

January 2023

## EUROPEAN UNION

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- EC publishes key decision on January Infringements package on the implementation of the AML Directive for Spain and Italy
- EP publishes adoption of rules by MEPs to smoothen investigations into financial crime

### BANKING UNION

- ECB publishes Croatia's introduction of the euro

### BENCHMARKS REGULATION (BMR)

- ESMA publishes MoU between ESMA and the FCA concerning EU Critical Benchmarks

### DIGITAL EURO

- Council of the EU publishes eurogroup statement on the digital euro project

### DIRECTIVE ON THE DISTANCE MARKETING OF FINANCIAL SERVICES

- EP publishes IMCO Committee Draft Report Amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC

### EUROPEAN SINGLE ACCESS POINT FOR FINANCIAL AND NON-FINANCIAL INFORMATION (ESAP)

- MEPs backed easier access to information relevant for investors

### FINANCIAL SUPERVISION

- Council of the EU publishes The Swedish Presidency programme

### MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- ESMA launches a common supervisory action (CSA) with NCAs on the application of MiFID II disclosure rules with regard to marketing communications across the EU

### SUSTAINABLE FINANCE / GREEN FINANCE

- EU publishes Amendments adopted by the European Parliament on 22 June 2022 on the revision of EU Emissions Trading System
- EU publishes EP resolution of 23 June 2022 on the implementation and delivery of the Sustainable Development Goals (SDGs)
- ECON publishes opinion on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence

## FRANCE

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- Ministère de l'Economie announces the maintenance of public access to the register of beneficial owners / Le Ministère de l'Economie annonce le maintien d'accès public au registre des bénéficiaires effectifs

### CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

- ACPR announces compliance with EBA's guidelines on the specification of indicators for G-SIIs and their publication / L'ACPR annonce sa conformité avec les lignes directrices de l'ABE sur la spécification des indicateurs pour les EIS et leur publication

### FINANCIAL SUPERVISION

- AMF publishes its action and supervisory priorities for 2023 / L'AMF publie ses priorités d'action et de surveillance pour 2023

### SUSTAINABLE FINANCE / GREEN FINANCE

- AMF recalls main provisions of the CSRD / L'AMF rappelle les principales dispositions de CSRD

## BELGIUM

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- NBB publishes Circular 2023\_01 on periodic questionnaire on (ML/FT) / La BnB publie la Circulaire 2023\_01 relative au questionnaire périodique sur la prévention du BC/FT

### FINANCIAL INCLUSION

- Chambre des représentants de Belgique publishes Bill amending the law of 25/4/2014 on credit institutions' control / La Chambre des représentants de Belgique publie le projet de loi modifiant la loi du 25/4/2014

## GERMANY

### BANKING MATTERS

- BaFin publishes Notification Forms for acquiring a significant/qualifying interest in an investment institution or to increase an existing holding

### CAPITAL INVESTMENT CODE

- BVI publishes Position on the Draft Bill for an Ordinance for electronic communication according to the German Investment Code (Kapitalanlage-e-Kommunikationsverordnung – KAeKV)
- BaFin publishes Notes on the submission of the retrieval notification in the MVP specialist procedure according to KAGB

### DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

- Bundesrat publishes Bundestag Resolution passing draft Whistleblowing Directive implementation into National Law

### FINANCIAL SUPERVISION

- BaFin publishes Report on risks in the focus of BaFin for 2023

### MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- BVI publishes MiFIDII/ MiFIR review – BVI-EFAMA-EFSA-NSA priorities

### PAYMENT SERVICES DIRECTIVE (PSD2) / SINGLE EURO PAYMENTS AREA (SEPA)

- BaFin publishes FAQ on Circular 03/2022 (BA) on the reporting of serious payment security incidents pursuant to Section 54 (1) ZAG

### PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

- BaFin publishes Consultation 03/2023: Draft Circular on the criteria for exemption from liquidity requirements

### SUSTAINABLE FINANCE / GREEN FINANCE

- BVI publishes its Key Messages and Position in the context of the ESAs' call for evidence on better understanding greenwashing

## HONG KONG

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- HKMA issues letter to consult the banking industry on proposed amendments to Guideline on AML/CFT

### FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- HKMA publishes conclusion of discussion paper on crypto-assets and stablecoins

### INVESTOR PROTECTION / CONSUMER PROTECTION

- HKMA publishes Supervisory Policy Manual (SPM): Revised Module IC-4 on "Complaints Handling and Redress"

## IRELAND

### FINANCIAL SUPERVISION

- Ireland issues Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2023
- Ireland publishes Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023

## ITALY

### DIRECTIVE ON COVERED BONDS

- Banca d'Italia opens Public Consultation on its provisions on covered bank bonds

### FINANCIAL SUPERVISION

- Banca d'Italia publishes Strategic Plan for the three-year period 2023-2025

### PROSPECTUS REGULATION

- CONSOB publishes call for attention no. 1/23 of 13 January 2023 on supervision of corporate governance and transactions with related parties in the context of offering and admission to trading prospectuses

### SUSTAINABLE FINANCE / GREEN FINANCE

- Italy publishes Regulation implementing Article 111-bis of the Decree Legislative Decree No 385 of 1 September 1993, as amended by Law No 11 December 2016, n. 232, on the regulation of banking operators of ethical and sustainable finance

## LUXEMBOURG

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- CSSF publishes communication on AML/CFT controls applied to TCSP activities by certain IFMs / La CSSF publie une communication sur les contrôles LBC/FT appliqués aux activités de TCSP par certains GF
- Luxembourg publishes Ministry of Finance - United Nations - Redesignated on the ISIL (Da'esh) and Al-Qaida Sanctions List / Le Luxembourg publie la liste des sanctions redésignée sur l'EUIL (Daech) et Al-Qaida par le Ministère des finances et l'ONU

### INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CSSF publishes technical document on URR - UCITS identifiers list / La CSSF publie un document technique sur l'URR - Liste des identifiants OPCVM
- CSSF publishes 2022 Thematic Review: STOR Obligations of IFMs / La CSSF publie la Revue thématique 2022 : Obligations STOR des GFI
- CSSF publishes new notification templates to be used by the IFMs / La CSSF publie de nouveaux modèles de notification à utiliser par les GFI

#### MACROECONOMIC FRAMEWORK

- Luxembourg Government publishes communication on Scope Ratings affirming the Grand Duchy's "AAA" rating / Le gouvernement luxembourgeois publie une communication confirmant la notation "AAA" du Grand-Duché par Scope Ratings

#### PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

- CSSF publishes Circular 23/829 on the Guidelines on the exemption of investment firms from liquidity requirements / La CSSF publie la Circulaire 23/829 relative aux orientations sur l'exemption des entreprises d'investissement des exigences de liquidité

#### SUSTAINABLE FINANCE / GREEN FINANCE

- CSSF publishes SFDR data collection exercise for IFMs on regulatory requirements in relation to the SFDR / La CSSF publie un exercice de collecte de données SFDR pour les GFI sur les exigences réglementaires relatives au SFDR
- LuxSE signs Abu Dhabi Sustainable Finance Declaration / La LuxSE signe la déclaration d'Abu Dhabi sur la finance durable

### SWITZERLAND

#### SWISS FINANCIAL INSTITUTIONS ACT (FINIA)

- FINMA publishes Guidance 02/2023 on the status of licences for portfolio managers and trustees

### NETHERLANDS

#### BREXIT

- The Netherlands publishes Regulation of 15 January 2023 amending Temporary Scheme for subsidy of costs of the Brexit Adjustment Reserve by adjusting the information requirements and amending the Temporary Scheme for the Subsidy of Enterprises

#### FINANCIAL SUPERVISION

- The Netherlands publishes Decree of 23 January 2023 amending several Decrees and other decisions for financial markets (Financial Markets Amendment Decree 2022)

#### INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- AFM publishes Decree of 13 December 2022 amending Further Rules on conduct of business supervision financial undertakings Wft (Detailed rules for the supervision of the conduct of financial undertakings) Wft 2023

### UNITED KINGDOM

#### AUDIT MATTER

- FRC updates 2021 Statement of Intent on ESG

#### CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

- PRA publishes Dear CEO letter on 2023 supervisory priorities for UK deposit takers

#### FINANCIAL SUPERVISION

- FCA publishes Handbook Notice 106

#### INVESTOR PROTECTION / CONSUMER PROTECTION

- FCA highlights areas of focus for firms implementing the Consumer Duty

#### PAYMENT SYSTEMS

- UK Government launches consultation on Payment Services Regulations review and call for evidence

#### PENSION SCHEMES

- UK publishes the Pensions Act 2004 (Disclosure of Restricted Information by the Pensions Regulator) (Amendment of Specified Persons) Order 2022

#### REPORTING

- FCA opens CP23/23 on streamlining rules on structured digital reporting of financial statements

### BRAZIL

#### FINANCIAL MARKET INFRASTRUCTURE (FMI)

- CVM publishes Circular Letter No. 1/2023-CVM/SRE regarding new guidelines for automatic registration of public offerings for the distribution of securities
- CVM publishes Circular Letter No. 2/2023-CVM/SRE regarding new guidelines on procedures for automatic registration of public offerings regarding the distribution of securities

### INTERNATIONAL

#### BENCHMARKS

- ISDA updates Bloomberg Rulebook for IBOR Fallback Methodology

#### CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- ISDA publishes Standard Definitions for Digital Asset Derivatives and whitepaper on Bankruptcy in Digital Asset Markets

#### DERIVATIVE FINANCIAL INSTRUMENTS (DERIVATIVES)

- ISDA updates OTC derivatives compliance calendar (03/01/2023)

#### FINANCIAL MARKET INFRASTRUCTURE (FMI)

- ICMA updates its Secondary Market Rules & Recommendations to consolidate a number of updates over recent years in a single document

#### MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- IOSCO revises its 2011 Principles for the Regulation and Supervision of Commodity Derivatives Markets to ensure market integrity

#### OTC DERIVATIVES

- ISDA updates OTC Derivatives Compliance Calendar

#### SUSTAINABLE FINANCE / GREEN FINANCE

- ICMA publishes response to the FCA's consultation on Sustainability Disclosure Requirements (SDR) and investment labels
- UNEP FI publishes third edition of Target-Setting Protocol
- ISLA publishes response to Consultation on SDR & Investment Labels

#### CONTACTS

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## EUROPEAN UNION

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

#### EC publishes key decision on January Infringements package on the implementation of the AML Directive for Spain and Italy

##### BACKGROUND

Spain and Italy notified the European Commission of a complete transposition of the Anti-Money Laundering Directive (4th AML as amended by 5th AML) into their respective national laws. Nevertheless, the Commission identified several instances of incorrect application of the Directive, which refer to the functioning of one of its keystones: the creation of the central beneficial ownership registers. Enhancing transparency is fundamental to combat the misuse of legal entities. Member States have to ensure that information about the real owners of these legal entities (their beneficial owners) is stored in a central register and can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register. Confidence in financial markets from investors and the general public depends largely on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This is particularly true for corporate governance systems that are characterised by concentrated ownership, such as the ones in the European Union.

##### WHAT'S NEW?

On 26 January 2023, European Commission published key decision on January Infringements package on the implementation of the AML Directive for Spain and Italy, urging the two countries to apply correctly the provisions of the Directive. The European Commission sent letters of formal notice to Spain (INFR(2022)2151) and Italy (INFR(2022)2150) on the grounds of incorrect application of the Anti-Money Laundering Directive (4th AML as amended by 5th AML).

##### WHAT'S NEXT?

The AML Directive improves the EU's overall ability to prevent its financial system from being used in money laundering or terrorist funding activities. Without a satisfactory response from Spain and Italy within two months, the Commission may decide to continue the infringement procedure and send a reasoned opinion, which can take the form of formal action against the Member States if they are suspected of breaching EU law, asking them to remedy the situation by a certain date.

#### EP publishes adoption of rules by MEPs to smoothen investigations into financial crime

On 12 January 2023, European Parliament published adoption of rules by MEPs to smoothen investigations into financial crime.

The new proposal, endorsed by Civil Liberties Committee MEPs with 56 in favour, 2 against, and 1 abstaining, would ensure more effective investigations into illicit finance by making it easier to retrieve data from centralised bank registries created by the fifth anti-money laundering directive. It mandates EU Member States to ensure that the information from centralised registries is available through a single access point to be developed and operated by the Commission. This way, competent authorities can quickly establish if an individual holds accounts in several EU countries without multiple time-consuming queries.

In their position ahead of interinstitutional negotiations on the legislative proposal, MEPs emphasised the importance of respecting an individual's right to privacy, and the principle of data minimisation. They also highlight the need to gather bank account information proportionally to the needs of a specific ongoing investigation, and emphasise that searches in the centralised bank registries should only be allowed in cases where the authorities would be allowed to conduct a similar search in national registries.

In parallel to the new rules on access to centralised bank registries, EU lawmakers are also discussing a new Anti-money laundering package, which sets out measures to strengthen the EU rules on combating money laundering and terrorist financing. It addresses the shortcomings of the existing framework, which include ineffective implementation, weak oversight and insufficient detection of suspicious transactions. The Parliament and Council have already reached an agreement on one part of the package, and work on the others is ongoing.

Next, the full house of the European Parliament will be asked to endorse the mandate for negotiations.

## BANKING UNION

#### ECB publishes Croatia's introduction of the euro

On 1 January 2023, European Central Bank (ECB) published Croatia's introduction of the euro.

- Euro banknotes and coins start circulating in Croatia
- Hrvatska narodna banka joins Eurosystem
- Croatia becomes 20th euro area member
- Hrvatska narodna banka now also full member of Single Supervisory Mechanism following period of close cooperation

The euro entered into circulation in Croatia today, bringing the number of European Union (EU) Member States using the single European currency to 20.

With Croatia joining the euro area, Hrvatska narodna banka, the country's national central bank, becomes a member of the Eurosystem. The euro area's central banking system comprises the ECB and the national central banks of those countries whose currency is the euro.

Hrvatska narodna banka also becomes a full member of the Single Supervisory Mechanism, although the country has been part of the close cooperation framework since October 2020. As such, the ECB is currently responsible for directly supervising five significant institutions in the country and overseeing 16 less significant institutions there. As part of its supervisory tasks, the ECB is also responsible for licensing banks and assessing the buyers of qualifying holdings in all banks. Hrvatska narodna banka already has a representative on the ECB's Supervisory Board.

Hrvatska narodna banka has paid the remainder of its contribution to the capital of the ECB and transferred its contribution to the ECB's foreign reserve assets. Croatian counterparties of the Eurosystem will be able to participate in ECB open market operations announced after 1 January 2023. A list of credit institutions and branches of credit institutions located in Croatia that are subject to reserve requirements will be published shortly on the ECB's website, as will lists of branches of Croatian credit institutions located in other EU Member States already using the euro. The ECB announced transitional provisions for minimum reserve requirements on 28 October 2022. Assets located in Croatia that fulfil the necessary requirements will be added to the euro area's list of eligible collateral.

