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Digital finance: DORA published in OJ

The [Digital Operational Resilience Act](#) (DORA) and the [DORA Amending Directive](#) have been published in the Official Journal.

DORA is intended to establish a uniform set of requirements for the security of network and information systems of companies and organisations operating in the financial sector, as well as any critical third parties which provide information communication technologies services to them. It is part of the EU Commission's wider digital finance strategy which was published in September 2020.

DORA will enter into force on 16 January 2023 and apply from 17 January 2025.

Revised cybersecurity directive published in OJ

The [directive](#) repealing and replacing the Directive (EU) 2016/1148 on security of network and information systems (NIS2) been published in the Official Journal.

NIS2 is intended to remove divergences among Member States' cybersecurity requirements by:

- setting out minimum rules regarding the functioning of a coordinated regulatory framework;
- laying down mechanism for effective cooperation among national authorities;
- extending the list of sectors and activities subject to cybersecurity obligations; and
- providing remedies and enforcement measures.

NIS2 will enter into force on 16 January 2023 and the transposition deadline is 17 October 2024.

CRD4: RTS and ITS on authorisation of credit institutions published in OJ

[Commission Delegated Regulation \(EU\) 2022/2580](#) and [Commission Implementing Regulation \(EU\) 2022/2581](#) setting out regulatory technical standards (RTS) and implementing technical standards (ITS) respectively under the Capital Requirements Directive (CRD4) have been published in the Official Journal.

The RTS specify the information to be provided in the application for the authorisation as a credit institution and specify the obstacles that may prevent the effective exercise of supervisory functions of competent authorities.

The ITS relate to the application of CRD4 with regard to the provision of information in applications for authorisation of a credit institution.

The Regulations will enter into force on 18 January 2023.

CRD4: RTS on authorisations under Article 8a published in OJ

[Commission Delegated Regulation \(EU\) 2022/2579](#) containing RTS specifying the information to be provided by an undertaking in an application for

authorisation under Article 8a of the CRD4 has been published in the Official Journal.

The Delegated Regulation will enter into force on 18 January 2023.

BaFin publishes circular on online notification of supervisory and administrative board members of capital management companies

The German Federal Financial Supervisory Authority (BaFin) has published its [circular 01/2023](#), enabling capital management companies under its direct supervision to submit certain notifications regarding members of supervisory and administrative bodies required under the German Capital Investment Code (KAGB) via BaFin's Reporting and Publishing Platform (MVP Portal).

Initially, this option will only be available for notifications concerning the appointment of members of administrative and supervisory bodies, with companies being able to report the resignation of such members or any changes through the MVP Portal only if they have already reported their appointment in this way. A respective procedure was made available on the MVP Portal from 2 January 2023.

Once registered for this specialised procedure, the online submission via the MVP Portal becomes mandatory for companies, so that paper documents should not be submitted additionally to BaFin. BaFin will continue to optimise the system, also taking into account feedback from users.

BaFin further plans to extend the MVP Portal in the future to include additional person notifications, in particular those pursuant to sections 34 para 1, 2, 3 number 1 and 2, 119 para 2, 128 para 2, 147 para 2 and 153 para 2 KAGB, such as the notification of the intended appointment or the resignation of management board members.

BaFin publishes new general decree regarding CET1 instruments for cooperative banks

BaFin has published a [new general decree](#) regulating the extent to which shares in cooperative banks issued after 28 June 2013 may be classified as Common Equity Tier 1 (CET1) instruments. In addition, the general decree also specifies the conditions under which the repayment of credit balances based on terminated cooperative shares that constitute CET1 instruments is authorised in advance.

The regulatory framework is provided by the Capital Requirements Regulation (CRR) and the supplementary Commission Delegated Regulation (EU) No. 241/2014 in respect of capital adequacy requirements. While the previous general decree expired at the end of 2022, the new general decree is valid until the end of 2023.

The scope of application is limited to cooperative banks that are not subject to direct supervision by the European Central Bank (ECB).

Revised German Ownership Control Ordinance introducing new requirements for sovereign wealth, private equity and hedge funds enters into force

The amended Ownership Control Ordinance (InhKontrollIV) has [entered into force](#), introducing additional requirements for sovereign wealth, private equity

and hedge funds as well as for investors from non-EEA countries who intend to acquire a qualifying holding in a credit institution, financial service institution, insurance or re-insurance undertaking or pension fund.

The amended InhKontrollV implements amendments made to the German Banking Act (KWG) and the German Insurance Supervision Act (VAG) by the German Risk Reduction Act (RiG) as well as the European Supervisory Authorities' joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

CSSF issues circular on practical rules concerning statutory audit mandate of statutory auditors

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Circular 22/826](#) relating to practical rules concerning the statutory audit mandate of statutory auditors (réviseurs d'entreprises agréés).

The provisions of the circular are applicable to credit institutions incorporated under Luxembourg law, including their branches, as well as Luxembourg branches of third-country credit institutions. The provisions of the circular are not applicable to Luxembourg branches of EU credit institutions.

