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SFDR: ESAs report on extent of voluntary disclosure of principal adverse impact

The Joint Committee of the European Supervisory Authorities (ESAs) has published the [first annual report](#) on the extent of voluntary disclosure of principal adverse impact (PAI) under the Sustainable Finance Disclosure Regulation (SFDR).

Based on a survey of national competent authorities (NCAs), the ESAs have developed a preliminary, indicative and non-exhaustive overview of good examples of best practices, and less good examples of voluntary disclosures. Highlights of the report include that:

- the extent of compliance with voluntary disclosures varied significantly across respondents, but, overall, the first disclosures since the application of the SFDR were not very detailed – this is expected to change for the disclosures made for the 2022 reporting period once the SFDR Delegated Regulation applies;
- there was an overall low level of disclosure on the degree of alignment with the objective of the Paris Agreement – when disclosure of alignment was made, it was often vague; and
- there was a low level of compliance with the details required for explaining why financial market participants did not take into account the adverse impact of their investment decisions.

The report also includes a set of recommendations for NCAs to ensure appropriate supervision of financial market participants' practices, such as running regular surveys in their own market to determine whether supervisory entities comply with Article 4 SFDR disclosures.

SFDR: RTS on disclosure rules on sustainable investments published in Official Journal

[Commission Delegated Regulation \(EU\) 2022/1288](#) has been published in the Official Journal.

The Delegated Regulation supplements the SFDR with regulatory technical standards (RTS) specifying:

- details around the content and presentation of information relating to the principle of 'do no significant harm';
- the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts; and

- the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in precontractual documents, on websites and in periodic reports.

The Delegated Regulation will enter into force on 14 August 2022 and apply from 1 January 2023.

MiFID2 Quick Fix: Delegated and Implementing Regulations on commodity derivatives published in Official Journal

[Delegated Regulation \(EU\) 2022/1302](#), [Implementing Regulation \(EU\) 2022/1300](#) and [Delegated Regulation \(EU\) 2022/1299](#) developed under Directive (EU) 2021/338 (MiFID2 Quick Fix) have been published in the Official Journal.

Delegated Regulation (EU) 2022/1302 repeals and replaces Commission Delegated Regulation (EU) 2017/591 (RTS 21) on the application of position limits to commodity derivatives, to include amendments relating to MiFID2 Quick Fix and based on experience gained with the existing methodology.

Implementing Regulation (EU) 2022/1300 amends Implementing Regulation (EU) 2017/1093 setting out implementing technical standards (ITS) with regard to the format of commodity derivative position reports, to exclude securitised derivatives from the scope of the position limit regime.

Delegated Regulation (EU) 2022/1299 sets out RTS specifying the content of position management controls by trading venues, with the aim of further enhancing convergent implementation.

All three delegated acts come into force on 15 August 2022.

ECON Committee publishes draft report on MiFIR Review proposals

The EU Parliament Committee on Economic and Monetary Affairs (ECON) has published a [draft report](#) on the EU Commission's legislative proposal to address liquidity and trade execution risk through amendments to MiFIR. In particular, the EU Commission's proposal is intended to:

- enhance market data transparency for investors;
- support the development of a consolidated tape (CT) for trade data;
- refine trading obligations; and
- ban investment firms from receiving payments for forwarding client orders to a third party for execution.

Overall, the rapporteur welcomes the proposals but recommends various amendments including:

- taking a phased approach to the introduction of CTs across the different asset classes;
- limiting the use of the waivers to pre-trade transparency obligations under Article 4 of MiFIR, and suspending the cap mechanism limiting dark trading under these waivers;

- requiring shorter deferrals for the publication of price and volume data of non-equity transactions;
- establishing a register of all systematic internalisers (SIs) and designated reporting entities (DREs), which would specify their identity and the instruments for which they are an SI or DRE;
- expanding the target suspension of the derivatives trading obligations to cover dealer-to-dealer platforms that have established links to EU central counterparties; and
- amending the best-execution requirements under Article 27 of MiFID in an effort to increase harmonisation.

