 / FCA CP22/28).

The proposals are intended to strengthen the effectiveness of the remuneration regime by:

- increasing the proportion of compensation at risk that can be subject to the incentive setting tools, including deferral, payments in instruments and risk adjustment; and

- helping, over time, to remove unintended consequences, namely growth in the proportion of the fixed component of total remuneration, which reduces a firm's ability to adjust costs to absorb losses.

Comments are due by 31 March 2023.

## **Swiss Federal Council defines measures for a sustainable financial centre**

The Swiss Federal Council has issued a [report](#) entitled 'Sustainable finance in Switzerland – Areas for action for a leading sustainable financial centre, 2022–2025'. The report sets out 15 measures for Switzerland to consolidate its position as a leading location for sustainable finance.

Amongst other things, the measures are intended to ensure more and better sustainability data from all sectors of the economy, for instance through disclosures on climate compatibility. Transparency in the financial sector should be increased overall, for example if financial institutions apply the recently introduced Swiss Climate Score or join international net-zero alliances. The Federal Council recommends that financial institutions and pension funds state on their websites the extent to which their dialogue with the companies in which they invest and the exercise of their voting rights are compatible with the sustainability goals that they voluntarily support.

In addition, the Federal Council hopes to encourage investments that achieve a positive and measurable social and/or environmental impact, in addition to a financial return. It also wants to help shape the transition to a sustainable economy in international bodies and support global carbon pricing initiatives, for example.

## **Swiss Federal Council issues position paper on greenwashing**

The Swiss Federal Council has [issued](#) a position paper on greenwashing in the financial sector. According to the position paper:

- financial products or services should only be advertised as being sustainable if they are compatible with at least one specific sustainability goal or contribute to achieving a sustainability goal;
- providers of sustainable products or services should be able to disclose how they intend to achieve the sustainable investment goal they pursue;
- providers should report regularly on the selected sustainable investment goals, and compliance with the transparency requirements should be verifiable by an independent third party; and
- clients should have recourse to legal remedies.

The Federal Council has instructed a working group, led by the Federal Department of Finance (FDF), to examine the best way to implement the Federal Council's position on the prevention of greenwashing. In addition to the FDF, the working group will contain representatives from the Federal Department of the Environment, Transport, Energy and Communications (DETEC), the Federal Department of Economic Affairs, Education and Research (EAER), the Swiss Financial Market Supervisory Authority (FINMA), industry and non-governmental organisations. Based on these activities, the FDF will present the Federal Council with proposals on the next steps by the end of September 2023.

## **BaFin extends authorisation of deferred trade publication**

The German Federal Financial Supervisory Authority (BaFin) has [issued](#) three general decrees (Allgemeinverfügungen) extending the authorisation of deferred publication of the details of transactions within the framework of post-trade transparency. Transactions in financial instruments can thus continue to be published later than is generally required under MiFIR. The general decrees, which are based on Articles 7, 11 and 21 MiFIR respectively, apply from 2 January 2023, thereby tying in with the corresponding previous general decrees that will expire on 1 January 2023.

In particular, the general decrees are the following:

- a general decree on the authorisation of deferred publication of transactions in non-equity instruments on trading venues operated by an investment services firm;
- a general decree on the authorisation of deferred publication of over-the-counter (OTC) transactions in non-equity instruments by investment services firms; and
- a general decree on the authorisation of deferred publication of transactions in equity instruments on trading venues operated by an investment services firm.

A separate authorisation of deferred publication of OTC transactions in equity instruments is still not intended. These are covered by the authorisation for trading venues under MiFIR. Trading venues that fall under the supervision of BaFin must obtain BaFin's approval before making use of the authorisation of deferred publication.

The general decrees will apply for six months until 2 July 2023.

## **BaFin extends decree on permission to call, redeem, repay or repurchase eligible liabilities instruments until 27 December 2023**

BaFin has [issued](#) a general decree (Allgemeinverfügung) extending the applicability of its general decree of 27 December 2021 on permission to call, redeem, repay or repurchase eligible liabilities instruments until 27 December 2023.