Croatia joining the euro area as its 20th member also means that the new system of rotating voting rights in the ECB's Governing Council comes into force as of today, with the rights rotating according to a calendar.

Croatia's membership of the euro area has also led to changes to the Eurosystem capital subscriptions.

## **BENCHMARKS REGULATION (BMR)**

### **ESMA publishes MoU between ESMA and the FCA concerning EU Critical Benchmarks**

On 30 January 2023, the European Securities and Markets Authority (ESMA) published a Memorandum of Understanding (MoU) between ESMA and the UK Financial Conduct Authority (FCA) concerning EU Critical Benchmarks

## **DIGITAL EURO**

### **Council of the EU publishes eurogroup statement on the digital euro project**

On 16 January 2023, Council of the EU published eurogroup statement on the digital euro project.

The Eurogroup reaffirms its support for the continued efforts of all European and national institutions involved in the preparatory work for the potential issuance of a digital euro, and encourages a high level of innovation and ambition in exploring its possible design and distribution options. Depending on its design, a digital euro could play a key role in an increasingly digitalised economy by strengthening the open strategic autonomy of the European Union, reflecting the central geopolitical role played by payment systems, in fostering financial sector innovation and delivering benefits for citizens, businesses, and Member States, while preserving the role of central bank money as an anchor for our monetary system.

The Eurogroup will continue to play an active role in discussing the key political issues underlying a digital euro. The Eurogroup looks forward to the further work by the ECB, the euro area national central banks and the Commission in assessing key aspects of the digital euro, and stand ready to contribute to these discussions, including regarding the costs and benefits, the international use of the digital euro and policy implications of the underlying architecture. The Eurogroup will also discuss in inclusive format the relevant implications for non-euro area Member States and hear on their progress and plans on the introduction of CBDCs. The Eurogroup looks forward to the results of the prototyping exercise conducted by the ECB. Furthermore, the appropriate technical solutions and business arrangements necessary to provide a digital euro will be a key aspect to be considered in the realisation of a digital euro.

## **DIRECTIVE ON THE DISTANCE MARKETING OF FINANCIAL SERVICES**

### **EP publishes IMCO Committee Draft Report Amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC**

On 18 January 2023, European Parliament published IMCO Committee Draft Report Amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC.

The Commission proposal includes the following elements:

- Easier access to 14-day right of withdrawal for distance contracts for financial services, including a requirement that consumers be provided with a withdrawal button;
- Clarification of the rules on what, how and when pre-contractual information is to be provided. This would include an obligation on the seller to inform consumers on potential hidden costs or the risk related to the financial service. Consumers would also get a right to reflect on the pre-contractual information received, at least a day before signing a contract;
- Special rules on concluding financial services contracts online, requiring traders to provide consumers with adequate explanations, including by using roboadvice or chat boxes. Consumers would also have a right to request to speak to a person;
- Stronger penalties, in line with those that already apply to other widespread cross-border infringements of consumer rights, with a maximum penalty of at least 4% of a trader's annual turnover;
- Full harmonisation, which would ensure the same high level of consumer protection across Member States.

In the European Parliament, the file has been referred to the Committee on the Internal Market and Consumer Protection (IMCO). On 8 July 2022, the IMCO Committee has appointed MEP Arba Kokalari as rapporteur.

## **EUROPEAN SINGLE ACCESS POINT FOR FINANCIAL AND NON-FINANCIAL INFORMATION (ESAP)**

### **MEPs backed easier access to information relevant for investors**

On 31 January 2023, the European Parliament published a communication on the committee vote for common data spaces to merge information relevant for capital markets, financial services and sustainable finance. This exercise, the European Single Access Point (ESAP) is set to improve public access to public information about companies, both financial and non-financial, such as on sustainability, social governance or the workplace diversity of businesses. This in turn should make SMEs more visible and support the green transition through sustainable finance, as investors and other key capital market participants as well as non-governmental organisations would be better informed when making decisions about investments. In addition to the information made public because of EU law, MEPs proposed that from 1 January 2027 ESAP should also make available information that any EU business has made public on a voluntary basis and that each member state should designate at least one entity to collect such information. Information provided voluntarily would have to be uniform in format and comparable

in substance, value, use and reliability to that submitted on a mandatory basis. Furthermore, information containing personal data should not be stored on ESAP. MEPs also insisted that ESAP should not create any new reporting requirements but should instead build upon existing disclosure requirements, procedures and infrastructure stemming from EU legislation. The information on ESAP should be available free of charge, except for fees charged for specific services such as downloads of large volumes of information of commercial relevance. As part of the CSA, NCAs will review whether marketing communications (including advertisements) are fair, clear and non-misleading and how firms select the target audience for the marketing communications, especially in the case of riskier and more complex investment products. ESMA is also aware that younger, less experienced investors, are particularly vulnerable when they operate online. For this reason, the CSA will also closely consider marketing and advertising by firms through distribution channels including apps, websites, social media and collaborations with affiliates such as influencers. Finally, the 2023 CSA will also be an opportunity to collect information about possible 'greenwashing practices' observed in marketing communications and advertisements. ESMA wishes to assess the application by investment firms and credit institutions of the MiFID II requirements on marketing communication and is aware of the key role that marketing communications and advertisements can play in determining consumer behaviour and influencing investment decisions. A sharing of practices across NCAs will help ensure consistent implementation and application of EU rules and enhance the protection of investors in line with ESMA's objectives.

## FINANCIAL SUPERVISION

### Council of the EU publishes The Swedish Presidency programme

On 17 January 2023, Council of the EU published The Swedish Presidency programme.

Among the The Swedish Presidency's priorities in the Economic and Financial Affairs Council, in the financial area, the Presidency will seek to continue the fight against international crime by advancing the efforts to tackle money laundering and the financing of terrorism. This will involve advancing the negotiations on establishing a new EU body in this area and on the 'rulebook'. The Presidency will also prioritise efforts to create an open and competitive capital markets union to strengthen the internal market and bolster the green transition. It is crucial to ensure continued high consumer and investor protection and help ensure transparency and sustainability in the capital market.

For this reason, the Presidency will continue the work on regulatory frameworks for funds and financial instrument markets, and a European single access point for financial and non-financial information. Financial stability efforts will continue, including through progress in the area of banking and insurance with regard to enhanced resilience, the implementation of international standards, and crisis management. The Presidency is also ready to initiate discussions on new proposals presented by the Commission during the first half of the year, including on the digital euro and consumer protection.

## MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

### ESMA launches a common supervisory action (CSA) with NCAs on the application of MiFID II disclosure rules with regard to marketing communications across the EU

On 16 January 2023, European Securities and Markets Authority (ESMA) informed on launching a common supervisory action (CSA) with national competent authorities (NCAs) on the application of MiFID II disclosure rules with regard to marketing communications across the European Union (EU).

The CSA will be conducted over the course of 2023.

ESMA is aware of the key role that marketing communications and advertisements can play in determining consumer behaviour and influencing investment decisions and is therefore launching this exercise to assess the application by investment firms and credit institutions of the MiFID II requirements on marketing communications.

As part of the CSA, NCAs will review whether marketing communications (including advertisements) are fair, clear and non-misleading and how firms select the target audience for the marketing communications, especially in the case of riskier and more complex investment products.

ESMA is also aware that younger, less experienced investors, are particularly vulnerable when they operate online. For this reason, the CSA will also closely consider marketing and advertising by firms through distribution channels including apps, websites, social media and collaborations with affiliates such as influencers.

Finally, the 2023 CSA will also be an opportunity collect information about possible 'greenwashing practices' observed in marketing communications and advertisements.

ESMA believes this initiative and the related sharing of practices across NCAs, will help ensure consistent implementation and application of EU rules and enhance the protection of investors in line with ESMA's objectives.

The CSA contributes to fulfilling ESMA's mandate on building a common supervisory culture among NCAs to promote sound, efficient, and consistent supervision throughout the EU. ESMA's promotion of supervisory convergence is done in close cooperation with NCAs.

## SUSTAINABLE FINANCE / GREEN FINANCE

### EU publishes Amendments adopted by the European Parliament on 22 June 2022 on the revision of EU Emissions Trading System

On 27 January 2023, EU published Amendments adopted by the European Parliament on 22 June 2022 on amendments adopted by the European Parliament on 22 June 2022 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 (Revision of the EU Emissions Trading System).

On 18 May 2022, as part of the REPowerEU initiative, the Commission presented a legislative proposal that amends the EU ETS Directive and the MSR decision to auction €20 billion worth of allowances from the market stability reserve. The auction revenue would be made available to the Recovery and Resilience Facility.

In the European Parliament, the proposal has been referred to the Committee on Environment, Public Health and Food Safety (ENVI). Peter Liese (EPP, Germany) was appointed as rapporteur and presented his draft report in January 2022. The ENVI Committee adopted its report on 17 May 2022. It was rejected in the June I plenary session, referred back to the Committee, and then adopted in the June II plenary. The adopted text aims to reduce GHG emissions in the ETS sectors by 63 % by 2030 and introduces a bonus-malus-system to incentivise best-performers and innovation. It aims to raise the ambition for the maritime transport sector and establishes an Ocean Fund to support maritime decarbonisation. Free allowances in sectors covered by the CBAM should be phased out between 2027 and 2032. The adopted text sets the starting date for the ETS II to 2024 for commercial buildings and road transport, while residential buildings and private road transport would be included from 2029, subject to a thorough assessment and a new legislative proposal. Parliament wants a share of the ETS auctioning revenue to be used as an own resource for the EU budget and increase the size of the Innovation Fund. The Modernisation Fund could also finance cross-border projects in low-growth border regions, and would only be available to Member States with legally binding climate neutrality targets and full respect for the rule of law.

In the Council, environment ministers held a first exchange on the 'Fit for 55' package on 20 July 2021. The Council adopted its general approach on 29 June 2022, maintaining the overall ambition proposed by the Commission.

Trilogues started in July 2022 and concluded with a provisional political agreement on 18 December 2022.

### **EU publishes EP resolution of 23 June 2022 on the implementation and delivery of the Sustainable Development Goals (SDGs)**

On 27 January 2023, EU published in the Official Journal of the European Union (OJ) EP resolution of 23 June 2022 on the implementation and delivery of the Sustainable Development Goals (SDGs).

Reaffirms its commitment to the 2030 Agenda, its 17 SDGs and the pledge to leave no one and no place behind; stresses that, in the light of current and future pandemics and the aftermath of the war in Ukraine, the 2030 Agenda provides a unique pathway to a wellbeing economy to build back better a more equitable, just, inclusive, sustainable and resilient world; acknowledges that the SDGs are a common concern of humankind; encourages the Commission to take action to address climate change and to respect and promote human rights, the right to health, local communities, refugees and migrants, children, minority groups, people in vulnerable situations, the right to development, gender equality, the empowerment of women and intergenerational equity;

2. Recalls that there are fewer than eight years left to meet the 2030 Agenda targets for sustainable development and that the 2020s have been declared to be the UN Decade of Action on Sustainable Development;

3. Underlines that delivering on the 2030 Agenda will contribute to achieving a fair and inclusive green and digital transition, in line with the EU's ambitions and actions outlined in the European Green Deal and the 2030 Digital Compass.

### **ECON publishes opinion on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence**

On 30 January 2023, the Committee on Economic and Monetary Affairs of the European Parliament (ECON) published an opinion on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. The ECON has made several amendments to the Directive. They comprise the following:

- The need for a level playing field for due diligence legislation across member states.
- The risks posed by global value chains and the actions the EU needs to take to establish resilience.
- Voluntary inclusion of SMEs in the value chain of a company.
- Reference added to international frameworks such as the OECD Due Diligence Guidance for Responsible Business Conduct and the UN Guiding Principles for Business and Human Rights, and requirements stemming from them.
- The disclosure of information on actual and potential adverse impacts to stakeholders.
- Adequate and targeted requirements for SMEs.
- Disengagement from a business relationship as a last resort.
- Possibility of relying on contractual assurances does not exclude the possibility of a company to be in breach of its due diligence obligations.
- Companies to prevent or mitigate any impact it is causing or contributing to the impact, and try to best extend to remedy any impact.
- Financial undertakings to assess the company before providing any financial service and verifications to be performed regularly after the provision of the service.
- The development of contractual clauses to manage environmental and human rights risks to be prioritized.
- Administrative fines foreseen to be comparable in magnitude to fines currently provided for in competition law and data protection law.
- Amendments of victims access to justice and legal remedies.
- New definitions of some terms.
- Minimum standards for independent third-party verification.
- Member states to prioritise adverse impacts according to their severity and their likelihood, and shall take into consideration the nature and context of their operations, including geographic.
- The code of conduct to be designed to ensure the respect of human rights, the environment by the company.
- Undertakings' due diligence policies to be publicly accessible through the European Single Access Point for at least 30 years.
- Member States to ensure that companies carry out a due diligence policy which is proportionate and commensurate to the likelihood and severity of their potential or actual adverse impacts and their specific circumstances.
- Member States to ensure companies identify whether they cause, contribute to or are directly linked to actual and potential adverse human rights impacts and adverse environmental impacts based on a risk assessment and risk-based monitoring methodology.
- Member States to ensure that companies map their value chain and, with due regard for commercial confidentiality, publicly disclose relevant information.
- Financial sector guidelines to be issued in the future.
- Deletion of some articles.

## FRANCE

### ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

#### [Ministère de l'Economie annonce la maintenance de public access to the register of beneficial owners / Le Ministère de l'Economie annonce le maintien d'accès public au registre des bénéficiaires effectifs](#)

On 19 January 2023, the Ministère de l'Economie announced the maintenance of public access to the register of beneficial owners. On 22 November 2022, the Court of Justice of the European Union invalidated the provision according to which information on the beneficial ownership of companies must be accessible in all cases to any member of the general public, considering that this opening constituted a serious interference with the Charter of Fundamental Rights of the European Union.

Bruno Le Maire, Minister of the Economy, Finance and Industrial and Digital Sovereignty, has decided to maintain public access to the data of the register of beneficial owners pending drawing all the consequences of the judgment of the Court of Justice of the European Union.

On the occasion of the transition to the national register of companies on 1 January 2023, access to the data of the national register of beneficial owners was temporarily suspended for technical reasons. This access was restored today from the website of the National Institute of Industrial Property (INPI).

The future modalities of access to the data of the register of beneficial owners taking into account the decision of the CJEU will be defined soon, in conjunction with the stakeholders. In particular, they will allow media outlets and civil society organisations with a legitimate interest to continue to access the register.

France is strongly committed to the fight for transparency of the beneficial owners of companies. The publication and free use of the register of beneficial owners has been guaranteed as part of the transposition of the Fifth European Directive on combating money laundering and terrorist financing. The France will continue to take ambitious positions on the Sixth Directive currently under negotiation, which will have to be adapted to take into account the CJEU's ruling.

