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CRR: Amending RTS on own funds published in OJ

[Commission Delegated Regulation \(EU\) 2023/827](#) laying down regulatory technical standards (RTS) regarding the prior permission to reduce own funds and the requirements related to eligible liabilities instruments has been published in the Official Journal.

The RTS amend Commission Delegated Regulation (EU) No 241/2014 containing RTS specifying some of the eligibility criteria for own funds under the Capital Requirements Regulation (CRR). The amending RTS reflect the changes to the CRR introduced by CRR2, which revised the own funds eligibility criteria and the rules relating to the own funds permission regime and introduced new mandates for the Commission to adopt RTS specifying some of the criteria for eligible liabilities instruments to constitute high quality loss absorbing capacity.

The Delegated Regulation will enter into force on 9 May 2023.

CRR: EU Commission adopts RTS on probabilities of and losses given default and non-trading book risk positions

The EU Commission has adopted two Delegated Regulations setting out RTS supplementing the CRR.

The [first RTS](#) specify the requirements that an institution's internal methodology or external sources are to fulfil for estimating probabilities of default (PDs) and losses given default (LGDs).

The [second RTS](#) specify how institutions are to calculate:

- the own funds requirements for market risk for non-trading book positions that are subject to foreign exchange risk or commodity risk; and
- the changes in hypothetical profit and loss (HPL), actual profit and loss (APL) and risk theoretical profit and loss (RTPL) for the purpose of the back-testing and profit and loss attribution requirements.

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

Digital finance: EU Parliament adopts MiCA and AML/CTF measures for cryptoassets

The EU Parliament has formally [adopted](#) the Markets in Cryptoassets Regulation (MiCA) and the recast Regulation on information accompanying transfers of funds and certain cryptoassets.

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

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 adopted texts are expected to be published in due course.

Once the texts are formally endorsed by the EU Council, they will be published in the Official Journal and enter into force 20 days after publication.

CSDR: EU Commission adopts RTS on penalty mechanism for settlement fails

The EU Commission has adopted a [Delegated Regulation](#) under the Central Securities Depositories Regulation (CSDR) amending the RTS regarding the penalty mechanism for settlement fails relating to cleared transactions submitted by central counterparties (CCPs) for settlement.

Article 19 of the RTS on settlement discipline details a specific process for the collection and distribution of penalties relating to cleared transactions by CCPs which runs in parallel to the general process specified in Article 17 for the collection and distribution of penalties managed by CSDs.

The amending RTS are intended to facilitate the calculation and distribution of cash penalties regarding settlement fails relating to cleared transactions, while reducing the risks and cost related to the process. The amendments include:

- removing the separate process established in Article 19, putting CSDs in charge of the entire process of collection and distribution of penalties according to Articles 16, 17 and 18; and
- specifying that, in the event of imbalanced positions in respect of cleared transactions, CCPs may allocate the remaining penalties' amount, credit or debit to their clearing members and should establish relevant mechanism in their rules to that effect.

Subject to scrutiny by the EU Council and Parliament, the Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal and will apply from the first business day after 12 months from the entry into force date.

Capital Markets Union: EU Council adopts negotiating mandate on multiple-vote share structures

The EU Council has [adopted](#) its position on the proposed directive on multiple-vote share structures, which will allow company owners to list on SME growth markets using multiple-vote share structures.

The proposed directive is part of the Listing Act package, a set of measures to make public capital markets more attractive for EU companies. The directive is intended to encourage owners of small- and medium-sized companies to list their shares on SME growth markets using multiple-vote share structures. This would help owners to retain sufficient control of their company after listing, and as a result, help to make access to SME growth markets more attractive.

Currently, some Member States allow multiple-vote share structures while in others such structures are forbidden. The proposed directive aims at reducing inequalities for companies seeking to raise funds on SME growth markets, as it removes obstacles that hinder access and stem from regulatory barriers. The proposed directive also aims to protect the rights of shareholders who hold shares with a lower number of votes per share, by introducing safeguards on issues such as key decisions taken in general meetings.

The Council's negotiating mandate seeks to better distinguish between the adoption of multiple-vote share structures and safeguards in companies once they have adopted such a structure. It also tries to ensure that safeguards protect shareholders with lower voting rights and accommodate differences in national practices. The negotiating mandate also clarifies transparency requirements by addressing data protection considerations and member states' concerns in this regard.

