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Regulatory monitoring: EU Version

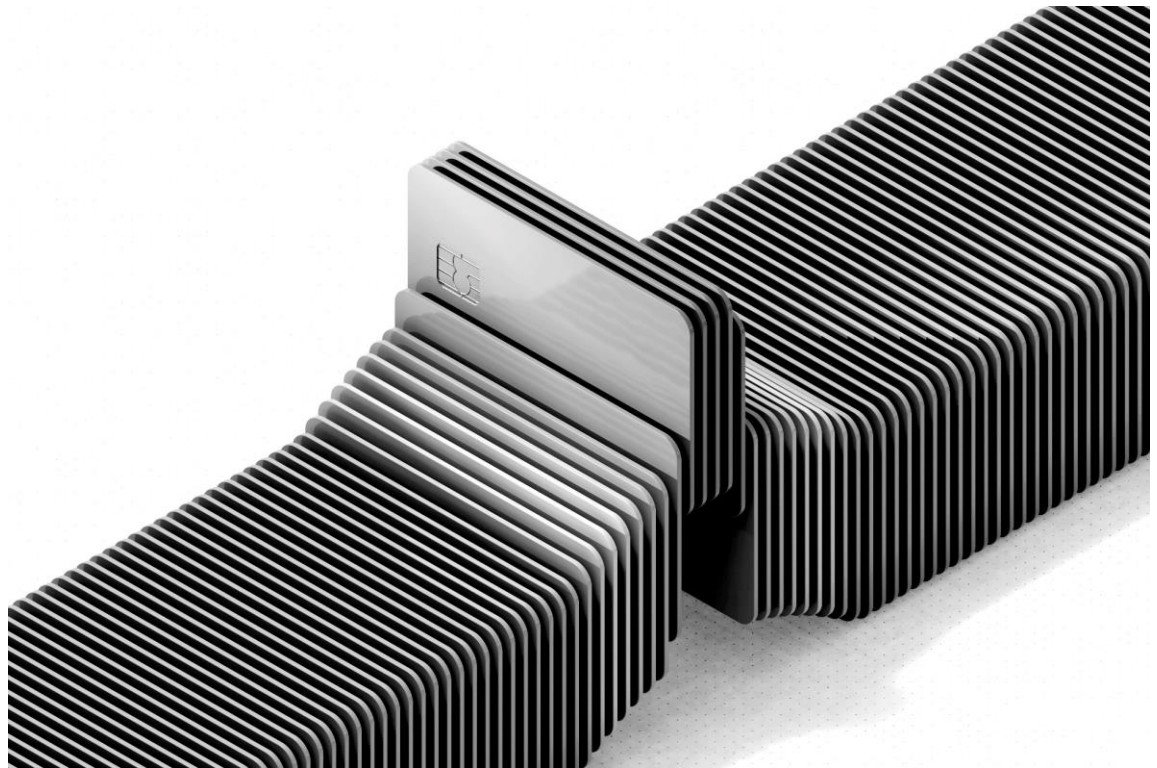
NEWSLETTER

INSERT MONTH AND YEAR

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FEATURES

HORIZON SCANNING/REGULATORY MONITORING

Identify new regulatory developments easily and tailored to the specific type of regulated firm, so that only relevant changes appear.

FINANCIAL REGULATORY LAW SOURCEBOOK

A categorised collection of all laws in the field of financial regulatory law for Europe and Germany (constantly being expanded), which can be compiled as an obligation register and commented on as desired.

IMPLEMENTATION MANAGEMENT

Effective implementation (including tailored impact analysis and gap analysis) of new legislation and agile control using our project management tool (including KPIs).

CHANGE ANALYSIS AND PREVIEW OF RULES

Read the future versions of a law early, including the official explanatory memorandum, and identify any legislative changes.

1. Bank regulation

1.1 PRUDENTIAL REGULATION

a) General

(i) EU

EBA: Opinion on measures in accordance with Article 458 CRR following a notification by the De Nederlandsche Bank

Status: Final

The EBA has published an Opinion following the notification by the Dutch Central Bank (*De Nederlandsche Bank – DNB*) of its intention to extend a measure originally introduced in 2022 for a further two years until 2026. The measure aims to maintain the resilience of institutions against a potential severe downturn in the residential real estate market. This action comes amidst recent sustained real estate price increases. Based on the information provided by the DNB, the EBA does not object to the extension of the measure.