#### [Version française](#)

*Le 19 janvier 2023, le ministère de l'Économie a annoncé qu'il maintenait l'accès au registre public général des bénéficiaires effectifs. Le 22 novembre 2022, la Cour de justice de l'Union européenne a invalidé la disposition selon laquelle les informations sur les bénéficiaires effectifs des sociétés devaient être accessibles dans tous les cas à tout membre du public, considérant que cette ouverture constituait une atteinte grave à la Charte des droits fondamentaux de l'Union européenne.*

*Bruno Le Maire, ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique, a décidé le maintien de l'accès du public aux données du registre des bénéficiaires effectifs dans l'attente de tirer toutes les conséquences de l'arrêt de la Cour de justice de l'Union européenne.*

*A l'occasion du passage au registre national des entreprises au 1er janvier 2023, l'accès aux données du registre national des bénéficiaires effectifs a été provisoirement suspendu pour des raisons techniques. Cet accès a été rétabli ce jour [19/01/2023] depuis le site de l'Institut National de la Propriété Industrielle (INPI).*

*Les futures modalités d'accès aux données du registre des bénéficiaires effectifs tenant compte de la décision de la CJUE seront définies prochainement, en lien avec les parties prenantes. Elles permettront notamment aux organes de presse et aux organisations de la société civile y ayant un intérêt légitime de continuer à accéder au registre.*

*La France est fortement engagée dans la lutte pour la transparence des bénéficiaires effectifs des sociétés. La publicité et la gratuité du registre des bénéficiaires effectifs ont été garanties dans le cadre de la transposition de la cinquième directive européenne relative à la lutte contre le blanchiment de capitaux et le financement du terrorisme. La France continuera de porter des positions ambitieuses sur la sixième directive actuellement en cours de négociation, qui devra être adaptée pour tenir compte de l'arrêt de la CJUE.*

### CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

#### [ACPR announces compliance with EBA's guidelines on the specification of indicators for G-SIIs and their publication / L'ACPR annonce sa conformité avec les lignes directrices de l'ABE sur la spécification des indicateurs pour les EIS et leur publication](#)

On 23 January 2023, the Autorité de contrôle prudentiel et de résolution (ACPR) announces compliance with the European Banking Authority (EBA)'s guidelines amending Guidelines EBA/GL/2020/14 on the specification of indicators for global systemically important institutions (G-SIIs) and their publication (EBA/GL/2022/12).

These guidelines are applicable from 16 January 2023 by banking groups whose parent company is located in France and which are subject to a reporting obligation for the G-SIIs exercise, which must make every effort to comply with them, in accordance with the provisions of Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Banking Authority.

#### [Version française](#)

*Le 23 janvier 2023, l'Autorité de contrôle prudentiel et de résolution (ACPR) a annoncé sa conformité aux orientations de l'Autorité bancaire européenne (ABE) modifiant les orientations EBA/GL/2020/14 relatives à la spécification des indicateurs des établissements d'importance systémique mondiale (EISm) et leur publication (EBA/GL/2022/12).*

*Ces orientations sont applicables à compter du 16 janvier 2023 par les groupes bancaires dont la maison mère est située en France et qui sont soumis à une obligation déclarative au titre l'exercice des EISm, qui doivent mettre tout en œuvre pour les respecter, conformément aux dispositions de l'article 16 du règlement (UE) n° 1093/2010 du Parlement européen et du Conseil du 24 novembre 2010 instituant l'Autorité bancaire européenne.*

### FINANCIAL SUPERVISION

#### [AMF publishes its action and supervisory priorities for 2023 / L'AMF publie ses priorités d'action et de surveillance pour 2023](#)

On 9 January 2023, the Autorité des marchés financiers (AMF) published its action and supervisory priorities for 2023.

The AMF's priorities for action in 2023 focus on four areas:

- Promote finance that meets the new expectations of retail investors: the AMF will strive to provide useful, easy-to-read information to enable investors to make informed investment decisions, whether on fees charged or on information and warnings about financial products. It will build up its knowledge of retail investors to ensure that its financial education initiatives are better targeted, using the same communication channels as those used by retail investors. The AMF will seek out new channels to raise public awareness of the risk of scams, which is continuing unabated, and will draw on the lessons learned from its mystery visits and inspection campaigns to encourage distributors to market products that are genuinely adapted to the different investor profiles. The AMF will take action on the marketing of risky investment offers and promotion on social media and by influencers. In this regard, it will contribute to the national and European legislation currently under review and to the work undertaken by the Ministry of the Economy, Finance and Industrial and Digital Sovereignty on influence marketing.
- Take up European and international challenges: the AMF will work to promote supervisory convergence by actively participating at ESMA's work. It also intends to take a proactive stance on new European legislation, with a focus on investor protection. The AMF is committed to addressing the issues of financial market resilience and efficiency and will participate in the work being done under the auspices of the Financial Stability Board and the International Organization of Securities Commissions (IOSCO) on liquidity management by investment funds. At the same time, it will continue to support financial players in implementing the new legislation, including the European Regulation on Markets in Crypto-assets (MiCA). This regulation will make it compulsory for digital asset service providers to obtain authorisation in order to operate. The AMF calls for an acceleration of the timetable for the transition to mandatory authorisation for non-registered digital asset service providers within a timeframe to be determined.
- Develop the regulatory framework for sustainable finance and combat greenwashing: the AMF will continue to support listed companies and asset managers in implementing key sustainable finance legislation. The AMF will this year review the first reports by listed companies on their economic activities that are considered environmentally sustainable. The AMF will also assist the financial market to prepare for implementation of the Corporate Sustainability Reporting Directive (CSRD). It will advocate in favour of a clarification of texts to ensure their proper application and to better combat the risk of greenwashing. This will be the case in particular with the Sustainable Finance Disclosure Regulation (SFDR). Data quality, training of financial intermediaries, and financial education of investors is another key issue in sustainable finance.
- Ensure robust and efficient supervision: the AMF will continue to secure its enforcement policy and adapt its tools to keep pace with changes in behaviour and technology. It will step up its use of data, while continuing to experiment with the possibilities offered by artificial intelligence technologies.

Supervisory priorities for investment management companies:

- cybersecurity measures with particular attention to the processes and due diligence put in place with regard to external IT service providers;
- financial management delegations, and more particularly the governance and human resources of management companies and risk control mechanisms;
- the application of the SFDR;
- the quality of the reporting data, tested on the reports required under the money market funds regulation, on alternative investment fund managers, and on the ratios and information sent to the regulator via the ROSA extranet;
- Environmental, social and governance (ESG) reporting of benchmark administrators.

Supervisory priorities for market intermediaries and infrastructures:

- the quality of post-trade transparency data on bonds under the Markets in Financial Instruments Regulation (MIFIR) and transaction data from derivatives reporting under the European Market Infrastructure Regulation (EMIR) and securities financing transactions as regards the Securities Financing Transactions Regulation (SFTR);
- provision of market data by trading venues;
- cross-border activities.

Supervisory priorities for marketing and advisory players:

- marketing within banking distribution networks and compliance with the rules laid down in the Markets in Financial Instruments Directive (MiFID), with particular attention to the online customer journey;
- marketing materials;
- investor claims handling;
- supervision of financial investment advisers, with particular attention paid to the marketing of atypical, risky products or products that are banned from being marketed in France.

The AMF-ACPR Joint Unit will be starting work on the adoption of the provisions of MiFID II and the Insurance Distribution Directive (IDD) by market participants in order to understand any difficulties that they may encounter in applying them and to improve market compliance. It will review changes in the practices of distributors in marketing financial products to vulnerable elderly people, two years after the regulators discussed this issue with the marketplace.

## Version française

Le 9 janvier 2023, l'Autorité des marchés financiers (AMF) a publié ses priorités d'action et de surveillance pour 2023.

Pour l'année, les priorités d'action 2023 de l'AMF s'articuleront autour de quatre axes :

- *promouvoir une finance adaptée aux attentes des épargnants : l'AMF s'efforcera d'assurer une information utile et lisible pour permettre aux épargnants de prendre des décisions d'investissement éclairées, qu'il s'agisse des frais appliqués ou des informations et avertissements sur les produits financiers. Elle renforcera sa connaissance des épargnants pour mieux cibler ses actions de communication et d'éducation financière, en utilisant les mêmes canaux de communication que ceux utilisés par les épargnants. L'AMF cherchera de nouveaux canaux pour sensibiliser le public aux risques d'arnaques, qui n'ont pas diminué, et s'appuiera sur les enseignements tirés de ses visites mystères et contrôles pour favoriser auprès des distributeurs un marketing réellement adapté aux différents profils d'épargnants. L'AMF interviendra pour commercialiser les offres d'investissement à risque et en faire la promotion sur les réseaux sociaux et auprès des influenceurs. À cet égard, l'AMF contribuera aux textes nationaux ou européens, et aux travaux engagés par le ministère de l'Économie, des Finances et de la Souveraineté industrielle et numérique sur l'influence ;*

- relever les défis enjeux européens et internationaux : l'AMF se mobilisera pour favoriser la convergence prudentielle en Europe en participant activement aux travaux de l'ESMA. L'AMF entend également se positionner sur les nouveaux textes européens avec une priorité donnée à la protection des investisseurs mobilisés sur les enjeux de transparence, de résilience et d'efficacité des marchés financiers, l'AMF sera attentive aux travaux européens sur ces sujets, notamment la Régulation MiFIR. Elle contribuera aux travaux du Conseil de stabilité financière et de l'Organisation internationale des commissions de valeurs (OICV) sur la gestion de la liquidité par les fonds d'investissement. Parallèlement, l'Autorité poursuivra ses actions d'accompagnement des acteurs financiers dans la mise en œuvre des nouveaux textes, dont le règlement européen sur les marchés des crypto-actifs MiCA. Ce texte rendra obligatoire l'agrément des prestataires de services sur actifs numériques. L'AMF appelle de ses vœux une accélération du calendrier de passage à l'agrément obligatoire des prestataires de services sur actifs numériques non enregistrés dans un délai à convenir ;
- améliorer le cadre réglementaire en matière de finance durable et lutter contre l'éco-blanchiment : l'AMF continuera d'accompagner les sociétés cotées et les sociétés de gestion dans la mise en œuvre des textes clés sur la finance durable. Cette année, elle fera le point sur les premiers rapports des sociétés cotées sur leurs activités économiques considérées comme durables sur le plan environnemental. Elle accompagnera également la Place dans sa préparation à la mise en œuvre de la Directive sur le reporting de durabilité (Corporate Sustainability Reporting Directive ou CSRD). Elle plaidera en faveur d'une clarification des textes européens afin de permettre leur bonne application et mieux lutter contre le risque d'éco-blanchiment (greenwashing). Ce sera le cas, par exemple, en ce qui concerne le règlement sur la publication d'informations en matière de durabilité dans le secteur des services financiers (SFDR). La qualité des données, la formation des intermédiaires financiers et l'éducation financière des épargnants constituent un autre enjeu important en matière de la finance durable ;
- assurer une supervision robuste et efficace : l'AMF poursuivra la sécurisation de sa politique répressive et l'adaptation de ses outils au plus près des évolutions des comportements et des technologies. Elle intensifiera son utilisation des données, tout en continuant à expérimenter les possibilités offertes par les technologies relevant de l'intelligence artificielle.

Priorités de supervision concernant les sociétés de gestion :

- les dispositions de cybersécurité avec une attention particulière sur les processus et diligences mis en place vis-à-vis des prestataires informatiques externes ;
- les délégations de gestion financière, et plus particulièrement la gouvernance et les ressources humaines des sociétés de gestion et les dispositifs de contrôle des risques ;
- l'application de la réglementation SFDR (finance durable) ;
- la qualité des données de reporting, testées sur les reporting exigés par la réglementation sur les fonds monétaires, sur les gestionnaires de fonds d'investissement alternatifs, et sur les ratios et informations transmises au régulateur via l'extranet ROSA ;
- les déclarations environnementales, sociales et de gouvernance (ESG) des administrateurs d'indices.

Priorités de supervision concernant les intermédiaires et les infrastructures de marché :

- la qualité des données de transparence post-négociation sur les obligations (dans le cadre de la réglementation des marchés d'instruments financiers (MiFIR) et des données de transaction issues du reporting sur les dérivés (règlement EMIR) et les opérations de financement sur titre (SFTR) ;
- la fourniture de données de marché par les plateformes de négociation ;
- les activités transfrontalières.

Priorités de supervision concernant les acteurs de la commercialisation et du conseil :

- la commercialisation au sein des réseaux de distribution bancaire et le respect des règles édictées par la Directive des marchés d'instruments financiers, avec une attention particulière portée au parcours des clients en ligne ;
- la documentation commerciale ;
- le traitement des réclamations des investisseurs ;
- la supervision des conseillers en investissements financiers, avec une attention particulière portée à la commercialisation des produits financiers atypiques, risqués ou interdits à la commercialisation en France.

Dans le cadre du Pôle Assurance Banque Épargne, pôle commun à l'AMF et à l'ACPR, qui coordonne la veille des pratiques commerciales des professionnels de la finance, de nouveaux travaux débiteront sur l'appropriation des dispositions des Directives sur les marchés d'instruments financiers ( MiF2) et sur la distribution d'assurance (DDA) par les acteurs afin de comprendre leurs éventuelles difficultés d'application et d'améliorer la conformité du marché. Un état des lieux sera notamment dressé sur l'évolution des pratiques des distributeurs dans la commercialisation des produits financiers auprès des personnes âgées vulnérables.

## SUSTAINABLE FINANCE / GREEN FINANCE

### AMF recalls main provisions of the CSRD / L'AMF rappelle les principales dispositions de CSRD

On 17 January 2023, the Autorité des marchés financiers (AMF) published a communication recalling the main provisions of the Corporate Sustainability Reporting Directive (CSRD).

The European Non Financial Reporting Directive (NFRD) that currently governs the non-financial performance declarations of European companies will soon be replaced by a new, more ambitious directive: the Corporate Sustainability Reporting Directive, known as the "CSRD" (EU) 2022/2464, which will apply gradually from 1 January 2024.

#### Main provisions of CSRD:

The new and enhanced reporting requirements of companies form part of the European Commission Green Deal action plan to strengthen the sustainable finance framework. The main objective of CSRD is indeed to harmonize companies' sustainability reporting and to improve the availability and quality of ESG disclosures. These developments should ensure, for instance, that financial market participants' needs in terms of ESG data are met to comply with their own reporting obligations.

CSRD amends four existing European legislations: the Accounting directive, the Transparency directive, the Audit regulation and the Audit directive. The main changes introduced by the CSRD, in comparison with NFRD, the non-financial reporting directive of 2014, are:

- The expansion of the scope: a significantly higher number of companies fall within the scope of the new directive, compared with NFRD. In particular, all companies listed on regulated market (except micro-undertakings) will be concerned with this new reporting obligations (i.e. section "scope of the CSRD directive").
- More stringent and harmonized reporting obligations: following a principle of "double materiality", companies have to report detailed information on their material sustainability risks, opportunities and impacts according to European sustainability reporting standards (ESRS). These standards, that cover all environmental, social and governance matters will be adopted by way of delegated acts by the European Commission (See "Focus" section below).
- Mandatory location of sustainability information in a dedicated section of the management report.
- Single electronic reporting format: companies will have to prepare their management report, including the sustainability statement, in a xHTML electronic format. In addition, sustainability information will have to be marked-up in accordance with a to-be-adopted digital taxonomy.
- Mandatory assurance of sustainability information, to be conducted by statutory auditors or independent assurance providers (at the choice of Member States). The CSRD requires first a "limited assurance" level and introduces a possible transition to "reasonable assurance" from 2028. In addition, assurance providers will have to apply European assurance standards as well as the new requirements set out in the Audit directive and regulation for the assurance of sustainability reporting.

