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## **Benchmarks: EU Council and Parliament reach provisional agreement on proposed amendments**

The EU Council and Parliament have [reached](#) a provisional agreement on the EU Commission's proposal to amend 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 proposal is intended significantly to reduce the number of benchmarks in scope of EU law and to reduce the regulatory burden for the majority of benchmark administrators and users. Under the proposal, only administrators of critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks and certain commodity benchmarks would continue to be subject to the requirement of registration or authorisation and to the majority of the substantive requirements of the BMR.

The Council and Parliament have also agreed to:

- grant administrators outside the scope the possibility to request the voluntary application of the rules (opt-in), under certain conditions;
- add further qualitative criteria to the calculation methodology for significant benchmarks, in addition to existing qualitative and quantitative criteria;
- grant the European Securities and Markets Authority (ESMA) extended competence. Specifically, it will be in charge of supervising the endorsement of administrators, which would result in a single entry point for all third country benchmark administrators in the EU;
- only allow supervised entities to use EU and third-country benchmarks that claim to take environmental sustainability and governance factors (ESG) into account in their methodology, if the administrator of the benchmarks discloses certain information; and
- keep a specific exemption regime for spot foreign exchange benchmarks in the rules.

Once formally adopted, the final text will be published in the Official Journal and will apply from 1 January 2026.

## **MiCA: EU Commission adopts RTS on adjustments to own funds requirement for issuers of ARTs and EMTs**

The EU Commission has [adopted](#) RTS specifying the adjustment of own funds requirement and minimum features of stress testing programmes of issuers of

asset-referenced tokens (ARTs) or of e-money tokens (EMTs) under the Markets in Cryptoassets Regulation (MiCA).

The RTS relate to the higher own funds requirements on issuers where there is a higher degree of a risk, and cover:

- the procedure and timeframe for competent authorities to make an assessment of higher degree of risk;
- the procedure and timeframe for issuers to submit and implement plans to increase own funds;
- the criteria when making a determination to produce an assessment of risk; and
- the specific minimum requirements for issuers' stress testing programmes.

### **MiCA: ESAs publish guidelines on cryptoasset classification**

The European Supervisory Authorities (ESAs) have published [joint guidelines](#) on the regulatory classification of cryptoassets by industry and supervisors under the MiCA.

The guidelines contain a standardised test, as well as templates for explanations and legal opinions that provide descriptions of the regulatory classification of cryptoassets. In particular, they state that:

- the white paper for the issuance of ARTs, which contains comprehensive information about the cryptoasset, must be accompanied by a legal opinion that explains the classification of the cryptoasset. Among other things, it must state that it is not an EMT or a cryptoasset that could be considered excluded from the scope of MiCA; and
- the white paper for cryptoassets that are not ARTs or EMTs under MiCA must be accompanied by an explanation of their classification, specifically that they are not EMTs, ARTs or cryptoassets excluded from the scope of MiCA.

The guidelines will apply three months after the date of publication on the ESAs' websites in all EU official languages.

### **MiCA: EBA reports on tokenised deposits**

The EBA has published a [report](#) to raise awareness of tokenised deposits and assess their potential benefits and challenges. The report is also intended to promote convergence in the classification of tokenised deposits in contrast with EMTs issued by credit institutions under the MiCA.

The EBA has identified very few cases of tokenised deposits to date, but notes that interest from credit institutions appears to be growing. The report highlights potential benefits including programmability and automation of transfers, and potential challenges including issues relating to consumer protection, operational risk, and the application of the anti-money laundering and countering the financing of terrorism framework.

The EBA intends to continue to monitor market developments and promote discussion on potential benefits and challenges, as well as on issues relating to regulatory classification as compared to EMTs, which are in scope of MiCA.

## **CRR3: EBA consults on amending RTS on material model changes**

The European Banking Authority (EBA) has launched a [consultation](#) on amending regulatory technical standards (RTS) for assessing the materiality of extensions and changes to the Internal Ratings Based (IRB) approach.