The measure imposes a minimum average risk weight on Dutch housing loan portfolios for credit institutions that have adopted an internal ratings-based (IRB) approach. The minimum average risk weight is based on a risk weight function which relies on the Loan-to-Value (LTV) of each loan. The measure does not apply to exposures which are wholly or partly covered by the Dutch National Mortgage Guarantee scheme (NHG). The period of application of the two-year extension will start from 1 December 2024.

In its Opinion, addressed to the Council, the European Commission and the DNB, the EBA takes note of the continued elevated level of systemic risk related to the housing market in the Netherlands. The EBA continues to acknowledge the risks from the high household indebtedness in the Netherlands and the large share of banks' exposures to the residential real estate mortgage market, including high-LTV loans. The EBA invites the DNB to closely monitor any overlaps of the proposed measure with the output floor and to stand ready to review the calibration of the proposed measure.

Date of publication: 29/08/2024

b) Solvency/Own funds issues

(i) EU

EBA: Final report on draft RTS amending delegated regulations on profit and loss attribution requirements, risk factor modellability assessment, and the treatment of FX and commodity risk in the banking book

Status: Final

The EBA has finalised its draft amendments to the RTS on the market risk framework, also known as the Fundamental Review of the Trading Book. CRR III introduced a number of changes to the FRTB as implemented in the EU via CRR II, and consequently mandated the EBA to review its RTS in areas where the underlying CRR legal basis has been amended, namely on the treatment of foreign-exchange and commodity risk in the banking book, the profit and loss attribution test and the risk factor modellability assessment.

The EBA's RTS therefore amend the following: (i) Commission Delegated Regulation (EU) 2022/2059, which sets out the details on the profit and loss attribution test. The amending RTS remove the aggregation formula for computing the total own funds requirements for market risk for an institution using the alternative internal model approach as this formula has been now introduced in the CRR III; (ii) Commission Delegated Regulation (EU) 2022/2060, which relates to the risk factors' modellability assessment. The amending RTS ensure that institutions are able to identify how far they rely on a third-party vendor for the purpose of assessing the modellability of a risk factor; and (iii) Commission Delegated Regulation (EU) 2023/1577, which relates to the treatment of foreign exchange and commodity risk in the non-trading book. The amending RTS ensure that translation risk is duly captured by institutions. The EBA will submit the final draft RTS to the EC for endorsement.

Date of publication: 13/08/2024

EBA: No-action letter in response to the EC's Delegated Act postponing the application of the market risk framework in the EU

Status: Final

The EBA has published a no-action letter in response to the EC's postponement of the application of the revised market risk framework, also known as the Fundamental Review of the Trading Book. In the no-action letter, the EBA recommends that competent authorities should not prioritise any supervisory or enforcement action relating to the amendments to the provisions setting the boundary between the banking and trading books, or those defining internal risk transfers between books. The EBA also clarifies that the points it made in its separate no-action letter on the same topic issued in 2023 should remain applicable. The EBA considers that the front-loaded application of the revised provisions on the boundary and internal risk transfers, compared to the rest of the FRTB framework, would subject institutions to an operationally complex, fragmented and costly two-step implementation. There are also no jurisdictions at the global level that envisage such a two-step implementation of the FRTB framework. This means that a front-loaded application of the boundary provisions would lead to global institutions being subject to very different regulatory requirements depending on where the risk management is performed, leading to a fragmentation of the regulatory framework.

In a [separate document](#), the EBA shares some considerations on technical questions and implementation issues arising from the postponement, that were deemed material and relevant with a view to achieving a harmonised implementation of the market risk framework across institutions during the postponement period. The EBA also provides clarity on the supervisory benchmarking exercise. The EBA considers that a legislative proposal to provide the necessary legal certainty should be introduced by the EC, under an accelerated adoption procedure by the EP and the Council, if possible.

Date of publication: 12/08/2024

EBA: Final report on draft ITS on amending Commission Implementing Regulation (EU) 2016/2070 with regard to the benchmarking of internal models

Status: Final

The EBA has published its final draft ITS amending the Implementing Regulation on the benchmarking of credit risk, market risk and IFRS9 models for the 2025 exercise. The CRD requires competent authorities to conduct an annual assessment of the quality of internal approaches used for the calculation of own funds requirements. To assist competent authorities in this assessment, the EBA calculates and distributes benchmark values to competent authorities that allows a comparison of individual institutions' risk parameters. These benchmark values are based on data submitted by institutions as laid out in Commission Implementing Regulation (EU) 2016/2070 which specifies the benchmarking portfolios, templates and definitions to be used as part of the annual benchmarking

exercises. Proposed changes for the 2025 benchmarking exercise include the expansion to all asset classes of the alternative standardised approach validation portfolios. Only minor changes are proposed in relation to credit risk. The EBA notes that the templates based on the alternative internal model approach have not been implemented because of the postponed implementation of the Fundamental Review of the Trading Book in the EU. The EBA has submitted the draft ITS to the EC for endorsement.

