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Digital finance: EU Council approves final texts of MiCA and AML/CTF measures for cryptoassets

The EU Council's Committee of Permanent Representatives has endorsed and published the [final compromise texts of the Markets in Cryptoassets Regulation](#) (MiCA) and the [recast Regulation on information accompanying transfers of funds and certain cryptoassets](#). This follows the provisional agreements reached by EU Council and Parliament negotiators at the end of June.

MiCA establishes an EU regulatory framework for the issuance, offering, intermediation and dealing in cryptoassets, including licensing and conduct of business requirements as well as a market abuse regime with respect to cryptoassets.

The recast Regulation on information accompanying transfers of funds, which is part of a package of legislative amendments designed to strengthen the EU's anti-money laundering and counter terrorist financing (AML/CTF) rules, is intended to improve the traceability of cryptoasset transfers and the identification of suspicious transactions.

The texts still need to be formally approved, first by the EU Parliament plenary and then by the Council, before they can be published in the Official Journal.

CRR/BRRD: EU Council adopts daisy chain regulation

The EU Council has adopted a [regulation](#) setting out targeted amendments to the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD) aimed at improving institutions' resolvability. This follows the EU Parliament adopting the regulation on 13 September 2022.

Known as the 'daisy chain' regulation, amendments include:

- incorporating a dedicated treatment for indirect subscription of instruments eligible for internal minimum requirements for own funds and eligible liabilities (MREL);
- further aligning the treatment of global systemically important institutions (G-SII) groups with a multiple point of entry (MPE) resolution strategy with the treatment outlined in the Financial Stability Board's (FSB's) international total loss-absorbing capacity term (TLAC) sheet; and
- clarifying the eligibility of instruments in the context of the internal TLAC.

The regulation will enter into force on the twentieth day following its publication in the Official Journal.

CRR: EU Commission adopts RTS on assessment of risk weights and appropriateness of LGD values for exposures secured by immovable property

The EU Commission has adopted a [Delegated Regulation](#) setting out regulatory technical standards (RTS) under Articles 124 (4) and 164 (8) of the CRR.

The RTS specify:

- the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property; and
- the conditions to be taken into account for the assessment of the appropriateness of the minimum loss given default (LGD) values for exposures secured by immovable property.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

EMIR REFIT: Reporting technical standards published in OJ

Delegated and Implementing Regulations setting out implementing technical standards (ITS) and RTS on reporting, data quality, data access and registration of trade repositories (TRs) under Regulation (EU) 834/2019 (EMIR REFIT) have been published in the Official Journal.

[Delegated Regulation \(EU\) 2022/1855](#) sets out RTS specifying the minimum details of the data to be reported to TRs and the type of reports to be used.

[Delegated Regulation \(EU\) 2022/1856](#) sets out amending RTS further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access.

[Delegated Regulation \(EU\) 2022/1857](#) sets out amending RTS as regards the details of applications for registration, or the extension of registration, as a TR.

[Delegated Regulation \(EU\) 2022/1858](#) sets out RTS specifying the procedures for the reconciliation of data between TRs and the procedures to be applied to verify compliance by the reporting counterparty or submitting entity with reporting requirements and to verify the completeness and correctness of the data reported.

[Implementing Regulation \(EU\) 2022/1859](#) sets out amending ITS as regards the format for applications for registration or extensions of registration as a TR.

[Implementing Regulation \(EU\) 2022/1860](#) sets out ITS with regard to the standards, formats, frequency and methods and arrangements for reporting.

The Regulations enter into force on 27 October 2022 and apply from 29 April 2024.

ESAs Joint Committee publishes 2023 work programme

The Joint Committee of the European Supervisory Authorities (ESAs) has published its [work programme](#) for 2023.

The Joint Committee intends to continue to focus on consumer and investor protection, retail financial services and investment products, sustainable finance, risks and vulnerabilities for financial stability, digital operational resilience, financial conglomerates and prudential consolidation, as well as accounting and auditing.