Securitisation Regulation: RTS on STS notification requirements for on-balance-sheet synthetic securitisations published in Official Journal

[Commission Delegated Regulation \(EU\) 2022/1301](#) amending the RTS laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations has been published in the Official Journal.

The Delegated Regulation specifies the information that originators have to submit to the European Securities and Markets Authority (ESMA) to comply with the STS notification requirements for on-balance-sheet synthetic securitisations.

The Delegated Regulation will enter into force on 15 August 2022.

Securitisation Regulation: EBA consults on draft RTS on homogeneity of underlying exposures in STS securitisations

The European Banking Authority (EBA) has launched a [consultation](#) on draft RTS specifying the criteria for the underlying exposures in securitisation to be deemed homogeneous.

The draft RTS would amend Commission Delegated Regulation (EU) 2019/1851 and will be applicable to all securitisations, including asset-backed commercial paper (ABCP), non-ABCP and on-balance-sheet securitisations.

The draft RTS carry over the provisions on homogeneity set out in the existing RTS with some modifications. While extending the scope to on-balance-sheet securitisations, the draft RTS establish the same criteria for the assessment of homogeneity for all securitisations.

Considering the relevance of corporate and SME loans in the context of synthetic securitisations, adjustments have been made to one of the homogeneity factors, the type of obligor, to reflect the current market practices and the credit risk assessment approaches applied to those asset types. Similar changes are made to the respective homogeneity factor for all relevant asset types. Finally, the draft RTS specify further the asset type for credit facilities provided to enterprises, where similar underwriting standards are applied as for individuals.

Comments are due by 28 October 2022.

Investment firms: EBA publishes guidelines on criteria for exemption from liquidity requirements

The EBA has published its [final report on guidelines](#) on the criteria for the exemption of small and non-interconnected investment firms from the liquidity requirements in accordance with the Investment Firms Regulation (IFR).

The guidelines ensure that all competent authorities granting this exemption follow the same harmonised approach by addressing:

- the set of investment services and activities which make an investment firm eligible for the exemption;
- the set of criteria a competent authority should assess before granting the exemption;
- guidance for competent authorities when granting and withdrawing the exemption.

The guidelines will apply from two months after the issuance date.

CRR: EBA consults on validation of IRB systems handbook

The EBA has launched a [consultation](#) on its supervisory handbook for the validation of internal ratings based (IRB) systems.

Overall, the handbook aims to clarify the role of the validation function as part of corporate governance, in particular in terms of scope of work and interaction with the credit risk control unit. The handbook, among other things:

- provides general guidance on the expectations relative to the validation function, as laid out in Article 185 of the Capital Requirements Regulation (CRR);
- builds on the EBA RTS and guidelines which are part of the IRB repair roadmap;
- provides a detailed description of the areas which the validation function is expected to assess;
- specifies which elements of institutions' rating systems are expected to be assessed by the validation function, rather than presenting any specific methodology to be used by the validation function;
- describes the specificities of the validation function tasks and clarifies its relationship with other functions related to the corporate governance, such as the credit risk control unit and the internal audit; and
- provides a set of expectations and good practices on the work of the validation function depending on its position in the model cycle (i.e. first or subsequent validation).

A [public hearing](#) on the handbook will take place on 4 October 2022. Comments on the consultation are due by 28 October 2022.

Deposit guarantee schemes: EBA consults on revised guidelines on calculating contributions

The EBA has launched a [consultation](#) on its draft revised guidelines on deposit guarantee schemes (DGS) contributions.

The revisions aim to enhance the proportionality between the risk of a credit institution and its contributions to the DGS and streamline and simplify the original guidelines.

The consultation includes proposals to, among other things:

- set minimum thresholds for the majority of core risk indicators and adjust their minimum weights to better reflect the indicators' performance in measuring the risk to the DGSs;
- introduce an improved formula for determining the risk adjustment factor of each member institution that ensures a constant relationship between the riskiness of institutions and their DGS contributions.; and
- specify how to account for deposits where the DGS coverage is subject to uncertainty, including in relation to client funds, thus ensuring closer alignment between the amount of covered deposits of a credit institution and its contributions.

A [public hearing](#) will take place on 29 September 2022. Comments on the consultation are due by 31 October 2022.

