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## **Regulation to protect against market manipulation on wholesale energy market through amendments to REMIT published in Official Journal**

[Regulation \(EU\) 2024/1106](#), which is intended 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), has been published in the Official Journal.

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.

Regulation (EU) 2024/1106 will enter into force on 7 May 2024.

## **Banking Union: ECON Committee adopts report on European Deposit Insurance Scheme**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON Committee) has [adopted](#) its report on the Commission's proposed regulation amending the Single Resolution Mechanism Regulation ((EU) 806/2014) (SRMR) to establish a European Deposit Insurance Scheme (EDIS).

The adopted text proposes to establish the EDIS in stages, with stage 1 (EDIS I) introducing a Deposit Insurance Fund (DIF) to provide liquidity support to participating deposit guarantee schemes (DGSs).

An EU Parliament press release published following the Committee's vote notes that the loss covering EDIS remains the goal for a later stage, and that MEPs expect the Commission to review the appropriateness of extending EDIS I to a full insurance scheme and to make associated legislative proposals in order to complete the Banking Union.

The EU Parliament is expected to follow up the legislative file after the June 2024 European elections.

## **Open Finance: ECON Committee adopts report on proposed regulation on financial data access**

The ECON Committee has [adopted](#) its report on the proposed regulation on a framework for financial data access (FiDA).

The EU Commission proposed the FiDA package in June 2023. The framework is intended to establish clear rights and obligations to manage customer data sharing in the financial sector beyond payment accounts.

An EU Parliament press release published following the ECON Committee's vote notes that:

- customers would decide how and by whom their financial data is used;
- data related to sickness and health cover would be excluded from the scope, as well as confidential business data and undisclosed know-how;
- large digital platforms designated as Gatekeepers pursuant to the Digital Markets Act should not be eligible to become financial information service providers; and
- data holders and data users should be allowed to use existing market standards and infrastructures for technical interfaces like application programming interfaces when developing common standards for mandatory data access.

Under the proposals, the European Banking Authority (EBA) would establish a register of authorised financial information service providers, as well as financial data access schemes agreed between data holders and data users.

The ECON Committee intends to give 12 more months to small firms to apply the rules, to ensure their proportional involvement.

The EU Parliament is expected to follow up the legislative file after the June 2024 European elections.

### **DORA: ESAs consult on draft RTS for joint examination teams**

The Joint Committee of the European Supervisory Authorities (ESAs) has published for [consultation](#) draft regulatory technical standards (RTS) on the conduct of oversight activities in relation to the joint examination teams (JETs) under the Digital Operational Resilience Act (DORA).

Under DORA, JETs should be established for each critical ICT third-party service provider of a supervised entity. They are comprised of staff members from the ESAs and national competent authorities (NCAs) and are responsible for assisting the assigned 'lead overseer' (one of the three ESAs) in conducting oversight activities.

The draft RTS set out the criteria for determining:

- the composition of the JETs, including the balance of members from ESAs and NCAs;
- the designation of their members;
- their tasks; and
- their working arrangements.

Comments are due by 18 May 2024. DORA and the related RTS will apply from 17 January 2025.

### **Basel Committee seeks feedback on role of climate scenario analysis in management and supervision of climate-related financial risks**

The Basel Committee on Banking Supervision has issued a [discussion paper](#) on how climate scenario analysis (CSA) can be practically used to help strengthen the management and supervision of climate-related financial risks.

The paper looks at the objectives of CSA exercises and relevant features to design and use them.

The Committee is seeking stakeholder feedback that, in conjunction with the work under way in other global forums such as the Financial Stability Board (FSB) and Network for Greening the Financial System (NGSF), may lead to additional complementary work in pursuit of its mandate to strengthen the regulation, supervision and practices of banks worldwide.

Comments are due by 15 July 2024.

### **FSB consults on liquidity preparedness of non-bank market participants for margin and collateral calls**

The FSB has launched a [consultation](#) on eight proposed policy recommendations intended to enhance liquidity preparedness of non-bank market participants for margin and collateral calls in centrally and non-centrally cleared derivatives and securities markets.

