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AI Act published in Official Journal

[Regulation \(EU\) 2024/1689](#) – the Artificial Intelligence (AI) Act – has been published in the Official Journal.

The AI Act is intended to introduce harmonised rules to promote investment and innovation in AI, and to ensure that AI developed and used within the EU is trustworthy and subject to an appropriate legal framework.

The AI Act will enter into force on 1 August 2024 and apply from 2 August 2026, except for:

- the prohibitions as well as the general provisions of the Act, which will apply from 2 February 2025;
- codes of practice, which should be ready by 2 May 2025;
- the provisions on notified bodies and governance structure, and the obligations for providers of general-purpose AI models, which will apply from 2 August 2025; and
- obligations for high-risk systems, which will apply from 2 August 2027.

CSDR Refit: ESMA consults on rules to recalibrate CSDR framework

The European Securities and Markets Authority (ESMA) has [launched](#) three consultations on draft rules under the Central Securities Depositories Regulation (CSDR) Refit.

The consultations relate to:

- draft regulatory technical standards (RTS) intended to harmonise the information to be provided by EU CSDs to their national competent authorities (NCAs) on their cross-border activities and the risks to be considered by the relevant authorities for the purpose of feeding the overall assessment of the competent authorities;
- draft RTS intended to streamline the information to be notified to ESMA by third-country CSDs to limit the reporting burden; and
- technical advice on the scope of settlement discipline, covering ESMA's proposals on the underlying cause of settlement fails that are considered as not attributable to the participants in the transaction, and the circumstances in which operations are not considered as trading.

Comments are due by 9 September 2024.

EMIR 3: ESMA issues statement on CCP collateral requirements

ESMA has issued a [statement](#) on deprioritising certain supervisory actions in light of the ongoing review of the European Market Infrastructure Regulation (EMIR 3.0).

In the statement, ESMA notes stakeholder concerns about letting emergency measures relating to the eligibility of uncollateralised public guarantees, public bank guarantees or commercial bank guarantees as collateral by central counterparties (CCPs) lapse before EMIR 3.0 is adopted and published in the Official Journal. The temporary measures are currently set to expire on 7 September 2024.

ESMA highlights the challenges stakeholders will face if they have to comply with the CCP collateral requirements between the expiry of the emergency measures and the entry into force of EMIR 3.0, whilst acknowledging that it has no formal powers to dis-apply a directly applicable EU legal text. To address this, ESMA expects NCAs not to prioritise their supervisory actions in relation to the eligibility of CCP collateral and to apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

CRR3: EBA publishes final draft ITS on supervisory reporting

The European Banking Authority (EBA) has published its [final draft ITS](#) on supervisory reporting under the Capital Requirements Regulation (CRR3).

The ITS are aimed at allowing supervisors to monitor institutions' compliance with the CRR3 implementation of the latest Basel III reforms in the EU by including new or amended CRR3 requirements on the output floor, credit risk, market risk, credit valuation adjustment (CVA) risk, leverage ratio and on the transitional treatment of exposures to cryptoassets. They include the minimum reporting requirements on operational risk that will apply to institutions from the date that CRR3 applies. The EBA intends to finalise the remaining reporting requirements on operational risk by the end of 2024.

The ITS will apply from 1 January 2025 with a first reference date of 31 March 2025.

Alongside the draft ITS, the EBA has also published:

- an updated mapping tool between the revised disclosure templates published on 21 June 2024 and the reporting templates; and
- a summary of all the Pillar 3 disclosure requirements and their respective frequency.

CRR: EBA consults on draft RTS on credit valuation adjustment risk of SFTs

The EBA has launched a [consultation](#) on draft RTS on the CVA risk of securities financing transactions (SFTs) under the CRR.

The draft RTS propose using a quantitative threshold approach to determine the materiality of CVA risk exposures arising from fair-valued SFTs and set out a ratio that quantifies the amount of CVA risk arising from fair-valued SFTs relative to the CVA risk of transactions within the scope of the own funds requirements for CVA risk. It is proposed that the assessment be carried out on a quarterly basis.

Comments are due by 8 October 2024. A public hearing is scheduled for 4 September 2024 and stakeholders must [register](#) their attendance by 30 August 2024.

ESMA consults on liquidity management tools for funds

ESMA has launched a consultation on [draft guidelines](#) and [RTS](#) on liquidity management tools (LMTs) under the revised Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

The draft RTS on the characteristics of LMTs define the constituting elements of each LMT, such as calculation methodologies and activation mechanisms. The draft guidelines on LMTs of UCITS and open-ended AIFs address how managers should select and calibrate LMTs, considering their investment strategy, liquidity profile, and the redemption policy of the fund.

