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### EU Parliament adopts ELTIF2

The EU Parliament has adopted a [Regulation](#) amending the European Long-Term Investment Funds Regulation (ELTIF2).

Among other things, the amendments are intended to:

- remove supply-side and demand-side limitations; and

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#### International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304  
[Caroline Dawson](#) +44 207006 4355  
[Steven Gatti](#) +1 202 912 5095  
[Lena Ng](#) +65 6410 2215  
[Gareth Old](#) +1 212 878 8539  
[Mark Shipman](#) + 852 2826 8992  
[Donna Wacker](#) +852 2826 3478  
International Regulatory Update  
Editor  
[Joachim Richter](#) +44 (0)20 7006 2503

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

Clifford Chance LLP,  
10 Upper Bank Street,  
London, E14 5JJ, UK  
[www.cliffordchance.com](http://www.cliffordchance.com)

- improve regulatory oversight and investor protection safeguards in order to accelerate the uptake of ELTIFs.

Once the EU Council has also adopted the text, the new rules are expected to apply nine months after the amending Regulation enters into force (which will be on the twentieth day following publication in the Official Journal).

## **Banking package: ECON Committee publishes reports on CRR3 and CRD6**

The EU Parliament's Economic and Monetary Affairs Committee (ECON) has published its reports on the EU Commission's legislative proposals for a [directive amending the Capital Requirements Directive](#) (CRD) as regards supervisory powers, sanctions, third-country branches and ESG risk (CRD6) and the [proposed regulation amending the Capital Requirements Regulation](#) (CRR) as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR3).

The publication of the reports follows the ECON Committee's vote to adopt them in January 2023.

The reports have been tabled for the EU Parliament's plenary session.

## **EU Council publishes fifth compromise text on proposed Directive on distance financial services contracts**

The EU Council Presidency has published its [fifth compromise text](#) on the EU Commission's proposal for a directive to repeal the Distance Marketing Directive (2002/65/EC) and to transfer the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU).

The proposal broadly seeks to achieve a high level of consumer protection in order to enhance consumer confidence in distance selling and to ensure a level playing field among traders.

Among other things, the proposed directive provides:

- that only certain provisions of the Consumer Rights Directive such as relevant definitions and rules on additional payments, enforcement, penalties, inertia selling and reporting, should apply to distance financial services contracts; and
- for a dedicated chapter with rules applicable only to distance financial services contracts, including those concerning the right to pre-contractual information and the right to withdrawal, and online fairness.

The text is dated 18 January 2023. Only the fourth version of the Presidency's compromise text has also been published.

## **EU Council updates list of non-cooperative jurisdictions for tax purposes**

The EU Council has adopted a [revised list](#) of non-cooperative jurisdictions for tax purposes.

The following jurisdictions have been added to the list:

- the Marshall Islands, due to concerns that it has a zero or nominal rate of corporate income tax attracting profits without real economic activity and lacking in the enforcement of economic substance requirements;

- the British Virgin Islands, as they were found not to be sufficiently in compliance with the OECD standard on exchange of information on request;
- Costa Rica, due to not fulfilling its commitment to abolish or amend the harmful aspects of its foreign source income exemption regime; and
- Russia, due to not fulfilling its commitment to address the harmful aspects of a special regime for international holding companies and dialogue with Russia on matters related to taxation came to a standstill following the Russian aggression against Ukraine.

The following 16 jurisdictions are now on the list of non-cooperative jurisdictions (Annex I): American Samoa, Anguilla, The Bahamas, the British Virgin Islands, Costa Rica, Fiji, Guam, the Marshall Islands, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, the US Virgin Islands and Vanuatu.

The Council has also approved the state of play document (Annex II), which identifies cooperative jurisdictions which have made further improvements to their tax policies or related cooperation.

The next revision of the list is scheduled for October 2023.

### **EMIR: RTS on temporary exemptions regime for intragroup contracts published in OJ**

Two Commission Delegated Regulations amending regulatory technical standards (RTS) to extend the temporary exemptions regime for intragroup contracts for three years under the European Market Infrastructure Regulation (EMIR) have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2023/314](#) extends the deferred date of application of the margin requirements for intragroup transactions set in Delegated Regulation (EU) 2016/2251 to 30 June 2025.

[Commission Delegated Regulation \(EU\) 2023/315](#) extends the deferred date of application of the clearing obligation for intragroup transactions set in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 to 30 June 2025.

The Delegated Regulations entered into force on 14 February 2023.

### **SFDR: RTS on gas and nuclear energy activities published in OJ**

A [Delegated Regulation](#) amending regulatory RTS to include the disclosure of investments in taxonomy-aligned gas and nuclear economic activities under the Sustainable Finance Disclosure Regulation (SFDR) has been published in the Official Journal.

Delegated Regulation (EU) 2023/363 amends the existing SFDR RTS to align them with the Taxonomy Complementary Climate Delegated Act, which includes specific nuclear and gas energy activities in the list of environmentally sustainable economic activities covered by the EU Taxonomy.

The amendments are intended as limited adjustments of the existing regulatory framework and include revised pre-contractual and periodic disclosure templates and minor technical revisions.

