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DORA: Delegated Regulations on ICT-related incidents, contractual arrangements and risk management frameworks published in Official Journal

The following three Delegated Regulations supplementing provisions relating to the use of ICT under the Digital Operational Resilience Act (DORA) have been published in the Official Journal:

- [Commission Delegated Regulation \(EU\) 2024/1772](#) 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;
- [Commission Delegated Regulation \(EU\) 2024/1773](#) 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; and
- [Commission Delegated Regulation \(EU\) 2024/1774](#) specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework.

The Delegated Regulations will enter into force on 15 July 2024.

IFR: RTS on prudential consolidation for investment firm groups published in Official Journal

[Delegated Regulation \(EU\) 2024/1771](#) setting out regulatory technical standards (RTS) specifying the scope and methods for prudential consolidation of an investment firm group under the Investment Firms Regulation (IFR) has been published in the Official Journal.

Delegated Regulation (EU) 2024/1771 will enter into force on 15 July 2024.

CRR: RTS on KIRB calculations for underlying exposures in securitisation transactions published in Official Journal

[Commission Delegated Regulation \(EU\) 2024/1780](#) containing RTS specifying the conditions under which institutions are allowed to calculate capital requirements for the pool of underlying exposures in securitisation (KIRB) has been published in the Official Journal.

The RTS specify the conditions to allow credit institutions to calculate KIRB for the pools of underlying exposures in line with the Capital Requirements Regulation (CRR) provisions on the internal ratings based (IRB) approach for the calculation of capital requirements for purchased receivables, in particular with regard to:

- internal credit policy and models for calculating KIRB for securitisations;
- 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
- due diligence requirements to monitor the actions and policies of sellers of receivables or other originators.

The Delegated Regulation will enter into force on 15 July 2024.

CRR3: EBA publishes draft amending RTS on standardised approach for counterparty credit risk

The European Banking Authority (EBA) has published [final draft amending RTS](#) the standardised approach for counterparty credit risk (SA-CCR).

The amending RTS specify the supervisory delta formula for commodity options compatible with negative commodity prices as mandated under the CRR3. The amending RTS form part of the EBA's roadmap on the Banking Package.

The RTS will now be submitted to the EU Commission for endorsement.

CRR: EBA updates AT1, Tier 2 and TLAC/MREL monitoring report

The EBA has published an [updated report](#) on the monitoring of Additional Tier 1 (AT1), Tier 2, total loss absorbing capacity (TLAC) and minimum requirement for own funds and eligible liabilities (MREL) instruments issued by EU institutions.

The report makes substantial updates to the July 2023 report and covers:

- the EBA's considerations on AT1, Tier 2 and eligible liabilities instruments monitoring;
- the EBA Opinion on legacy instruments; and
- the EBA's considerations on own funds or eligible liabilities instruments with ESG features.

The report is published in accordance with Article 80 of the CRR on the continuing review of the quality of own funds.

MiCA: EBA and ESMA publish guidelines on suitability of management body members and shareholders

The EBA and the European Securities and Markets Authority (ESMA) have [published](#) two sets of joint guidelines on suitability assessments under the Markets in Cryptoassets Regulation (MiCA).

The first set of guidelines covers the suitability assessment of the management bodies of asset-referenced token (ART) issuers and cryptoasset service providers (CASPs). It sets out common criteria to assess the knowledge, skills, experience, reputation, honesty and integrity of members of the management body, as well consideration of whether they can commit sufficient time to perform their duties to ensure a sound management of the entities.

The second set of guidelines covers the suitability assessment of shareholders or members with direct or indirect qualifying holdings in ART issuers or CASPs. It provides a common methodology to assess their suitability for the purposes of authorising them as issuers of ARTs or as CASPs, and for carrying out the prudential assessment of proposed acquisitions.

EBA welcomes new EU framework for AML/CFT

The EBA has [welcomed](#) the new EU framework for tackling money laundering and terrorist financing, following the publication of the EU Commission's anti-

money laundering and counter terrorist financing (AML/CFT) package in the Official Journal on 19 June.

The EBA will maintain its AML and CFT powers and mandates until December 2025 to minimise disruption and provide continuity before transferring the powers that are specific to AML/TF to the new Anti-Money Laundering Authority (AMLA).

Over the course of 2024 and in 2025, the EBA's priorities in the area of AML/CFT will focus on:

- a methodology for selecting financial institutions for direct EU-level AML/CFT supervision;
- a common risk assessment methodology;
- information necessary to carry out customer due diligence; and
- criteria to determine the seriousness of a breach of AML/CFT provisions.