EBA publishes report on non-EU entities and foreign currency funding in EU banking sector

The European Banking Authority (EBA) has published a [report](#) assessing the market share of non-EU entities in the EU banking system and EU banks' dependence on funding in foreign currencies.

Key findings as of June 2021 include that:

- 360 banks controlled by non-EU entities operated in the EU, of which 243 had the legal form of subsidiaries and 117 operated as branches;
- non-EU entities with the global ultimate parent located in the UK and US represent more than three quarters of the market share of all non-EU entities;
- the market share of non-EU entities is 12.2% of total assets, 11.4% of loans, 6.6% of debt securities and 31.4% of derivatives, with non-EU investment banks and one large non-EU clearing house representing more than half of the assets of all non-EU entities operating in the EU;
- non-EU entities' business models are concentrated on wholesale banking, clearing and settlement and investment banking services, with limited exposure to EU households on both the asset side and the liability side;
- around 20% of EU banks' fees and commissions expenses were credited to non-EU operators, most commonly for payment services, clearing and settlement and custody services;
- 19% of EU banks' total funding was denominated in significant foreign currencies;
- the US dollar (USD) and the pound sterling (GBP) show the lowest liquidity coverage ratio (LCR) levels for EU banks; and
- net stable funding ratios (NSFRs) in some significant currencies were below 100%.

Among other things, the EBA has concluded that:

- overall, exposures at the aggregate level do not give rise to concern;
- over time, the EU should mitigate the medium-term financial stability risks arising from potential disruptions to services provided by non-EU entities by developing competitive alternatives; and
- low levels of LCR in one or several significant currencies may cause problems during stress periods when liquidity may be scarce and the FX swaps markets may become difficult to access.

EBA responds to EU Commission on energy derivatives markets

The EBA has submitted its [response](#) and a letter to the EU Commission regarding the current level of margin and of excessive volatility in energy derivatives markets.

The EBA response provides an initial analysis and stock-take of how banks provide collateral transformation services, which broadly finds that:

- market-based solutions, where banks provide clearing services to energy firms, are already in place;
- banks are already providing significant levels of support to energy companies by facilitating the posting of collateral towards central clearing counterparties (CCPs); and
- while the EBA could not identify any potential changes to the prudential framework to help alleviate the current situation, efforts to provide more transparency around margin calls would be welcomed.

The response also notes that:

- bank guarantees can already be used as unfunded credit protection if the conditions relating to credit risk mitigation (CRM) under the Capital Requirements Regulation (CRR) are met; and
- any relaxation of prudential standards could have unintended consequences and erode the soundness and risk sensitivity of the regulatory framework.

The EBA intends, in collaboration with the European Securities and Markets Authority (ESMA) and competent authorities, to continue to closely monitor and assess the situation.

Basel Committee reports on the implementation of Basel III reforms

The Basel Committee on Banking Supervision (BCBS) has published a [progress update](#) on the adoption of the Basel regulatory framework.

The update sets out the adoption status of Basel III standards in member jurisdictions as of end-September 2022, including the Basel III post-crisis reforms published by the Committee in December 2017 and the finalised minimum capital requirements for market risk of January 2019. The reforms are due to take effect from 1 January 2023.

According to the BCBS, member jurisdictions have made further progress since the previous report published in October 2021 in implementing standards with past due dates and outstanding standards with the 1 January 2023 due date.

In addition, the BCBS notes that the monitoring dashboard introduced last year has been further refined and provides the full implementation history of standards by member jurisdictions. It encompasses and replaces the existing series of reports published since 2011.

Basel Committee reports on buffer usability and cyclicity

The BCBS has published an [evaluation report](#) assessing the impact of the implemented Basel reforms in relation to buffer usability and cyclicity.

The report follows the July 2021 report on the impact of the COVID-19 pandemic on the Basel reforms and examines the lending implications and market reactions regarding:

- capital buffer usability;
- countercyclical capital policy;
- liquidity buffer usability; and
- expected credit loss provisioning, capital and procyclicality.