UK-US Financial Regulatory Working Group publishes joint statement on sixth meeting

HM Treasury (HMT) has published a [joint statement](#) on the sixth meeting of the UK-US Financial Regulatory Working Group held on 21 July 2022.

The meeting focused on the following themes:

- international and bilateral cooperation, including risk management in global derivatives and banking markets;
- benchmark transition, including the cessation of remaining USD LIBOR settings at the end of June 2023;
- financial innovation, including cryptoasset regulation and strengthening regulatory outcomes for stablecoins;
- sustainable finance, including the US Financial Stability Oversight Council's Report on Climate-Related Financial Risk, the UK's Climate Biennial Exploratory Scenario, ESG data and ratings providers, and the development of climate-related financial disclosures regimes and corporate reporting on sustainability;
- non-bank financial intermediation, including the need to strength liquidity risk management;
- operational resilience, including regulatory approaches to critical third-party providers; and
- cross-border regimes.

The next Working Group meeting is expected to take place later in 2022.

Financial Services and Markets Act 2000 (Consequential Amendments of Reference to Rules and Miscellaneous Amendments) Regulations 2022 published

HMT has made and laid the [Financial and Markets Act 2000 \(Consequential Amendments of Reference to Rules and Miscellaneous Amendments\) Regulations 2022](#).

The statutory instrument (SI 2022/854), which is part of package of instruments intended to support implementation of the remaining Basel 3 standards and the introduction of the Investment Firms Prudential Regime (IFPR), makes consequential changes as a result of the Financial Services Act 2021.

The changes relate to the transfer of UK Capital Requirements Regulation (UK CRR) rules to the Prudential Regulation Authority (PRA) and the powers for the Financial Conduct Authority (FCA) in relation to the IFPR, which include amendments to references and definitions to refer to the PRA rulebook and FCA handbook.

The SI comes into force on 17 August 2022.

Green finance: FCA and FRC report on premium listed companies' climate disclosures

The FCA and Financial Reporting Council (FRC) have published two reports which find that premium listed companies have made significant steps forward in the quality of climate-related information provided in their financial reports, but further improvements are needed. The FRC [reviewed](#) 25 larger companies and the FCA [reviewed](#) 170 companies at a high level and 30 companies in more detail.

The findings suggest that although there was a significant increase in the quantity and quality of companies' climate-related disclosures, there were also instances of companies saying that they had made disclosures consistent with the Task Force on Climate-related Financial Disclosures' (TCFD) recommendations when it appeared that they had not.

FCA publishes new consumer duty package

The FCA has published a [policy statement](#) (PS22/9) and [finalised guidance](#) (FG22/5) on a new consumer duty for financial services firms.

PS22/9 sets out the final rules and guidance for the new duty, which seeks to set higher expectations for the standard of consumer protection in retail financial markets, comprising

- a new consumer principle requiring firms to act to deliver good outcomes for retail customers in relation to products and services, price and value, consumer understanding and consumer support; and
- cross-cutting rules providing greater clarity on the FCA's expectations that firms act in good faith, avoid causing foreseeable harm, and enable and support retail customers to pursue their financial objectives.

The rules are being introduced in two phases:

- for new and existing products or services that are open to sale or renewal, the rules will apply from 31 July 2023; and
- for closed products or services, the rules will apply from 31 July 2024.

PS22/9 also provides the FCA's expectations for firms during the implementation period, including that:

- firms' boards or management bodies to have agreed implementation plans by the end of October 2022; and

- manufacturers to have completed reviews necessary to meet the four outcomes for existing products and services by the end of April 2023.

FG22/5 provides further non-handbook guidance to firms on how they should comply with the new duty.

Law Commission consults on digital assets

The Law Commission has published a [consultation paper](#) on proposals for law reform in respect of certain digital assets as objects of property rights.

