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EU Council adopts Regulation to protect against market manipulation on wholesale energy market through amendments to REMIT

The EU Council has adopted a Regulation to improve the protection against market manipulation on the wholesale energy market, by amending the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) and the Regulation on the establishment of the Agency for the Cooperation of Energy Regulators (ACER) ((EU) 2019/942).

The Regulation was proposed by the EU Commission in March 2023 as a response to the high and volatile energy prices in 2022.

The Regulation enhances the ability of ACER and national regulators to monitor energy market integrity and transparency. It is intended to ensure better data quality and strengthen ACER's role in investigations of potential market abuse cases of a cross border nature. The Regulation introduces new tools for ACER to use for conducting investigations, such as on-site inspections, and provides ACER with powers to impose periodic penalty payments to ensure compliance with on-site inspection decisions.

The Regulation also creates stricter requirements for market participants in the EU who are resident in a third country.

The Regulation will enter into force 20 days after its publication in the Official Journal.

EU Council publishes final compromise text of corporate sustainability due diligence directive

The EU Council's Committee of Permanent Representatives (Coreper) has published the final compromise text for the EU Commission's proposal for a corporate sustainability due diligence directive (CSDDD / CS3D).

The CSDDD will set obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries and those carried out by their business partners.

The final text has been sent with a letter to the EU Parliament's Committee on Legal Affairs (JURI) confirming that, should the EU Parliament adopt the text at first reading, the Council would approve the Parliament's position.

The Council and the Parliament reached provisional agreement on the proposal on 14 December 2023.

Capital Markets Union: Regulation on instant payments in euros published in Official Journal

Regulation (EU) 2024/886 on instant credit transfers in euro has been published in the Official Journal.

The regulation amends and modernises the Single Euro Payments Area (SEPA) Regulation on standard credit transfers in euro by adding to it specific provisions for instant credit transfers in euro.

In particular, it will:

- improve the strategic autonomy of the European economic and financial sector by reducing any excessive reliance on third-country financial institutions and infrastructures;
- allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU Member State;
- require payment service providers such as banks, which provide standard credit transfers in euro, to offer the service of sending and receiving instant payments in euro;
- grant access for payment and e-money institutions (PIEMIs) to payment systems, by changing the Settlement Finality Directive (SFD); and
- require instant payment providers to verify that the beneficiary's IBAN and name match in order to alert the payer to possible mistakes or fraud before a transaction is made.

The regulation will enter into force on 8 April 2024.

BRRD: Amending Delegated Regulation on ex ante contributions to resolution financing arrangements published in Official Journal

Commission Delegated Regulation (EU) 2024/895 amending Delegated Regulation (EU) 2015/63 on ex ante contributions to resolution financing arrangements under the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal.

The changes introduced through the amending Regulation include:

- amending provisions relating to the calculation and definition of eligible liabilities to reflect amendments to the BRRD made by the BRRD2;
- extending the period during which smaller institutions can contribute with a lump-sum to national resolution funds until 31 December 2024; and
- updating the process for raising annual contributions so that, in the 2024 contribution period, institutions must provide information to resolution authorities by 29 February 2024 and resolution authorities must notify institutions of their decisions determining the annual contribution by 31 May 2024.

The amending Regulation enters into force on 21 March 2024. The amendments relating to the transitional regime and the process for raising annual contributions apply retroactively from 1 December 2023, and all other provisions apply from 21 March 2024.

Securitisation Regulation: RTS on performance-related triggers published in Official Journal

Commission Delegated Regulation (EU) 2024/920, which supplements the Securitisation Regulation with regulatory technical standards (RTS) on performance-related triggers for simple, transparent and standardised (STS) on-balance-sheet securitisation transactions and the criteria for the calibration of those triggers, has been published in the Official Journal.

The RTS specify the triggers referred to in Article 26c(5) of the Securitisation Regulation including:

- the two triggers under subparagraph (a);
- the additional backward-looking trigger under subparagraph (b); and
- the forward-looking trigger under subparagraph (c).

They also set out the criteria to be fulfilled by the parties to the securitisation in order to set the level of the mandatory triggers.

The Delegated Regulation will enter into force on 11 April 2024.

Capital Markets Union: ECON Committee adopts reports on retail investment package

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has adopted its reports in relation to the EU Commission's retail investment strategy intended to reinforce retail investor protection rules.