The EU Commission intends to issue a Delegated Regulation in 2023 amending Delegated Regulation (EU) No 241/2014 supplementing the CRR with regard to RTS for own funds requirements for institutions. BaFin has explained that, considering the uncertainty as to the entry into force of the Delegated Regulation, the extension until 27 December 2023 provides leeway for amendments introduced by the Delegated Regulation to be incorporated into the Decree.

## **Crowdfunding: Italian Government approves draft implementing decree**

The Italian Council of Ministers has [approved](#) a preliminary draft decree intended to adapt national legislation to the provisions of Regulation (EU) 2020/1503 on crowdfunding service providers for businesses.

Regulation (EU) 2020/1503 introduces significant innovations in the area of crowdfunding, with the aim of harmonising conduct of business rules at the EU

level and increasing both capital raising and investment capabilities on a cross-border basis.

The Regulation also provides for a common discipline for all crowdfunding platform operators, assimilating investment-based and lending-based crowdfunding.

In particular, the new regime establishes uniform requirements for the provision of crowdfunding services, for the organisation, authorisation, and supervision of providers, for the operation of platforms, and for transparency and marketing communications.

### **MiFID2: Italian Government approves new implementing decree**

The Italian Council of Ministers has [approved](#) a preliminary draft decree intended to implement Directive (EU) 2021/338 amending MiFID2 with regard to disclosure requirements, product governance and position limits, and Directives (EU) 2013/36/EU (CRD4) and (EU) 2019/878 with regard to their application to investment firms, to support recovery from the COVID-19 crisis.

Directive (EU) 2021/338 is part of the framework under the Capital Markets Recovery Package, which provides for a series of measures to support the recapitalisation of EU firms in the financial markets following the COVID-19 crisis. The main purpose of the Directive is to overcome unnecessary bureaucratic burdens by introducing a series of simplification measures aimed at mitigating the economic difficulties of intermediaries.

### **PRIPs: Consob amends Issuers' Regulation on key information document**

The Commissione Nazionale per le Società e la Borsa (Consob) has [published](#) its resolution 22551/2022, which amends Consob's Issuers' Regulation in relation to the rules governing key information documents (KID) and their application to UCITS and open-end AIFs. In particular, as of 1 January 2023, the PRIIPs KID will also apply to UCITS and open-end AIFs offered to retail clients, thus aligning the existing regulatory framework across different investment products.

### **UCITS: Italian Government approves draft implementing decree**

The Italian Council of Ministers has [approved](#) a preliminary draft decree intended to implement Directive (EU) 2021/2261 amending Directive 2009/65/EC regarding the use of key investor information documents (KIIDs) by management companies of undertakings for collective UCITS.

Directive (EU) 2021/2261 covers the use of key investor information documents by management companies of UCITS and is concurrent and related to Regulation (EU) 2021/2259 amending the PRIIPs Regulation.

The quick fix to Directive 2009/65/EC is intended to avoid interpretative doubts arising when the transitional period expires, whereby retail investors in UCITS could receive both a document containing key information under the PRIIPs Regulation and key investor information under the UCITS Directive.

## **CSSF issues communiqué on new EMIR Refit reporting standards**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communiqué](#) to announce the publication of new reporting standards applicable to derivatives reporting under EMIR.

The EMIR Refit reporting standards will be applicable from 29 April 2024 and include changes regarding:

- end-to-end reporting in ISO 20022 XML;
- the framework for the mandatory delegation;
- information to NCAs for significant reporting issues; and
- the new controls and feedback reports by trade repositories.

The communiqué provides more details on the underlying new technical standards, related ESMA guidelines, the validation rules and the reporting instructions.

The CSSF considers that there is sufficient time for stakeholders to implement the changes until 29 April 2024 and has informed all stakeholders that any failure to report accurately will be considered as non-compliance with Article 9 of EMIR.

The CSSF has therefore reminded all stakeholders in the EMIR reporting value chain that the changes to the reporting framework, which will be applicable from 29 April 2024, are significant. In order to ensure a smooth transition, the CSSF has invited all stakeholders to start preparing for these changes as soon as possible and is confident that all stakeholders will be able to comply with the new requirements without delay.

## **CSSF issues guidance for payment agents and e-money distributors in relation to prevention of money laundering and terrorism financing**

The CSSF has issued a [press release](#) to announce the publication of its [guidance](#) for agents and e-money distributors on the prevention of money laundering and terrorism financing (ML-TF).