Findings include:

- indications of a positive relationship between lending and banks' capital headroom;
- that temporary reductions in capital requirements supported lending during the COVID-19 pandemic;
- little evidence to suggest that reluctance by banks to use liquid asset buffers affected their lending and market activity; and
- little sign of procyclical effects on lending during the COVID-19 pandemic related to the introduction of the expected credit loss (ECL) framework.

The report is intended to inform the Financial Stability Board's (FSB's) final report on exit strategies to support equitable recovery and address effects from Covid-19 scarring in the financial sector, which is to be submitted to the G20 Leaders' summit in November 2022.

The BCBS has also published a [newsletter](#) on positive cycle-neutral countercyclical capital buffer (CCyB) rates.

FCA publishes guidance on consumer duty

The Financial Conduct Authority (FCA) has published additional guidance for firms on the consumer duty in the form of a [new webpage](#).

Following queries received from firms, the FCA has provided additional clarification on the:

- October deadline for implementation plans;
- role of the Board champion; and
- definition of closed products.

The consumer duty comes into effect on:

- 31 July 2023 for new and existing products or services that are open for sale or renewal; and
- 31 July 2024 for closed products or services.

The FCA intends to keep this webpage updated.

FCA consults on financial resilience regulatory return

The FCA has launched a [consultation](#) (CP22/19) on proposals to introduce a new financial resilience regulatory return for solo-regulated firms.

The proposed new financial resilience regulatory return would replace the FCA Financial Resilience Survey (formerly the COVID-19 Impact Survey). The data collected from the regulatory return is intended to help the FCA rapidly to assess financial resilience risks at firms, resulting in early intervention where appropriate.

By replacing the Financial Resilience Survey with a regulatory return, the FCA aims to:

- reduce the administrative and financial burden that an ad hoc survey places on firms; and
- increase the quality and consistency of financial resilience data received from the FCA's solo-regulated firms.

Comments are due by 2 December 2022.

The FCA intends to publish a policy statement and final rules in spring 2023.

CSSF regulation on setting of countercyclical buffer rate enters into force

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [new regulation](#) (22-06) on the setting of the countercyclical buffer rate for the fourth quarter of 2022. The regulation was published in the Luxembourg official journal (Mémorial A) on 5 October 2022.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 2 September 2022 (CRS/2022/007) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the fourth quarter of 2022. This rate is applicable since 1 January 2021.

The regulation entered into force on 5 October 2022.

CSSF issues circular on survey of amount of covered deposits held on 30 September 2022

The CSSF, acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued [CSSF-CPDI circular 22/31](#) regarding its survey of the amount of covered deposits held as of 30 September 2022.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus accounts. The volume of

eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where FGDL members wish to ensure deposit protection for relevant beneficiaries and to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, including branches located within other EU Member States, by 28 October 2022 at the latest.

In order to transmit these data, institutions should complete the table attached to the circular, which is also available on the CSSF's website. The file containing the data must be duly completed and submitted regardless of the circumstances in which the entity may find itself. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted through secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

CSSF announces public private partnership with Luxembourg Bankers' Association and Financial Intelligence Unit

The CSSF, has issued a [press release](#) to announce the signing of a Public Private Partnership (PPP) on 13 September 2022 with the Luxembourg Bankers' Association, the Association des Banques et Banquiers Luxembourg (ABBL), and the Luxembourg Financial Intelligence Unit (FIU), the Cellule de Renseignement Financier (CRF).

The purpose of the PPP is to further strengthen collaboration between the CSSF, the ABBL and the CRF in the fight against money laundering and the financing of terrorism by pooling together their knowledge and skills to prevent, detect and combat these crimes. The PPP further intends to help provide clarity on risks related to specific activities, typologies of crimes, regulatory expectations, and aims at identifying specific areas or issues where more regulatory guidance is needed.