The reports constitute the Parliament's negotiating mandates on a legislative package consisting of a proposed Omnibus Directive amending MiFID2, IDD, Solvency II, the UCITS Directive and AIFMD, and a proposed Regulation amending the PRIIPs Regulation. According to a press release, the Committee agreed, among other things, that the new rules should:

- ensure investment advice is more transparent, understandable and tailored to clients;
- prevent investment firms from accepting fees, commissions or any monetary or non-monetary benefits from third parties in relation to the provision of portfolio management or insurance-based investment products;
- require firms to inform clients about how the cost of third-party research affects fees;
- enable investors to compare the costs of investment products through EU and national benchmarks;
- enhance the quality of financial advice and support financial education;
- subject finfluencers to supervision; and
- require investment firms to establish procedures for handling client complaints within 30 days.

The texts will be tabled for approval by the EU Parliament during the first plenary session in April. It is intended that the file will be followed up by the new Parliament following the European elections

Banking Union: ECON Committee adopts reports on CMDI reform proposals

The ECON Committee has adopted its reports on a package of proposals to reform the bank crisis management and deposit insurance (CMDI) framework, as set out in the BRRD, Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The reports set out the ECON Committee's views on the proposals, which include that:

- the costs of banks failures should be borne by shareholders and creditors in the first instance, and if further resources are needed, by industry-funded safety nets, not taxpayers;
- medium-sized banks should be in scope of resolution if deemed critical to the financial stability in a regional market; and
- retail customers as well as micro, small and medium-sized enterprises (SME) should be protected from bearing losses.

The EU Parliament is expected to vote on the texts during the secondary plenary session in April 2024, to close the first reading without agreement with the EU Council. Negotiations between the EU Parliament and EU Council are then expected to start after the EU Parliament elections.

Benchmarks Regulation: ECON Committee publishes report on proposed amendment regarding scope, use in the EU of benchmarks provided by a third country administrator, and reporting requirements

The ECON Committee has published its report on the proposal for a regulation amending the Benchmarks Regulation (BMR) as regards the scope of the rules for benchmarks, the use in the EU of benchmarks provided by an administrator located in a third country, and certain reporting requirements.

The ECON Committee adopted the report on 4 March and it has been tabled for the Parliament's plenary session. The report sets out:

- that the new rules should apply to critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and certain commodity benchmarks;
- the current threshold of a total average value of at least 50 billion euro to define a significant benchmark should be retained, with other benchmarks being subject to a voluntary supervision regime;
- technical standards should be developed to specify the calculation method to classify a benchmark as significant;
- administrators of benchmarks used in the EU should attempt to obtain a globally agreed identifier code to identify their benchmarks;
- ESMA should have a supervisory role for critical, significant, cross-border, third country, EU climate transition benchmarks and EU Paris-aligned benchmarks;
- previously supervised benchmark administrators would keep their existing registration, authorisation, recognition or endorsement for nine months after entry into force of the new rules and should not be obliged to re-apply if they voluntarily opt-in to the amending Regulation within nine months.

The EU Parliament is expected to vote on the text during the secondary plenary session in April 2024, to close the first reading without agreement with the EU Council.

Negotiations between the EU Parliament and EU Council are then expected to start after the EU Parliament elections.

ESMA publishes feedback to call for evidence on shortening the settlement cycle

The European Securities and Markets Authority (ESMA) has published feedback received to its call for evidence on shortening the settlement cycle.

The report summarises the feedback received from market participants, with particular focus on:

- operational impacts beyond adaptations of post-trade processes resulting from a reduction of the securities settlement cycle in the EU;
- potential costs and benefits of a shortened cycle, with some responses supporting a thorough impact assessment before deciding;
- suggestions around how and when a shorter settlement cycle could be achieved, including a clear signal from the regulatory front at the start of the work and clear coordination between regulators and the industry; and
- the need for a proactive approach for stakeholders to adapt their own processes to the transition to T+1 in other jurisdictions, as some responses warned of potential infringements due to the misalignment of the EU and North America settlement cycles.

ESMA intends to continue assessing the responses received, including the demands for regulatory and supervisory guidance, and deliver its final assessment to the EU Parliament and to the Council before 17 January 2025.

MiFIR Review: ESMA issues statement on transition to the revised rulebook

The ESMA has issued a statement about changes introduced by the review of the Markets in Financial Instruments Regulation (MiFIR).

ESMA has received inquiries from stakeholders about provisions that will be applicable from the revised MiFIR's entry into force on 28 March 2024. In particular, ESMA has acknowledged the need for public guidance on Article 54(3), which allows for the continued application of the delegated acts in place beyond 28 March 2024 until these delegated acts have been revised.

ESMA, in conjunction with the EU Commission, is assessing the provisions that may require further guidance. According to the statement, the Commission is developing an interpretive notice on the application of the transitional provision, which ESMA then intends to build on in order to provide clarity on the transition to the revised MiFIR.