In the guidance, the CSSF analyses the risks related to ML-TF to which payment agents and e-money distributors are exposed and communicates its recommendations in this regard in order to comply with all related professional obligations in the area of AML and counterterrorist financing.

The guidance follows the publication in December 2020 of Luxembourg's national risk assessment of ML-TF, which concluded that payment and e-money services carry a moderate level of residual risk.

The recommendations in the guidance are intended for:

- payment agents and e-money distributors established in Luxembourg and their payment institutions and e-money institutions established in another EU Member State; and
- payment institutions and e-money institutions authorised and supervised by the CSSF which provide their services in other Member States via payment agents and electronic money distributors.

## **CSSF publishes circular on application of EBA guidelines on loan origination and monitoring**

The CSSF has issued a [circular](#) (22/824) on the application of the [EBA guidelines on loan origination and monitoring](#) (EBA/GL/2020/06), confirming that it will apply the guidelines in its administrative practice.

The guidelines have been developed with a view to ensuring that in-scope entities (as defined below) have prudent loan origination and monitoring standards in place to prevent newly originated performing loans from becoming non-performing in the future. The guidelines pursue not only a prudential objective by requiring in-scope entities to implement a prudent risk taking and management process, but also a consumer protection objective to ensure that consumers are treated fairly based on a principle of responsible lending and that their creditworthiness is correctly assessed to avoid any negative consequences both for consumers and in-scope entities.

The circular applies to credit institutions that are less significant institutions (within the meaning of the SSM Framework Regulation), on an individual, sub-consolidated and consolidated basis as well as to Luxembourg branches of credit institutions that have their registered office in a third country and, subject to the limitation below, professionals granting loans to the public under Article 28-4 of the Law of 5 April 1993 on the financial sector (as amended) (FSL) and creditors (within the meaning of Directive 2014/17/EU (Mortgage Credit Directive) and Directive 2008/48/EC (Consumer Credit Directive)).

However, with respect to professionals granting loans to the public under Article 28-4 of the FSL and creditors, only Section 5 (Loan origination procedures), Section 6 (Pricing) and Section 7 (Valuation of immovable and movable property) of the guidelines apply, having regard to the principle of proportionality.

In addition, the CSSF has emphasised that consumer protection remains a competence of the national/host competent authorities and that, accordingly, the CSSF is competent to supervise the compliance with the consumer protection-related provisions of the guidelines by significant institutions (within the meaning of the SSM Framework Regulation) and by Luxembourg branches of EU credit institutions and, in particular, the provisions regarding the creditworthiness assessment of consumers. For the sole purpose of the consumer protection-related provisions, significant institutions and Luxembourg branches of EU credit institutions shall be regarded as in-scope entities.

The circular provides further explanations on the material scope of the guidelines and their application and reiterates that in-scope entities shall have regard to the principle of proportionality when complying with the guidelines.

The circular further confirms that the guidelines repeal the guidelines on creditworthiness assessment (EBA/GL/2015/11) which were introduced by Circular CSSF 17/651.

The circular will apply from 31 March 2023.

## **CSSF repeals circular adopting EBA guidelines on reporting and disclosure of exposures subject to measures applied in response to COVID-19**

The Luxembourg financial sector supervisory authority CSSF has [repealed](#) its circular (20/748) adopting the EBA guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis (EBA/GL/2020/07).

Following the EBA communication of 16 December 2022 concerning the repeal of its guidelines, the CSSF has informed the concerned entities (i.e., all Luxembourg credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism and all Luxembourg branches of non-EU credit institutions) that the circular will be repealed from 1 January 2023.

The CSSF has also reiterated that the COVID-19 reporting and disclosure framework introduced by the EBA guidelines in June 2020 was set up to monitor the measures taken by credit institutions in response to the COVID-19 crisis and was originally meant to be in place for a limited period of time.

## **Bank of Spain launches preliminary public consultation on draft circular on information of capital structure**

The Bank of Spain has launched a [preliminary public consultation](#) on a draft circular on information of capital structure.

The aim of the draft circular is to update the Bank of Spain rules governing the information on their shareholders that Spanish credit institutions, financial credit establishments (establecimientos financieros de crédito), payment institutions and electronic money institutions must notify to the Bank of Spain. The information to be reported mainly consists of acquisitions, increases and reductions of participation in entities and variations in the capital structure.