The Permanent Representatives Committee (COREPER) has been invited to endorse the Presidency compromise text and to grant a mandate to the Presidency for negotiations with the EU Parliament, with a view to reaching an agreement in first reading.

EU Parliament Committees publish reports on proposed AMLD6 and AMLR

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) and Committee on Civil Liberties, Justice and Home Affairs (LIBE) have published a [report](#) on the proposed sixth directive on anti-money laundering and countering the financing of terrorism (AML/CFT) (AMLD6) and a [report](#) on the proposed AML regulation (AMLR).

The reports, adopted by the Committees on 28 March 2023, set out amendments to the proposed texts, as well as explanatory statements and minority positions.

The two measures are part of the Commission's July 2021 AML/CTF legislative package. The EU Council agreed its negotiating positions on AMLD6 and AMLR on 7 December 2022 and the co-legislators will enter trilogue negotiations in order to agree on a final version of text.

Banking Union: EU Commission publishes crisis management and deposit insurance reform proposals

The EU Commission has [published](#) a package of proposals to reform the bank crisis management and deposit insurance (CMDI) framework, as set out in the Bank Recovery and Resolution Directive (BRRD), Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The main elements of the proposed reform, which seek to address limitations in the existing CMDI framework, include:

- clarification of the public interest assessment in managing bank crises to ensure that a full range of crisis management tools can also be applied to failing smaller and medium-sized banks;
- facilitating the use of DGS funds, subject to a harmonised least cost test, as an alternative to the basic pay-out function and as a complement to banks' internal loss absorption capacity;
- introducing conditions on when DGS funds and access to the Single Resolution Fund (SRF) can be applied to smaller and medium sized banks in resolution;
- removing the overlaps between early intervention and supervisory measures, and facilitating an earlier triggering of resolution; and
- targeted amendments to the DGSD on the scope of protection and cross-border cooperation, harmonisation of national options, and transparency of the financial robustness of DGSs.

The Commission also notes:

- the complementarity between the proposed CMDI reforms and the 2015 proposal for a European deposit insurance scheme (EDIS), with political negotiations on the latter stalled, and suggests that a renewed effort to reach a political agreement on EDIS should be a priority; and
- that it is carrying out an evaluation of the State aid framework for banks, which is expected to complete in Q1 2024.

The proposals will now be discussed by the EU Parliament and Council.

The Commission has invited the EU Parliament and Council to reach agreement on the proposed reform of the CMDI framework before the next Parliamentary elections in 2024.

Banking Union: EU Commission publishes SSM review report

The EU Commission has published its [second review report](#) on the application of the Single Supervisory Mechanism (SSM) Regulation.

The report, which was due in 2020 but delayed owing to the COVID-19 pandemic and prioritisation of the 2021 Banking Package, follows up on the findings of the first review report published in 2017 and sets out the findings of the second review, which focused on specific high-priority developments and risks, including:

- the fit and proper assessment;
- risks linked to ESG factors;
- AML/CTF;
- third country groups in the post-Brexit context; and
- ICT and cyber risk.

While the report broadly concludes that the supervisory pillar of the Banking Union is now well-established and functions effectively, and that no major

changes to the SSM Regulation are required at this stage, it highlights the need for continued focus in the following areas:

- the availability of the skills required to conduct supervision in highly specialised areas, such as ICT/cyber risks and internal model assessments;
- external communication with relevant stakeholders and cooperation with other supervisory authorities to ensure better supervisory outcomes; and
- harmonisation of certain legislative areas, such as the fit and proper assessment, sanctioning powers and anti-money laundering, to address concerns about an unlevel playing field within the SSM.

The Commission is required to publish a review report every three years.

Securitisation Regulation: EBA consults on STS criteria guidelines

The European Banking Authority (EBA) has launched a [consultation](#) on draft guidelines on the simple, transparent and standardised (STS) criteria for on-balance-sheet securitisation under the Securitisation Regulation.

The guidelines are intended to:

- provide a single point of consistent interpretation of the STS criteria, which are a prerequisite for preferential risk-weight treatment under the CRR; and
- ensure a common understanding by originators, original lenders, securitisation special purpose entities (SSPEs), investors, competent authorities and third party verification agents verifying STS compliance.

The draft guidelines also propose targeted amendments to the guidelines for traditional securitisations (non-ABCP and ABCP).

Comments are due by 7 July 2023.

Non-Performing Loans Directive: EBA consults on draft guidelines on management or administrative organ of credit servicers

The EBA has launched a [consultation](#) on its draft guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under the Non-Performing Loans Directive.