The EU Commission has also asked the EBA to provide its technical advice on certain aspects of the future EU AML/CFT framework to ensure that AMLA can begin to operate efficiently and effectively as of its establishment. The EBA intends to provide this advice to the Commission in October 2025.

Banking Union: SRB publishes document on bail-in approach

The Single Resolution Board (SRB) has published a [document](#) for banks, investors and other stakeholders on executing its bail-in decision, along with a webpage linking to national resolution authorities' (NRAs) mechanics for bail-in.

The document is structured around the different stylised phases of a resolution process, describing the roles of the SRB, the NRAs, the bank, as well as other stakeholders, throughout these phases in relation to bail-in. It also includes a list of market authorities, stock exchanges, national central security depositories (CSDs) and national numbering agencies in the Banking Union.

BaFin reminds payment service providers to prepare data reporting for its payment accounts comparison website

The German Federal Financial Supervisory Authority (BaFin) has published an [announcement](#) reminding payment service providers to prepare the reporting of their data for the purposes of the free payment accounts comparison website for consumers which BaFin will operate in the future in accordance with sections 16 *et seqq.* of the German Payment Accounts Act (Zahlungskontengesetz) and the Payment Accounts Directive (Directive 2014/92/EU).

In September 2024, payment service providers will have to submit the required data for the comparison website via BaFin's MVP portal. BaFin already created the conditions for payment service providers to prepare and test their mandatory initial reporting in April.

The data entry will only be legally effective if made via a manual XML upload or an automated web service procedure, which can be tested in a separate testing procedure.

Initially, payment service providers must register and apply for admission to the specialised procedure ‘comparison website for payment accounts’ (Vergleichswebsite für Zahlungskonten) in the MVP portal. As the admission may take a few days, BaFin has recommended that payment service providers that have not yet been admitted do so promptly. Registration and admission are also required for the testing procedure.

CSSF publishes communiqué on new eDesk procedure for artificial intelligence survey

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a [communiqué](#) on a new eDesk procedure for an artificial intelligence survey.

The purpose of the communiqué is to inform the public that as part of a joint initiative with Banque centrale de Luxembourg (BCL), the CSSF has launched a survey regarding the use of artificial intelligence addressed to banks, investments firms, payment institutions, e-money institutions and authorised investment funds managers.

The questionnaire has to be submitted via one of the following means by 7 August 2024 at the latest:

- a form available in the dedicated eDesk procedure ‘Specific Enquiries’; or
- an API solution (S3 protocol) allowing for automation.

A user guide providing details on how to fill in and submit the report is available in the dedicated eDesk procedure.

CSSF publishes communiqué on MiCA questionnaire for financial entities considering an Article 60 notification

The CSSF has published a [communiqué](#) on the MiCA questionnaire for financial entities considering an Article 60 notification.

The purpose of the communiqué is to inform financial entities covered by Article 60 of the MiCA (i.e. credit institutions, central securities depositories, investment firms, electronic money institutions, UCITS management companies, alternative investment fund managers and market operators) that they will have the option to provide cryptoasset services in the EU equivalent to the services and activities for which they are authorised under relevant EU law, subject to a notification procedure. A questionnaire has been published in order to allow the CSSF to understand to what extent firms with a relevant authorisation are planning to notify MiCA services.

The CSSF is asking financial entities that are considering providing cryptoasset services following the notification procedure to complete a [questionnaire](#) regarding their plans under MiCA by 26 July 2024.

In relation to the questionnaire, the CSSF has asked financial entities to note the following:

- the questionnaire takes between 15 and 30 minutes to complete (16 questions in total);
- if the answer to question 5 (‘Are you considering providing crypto-related services, with reference to the MiCA notification procedure?’) is no, financial entities are not required to complete the other questions;

- entities which are not covered by Article 60 of MiCA or which are not considering providing crypto-related services with reference to the notification procedure are not requested to fill in the questionnaire; and
- entities that are considering providing crypto-related services but which are not covered by the notification procedure are invited to contact the CSSF by referring to the instructions contained in the relevant communiqué published by the CSSF in order to initiate a preliminary dialogue with the CSSF.

CSSF publishes communiqué on notification requirements for firms using algorithmic trading or providing direct electronic access to a trading venue

The CSSF has published a [communiqué](#) on notification requirements for firms using algorithmic trading or providing direct electronic access to a trading venue.

The purpose of the communiqué is to remind firms of their obligation to notify the relevant authorities when they engage in algorithmic trading or provide direct electronic access (DEA) to trading venues. This includes notifying both the competent authority of their home Member State and, if applicable, the competent authority(ies) of the trading venues involved.