The draft amendments are intended to clarify and enhance the conditions for the assessment by:

- aligning the existing RTS with changes introduced by the Capital Requirements Regulation (CRR3), such as by removing references to the IRB approach for equity exposures, and to the advanced measurement approach (AMA); and
- enhancing the supervisory effectiveness of the approval process for model changes, such as by clarifying the qualitative criteria and scope of the RTS.

Comments are due by 10 March 2025.

## **CRR3: EBA publishes final report on RTS on specification of long and short positions**

The EBA has published its [final draft RTS](#) on the method for identifying the main risk driver and determining whether a transaction represents a long or a short position under the market risk amendments introduced by CRR3. The RTS are part of the Phase 1 deliverables of the EBA roadmap on the implementation of the EU banking package.

The proposed general method to identify the main risk drivers hinges on sensitivities defined under the market risk standardised approach (FRTB-SA) or on add-ons defined under the standardised approach for counterparty credit risk (SA-CCR). For the determination of the direction of the positions, the methodology is aligned with the one set out in the RTS on SA-CCR.

A simplified method has also been included, covering relatively simple instruments, such as fixed-rate bonds, floating-rate notes, stocks, forwards, futures, simple swaps and plain vanilla options.

The draft RTS will be submitted to the EU Commission for endorsement following which they will be subject to scrutiny by the EU Parliament and the EU Council before being published in the Official Journal.

## **Basel Committee publishes final guidelines for counterparty credit risk management**

The Basel Committee on Banking Supervision (BCBS) has published its [final guidelines](#) for CCR management. The guidelines will replace the Committee's sound practices for banks' interactions with highly leveraged institutions report published in January 1999. Amongst other things, the guidelines highlight the need to:

- conduct comprehensive due diligence of counterparties both at initial onboarding and on an ongoing basis;
- develop a comprehensive credit risk mitigation strategy to effectively manage counterparty exposures;

- measure, control and limit CCR using a wide variety of complementary metrics; and
- build a strong CCR governance framework.

The guidelines provide a supervisory response to shortcomings that the BCBS identified in banks' management of CCR, including the lessons learned from recent episodes of non-bank financial intermediary (NBFI) distress. The guidelines are designed to be broadly applicable to manage banks' CRR exposures to all types of counterparties. However, the BCBS expects the greatest potential benefits in cases where banks have high-risk exposures to counterparties, including NBFIs. Banks and supervisors are encouraged to take a risk-based and proportional approach in the application of the guidelines, taking into account the degree of CCR generated by banks' lines of business, their trading and financing activities and the complexity of such CCR exposures.

### **FSB publishes NBFI recommendations on margin and collateral calls**

The Financial Stability Board (FSB) has published [policy recommendations](#) aimed at enhancing the 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 existing rules and regulations for liquidity risk management and governance and respond to calls for regulatory adjustments to deal with liquidity strains in the non-bank financial intermediation (NBFI) sector arising from spikes in margin and collateral calls during market stress. The recommendations cover:

- liquidity risk management and governance with respect to managing and mitigating exposures to spikes in margin and collateral calls;
- liquidity stress testing and scenario design for margin and collateral calls during both normal market conditions and in extreme but plausible stressed market conditions; and
- collateral management practices to ensure sufficient collateral is available, as and when required.

The FSB intends for these recommendations to be applied proportionately to the underlying risks of different non-bank market participants.

### **FSMA 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2024 made**

[The Financial Services and Markets Act 2000 \(Disclosure of Confidential Information\) \(Amendment\) Regulations 2024](#) (SI 2024/1306) have been made and laid before Parliament according to the negative procedure.

SI 2024/1306 amends the Disclosure Regulations (SI 2001/2188) to widen the scope for the Financial Conduct Authority (FCA) to share confidential information with other legal regulators to include information relating to claims management activity.

It also rectifies a drafting deficiency by relocating, while also updating, the list of regulators from Schedule 1 to Schedule 2 to the Disclosure Regulations to reflect the domestic regime.

SI 2024/1306 comes into force on 21 January 2024.

## **BoE and PRA publish statements of policy on cost benefit analysis**

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have published their statements of policy (SoP) on cost benefit analysis (CBA).