The draft RTS and guidelines are intended to promote convergent application of the directives for both UCITS and open-ended AIFs and to equip EU fund managers better to manage the liquidity of their funds. They also aim to clarify the functioning of specific LMTs, such as the use of side pockets, a practice that currently varies significantly across the EU.

Comments are due by 8 October 2024.

ESMA consults on reporting requirements and governance expectations for supervised entities

ESMA has [launched](#) two consultations on proposed guidance for some of its supervised entities.

The consultation on periodic reporting sets out the information ESMA expects to receive and a timeline for supervised entities to provide required information. To date, ESMA has formalised its periodic reporting requirements for credit rating agencies (CRAs) and trade repositories (TRs) in separate ESMA guidelines. In the new proposed guidelines, ESMA brings together requirements for CRAs and TRs as well as for benchmark administrators, data reporting services providers and securitisation repositories.

The proposed guidelines aim to:

- ensure a harmonised approach to periodic reporting;
- increase consistency and usability of the reported information;
- establish proportionate reporting based on the risk profile of the supervised entity; and
- reduce the reporting burden by tailoring reporting frequencies to a risk-based supervisory approach.

The second consultation sets out ESMA's supervisory expectations in relation to good practice in governance arrangements, such as on the role, operation, and effectiveness of the management bodies of the entities supervised by ESMA. The proposed guidance is also aimed at future supervised entities and ESMA is seeking feedback from systemically important third country central counterparties (Tier 2 TC-CCPs).

Comments on the consultations are due by 18 October 2024. ESMA intends to publish its finalised guidelines and supervisory expectations in Q1 2025.

MiFIR Review: ESMA publishes third consultation package

ESMA has published a [consultation paper](#) on several mandates relating to the revised Markets in Financial Instruments Regulation and Directive (MiFIR2/MiFID3).

The consultation follows two previous MiFIR Review consultation packages published in May 2024. These papers seek views on consolidated tape providers (CTPs) and data reporting service providers (DRSPs), and on non-equity trade transparency, reasonable commercial basis and reference data.

The third consultation package seeks views on proposals for:

- amendments to rules on the liquidity assessment for equity instruments, equity transparency and the volume cap;
- new implementing technical standards (ITS) on systematic internalisers (SIs);
- new RTS on input/output data for the equity consolidated tape provider (CTP);
- new rules specifying organisational requirements for trading venues, adding new provisions on circuit breakers and targeted amendments relating to the Digital Operational Resilience Act (DORA); and
- flags on post-trade transparency reports for non-equity instruments.

Comments on the proposals on equity transparency and flags are due by 15 September 2024. Comments on the remaining proposals are due by 15 October 2024.

EBA reports on convergence of supervisory practices in 2023

The EBA has published its [annual report](#) on the convergence of supervisory practices for 2023.

Overall, the EBA notes that most competent authorities (CAs) have adequately included the topics identified in the 2023 European Supervisory Examination Programme (ESEP) in their supervisory priorities for 2023. These topics were:

- macroeconomic and geopolitical risks;
- operational and financial resilience;
- transition risks towards sustainability and digitalisation; and
- money laundering/terrorism financing (ML/TF) risks in the supervisory review and evaluation process (SREP) and internal governance controls.

However, the EBA noted that there remains some disparity in the implementation of risk areas such as environmental, social and governance (ESG) and data aggregation capabilities in the CAs' supervisory processes. It also found that there is a need for greater convergence in the identification and treatment of risks covered by Pillar 2 requirements.

The report also notes that the EBA's monitoring of supervisory colleges has confirmed that the annual college cycle is functioning well, although it calls for

increased information sharing and joint supervisory activities between colleges.

Basel Committee consults on principles for management of third-party risk

The Basel Committee on Banking Supervision (BCBS) has launched a [consultation](#) on proposed principles for the sound management of third-party risk.

The BCBS notes that ongoing digitalisation in the banking sector and the rapid adoption of innovative approaches has resulted in an increased reliance on third parties beyond the scope of traditional outsourcing. As a result, it has drafted a set of twelve high-level principles, intended to provide guidance to banks and supervisors on the effective management and supervision of risks posed by third-party arrangements.

The proposed principles:

- introduce the concept of a third-party life cycle, with risk management guidance at each stage of the cycle;
- consider issues related to supply chain and concentration risks;
- complement and expand on the Financial Stability Board's (FSB's) 2023 report 'Enhancing third party management and oversight – a toolkit for financial institutions and financial authorities';
- are primarily directed at large internationally active banks and their prudential supervisors but are intended to be flexible enough to be of use to smaller banks and their authorities; and
- are designed to be technology-neutral, and are intended to be applicable to recent trends such as AI and blockchain technology, without referring to them explicitly.