Algorithmic trading refers to the process where a computer algorithm autonomously determines various parameters of financial instrument orders, such as initiation, timing, price, or quantity, and manages the order post-submission with little to no human intervention. An automated order routing system is not considered an algorithmic trading system if it only determines the trading venue or trading venues to which the order is to be sent, without changing any other parameter of the order. However, a 'smart order routing system' which, additionally to routing orders to trading venues, offers automated management of the order is considered an algorithmic trading system. A computer algorithm which only draws human traders' attention to trading opportunities or only generates investment advice does not qualify as an algorithmic trading system.

The CSSF has also clarified the concept of DEA, which means an arrangement where a member, participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. It includes arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access). The definition of DEA does not encompass any other activity beyond the provision of direct market access and sponsored access. Therefore, arrangements where client orders are intermediated through electronic means by members or participants of a trading venue such as online brokerage do not qualify as DEA.

For a complete understanding of the definition of algorithmic trading and the associated notification requirement, the CSSF refers to several key regulatory texts, including MiFID2, Commission Delegated Regulation (EU) 2017/565, and the ESMA Q&A on direct electronic access and algorithmic trading. Additionally, the CSSF's own MiFID2/MiFIR Q&A document provides specific guidance on these topics.

Luxembourg firms engaging in algorithmic trading and other EU firms engaging in algorithmic trading at a Luxembourg trading venue should notify the CSSF by e-mail to mifid2@cssf.lu, using the table as presented in the CSSF MiFID2/MiFIR Q&A. The same procedure is to be applied for Luxembourg firms providing DEA to a trading venue and other EU firms providing DEA to a Luxembourg trading venue.

RECENT CLIFFORD CHANCE BRIEFINGS

CRD6 – New EU rules for EU branches of non-EU banks

The new EU Capital Requirements Directive (CRD6) will require Member States to apply minimum authorisation, reporting and supervisory requirements to local branches of non-EU banks (third-country branches or TCBs). It will also oblige Member States to give their supervisors powers to require the restructuring or subsidisation of systemically important TCBs.

CRD6 has now been published in the Official Journal and Member States will be required to apply the new reporting rules for TCBs from January 2026 and the other new rules for TCBs from January 2027.

This briefing paper discusses the new reporting rules.

<https://www.cliffordchance.com/briefings/2024/06/crd6--new-eu-rules-for-eu-branches-of-non-eu-banks.html>

CRD6 – New EU rules for non-EU entities conducting cross-border banking business in the EU

The new EU CRD6 will require non-EU entities intending to provide 'core banking services' in an EU Member State to establish an authorised local branch in that Member State unless one of the limited exemptions applies. A new Article 21c of the Capital Requirements Directive (CRD) will restrict the cross-border provision of loans or credit and guarantees or commitments by non-EU banks and the taking of deposits or other borrowing in the EU by any non-EU entity.

CRD6 has now been published in the Official Journal and Member States will be required to apply the new rules from January 2027.

This briefing paper discusses the new rules.

<https://www.cliffordchance.com/briefings/2024/06/crd6--new-eu-rules-for-non-eu-entities-conducting-cross-border-b.html>

CRD6 – New EU rules for bank senior managers and governance

The new EU CRD6 will introduce a revised framework for assessing the suitability of directors and other senior managers of EU banks, including new requirements for key function holders and a new supervisory process for the prior assessment of the suitability of some appointments. It will also make other changes to the EU rules on bank governance.

CRD6 has now been published in the Official Journal and Member States will be required to apply the new rules for bank senior managers and governance from January 2026.

This updated briefing paper discusses the new rules.

<https://www.cliffordchance.com/briefings/2024/06/crd6--new-eu-rules-for-bank-senior-managers-and-governance.html>

CRD6 – New EU rules for bank M&A and reorganisations

The new EU CRD6 will impose additional requirements on EU banks and their holding companies to pre-notify and, in some cases, pre-clear certain M&A transactions and reorganisations with their own supervisor. These new rules will apply to acquisitions and disposals of material holdings in both financial and non-financial sector entities, material transfers of assets or liabilities, and mergers and divisions.

CRD6 has now been published in the Official Journal and Member States will be required to apply the new rules on bank M&A and reorganisations from January 2026.

This updated briefing paper discusses the new rules.

<https://www.cliffordchance.com/briefings/2024/06/crd6--new-eu-rules-for-bank-m-a-and-reorganisations.html>

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