The PPP will operate through an expert working group on compliance with an expert working sub-group on private banking.

Spanish Parliament passes Act on Creation and Growth of Companies

The Spanish Parliament has enacted the [new Act on the Creation and Growth of Companies](#) (Act 18/2022), which contains amendments to certain securities markets and financial regulatory statutes. The Act is generally intended to enhance the process of company incorporation and reduce regulatory and financial barriers that hinder the growth of companies, in order to increase competition for the benefit of consumers, productivity, and resilience of companies while promoting the creation of employment.

Chapter V of the Act introduces a new regulatory framework for crowdfunding platforms by adapting the current Spanish regulation to the EU legal framework (Regulation (EU) 2020/1503 on European crowdfunding service providers for business). The Act also provides for a transition period for crowdfunding platforms authorised under the previous regime to ensure compliance with the new EU legal framework.

Chapter VI includes a new set of rules seeking to promote and enhance collective investment and venture capital in Spain. In particular, the Act (a) incorporates express references to European Long Term Investment Funds (ELTIFs), providing them with a similar level of recognition to other EU vehicles; (b) removes the mandatory quarterly reporting obligation; (c) sets electronic means as the default communication method with shareholders and investors; and (d) allows for the incorporation and authorisation of AIFMs and UCITS management companies as either private limited companies or public limited companies.

Chapter VI also introduces new rules intended to boost the Spanish risk-capital industry, such as:

- introducing a new category of closed-ended AIFs focused on debt investments;
- expanding the range of eligible investments of Spanish risk-capital closed-ended AIFs, so as to allow them to invest in fintech;
- amending the diversification regime so as to adapt it to international standards and industry practices;
- aligning domestic legislation with the concept of ‘qualifying portfolio undertaking’ under Regulation (EU) No 345/2013 on European venture capital funds;
- allowing for the incorporation and authorisation of AIFMs as either private limited companies or public limited companies; and
- allowing for the distribution of Spanish risk-capital closed-ended AIFs among retail investors, i.e. where the investment decision is based on a personal recommendation made in the context of the provision of investment advice rendered by a duly authorised entity (i.e. investment firm, credit institution or otherwise) and the relevant investor commits to making an investment of least EUR 10,000, with one exception – retail investors with a financial net worth of less than EUR 500,000 shall not be able to make investment commitments for amounts exceeding 10% of their financial net worth.

The first final provision of the Act amends Act 41/1999 on payments and securities settlement systems to allow central securities depositories to settle payments through accounts in a credit institution when there is no access to central bank accounts or settlement mechanisms (in accordance with Regulation (EU) 909/2014).

The third final provision of the Act amends the current regime for the protection of banking clients envisaged in Act 10/2014 on banking solvency and supervision, while empowering the Ministry of Economic Affairs and Digital Transformation to elaborate rules on how lending businesses operate.

Act 18/2022 will enter into force on 18 October 2022, except for Chapter V, which will enter into force as of 10 November 2022.

Bank of Spain consults on draft circular to amend Circular 1/2013 on the Risk Information Centre

The Bank of Spain has issued for consultation a [draft circular](#) to amend Circular 1/2013 of 24 May on the Risk Information Centre (Central de Información de Riesgos (CIR)).

The aim of the draft circular is to adapt Circular 1/2013 to changes made by Order ETD 600/2022 of 29 June, which requires declaring entities to report, from 2 January 2023, on an individual basis to the CIR any operation carried out by persons whose accumulated risk with the entity is equal or above EUR 3,000.

The draft circular also clarifies and brings in new requirements laid down in a letter sent by the General Director of Financial Stability, Regulation and Resolution (Director General de Estabilidad Financiera, Regulación y Resolución) to declaring entities dealing with certain information reporting obligations to the CIR as established by the Code of Good Practice (Código de Buenas Prácticas) for the framework of renegotiation for clients having financial support derived from the Royal Decree Law 5/2021 of 12 March (Real Decreto-ley 5/2021, de 12 de marzo, de medidas extraordinarias de apoyo a la solvencia empresarial en respuesta a la pandemia de la COVID-19).