Comments are due by 9 October 2024.

Basel Committee consults on technical amendments and FAQ answers

The BCBS has [published](#) proposals for various technical amendments and answers to frequently asked questions (FAQs). The set of amendments addressed in this document relate to:

- the standardised approach to credit risk;
- cryptoasset exposures;
- counterparty credit risk;
- the standardised approach to operational risk;
- the simplified standardised, standardised, and internal models' approach to market risk; and
- the net stable funding ratio.

The Committee encourages comments from a broad range of interested stakeholders on the proposed technical amendments and all submissions will be published on the Bank for International Settlements (BIS) website unless confidential treatment is specifically requested.

Comments are due by 19 August 2024.

FATF publishes targeted update on implementation of standards on virtual assets

The Financial Action Task Force (FATF) has [published](#) its fifth update on jurisdictions' compliance with FATF's Recommendation 15 and its Interpretative Note (R.15/INR.15). Recommendation 15 was updated in 2019 to apply anti-money laundering and counter-terrorist financing (AML/CFT) measures to virtual assets (VAs) and virtual asset service providers (VASPs). The report also provides updates on emerging risks and market developments relating to the use of VAs for money laundering, terrorist financing and proliferation financing.

Amongst other things, the FATF has concluded that:

- while some jurisdictions have made progress in putting AML/CFT regulation in place, global implementation is still lagging;
- there are several governments which have yet to take any significant steps to regulate the sector; and
- based on 130 FATF mutual evaluation and follow-up reports since the revised R.15/INR.15 was adopted in 2019, 75% of jurisdictions are only partially or not compliant with the FATF's requirements, which is identical to that of April 2023.

The FATF has called on all jurisdictions to rapidly implement its standards on VAs and VASPs, including the travel rule.

FCA publishes Quarterly Consultation No. 44

The Financial Conduct Authority (FCA) has published its latest [quarterly consultation paper](#) (CP24/11) on proposed amendments to the FCA Handbook.

It is seeking feedback on its proposals relating to:

- the introduction of criminal background checks on owners and controllers at the Authorisation's gateway;
- amendments to SUP following the FCA's consultation on prudential assessment of acquisitions and increases in control;
- changes to retail conduct rules as a result of MiFID Org Reg amendments;
- a change to the application of the UCITS concentration rules;
- removal from the Handbook of certain EU-withdrawal related provisions which have expired and renaming of certain terms;
- a consequential amendment to UK Credit Rating Agencies Regulation to implement the Securitisation Regulations 2024;
- removing references to LTIFs and the LTIF Regulation Handbook, following the government's repeal of the LTIF Regulation on 1 January 2024; and
- the transitional transparency regime.

Comments are due by 12 August 2024.

FCA publishes final Listing Rules

The FCA has published a [policy statement](#) (PS24/6) setting out its final policy position and rules for a new UK listing regime.

Forming part of the implementation of the 2021 UK Listing Review, PS24/6 sets out reforms intended to simplify and streamline the regime, such as:

- replacing the 'premium' and 'standard' listing segments with a new 'commercial companies' category for equity share listings;
- taking a disclosure-based approach, including replacing the requirement for shareholder approval with market notifications in relation to significant and related party transactions; and
- fewer restrictions on dual class share structures (DCSS), while subjecting institutional investors' enhanced voting rights to a 10-year sunset.

The final rules, which replace the LR sourcebook with a new UKLR sourcebook, come into force on 29 July 2024. Transitional provisions on how 'in-flight' transactions should be considered are also provided.

The FCA has also published [Primary Market Bulletin 50](#) seeking views on technical notes intended to provide guidance on:

- sponsor responsibilities in relation to specialist due diligence;
- sponsor record keeping requirements; and
- the FCA's approach to supervising sponsors.

Comments are due by 5 September 2024.

BoE publishes policy statement on fees regime for FMI supervision

The Bank of England (BoE) has published a [policy statement](#) on the levying of fees on financial market infrastructures (FMIs) for the purpose of supervision and certain applications by FMIs.

The policy statement is a consolidated and updated version which replaces all previous fees policy statements. Among other things, the policy statement sets out the:

- methodology for levying supervision fees, including fee blocks and category based charging;
- fee ratio across the categories of FMI;
- fees for operators of multiple recognised payment systems; and
- process for levying supervision fees.