## Scope of CSRD

The requirement to deliver sustainability statement under CSRD progressively applies to financial and non-financial companies which are within the scope of the Accounting directive and/or the Transparency directive and which correspond to one of the following categories:

- Companies listed on EU regulated markets, except micro-undertakings. Listed SMEs are therefore in the scope. Nevertheless, SMEs will have simplified reporting rules (specific standard).
- Large European companies within the scope of the Accounting directive, meaning companies, listed or not listed, that meet two out of three criteria : more than 250 employees, a balance sheet total exceeding €20 million and a net turnover exceeding €40 million at the balance sheet date.
- Through their European branches and/or subsidiaries, certain third-country groups with a European turnover exceeding €150 million. Additional size criteria apply to branches and subsidiaries that are under the scope of the directive. However, these groups are only required to report information on their material social and environmental impacts (and not on their material sustainability risks or opportunities).

When a consolidated sustainability statement is prepared by a parent company of a group, the subsidiary companies can be exempted from the reporting obligations. Minimum information must however be provided in the subsidiary's management report (statement on the exemption, reference to the consolidated report, etc.). This exemption does not apply to large listed companies.

## Version française

Le 17 janvier 2023, l'Autorité des marchés financiers (AMF) a publié une communication rappelant les principales dispositions de la Directive sur le reporting de durabilité des sociétés (CSRD).

La Directive européenne sur l'information non-financière (NFRD) qui encadre actuellement les déclarations de performance extra-financière des sociétés européennes sera bientôt remplacée par une nouvelle directive plus ambitieuse : la directive (UE) 2022/2464, dite « CSRD » (Corporate Sustainability Reporting Directive), qui s'appliquera progressivement à partir de 1er janvier 2024.

### Principales dispositions de la CSRD :

Le renforcement des exigences de reporting de durabilité des sociétés est un élément clé du Pacte Vert pour l'Europe. L'objectif principal de la CSRD est d'harmoniser le reporting de durabilité des entreprises et d'améliorer la disponibilité et la qualité des données ESG publiées. Ces évolutions permettront par exemple de répondre aux besoins d'information des acteurs financiers, eux-mêmes soumis à des obligations de reporting ESG.

La CSRD modifie quatre textes européens existants : la directive Comptable, la directive Transparence, la directive Audit et le règlement Audit. Les principaux changements introduits en comparaison de la directive NFRD de 2014 sur la publication d'informations non financières sont :

- Un champ d'application élargi : un nombre significativement plus important de sociétés seront concernées par les obligations de reporting, et en particulier toutes les sociétés (sauf micro-entreprises) cotées sur les marchés réglementés européens (cf. section suivante « sociétés concernées »).
- Un renforcement et une standardisation des obligations de reporting : en s'appuyant sur des normes européennes harmonisées, les sociétés devront publier des informations détaillées sur leurs risques, opportunités et impacts matériels en lien avec les questions sociales, environnementales et de gouvernance, selon un principe de « double matérialité ». Ces normes de reporting seront adoptées via des actes délégués (cf. encadré ci-dessous).
- Une localisation unique : le reporting de durabilité sera publié dans une section dédiée du rapport de gestion.
- Un format digital imposé : le rapport de gestion sera publié dans un format électronique unique européen xHTML. Des balises (ou tags) seront insérées dans le reporting de durabilité et seront définies dans une nouvelle taxonomie digitale fixée par acte délégué.
- Une vérification obligatoire de l'information par un commissaire aux comptes ou un organisme tiers indépendant (au choix des Etats), dans un premier temps avec un niveau d'assurance « modérée ». Un passage au niveau d'assurance « raisonnable » pourrait être requis à compter de 2028. Par ailleurs, les auditeurs devront appliquer des standards d'assurance et les règles encadrant leurs missions seront renforcées par la directive et le règlement Audit.

### Sociétés concernées par les nouvelles obligations de reporting

L'obligation de publier un reporting de durabilité en application de la CSRD s'applique de manière progressive. Elle concerne les sociétés financières et non-financières dans le champ d'application de la directive Comptable et de la directive Transparence et qui correspondent aux catégories suivantes :

- Toutes les sociétés cotées sur les marchés réglementés européens, à l'exception des microentreprises telles que définies par la directive Comptable. Sont donc concernées les PME cotées. Toutefois, les PME bénéficient d'obligations de reporting allégées (normes spécifiques).
- Toutes les autres grandes entreprises européennes, c'est-à-dire, selon la directive Comptable, les sociétés, cotées ou non, au-dessus de deux des trois seuils suivants : 250 salariés ; 40 M€ de chiffre d'affaires et 20 M€ de total de bilan.

- Par le biais de leur(s) filiale(s) ou succursale(s) européenne(s), certaines sociétés non-européennes pour autant que leur chiffre d'affaires réalisé dans l'UE soit supérieur à 150 M€. Des critères de taille au niveau des filiales et succursales européennes sont également à prendre en compte. Toutefois, ces sociétés non-européennes doivent uniquement fournir des informations relatives à leurs impacts socio-environnementaux (et non celles liées à leurs risques et opportunités).

Lorsqu'un reporting de durabilité consolidé est établi par la société mère d'un groupe, les sociétés filiales peuvent bénéficier d'une exemption de reporting. Des informations minimales sont toutefois à fournir par la filiale exemptée (déclaration d'exemption, renvoi vers le rapport consolidé, etc.). Cette exemption ne s'applique pas aux grandes sociétés cotées.

# BELGIUM

## ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

**NBB publishes Circular 2023\_01 on periodic questionnaire on (ML/FT) / La BnB publie la Circulaire 2023\_01 relative au questionnaire périodique sur la prévention du BC/FT**

On 26 January 2023, the National Bank of Belgium (NBB) published Circular 2023\_01 on Periodic questionnaire on combating money laundering and terrorist financing (ML/FT).

With this circular, the National Bank of Belgium aims to obtain standardised information from financial institutions to enable it to strengthen its risk-based approach in the exercise of its legal supervisory powers in the fight against ML/FT.

The Circular contains the following elements:

- Questionnaire for credit institutions,
- Questionnaire for life insurance companies,
- Questionnaire for stockbroking firms,
- Questionnaire for payment institutions and electronic money institutions,
- Indicative list of countries presenting a higher risk of money laundering or terrorist financing (annex 1 to the above-mentioned questionnaires).

The responses to the periodic questionnaire must be received via OneGate by 15 May 2023 at the latest in order to align its introduction with the date of the other reports and in particular the AMLCO annual report. The electronic form in which the requested information must be provided will be made available via OneGate as from 1 March 2023 so as to always allow sufficient time for financial institutions to complete it.

### Version française

*Le 26 janvier 2023, la Banque nationale de Belgique (BnB) a publié la Circulaire 2023\_01 relative au Questionnaire périodique relatif à la prévention du blanchiment de capitaux et du financement du terrorisme (BC/FT). Avec cette circulaire, la Banque nationale de Belgique vise à obtenir des institutions financières des informations standardisées lui permettant de renforcer son approche par les risques dans l'exercice de ses pouvoirs de surveillance en matière de lutte contre le BC/FT.*

*La Circulaire contient les éléments suivants :*

- un Questionnaire pour les établissements de crédit,
- un Questionnaire pour les compagnies d'assurance-vie,
- un Questionnaire pour les sociétés de bourse,
- un Questionnaire pour les établissements de paiement et les établissements de monnaie électronique,
- une Liste indicative des pays pouvant présenter un risque accru de blanchiment de capitaux ou de financement du terrorisme (annexe 1 aux questionnaires précités).

*Les réponses au questionnaire périodique doivent parvenir via OneGate au plus tard le 15 mai 2023 afin d'aligner son introduction sur la date des autres rapports et notamment du rapport annuel AMLCO. Le formulaire électronique dans lequel les informations demandées doivent être fournies sera mis à disposition via OneGate à partir du 1er mars 2023 afin de toujours laisser suffisamment de temps aux institutions financières pour le remplir.*

## FINANCIAL INCLUSION

**Chambre des représentants de Belgique publishes Bill amending the law of 25/4/2014 on credit institutions' control / La Chambre des représentants de Belgique publie le projet de loi modifiant la loi du 25/4/2014**

On 26 January 2023, the House of Representatives of Belgium published Bill amending the law of 25 April 2014 on the status and control of credit institutions relating to the anchoring of the universal banking service and the dispersion of Automated Teller Machines (ATMs).

This bill aims to anchor the accessibility of financial services in the Banking Act. This anchoring consists of two parts. Firstly, every credit institution will have to offer a universal banking service. Secondly, credit institutions will have to collectively guarantee a minimum spread of ATMs, self-banking machines and systems for printing bank statements. The concrete modalities for these two obligations will be defined by the King.

The guarantee of the physical accessibility of financial services will become a condition for doing business. If credit institutions do not comply with their obligations, the supervisory authority will be able to impose sanctions or take binding measures.

### Version française

*Le 26 janvier 2023, la Chambre des représentants de Belgique a publié le projet de loi modifiant la loi du 25 avril 2014 relative au statut et contrôle des établissements de crédit relative à l'ancrage du service bancaire universel et à la dispersion des distributeurs automatiques de billets.*

*Ce projet de loi vise à ancrer l'accessibilité des services financiers dans la loi bancaire. Cet ancrage se compose de deux parties. Premièrement, chaque établissement de crédit devra obligatoirement offrir un service bancaire universel. Deuxièmement, les établissements de crédit devront garantir collectivement une répartition minimale des distributeurs automatiques de billets, des appareils de self-banking et des systèmes d'impression des relevés bancaires. Les modalités concrètes de ces deux obligations seront définies par le Roi.*

*La garantie de l'accessibilité physique des services financiers deviendra une condition d'exercice de l'activité. Si les établissements de crédit ne respectent pas leurs obligations, l'autorité de contrôle pourra infliger des sanctions ou prendre des mesures contraignantes.*

# GERMANY

## BANKING MATTERS

### BaFin publishes Notification Forms for acquiring a significant/qualifying interest in an investment institution or to increase an existing holding

On 25 January 2023, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) published forms for submitting the notifications for acquiring a significant/qualifying interest in an investment institution or to increase an existing holding.

Holders of significant/qualifying holdings in an investment institution must follow Delegated Regulation (EU) 2017/1946 if they intend to submit a notification pursuant to § 24 WpIG.

Anyone who intends to acquire a significant/qualifying interest in an investment institution or to increase an existing holding must, when submitting the notifications pursuant to section 24 (1) WpIG, follow Delegated Regulation (EU) 2017/1946. Until the entry into force of the Investment Institute Holder Control Ordinance (Wpl-IKV), the Inhaberkontrollverordnung-InhKontrollV (in the version valid until 28.12.2022) continues to apply to notifications of the reduction or abandonment of a significant/qualifying holding.

However, Delegated Regulation (EU) 2017/1946 does not specify the form in which notifications are to be submitted. The following forms serve as assistance until the Wpl-IKV comes into force and can be used for the display.

The following form were published:

- Form notification according to Delegated Regulation (EU) 2017/1946 for natural persons
- Form notification according to Delegated Regulation (EU) 2017/1946 for legal persons
- Form for information on good repute according to Delegated Regulation (EU) 2017/1946
- Form Presentation of complex participation structures
- Task Reduction form

## CAPITAL INVESTMENT CODE

### BVI publishes Position on the Draft Bill for an Ordinance for electronic communication according to the German Investment Code (Kapitalanlage-e-Kommunikationsverordnung – KAeKV)

On 2 January 2023, BVI Bundesverband Investment und Asset Management e.V. published BVI position on the draft bill for an ordinance for electronic communication according to the German Investment Code (Kapitalanlage-e-Kommunikationsverordnung – KAeKV).

BVI welcomes the "electronic fund file" project. It is a significant step forward that the companies supervised under the KAGB communicate electronically with BaFin and that the content and form of applications, notifications and reports as well as access to the electronic procedure are to be regulated in a new legal ordinance, the KAeKV. However, BVI still sees considerable need for improvement concerning the content of the submitted draft of the KAeKV as well as the entire new electronic communication procedure.

### BaFin publishes Notes on the submission of the retrieval notification in the MVP specialist procedure according to KAGB

On 31 January 2023, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) published notes on the submission of the retrieval notification in the MVP specialist procedure according to KAGB.

The document contains the instructions for submitting the outsourcing notification in the MVP specialist procedure:

- Notification of outsourcing in accordance with Section 36 of the Capital Investment Code; and
- The ordinance on notifications and the submission of documents in accordance with Section 36 of the Capital Investment Code (KAGB Outsourcing Notification -KAGBAuslAnzV).

## DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

### Bundesrat publishes Bundestag Resolution passing draft Whistleblowing Directive implementation into National Law

On 20 January 2023, Bundesrat published Bundestag resolution passing draft Whistleblowing Directive implementation into National Law.

In its 77th session on 16 December 2022, German Bundestag had passed Law to improve the protection of whistleblowers and to implement the directive on the protection of persons who report violations of Union law.

#### Next steps

The Bundesrat needs to approve the law.

## FINANCIAL SUPERVISION

### BaFin publishes Report on risks in the focus of BaFin for 2023

On 23 January 2023, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) published its report on risks in the focus of BaFin for 2023.

In its report, BaFin has identified a total of six risks that it believes could pose the greatest threat to financial stability and the integrity of the German financial system. The supervision will pay particular attention to these in 2023. In the "Risks in the focus of BaFin", the supervisory authority also explains what it is doing to contain these risks in the best possible way.

The current main risks for the German financial market are:

- Risks from abrupt interest rate increases of significant magnitude
- Risks from corrections in the real estate markets
- Risks from significant corrections on the international financial markets
- Risks from the default of loans to German companies
- Risks from cyberattacks with serious consequences
- Risks arising from inadequate prevention of money laundering

In addition, BaFin has identified three major future trends that entail risks that BaFin and the companies it supervises must deal with intensively: the topics of "sustainability", "digitization of the financial sector" and "geopolitical upheavals".

## MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

### BVI publishes MiFIDII/ MiFIR review – BVI-EFAMA-EFSA-NSA priorities

On 16 January 2023, BVI Bundesverband Investment und Asset Management e.V. published MiFIDII/ MiFIR review – BVI-EFAMA-EFSA-NSA priorities.

