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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use `firstname.lastname@cliffordchance.com`

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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Capital Markets Union: EU Council agrees position on AIFMD review

The EU Council has agreed its [general approach](#) on amendments to the Alternative Investment Fund Managers Directive (AIFMD).

The proposal is intended to improve the integration of asset management markets in Europe while modernising the framework for key regulatory aspects. It updates the AIFMD as well as the rules applicable to undertakings for the collective investment in transferable securities (UCITS).

In its position, the Council:

- stresses the importance of consistent harmonisation in the area of liquidity risk management, in particular, underlining the need to improve the availability of liquidity management tools, with new requirements on managers to provide for the activation of these instruments;
- supports the creation, as proposed by the EU Commission, of an EU framework for loan-originating funds;
- clarifies the rules for outsourcing and the delegation of certain functions by fund managers to third parties and increases the supervisory cooperation in this area;
- introduces new reporting requirements on delegation arrangements for the purpose of an improved monitoring and supervision of the application of the EU regulatory framework; and
- outlines its concerns around the framework for the provision of cross-border services by depositaries, new reporting obligations for UCITS for the purpose of risk monitoring and new transparency rules to enhance investor protection.

The Council is now ready to enter into trilogue negotiations with the EU Parliament to agree on a final version of the text.

EMIR: CCP equivalence decisions for China and Israel published in OJ

[Commission Implementing Decision \(EU\) 2022/984](#) and [Commission Implementing Decision \(EU\) 2022/985](#) on the equivalence of the regulatory framework for central counterparties (CCPs) in China and Israel respectively to the requirements of the European Market Infrastructure Regulation (EMIR) have been published in the Official Journal.

The Implementing Decisions allow CCPs in these jurisdictions to apply for recognition by the European Securities and Markets Authority (ESMA) and will be able to provide central clearing services in the EU to EU clearing members and trading venues.

The Implementing Decisions will enter into force on 14 July 2022.

PRIIPS: Delegated regulation postponing application dates published in Official Journal

[Commission Delegated Regulation \(EU\) 2022/975](#), which postpones applications dates relating to certain PRIIPs-related disclosures, has been published in the Official Journal.

The delegated regulation:

- postpones the start of application of the new rules on certain PRIIPs-related disclosures included in Delegated Regulation 2021/2268 to 1 January 2023; and
- prolongs the application of Article 14(2) of Delegated Regulation (EU) 2017/653 concerning the ability to use the UCITS Key Investor Information Document (KIID) to provide specific information for the purposes of disclosures relating to PRIIPs offering a range of options for investment, until 31 December 2022.

The delegated regulation comes into force on 14 July 2022.

The EU Commission and the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, have both published statements highlighting the application date of new PRIIPs rules. The ESAs expect national competent authorities to take the statement from the EU Commission into account during their supervision of PRIIPs.

CRR: RTS on credit risk adjustments published in Official Journal

[Commission Delegated Regulation \(EU\) 2022/954](#) amending the regulatory technical standards (RTS) as regards the specification of the calculation of specific and general credit risk adjustments under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The RTS specify the calculation of credit risk adjustments to determine the own funds requirements for credit risk.

The Delegated Regulation will enter into force on 11 July 2022.

CRD 4: EU Commission adopts ITS and RTS on applications for authorisation of credit institutions

The EU Commission has adopted an [implementing regulation](#) and a [delegated regulation](#) containing implementing technical standards (ITS) and RTS on the provision of information in applications for authorisation of a credit institution under the Capital Requirements Directive (CRD 4).

The RTS specify the information to be supplied by the applicant credit institution including, among other things, information relating to its:

- identity and history, programme of activities and financial information;

- programme of operations, structural organisation, internal control systems and auditors;
- capital at authorisation; and
- shareholders or members with qualifying holdings, as well as the 20 largest shareholders in, or members of, the applicant credit institution, other than shareholders or members with qualifying holdings.

The RTS also specify the obstacles which may prevent the effective exercise of supervisory functions of competent authorities.

The ITS and RTS should be read alongside one another.

The regulations will enter into force on the twentieth day following that of their publication in the Official Journal and will apply six months from their entry into force.