The recommendations build on and complement existing rules and regulations on liquidity risk management across different sectors and jurisdictions. The FSB intends to apply the recommendations proportionately, with a focus on non-bank market participants with material exposures to spikes in margin and collateral calls during times of stress. The recommendations cover:

- liquidity risk management and governance;
- stress testing and scenario design; and
- collateral management practices of non-bank market participants including insurance companies, pension funds, hedge funds, other investment funds and family offices, and non-financial entities, such as commodities traders.

Comments are due by 18 June 2024.

### **NGFS publishes package of reports relating to transition plans**

NGSF has [published](#) three reports furthering its work on transition plans. These reports explore:

- the needs and challenges of emerging market and developing economies (EMDEs) related to transition plans;
- interlinkages between the transition plans of the real economy and financial institutions (FIs); and
- the credibility of FIs' transition plans and processes from a micro-prudential perspective.

The reports identify three key actions that can support the global adoption of transition plans, which are:

- the development of international guidance for transition planning and corresponding and interacting frameworks for the disclosure of transition plans;
- that holistic transition plans should integrate both transition and physical aspects of climate change while considering the ongoing loss of nature; and

- enabling conditions for adopting transition plans including clarity about policy directions, such as national climate frameworks, and economy-wide incentives for developing and disclosing transition plans to broaden adoption and close information gaps.

## **Cabinet Office publishes outcome of call for evidence on National Security and Investment Act 2021**

The Cabinet Office has published the [outcome](#) of its call for evidence on the National Security and Investment Act 2021 (NSIA).

The call for evidence was intended to ensure that the NSIA regime continues to be effective and proportionate and sought feedback in relation to the scope of the activities in the 17 sensitive sectors and whether there should be some targeted exemptions from the mandatory notification regime.

The Government received 110 full responses, including:

- 41% from legal firms;
- 15% from trade bodies and business representative organisations;
- 15% from banks or investors;
- 11% from businesses operating in the 17 NSI mandatory areas;
- 7% from academic and research institutions; and
- other respondents including think-tanks, consultants and respondents not replying on behalf of an organisation.

According to the Government, the feedback was positive regarding the operation of the system and business understanding of how the NSIA works.

Following the feedback, the Government intends to focus on:

- the publication of an updated statement on how the Secretary of State expects to exercise the call-in power and updated market guidance by May 2024;
- a consultation on changes to the mandatory notification areas by Summer 2024;
- consideration of certain technical exemptions to the mandatory notification requirement for inclusion in legislation to be laid in Autumn 2024; and
- making further improvements to the operation of the NSI system, including the NSI Notification Service.

## **BaFin consults on draft guidance note on electronic transmission of asset register entries under Insurance Supervision Act**

The German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) on a draft guidance note on electronic transmission of entries made in the asset register pursuant to section 126 para 2 of the Insurance Supervision Act (Merkblatt zur elektronischen Übermittlung der im Vermögensverzeichnis vorgenommenen Eintragungen gemäß § 126 Absatz 2 VAG).

Pursuant to section 126 para 1 sentence 1 of the German Insurance Supervision Act, (Versicherungsaufsichtsgesetz – VAG), insurance

undertakings must ensure that the guarantee assets are entered individually into an asset register and must submit the entries made during a financial year to the supervisory authority three months after the end of that financial year.

A new version of section 126 para 2 VAG entered into force on 15 December 2023, which allows asset register entries to be transmitted electronically to BaFin without a qualified electronic signature. Paper submission remains optional.

BaFin's draft guidance note, which is accompanied by three related forms, is intended to create uniformity in the electronic transmission of asset register entries to BaFin. In addition to information on the type and form of the electronic transmission, the draft note also contains guidance on securing the data entered in the asset register.

The guidance note is first to apply to the electronic transmission of asset register entries for the financial year 2024, to be made in 2025.

Comments are due by 14 May 2024.