The purpose of the circular is to define the scope of the statutory audit mandate and the content of the reports and written comments issued by the réviseur d'entreprises agréé (REA) in the context of its audit of the annual accounting documents (audit reports) prepared pursuant to Article 54(1) of the Law of 5 April 1993 on the financial sector (LFS). The circular also clarifies the REA's reporting obligations under Article 54(3) LFS.

The circular draws upon the provisions formerly contained in the Circular CSSF 01/27, the latter being repealed by Circular CSSF 22/821 as of 31 December 2022.

The circular entered into force on 31 December 2022.

CSSF issues regulation concerning systemically important institutions authorised in Luxembourg

The CSSF has issued a [regulation](#) (22-07) concerning systemically important institutions (SIs) authorised in Luxembourg.

The regulation identifies the following SIs authorised in Luxembourg: Banque et Caisse d'Épargne de l'État Luxembourg, Banque Internationale à Luxembourg, BGL BNP Paribas, Clearstream Banking S.A., RBC Investor Services Bank S.A., and Société Générale Luxembourg, all qualifying as other systemically important institutions (O-SIs). There is no global systemically important institution (G-SI) authorised in Luxembourg.

Four of these institutions qualify as O-SIs based on the score obtained by application of the European Banking Authority (EBA) standard methodology, i.e. exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10).

Another institution is identified as an O-SI based on the relevant authority's judgement and the score obtained by application of the enriched methodology. This classification is justified by the importance of this institution for the investment fund sector and its role as depositary bank for undertakings for collective investment (UCI).

Finally, another institution qualifies as an O-SII by application of the prudential judgement and due to its score, which falls below the relevant threshold but remains very close thereto. The identification of this institution is justified by its role as market infrastructure.

The regulation maintains the capital buffer rates for these O-SIIs.

The regulation entered into force on 1 January 2023.

CSSF issues regulation on countercyclical buffer rate for first quarter of 2023

The CSSF has issued [Regulation 22-08](#) on the setting of the countercyclical buffer rate for the first quarter of 2023. The regulation was published in the Luxembourg Official Journal on 2 January 2023.

The regulation provides that the countercyclical buffer rate applicable to relevant exposures located in Luxembourg remains set at 0.50% for the first quarter of 2023.

The regulation entered into force on upon publication.

CSSF amends circular on requirements regarding information and communication technology and security risk management

The CSSF has issued [Circular 22/828](#) amending Circular CSSF 20/750 on requirements regarding information and communication technology (ICT) and security risk management.

The provisions of the circular are applicable to all credit institutions, all professionals of the financial sector (PFS), all payment institutions and all electronic money institutions.

The objective of the circular is to amend paragraph 4 'Additional requirement for payment service providers (PSPs)' of Circular CSSF 20/750 to introduce a form regarding the updated and comprehensive risk assessment of the ICT and security risks related to payment services provided by PSPs (named 'PSP ICT Assessment'), and to provide further information on the objective, the scope and the submission process and deadline related to this form.

The PSP ICT Assessment form shall be used for the first time concerning the calendar year 2022 and submitted to the CSSF no later than 31 March 2023. The amended version of paragraph 4 is presented in tracked changes in the annex to the circular. The revised version of paragraph 4 entered into force on the date of publication of the circular. The circular is applicable as of its publication date.

CSSF updates circular on EU credit institutions and investment firms established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services

The CSSF has issued [Circular 22/827](#) updating Circular CSSF 07/325 on provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services.

The provisions of the circular are applicable to all credit institutions and investment firms.

The purpose of the circular is to amend Circular CSSF 07/325 on provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services, following the introduction of the revised long form report by Circular CSSF 22/821.

The circular draws upon the provisions of the revised long form report and introduces a self-assessment questionnaire to be completed on an annual basis by Luxembourg branches of credit institutions whose head office is in another EU Member State.

The circular also modifies relevant regulatory references following (i) the latest updates made to the Law of 5 April 1993 on the financial sector and to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, and (ii) the entry into force of MiFID2.

The annex of the circular provides details of the amendments to Circular 07/325.

HKMA revises SPM module on risk-based supervisory approach

The Hong Kong Monetary Authority (HKMA) has issued a [revised version](#) of its supervisory policy manual (SPM) module on its risk-based supervisory approach (SA-1).

As set out in its [circular of 30 June 2022](#), the HKMA has developed a two-year plan to embed climate risk considerations more fully into its banking supervisory processes. The revisions made to SA-1 illustrate the HKMA's approach to the supervision of emerging risks such as climate risk under its risk-based supervisory approach. They also seek to align the processes described in SA-1 with the HKMA's current supervisory practices.

Regarding climate risk management, the HKMA encourages authorised institutions to continue to build up their climate risk management capabilities by implementing measures to comply with the supervisory expectations set out in the SPM module 'GS-1 on Climate Risk Management'.