ECON Committee adopts position on ELTIFs review

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has agreed its [position](#) on the EU Commission's proposed amendments to the European Long-Term Investment Funds (ELTIFs) Regulation.

The proposed amending regulation was announced as part of the Commission's November 2021 capital markets package and aims to make the creation of ELTIFs more attractive for asset managers and make it easier for retail investors to invest in ELTIFs.

Among other things, the ECON Committee's position includes:

- requiring ESMA to keep and update a central public register of authorised ELTIFs;
- permitting ELTIFs marketed to retail investors to borrow up to 70% of its net asset value (NAV), which should be extended up to 100% for professional investors;
- protecting retail investors from being charged unjustified additional costs;
- removing existing tax barriers and introducing tax incentives;
- creating an optional sub-category of ELTIFs marketed as environmentally-sustainable; and
- expressly including green bonds and financial products that aim to make sustainable investments in the list of investment assets eligible for ELTIFs.

The EU Council and Parliament can now enter trilogue negotiations in order to agree on a final version of the text.

EBA responds to call for advice on PSD2 review

The EBA has published an [opinion](#) and report in response to the EU Commission's call for advice on the review of the Payment Services Directive (PSD2).

The EBA has put forward over 200 proposals that it believes would contribute to the development of the single EU retail payments market and ensure a harmonised and consistent application of the legal requirements across the EU.

Its proposals aim to enhance competition, facilitate innovation, protect consumers' funds and data, foster the development of user-friendly services, and prevent exclusion from access to payment services, as well as ensuring a harmonised and consistent application of the legal requirements across the EU. The proposals include, among other things:

- merging the PSD2 and the Electronic Money Directive;
- clarifying the application of strong customer authentication (SCA) and the transactions in scope;
- addressing new security risks for customers such as social engineering fraud where customers are tricked into initiating a payment transaction;
- addressing concerns about authentication approaches (e.g. based on smartphones) that have led to exclusion of certain groups of society from using payment services online;
- moving from 'Open banking' to 'Open finance' (or otherwise the expansion from access to payment accounts data towards access to other types of financial data) and the opportunities and potential challenges associated with it, based on the PSD2 experience;
- addressing the enforcement shortcomings in relation to the implementation and application of SCA for e-commerce card-based transactions and the removal of obstacles to the provision of account information services (AIS) and payment initiation services (PIS); and
- adjusting the prudential requirements, in particular in relation to initial capital, own funds, the use of professional indemnity insurance, the proposal for recovery and wind-down for significant payment institutions and possible consolidation group supervision.

BIS Innovation Hub announces new projects on cryptocurrency, cybersecurity and green finance

The Bank for International Settlements (BIS) Innovation Hub has [announced](#) a new set of projects under its 2022 work programme, which will explore the areas of cryptocurrency, cybersecurity and green finance.

Three projects will be led by the BIS Innovation Hub's new Eurosystem centre, which is expected to open in the coming months and will bring together all of the EEA central banks and the European Central Bank. The projects include:

- creating an open-source market intelligence platform to share information on the cryptocurrency market, including market capitalisations, economic activity, and financial stability risks;
- exploring and testing potential cryptographic solutions for secure payment and settlement systems, intended to withstand the security risks posed by quantum computing; and
- building an open-source database of corporate reports, with a full-text search engine and machine learning/natural language processing tools, to improve central banks' abilities to identify and assess sustainability-related disclosures.

Alongside these, the Hong Kong centre will lead the following two projects:

- a partnership with the Bank of Israel and the Hong Kong Monetary Authority on a new study on central bank digital currencies (CBDCs) and

cybersecurity, which will explore technological solutions to allow intermediaries to provide CBDCs to users without the related financial exposure; and

- a second phase of its green finance project (Project Genesis), in collaboration with the United Nations Framework Convention on Climate Change, and other public and private parties, which will test the use of blockchain, smart contracts and other related technologies for the tracking, delivery and transfer of digitised 'mitigation outcome interests' (i.e. carbon credits recognised under national verification mechanisms compliant with the Paris Agreement) that are attached to a bond.

UK Government publishes retained EU law dashboard

The UK Government has published a [dashboard](#) providing a catalogue of and statistics on retained EU law (REUL).