The guidelines are intended to ensure that the organs are suitable to conduct the business of the credit servicer in a competent and responsible manner. The guidelines specify the criteria for the assessment of the organs' collective knowledge and experience, which will be performed based on the individual members' assessment by credit servicers, taking into account the principle of proportionality. The guidelines set out the main requirements of the credit servicers assessment process, including the good repute, and specify when such an assessment has to be performed.

Comments are due by 19 July 2023. The EBA intends to publish the final guidelines by the end of 2023.

EBA consults on approach to resubmission of historical data under EBA reporting framework

The EBA has launched a [public consultation](#) on its draft guidelines on resubmission of historical data under the EBA reporting framework.

The objective of the draft guidelines is to provide a common approach to the resubmission by financial institutions of historical data to competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework developed by the EBA.

Comments are due by 31 July 2023.

ECB publishes independent expert report on banking supervision

The European Central Bank (ECB) has published the [results](#) of an external assessment of the supervisory review and evaluation process (SREP), which includes recommendations to become more efficient and effective.

The report was drafted by the group of independent experts appointed in September 2022. The report finds that, among other things:

- the ECB Banking Supervision is now established as a supervisor and is sufficiently robust and mature enough to make processes leaner and enhance risk-based prioritisation;
- good progress has been made in European banking supervision to ensure that banks maintain sufficient capital levels; and
- the current level of capital requirements for supervised banks looks broadly adequate.

The report invites the ECB to reform risk scores and the process of determining Pillar 2 capital requirements and recommends that the ECB make full use of all instruments including qualitative measures to encourage banks to tackle weak business models and governance practices.

The Supervisory Board of the ECB intends to continue to strengthen supervisory practices and will evaluate the report's input as part of a review of supervisory processes planned for 2024.

FSB publishes report on climate-related financial risk factors in compensation frameworks

The Financial Stability Board (FSB) has published a [report](#) on climate-related financial risk factors in compensation frameworks. The report reviews compensation practices around climate-related objectives and how the stated goal of financial institutions is incorporated into compensation frameworks. The report does not aim to present and compare practices across jurisdictions, but rather to identify challenges and to provide an early insight to assist ongoing initiatives of regulators and financial institutions. Common challenges include:

- gaps in data availability and reliability that make it difficult to apply consistent metrics and monitor them in performance evaluation and compensation determination;

- development of objectively measurable metrics that are aligned with financial institutions' strategies; and
- misalignment of timeframes between compensation assessment periods and the materialisation of climate-related results.

Market Abuse: Draft Insider Dealing (Securities and Regulated Markets) Order 2023 published

The [draft Insider Dealing \(Securities and Regulated Markets\) Order 2023](#) has been published.

The draft Order amends the scope of the securities and markets for the criminal insider dealing offence set out in the Criminal Justice Act 1993 to broadly align it with the securities and markets in scope of the UK's civil market abuse offence set out in the UK Market Abuse Regulation (UK MAR).

The draft Order seeks to implement a recommendation from the 2015 Fair and Effective Markets Review (FEMR) that the UK criminal sanctions framework for market abuse for individuals and firms be updated to include a wider range of fixed income, commodities and currency (FICC) instruments (including all of those covered under UK MAR).

The Order comes into force 21 days after the day on which it is made.

UK EMIR: BoE grants CFTC comparable compliance for incoming CCPs

The Bank of England (BoE) and Commodity Futures Trading Commission (CFTC) have [published](#) a joint statement on the supervision of cross-border CCPs.

In the statement, the BoE and CFTC confirm their commitment to strengthen cooperation and mutual understandings and set out practices pursuant to their 2020 memorandum of understanding (MoU). The practices include:

- periodic engagements between the BoE and CFTC to exchange views on relevant supervisory issues, consider each other's views, and provide assistance on matters of concern where they arise;
- the robust and timely sharing of information, including data on the clearing services provided to market participants;
- notifications of material events, including those related to financial resilience or business continuity of CCPs; and
- regular engagement on areas of supervisory focus.

The BoE has assessed its relationship with the CFTC based on the practices outlined in the MoU and in accordance with its statement of policy on its approach to comparable compliance for incoming CCPs under the retained EU Regulation on OTC derivative transactions, CCPs and trade repositories (UK EMIR).

The BoE has determined that its relationship with the CFTC meets the expectations of the 'Level 1 informed reliance assessment'. Therefore, following recognition and tiering decisions, the BoE will be able to rely on the CFTC's supervision and oversight of incoming CCPs based in the US.