The Delegated Regulation entered into force on 20 February 2023.

## **CRD4: ITS on benchmark portfolios, reporting templates and reporting instructions published in OJ**

[Commission Implementing Regulation \(EU\) 2023/313](#) amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions under the Capital Requirements Directive (CRD4) has been published in the Official Journal.

Under CRD4, internal approaches used for the calculation of own funds requirements for market and credit risk are subject to an annual assessment by competent authorities. The Implementing Regulation reflects revisions proposed by the European Banking Authority (EBA) in May 2022, and replaces annexes I, II, IV, V and VI to reflect the EBA's proposals for the 2023 benchmarking exercise.

The Implementing Regulation will enter into force on 6 March 2023.

## **EBA seeks input from credit institutions on green loans and mortgages**

The European EBA has [launched](#) an industry survey to receive input from credit institutions on their green loans and mortgages as well as market practices related to these loans. The purpose of the survey is to collect both quantitative and qualitative information the EBA can use to advise the EU Commission. The work is part of the Commission's strategy for financing transition to a sustainable economy.

Institutions wishing to take part in the survey should contact the national competent authority in their EU/EEA country to receive the survey templates as well as information on the process.

The deadline for responding to the survey is 7 April 2023.

## **BRRD: EBA publishes guidelines for resolution authorities on publication of bail-in approach**

The EBA has published [guidelines](#) addressed to resolution authorities on the information to be made public on how the write down and conversion will be applied, in particular in the context of the bail-in tool, in accordance with the Bank Recovery and Resolution Directive (BRRD).

The guidelines are intended to increase consistency and provide a clear framework for resolution authorities to publish a high-level description of their approach to using the bail-in tool, covering:

- whether they intend to make use of interim instruments or not;
- an indicative timeline for the application of the exchange mechanic; and
- how potential valuation adjustments would take place.

The guidelines apply from 1 January 2024, which is when authorities are expected to start publishing a high-level document. Authorities that have already published information are expected to check that it complies with the guidelines.

## **Securitisation Regulation: EBA publishes final draft amending RTS on homogeneity of underlying exposures in STS securitisations**

The EBA has published [final draft RTS](#) setting out the conditions for the assessment of the homogeneity of the underlying exposures in a pool of a simple transparent and standardised (STS) on-balance-sheet securitisation.

The EBA has extended the existing work on the RTS on homogeneity for both asset-backed commercial paper (ABCP) and non-ABCP securitisation to ensure consistency for on-balance-sheet securitisation to the overall STS framework. The draft RTS amend Commission Delegated Regulation (EU) 2019/1851 by extending the scope to on-balance-sheet securitisations.

In particular, the draft RTS clarify that homogeneous exposures for on-balance-sheet securitisations need to be underwritten according to similar underwriting standards and serviced according to similar servicing procedures. In addition, they need to fall within the same asset category specified therein and be further assessed with reference to at least one of the homogeneity factors, such as type of obligor, ranking of security rights, jurisdiction, or type of immovable property.

In order to ensure a continuation of existing securitisation transactions, transitional provisions have been introduced for those securitisations that have been notified as STS and whose securities were issued before its application date.

The EBA will submit the draft RTS to the Commission for endorsement.

## **Joint Regulatory Oversight Committee publishes open banking report**

The Joint Regulatory Oversight Committee, comprising HM Treasury, the Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR), has welcomed the publication of the [final report](#) produced by its Strategic Working Group on the future development of open banking in the UK.

The report sets out gap analysis and potential solutions intended to inform the Committee's forthcoming recommendations for the future development of open banking and covers issues such as:

- ecosystem reliability and sustainability;
- fraud prevention;
- enhancements to existing standards;
- customer protection and trust;
- extension of open banking, including further data sharing; and
- future industry structure, including a successor entity to the Open Banking Implementation Entity (OBIE).

## **HM Treasury consults on buy-now pay-later draft legislation**

HM Treasury (HMT) has launched a [consultation](#) on a [draft statutory instrument](#) (SI) intended to bring Buy-Now Pay-Later (BNPL) products into the FCA regulation.

The consultation, which follows the June 2022 publication of the Government's response to a previous consultation, confirms the Government's position on the scope of regulation and seeks feedback on the approach taken in the draft SI, including:

- limiting the scope of regulation to agreements offered by third-party lenders;
- regulatory exemptions, including agreements financing contracts of insurance, agreements offered by registered social landlords to tenants to finance the provision of goods and services, and employer / employee lending;
- regulatory controls, such as those relating to credit broking, domestic premises suppliers, advertising and promotions, and FCA rules for pre-contractual requirements; and
- architecture for a temporary permissions regime (TPR) that will allow firms to undertake relevant regulatory activities relating to newly regulated agreements until they are fully authorised.

The consultation paper also sets out the Government's policy position on regulatory controls not included in the draft SI.

Comments are due by 11 April 2023. The Government intends to lay legislation when Parliamentary time allows during 2023, and notes that the FCA will consult on proposed rules when final draft legislation is published.