The purpose of this note is to highlight the abovementioned associations core priorities in relation to the ongoing MiFIR negotiations taking place in the European Parliament:

- Creating an EU consolidated tape to bridge EU capital markets;
- Market Data cost must be properly addressed at level 1 and level 2;
- Reforming the transparency regime for equity in a pragmatic way;
- Preserving the precarious balance of the transparency regime for non-equity;
- Definition of systematic internaliser;
- Alleviating investment firms' best-execution reporting constraints;
- Payment for order flow: defining precisely scoped in practices;
- Modification of the existing reporting regime;
- Modification of the transaction reporting regime (extension of Article 26 reporting).

## PAYMENT SERVICES DIRECTIVE (PSD2) / SINGLE EURO PAYMENTS AREA (SEPA)

### BaFin publishes FAQ on Circular 03/2022 (BA) on the reporting of serious payment security incidents pursuant to Section 54 (1) ZAG

On 25 January 2023, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) published FAQ on Circular 03/2022 (BA) on the reporting of serious payment security incidents pursuant to Section 54 (1) ZAG.

The following explanations refer to the regulations for the reporting of serious payment security incidents pursuant to Section 54 (1) ZAG. These regulations are set out in the Circular 03/2022 (BA) which is based on the revised Guidelines of 10.06.2021 (EBA/GL/2021/03) for the reporting of serious incidents under the Payment Services Directive PSD2 (EU) 2015/2366.

The following Q&As were published:

- General: "Can a submitted report be corrected?"
- Payment transactions concerned (re 1.2 i.):  
"What values should be provided if the exact number of affected payment transactions is not known?"  
"Can the payment transactions concerned be declared as zero if payment service users are expected to make payments?"  
"Are payment transactions that could be carried out by the customer via an alternative channel still considered affected?"
- Payment service users concerned (re 1.2 ii.): "If the exact number of payment service users concerned is not known, what values should be provided?"
- Other payment service providers or relevant infrastructures that may be affected (re 1.2 vii.): "How is the impact of other payment service providers to be interpreted?"
- First notification (to 2.7 – 2.11). "Does an initial registration also have to be made on weekends and public holidays?"

Interim report (to 2.12 – 2.16):

- "When exactly is an interim report to be submitted?"
- "Does an interim report have to be made on the same day as the initial report if normal operation can be restored on that day?"

## PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

### BaFin publishes Consultation 03/2023: Draft Circular on the criteria for exemption from liquidity requirements

On 24 January 2023, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) published Consultation 03/2023: Draft circular on the criteria for exemption from liquidity requirements.

The public consultation of the Draft circular on the criteria for exemption from liquidity requirements referred to in the second subparagraph of Article 43(1) of Regulation (EU) 2019/2033. Until 10 February 2023, BaFin will receive comments on the draft circular draft ordinance by e-mail. The circular is scheduled to enter into force on 28 February 2023.

Article 43(1) of the Investment Firm Regulation (IFR) imposes liquidity requirements on all investment institutions. For small investment institutions, the first subparagraph of Article 43(1) of the IFR allows for exemption from the liquidity requirement on a case-by-case basis. Article 43(4) of the IFR requires the European

Banking Authority (EBA) to issue guidelines setting out further criteria to be taken into account for the exemption of smaller investment firms from the liquidity requirement. The envisaged circular serves to implement the EBA Guidelines.

You have the opportunity to submit your statement on the draft to the Federal Institute by 10 February 2023.

## **SUSTAINABLE FINANCE / GREEN FINANCE**

### **BVI publishes its Key Messages and Position in the context of the ESAs' call for evidence on better understanding greenwashing**

On 13 January 2023, BVI Bundesverband Investment und Asset Management e.V. published its key messages and position in the context of the ESAs' call for evidence on better understanding greenwashing.

BVI made key statements on the European Securities and Markets Authority's (ESAs) call for evidence on better understanding of greenwashing. BVI1 stated that they do not believe that greenwashing can happen unintentionally and that interpretation of regulatory requirements, such as the SFDR regime and MiFID/IDD provisions, is still uncertain. BVI1 also highlighted that there is no universal understanding of sustainable investments and sustainability claims should be evaluated against the specific features of individual products. BVI expressed concern about the availability of ESG data, particularly in relation to the quality of disclosures and data obtained from third parties. BVI1 stated that fund management companies struggle to ensure the quality of ESG data and the assessment of ESG controversies can vary greatly across data providers. BVI1 emphasized the need for fund management companies to retain discretion in choosing data sources and methodologies for ESG assessment and that greenwashing risk may arise in distribution channels due to diverging interpretations of regulatory concepts at the product level.

# HONG KONG

## ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

### HKMA issues letter to consult the banking industry on proposed amendments to Guideline on AML/CFT

On 18 January 2023, the Hong Kong Monetary Authority (HKMA) issued a letter on 18 January 2023 to consult the banking industry on proposed amendments to Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) (For Authorized Institutions).

It outlines the risks associated with the use of artificial intelligence (AI) and ML and provides recommendations on how to mitigate these risks through the implementation of effective controls and oversight. The guideline also includes a section on the ethical considerations of using AI and ML, and emphasizes the importance of transparency and accountability in the development and use of these technologies.

The consultation is open until 8 March 2023.

## FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

### HKMA publishes conclusion of discussion paper on crypto-assets and stablecoins

On 31 January 2023, the Hong Kong Monetary Authority (HKMA) issued the consultation conclusion to the discussion paper on crypto-assets and stablecoins (the "Consultation Conclusion"), summarising the feedback received in relation to the paper and the HKMA's response. In the Consultation Conclusion, the HKMA proposes to bring certain activities relating to stablecoins into the regulatory perimeter, and indicates the expected regulatory scope and key regulatory requirements.

The HKMA received a total of 58 submissions in response to the discussion paper on crypto-assets and stablecoins from the industry, public bodies, business and professional organisations, and individuals, etc. On the whole, the respondents were supportive of regulating stablecoins with a risk-based and agile approach. The respondents also broadly supported the need to take into account the latest market developments and draw reference from the discussion of international regulatory bodies when developing the relevant regulatory regime.

The HKMA will announce the regulatory arrangements and next steps in due course.

## INVESTOR PROTECTION / CONSUMER PROTECTION

### HKMA publishes Supervisory Policy Manual (SPM): Revised Module IC-4 on "Complaints Handling and Redress"

On 6 January 2023, the Hong Kong Monetary Authority (HKMA) published Supervisory Policy Manual (SPM): Revised Module IC-4 on "Complaints Handling and Redress".

The updated SPM module is forward-looking and aims to align the requirements of the Hong Kong Monetary Authority (HKMA) with the latest global best practices in financial consumer protection. It takes into account the recently updated G20/OECD High-Level Principles on Financial Consumer Protection (High-Level Principles), which are the international standards for effective and comprehensive financial consumer protection frameworks. Details of the High-Level Principles (including "Principle 12 – Complaints Handling and Redress") can be found at: [www.oecd.org/finance/high-level-principles-on-financial-consumer-protection.htm](http://www.oecd.org/finance/high-level-principles-on-financial-consumer-protection.htm).

Under the enhanced complaints handling framework, authorized institutions (AIs) are expected to, among others:

- follow up and monitor any issues of concerns or control deficiencies as identified from handling of customer complaints, to achieve improved financial consumer protection on an ongoing basis; and (
- proactively make use of alternate dispute resolution channels such as mediation and arbitration services of the Financial Dispute Resolution Centre, when complaints involving monetary disputes referred by the HKMA could not be resolved through AIs' internal mechanisms.

AIs should implement this updated SPM module within three months from the date of this letter (i.e. no later than 5 April 2023).

# IRELAND

## FINANCIAL SUPERVISION

### Ireland issues Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2023

On 26 January 2023, the Houses of the Oireachtas (Ireland's National Parliament) issued Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2023.

These Regulations made by the Financial Services and Pensions Ombudsman Council in accordance with section 43 of the Financial Services and Pensions Ombudsman Act 2017 provide for each financial service provider to be liable to pay an annual levy in respect of the services provided by the Ombudsman to the financial services industry. These Regulations provide for the collection and recovery of the levy and provide for certain obligations in respect of self-assessment and record keeping by financial service providers. These Regulations also provide for the calculation of the required levy contribution payable by each category of financial service provider for the year ended 31 December 2023.

These Regulations may be cited as the Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2023.

These Regulations come into operation on 1st February 2023.

### Ireland publishes Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023

#### BACKGROUND

The Central Bank of Ireland seeks to regulate the Irish financial market and by its Supervision and Enforcement Act 2013 (Section 48(1)) (Investment Firms) Regulations, it sets out the regulatory requirements for authorised investment firms, fund service providers, credit institutions and market operators.

#### WHAT'S NEW?

On 30 January 2023, the Houses of the Oireachtas (Ireland's National Parliament) published Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 amending requirements for financial market participants authorised by the Central Bank of Ireland, notably regarding their client asset requirements, some of which are presented below:

Art. 49 (7): The investment firm shall review the arrangements for the holding of client funds with the third party

- (a) against the criteria set out in paragraphs 3(3) and 3(4) of Schedule 3 to the MiFID Regulations,
- (b) if there is any material change to the relationship with the third party which affects the manner by which client funds are held, and
- (c) at least on an annual basis.

Art. 51 (6): Client financial instruments deposited by an investment firm in a third-party client asset account maintained by the investment firm at that third party.

Art. 54 (e): The third-party need to provide the investment firm with a statement or confirmation specifying all client funds deposited in the third-party client asset accounts.

Art. 55 (h): The third-party need to provide the investment firm with a statement or confirmation specifying a description and balance of all client financial instruments deposited in the third-party client asset accounts.

Art. 59 (g): If client assets are deposited with a third party outside the State in the event of a default, those client assets may be treated differently, and additional risks may arise.

#### WHAT'S NEXT?

The Central Bank (Supervision and Enforcement) Act 2013 Section 48(1)) (Investment Firms) Regulations 2017 [S.I. No.604 of 2017] is revoked. The new Regulations shall come into operation on 1 July 2023. Part 6 of these Regulations shall come into operation on 1 January 2024 to the extent that it applies to credit institutions.

## ITALY

### DIRECTIVE ON COVERED BONDS

#### Banca d'Italia opens Public Consultation on its provisions on covered bank bonds

On 12 January 2023, Banca d'Italia opened a public consultation on its provisions on covered bank bonds.

#### What is the subject of the consultation?

The public consultation concerns the proposed amendments to the Bank of Italy's provisions on Bonds guaranteed bank bonds (Part Three, Chapter 3, of the Circular of the Bank of Italy No. 285/2013).

#### What are the reasons for this consultation?

The consultation is intended to gather comments and observations on the proposed amendments to the above provisions; the amendments arise from the need to implement the provisions of the transposition of Directive (EU) 2019/2162 (so-called covered bond directive - CBD) regarding the issuance of bank bonds covered bonds, contained in the new Title I-bis of Law no. 130 of 1999 (hereinafter Law 130/1999); in the implementing provisions are also defined the choices for the exercise of the discretions provided for by Regulation (EU) 2019/2160 (so-called covered bond regulation - CBR) regarding exposures in the form of bank bonds covered bonds, incumbent on the Bank of Italy as the designated authority to supervise covered bond issuance programs.

#### Who is this consultation aimed at?

The consultation is aimed at banks and parent companies of banking groups, other banking, financial and instrumental companies belonging to banking groups, trade associations and entities licensed to conduct statutory audits as well as anyone may have an interest in submitting observations and comments on the consultation document.

#### By when and how can comments and observations be submitted?

Observations and comments can be submitted within 30 days from the publication of this consultation document on the Bank of Italy website, by pec or in hard copy.

#### What happens after the public consultation?

The Bank of Italy will analyze the observations and comments received during the consultation to prepare the final text of the provisions, which will be published on the Institute's website, subject to the forms of publication required by law. The Bank of Italy will also publish a "summary of the consultation," unless there is a reason for exclusion from publication, pursuant to Article 8 of the Order of July 9 July 2019 regarding the adoption of regulatory acts.

### FINANCIAL SUPERVISION

#### Banca d'Italia publishes Strategic Plan for the three-year period 2023-2025

On 10 January 2023, Banca d'Italia published Strategic Plan for the three-year period 2023-2025.

The Bank of Italy's Strategic Plan for the three-year period 2023-2025 is published, outlining the vision, the objectives to be pursued and the action plans to be implemented.

The Bank of Italy periodically formulates strategic priorities in a planning document which explains the objectives and action plans to be achieved in the following three years. The plan serves to direct the overall governance of the resources of an organisation with multiple tasks (participation in the formulation and implementation of the monetary policy of the euro area, safeguarding the stability of the banking and financial system, analysis of the economy and society and advice on public policies, protection of savers, support for innovation and infrastructure of the payments system and governance of the monetary circulation). The implementation of the Plan involves the involvement of the various functions of the Bank at central level and on the territory.

The definition of the 2023-2025 Strategic Plan comes at a time characterized by profound uncertainty also at international level: the pandemic crisis still active in the background, geopolitical tensions, the increase in energy supply costs resulting from Russia's aggression against Ukraine, inflationary pressures and the new phase of monetary policy at global and European level have overlaid the challenges posed by the unavoidable transition energy, new technologies, digitalization and the reforms necessary to give new impetus to the Italian economy.

The Plan for the three-year period 2023-25 is broad and innovative, with a strong design component and a strong international dimension. It expresses the Bank's strong commitment to serving the country and Europe, aimed at providing the community with a consistently high-quality contribution in all areas of its action.

Seventeen action plans have five strategic objectives: 1) to strengthen efforts to a stable and secure financial system; 2) promote innovation in the economic and financial field more strongly in Italy and in Europe; 3) strengthen the protection of customers of banking and financial services and dialogue with the outside world in an increasingly direct and open way to listening; 4) supporting the energy transition and safeguarding the environment; 5) make your organization increasingly inclusive, efficient and able to innovate.

### PROSPECTUS REGULATION

#### CONSOB publishes call for attention no. 1/23 of 13 January 2023 on supervision of corporate governance and transactions with related parties in the context of offering and admission to trading prospectuses

On 13 January 2023, CONSOB published call for attention no. 1/23 of 13 January 2023 on supervision of corporate governance and transactions with related parties in the context of offering and admission to trading prospectuses.

As part of the amendments to the provisions of the Issuers' Regulation on prospectuses adopted by resolution no. 22423 of 28 July 2022 – with the aim of optimising the procedures for approving prospectuses and simplifying their discipline, as well as making companies' access to capital markets more efficient, without affecting the provisions placed to protect investors – there are no envisages, among the documents and information that must be attached to the application for approval of the listing prospectus pursuant to All. 1C of the aforementioned Regulation, the draft procedure on transactions with related parties ("OPC Procedure") and information on relationships relevant to the independence of the members of the issuer's corporate bodies<sup>[1]</sup>, as not required by Delegated Regulation (EU) 2019/980 on the subject of a Prospectus of direct application.