Joint Regulatory Oversight Committee publishes recommendations for open banking

The Joint Regulatory Oversight Committee (JROC), co-chaired by the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR), has published its [recommendations](#) for the next phase of open banking in the UK.

The JROC's recommendations contain a roadmap of priorities over the next two years, covering five key themes:

- levelling up availability and performance;
- mitigating the risks of financial crime;
- ensuring effective consumer protection if something goes wrong;
- improving information flows to third party providers (TPPs) and end users; and
- promoting additional services, using non-sweeping variable recurring payments (VRP) as a pilot.

The JROC has also set out its vision for the open banking future entity, including the next steps to be taken in designing it. The JROC intends to set out a detailed plan for the future entity and the Open Banking Implementation Entity's (OBIE's) transition to it in Q4 2023.

The report also outlines the principles that will underpin a long-term regulatory framework, which the Government is intending to legislate for.

The JROC intends to publish a progress report in Q4 2023.

BaFin applies ESMA guidelines on standard forms, formats and templates to apply for permission to operate DLT market infrastructure

The German Federal Financial Supervisory Authority (BaFin) has [confirmed](#) that it will fully adopt the German version of the European Securities and Markets Authority (ESMA) guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure, dated 8 March 2023, in its supervisory practice.

The guidelines are intended to contribute to the use of uniform application forms and minimum information within the EU and thus to ensure consistent, efficient and effective supervisory practices within the European financial supervisory system. In particular, they address the additional requirements for DLT market infrastructures in the application process. These include the type of DLT financial instruments traded and/or settled as well as the type and functionality of the DLT used for the operation of a DLT market infrastructure.

As a precautionary measure, BaFin has indicated that further information in addition to the information mentioned in the guidelines might have to be submitted to BaFin as part of an approval procedure.

CSSF issues circular on survey of amount of covered deposits held on 31 March 2023

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (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 23/33 dated 13 April 2023](#) regarding the survey of the amount of covered deposits held as of 31 March 2023.

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 Member States, by 19 May 2023 at the latest.

In order to transmit these data, institutions are requested to 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 sent out 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 over 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.

AFM amends guideline on compensation for early repayment of mortgage loans

The Dutch Authority for the Financial Markets (AFM) has published an [amendment to its guideline](#) (Leidraad) on compensation for early repayment of mortgage loans.

The Dutch Financial Supervision Act provides that a mortgage credit provider may not charge a fee for early repayment of a loan that is higher than the actual financial disadvantage that the provider has in case of early repayment. In its guideline, which was initially published in March 2017, the AFM has now added guidance on the date at which the relevant (current) interest rate used for calculating the compensation (the 'reference interest rate') is set.

The AFM states that the reference interest rate used for calculating the compensation should not be lower than the reference interest rate that would apply on the repayment date agreed between the provider and the customer in the final repayment note. The background to the guidance is the potential rising of interest rates between the date at which the reference interest rate is set and the final repayment date.

The AFM has added that if it is practically impossible to use the repayment date as the relevant date for the reference interest rate, credit providers can choose a date for determining the reference interest rate that is a maximum of five working days before the agreed repayment date. The AFM has elaborated on the new guidance in a [letter](#) to relevant credit providers.

Records of cross-border payments: Sejm adopts new regulations

The Sejm has adopted an [amendment to the Act on the Tax on Goods and Services](#), which implements Council Directive (EU) 2020/284 in the Polish legal system.

Among other things, the amendment introduces an obligation to keep records of payments and payment recipients in relation to payment services provided. The new obligation is to apply to payment service providers (e.g. domestic banks, branches of foreign banks, credit institutions, electronic money institutions).

The record-keeping obligation will apply if the following conditions are met at the same time:

- the funds are transferred from a payer located in an EU Member State (as a rule, this is the buyer of goods/services) to a payee located in another Member State or outside the EU (as a rule, this is the seller of goods/services). This means that only cross-border payments will be subject to reporting; and
- the payment service provider makes more than 25 cross-border payments to the same payee within a calendar quarter.

The bill has been referred to the Senate.

HKEX consults on enhancement of climate disclosures under ESG framework

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published a [consultation paper](#) to seek market feedback on proposals to enhance climate-related disclosures under the environmental, social and governance (ESG) framework.

