

INTERNATIONAL REGULATORY UPDATE 16 – 20 JANUARY 2023

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Eurogroup issues statement on digital euro

The Eurogroup has issued a [statement](#) on the digital euro following a meeting taking stock of the project.

Among other things, the Eurogroup:

- emphasised that the introduction of a digital euro as well as its main features and design choices require political decisions that should be discussed and taken at the political level;
- welcomed the EU Commission's intention to table in H1 2023 a legislative proposal establishing the digital euro and regulating its main features;

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- reaffirmed its support for the preparatory work for the potential issuance of a digital euro;
- called for consideration of the environmental implications of the digital euro design;
- noted the need for the digital euro to ensure a high level of privacy and compliance with other policy objectives;
- supported the exploration of offline functionality;
- noted that potential risks to financial stability should be limited, such as by imposing holding limits;
- agreed that supervised intermediaries could play an important role in the digital euro ecosystem;
- noted that the digital euro should at all times be convertible at par with other forms of the euro, such as banknotes and commercial bank deposits;
- noted that granting the digital euro legal tender status should be considered; and
- noted that interoperability with other central bank digital currencies (CBDCs) should be an important feature, including for cross-currency transactions.

MiFID2/MiFIR Review: EU Commission adopts amendments to transparency requirements

The EU Commission has adopted two Delegated Regulations making targeted amendments to regulatory technical standards (RTS) [on equity transparency](#) and [non-equity transparency](#) under MiFIR.

The amendments broadly seek to improve and further harmonise data quality for post-trade transparency reports, as well as to increase the level of pre- and post-trade transparency, particularly in view of the establishment of a consolidated tape.

The Regulations will enter into force 20 days following their publication in the Official Journal.

MiFID2/MiFIR Review: ESMA consults on post-trade transparency manual

The European Securities and Markets Authority (ESMA) has published a [consultation paper](#) on proposals on Level 3 guidance, in the form of a manual, on post-trade transparency.

The consultation is based on the texts of revised RTS on equity transparency and non-equity transparency under MiFIR adopted by the EU Commission on 17 January 2023.

The proposed manual, which broadly aims to improve the consistency and usability of the information published, consists of:

- a general overview of the post-trade transparency regime;
- legal references to MiFIR/MiFID2, RTS 1 and 2, and opinions and guidelines;
- guidance included in previously published Q&As; and

- additional Level 3 guidance.

Comments are due by 31 March 2023. ESMA intends to publish a final report and the manual after the endorsement of the reviewed RTS by all co-legislators.

MiFID2: ESMA launches common supervisory action on marketing communications

ESMA has [launched](#) a common supervisory action (CSA) with national competent authorities (NCAs) on the application by investment firms and credit institutions of MiFID2 requirements on marketing communications.

The CSA will review, among other things:

- whether communications, including advertisements, are fair, clear and non-misleading;
- how firms select the target audience for marketing communications, especially for riskier and more complex investment products;
- distribution channels, including apps, websites, social media and collaborations with affiliates such as influencers; and
- possible greenwashing practices.

The CSA will be conducted over the course of 2023.

MREL: EBA publishes quantitative report

The European Banking Authority (EBA) has published its [annual quantitative report](#) on minimum requirement for own funds and eligible liabilities (MREL) with data as of December 2021.

The report is complemented by an analysis looking into the impact of the MREL framework on banks and financial markets. Key findings of the report include that:

- the EBA received 337 external MREL decisions that cover 81.2% of EU banking sector assets, with bail-in as the prominent strategy covering 77.3% of EU banking sector assets;
- the MREL requirement for the 245 banks subject to an external MREL requirement was on average 22.6% of TREA with a combined buffer requirement of 3.3% of TREA. The MREL requirement for the 133 non-resolution entities subject to an internal MREL was on average 20.2% of TREA with a combined buffer of 2.9%;
- 70 banks out of a sample of 245 reported an MREL shortfall of EUR 33 billion (down by 42% compared to last year's quantitative report on MREL);
- resolution entities made progress in complying with MREL by increasing the stock of eligible instruments rather than from deleveraging;
- own funds instruments represent the main source to comply with MREL, while senior nonpreferred has become the most important type of eligible debt;
- most resolution banks have shown high levels of issuance over 2021;
- the cost of MREL issued so far is generally manageable for all banks but varies by type of banks;

- there was limited impact on banks' profitability of closing MREL shortfalls overall, but some banks face difficulties; and
- at aggregated level, banks facing difficulties to issue remain limited in terms of total assets, but they can represent a significant share of total assets in some member states.