ESMA anticipates more detailed guidance will likely be necessary and intends to proceed with developing draft technical standards in a swift and transparent manner.

FSB updates guidance on arrangements to support operational continuity in resolution

The Financial Stability Board (FSB) has republished its guidance on arrangements to support operational continuity in resolution with a supplementary note on the digitalisation of critical shared services.

The guidance was originally published in August 2016, and aims to assist supervisory and resolution authorities and financial institutions in evaluating whether financial institutions that are subject to resolution planning requirements have appropriate arrangements to support operational continuity if the firm enters resolution. It covers legal, contractual and governance frameworks, resourcing, management information systems and financial resources.

A supplementary note on the digitalisation of critical shared services has been added to the guidance as an addendum. It specifies, for each section of the 2016 guidance, how authorities and firms should think about the continuity of critical shared services in resolution when those services are digital. The supplementary note does not create any new guidance or requirements.

Wolfsberg Group updates statement on countering terrorist financing

The Wolfsberg Group has updated its statement on the suppression of the financing of terrorism.

The statement was originally published in 2002. The statement has been revised to reflect changes in counter-terrorist financing (CTF) measures and the evolving nature of public-private cooperation.

The statement describes the role of financial institutions in CTF and the key controls which seek to mitigate and manage the risk of a financial institution being abused for the financing of terrorism as part of a risk-based financial crime compliance programme, including:

- customer due diligence;
- monitoring and screening; and
- global cooperation.

HMT reports on next phase of Smarter Regulatory Framework for financial services

HM Treasury (HMT) has published a report setting out the next steps for its planned Smarter Regulatory Framework (SRF) for financial services. The SRF is intended to replace the assimilated law repealed by the Financial Services and Markets Act 2023 (FSMA 2023) and introduce a regulatory framework for financial services tailored to the UK and led by UK regulators.

In July 2023, HMT published a report setting out its plans for Tranches 1 and 2 of the programme. The follow up report provides an update on the progress made on the programme so far and sets out the Government's plans for Tranche 3. Among other things, the Government intends to prioritise reviewing the following pieces of legislation to determine what should be retained by the SRF and what roles HMT and the UK regulators should take:

- the Alternative Investment Fund Managers Directive (AIFMD);
- the Undertakings for Collective Investment in Transferable Securities Directive (UCITS);
- continuing the review of the Payment Services and E-Money Directives;
- the European Market Infrastructure Regulation (EMIR), beginning with Titles III, IV and V relating to central counterparties; and
- the Markets in MiFID and MiFIR, with a particular focus on the MiFID regulations relating to the organisational requirement and operating

conditions for investment firms, and the MiFIR regulations relating to transaction reporting.

Alongside this, HMT intends to review the 2019 and 2020 Equivalence Determinations Regulations in order to restate necessary provisions and ensure that onshored equivalence decisions are in scope of the new FSMA 2023 Deference Accountability Mechanism.

HMT publishes approach to designating critical third parties paper

HMT has published a paper outlining its approach to designating critical third parties to the UK financial services sector.

The paper covers the end-to-end process including:

- receipt of a recommendation from the financial regulators;
- engagement with the third party supplier, the financial regulators, and other relevant organisations; and
- the consideration of evidence before a designation decision.

The paper also describes how HMT will communicate a decision to third party suppliers, outlines the Designation Regulations process and describes the process of de-designating a critical third party.

FCA publishes 2024/25 business plan

The Financial Conduct Authority (FCA) has published its 2024/25 business plan, in line with its three-year strategy published in 2022.

The 2024/25 business plan sets out the FCA's intention to focus on the following areas:

- protecting consumers by testing the extent to which firms are meeting the standards set by the Consumer Duty, supporting people's long term financial wellbeing through the Advice Guidance Boundary Review, and making sure pension products deliver value for money;
- contributing to UK competitiveness and growth by improving the attractiveness and reach of UK wholesale markets, supporting firms to invest, innovate and expand through its innovation services and making it quicker and easier for firms to apply for authorisation; and
- building on its work to become a data-led regulator by automating more of its analytics tools to help it detect and respond to consumer harms faster and working with firms on the safe deployment of artificial intelligence.