The SEHK is proposing to mandate all issuers to make climate-related disclosures in their ESG reports and introduce new climate-related disclosures aligned with the International Sustainability Standards Board Climate Standard, which is built on the principles of the Task Force on Climate-related Financial Disclosures recommendations. The key proposals include disclosures on the following:

- the issuer's governance process, controls and procedures used to monitor and manage climate-related risks and opportunities;
- material climate-related risks and, where applicable, opportunities faced by the issuer, and their impact on the issuer's business operations, business model and strategy;
- the issuer's response to climate-related risks and opportunities identified, including any changes to its business model and strategy, adaptation and mitigation efforts, and climate-related targets set for such plans;

- resilience of the issuer's strategy and operations to climate-related changes, developments or uncertainties, which should be assessed using a method of climate-related scenario analysis that is commensurate with the issuer's circumstances;
- current and anticipated financial effects of climate-related risks and, where applicable, opportunities on the issuer's financial position, financial performance and cash flows;
- the issuer's process to identify, assess and manage climate-related risks and, where applicable, opportunities;
- scope 1, scope 2 and scope 3 greenhouse gases emissions;
- the amount and percentage of assets or business activities: vulnerable to transition/physical risks; or aligned with climate-related opportunities, and the amount of capital expenditure deployed towards climate-related risks and opportunities;
- the internal carbon price and such that was applied in the issuer's decision-making where applicable; and
- how climate-related considerations are factored into executive remuneration policy.

Subject to responses to the consultation, the revised Listing Rules and the ESG Reporting Guide will come into effect on 1 January 2024 and apply to ESG reports in respect of financial years commencing on or after the effective date. The Securities and Futures Commission has also published a circular to encourage interested parties to respond to the consultation. Comments on the consultation are due by 14 July 2023.

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill and Computer Misuse (Amendment) Bill moved for first reading in Singapore Parliament

As part of an effort to combat an increase in scams being carried out in Singapore, the Corruption, [Drug Trafficking and Other Serious Crimes \(Confiscation of Benefits\) \(Amendment\) Bill](#) (CDSA Bill) and the [Computer Misuse \(Amendment\) Bill](#) (CMA Bill) have been introduced for their first reading in the Singapore Parliament.

The CDSA Bill will create new money laundering offences which, in particular, will allow the police better to act against money mules who facilitate the movement of scam monies. The proposed new offences are:

- rash and negligent money laundering; and
- assisting another to retain benefits from criminal conduct.

The Computer Misuse (Amendment) Bill aims to prevent abuse of the national digital identity service owned by the Singapore Government (commonly known as Singpass) for the perpetration of scams and other crimes, and will create new offences of:

- disclosing a user's own Singpass credentials to facilitate an offence; and
- obtaining or dealing in Singpass credentials to facilitate criminal activities.

When passed, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act 2023 and the Computer Misuse (Amendment) Act 2023 will come into operation on a date that the Minister appoints by notification in the Government's Gazette.

RECENT CLIFFORD CHANCE BRIEFINGS

EU reforms bank crisis management and deposit insurance regime

The European Commission has published a legislative package of reforms to the EU regime for bank CMDI.

The proposals aim to make it easier to resolve failing smaller and medium-sized banks but will affect all EU banks. In particular, they would end the super-priority of DGSD and give all depositors equal preference in the winding up of an EU bank.

This briefing paper discusses the proposals.

<https://www.cliffordchance.com/briefings/2023/04/eu-reforms-bank-crisis-management-and-deposit-insurance-regime.html>

Buy-Side Regulatory Horizon Scanner

The investment management industry currently faces unprecedented regulatory change on a global basis. This buy-side regulatory horizon scanner provides a high level overview of key ongoing and expected EU and UK regulatory developments relevant to investment managers.

<https://www.cliffordchance.com/briefings/2023/04/buy-side-regulatory-horizon-scanner.html>

FCA commences wide-ranging review of asset management regulation

In February 2023, the UK's FCA published a discussion paper (DP23/2) on updating and improving the UK regime for asset management. The discussion paper forms part of the UK's current work of reviewing and assimilating EU-derived financial services regulation into UK law and the UK regulators' rulebooks. It seeks views on a vast spectrum of issues, from the structure of UK asset management regulation to fund tokenisation. Responses to the discussion paper will shape the future regulation of the UK's asset management sector.

This briefing paper summarises key aspects of the discussion paper and the UK's next steps.

<https://www.cliffordchance.com/briefings/2023/04/fca-commences-wide-ranging-review-of-asset-management-regulation.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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