## **German Anti-Financial Crime Alliance to be continued after successful pilot phase**

The Anti-Financial Crime Alliance (AFCA) [will continue](#) its work permanently after a successful three-year pilot phase, following a decision by the AFCA board. Since September 2019, the AFCA has been providing its members and all obliged persons under the German Money Laundering Act (GwG) with valuable insights on current issues and assistance (e. g. white papers, reference papers).

The AFCA is a German public-private partnership which supports coordinated and long-term strategic cooperation in combating money laundering and terrorist financing. The German Federal Financial Supervisory Authority (BaFin) is a member of the AFCA and is represented on the board by its Chief Executive Director of Resolution and Prevention of Money Laundering, Birgit Rodolphe.

## **ASIC to expand enforcement focus areas in coming year**

The Australian Securities and Investments Commission (ASIC) has [issued](#) a warning to businesses informing them of its plans to target greenwashing, predatory lending, and misleading insurance pricing promises in 2023, as part of a continuing focus on protecting consumers from financial harm.



The warning coincides with the release of ASIC's latest enforcement and regulatory report (Report 757), which outlines court-based actions against misconduct as a result of ASIC's investigations, its work to protect consumers and investors, and its increased focus on market integrity and sustainable finance. The report also sets out ASIC's 2023 enforcement priorities and includes a regulatory developments timetable to inform its stakeholders of proposed timeframes for ASIC's regulatory actions. In particular, the timetable is intended to help industry to better anticipate when ASIC will issue draft or final guidance, or the making of a legislative instrument.

Amongst other things, ASIC plans to focus on enforcement activities targeting sustainable finance practices and disclosure of climate risks, financial scams, cyber and operational resilience, and investor harms involving cryptoassets.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Insurer resolution – how do the new UK and EU regimes compare?**

Both the UK and EU have proposed new resolution regimes for failing (re)insurers based on international standards and their existing regimes for bank resolution. As a result, the proposed UK Insurer Resolution Regime (IRR) and the proposed EU Insurance Recovery and Resolution Directive (IRR) have much in common, albeit with some key differences.

This briefing paper provides a high-level comparison of the IRR, the IRRD and the UK and EU regimes for bank resolution, highlighting the main differences.

<https://www.cliffordchance.com/briefings/2023/02/insurer-resolution--how-do-the-new-uk-and-eu-regimes-compare-.html>

### **ESG – what to expect from financial regulators in 2023 – disclosures, data and 'greenwashing' in the spotlight**

ESG disclosures, data product and ratings providers and 'greenwashing' will be in the regulatory spotlight in 2023, as financial regulators seek to implement measures aimed at improving the sustainability information made available to investors and to ensure that claims of being 'green', 'climate-friendly' and 'sustainable' stand up to scrutiny.

This briefing paper discusses what to expect from financial regulators in 2023.

<https://www.cliffordchance.com/briefings/2023/02/esg-what-to-expect-from-financial-regulators-in-2023-disclosures-data-and-greenwashing-in-the-spotlight.html>

### **Regulatory developments in the buy-now-pay-later space – HMT consultation on proposed draft legislation for BNPL products**

On 14 February 2023, HMT published a consultation on draft legislation to bring buy-now-pay-later (BNPL) products within the scope of the UK regulatory regime. This follows a policy announcement from February 2021 to bring BNPL products into scope of regulation. The consultation closes for comments on 11 April 2023 and the Government plans to lay legislation before Parliament when there is time.

At the moment, BNPL products provided to ‘consumers’ are generally unregulated by virtue of an exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Article 60F(2) exempts from regulation interest-free agreements repayable in under 12 months and in 12 or fewer instalments. This covers BNPL, as well as other types of short-term credit provided without interest or other significant charge.

This briefing paper discusses the recent regulatory developments in the BNPL space.

<https://www.cliffordchance.com/briefings/2023/02/regulatory-developments-in-the-buy-now-pay-later-space--hmt-cons.html>

## **Transitioning from WIBOR – implications for Polish debt capital markets**

As WIBOR is a key benchmark for PLN bonds, the Polish National Working Group for benchmark reform was formed to navigate transition from WIBOR to WIRON. Polish issuers and debt capital markets participants will need to carefully consider how this changing environment will impact new and existing capital markets documentation, particularly in respect of instruments maturing after the 2025 deadline for WIBOR cessation.

This briefing paper discusses the impact of the transition from WIBOR to WIRON on the Polish debt capital markets and what issuers and their advisers will need to consider.

<https://www.cliffordchance.com/briefings/2023/02/-transitioning-from-wibor--implications-for-polish-debt-capital-.html>

## **Data Center Financings – What’s Next?**

Technology has transformed the way we live and dramatically increased the volume of data being stored. As a result, data centers, as an asset class, have risen in value. However, the cost of energy and the water usage needed to run them, are increasingly coming under the spotlight. It is estimated that data centers account for approximately 2% of the total US electricity use and these facilities’ energy use is expected to increase as demand rises. With spiralling energy costs, warnings of supply shortages, growing concerns about water resources and an increasing focus on sustainable lending, this briefing paper looks at what is next for data center financings.

<https://www.cliffordchance.com/briefings/2023/02/data-center-financings--what-s-next-.html>



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

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