The business plan also sets out a number of the FCA's specific commitments for the coming year, including to:

- continue to work with the Treasury and other regulatory authorities to ensure an efficient and appropriately sequenced workflow of the repeal of assimilated law and its replacement, where appropriate, with rules;
- issue a discussion paper on transferring the Markets in Financial Instruments Directive (MiFID) data reporting regimes for transactions (RTS 22) and reference data (RTS 23);
- assist in delivering a market abuse regime for cryptoassets and the PISCES facility;

- extend its data reporting supervision approach to European Market Infrastructure Regulation (EMIR), Securities Financing Transactions Regulation (SFTR) and Orderbook regimes;
- integrate the Sustainability Disclosure Requirements and Investment Labels across the market, including the anti-greenwashing rule and guidance, and continue to expand the regime, starting with a consultation on portfolio management in 2024; and
- publish a consultation paper clarifying its expectations on how firms should report operational incidents.

The FCA has also published a new set of webpages setting out its approach to:

- supervision;
- consumers;
- competition; and
- international firms.

Securitisation Regulation: Bank of Italy publishes new implementing rules

The Bank of Italy has published a new set of rules intended to update its Circulars 288/2015, 286/2013 and 285/2013 to ensure full compliance with the EU rules on securitisations set out under the Securitisation Regulation (EU) 2017/2402. The Securitisation Regulation was first implemented in Italy through the introduction of the provisions included in Articles 4-septies.2 and 190-bis.2 of Legislative Decree No. 58/1998 (Italian Financial Act).

The main objective of the new rules is to clarify the procedures for the exercise of the supervisory powers by the Bank of Italy in transactions falling under the Securitisation Regulation, and the reporting requirements applicable, amongst others, to financial intermediaries.

CSSF publishes communiqué in relation to new Luxembourg office for the management of seized assets

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a communiqué in relation to the Bureau de gestion des avoirs (BGA), the new Luxembourg office for the management of seized assets.

The purpose of the communiqué is to highlight the obligations arising from the Law of 22 June 2022 on the management and recovery of seized or confiscated assets, which came into force on 5 July 2022.

The Law established the BGA, responsible for handling all amounts seized in Luxembourg during national or international criminal proceedings, including cash or credit balances in an account, debts or virtual assets.

In accordance with Article 18 of the Law, any garnishee holding monies, debts or virtual assets seized as part of a national or foreign criminal proceeding, before Article 18 of the Law entered into force, shall declare them to the BGA.

The CSSF has therefore reminded garnishees, in particular credit institutions and virtual asset service providers, to comply with their legal obligations and declare any monies, debts or virtual assets seized before 1 October 2022.

A six-month transition period starting on 1 October 2022 expired on 31 March 2023.

In case of any further questions, supervised entities should contact the BGA directly via: info@bga.etat.lu.

SFC and HKMA consult on enhancements to OTC derivatives reporting regime

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have jointly launched a further consultation on enhancements to the over-the-counter (OTC) derivatives reporting regime in Hong Kong.

The SFC and the HKMA conducted a consultation in April 2019 which proposed a requirement to identify transactions submitted to the Hong Kong Trade Repository (HKTR) for the reporting obligation by a unique transaction identifier (UTI).

The SFC and the HKMA are now seeking views on the implementation of the UTI, together with the mandatory use of unique product identifier and critical data elements for submission of transactions to the HKTR. These proposals are intended to ensure that Hong Kong's reporting regime aligns with international developments. In addition, the SFC and the HKMA concluded that the list of designated jurisdictions for the masking relief of the reporting obligation remains unchanged.

The consultation period will end on 17 May 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

Global Insurance Trends 2024

Innovation, evolving regulatory frameworks and strategic adaptations are driving change in the global insurance markets. In the life insurance sector, we will see the continued growth of Pensions Risk Transfer (PRT) activity in new jurisdictions and with new structures. Additionally, cross-border reinsurance has become a critical component of capital management strategies. In the general insurance sector, opportunities in specialty lines, for Managing General Agents (MGAs) and for alternative capital solutions are driving change against the backdrop of increased regulatory oversight growth in sectors such as Managing General Agents (MGAs), and the exploration of alternative capital solutions to address rising demand. Collectively, these trends indicate resilience, adaptation, and potential opportunities within the global insurance landscape.

This report examines key legal trends shaping the life and general insurance sectors in 2024.

https://www.cliffordchance.com/briefings/2024/03/global-insurance-trends-2024.html

Sustainability & ESG Trends 2024

Environmental, social and governance (ESG) issues are having a significant impact on businesses globally.

Against the prevailing backdrop of continued political and economic uncertainty and rising geopolitical tensions, Clifford Chance has prepared a report looking ahead and assessing the challenges and opportunities on a range of strategic issues, from regulations on corporate sustainability reporting and transition planning, the evolution of sustainable finance and the role of carbon markets in funding net zero, to the increase in ESG-related litigation.

https://www.cliffordchance.com/insights/thought_leadership/trends/2024/sustainability-esg-trends-2024.html