In addition, the draft circular is intended to repeal the current regime contained in Chapter III of Circular 1/2009 regarding the registration of senior management within the Senior Management Registry, as well as the referral system of information regarding other management positions senior managers may hold in other companies. Obligated entities will continue to report on this matter according to more recent and sectoral enacted regulations.

The preliminary public consultation on the draft circular is open for comments until 10 January 2023.

## **Spanish Ministry of Economy and Digital Transformation launches preliminary public consultation on transposition of EU Directive on credit servicers and credit purchasers**

The Spanish Ministry of Economy and Digital Transformation has issued a [preliminary public consultation](#) on the transposition of EU Directive 2021/2167 on credit servicers and credit purchasers.

The Directive is intended to implement a unified European framework for credit servicers and enhance consumer protection, ensuring that consumers have access to information in case of contractual amendments, and full protection of their rights in case of assignments to third parties.

The Directive also introduces a new legal framework to require credit institutions to apply reasonable tolerance prior to mortgage foreclosure.

The preliminary public consultation on transposing the Directive is open for comments until 16 January 2023.

## **Green and Sustainable Finance Cross-Agency Steering Group collaborates on enhancing data availability and sustainability reporting**

The Green and Sustainable Finance Cross-Agency Steering Group has [announced](#) its collaboration arrangement with CDP, an international non-profit organisation that runs global environmental disclosure systems for companies, jointly to enhance climate data availability reporting in Hong Kong.

The Steering Group and CDP will work together to:

- enhance climate and environmental disclosure, and improve data availability and accessibility in Hong Kong;
- support capacity building and upskilling to support local companies in disclosing high-quality climate and other environmental-related data in line with existing and upcoming global standards and best practices; and
- facilitate data flow to provide financial institutions with better data resources to assess climate and environmental related risks and support the real sector in the transition towards carbon neutrality.

As part of the collaboration, the Steering Group and CDP have developed a climate environmental risk questionnaire for non-listed companies/small and medium-sized enterprises, which is aligned with the Task Force on Climate-related Financial Disclosures framework.

## **HKMA issues circular on prudential treatment of cryptoasset exposures**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) on the prudential treatment of cryptoasset exposures. Following two rounds of public consultation, Basel Committee on Banking Supervision (BCBS) issued its final standard on the prudential treatment of cryptoasset exposures on 16 December 2022. The standard has been developed to provide a global baseline framework for banks' cryptoasset exposures that promotes responsible innovation while preserving financial stability. In order to determine the prudential classifications, cryptoassets will be categorised into two broad groups, namely:

- Group 1, consisting of qualifying tokenised assets and stablecoins; and
- Group 2, consisting of cryptoassets that fail to meet all of the group 1 classification conditions.

Additional key features of the standards include the following:

- infrastructure risk add-on to cover infrastructure risk for all Group 1 cryptoassets that member jurisdictions can activate based on any observed weakness in the infrastructure on which cryptoassets are based;
- redemption risk test and a supervision/regulation requirement to ensure that only stablecoins issued by supervised and regulated entities that have



robust redemption rights and proper governance are eligible for a Group 1 qualification;

- Group 2 exposure limit to serve as an additional guardrail against Group 2 exposures growing too large in a bank's portfolio; and
- elements to prescribe the supervisory review process and disclosure requirements and specify how the operational risk, liquidity, leverage ratio and large exposures requirements have to be applied in the context of banks' cryptoasset exposures.

The HKMA notes that permissionless blockchains and additional statistical tests to identify low risk stablecoins will remain subject to monitoring and further review by the BCBS. As the final standard is scheduled to be implemented by member jurisdictions by 1 January 2025, the HKMA intends to implement the standard locally in accordance with the BCBS timetable. The HKMA will consult the industry on the specific local implementation proposal in due course.

## **HKEX consults on proposals to expand paperless listing regime**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published a [consultation paper](#) on proposals to expand its paperless listing regime and make other rule amendments. The key proposals include the following:

- streamlining the document submission process by removing submission of documents that are unnecessary to the HKEX's regulatory objectives, codifying obligations as Listing Rules to replace standalone undertakings and confirmations, removing unnecessary signature and certification requirements and mandating electronic submission for a majority of submission documents;
- mandating that listed issuers electronically disseminate corporate communications to the extent permitted by the laws and regulations applicable to them; and
- restructuring the appendices to the Listing Rules to simplify navigation and enhance the online experience for Listing Rules users.