While noting that the law is sufficiently flexible to accommodate digital assets, the Commission seeks views on provisional conclusions and limited proposals aimed at providing digital assets with wider recognition and legal protection, such as:

- creating a distinct third category of personal property for data objects, either through common law reform or limited statutory intervention;
- the criteria a thing must exhibit to be considered a data object;
- that the factual concept of control, rather than possession, best describes the relationship between data objects and persons;
- that crypto-tokens satisfy the proposed data objects criteria, are appropriate objects of property rights and could be transferred applying the rules of derivative transfer of title;
- an explicit clarification that the special defence of good faith purchaser for value without notice should apply to crypto-token transactions;
- statutory law reform clarifying the scope and application of the Law of Property Act 1925 in connection with certain dealings in specified forms of equitable crypto-token entitlements;
- law reform clarifying and simplifying the apportionment of shortfall losses arising out of commingled crypto-token holdings held on trust by an insolvent custodian;
- whether bespoke statutory provisions should be developed specifically for collateral arrangements;
- in relation to the tort of conversion, whether conversion or a conversion-type cause of action should be extended to data objects; and
- whether the courts should be provided with the discretion to award a remedy denominated in certain crypto-tokens in appropriate cases.

The consultation does not consider regulation of crypto-tokens and other digital assets, which is dealt with by other bodies including HMT and the FCA.

Comments are due by 4 November 2022.

Bank of Italy publishes provisions on ownership structures of banks and other intermediaries

The Bank of Italy has adopted a [new set of provisions](#) regarding the ownership structures of banks, financial intermediaries, electronic money institutions, payment institutions, investment firms and investment managers.

The updated provisions implement the relevant EU and national regulations currently in force as well as the guidelines of the relevant EU authorities.

The scope of application of this new regulation concerns: the authorisation and criteria for calculating qualified holdings, cases of significant influence and involuntary acquisition of a qualified holding; indicators of structures acting in concert and disclosure requirements regarding qualified holdings.

The provisions will enter into force on 1 January 2023.

CSSF publishes regulation on equivalence of China and Australia for purposes of MiFIR third country national regime

The Luxembourg financial sector supervisory authority (CSSF) [Regulation No. 22-04 of 20 July 2022](#) amending CSSF [Regulation No. 20-02 of 29 June 2020](#) on the equivalence of certain third countries with respect to supervision and authorisation rules for the purpose of providing investment services or performing investment activities and ancillary services by third-country firms, as amended by CSSF Regulation No. 20-09 of 14 December 2020 has been published in the Luxembourg official journal (Mémorial A).

The Regulation adds the People's Republic of China and Australia to the list of jurisdictions which are deemed equivalent for the purpose of applying the MiFIR national third-country regime in accordance with the provisions of Article 32-1(1) of the Law of 5 April 1993 on the financial sector, as amended.

The Regulation entered into force on 20 July 2022.

CSSF clarifies process for regulated investment funds to submit new reports

The CSSF has issued a [communication](#) to clarify the process for the submission of the self-assessment questionnaire (SAQ), separate report (SR) and management letter (ML) introduced by CSSF Circular 21/790 on 22 December 2021.

Luxembourg-based UCITS, UCIs part II, SIFs, and SICARs are subject to [Circular 21/790](#) and must submit these three reports through the CISERO module on eDesk.

The CSSF has clarified that, should the managers or directors (dirigeants) of the regulated investment fund rely on the support of service providers for the completion of the SAQ and the submission of the three reports to the CSSF, they remain ultimately responsible for the content of the SAQ and have to perform a formalised review and validation of the content of the SAQ before its submission to the CSSF in any case.

Where the regulated investment fund has appointed a Chapter 15 ManCo, Chapter 16 ManCo, authorised AIFM, registered AIFM or a management company that is not located in Luxembourg, the 'authorised user(s)' of these IFMs are granted automatic access to the CISERO module on eDesk and have the ability to complete and, for those designated as 'Board member' or 'Conducting Officer' in eDesk, submit the reports to the CSSF.

Where the regulated investment fund has not appointed an IFM, one of its service providers can complete the SAQ and submit the reports in the CISERO module.

In all cases, the managers or directors (dirigeants) of the regulated investment fund always have the ability to complete the SAQ and submit the reports themselves and always remain responsible for the content of the SAQ.

The CSSF has also reiterated that the auditor of the regulated investment fund only has access to the SR and ML and such access is only granted once the field 'Auditor' in the CISERO module has been duly filled.