That said, issuers and other parties involved in the listing process are invited to pay attention to ensuring that corporate governance aspects, such as the OPC procedure and the independence requirements for the members of the corporate bodies that will take office on the date of the start of trading, are in line with the discipline of listed companies. Especially:

- With reference to the procedures adopted regarding transactions with related parties, attention is drawn to the importance of verifying, prior to listing, the compliance of these procedures with the provisions of Consob Regulation no. 17221 of 12 March 2010 ("OPC Regulation") as well as the consistency of the optional choices made by the issuer, which the OPC Regulation leaves to the statutory autonomy;
- With specific reference to the independence requirements of the members of the administrative and control bodies, attention is drawn to the need to verify the compliance of the composition of the corporate bodies with the regulations of listed companies with particular regard to these requirements; the finding of critical issues after the listing could in fact entail, with regard to the members of the control bodies, an obligation for CONSOB to declare their forfeiture, in the event of inertia on the part of the administrative body (pursuant to Article 148, paragraph 4-quarter of Legislative Decree 58/1998, "TUF") and, as regards the members of the administrative body, the need to request additional information on the assessments carried out by the company and the involvement of the supervisory body on the correctness of these assessments.

In light of Consob's supervisory powers in the field of corporate governance, the attention of the Issuers is therefore drawn to the fact that these checks are carried out before listing; this in order to avoid any costs deriving, for example, from the need – in the event of ascertained non-existence of the independence requirement for a member of the corporate bodies – to convene, after the listing, a shareholders' meeting aimed at integrating the corporate body and the reputational costs deriving, for example, from the adoption, after admission to listing, of forfeiture measures by Consob of members of the control body declared independent in the prospectus of quotation.

However, it remains possible for issuers to submit to Consob, even during pre-filing, any problem concerning the above issues in relation to which it is necessary to carry out a preliminary comparison with the Authority; in this regard, Consob is fully available to provide clarifications regarding any requests received, according to a timing that takes into account the needs of the issuer and the effectiveness and efficiency of the overall administrative activity.

## SUSTAINABLE FINANCE / GREEN FINANCE

**Italy publishes Regulation implementing Article 111-bis of the Decree Legislative Decree No 385 of 1 September 1993, as amended by Law No 11 December 2016, n. 232, on the regulation of banking operators of ethical and sustainable finance**

On 21 January 2023, Italy published in the Gazzetta Ufficiale Regulation implementing Article 111-bis of the Decree Legislative Decree No 385 of 1 September 1993, as amended by Law No 11 December 2016, n. 232, on the regulation of banking operators of ethical and sustainable finance.

This Decree identifies:

- (a) the requirements to which banking operators conform their organization and activities in order to assume, upon certification of their existence, the qualification of ethical and sustainable finance banking operators, in order to take advantage of the facility provided for in Article 111 -bis of the TUB, in compliance with the limit of expenditure total set annually by paragraph 3 of the above-mentioned Article;
- (b) the procedure for the application and recognition of the tax relief.

# LUXEMBOURG

## ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

**CSSF publishes communication on AML/CFT controls applied to TCSP activities by certain IFMs / La CSSF publie une communication sur les contrôles LBC/FT appliqués aux activités de TCSP par certains GFI**

On 11 January 2023, the Commission de Surveillance du secteur financier (CSSF) published a communication on anti-money laundering/ terrorist financing (AML/CFT) controls applied to Trust and Company Service Provider (TCSP) activities by certain investment fund managers (IFMs).

In July 2020 the CSSF published a ML/TF sub-sector risk assessment regarding the specialised professionals of the financial sector providing corporate services – TCSP activities. The results of the sub-sector risk assessment indicate an inherent high risk and a residual medium risk for the activity. Although the risk assessment remains focused on one category of professionals of the financial sector, its findings are judged pertinent also for understanding the ML/TF risk of TCSP activities conducted by other professional such as IFMs, albeit being ancillary to their main business activity.

In this context, the CSSF's "UCI On-site Inspection" department carried out a thematic review from November 2021 to January 2022 of the AML/CFT controls applied by IFMs in regard to their TCSP activities, ancillary to their principle investment fund management activity. The thematic review targeted different types and sizes of market participants (hereafter the IFMs) and included four Luxembourg IFMs. Further details on the focus areas of the thematic review are described below.

Key findings:

- TCSP services mainly consisted in providing a corporate address and directorship services to entities directly linked to their investment fund management activity;
- the AML/CFT controls applied by the IFMs to their TCSP activity are embedded in their general AML/CFT framework;
- the overall understanding of the risks associated with ML/TF linked to the IFMs' TCSP activity as well as the related mitigation measures put in place by the entities inspected were satisfactory, despite certain findings in particular in the area of customer due diligence and ongoing monitoring.

Best practices:

- the governing bodies were specifically made aware of TCSP matters, despite these being ancillary activities;
- the TCSP activity was assessed individually in the IFM's risk assessment;
- the AML/CFT procedures made specific reference to the TCSP activity.

The CSSF reminds IFMs of the importance to also capture such ancillary activity at the level of the risk appetite statement, the compliance monitoring plan and the annual AML report, in this case by making specific reference to the TCSP activity.

### Version française

*Le 11 janvier 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une communication sur les contrôles anti-blanchiment/financement du terrorisme (AML/CFT) appliqués aux activités de Trust and Company Service Provider (TCSP) par certains gestionnaires de fonds d'investissement (GFI).*

*En juillet 2020, la CSSF a publié une évaluation des risques du sous-secteur BC/FT concernant les professionnels spécialisés du secteur financier fournissant des services aux entreprises – activités TCSP. Les résultats de l'évaluation des risques du sous-secteur indiquent un risque inhérent élevé et un risque résiduel moyen pour l'activité. Bien que l'évaluation des risques reste centrée sur une catégorie de professionnels du secteur financier, ses conclusions sont jugées pertinentes également pour comprendre le risque de BC/FT des activités de PSST menées par d'autres professionnels tels que les GFI, bien qu'accessoires à leur activité principale.*

*Dans ce cadre, le service « UCI On-site Inspection » de la CSSF a réalisé une revue thématique de novembre 2021 à janvier 2022 des contrôles LBC/FT appliqués par les GFI dans le cadre de leurs activités de TCSP, accessoirement à leur activité principale de gestion de fonds d'investissement. L'examen thématique ciblait différents types et tailles d'acteurs du marché (ci-après les GFI) et comprenait quatre GFI luxembourgeois. De plus amples détails sur les domaines d'intervention de l'examen thématique sont décrits ci-dessous.*

Principales conclusions:

- les prestations de TCSP consistaient principalement à fournir des services de domiciliation et de direction à des entités directement liées à leur activité de gestion de fonds d'investissement ;
- les contrôles LBC/FT appliqués par les GFI à leur activité de PSST s'inscrivent dans leur cadre général LBC/FT ;
- la compréhension globale des risques associés au BC/FT liés à l'activité de PSST des GFI ainsi que les mesures d'atténuation y afférentes mises en place par les entités inspectées étaient satisfaisantes, malgré certains constats notamment en matière de vigilance à l'égard de la clientèle et de suivi continu surveillance.

Les meilleures pratiques:

- les instances dirigeantes ont été spécifiquement sensibilisées aux sujets du TCSP, bien qu'il s'agisse d'activités annexes ;
- l'activité TCSP a fait l'objet d'une évaluation individuelle dans l'évaluation des risques du GFI ;
- les procédures LBC/FT faisaient spécifiquement référence à l'activité de TCSP.

La CSSF rappelle aux GFI l'importance de saisir également cette activité auxiliaire au niveau de la déclaration d'appétence au risque, du plan de surveillance de la conformité et du rapport annuel LBC, en l'occurrence en faisant spécifiquement référence à l'activité du TCSP.

**Luxembourg publishes Ministry of Finance - United Nations - Redesignated on the ISIL (Da'esh) and Al-Qaida Sanctions List / Le Luxembourg publie la liste des sanctions redésignée sur l'EIIL (Daech) et Al-Qaida par le Ministère des finances et l'ONU**

On 23 January 2023, Luxembourg published in the Legilux (Journal Officiel du Grand-Duché de Luxembourg) Ministry of Finance - United Nations - Redesignated on the ISIL (Da'esh) and Al-Qaida Sanctions List.

On 16 January 2023, the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities added the following entry to the ISIL (Da'esh) and Al-Qaida sanctions list:

#### **ABDUL REHMAN MAKKI**

In accordance with Article 4 (2) of the Law of 19 December 2020 on the implementation of restrictive measures in financial matters, this designation applies automatically and without delay.

Please refer to UN Security Council communiqué SC/15177 for more details.

Effective January 16, 2023.

#### **Version française**

*Le 23 janvier 2023, le Luxembourg a publié au Legilux (Journal Officiel du Grand-Duché de Luxembourg) la liste des sanctions redésignée sur l'EIL (Daech) et Al-Qaida par le Ministère des finances et l'ONU. Le 16 janvier 2023, le Comité du Conseil de sécurité, en application des résolutions 1267 (1999), 1989 (2011) et 2253 (2015) concernant l'EIL (Daech), Al-Qaida et les individus, groupes, entreprises et entités associés, a ajouté l'entrée suivante à la liste des sanctions de l'EIL (Daech) et d'Al-Qaida :*

#### **ABDUL REHMAN MAKKI**

*Conformément à l'article 4 (2) de la loi du 19 décembre 2020 portant mise en œuvre de mesures restrictives en matière financière, cette désignation s'applique de plein droit et sans délai.*

*Veillez-vous référer au communiqué SC/15177 du Conseil de sécurité des Nations Unies pour plus de détails.*

*Les sanctions entrent en vigueur le 16 janvier 2023.*

### **INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT**

#### **CSSF publishes technical document on URR - UCITS identifiers list / La CSSF publie un document technique sur l'URR - Liste des identifiants OPCVM**

On 16 January 2023, Commission de Surveillance du secteur financier (CSSF) published technical document on URR - UCITS identifiers list.

Reporting scope: The present reporting obligation does apply to all Luxembourg domiciled UCITS authorized by the CSSF as at the reporting reference dates (30 June, resp. 31 December) until further notice. UCITS liquidated during the reference period are out of scope.

While management companies and investment companies know the UCITS they manage and that are covered by the reporting scope, the CSSF asks them nevertheless to critically verify, prior to the submission of the report, that they cover all UCITS authorized as at the reporting reference date by consulting the following list available on the CSSF website.

#### **Version française**

*Le 16 janvier 2023, la Commission de Surveillance du secteur financier (CSSF) a publié un document technique sur la liste des identifiants URR - UCITS.*

*La présente obligation de reporting s'applique à tous les OPCVM domiciliés au Luxembourg agréés par la CSSF aux dates de référence de reporting (30 juin, resp. 31 décembre) jusqu'à nouvel ordre. Les OPCVM liquidés pendant la période de référence sont hors champ.*

*Si les sociétés de gestion et les entreprises d'investissement connaissent les OPCVM qu'elles gèrent et qui sont couverts par le périmètre de reporting, la CSSF leur demande néanmoins de vérifier de manière critique, préalablement à la remise du rapport, qu'ils couvrent l'ensemble des OPCVM agréés à la date de référence de reporting en consultant la liste suivante disponible sur le site Internet de la CSSF.*

#### **CSSF publishes new notification templates to be used by the IFMs / La CSSF publie de nouveaux modèles de notification à utiliser par les GFI**

On 19 January 2023, Commission de Surveillance du secteur financier (CSSF) published a Communication on the publication of two new notification templates to be completed when applying for the authorisation of an IFM to the CSSF, respectively when extending the activities of an existing IFM or modifying its shareholding structure.

The CSSF published two notification templates entitled "Authorised investment fund managers ("IFMs") – type(s) of requested authorisation(s)" and "Authorised investment fund managers ("IFMs") – type(s) of requested change(s)" to be used with immediate effect when:

- a new application for IFM authorisation subject to the Law of 17 December 2010 relating to undertakings for collective investment, to the Law of 12 July 2013 on alternative investment fund managers and to the EuVECA or EuSEF Regulation is submitted to the CSSF;
- an existing IFM intends to extend its activities by requesting to be approved for additional investment strategies or MiFID services, respectively to act as central administration and/or registrar, and transfer agent.

Furthermore, the template "Authorised investment fund managers ("IFMs") – type(s) of requested change(s)" should also be used in the context of an acquisition of a qualifying holding in an IFM, a change of a reference shareholder and/or the creation of one or more branches.

The applicable notification template should always be filled out and submitted to the CSSF along with the related application file. The templates can be found in the documentation/forms section of the relevant pages:

In case of authorisation:

- Authorisation of an AIFM – CSSF
- Legal requirements and authorisation procedure for a Management Company – Chapter 15 – CSSF
- Legal requirements and authorisation procedure for a Management Company – Chapter 16 – CSSF

In case of changes:

- Amendment to an authorised AIFM – CSSF
- Amendment to an existing Management Company – Chapter 15 – CSSF
- Amendment to an existing Management Company – Chapter 16 – CSSF

### Version française

Le 19 janvier 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une Communication relative à la publication de deux nouveaux modèles de notification à remplir lors de la demande d'agrément d'un GFI auprès de la CSSF, respectivement lors de l'extension des activités d'un GFI existant ou de la modification de sa structure actionnariale.

La CSSF a publié deux modèles de notification intitulés « Gestionnaires de fonds d'investissement agréés (« GFI ») – type(s) d'agrément(s) demandé(s) » et « Gestionnaires de fonds d'investissement agréés (« GFI ») – type(s) de modification(s) demandée(s) » à utiliser avec effet immédiat lorsque :

- une nouvelle demande d'agrément GFI soumise à la loi du 17 décembre 2010 relative aux organismes de placement collectif, à la loi du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs et au règlement EuVECA ou EuSEF est introduite auprès de la CSSF ;
- un GFI existant à l'intention d'étendre ses activités en demandant d'être agréé pour des stratégies d'investissement supplémentaires ou des services MiFID, respectivement pour agir en tant qu'administration centrale et/ou teneur de registre et agent de transfert.

Par ailleurs, le modèle « Gestionnaires de fonds d'investissement agréés (« GFI ») – type(s) de changement(s) demandé(s) » doit également être utilisé dans le cadre d'une acquisition d'une participation qualifiée dans un GFI, d'un changement d'actionnaire de référence et/ou la création d'une ou plusieurs succursales.

Le modèle de notification applicable doit toujours être rempli et soumis à la CSSF avec le dossier de demande correspondant. Les modèles se trouvent dans la rubrique documentation/formulaires des pages concernées :

En cas d'autorisation :

- Agrément d'un AIFM – CSSF
- Exigences légales et procédure d'agrément d'une société de gestion – Chapitre 15 – CSSF
- Exigences légales et procédure d'agrément d'une société de gestion – Chapitre 16 – CSSF

En cas de modifications :

- Modification d'un AIFM agréé – CSSF
- Modification d'une société de gestion existante – Chapitre 15 – CSSF
- Modification d'une société de gestion existante – Chapitre 16 – CSSF

### CSSF publishes 2022 Thematic Review: STOR Obligations of IFMs / La CSSF publie la Revue thématique 2022 : Obligations STOR des GFI

#### BACKGROUND

On 25 January 2023, Commission de Surveillance du Secteur Financier (CSSF) published 2022 Thematic Review: STOR Obligations of IFMs. In 2022, the CSSF launched a thematic review on the STOR obligations of Investment Fund Managers (IFMs) under Article 16 (2) of the Market Abuse Regulation (MAR). The phrase "STOR obligations" refers to the obligation to establish and maintain effective controls to detect and report potential instances of insider dealing or market manipulation to the CSSF via a Suspicious Transaction and Order Report (STOR). The review is part of the measures taken by the CSSF following the finding made in 2019 in the ESMA Peer Review on STORs that national competent authorities, including the CSSF, need to engage more with asset managers when it comes to their STOR obligations.