Comments on the consultation are due by 28 February 2023.

## **FSA publishes proposed partial amendments to comprehensive supervisory guidelines regarding ESG investment trusts**

The Financial Services Agency (FSA) has launched a [public consultation](#) on proposed partial amendments to the comprehensive supervisory guidelines for financial business operators regarding ESG investment trusts.

In light of the increasing number of investment products that incorporate ESG factors in their names and investment strategies, and the risks of greenwashing, the FSA conducted a survey of 225 publicly offered investment trusts managed by 37 asset managers in Japan since November 2021 and compiled seven expectations for asset managers of ESG investment trusts in its May 2022 progress report on enhancing asset management business.

Based on these seven expectations, the FSA is [proposing](#) to revise the supervisory guidelines in order to define specific points for supervisors to check disclosure of information on publicly offered investment trusts and organisational resources and due diligence of asset managers regarding ESG.

Comments on the consultation are due by 27 January 2023.

### **SC-STs publishes implementation details of supplementary guidance on adjustment spreads for conversion of legacy SOR loans to SORA**

The Steering Committee for Singapore Dollar Swap Offer Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STs) has [published](#) technical details on the implementation of the supplementary guidance on adjustment spreads for the conversion of legacy SOR loans to SORA.

The supplementary guidance was previously outlined in the SC-STs' July 2022 response to consultation feedback, which finalised the broad approach for setting the MAS Recommended Rate (MRR) and the supplementary guidance for the active transition of unhedged loans.

The implementation of the supplementary guidance applies to the setting of adjustment spreads for the conversion of wholesale SOR contracts and covers:

- the formula and computation of the MRR Adjustment Spreads and the Reference Spot Spreads (RSS);
- the formula for interpolation between the RSS and MRR Adjustment Spreads, for use in the active transition of unhedged loans from SOR to SORA; and
- a user manual for the separately published Adjustment Spread Calculator.

The SC-STs recommends that the adjustment spreads computed using the calculator should be applied directly only for unhedged loans, and that it can be used as a starting point for counterparty discussions where derivatives are involved (such as in the case of hedged loans).

The SC-STs has confirmed that the MRR Adjustment Spreads will apply for interest periods starting from 1 January 2025. This follows the final publication of Fallback Rate (SOR) on a date corresponding to an Original SOR Rate Record Day of 31 December 2024.

The SC-STs has also clarified that these implementation details do not set out the methodology of the MRR. Bloomberg Index Services Limited will calculate and distribute the MRR. Bloomberg is expected to commence the daily publication of the MRR in 2023, ahead of its expected use by the industry after end-2024. Bloomberg will be responsible for setting out the methodological details of this rate.

### **Federal Reserve Board adopts final rule establishing LIBOR replacement benchmarks**

The Board of Governors of the Federal Reserve System (FRB) has adopted a [final rule](#) implementing the Adjustable Interest Rate (LIBOR) Act. This follows the receipt of comments on the FRB's previously published proposed rule.

The final rule identifies benchmark rates based on the Secured Overnight Financing Rate (SOFR) that will replace LIBOR in certain financial contracts after 30 June 2023.

In accordance with the LIBOR Act, the final rule identifies replacement benchmark rates based on SOFR to replace overnight, one-month, three-month, six-month, and 12-month LIBOR in contracts subject to the Act. These contracts include US contracts that do not mature before LIBOR ends and that lack adequate 'fallback' provisions that would replace LIBOR with a practicable replacement benchmark rate.

Among other things, the final rule:

- restates safe harbor protections contained in the LIBOR Act for selection or use of the replacement benchmark rate selected by the FRB;
- clarifies who would be considered a 'determining person' able to choose to use the replacement benchmark rate selected by the FRB for use for certain LIBOR contracts; and
- ensures that LIBOR contracts adopting a benchmark rate selected by the FRB will not be interrupted or terminated following LIBOR's replacement.