The [PRA's SoP](#) sets out its approach to CBA, incorporating feedback from the CBA Panel. The Financial Services and Markets Act 2000 (FSMA) requires the PRA to conduct CBA for rulebook changes and to publish an SoP on its preparation of CBAs.

The [BoE's SoP](#) outlines its approach to CBA when making rules affecting central counterparties (CCPs) and central securities depositories (CSDs). The policy explains the Bank's method for estimating costs and benefits and the role of CCP and CSD regulation in maintaining UK financial system stability.

The PRA and BoE intend to review their CBA SoPs in Q4 2025, with a potential revision in 2026 based on feedback and lessons learned. Feedback is due by 30 September 2025.

## **BoE consults on indexed long-term repo facility**

The BoE has published a [discussion paper](#) seeking feedback on its transition to a repo-led, demand-driven operating framework for supplying central bank reserves.

The paper focuses on the BoE's intention to recalibrate the indexed long-term repo facility (ILTR) and allow counterparties to use it freely as a way to access reserves. The BoE hopes the ILTR will play a key role in supplying the stock of reserves needed for both financial stability and monetary control purposes.

The paper seeks feedback from current and prospective sterling monetary framework (SMF) participants on, among other things:

- the recalibrated ILTR;
- how they view usage of the facility relative to private market alternatives;
- how they might split usage between ILTR and short-term repo (STR);
- their collateral preferences more generally; and
- potential operation barriers that could impact the success of the new framework.

Comments are due by 31 January 2025.

The PRA has also released a [statement](#) on its approach to the ILTR.

## **PRA consults on life insurer liquidity reporting**

The PRA has published a [consultation paper](#) (CP19/24) on closing the liquidity reporting gap and streamlining standard formula reporting.

During market stress episodes in 2020 and 2022, the PRA identified deficiencies in insurance firms providing accurate data in a timely manner and was limited in determining the full scope and nature of their liquidity risk exposures in real time, individually or relative to peers. The PRA also believes that the Standard Formula (SF) Solvency Capital Requirement (SCR) may be less effective in detecting model drift in internal models for life insurance firms.



The package of proposed reporting reforms includes the introduction of new liquidity reporting requirements for large life insurers and the removal of the expectation for internal model life insurance firms to report the SF SCR annually via the SF.01 template. Specifically, the proposals would result in:

- amendments to the Reporting Part of the PRA Rulebook;
- the introduction of four new reporting templates and instruction files; and
- amendments to supervisory statement (SS) 15/16 – Solvency II: Monitoring model drift and standard formula SCR reporting for firms with an approved internal model.

The proposed implementation date for any changes resulting from CP19/24 is 31 December 2025.

Comments are due by 31 March 2025.

### **PSR publishes market review and consultation on UK-EEA consumer cross-border interchange fees**

The Payment Systems Regulator (PSR) has published a [final report](#) on its market review (MR22/2.7) into cross border interchange fees alongside an associated consultation paper (CP24/14) which seeks views on potential remedies to the issues identified in the final report.

The final report identified several harms associated with the lack of competition in the cross-border interchange fee market. The PSR has concluded that merchants are paying GBP 150 to GBP 200 million a year more in fees than they would if the market worked properly.

To address the issues, the consultation paper sets out a potential price cap remedy. Subject to the outcome of the consultation, the PSR is considering an initial interim cap put in place for a limited time while further analysis is carried out to establish an appropriate methodology and level for a longer lasting cap.

Comments are due by 7 February 2024.

### **BaFin consults on amendments to Audit Report Ordinances for investment institutions and crowdfunding service providers**

The German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) (11/2024) on a draft ordinance amending the Investment Institutions Audit Report Ordinance (Wertpapierinstituts-Prüfungsberichtsverordnung - WpIPrüfbV) and the Crowdfunding Service Providers Audit Report Ordinance (Schwarmfinanzierungsdienstleister-Prüfungsverordnung - SchwarmfdPV).