The dashboard is the outcome of a cross-government exercise to determine which departments, policy areas and sectors of the economy contain the most REUL, and enables users to explore and filter various REUL data points, such as by department and status.

The dashboard is intended to build the understanding and scrutiny of REUL, and the public are encouraged to use normal correspondence channels to highlight specific regulations that could be amended, repealed or replaced.

The Government intends to update the dashboard on a quarterly basis.

The Government also notes its intention to bring forward a Brexit Freedoms Bill, as announced in the Queen's May 2022 Speech, to enable REUL to be more easily amended.

HMT publishes review of UK AML/CFT regulatory and supervisory regime

HM Treasury (HMT) has published two post-implementation reviews (PIRs) and a forward-looking review of the UK regime for anti-money laundering and countering the financing of terrorism (AML/CFT).

The PIRs analyse the [impact of the Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) (MLRs) and the [Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017](#) (OPBAS Regulations).

The [forward-looking review](#) focuses on establishing a high-quality AML/CFT supervisory regime for the UK going forward, including through improvements to the effectiveness of the MLRs. It is structured around three key objectives, namely:

- to establish an agreed definition of 'effectiveness' in the context of the regime and to put forward proposals on how it can be measured more precisely;
- to ensure firms and individuals most exposed to illicit finance risks have a strong understanding of those risks and the ability to implement effective controls against them; and
- to continue to reform the AML/CFT supervisory regime.

Key actions to be taken under these objectives include:

- using the regular national risk assessments of money laundering and terrorist financing, as well as existing public-private fora, to assess emerging risks and potential changes to the scope of the MLRs;
- considering ways in which the UK's departure from the EU may allow the UK to tailor its AML/CFT regime more effectively;
- addressing the key findings of the Government's call for evidence on the UK AML/CFT regime, which was launched in July 2021, including those in relation to the difficulties faced by small or new firms, the supervisory approach to the risk-based approach and varying levels of risk understanding; and
- reforming the structure of the supervisory regime, with the aim of ensuring effective supervision across all sectors. Options for reform include granting OPBAS additional powers to intervene where it identifies deficiencies in professional body supervisors' (PBSs') supervision, consolidating PBSs to improve consistency in supervisory approaches across sectors, or establishing a single professional services supervisor with similar statutory powers as those provided to the Financial Conduct Authority and HM Revenue and Customs under the MLRs.

House of Lords European Affairs Committee publishes report on UK-EU relationship in financial services

The UK House of Lords European Affairs Committee has published a [report](#) following its inquiry on the UK-EU relationship in financial services.

Overall, the Committee finds the outlook for financial services after Brexit to be relatively positive, while cautioning the UK Government against complacency. Key conclusions and recommendations include, among other things:

- that the absence of EU equivalence decisions for the UK reflects the EU's political rather than technical approach, and that the imbalance has had a limited impact on UK competitiveness;
- that the Government's overall objective should remain the earliest possible entry into force of the UK-EU Memorandum of Understanding (MoU) on regulatory cooperation, which although a tool for political cooperation, would provide a useful mechanism for future strategic dialogue and cooperation;
- that alongside formal regulatory cooperation, the Government should increase its political and diplomatic engagement on financial services both with the EU institutions and key Member State capitals;
- welcoming the Government's Future Regulatory Framework Review, while noting that the transfer of powers to regulators be accompanied by appropriate mechanisms for parliamentary scrutiny;
- noting opportunities in regulatory divergence, while urging the Government to balance the benefits of reform against the cost of implementing new rules and not subjecting the sector to piecemeal change;
- concerns that the EU's increasing emphasis on strategic autonomy could lead to barriers to cross-border trade in financial services; and

- that the Government cooperate closely with the EU and other major jurisdictions on issues such as fintech and green finance.

Treasury Committee publishes report on scrutiny of financial services regulation

The UK House of Commons Treasury Committee has published a [report](#) setting out how it intends to expand its role by taking on the scrutiny function of regulatory proposals formerly carried out by the EU Parliament and its ECON Committee.

Published as part of its ongoing future of financial services inquiry, the report details the Committee's intended approach, including intervening at the consultation stage of proposals containing texts that would have legal effect, and establishing a Sub-Committee to take the lead on the scrutiny of proposals, which will be supported by a Financial Services Scrutiny Unit.