Finally, the CSSF has specified that, if the managers or directors (dirigeants) of the investment fund intend to complete the SAQ and submit the reports themselves, they must follow the steps detailed in the [eDesk Authentication User Guide](#) in order to have 'advanced user(s)' accepted by the CSSF. These advanced users will be able to give access to 'designated user(s)' (who can complete the SAQ) and specify which ones have the role of 'Board member' (who also can submit the reports in addition to completing the SAQ).

CSSF expects to receive investment funds' precontractual documents updated pursuant to SFDR RTS by 31 October 2022

The CSSF has issued a [communication](#) to remind financial market participants in the investment fund industry of the upcoming SFDR related requirements and to inform them about specific processes with the CSSF.

In particular, the CSSF notes that:

- financial products subject to Article 8 and Article 9 of SFDR must present, by 1 January 2023, precontractual disclosure documents in the format of the templates set out in the annexes of the SFDR RTS;
- financial products subject to Article 8 and Article 9 of SFDR must also include in the precontractual disclosure documents information with regard to the environmental objectives referred to in Article 9, points (c) to (f) of the Taxonomy Regulation; and
- the SFDR RTS require that the mandatory website product disclosures be under a separate website section titled 'Sustainability-related disclosures'.

The CSSF has indicated that it expects to receive the updated precontractual documents by 31 October 2022 at the latest and will give priority for visa stamping to submissions that only reflect the changes pertaining to sustainability related disclosures. The CSSF will endeavour to release the visa stamp prior to 31 December 2022 for submissions that are complete, compliant and submitted by 31 October 2022. The updated precontractual documents will have to be accompanied by an RTS confirmation letter on the basis of a template that the CSSF will post on its website shortly.

HKMA publishes new code of practice chapter on liquidity and funding in resolution

The Hong Kong Monetary Authority (HKMA) has published a new code of practice chapter titled '[Resolution Planning – Liquidity and Funding in Resolution](#)' under the Financial Institutions (Resolution) Ordinance (FIRO).

The new chapter sets out the HKMA's expectations regarding the capabilities and arrangements that an authorised institution (AI) should have in place, in business as usual, in order to address the potential impediment to orderly resolution that would arise if an AI were unable to assess its liquidity and funding needs and access funding in resolution.

Separately, the HKMA has updated its code of practice chapter titled '[Operational Independence of the Monetary Authority as Resolution Authority](#)'. The revisions are intended to reflect certain changes in the reporting lines

within the Resolution Office of the HKMA since its establishment. The Resolution Office continues to remain operationally independent and report directly to the HKMA as a resolution authority under the FIRO.

HKMA issues revised SPM on operational risk management

The HKMA has issued its revised [Supervisory Policy Manual \(SPM\) module on operational risk management](#) (OR-1). The revised module is intended to implement the Basel Committee on Banking Supervision (BCBS)'s revised principles for sound management of operational risk issued in March 2021.

The HKMA expects every authorised institution to implement its revised module within 18 months from 25 July 2022 i.e. no later than 25 January 2024, except for the areas related to operational resilience as set out in paragraph 1.5.2. Such areas should follow the implementation timelines for the new SPM module OR-2 on operational resilience based on the HKMA's circular dated 31 May 2022.

MAS publishes circular on disclosure and reporting guidelines for retail ESG funds

The Monetary Authority of Singapore (MAS) has published a [circular](#) on disclosure and reporting guidelines for retail environmental, social and governance (ESG) funds following its industry consultation on the same topic in January 2022.

The circular applies to authorised or recognised funds which use or include ESG factors as their key investment focus and strategy (i.e. ESG factors significantly influence the relevant fund's selection of investment assets) and represent themselves as ESG-focused schemes (ESG funds).

The circular:

- elaborates on the MAS's expectations concerning existing requirements regarding the naming of funds; and
- sets out additional disclosure requirements applicable to ESG funds.

The circular states that where a scheme's name includes or uses ESG-related terms, the scheme's investment portfolio/strategy should reflect a substantial ESG focus and comply with the circular.