#### WHAT'S NEW?

A self-assessment questionnaire was sent to a sample of six IFMs selected based on the size of their assets under management. All reviewed IFMs hold authorisations to manage UCITS and AIFs under the UCI Law and the AIFM Law respectively. Most of them further hold authorisations to provide the additional investment services referred to in Article 101 (3) of the UCI Law and Article 5 (4) of the AIF Law (the "MiFID Services"). Other CSSF measures included awareness raising at several industry events and on-site inspections at Luxembourg-based IFMs. Particularly, the majority of respondents have undertaken an in-house risk assessment to identify market abuse risks to which they are potentially exposed as a result of their business activities. Such in-house assessments are recognized as a best practice, as a means whereby the IFM can demonstrate the appropriateness and the proportionality of its market abuse controls. The risk that a staff member may place orders or enter into transactions on own account on the basis of inside information obtained while working for the IFM (or disclose such information to an unauthorised third party with a recommendation to trade on it) was identified. It is to ensure that all staff members have been duly informed that they are not permitted to trade on the basis of inside information, including inside information of which they may become aware while working for the IFM, and that failure to comply with this 'trading restriction' may result in administrative or criminal sanctions in case of transgression. Potential shortfalls from the standards include the lack of an audit and internal review of the market abuse controls, the lack of a STOR training provided to relevant staff on a regular basis, and the lack of formalization of market abuse controls. IFMs should critically examine the different ways in which they may come into contact with inside information and the need to introduce additional controls or enhance existing ones. Furthermore, the delegation of or part of the performance of the STOR obligations has no impact upon the STOR obligations of the delegating IFM.

## WHAT'S NEXT?

The thematic review on the STOR obligations of IFMs did not bring to the fore indications of serious failures among respondents as regards their STOR obligations. However, the review pointed out a number of potential shortfalls from the applicable technical standards, which are laid down by a Level 2 Regulation. In this sense, the findings of the thematic review are in line with the findings of the aforementioned on-site inspections at IFMs.

## Version française

### BACKGROUND

Le 25 janvier 2023, la Commission de Surveillance du Secteur Financier (CSSF) a publié le Revue Thématique 2022: Obligations STOR des GFI. En 2022, la CSSF a lancé une revue thématique sur les obligations STOR des gestionnaires de fonds d'investissement (GFI) en vertu de l'article 16 (2) du règlement Abus de marché (MAR). L'expression « obligations STOR » fait référence à l'obligation d'établir et de maintenir des contrôles efficaces pour détecter et signaler les cas potentiels d'opérations d'initiés ou de manipulations de marché à la CSSF via un rapport de transaction et ordre suspects (STOR). La revue fait partie des mesures prises par la CSSF suite à la constatation faite en 2019 dans l'ESMA Peer Review sur les STOR selon laquelle les autorités nationales compétentes, y compris la CSSF, doivent s'engager davantage avec les gestionnaires d'actifs en ce qui concerne leurs obligations STOR.

### WHAT'S NEW?

Un questionnaire d'auto-évaluation a été envoyé à un échantillon de six GFI sélectionnés en fonction de la taille de leurs actifs sous gestion. Tous les GFI examinés sont titulaires d'autorisations de gestion d'OPCVM et de FIA en vertu respectivement de la Loi OPC et de la Loi AIFM. La plupart d'entre eux sont en outre titulaires d'autorisations pour fournir les services d'investissement complémentaires visés à l'article 101 (3) de la Loi OPC et à l'article 5 (4) de la Loi FIA (les « Services MIFID »). Parmi les autres mesures de la CSSF, dont la sensibilisation lors de plusieurs événements du secteur et des inspections sur place auprès des GFI basés au Luxembourg. En particulier, la majorité des répondants ont entrepris une évaluation interne des risques afin d'identifier les risques d'abus de marché auxquels ils sont potentiellement exposés du fait de leurs activités commerciales. De telles évaluations internes sont reconnues comme une bonne pratique, comme un moyen par lequel le GFI peut démontrer la pertinence et la proportionnalité de ses contrôles des abus de marché. Le risque qu'un membre de personnel puisse passer des ordres ou conclure des transactions pour son propre compte sur la base d'informations privilégiées obtenues dans le cadre de son travail pour le GFI (ou divulguer ces informations à un tiers non autorisé avec une recommandation de négocier sur celles-ci) a été identifié. Il s'agit de s'assurer que tous les membres du personnel ont été informés qu'ils ne sont pas autorisés à effectuer des opérations sur cette base, y compris des informations privilégiées dont ils pourraient avoir connaissance dans le cadre de leur travail pour le GFI, et que le non-respect de cette « restriction » peut entraîner des sanctions administratives ou pénales en cas de transgression. Les lacunes potentielles par rapport aux normes comprennent l'absence d'audit et d'examen interne des contrôles des abus de marché, l'absence de formation STOR dispensée régulièrement au personnel concerné et l'absence de formalisation des contrôles des abus de marché. Les GFI doivent examiner de manière critique les différentes manières dont ils peuvent entrer en contact avec des informations privilégiées et la nécessité d'introduire des contrôles supplémentaires ou d'améliorer ceux qui existent déjà. Par ailleurs, la délégation de tout ou partie de l'exécution des obligations STOR n'a pas d'impact sur les obligations STOR du GFI déléguant.

### WHAT'S NEXT?

La revue thématique sur les obligations STOR des GFI n'a pas mis en évidence d'indices d'échecs graves parmi les répondants en ce qui concerne leurs obligations STOR. Cependant, l'examen a mis en évidence un certain nombre de lacunes potentielles par rapport aux normes techniques applicables, qui sont fixées par une réglementation de niveau 2. En ce sens, les conclusions de la revue thématique sont conformes aux conclusions des inspections sur place susmentionnées auprès des GFI.

## MACROECONOMIC FRAMEWORK

**Luxembourg Government publishes communication on Scope Ratings affirming the Grand Duchy's "AAA" rating / Le gouvernement luxembourgeois publie une communication confirmant la notation "AAA" du Grand-Duché par Scope Ratings**

On 28 January 2023, the Luxembourg Ministry of Finance published a communication on Scope Ratings affirming the Grand Duchy's "AAA" rating.

The rating agency Scope Ratings has just confirmed on Friday the "AAA" credit rating of the Grand Duchy of Luxembourg with a stable outlook. This higher rating reflects the country's resilient economy, as well as the good performance of public finances.

Scope notes that government measures, implemented in a determined manner, have enabled Luxembourg to resist successive crises comparatively better than its neighbouring countries. By way of illustration, the agency considers that the "Energiedësch" measures, respectively "Solidaritéitspak 1.0 and 2.0 " have a positive impact on purchasing power, private consumption and investment levels. The agency notes that inflation is on a downward trend.

Despite the economic slowdown in Europe caused by the war in Ukraine, Scope forecasts GDP growth in Luxembourg of 2.2% for 2023, compared with 2.0% in 2022. On the labour market, job creation in Luxembourg remains at a high level, in the face of a slowdown in the rest of the European Union. With regard to the financial centre, the agency notes that the regulatory framework and effective supervision are features that explain its resilience and competitiveness.

At the same time, the report highlights a number of risks to which Luxembourg is exposed as an open economy, such as a possible rise in energy prices, the evolution of the European Central Bank's monetary policy or lower than expected growth.

The rating agency highlights the soundness of Luxembourg's public finances and believes that the level of public debt will not exceed the 30% of GDP threshold set in the government programme. According to Scope's analysis, the evolution of the budgetary situation provides some room for manoeuvre to face possible economic challenges.

## Version française

Le 28 janvier 2023, le ministère luxembourgeois des Finances a publié une communication confirmant la notation "AAA" du Grand-Duché par Scope Ratings.

L'agence de notation Scope Ratings a confirmé la note de crédit "AAA" du Grand-Duché de Luxembourg avec une perspective stable. Cette note plus élevée reflète la résilience de l'économie du pays, ainsi que la bonne tenue des finances publiques.

Scope Ratings note que les mesures gouvernementales, mises en œuvre de manière déterminée, ont permis au Luxembourg de résister relativement mieux aux crises successives que ses pays voisins. A titre d'illustration, l'agence considère que les mesures « Energiedesch », respectivement « Solidaritétspak 1.0 et 2.0 » ont un impact positif sur le pouvoir d'achat, la consommation privée et le niveau d'investissement. L'agence note que l'inflation est sur une tendance à la baisse.

Malgré le ralentissement économique en Europe provoqué par la guerre en Ukraine, Scope Ratings prévoit une croissance du PIB luxembourgeois de 2,2% pour 2023, contre 2,0% en 2022. Sur le marché du travail, la création d'emplois au Luxembourg reste à un niveau élevé, face à un ralentissement dans le reste de l'Union européenne. Concernant la place financière, l'agence note que le cadre réglementaire et la supervision efficace sont des caractéristiques qui expliquent sa résilience et sa compétitivité.

Dans le même temps, le rapport met en lumière un certain nombre de risques auxquels le Luxembourg est exposé en tant qu'économie ouverte, comme une éventuelle hausse des prix de l'énergie, l'évolution de la politique monétaire de la Banque centrale européenne ou une croissance plus faible que prévu.

L'agence de notation souligne la solidité des finances publiques luxembourgeoises et estime que le niveau de la dette publique ne dépassera pas le seuil de 30% du PIB fixé dans le programme gouvernemental. Selon l'analyse de Scope Ratings, l'évolution de la situation budgétaire offre des marges de manœuvre pour faire face à d'éventuels défis économiques.

## PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

CSSF publishes Circular 23/829 on the Guidelines on the exemption of investment firms from liquidity requirements / La CSSF publie la Circulaire 23/829 relative aux orientations sur l'exemption des entreprises d'investissement des exigences de liquidité

### BACKGROUND

On 19 January 2023, the Commission de Surveillance du secteur financier (CSSF) published Circular CSSF 23/829 on the application of the Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033. The Guidelines were issued by the EBA (Ref. EBA/GL/2022/10) published on 29/07/2022 and drafted in the context of the mandatory liquidity requirements. They specify that an exemption is based on the assessment of the financial resource needed for an orderly wind-down of the investment firm. The CSSF has integrated these Guidelines into its administrative practice and regulatory approach with a view to promote supervisory convergence in this field at European level.

### WHAT'S NEW?

The purpose of this circular is to inform that the CSSF, in its capacity as competent authority, applies the Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033. The Guidelines specify that small and non-interconnected investment firms as defined in Article 12(1) are eligible for the exemption if they fulfill the criteria set out in sections 4.1 and 4.2 and point 20 of section 4.3 of the Guidelines: 4.1: an investment firm qualifying as a small and non-interconnected investment firm; investment firms where specific liquidity requirements cease to apply; an investment firm's request to be exempted, providing all information necessary for assessing if these requirements are met, including a description of the investment firm's activity and how it fulfils the requirements for the exemption. 4.2: investment firms providing the following limited set of services are exempted: i) reception and transmission of orders in relation to one or more financial instruments, ii) execution of orders on behalf of clients, iii) portfolio management, iv) investment advice, v) placing of financial instruments without a firm commitment basis; investment firms providing ancillary services giving rise to a liquidity risk: an investment firm engaging in activities such as granting credits or loans to an investor is exposed to higher liquidity risk and therefore it should not be exempted from liquidity requirements; investment firms providing other services giving rise to liquidity risk in providing guarantees to clients or third parties, as they are also subject to a higher liquidity requirement; investment firms engaging in securities lending, as an investment firm would be exposed to liquidity risk because the borrower may not be able to return securities in time or on demand to the investment firm; on and off-balance-sheet positions, including nontrading book derivative positions held for hedging purposes, as an investment firm holding significant amounts of such off-balance-sheet items could be exposed to material liquidity risk. Competent authorities should consider the above requirement when granting exemptions but they should not grant one where an investment firm engages at significant scale in transactions in foreign currencies; its ability to swap currencies and access to the relevant foreign exchange markets may be impaired under stressed conditions. 4.3 (20): an investment firm providing portfolio management or investment advice on an ongoing basis managing assets delegated to it by other financial institutions.

### WHAT'S NEXT?

In-scope entities that wish to be exempted from the aforementioned liquidity requirements must receive prior authorisation from the CSSF. This circular shall apply with immediate effect.

### Version française

### BACKGROUND

Le 19 janvier 2023, la Commission de Surveillance du secteur financier (CSSF) a publié la circulaire CSSF 23/829 relative à l'application des orientations relatives aux critères d'exemption des entreprises d'investissement des exigences de liquidité conformément à l'article 43, paragraphe 4, de la Régulation (UE) 2019/2033. Les Orientations ont été émises par l'ABE (Réf. EBA/GL/2022/10) publiées le 29/07/2022 et rédigées dans le contexte des exigences obligatoires de liquidité. Elles précisent qu'une exemption est basée sur l'évaluation des ressources financières nécessaires à une liquidation ordonnée de l'entreprise d'investissement. La CSSF a intégré ces Orientations dans sa pratique administrative et son approche réglementaire en vue de promouvoir la convergence prudentielle dans ce domaine au niveau européen.