## **Ministerial draft ordinance to transfer existing legal framework for cryptoasset services to MiCA published**

The German Federal Ministry of Finance has [published](#) a draft 'Accompanying ordinance to transfer the existing legal framework regarding cryptoassets to Regulation (EU) 2023/1114' (Begleitende Verordnung zur Überführung des bestehenden Rechtsrahmens in Bezug auf Kryptowerte auf die Verordnung (EU) 2023/1114).

The Markets in Cryptoassets Regulation (EU) 2023/1114 (MiCA) creates an EU-wide uniform set of rules for primary and secondary markets in cryptoassets, which entered into force on 29 June 2023. The various rules begin to apply in different stages, a key aspect being the introduction of an authorisation requirement for the provision of cryptoasset services, which applies from 30 December 2024.

MiCA is to be implemented in Germany by way of the Financial Market Digitalisation Act (Finanzmarktdigitalisierungsgesetz - FinmadiG).

In light of the fact that Germany already has a national legal framework for the regulation of the crypto market, including an authorisation requirement for cryptoasset services, the draft ordinance aims to specify provisions in the FinmadiG intended to enable existing companies and new market participants to provide their services EU-wide from day one of the application of MiCA.

For this purpose, it is envisaged that initiating respective authorisation procedures will be possible already before application of the relevant MiCA provisions. In addition, the 'simplified procedure' provided for in MiCA and the FinmadiG for applications by entities that are already authorised under national law to provide cryptoasset services is to be specified. It is intended that the BaFin be vested with the power to issue further technical ordinances.

## **Ministry of Finance publishes bill amending certain acts in relation to ensuring operational digital resilience of financial sector**

The Ministry of Finance has published a [bill](#) amending certain acts in relation to ensuring the operational digital resilience of the financial sector. The bill assumes, among other things, that the Financial Supervision Authority will be

the authority in Poland responsible for supervising compliance with Regulation (EU) 2022/2554 of the European Parliament and of the Council on the operational digital resilience for the financial sector (the Digital Operation Resilience Act, DORA).

The requirement to comply with the provisions of the bill will apply to credit institutions, payment institutions, investment firms or central securities depositories, among others.

The bill has been referred to public consultation.

## **HKEX publishes conclusions on proposed amendments to listing rules relating to treasury shares**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has [published](#) the conclusions to its October 2023 consultation on proposed amendments to the Listing Rules relating to treasury shares. The key changes to the Listing Rules include the following:

- removing the requirement to cancel repurchased shares, so that issuers may hold the repurchased shares in treasury subject to the laws of their places of incorporation and their constitutional documents;
- resale of treasury shares by an issuer to follow the Rules that currently apply to an issue of new shares;
- maintaining a fair and orderly market, by mitigating the risk of stock market manipulation and insider dealing, through: imposing a 30-day moratorium period to restrict a resale of treasury shares after a share repurchase (subject to certain carve-out provisions); and an on-exchange share repurchase after an on-exchange resale of treasury shares; and prohibiting a resale of treasury shares on the exchange when there is undisclosed inside information; during the 30-day period preceding the results announcement; or if it is knowingly made with a core connected person; and
- consequential Rule amendments that include the following: allowing new listing applicants to retain their treasury shares upon listing, with any resale of these shares subject to the same lock-up requirement as an issue of new shares; requiring issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Rules; excluding treasury shares from an issuer's issued or voting shares under various parts of the Rules (e.g. public float and size test calculations); requiring an issuer to disclose in the explanatory statement its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares; and clarifying that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees.

The SEHK has also published a new [guidance letter](#) on the arrangements for issuers to hold or deposit treasury shares in CCASS, and [frequently asked questions](#) relating to treasury shares. The Rule amendments will come into effect on 11 June 2024.

## **HKMA shares risk management considerations related to use of distributed ledger technology**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to share with the industry the key risk management considerations that it has regard to when it reviews proposals from authorised institutions (AIs) involving the use of distributed ledger technology (DLT).