FSB reports on progress of implementation of G20 non-bank financial intermediation reforms

The Financial Stability Board (FSB) has published a [report](#) describing the progress in implementing the G20 non-bank financial intermediation reforms, which are intended to strengthen the oversight and regulation of non-bank entities.

The report finds that:

- jurisdictions have made progress in implementing Basel III reforms to mitigate spillovers between banks and non-bank financial entities, but implementation is not yet complete;
- adoption of the 2012 International Organization of Securities Commissions (IOSCO) recommendations to reduce the run risk of money market funds (MMFs) is most advanced in the largest MMF markets;
- adoption of the IOSCO recommendations on incentive alignment approaches for securitisation and of the Basel Committee on Banking Supervision standard on the revised securitisation framework is ongoing;
- implementation of FSB recommendations for dampening procyclicality and other financial stability risks associated with securities financing transactions (SFTs) is incomplete and continues to face significant delays in most jurisdictions; and
- implementation of most FSB recommendations to assess and mitigate systemic risks posed by other non-bank financial entities and activities is ongoing.

Covered bonds: Bank of Italy publishes consultation document

The Bank of Italy has published a [consultation document](#) on covered bonds, including a set of proposed amendments to Circular No. 285 of 17 December 2013. The amendments are intended to implement the Covered Bonds Directive (2019/2162/EU) and Regulation (2019/2060) following the amendments to the applicable primary legislation made by the Italian lawmaker.

Comments are due by 11 February 2023.

Financial Markets Amendment Act 2022 enters into force

The [Financial Markets Amendment Act 2022](#) has entered into force.

One of the main changes relates to the introduction of segregated bank accounts as a new means of safeguarding customer funds for payment institutions, investment firms, electronic money institutions and payment processing service providers. The introduction of a segregated payment account is intended to address the shortcomings experienced with the method currently used by many Dutch financial institutions (FIs) to segregate customer

funds: the customer funds foundations (stichting derdengelden). Although commonly used in the Netherlands, customer funds foundations are not well known in other jurisdictions. This complicates cross-border transactions, particularly as non-Dutch parties sometimes refuse to pay to the customer funds foundation given their uncertainty as to whether it discharges their debt to the FI. A foundation is also relatively costly and complex. The proposal resolves these issues and also aligns Dutch law with the practice in other countries.

In addition, the amendment act increases the amounts of fines and periodic penalty payments which are returned to the financial sector, as the costs of supervision have increased in recent years.

Decree on implementation of directive on key information documents for UCITS enters into force

The [Decree on the implementation of the directive on key information documents for UCITS](#) has entered into force.

As of 1 January 2023, a UCITS manager offering participation rights in a UCITS to non-professional investors needs to draw up a key information document (KID).

Decree on the implementation of the directive on key information documents for UCITS

Law on further compensation measures for financial undertakings enters into force

The [Law on further compensation measures for financial undertakings](#) has entered into force. The law includes a number of amendments with regard to remuneration measures for the financial sector. The amendments relate to:

- a statutory retention period of five years for, among other things, shares in the fixed remuneration of directors and employees of financial undertakings;
- a legal obligation for financial undertakings to account for and be accountable for the ratio of the remuneration to the social function of the undertaking and the realisation thereof; and
- a tightening of the possibility to deviate from the bonus cap for non-CAO personnel.

In addition, the bill contains a number of more technical amendments to the remuneration rules in the Financial Supervision Act (Wet Financieel Toezicht).

MAS revises Code of Corporate Governance to reflect independent director tenure limit and mandatory remuneration disclosure for directors and CEOs

The Monetary Authority of Singapore (MAS) has [introduced](#) amendments to the Code of Corporate Governance pursuant to the Singapore Exchange Regulation (SGX RegCo)'s listing rule changes that will require a nine-year tenure limit for independent directors (IDs) and mandatory remuneration disclosure for each individual director and chief executive officer (CEO).

First issued in 2001, the Code requires listed companies under the SGX Rules to disclose their corporate governance practices and give explanations for

deviations from the Code in their annual reports. The aforementioned listing rule changes stem from the recommendations of the Corporate Governance Advisory Committee (CGAC) in September 2022, followed by the SGX RegCo's consultation launched in October 2022 and its responses released in January 2023.