Date of publication: 09/08/2024

c) Accounting/Prudential filter/Audit

(i) EU

EC: Draft Commission Notice on the interpretation of certain legal provisions in the Accounting Directive, Audit Directive, Audit Regulation, Transparency Directive, Commission Delegated Regulation (EU) 2023/2772 (“first ESRS delegated act”), and SFDR as regards sustainability reporting

Status: Final

The EC has published a draft Commission Notice on the interpretation of certain legal provisions in the Accounting Directive, Audit Directive, Regulation Audit Regulation, Transparency Directive, Regulation (EU) 2023/2772 (which contains that first set of European Sustainability Reporting Standards), and the SFDR as regards sustainability reporting. The notice contains a set of replies to FAQs clarifying the interpretation of certain provisions introduced by the CSRD with the aim of facilitating their implementation by undertakings. They aim to support stakeholders in the implementation of the EU corporate sustainability reporting rules. The FAQs include, among others, questions addressing: (i) sustainability information reporting under Articles 19a and 29a of the Accounting Directive; (ii) sustainability information reported under Article 40a of the Accounting Directive; (iii) assurance of sustainability reporting; (iv) key intangible resources disclosures; (v) additional FAQs on requirements for third-country undertakings; and (vi) the correlation between indicators published under CSRD and those published under SFDR.

Date of publication: 07/08/2024

1.2 RECOVERY AND RESOLUTION

(i) EU

EBA: Resolution convergence report and 2025 priorities

Status: Final

The EBA has published its 2024 European Resolution Examination Programme (EREP) report. The report sets three priorities for resolution authorities and banks for 2025 and looks at the progress achieved in 2023, identifying any areas of improvement. In 2023, convergence increased within the EU with regards to resolution planning practices and objectives: (i) on MREL, only four banks did not meet their target as of 1 January 2024; (ii) on the operationalisation of the bail-in tool, most resolution authorities have now published their bail-in mechanics and consider that certain challenges (e.g., the identification of holders of instruments, suspension of trading and requirements for issuing prospectuses for the new instruments) persist and are particularly prominent in relation to third-country stakeholders; (iii) while some progress has been observed in the area of liquidity in resolution, resolution authorities plan to further increase the intensity of their testing and to challenge the severity of banks' scenarios; and (iv) resolution authorities have performed further testing of management information systems for

valuation as some banks showed significant gaps in data quality, automation, granularity and timeliness of report delivery.

The 2025 EREP priorities confirm and complement the areas of focus set for 2024, given their ongoing relevance and the fact that work takes time on those complex topics. The key 2025 EREP topics are therefore the operationalisation of resolution strategies, the management information system for valuation and the operationalisation of liquidity strategies in resolution. New elements introduced for 2025 reflect policy and market developments, progress and expertise gained by resolution authorities and embed a testing dimension which is considered central for resolution readiness. Building up own funds and eligible liabilities is not a separate priority anymore, given that most banks have met their MREL targets. However, to increase the effectiveness of the bail-in tool, MREL qualitative aspects are to be further monitored as part of the operationalisation of resolution tools, and quantitative aspects will be followed and disclosed by the EBA in its MREL Dashboard.

Date of publication: 13/08/2024

Corrigendum to Commission Implementing Regulation (EU) 2024/1618 amending Implementing Regulation (EU) 2021/763 laying down ITS for the application of the CRR and BRRD with regard to the supervisory reporting and public disclosure of the MREL

Status: Published in the OJ

A corrigendum to Implementing Regulation 2024/1618 has been published in the OJ. This Implementing Regulation amends Implementing Regulation (EU) 2021/763 laying down ITS for the application of CRR and CRD with regard to the supervisory reporting and public disclosure of the MREL. The corrigendum inserts Annex IV, disclosures on the MREL – instructions into Regulation 2024/1618, which was not included in the version published in the OJ in June.