The HKMA notes that, since the Government published its 'Policy Statement on Development of Virtual Assets (VAs) in Hong Kong' in 2022, it has seen growing interest from AIs in exploring how they can apply the DLT that underlies the VA ecosystem to traditional financial market operations. The HKMA is supportive of AIs adopting DLT-based solutions as long as they can adequately manage the associated risks. In line with its risk-based and technology-neutral approach to supervision, the HKMA notes that its focus when reviewing AIs' DLT-related proposals is on ascertaining whether an AI has put in place adequate systems and controls to manage those additional risks that may arise due to DLT adoption.

To facilitate AIs' adoption of DLT solutions, the HKMA has set out in its circular:

- key issues that the HKMA will typically consider when evaluating an AI's DLT-related proposals; and
- competencies and conditions that the HKMA generally expects an AI to demonstrate and/or fulfil under each area.

The HKMA encourages AIs to take these considerations into account when preparing their DLT-related submissions. The HKMA has also reminded AIs that the considerations are non-binding, non-exhaustive and will continue to evolve as the market and related technologies develop.

## **China issues guiding opinions on further strengthening financial support for green and low-carbon development**

Seven key PRC regulators, including the People's Bank of China (PBoC), the National Financial Regulatory Administration (NFRA) and the China Securities Regulatory Commission (CSRC), have [jointly issued](#) the 'Guiding Opinions on Further Strengthening Financial Support for Green and Low-carbon Development', which were made public on 10 April 2024. The Opinions set out the framework of the policy support and measures to be implemented and developed in order to promote green and low-carbon development.

Amongst other things, the Opinions set out measures relating to:

- optimising the green financial service standard system – the Opinions provide that in respect of FIs, relevant standards on carbon footprint calculation that apply to business operation activities as well as investment and financing activities will be formulated; the existing financial service standards on green bonds, green loan, green insurance and climate investment and financing projects will be improved; and new finance standards on green stocks will be formulated;
- strengthening environmental information disclosure and reporting – the regulatory requirements on environmental disclosure and reporting are expected to be enhanced, including: exploring a phase-based and category-based environmental information disclosure mechanism



applicable to different FIs, including encouraging FIs to disclose exposure to high-carbon assets; and (b) promoting the environmental disclosure and reporting by listed companies and bond issuers;

- promoting carbon market development – the Opinions permit the market to explore diversified financial products linked to carbon emission allowances and the permitted trading channels. In addition, more trading participants will be invited to participate in the carbon market by progressively lowering the eligibility conditions; and
- facilitating international investors' participation – the Opinions also set out a goal of facilitating international market participants to invest in green assets in China, including by streamlining the procedures applicable to account set-up, trading, registration, liquidation and settlement, currency exchange and cross-border cash remittance. In addition, the Opinions provide that the alignment of the domestic standards and the internally recognised standards in green financial service will be further promoted.

The Opinions are a high-level instrument, and the framework they set out is intended to provide guidance for the competent regulators to formulate and issue the corresponding implementational regulations for market participants to comply with.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Carbon trading in China – relaunch of the Certified Emission Reduction scheme**

On 22 January 2024, China officially relaunched the China Certified Emission Reduction (CCER) scheme, which is a milestone step in establishing the voluntary carbon market in China (the National CCER Scheme). The framework of the voluntary standard applicable under this scheme is similar to other internationally recognised voluntary standards (such as Verra and Gold Standard), whilst the implementation details are subject to PRC specific regulatory requirements.

This development is critical as it also impacts China's national Emissions Trading System (ETS, the National ETS Market), which is the mandatory carbon market in China. This is because the 'key emitters' under the National ETS Market, are allowed to surrender their acquired CCERs together with their allocated or acquired certified emission allowance for their actual carbon emissions under the National ETS Market, so the launch of the National CCER Scheme will provide key emitters with additional methods to offset their carbon emissions.

This briefing paper discusses the scheme.

<https://www.cliffordchance.com/briefings/2024/04/client-briefing---china-relaunches-ccer-scheme.html>

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