PRA publishes regulated fees and levies for 2024/25

The Prudential Regulation Authority (PRA) has published a [policy statement](#) (PS11/24) on the regulated fees and levies for 2024/25.

PS11/24 is relevant to all firms that currently pay PRA fees or are expecting to do so within the 2024/25 fee year. It provides feedback to responses received to the PRA's consultation on its proposed rates (CP4/24). No changes were made to the proposals in CP4/24 as a result of the feedback received.

PS11/24 also sets out the PRA's final policy regarding:

- the fees rates to meet the PRA's 2024/25 annual funding requirement (AFR) for the financial period 1 March 2024 to 28 February 2025; and
- amendments to the Fees Part of the PRA Rulebook.

The PRA's AFR for 2024/25 is GBP 331.3 million, which is GBP 22.0 million higher than the AFR for 2023/24 of GBP 309.3 million.

The implementation date for the PRA Fees Amendment Instrument 2024 is 9 July 2024.

Law Commission publishes paper on decentralised autonomous organisations

The Law Commission has published a [scoping paper](#) examining the characterisation of decentralised autonomous organisations (DAOs).

According to the Law Commission, DAOs can be broadly described as a new type of online organisation using rules set out in computer code which generally brings together a community of participants with a shared goal, often with some control over governance matters distributed among participants through the use of distributed ledger technology (DLT) and smart contracts. DAOs are part of what is sometimes referred to as the crypto ecosystem.

The paper seeks to identify current issues around DAOs to inform any future law reform or innovations in England and Wales, as well as areas where further work may be useful to accommodate DAOs to ensure their activities are within reach of the regulatory regime. Among other things, the paper suggests:

- the Government keeps the need for developing a DAO-specific legal entity under review;
- reviewing the Companies Act 2006 and the law governing other business organisations such as limited liability partnerships (LLPs) to determine whether reform is needed to facilitate the increased use of technology at a governance level;
- undertaking further work to determine whether the introduction of a limited liability not-for-profit association with flexible governance options would be a useful and attractive vehicle for organisations, including non-profit DAOs;
- proceeding with the Law Commission's planned review of trust law which will consider, in general terms, the arguments for and against the introduction of more flexible trust and trust-like structures; and
- a Government review of anti-money laundering regulation to consider whether the same policy objectives can be achieved in a manner more compatible with the use of distributed ledger technology (DLT) and other technology.

CSSF publishes communiqué on publication of Luxembourg DORA Law in Official Journal

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a [communiqué](#) on the publication of the Luxembourg law of 1 July amending certain financial sector laws with a view to implementing Regulation (EU) 2022/2554 on digital

operational resilience for the financial sector (DORA Law) in the Luxembourg Official Journal (Mémorial A).

The purpose of the communiqué is to inform the public that, following its adoption by the Luxembourg Parliament in June, the national DORA Law has been published in the Luxembourg Official Journal and will apply from 17 January 2025.

As the provisions of DORA are directly applicable in the EU, the DORA Law, for the purpose of the implementation of DORA, aims to provide the competent national authorities responsible for ensuring the application of DORA (i.e., the CSSF and the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA)) with the supervisory and investigative powers necessary for the performance of their duties and to provide for an appropriate system of sanctions.

In addition, the DORA Law transposes Directive (EU) 2022/2556 (the DORA Amending Directive) into Luxembourg law, which makes specific amendments relating to digital resilience and ICT security to EU directives on the financial sector. The DORA Law thus carries out a targeted adaptation of a series of national laws relating to the financial sector. These amendments are necessary to ensure, in the interest of legal certainty, that these national laws are consistent with DORA as regards the application of digital operational resilience requirements currently dispersed across the various existing sector-specific laws.

The CSSF reminds financial entities that DORA will be applicable from 17 January 2025 and that they should work towards compliance with the requirements of DORA. The communiqué contains a link to the DORA page on the CSSF website. The CSSF encourages financial entities to regularly consult this site, which is kept up to date with new publications and relevant information.

Hong Kong welcomes PBOC's announcement allowing Chinese Government bonds as collateral for SWAP Connect

The Hong Kong Exchanges and Clearing Limited (HKEX), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have [welcomed](#) the announcement of the People's Bank of China to support offshore investors to use onshore bonds issued by the Ministry of Finance and policy banks in Mainland China and held under Northbound Bond Connect as margin collateral for Northbound Swap Connect transactions.

The enhancement to Northbound Swap Connect is intended to help improve capital efficiency of investors in the programme by offering them more non-cash collateral options and to boost the attractiveness of holding onshore RMB bonds for international investors participating in Bond Connect.