The final rule will be effective 30 days after publication in the Federal Register.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **EU securitisation review – two months on**

On 10 October 2022, the European Commission published its widely anticipated review report on the functioning of the EU Securitisation Regulation (EUSR). The aspects of the report dealing with the EUSR disclosure regime (and corresponding diligence obligations) were arguably the most significant. Indeed, the de facto exclusion on EU institutional investors investing in certain non-EU securitisations prompted an industry letter requesting relief.

This briefing paper discusses the consequences of the report two months on and the next steps from here.

<https://www.cliffordchance.com/briefings/2022/12/eu-securitisation-review--two-months-on.html>

### **More harmonisation of insolvency laws is on its way across Europe**

On 7 December 2022, the European Commission published its proposal for a directive seeking to level the playing field across the EU Member States in relation to certain aspects of insolvency law. The proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law (2022/0408 (COD)) is seeking to converge insolvency rules, with the aim of making them more efficient and effective in terms of creditor recoveries. In order to achieve this, it is looking to create common standards across all EU Member States which in its view will facilitate more cross border investment. As such this proposal for harmonising certain aspects of insolvency law forms part of the wider EU Capital Markets Union initiative announced in 2020, which is a key project designed to further financial and economic integration across the EU.

This paper discusses some of the highlights of the proposed reforms as drafted at present.

<https://www.cliffordchance.com/briefings/2022/12/more-harmonisation-of-insolvency-laws-is-on-its-way-across-europ.html>

## **New EU rules on non-performing loans – EBA issues final report on disclosure templates**

The EBA has issued its final report on the new disclosure templates to be used by EU banks selling NPLs under the EU Directive on credit servicers and credit purchasers.

The EBA's final report makes significant changes to its consultation draft of the templates but the templates will still impose extensive disclosure obligations on EU banks selling NPLs and EU banks may need to make significant changes to their systems to comply with the new requirements.

This briefing paper discusses the final report.

<https://www.cliffordchance.com/briefings/2022/12/new-eu-rules-on-non-performing-loans--eba-issues-final-report-on.html>

## **The rise of consumer complaints, litigation and enforcement actions to curb greenwashing**

The investor-led boom in green products and services presents opportunities for growth. However, whether claims of green, climate-friendly, sustainability or support for biodiversity are borne out in practice is increasingly questioned. Regulators are turning their attention to investigating and regulating firms which may be 'greenwashing' – a term which generally refers to unsubstantiated, misleading or incomplete assertions, statements or claims regarding a company's environmental performance, processes or products. Meanwhile, legislators are introducing laws to curb greenwashing and incorporate climate-focused requirements on corporates to promote environmental sustainability.

This briefing paper focuses on greenwashing complaints, investigations and complaints in respect of two areas: advertising, and financial products and services. In both areas statements, disclosures and claims made that products and services are 'green' are challenged by stakeholders both in the courts and in non-judicial fora. We outline some tips for avoiding greenwashing. It also provides an overview of the types of complaints, litigation and investigations seen in several jurisdictions around the world.

<https://www.cliffordchance.com/briefings/2022/12/the-rise-of-consumer-complaints--litigation-and-enforcement-acti.html>

## **UK Edinburgh Reforms – impact on financial services**

The UK Government has announced a package of over 30 measures to reform financial services regulation. The 'Edinburgh reforms' are intended to drive growth and competitiveness in the UK financial services sector and include the Government's plans for the repeal and reform of retained EU law on financial services under the Financial Services and Markets Bill.

This briefing paper provides an overview of the reforms and the timeline for their implementation.

<https://www.cliffordchance.com/briefings/2022/12/uk-edinburgh-reforms---impact-on-financial-services.html>

## **UK Edinburgh Reforms – key takeaways for asset managers**

On 9 December 2022, the UK's Chancellor of the Exchequer announced a series of reforms to drive growth and competitiveness in the UK financial services sector. Referred to as the 'Edinburgh Reforms' and being informally dubbed 'Big Bang 2.0', the package includes proposed reforms that will affect the buy-side, the sell-side, intermediaries and the UK regulators themselves.

This briefing paper discusses the key takeaways for asset managers.

<https://www.cliffordchance.com/briefings/2022/12/uk-edinburgh-reforms--key-takeaways-for-asset-managers.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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