Date of publication: 08/08/2024

2. Market regulation/ Conduct rules

2.1 GENERAL

(i) EU

ESMA: Risk monitoring report 2024

Status: Final

ESMA has published the second risk monitoring report of 2024, setting out the key risk drivers currently facing EU financial markets. External events continue to have a strong impact on the evolution of financial markets, and ESMA also sees high or very high overall risks in the markets within its remit. Less volatile markets earlier in 2024 and a return of search-for-yield behaviour in riskier market segments suggested a general market anticipation of a 'soft landing'. However, more recent events show how markets remain very sensitive, especially to interest rate developments, deteriorating credit risk and to political and electoral news. There remains a high risk of corrections in a context of fragile market liquidity, in equity and in other markets.

Date of publication: 29/08/2024

2.2 CONSUMER PROTECTION RULES

(i) EU

EBA: Report on the fact finding exercise on creditworthiness assessment practices of non-bank lenders

Status: Final

The EBA has published a report on the fact-finding exercise on creditworthiness assessment (CWA) practices of non-bank lenders (NBLs). The exercise is a follow-up to the Consumer Trends Report (CTR) published in April 2023. The report summarises the EBA's key findings from the exercise, with a view to bringing about more insight into the CWA practices of NBLs, on which potential legislative, regulatory and/or supervisory action can also be drawn in the future. Overall, the EBA found that, while during their CWAs some NBLs might service segments of the population that may have limited opportunities to access traditional banks for credit, a significant number of the surveyed NBLs appear to apply inadequate practices for information gathering and verification.

The report also found that: (i) there is a lack of a harmonised definition of NBLs and a harmonised authorisation framework in the EU, which results in different types of NBLs being supervised in different ways across EU Member States; (ii) many NCAs have taken supervisory actions in respect of NBLs, however, the increase in the number and significance of these entities has increased the need for specialised resources dedicated to the monitoring of non-bank lending activities; and (iii) in terms of market trends, the EBA found that the proportion of credit granted under the CCD by the surveyed NBLs between 2020 and 2023 overall increased, with a peak of 43% in 2021. The EBA will continue monitoring the activities of NBLs through its biennial CTR.

Date of publication: 07/08/2024

3. Market infrastructure

3.1 EMIR

(i) EU

ESMA: MoU recognising CDS Clearing and Depository Services as Tier 1 CCP following MoU with the British Columbia Securities Commission

Status: Final

ESMA has signed a Memorandum of Understanding (MoU) with the British Columbia Securities Commission and updated its list of recognised third-country central counterparties (TC CCPs) under the EMIR. The recognition of CDSC as a TC CCP follows the adoption on 13 November 2015 of an equivalence decision regarding the regulatory framework for central counterparties established in certain provinces of Canada, including in British Columbia, and was made possible by the signature of a Memorandum of Understanding (MoU) between ESMA and the British Columbia Securities Commission on 18 July 2024. The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs which are established in Canada and authorised or recognised by the British Columbia Securities Commission, and which have applied for EU recognition under EMIR. The new agreement complements ESMA's MoU with the Ontario Securities Committee and the Autorité des Marchés Financiers of Québec.

Date of publication: 13/08/2024

3.2 CLEARING, SETTLEMENT, AND CCPS RELATED RULES OTHER THAN IN THE CONTEXT OF DERIVATIVES

(i) EU

ECB: Guidelines on the management of collateral in Eurosystem credit operations

Status: Final

The ECB has published harmonised rules and arrangements for the mobilisation and management of collateral in Eurosystem credit operations, marking a step towards further financial integration in the euro area and the capital markets union. A document containing further information for Eurosystem counterparties on the harmonised processes, procedures and arrangements involved in the mobilisation and management of collateral in Eurosystem credit operations is available on the ECB's website.

Date of publication: 14/08/2024

4. Anti-money laundering

(i) International

FATF: Assessment methodology

Status: Final

The FATF has published a methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT/CPF systems. It sets out the assessment process which focuses on two distinct areas, effectiveness and technical compliance. The FATF last amended its assessment methodology in 2022. It commenced its fifth round of evaluations under this methodology in 2024 and FATF-Style Regional Bodies will also progressively use this methodology once they complete their previous round of evaluations.

Date of publication: 29/08/2024



5. Payments

5.1 PAYMENT SERVICES/E-MONEY

(i) EU

EBA/ECB: 2024 report on payment fraud

Status: Final

The EBA and ECB have published a joint report on payment fraud data. The report assesses payment fraud reported by the industry across the European Economic Areas (EEA), which amounted to €4.3 billion in 2022 and €2.0bn in the first half of 2023. The report confirms the beneficial impact of strong customer authentication (SCA) on fraud levels. It examines the total number of payment transactions and the subset of fraudulent transactions in terms of value and volume. In addition to the aggregated values, the report also presents data based on volumes and also sorted by type of payment instruments, i.e., credit transfers, direct debits, card payments, cash withdrawals, and e-money transactions.