Finally, further amendments are incorporated concerning the AnaCredit information reporting system to adapt it to the EBA 3.0 reporting scheme.

Comments on the draft circular are due by 25 October 2022.

Swiss Federal Council commissions revision of Financial Market Infrastructure Act and clarifies reporting duty for derivatives transactions

The Swiss Federal Council has [commissioned](#) a revision of the Financial Market Infrastructure Act (FinMIA). The FinMIA governs the authorisation and duties of financial market infrastructures and the conduct of financial market participants in securities and derivatives trading. It has been in force since January 2016. As already announced by the Federal Council prior to the Act's entry into force, the Federal Department of Finance (FDF) has now carried out a comprehensive review of the FinMIA and presented its report.

In the report, the FDF concludes that the FinMIA has largely stood the test of time since it entered into force in 2016. However, it also identifies a need for action in certain areas. On that basis, the Federal Council has now instructed the FDF to prepare a consultation draft by mid-2024.

The Federal Council has also decided that the reporting duty for derivatives transactions envisaged in FinMIA will be postponed for small non-financial counterparties (e.g. industrial companies) via an ordinance amendment. It will not enter into force until 1 January 2028, to give time to Parliament to make a decision. In this way, the Federal Council is seeking to create legal certainty for the companies concerned. The reporting duties already applicable to other market participants are unaffected.

HKMA consults on adjustments to Basel III final reform package implementation

The Hong Kong Monetary Authority (HKMA) has launched a [consultation](#) with the banking industry regarding certain adjustments to its proposals for the implementation of the Basel III final reform package. To allow more time for the industry to prepare for the necessary system changes for the adoption and the regulatory data reporting required, the following amendments to the timeline are proposed:

- the implementation date of those standards associated with credit risk, operational risk, the output floor, and the leverage ratio is to be adjusted from 1 July 2023 to a date no earlier than 1 January 2024; and
- the new standards for market risk and credit valuation adjustment risk are to take full effect on a date no earlier than 1 January 2024. However, the reporting-only period for these two standards will be shifted from 1 July 2023 to 1 January 2024.

The HKMA is also proposing adjustments to its policy proposals to align more closely with the Basel requirements. The adjustments are related to the output floor phase-in arrangement and the minimum loan-to-valuation based risk-weight of residential real estate exposures under the revised standardised approach and the related changes as a result of the latest calibration.

Comments on the consultation are due by 4 November 2022.

MAS launches ESG Impact Hub

The Monetary Authority of Singapore (MAS) has [launched](#) the ESG Impact Hub, which is intended to spur co-location and collaboration between environment, social, governance (ESG) fintech start-ups and solution providers, financial institutions, and real economy stakeholders.

The Hub seeks to capitalise on the industry interest in Project Greenprint and expedite the growth of Singapore's ESG ecosystem by:

- growing ESG fintechs, wherein the Hub will facilitate the discovery, scaling and deployment of technology solutions to address ESG needs of corporates and financial institutions, notably in terms of accurate measurement, reporting and verification of climate and sustainability data;
- anchoring ESG enablers, wherein the MAS will engage knowledge partners, financial institutions, and investors to organise key ESG initiatives out of the Hub, such as ESG fintech accelerator programmes, training and capacity-building workshops, and thought leadership events; and
- supporting ESG stakeholders, wherein the MAS will engage the Hub community to deploy its programmes and solutions to drive material, quantifiable impacts that support sectoral transition efforts, with particular emphasis on the eight focus sectors identified by the Green Finance Industry Taskforce.

The MAS has also indicated that it will continue to engage key stakeholders in building the Hub's onsite community and fostering partnerships to enhance financial sector access to climate and sustainability data, to support more efficient deployment of capital towards green and sustainable projects.