The HKEX's clearing subsidiary, OTC Clear, plans to start accepting these instruments as collateral for Swap Connect, with a targeted launch by the end of 2024. OTC Clear and will work with the SFC and the Central Moneymarkets Unit of the HKMA in preparation for this enhancement.

Insurance Authority publishes practice note on investment choices and premium allocations services under ILAS policies

The Insurance Authority (IA) has published a [practice note](#) on the application of requirements in the insurance regulatory framework to specific services provided by licensed insurance brokers on investment choices and premium allocations under investment-linked assurance scheme policies (ILAS policies).

The practice note articulates the standards expected to be met by a licensed insurance broker company and its personnel under the IA's regulatory framework, in relation to the following three specific types of regulated activities:

- execution-only services;
- advisory investment services; and
- discretionary investment management services.

The IA notes that the above services go beyond just introducing and arranging ILAS policies, and extend to executing, advising, or managing the selection of investment fund options and premium allocations by policy holders under the ILAS policies. Accordingly, a licensed insurance broker company which offers any of such services, is expected to satisfy the applicable requirements in the practice note in order to meet the ongoing fit and proper requirements under the insurance regulatory framework and the 'competence to advise' and corporate governance standards in the Code of Conduct for Licensed Insurance Brokers.

The practice note is effective from 1 October 2024.

Insurance Authority publishes revised guidelines on group supervision

The IA has published its [revised guidelines](#) on group supervision (GL32), which sets out the principles and standards for designated insurance holding companies (DIHCs) in respect of their supervised groups on a wide range of areas including enterprise risk management, corporate governance, disclosures, and investment management.

GL32 has been revised in view of the enactment of the Insurance (Amendment) Ordinance 2023. Amendments to GL32 include, among other things, classification into majority shareholder controller and minority shareholder controller, and elaboration on the 'fit and proper' criteria for shareholder controllers. The IA has also clarified its expectation of a director of a DIHC to be considered as an independent non-executive director.

The revised GL32 has replaced its previous version issued in December 2022, and came into effect on 5 July 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

Private Credit – A global perspective on market developments

With the continued global expansion of the pool of private credit, what does the future hold? Will the boom times continue, or will enthusiasm be dampened by the resurgence of syndicated bank loans and the return of CLOs? The private credit market over the past few years has expanded exponentially but this has been against the backdrop of a very subdued syndicated loan market.

This briefing paper looks at the impact on private credit of the return of the Broadly Syndicated Loan (BSL) market, the options for private credit in the short term and what developments we expect to see happening in the future.

<https://www.cliffordchance.com/briefings/2024/07/private-credit---a-global-perspective-on-market-developments.html>

Update – recent amendments to Regulation S-P

On 16 May 2024, the Securities and Exchange Commission issued important amendments to Regulation S-P, a set of privacy rules that regulate covered institutions' treatment of non-public personal information about consumers. A 'covered institution' is a broker, dealer, investment company, SEC-registered investment adviser, funding portal, or transfer agent registered with the SEC or another appropriate regulatory agency, as defined in the Securities Exchange Act of 1934. The amendments are designed to modernize and enhance Regulation S-P protections, initially put in place 24 years ago, and respond to expanded use of technology and corresponding risks to consumers.

Broadly, the amendments update the requirements of:

- the 'safeguards' rule, which requires brokers, dealers, investment companies, and SEC-registered investment advisers to adopt written policies and procedures addressing administrative, technical, and physical safeguards to protect customer records and information; and
- the 'disposal' rule, which requires institutions covered by the safeguards rule and transfer agents to appropriately dispose of consumer report information.

This briefing paper discusses the amendments.

<https://www.cliffordchance.com/briefings/2024/07/clifford-chance-update--recent-amendments-to-regulation-s-p.html>

China issues guidelines on corporate sustainability reporting

In April 2024, all three securities exchanges in China issued their respective guidelines on corporate sustainability reporting (CSR guidelines), which took effect from 1 May 2024.

The CSR guidelines require certain companies to prepare and publicly disclose a corporate sustainability report covering the period from 1 January 2025 to 30 April 2026. This applies to:

each constituent of SSE 180 Index, STAR 50 Index, Shenzhen 100 Index, or ChiNext Index if such constituent was included in such index continuously during the designated reporting term; and

companies dual-listed in China and abroad.

The CSR guidelines further encourage other listed companies on these securities exchanges to voluntarily follow them. The substance of the CSR guidelines is largely in line with international standards and has also taken into account China-specific considerations.

This briefing paper discusses the CSR guidelines.

<https://www.cliffordchance.com/briefings/2024/07/china-issues-guidelines-on-corporate-sustainability-reporting.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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