The report finds that SCA-authenticated transactions featured lower fraud rates than non-SCA transactions, especially for card payments, both in terms of values and volumes. Furthermore, fraud shares for card payments, both in terms of values and volumes, were ten times higher when the counterpart is located outside the EEA, where the application of SCA is not legally required and may therefore not have been requested. Hence, the report confirms the beneficial impact of the SCA requirements that were introduced by the PSD2 and the supporting technical standards that the EBA had issued in 2018 in close cooperation with the ECB. It also finds that losses due to frauds were distributed differently among liability bearers depending on the payment instrument.

Date of publication: 01/08/2024

6. Institutional supervisory framework

(i) EU

EBA: Resolution convergence report and 2025 priorities

Status: Final

The EBA has published its 2024 European Resolution Examination Programme (EREP) report. For more information, please see section 1.2 above.

Date of publication: 13/08/2024

7. Investment funds

7.1 PRODUCT REGULATION

a) AIF

(i) EU

ESMA: Official translations of Guidelines on funds' names using ESG or sustainability-related terms

Status: Final

Date of application: 21/11/2024

ESMA has published the official translations of its Guidelines on funds' names using ESG or sustainability-related terms. The objective of the Guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names. The Guidelines establish that to be able to use these terms, a minimum threshold of 80% of investments should be used to meet environmental, social characteristics or sustainable investment objectives.

The Guidelines also apply exclusion criteria for different terms used in fund names: (i) "Environmental", "Impact" and "sustainability"-related terms – exclusions according to the rules applicable to Paris-aligned Benchmarks; and (ii) "Transition", "Social" and "Governance"-related terms – exclusions according to the rules applicable to Climate Transition Benchmarks. In cases of a combination of terms, use of transition, sustainability- and impact-related terms, and for funds designating an index as a reference benchmark, further criteria are specified in the Guidelines. ESMA also provides a summary of the responses it received to its consultation and an explanation of the approach taken to address the comments received.

Within two months of the date of publication of the Guidelines, on 21 October, NCAs must notify ESMA whether they: (i) comply; (ii) do not comply but intend to comply; or (iii) do not comply and do not intend to comply with the Guidelines. The transitional period for funds existing before the application date will extend to 21 May 2025, six months after that date. Any new funds created on or after the application date should apply these Guidelines immediately.

Date of publication: 21/08/2024

8. Special topics

8.1 FINTECH/DIGITAL FINANCE

(i) International

BCBS: Working paper on novel risks, mitigants and uncertainties with permissionless DLTs

Status: Final

The BCBS has published a working paper on novel risks, mitigants and uncertainties with permissionless distributed ledger technologies (DLTs). This paper considers the risks for banks that transact on permissionless blockchains or similar DLTs, related to operations and security, governance, legal, compliance (including money laundering/financing of terrorism) and settlement finality. It finds that certain risks stem from the blockchain's reliance on unknown or third parties, which makes it difficult for banks to conduct due diligence and oversight. These risks require new risk management strategies and safeguards. The paper concludes that current practices for mitigating these risks remain in various stages of development and have not been tested under stress.

Date of publication: 28/08/2024

8.2 SUSTAINABLE FINANCE

(i) EU

ESMA: Official translations of Guidelines on funds' names using ESG or sustainability-related terms

Status: Final

Date of application: 21/11/2024

ESMA has published the official translations of its Guidelines on fund names using ESG or sustainability-related terms. For more information, please see section 7.1a) above.

Date of publication: 21/08/2024

EC: Draft Commission Notice on the interpretation of certain legal provisions in the Accounting Directive, Audit Directive, Audit Regulation, Transparency Directive, Commission Delegated Regulation (EU) 2023/2772 ("first ESRS delegated act"), and SFDR as regards sustainability reporting

Status: Final

The EC has published a draft Commission Notice on the interpretation of certain legal provisions in the Accounting Directive, Audit Directive, Regulation Audit Regulation, Transparency Directive, Regulation (EU) 2023/2772 (which contains that first set of European Sustainability Reporting Standards), and the SFDR as regards sustainability reporting. For more information, please see section 1.1c) above.

Date of publication: 07/08/2024

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