With regard to disclosure requirements, the circular provides specific guidelines that an ESG fund's prospectus should disclose in terms of investment objective, focus, approach, and associated investment risks and requires all ESG-related terms used in the prospectus to be clearly defined. The circular provides for enhanced reporting and disclosures to be made in the annual reports of an ESG fund as well as additional information that needs to be provided on the manager's website. However, ESG funds that are UCITS schemes classified as falling under Article 8 or 9 of the EU's SFDR are deemed to have complied with such disclosure requirements.

The circular is effective from 1 January 2023 and will apply to prospectuses of ESG funds that are lodged with the MAS on or after the effective date.

RECENT CLIFFORD CHANCE BRIEFINGS

EU Capital Markets Union – an overview of key developments in 2022

The creation of a single market for capital in the EU remains a work in progress, but some key advances have been made so far in 2022.

With the backdrop of the global COVID pandemic and the war in Ukraine, it has been noted that it is more critical than ever to deepen and diversify funding sources for companies of all sizes, strengthen Europe's economic resilience and shore up the financial system in order to keep the European economy and European companies competitive. During the first half of 2022, the EU has accordingly taken key steps towards the implementation of the EU Capital Markets Union and its related action plan.

This briefing paper discusses the key recent developments including proposals on changes to the Central Securities Depositories Regulation, Council agreed positions on ELTIFs, AIFMD and ESAP, and Listing Act to attract SMEs and deep tech start-ups.

<https://www.cliffordchance.com/briefings/2022/07/eu-capital-markets-union--an-overview-of-key-developments-in-202.html>

UK Financial Services and Markets Bill – the future regulatory framework

The new UK Financial Services and Markets Bill should increase the flexibility and reduce the complexity of the UK regulatory regime.

This briefing provides a summary overview of the changes that would be made by the Bill and of the EU-derived legislation that would be revoked, replaced and revised under the new powers.

<https://www.cliffordchance.com/briefings/2022/07/uk-financial-services-and-markets-bill--the-future-regulatory-fr.html>

UK Financial Services and Markets Bill – enacting the future regulatory framework

The new UK Financial Services and Markets Bill aims to implement the outcomes of the government's future regulatory framework review and to make other changes to update the UK regulatory regime.

The Bill would revoke retained EU law on financial services and give HMT broad powers to make regulations restating and revising that law and designating other activities for regulation by the UK regulators. It would also make changes to the UK regulators' objectives and the mechanisms for their accountability.

In addition, the Bill would implement the outcomes of other reviews, including the reviews of the regulation of wholesale markets, financial market infrastructure, digital settlement assets, critical third-party service providers, financial promotions and access to cash and of the regimes for central counterparties and insurers in financial difficulties. It also would give HMT new powers to implement mutual recognition arrangements with other countries and modify the rules for approving changes in control of authorised persons.

This briefing discusses the new Bill.

<https://www.cliffordchance.com/briefings/2022/07/uk-financial-services-and-markets-bill--enacting-the-future-regu.html>

Don't hit snooze on this wake up call – FinCen and BIS warn financial institutions to be alert for potential Russian export control and sanctions evaders

On 28 June 2022, the Financial Crime Enforcement Network and the Department of Commerce's Bureau of Industry and Security issued a joint alert urging financial institutions to increase vigilance for Russian and Belarusian export control evasion attempts. Although it does not establish new legal requirements, the joint alert indicates further cross-government coordination in the collection of information from the financial sector to pursue evaders of trade controls targeting Russia and Belarus. While FinCEN has always expected financial institutions to identify and report suspicious activity connected to possible export control violations, the joint alert provides new information and instructions. The action, as summarized in a joint press release, demonstrates the US Government's reliance on the financial sector to help identify export control violators and potentially increased expectations with respect to such. Bank examiners may refer to this guidance when asking how financial institutions are meeting these expectations. Financial institutions should ensure that their risk management systems and controls and transaction monitoring for suspicious activities are updated to address these new risks and threats.

This briefing discusses the joint alert.

<https://www.cliffordchance.com/briefings/2022/07/don-t-hit-snooze-on-this-wake-up-call---fincen-and-bis-warn-fina.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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