The Sub-Committee will consider the following points to inform its decision on whether a proposal merits closer examination:

- whether the policy is justified or desirable;
- whether the regulator is acting within its delegated powers; and
- whether the drafting is of the necessary standard.

The Sub-Committee intends to commence its work by scrutinising the Prudential Regulation Authority's (PRA's) proposals for a 'strong and simple' framework for prudential regimes, owing to the potential significant changes for banks and building societies. The Sub-Committee plans to invite written submissions and take oral evidence on the proposals.

BoE publishes 2022 annual reports

The Bank of England (BoE) and the Prudential Regulation Authority (PRA) have published their annual reports for 2022.

The [BoE's Annual Reports and Accounts](#) provide information on its activities and finances from 1 March 2021 to 28 February 2022 and include the PRA's statement of accounts for the same period. The review of 2021/2022 summarises how the BoE has worked to make full use of the knowledge, resources and skills from across the organisation in support of its mission and strategic priorities for 2021–24.

The [PRA's Annual Report](#) also covers the period from 1 March 2021 to 28 February 2022 and includes a review outlining the work directed by the PRA's business plan for 2021/22.

The BoE has also published the following reports:

- the [Asset Purchase Facility Annual Report 2021/22](#);
- the [BoE's climate-related financial disclosure 2022](#);
- the [Covid Corporate Financing Facility Limited Annual Report and Accounts 2021/22](#); and
- the [report on the BoE's official market operations 2021/22](#).

PRA consults on model risk management principles for banks

The PRA has published a [consultation paper](#) on model risk management (MRM) principles for banks, building societies and PRA-designated investment firms (CP6/22).

The PRA seeks views on a supervisory expectation that firms meet the following high-level MRM principles, supported by sub-principles, which have been designed to cover all elements of the model lifecycle and seek to complement existing supervisory expectations that have been published for selected model types:

- model identification and model risk classification to help identify and manage model risk;
- strong governance oversight, including board approval of the MRM policy and appointment of an accountable individual to assume the responsibility to implement a sound MRM framework;
- a model development process with standards for model design and implementation, model selection and model performance measurement, with regular testing of data, model construct, assumptions and outcomes;
- a validation process that provides ongoing, independent and effective challenge to model development and use; and
- policies and procedures for the use of model risk mitigants when models are under-performing, and procedures for independent review of post-model adjustments.

The PRA proposes that the policy be implemented 12 months following the publication of the final supervisory statement, at which date all firms applying the proposed principles would have undertaken an initial self-assessment and, where necessary, prepared remediation plans, and that self-assessments be updated annually thereafter.

Comments are due by 21 October 2022.

Decree modifying professional competence obligations for intermediaries in banking transactions and payment services published

A [decree](#) modifying the obligations relating to the professional competence of intermediaries in banking transactions and payment services (IOBSPs) has been published in the Official Journal. This text amends provisions of the Monetary and Financial Code regarding IOBSPs in order to improve their training. The training of IOBSPs, subject to particular conditions for each category, may from now on be focused on the products actually distributed and can therefore be accelerated. The level of qualification and services will be maintained due to an annual continuous training that is now mandatory for all IOBSPs.

The decree entered into force on 20 June 2022.

BaFin applies ESMA guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it has adopted the ESMA guidelines on common procedures and methodologies on the supervisory review and evaluation process of CCPs under Article 21 of the EMIR and will fully apply the German version of the guidelines to its supervisory practice.

The objective of the guidelines is to ensure a common, consistent and coherent application of Article 21 of EMIR. The guidelines contain proposals on the format, scope and methodology of the review and evaluation of CCPs. A review is due once a year. In the event of certain material and one-off changes, an ad hoc review is to take place to ensure ongoing compliance with the EMIR requirements. Further, the guidelines set out relevant sources of information on which the supervisory review and assessment is to be based.

Bank of Italy issues press release on decentralised finance and cryptocurrency

The Bank of Italy has published a [communication](#) on distributed ledger technologies (DLT) in finance and cryptoassets. The document aims to draw the attention of supervised intermediaries, supervised entities, and of those who operate in various capacities in decentralised ecosystems, including users, to the risks and opportunities associated with the use of these technologies and with operations in cryptoassets. It also examines some important aspects for risk management.