The objective of the amendments is to ensure that compliance with the requirements of the Digital Operational Resilience Act (DORA), in particular regarding the ICT organisation and ICT systems, is adequately considered and reviewed as part of the annual audit of investment institutions under the Investment Institutions Act (Wertpapierinstitutsgesetz) and of crowdfunding service providers under the Securities Trading Act (Wertpapierhandelsgesetz) and Regulation (EU) 2020/1503.

The draft ordinance is envisaged to enter into force on 17 January 2025 (i.e. on the date on which DORA begins to apply).

Comments are due by 27 December 2024.

## **BaFin consults on circular specifying STS criteria for on-balance-sheet securitization**

BaFin has launched a [consultation](#) on a draft circular (12/2024) specifying the simple, transparent and standardised (STS) criteria under Article 26b to 26e of Regulation (EU) No 2017/2402 for on-balance-sheet securitisation and amendments to the EBA guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on asset-backed commercial paper (ABCP) and non-ABCP securitisation.

The draft circular specifies the criteria for STS on-balance-sheet securitisation. It also implements amended guidelines for ABCP and non-ABCP securitisation. By way of the circular, BaFin is incorporating the EBA guidelines on the STS criteria for on-balance-sheet securitisation and amending guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation (EBA/GL/2024/05) into its administrative practice.

The circular is to apply from 15 January 2025.

Comments are due by 30 December 2024.

## **CSSF updates circular on implementation of Prospectus Regulation**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published [Circular 24/867](#) updating Circular 19/724 on technical specifications regarding the submission to the CSSF of documents under the Prospectus Regulation and the Law of 16 July 2019 on prospectuses for securities (Prospectus Law) and a general overview of the regulatory framework on prospectuses.

The circular applies to all persons and undertakings supervised by the CSSF, as well as all persons subject to the Prospectus Regulation as well as those subject to Chapter 1 of Part III of the Prospectus Law.

The purpose of the circular is to amend Circular CSSF 19/724 by taking into consideration the amendments introduced by Regulation (EU) 2024/2809 to make public capital markets in the EU more attractive for companies and to facilitate access to capital for small and medium-sized enterprises.

Annex I of the circular provides a mark-up of Circular CSSF 19/724 showing the amendments.

## **CSSF updates circular on STS criteria for ABCP and non-ABCP securitisation**

The CSSF has published its [Circular 24/868](#) updating CSSF Circular 19/719 implementing the EBA guidelines on the STS criteria for non-ABCP securitisation and the STS criteria for ABCP securitisation.

The circular applies to all originators, original lenders, sponsors, securitisation special purpose entities, investors and third parties verifying STS compliance.

The purpose of the circular is to amend CSSF Circular 19/719 by taking into account the new EBA guidelines on the STS criteria for on-balance-sheet securitisation (EBA/GL/2024/05), which amended the earlier guidelines. The annex to the circular provides a mark-up of Circular CSSF 19/719, showing the amendments.



The CSSF has thereby integrated the guidelines and the new guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at the EU level. The new guidelines include a limited set of targeted amendments to the guidelines, for a specific number of requirements, to ensure that the interpretation provided by the EBA is consistent across all three guidelines.

The CSSF expects all in-scope entities to apply the guidelines and the new guidelines.

### **Ministry of Finance presents regulations for operation of online currency exchange offices**

The Ministry of Finance has [presented](#) regulations for the operation of online currency exchange offices. The draft defines non-cash Polish and foreign means of payment, as well as non-cash currency exchange. Only payment service providers keeping accounts for service recipients will be allowed to carry out this exchange, and entities that do not meet the criteria of this definition and conduct currency exchange activities on the internet will have three months to adapt their operations or to terminate the provision of these services.

The consequences of violating the regulations, stipulated in the draft, will be fines of up to PLN 5 million or imprisonment of up to two years.

The new regulations were included in the draft amendments to the Foreign Exchange Law as part of the draft Act on the cryptoasset market.