Key updates from the SGX RegCo listing rule changes include:

- that IDs whose tenure exceeds the nine-year limit can continue to be deemed independent until the issuer's annual general meeting (AGM) held for the financial year ending on or after 31 December 2023, thereby giving affected issuers more than a year to search for new IDs;
- removal, with immediate effect, of the two-tier voting mechanism for companies to retain long-serving IDs who have served for more than nine years; and
- remuneration disclosure amendments, effective for annual reports prepared for the financial years ending on or after 31 December 2024, that will require companies to disclose remuneration paid to individual directors and CEOs by the issuer and its subsidiaries.

The MAS has also updated the accompanying [practical guidance](#) to the Code and plans to amend its Notice to all holders of a capital markets services licence for real estate investment trust management to reflect the change in remuneration disclosure requirements for directors and CEOs of REIT managers from comply or explain to mandatory.

The amendments to the Code will take effect on 1 January 2025, in alignment with the implementation of the SGX Listing Rules requirements.

MAS financial institutions transactions platform goes live

[MAS-Tx](#), the MAS's FIs transactions platform, has gone live.

Earlier known as FITx, the MAS-Tx is a portal that consolidates FI regulatory transaction data across different MAS systems in a single place, thereby allowing FIs to view their upcoming tasks, retrieve past transactions, and navigate to submission channels from a single place.

With the exception of an entity's initial licence application, the MAS-Tx will support navigation to all other capital market-related transactions listed in the MAS' compliance toolkits. The relevant compliance toolkits are the Securities and Futures Act compliance toolkits, compliance toolkit for financial advisers, compliance toolkit for insurance brokers, and the compliance toolkit for the trust industry.

New submission channels have been created for all regulatory applications, notifications and submissions that were previously submitted to the MAS via email and Form SG. Only submissions made through the updated submission channels will be recorded in the MAS-Tx as past transactions. The MAS has encouraged FIs to navigate to the MAS-Tx submission channels so that they can be certain that they are using the latest forms and the correct submission channels for each transaction.

To reflect correct submission channels, the MAS has [revised](#) its compliance toolkits for licensed fund management companies (LFMCs), registered fund management companies (RFMCs) and venture capital fund managers

(VCFMs) relating to various MAS approval and reporting requirements and timelines.

The MAS-Tx will replace the MASNet portal by end 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

Financial collateral agreements and the Dutch scheme (WHOA) – changes with effect from 1 January 2023

Early 2022, after a public consultation, a Bill was introduced to Parliament to make certain changes to Dutch bankruptcy law to implement the EU Restructuring Directive 2019/1023. This Bill, which became law on 1 January 2023, also amends certain aspects of the WHOA and these changes are likely to benefit creditors whose claims are secured by way of a financial collateral arrangement significantly.

This briefing paper discusses its implications for financial transactions and derivatives with Dutch entities that are covered by the WHOA.

Moreover, for unsecured creditors the explanatory remarks to the new law contain a novel and beneficial interpretation of protections available to them in case they are faced with a default by their debtor prior to a stay period imposed under a Dutch Scheme. This aspect is also addressed in the briefing.

<https://www.cliffordchance.com/briefings/2023/01/financial-collateral-agreements-and-the-dutch-scheme-whoa.html>

China issues new regulations on medium and long-term foreign debt

On 5 January 2023, the National Development and Reform Commission (NDRC) released the Administrative Measures for the Review and Registration of Medium and Long-Term Foreign Debt of Enterprises (the Foreign Debt Measures), which will take effect on and from 10 February 2023. The Foreign Debt Measures will replace the Circular on Promoting the Reform of the Filing and Registration Regime for Issuance of Foreign Debt by Enterprises (commonly known as Circular 2044).

The Foreign Debt Measures represent a tightening of regulations against PRC enterprises raising medium- and long-term debt (being debt with a tenor of more than one year) outside of the PRC (Foreign Debt) when compared with Circular 2044, while also providing clarification on several key concepts.

This briefing paper discusses:

- the background to the Foreign Debt Measures and the key differences from Circular 2044;
- the scope of the Foreign Debt Measures;
- the enhanced registration and reporting requirements;
- the consequences of failure to register or report;
- the additional compliance obligations and enhanced liability scheme; and
- the impact on lending and debt capital markets transactions.

<https://www.cliffordchance.com/briefings/2023/01/china-issues-new-regulations-on-medium-and-long-term-foreign-debt0.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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