CSSF presents assessment of investment funds' liquidity management tools

The Luxembourg financial sector supervisory authority (CSSF) has issued a [communication](#) on its recent [working paper](#) presenting an assessment of the effectiveness of liquidity management tools (LMTs).

The CSSF assessed fund-related liquidity management tools based on several supervisory datasets of Luxembourg-based UCITS and the main conclusions are the following:

- funds increase cash positions in periods of high volatility, and thereby contribute to pro-cyclical selling of assets. For most funds, the fund's cash reserves generally exceed the maximum daily redemptions, which suggests that the funds can rely on the ability to sell assets at short notice to honour redemptions. However, fund managers' estimates of the impact of a stress scenario on liquidity varies across funds and tends to be overly optimistic;
- swing-pricing reduces the dilution of the fund value caused by investor redemptions and lowers fund outflows during episodes of elevated market volatility, which helps to reduce investor first mover advantages. However, during episodes of systemic stress, first mover advantages are dominated by other investor considerations, such as imminent liquidity needs, which makes the outflows from swing-pricing funds similar to those of other funds; and

- the temporary suspension of redemptions preserves the fund's value in exceptional circumstances, but often the funds wait too long before suspending and the suspension precedes the permanent closure and liquidation of the fund.

The results of the paper highlight the effectiveness of LMTs and their positive correlation with overall liquidity risk management of open-ended funds. They also showcase the need for further guidance in key aspects, namely the assessment by fund managers of the liquidity of their portfolio, the calibration of swing pricing and the timing of suspensions.

CSSF updates its FAQ on SICAR

The CSSF has [updated its FAQ](#) on the investment company in risk capital, the société d'investissement en capital à risque (SICAR). The changes do not introduce any new requirement or clarification and mainly relate to the alignment with the CSSF Circular 21/790 of 22 December 2021, which reformed post financial year requirements.

The FAQ now covers (in question 7) the following additional mandatory submissions by SICARs to the CSSF, applicable with respect to financial years closing on or after 30 June 2022:

- a self-assessment questionnaire (SAQ) to be submitted via eDesk within four months after the end of the financial year;
- the separate report, pertaining to the reliability of the answers provided by the SICAR in the SAQ and validated by the statutory auditor, to be submitted within six months after the end of the financial year; and
- in case the audited report contains a modified audit opinion with respect to any sub-fund or the SICAR as a whole, a letter to be sent within one month of the publication of the audit report explaining the underlying reasons for the modified audit opinion, their impact on the investors and the SICAR, the corrective measures taken by the management, and the timeline for their implementation.

The update also reflects the fact that the management letter relating to the statutory audit of the SICAR's accounts to be submitted within six months after the end of the financial year will now be made available to the approved statutory auditor on eDesk and submitted to the CSSF by the SICAR's management body through eDesk as well.

Bank of Spain consults on draft circular on confidential financial information on covered bonds and other loan mobilisation instruments

The Bank of Spain has launched a [preliminary public consultation](#) on a draft circular on confidential financial information on covered bonds and other loan mobilisation instruments. The purpose of the draft circular is to:

- align the requirements of Circular 4/2017, of 26 November, and Circular 4/2019, of 26 November, with the financial information obligations imposed under Royal Decree-Law 24/2021, of 2 November; and
- ensure proper compliance with reporting obligations to the Bank of Spain under Royal Decree-Law 24/2021.

Comments on the draft circular are due by 6 July 2022.

HKMA provides update on lowering statutory limits of effective rates of interests under MLO and consults on customer communication guidance

The Hong Kong Monetary Authority (HKMA) has provided an [update to the Hong Kong Association of Banks](#) and the [DTC Association](#) on the government's proposal of lowering the statutory limits of the effective rates of interests stipulated in the Money Lenders Ordinance (MLO).

At present, under sections 24(1) and 25(3) of the MLO, it is respectively stipulated that the interest rate cap on a loan is 60% per annum; and that the interest rate of a loan exceeding 48% per annum will render the loan, prima facie, to be presumed to be extortionate and may trigger reopening of the transaction by the court (the extortionate rate). According to the HKMA, the government has proposed to the Legislative Council (LegCo) to lower the interest rate cap from 60% per annum to 48% per annum, and the extortionate rate from 48% per annum to 36% per annum. If approved by the LegCo, the new interest rate cap and the new extortionate rate (the revised interest rate limits) will come into effect on 30 December 2022.