### **Hong Kong Government launches roadmap on sustainability disclosure**

The Government of the Hong Kong Special Administrative Region has launched a [roadmap](#) on sustainability disclosure in Hong Kong. The roadmap sets out Hong Kong's approach to require publicly accountable entities (PAEs) to adopt the International Financial Reporting Standards - Sustainability Disclosure Standards (ISSB Standards) and is intended to provide a pathway for large PAEs to adopt the ISSB Standards no later than 2028. The key points of the roadmap are as follows:

- the Hong Kong Institute of Certified Public Accountants is developing the Hong Kong Sustainability Disclosure Standards (Hong Kong Standards) on a full alignment basis with the ISSB Standards. The final Hong Kong Standards are expected to be issued by the end of 2024 with an effective date of 1 August 2025;
- all Main Board issuers are required to disclose against the new climate requirements modelling the International Financial Reporting Standards S2: Climate-related Disclosures on a comply or explain basis from 1 January 2025. Issuers that are Hang Seng Composite LargeCap Index constituents are further required to disclose against the new climate requirements on a mandatory basis from 1 January 2026. The Hong Kong Exchanges and Clearing Limited will consult the market in 2027 on mandating sustainability reporting against the Hong Kong Standards for listed PAEs with an expected effective date of 1 January 2028, under a proportionate approach; and

- the relevant financial regulators will require financial institutions carrying a significant weight (being non-listed PAEs) to apply the Hong Kong Standards no later than 2028.

The roadmap also elaborates on Hong Kong's blueprint to develop a comprehensive ecosystem to support sustainability disclosures, which encompasses sustainability assurance, data and technology, as well as skills and competencies.

## **HKEX to introduce new post-trade services on Orion Cash Platform**

HKEX has [announced](#) that it is embarking on a multi-year post-trade services enhancement programme for its cash equities market. Under the programme, starting from mid-2025, new features will be progressively added to the Orion Cash Platform, HKEX's integrated cash market platform, with respective release dates to be announced in due course. New features include automated post-trade report download and information exchange, as well as enabling real-time transmission and processing of trade data, related positions and reference data, and real-time matching of settlement instructions.

As part of the enhancement, HKEX's post-trade systems will become technically ready to support a T+1 settlement cycle by the end of 2025, though any future changes to Hong Kong's settlement cycle will be subject to market engagement. Meanwhile, the HKEX will continue to provide core post-trade processing through its Central Clearing and Settlement System.

## **HKEX introduces fund repository on integrated fund platform**

HKEX has [announced](#) the launch of a fund repository on its integrated fund platform (IFP).

The fund repository is intended to provide investors with one-stop access to essential information on over 2,000 Securities and Futures Commission (SFC) authorised funds in Hong Kong. The HKEX has indicated that it will roll out other functionalities of the IFP, including a business platform and a communications network to facilitate dealing of funds on a business-to-business basis between fund managers and distributors.

## **MAS and ABS to launch electronic deferred payment solutions in mid-2025 and extend deadline for cessation of corporate cheques**

The Monetary Authority of Singapore (MAS) and the Association of Banks in Singapore (ABS) have [announced](#) that two new payments solutions, the new electronic deferred payment (EDP) and EDP+ solutions, will be launched in mid-2025 to support the transition to e-payments for both corporate and retail cheque users. These solutions will complement Singapore's existing suite of e-payment modes, including PayNow, FAST, GIRO and MEPS+.

The EDP and EDP+ solutions are intended to address the use cases of post-dated payments and transactions requiring greater certainty of payment respectively. Both EDP and EDP+ will be accessible via digital banking platforms, and will leverage PayNow to allow payers to identify payees when making payments via either solution. The MAS encourages all cheque users to adopt these e-payment alternatives once they are made available.

To allow corporates sufficient time to adopt these new solutions, the MAS and the ABS have also announced a one-year extension of the deadline to cease processing of corporate cheques. In this regard, while banks will stop issuing new cheque books to corporates by 31 December 2025, the deadline to cease processing of corporate cheques will be extended to 31 December 2026. However, retail cheques will continue to be available, along with cashier's orders and USD cheques for both corporate and retail customers.