MAS publishes guidance on applicable requirements to exchange traded funds participation in SZSE-SGX ETF Link

The MAS has published a [circular](#) providing guidance on requirements that are applicable to a Singapore constituted feeder exchange-traded fund (ETF) which intends to participate in the Shenzhen Stock Exchange- Singapore Exchange Limited (SZSE-SGX) ETF Link.

The circular follows the signing of a memorandum of understanding in December 2021 between the SGX and the SZSE to establish an ETF link for

the listing of feeder ETFs on SGX that will feed into master ETFs that are listed on SZSE and vice versa.

Amongst other things, the MAS expects feeder ETFs to:

- comply with the authorisation and disclosure requirements for collective investment schemes under the Securities and Futures Act 2001 and the Code on Collective Investment Schemes;
- note that they are also subject to the applicable listing rules of the Singapore Exchange Securities Trading Limited; and
- note that while assessing an application for authorisation from a feeder ETF, the MAS will deem a SZSE-listed master ETF to have satisfied the requirements under paragraph 1.4(b) of Appendix 1 of the Code if all of the listed criteria in the current circular are met.

MAS responds to feedback received on proposed amendments to Business Trusts Act

The MAS has published its [responses](#) to the feedback received on its November 2021 public consultation on the proposed amendments to the Business Trusts Act 2004 (BTA).

The proposed amendments mainly sought to align the BTA with the Companies (Amendment) Act 2014, the Companies (Amendment) Act 2017, and the regulatory regime for Real Estate Investment Trusts, and to streamline and clarify regulatory requirements in response to industry feedback.

In its response to the feedback received, the MAS has confirmed that respondents were generally supportive of the proposed amendments, particularly those on:

- disclosures and trust administration;
- unitholders' rights and general meetings;
- auditors and financial statements; and
- governance and right of compulsory acquisitions.

The MAS has also set out its views on two specific matters, namely penalties for contraventions of requirements to maintain beneficial ownership information, and administrative restoration of deregistered BTs.

Feedback, where appropriate, has been incorporated into the Business Trusts (Amendment) Bill 2022, which has been moved for its [second reading](#) in the Singapore Parliament. When passed, it will come into operation on a date that the Minister appoints by notification in the Government's Official Gazette.

RECENT CLIFFORD CHANCE BRIEFINGS

Porsche — a model for the pan-European retail IPO

On 29 September 2022, the Porsche Initial public offering (IPO) was priced at EUR 82.50 per share at the top end of the price range. The offering was significantly oversubscribed and concluded the largest IPO by market capitalization in European history with EUR 78 billion at IPO. The Porsche IPO also included a never before implemented pan-European retail offering across six European jurisdictions with approximately 280 million people.

This briefing paper discusses the considerations for a pan-European retail IPO, its economic, marketing and other benefits for an issuer and outline the legal challenges and obstacles. It also gives context for the IPO and the retail component to provide future European issuers with strong brand recognition a basis for their decision to also include a broader retail offering modelled after the Porsche IPO.

<https://www.cliffordchance.com/briefings/2022/10/porsche--a-model-for-the-pan-european-retail-ipo.html>

UK Retained EU Law (Revocation and Reform) Bill – Impact on financial services

The UK Retained EU Law (Revocation and Reform) Bill introduced into Parliament in late September will sunset a large part of retained EU law at end 2023, give the Government new powers to restate, revoke and replace outstanding retained EU law and change the UK law status of any remaining retained EU law. The sunset mechanism will not apply to financial services legislation covered by the UK Financial Services and Markets Bill introduced into Parliament in July, but the new Bill may affect financial services in other ways.

This briefing paper explores the impact of the new Bill on financial services and compares how the two Bills would operate to revoke, restate and revise retained EU law.

<https://www.cliffordchance.com/briefings/2022/10/uk-retained-eu-law--revocation-and-reform--bill--impact-on-finan.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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