SFC issues circular on thematic review of data standards for order life cycles

The Securities and Futures Commission (SFC) has issued a [circular](#) on its thematic review of data standards for order life cycles. On 31 July 2019 the SFC issued its circular on 'Data Standards for Order Life Cycles' (DS-OL). Since 30 April 2021, licensed securities brokers whose trading turnover in equities listed on the Stock Exchange of Hong Kong Limited in a calendar year (in 2018 or beyond) reaches or exceeds 2% of that year's total market trading volume (in-scope brokers) are required to comply with the DS-OL when submitting trading-related data to the SFC upon request.

Among other things, the thematic review was intended to assess whether the trading-related data processed, maintained and submitted by selected in-scope brokers was in compliance with the minimum content and presentation format prescribed in the DS-OL. The thematic review revealed that some in-scope brokers were still unprepared and a variety of data quality issues

related to the implementation of the data standards were identified for the following types of orders:

- short sell orders;
- multi-day orders;
- client facilitation orders; and
- alternative liquidity pool orders.

The SFC observed that some in-scope brokers also did not devote sufficient resources or assign personnel with the necessary knowledge and authority to oversee the implementation of the data standards and/or misinterpreted the data standards and did not conduct sufficient checking and testing prior to their implementation.

Against this background, the SFC has reminded in-scope brokers of its expected standards of conduct. In particular, in-scope brokers are expected to:

- assign one or more managers-in-charge, who have sufficient expertise and authority to make decisions and allocate resources, to oversee the implementation of the data standards;
- conduct proper testing and reviews prior to the implementation of the data standards; and
- review their current systems having regard to the reporting issues identified and implement necessary system changes and other arrangements to ensure compliance with the data standards.

Taking into consideration the feedback provided by in-scope brokers, the SFC has amended data standards regarding reporting of account ID, tradebook ID and execution events. In-scope brokers are expected to update their systems, where required, and make such data available no later than six months from 22 December 2022.

SFC publishes revised business and risk management questionnaire for licensed corporations and associated entities

The SFC has [published](#) a revised business and risk management questionnaire (BRMQ) for licensed corporations (LCs) and associated entities (AEs).

The BRMQ is a supervisory tool the SFC uses to gather data and information to better understand the industry landscape, monitor market trends and identify emerging issues. The SFC has revised the BRMQ to collect additional data and information on a variety of functions and business activities to enhance the effectiveness of its risk-based supervision of LCs and AEs. For example, new questions have been included to collect more granular client and transaction data to help identify and analyse the money laundering and terrorist financing risk exposures of LCs and AEs.

To allow sufficient preparation time for LCs and AEs, the revised BRMQ will be used for financial years ending on or after 30 November 2023. LCs and AEs are required to submit the BRMQ to the SFC electronically via WINGS.

The SFC has urged LCs and AEs to review and familiarise themselves with the revised questionnaires, start gathering the newly required data and information and make system enhancements where necessary.

MAS revises lodgement practice note for collective investment schemes

The Monetary Authority of Singapore (MAS) has [issued](#) a new version of the lodgement practice note for collective investment schemes (CIS) in connection with the MAS circular on disclosure and reporting guidelines for retail environmental, social and governance (ESG) funds issued on 28 July 2022 coming into force on 1 January 2023. A new Appendix A1 has been added to the practice note, which sets out a compliance checklist for additional matters to be disclosed in prospectuses for schemes that fall within the scope of ‘ESG fund’ as defined in the circular.

To provide further clarity on the circular, the MAS has also published a set of [frequently asked questions](#) on the disclosure and reporting guidelines for retail ESG funds.

RECENT CLIFFORD CHANCE BRIEFINGS

ISDA releases new documentation for secondary market trading in voluntary carbon credits

Voluntary carbon credits (VCCs) play an important role and incentive for parties investing in projects that aim to reduce carbon emissions or remove carbon from the atmosphere. Market interest in VCCs has also expanded in response to an increasing demand for offsetting carbon credits by entities who have climate change goals outside of mandatory schemes.

Standard documentation for secondary trading in VCCs is key to increasing trading activity and building liquidity. With this aim in mind, ISDA has now published documentation to cover secondary trading in VCCs - the 2022 ISDA Verified Carbon Credit Transactions Definitions (VCC Definitions).

This briefing paper discusses the new ISDA documentation.

<https://www.cliffordchance.com/briefings/2022/12/isda-releases-new-documentation-for-secondary-market-trading-in-.html>

President Biden signs omnibus spending bill containing trio of antitrust bills

On 29 December 2022, President Biden signed the Consolidated Appropriations Act of 2023, which contains a trio of previously introduced antitrust proposals: the Merger Filing Fee Modernization Act, the State Antitrust Enforcement Venue Act, and the Foreign Merger Subsidy Disclosure Act. The passage of the Act makes substantial changes for parties filing notifications required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended and for federal antitrust cases brought by state attorneys general. While these changes are significant, they are not as sweeping as other legislation proposed this term, such as the American Innovation and Choice Online Act and the Open App Markets Act.

This briefing paper discusses the Act.

<https://www.cliffordchance.com/briefings/2022/12/president-biden-signs-omnibus-spending-bill-containing-trio-of-a.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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