The MAS has also launched a consultation to provide details on the transition plan from cheques to e-payments, as well as proposed initiatives that focus on addressing the needs and concerns of corporates and individuals. In particular, the consultation paper seeks views on proposed initiatives to:

- manage the timeline for phasing out SGD corporate cheques and launch of the EDP solution for post-dated payments; and
- sunset the current Cheque Truncation System and replace it with a cost-efficient cloud-based system to serve the needs of remaining cheque users. These include users of SGD retail cheques, USD corporate and retail cheques and cashier's orders.

Comments on the consultation are due by 17 January 2025.

## **MAS publishes information paper on artificial intelligence model risk management**

The MAS has published an [information paper](#) on artificial intelligence (AI) model risk management.

The information paper is based on a thematic review of banks' AI (including generative AI) model risk management practices in mid-2024. It sets out good practices that were observed during the review, focusing on the following areas:

- AI governance and oversight;
- AI identification, inventorisation and risk materiality assessment; and
- AI development, validation, deployment, monitoring and change management.

The MAS has indicated that while the thematic review focused on selected banks, the good practices highlighted in the information paper should generally apply to other financial institutions (FIs). It has encouraged all FIs to refer to the good practices set out in the information paper when developing and deploying AI.

The MAS has also indicated that it is considering supervisory guidance for all FIs in 2025, building on the focus areas covered in the information paper.

## **MAS publishes information paper regarding good disclosure practices for retail ESG funds**

The MAS has published an [information paper](#) regarding good disclosure practices for retail environmental, social and governance (ESG) funds.

The paper sets out good disclosure practices for funds that qualify as ESG funds under the MAS circular on disclosure and reporting guidelines for retail ESG funds.

The paper sets out good disclosure practices that ESG funds may adopt in their adherence with paragraphs 11 to 14 of the circular. By sharing these practices, the information paper is intended to promote clear disclosures which are capable of being substantiated to facilitate investors' understanding of the key features and risks of an ESG fund and mitigate greenwashing risks.

Good practices identified in the paper include:

- clearly defining the meaning of subjective terms used in the context of the ESG fund (e.g., 'favourable/improving ESG characteristics', 'sustainable leaders' or 'strong sustainability profile');
- clearly setting out what ESG criteria or metrics are and how they are used;
- disclosing whether the manager or its related corporation has an influence over an ESG index that the ESG fund references for performance measurement purposes;
- (for recognised funds) providing a summary of risks associated with the scheme's ESG focus and investment strategy in the Singapore prospectus; and
- disclosing the purpose and extent of the manager's stakeholder engagement activities (if such activities are disclosed in the prospectus of the ESG fund), including why and how the manager would carry out such engagement, and when the manager would consider divesting the underlying investment.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **EMIR 3.0 – new rules for trading and clearing derivatives in the EU**

New rules for trading and clearing derivatives in the EU will apply from 24 December 2024. These rules will impact EU counterparties which trade derivatives as well as their trading partners.

The EMIR 3.0 package includes a range of measures to increase clearing at EU CCPs and reduce EU participants' reliance on UK CCPs. These measures include a new obligation for some EU counterparties to establish active accounts at EU CCPs and clear a 'representative' number of trades through these accounts.

This briefing paper provides an overview of the new active account obligation and other changes that will impact counterparties which trade and clear derivatives in the EU.

<https://www.cliffordchance.com/briefings/2024/12/emir-3-0--new-rules-for-trading-and-clearing-derivatives-in-the-.html>

### **US government will appeal nationwide preliminary injunction against enforcement of the Corporate Transparency Act**

On 5 December 2024, the US Department of Justice indicated that it will appeal a nationwide preliminary injunction issued by a federal district court in Texas order that enjoins enforcement of the Corporate Transparency Act (CTA). The preliminary injunction issued in the case of *Texas Top Cop Shop*

*v. Garland* (E.D. Tex.) also enjoins enforcement of regulations adopted by the Financial Crimes Enforcement Network (FinCEN) that implement the CTA's beneficial ownership information reporting requirements.

Notably, the court specifically stayed the 1 January 2025 reporting deadline included in FinCEN's implementing regulations.

This briefing paper discusses the preliminary injunction.

<https://www.cliffordchance.com/briefings/2024/12/government-will-appeal-nationwide-preliminary-injunction-against.html>

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