Subject to LegCo's approval of the proposed legislative amendments, authorized institutions (AIs) will be required to adopt the revised interest rate limits when complying with section 12.3 of Code of Banking Practice (CoBP) on the same date as licensed money lenders i.e. 30 December 2022. While there will be no retrospective effect for credit products offered by AIs, as a matter of principle, the HKMA expects AIs to facilitate customers to migrate from an existing credit product charging beyond the revised interest rate limits to a product that is subject to the revised (i.e. lower) interest rate limits, or at least not to unreasonably withhold customers from such migration.

According to the HKMA the revision to the MLO's interest rate limits referenced by CoBP is a significant change, and AIs should clearly explain to customers on the revision in good time. Accordingly, the HKMA has proposed guidance in respect of customer communication (proposed guidance). While the proposed legislative amendments are pending LegCo's approval, the HKMA welcomes comments from the industry on the proposed guidance and other arrangements by 7 July 2022.

The HKMA reminds AIs that their subsidiaries which lend or offer to lend money are not exempted from compliance with sections 24 and 25 of the MLO and are also expected to abide by the proposed guidance.

MAS announces first use case of NovA!

The Monetary Authority of Singapore (MAS) has [announced](#) the first use case of NovA! to help financial institutions (FIs) assess the sustainability performance of Singapore's real estate sector.

Part of the National Artificial Intelligence (AI) Programme in finance, NovA! was announced in November 2021 and aims to help FIs harness AI to generate insights on financial risk. FIs will be able to tap on NovA! for their environmental, social, governance (ESG) risk assessment for originating, underwriting, and servicing of sustainability linked loans.

The NovA! ESG use case is also expected to reduce the time taken by FIs in collecting, processing, and analysing data through the use of natural language

processing (NLP) technique to automatically extract relevant information from documents.

Additionally, NovA!'s ESG use case will also be integrated with MAS' Project Greenprint. Datasets collected through Project Greenprint will be used to supplement NovA!'s insights-generation capabilities, which will be accessible to Project Greenprint partners via application programming interfaces.

The core team of the consortium behind NovA! plans to release a demo version of NovA!'s ESG use case during the Singapore FinTech Festival in November 2022. In early 2023, a beta version will be released for testing by FIs, followed by further fine-tuning for eventual industry adoption of the solution. A white paper documenting the product design and AI features is expected to be published in mid-2023.

RECENT CLIFFORD CHANCE BRIEFINGS

The Digital Services Act – what is it and what impact will it have?

The Digital Services Act (DSA) will create new standards for digital services in the EU, regulating illegal content online, the protection of users' rights, and the liability of a wide variety of online intermediaries, including cloud providers, online marketplaces and app stores.

The DSA, together with its sister regulation, the Digital Markets Act (DMA), will form a set of new rules intended to create a safer and more open digital space and to foster innovation and competitiveness. The text of the provisional agreement reached by EU governments, recently endorsed by the EU Parliament's Internal Market Committee, is expected to be put to a final vote in Parliament in July before it is formally adopted by the Council and published in the EU Official Journal.

This briefing discusses the DSA.

<https://www.cliffordchance.com/briefings/2022/06/the-digital-services-act---what-is-it-and-what-impact-will-it-ha.html>

Japan to have world's first clear regulatory framework for stablecoins

Japan will soon have the world's first clear regulatory framework for stablecoins. This new framework has been developed following international discussions triggered by the announcement of the Diem (Libra) concept in 2019. In May 2022, TerraUSD, an algorithmic stablecoin which was supposed to be pegged to the US dollar, lost its dollar peg, collapsed and sent shockwaves through the crypto market. Regulators all over the world claim a focused regulatory framework is now urgently needed.

This briefing discusses the new framework.

<https://www.cliffordchance.com/briefings/2022/06/japan-to-have-world-s-first-clear-regulatory-framework-for-stabl.html>

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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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London, E14 5JJ

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