### WHAT'S NEW?

La présente circulaire a pour objet d'informer que la CSSF, en sa qualité d'autorité compétente, applique les Orientations sur les critères d'exemption des exigences de liquidité des entreprises d'investissement conformément à l'article 43(4) du Règlement (UE) 2019/2033. Les lignes directrices précisent que les petites entreprises d'investissement non interconnectées telles que définies à l'article 12, paragraphe 1, peuvent bénéficier de l'exemption si elles remplissent les critères énoncés aux sections 4.1 et 4.2 et au point 20 de la section 4.3 des lignes directrices : 4.1 : une entreprise d'investissement qualifiée de petite entreprise d'investissement non interconnectée ; les entreprises d'investissement où les exigences spécifiques de liquidité cessent de s'appliquer; demande d'exemption d'une entreprise d'investissement, en fournissant toutes les informations nécessaires pour évaluer si ces exigences sont remplies, y compris une description de l'activité

de l'entreprise d'investissement et de la manière dont elle satisfait aux exigences de l'exemption. 4.2 : les entreprises d'investissement fournissant l'ensemble limité de services suivants sont exemptées : i) réception et transmission d'ordres portant sur un ou plusieurs instruments financiers, ii) exécution d'ordres pour le compte de clients, iii) gestion de portefeuille, iv) conseil en investissement, v) placement d'instruments financiers sans engagement ferme ; entreprises d'investissement fournissant des services auxiliaires donnant lieu à un risque de liquidité: une entreprise d'investissement exerçant des activités telles que l'octroi de crédits ou de prêts à un investisseur est exposée à un risque de liquidité plus élevé et ne devrait donc pas être exemptée des exigences de liquidité; les entreprises d'investissement fournissant d'autres services donnant lieu à un risque de liquidité en fournissant des garanties à des clients ou à des tiers, car elles sont également soumises à une exigence de liquidité plus élevée ; les entreprises d'investissement pratiquant le prêt de titres, car une entreprise d'investissement serait exposée au risque de liquidité parce que l'emprunteur pourrait ne pas être en mesure de restituer les titres à temps ou sur demande à l'entreprise d'investissement ; positions au bilan et hors bilan, y compris les positions sur dérivés hors portefeuille de négociation détenues à des fins de couverture, étant donné qu'une entreprise d'investissement détenant des montants importants de ces éléments de hors bilan pourrait être exposée à un risque de liquidité important. Les autorités compétentes devraient tenir compte de l'exigence ci-dessus lorsqu'elles accordent des exemptions, mais elles ne devraient pas en accorder une lorsqu'une entreprise d'investissement effectue à grande échelle des transactions en devises étrangères; sa capacité à échanger des devises et son accès aux marchés des changes concernés peuvent être compromis dans des conditions de crise. 4.3 (20) : une entreprise d'investissement assurant la gestion de portefeuille ou le conseil en investissement de manière continue et gérant des actifs qui lui sont délégués par d'autres établissements financiers.

#### WHAT'S NEXT?

Les entités dans le champ d'application qui souhaitent être exemptées des exigences de liquidité susmentionnées doivent recevoir un agrément préalable de la CSSF. La présente circulaire s'applique immédiatement.

### SUSTAINABLE FINANCE / GREEN FINANCE

**CSSF publishes SFDR data collection exercise for IFMs on regulatory requirements in relation to the SFDR / La CSSF publie un exercice de collecte de données SFDR pour les GFI sur les exigences réglementaires relatives au SFDR**

#### BACKGROUND

On 27 July 2022, the Commission de Surveillance du secteur financier (CSSF) had published a communication related to the SFDR announcing the intention to launch an SFDR data collection exercise, following the publication of the SFDR Level 2 provisions in the Official Journal of the European Union on 25 July 2022.

#### WHAT'S NEW?

On 1 February 2023, the Commission de Surveillance du secteur financier (CSSF) announced an SFDR data collection exercise for investment fund managers (IFMs) on regulatory requirements in relation to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR). The objective of the present Communiqué is to provide industry participants with information on the launch of the first part of this data collection, which mainly focuses on the collection of information regarding organisational arrangements of IFMs. The CSSF expects the organisational arrangements of IFMs to take due account of the integration of sustainability risks, notably in terms of human resources and governance, the investment decision or advice process, the remuneration and risk management policies and the management of conflicts of interest. The IFMs listed in the communication (UCITS management companies; investment companies which did not designate a management company within the meaning of Article 27 of the Law of 17 December 2010 relating to undertakings for collective investment (i.e. "SIAGs"); authorised AIFMs, including internally managed alternative investment funds within the meaning of point (b) of Article 4(1) of the Law of 12 July 2013 on alternative investment fund managers (i.e. "FIAAGs"); managers of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013; and managers of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013 and AIFMs) are required to complete a dedicated questionnaire via the launch of a new eDesk module, "SFDR-IFM disclosures" as from 2 February 2023. The deadline for submission of the questionnaire is 2 March 2023. After the initial declaration and in case of changes, IFMs shall remain responsible to ensure that the information provided is being kept up-to-date. A specific update function ("Create update declaration") is available under the new eDesk module to allow the amendment of information initially submitted. The questionnaire must be completed and submitted by an eDesk user linked to the IFM.

#### WHAT'S NEXT?

The current data collection is necessary to allow the CSSF to fulfill its supervisory duties, notably in relation to the assessment of the compliance of IFMs with the requirements applicable under SFDR and SFDR RTS. The current data collection exercise will be extended in the near future to collect information contained in the PAI statements and in the precontractual and periodic disclosure templates. Further details on timing and practical proceeding of the data collection will be communicated at a later stage.

#### Version française

#### BACKGROUND

Le 27 juillet 2022, la Commission de Surveillance du secteur financier (CSSF) avait publié une communication relative au SFDR annonçant l'intention de lancer un exercice de collecte de données relatives à SFDR, suite à la publication des dispositions SFDR niveau 2 au Journal officiel de l'Union européenne le 25 juillet 2022.

#### WHAT'S NEW?

Le 1er février 2023, la Commission de Surveillance du secteur financier (CSSF) a annoncé un exercice de collecte de données SFDR pour les gestionnaires de fonds d'investissement (GFI) sur les exigences réglementaires en relation avec le règlement (UE) 2019/2088 sur les informations à fournir en matière de développement durable dans les services financiers secteur (SFDR). L'objectif du présent Communiqué est de fournir aux acteurs de l'industrie des informations sur le lancement de la première partie de cette collecte de données, qui se concentre principalement sur la collecte d'informations concernant les arrangements organisationnels des GFI. La CSSF attend que les modalités organisationnelles des GFI tiennent compte de l'intégration des risques de développement durable, notamment en matière de ressources humaines et de gouvernance, de processus de décision ou de conseil en investissement, de politique de rémunération et de gestion des risques et des conflits d'intérêts. Les GFI concernés (sociétés de gestion d'OPCVM ; sociétés d'investissement n'ayant pas désigné de société de gestion au sens de l'article 27 de la loi du 17 décembre 2010 relative aux organismes de placement

collectif (c'est-à-dire les « SIAG »); les GFIA agréés, y compris fonds d'investissement alternatifs gérés en interne au sens de l'article 4, paragraphe 1, point b), de la loi du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs (c'est-à-dire les « FIAAG »); gestionnaires d'un fonds de capital-risque éligible enregistré conformément à l'article 14 du règlement (UE) n° 345/2013; et les gestionnaires d'un fonds d'entrepreneuriat social éligible enregistré conformément à l'article 15 du règlement (UE) n° 346/2013) et les gestionnaires de FIA) sont tenus de remplir un questionnaire dédié via le lancement d'un nouveau module sur eDesk, « Déclarations SFDR-IFM » à partir du 2 février 2023. La date limite de soumission du questionnaire est le 2 mars 2023. Après la déclaration initiale et en cas de modifications, les GFI doivent rester s'assurer que les informations fournies soient tenues à jour. Une fonction spécifique de mise à jour (« Créer une déclaration de mise à jour ») est disponible dans le nouveau module eDesk pour permettre la modification des informations initialement soumises. Le questionnaire doit être rempli et soumis par un utilisateur eDesk lié à l'IFM.

#### WHAT'S NEXT?

La collecte actuelle des données est nécessaire pour permettre à la CSSF de remplir ses missions de surveillance, notamment en ce qui concerne l'évaluation de la conformité des GFI aux exigences applicables en vertu de SFDR et ses RTS. L'exercice de collecte de données en cours sera élargi dans un avenir proche pour collecter les informations contenues dans les déclarations PAI et dans les modèles de divulgation précontractuelle et périodique. De plus amples détails sur le calendrier et la procédure pratique de la collecte de données seront communiqués ultérieurement.

#### LuxSE signs Abu Dhabi Sustainable Finance Declaration / La LuxSE signe la déclaration d'Abu Dhabi sur la finance durable

On 20 January 2023, Luxembourg Stock Exchange (LuxSE) signed Abu Dhabi Sustainable Finance Declaration.

During the Abu Dhabi Sustainable Finance Forum hosted by Abu Dhabi Global Market, the Luxembourg Stock Exchange (LuxSE) signed the Abu Dhabi Sustainable Finance Declaration. LuxSE is the first European exchange to officially join the mission of contributing to the growth of sustainable finance and sustainable development in the region.

The Abu Dhabi Sustainable Finance Declaration, launched in 2019 by the Abu Dhabi Global Market (ADGM), a leading international financial centre, is sponsored by the Ministry of Climate Change and Environment, the Central Bank and the Securities & Commodities Authority. It aims to strengthen the sustainability footprint of UAE and increase the depth and quality of green finance products in Abu Dhabi – reflecting UAE's Vision 2030 and Green Agenda.

This fifth round of signatories to the Declaration brings the total number of signatories from across the globe to 109 and includes leading banks, asset managers, financial services providers and other institutions active in the field of sustainability and sustainable finance.

#### Version française

Le 20 janvier 2023, la Bourse de Luxembourg (LuxSE) a signé la déclaration d'Abu Dhabi sur la finance durable.

Lors du Forum sur la finance durable d'Abu Dhabi organisé par Abu Dhabi Global Market, la Bourse de Luxembourg (LuxSE) a signé la Déclaration sur la finance durable d'Abu Dhabi. LuxSE est la première bourse européenne à rejoindre officiellement la mission de contribuer à la croissance de la finance durable et du développement durable dans la région.

La Déclaration sur la finance durable d'Abu Dhabi, lancée en 2019 par l'Abu Dhabi Global Market (ADGM), un centre financier international de premier plan situé, est parrainée par le ministère du Changement climatique et de l'Environnement, la Banque centrale et l'Autorité des sécurités et commodités. Il vise à renforcer l'empreinte durable des EAU et à accroître la profondeur et la qualité des produits de financement vert à Abu Dhabi, reflétant la Vision 2030 et l'Agenda vert des EAU.

Cette cinquième série de signataires de la Déclaration porte à 109 le nombre total de signataires du monde entier et comprend des banques, des gestionnaires d'actifs, des prestataires de services financiers et d'autres institutions de premier plan actifs dans le domaine de la durabilité et de la finance durable.

# SWITZERLAND

## SWISS FINANCIAL INSTITUTIONS ACT (FINIA)

### FINMA publishes Guidance 02/2023 on the status of licences for portfolio managers and trustees

On 30 January 2023, the Eidgenössische Finanzmarktaufsicht (FINMA) provided information on the status of licences for portfolio managers and trustees.

In its Guidance 02/2023, FINMA provides information on the current status of the licensing process for asset managers and trustees. By the end of 2022, and thus at the end of the three-year transitional period, FINMA had received a total of 1,699 licence applications. As at 31 December 2022, FINMA had granted licences to 670 institutions (642 portfolio managers, 22 trustees and six institutions acting as portfolio managers and trustees). 1,060 institutions have notified FINMA that they will not be submitting an application.

These figures show that FINMA received a very large number of licence applications towards the end of the transitional period, as expected. As at 31 December, there were over 1,000 pending applications. FINMA was organisationally prepared for this larger number of applications. However, due to the large number of pending cases, a longer FINMA licensing process and in particular longer (initial) response times must be expected. The processing time as well as the corresponding costs of an individual application remain highly dependent on its quality and complexity.

Institutions that have submitted their application to FINMA on time may continue their business activities until FINMA has made a decision regarding the licence. At the end of November 2022, FINMA made it possible for applicants to independently download a form showing proof of the status of the licence application from FINMA's digital survey and application platform.

Portfolio managers and trustees who missed the submission deadline for their licence application and nevertheless continue to operate on a professional basis in 2023 face measures under supervisory law as well as criminal consequences. The financial penalties or fines resulting from criminal proceedings could be as high as CHF 250,000.

Since 2020, FINMA has opened 307 investigations based on suspicion of unauthorised activity. Moreover, by 31 December 2022 FINMA had lodged 27 criminal complaints based on suspicion of operating an unlicensed portfolio management or trustee activity. In addition, FINMA placed 153 institutions on its warning list, which it uses to publish details of institutions which have failed to comply with their duty to disclose information to FINMA and which do not have a licence.

## NETHERLANDS

### BREXIT

#### **The Netherlands publishes Regulation of 15 January 2023 amending Temporary Scheme for subsidy of costs of the Brexit Adjustment Reserve by adjusting the information requirements and amending the Temporary Scheme for the Subsidy of Enterprises**

On 17 January 2023, the Overheid (Government Documents in the Netherlands) published the Regulation of the Minister of Economic Affairs and Climate of 15 January 2023, no. WJZ/25627465, amending the Temporary Scheme for the subsidy of the costs of the Brexit Adjustment Reserve related to the adjustment of information requirements and amendment of the Temporary Scheme for the Subsidy of Enterprises in connection with the Brexit Adjustment Reserve with the adjustment of information obligations and the extension of the deadlines for opening up and for submitting an application for subsidy determination.

The Temporary Scheme subsidy incurred costs Brexit Adjustment Reserves and the Temporary scheme for subsidy for companies Brexit Adjustment Reserve (hereinafter: subsidy schemes) are open from 1 November 2022. With these subsidy schemes for respectively incurred costs and costs to be incurred as a result of Brexit come companies with existing economic interests in the United Kingdom eligible for subsidy if they are affected by the withdrawal of the United Kingdom Kingdom of the European Union (hereinafter referred to as: Brexit). The resources available for this purpose come from the Brexit Adjustment Reserve<sup>1</sup> (hereinafter referred to as: BAR). The BAR is intended to support Member States, regions and sectors who are hit hardest by the withdrawal of the United Kingdom, in order to mitigate their impact on economic, social and territorial cohesion.

Through this amendment scheme, a number of bottlenecks in the implementation of the subsidy schemes are identified.

The amendment regulation has minimal regulatory burden effects.

### FINANCIAL SUPERVISION

#### **The Netherlands publishes Decree of 23 January 2023 amending several Decrees and other decisions for financial markets (Financial Markets Amendment Decree 2022)**

On 27 January 2023, the Overheid (Government Documents in the Netherlands) published the Decree of 23 January 2023 amending the Decree on prudential rules Wft, the Decree on the Supervision of the Conduct of Financial Undertakings Wft, the Administrative Supervision Decree fines financial sector and any other decisions in the field of financial markets (Financial Markets Amendment Decree 2022).

This decision forms part of the, in principle, annual cycle of amendment of the legislative act. and financial market regulation. In this cycle, smaller subjects included that do not justify a separate decision. With this collective decision amendments are made to the Decree on Prudential Rules (Wft) (Bpr), the Decree conduct of business supervision of financial undertakings Wft (BGfo), the Decree on regulated markets Wft (Bgm), as well as any other decisions in the field of financial Markets.

The Financial Markets Amendment Act 2022 introduces an ongoing reputation requirement for holders of a declaration of no objection (vvgb) when it comes to professional competence (professional competence). This decision sets out the information to be submitted with which the supervisory authority can determine whether this requirement is met (Article I, section I). It also determines which changes to data of banks with their registered office in the Netherlands with a branch in another Member State to notify the supervisory authority and how this should be done (Article IV). In addition, this expires decides on the AFM's consent requirement in the event of changes made by a market operator with a licence to manage or operate a regulated body in the Netherlands market (Article III). By removing this consent requirement Dutch laws and regulations are brought into line with EU law.

This decision also brings more consistency in the penalty categories as laid down in the Decree on administrative fines for the financial sector (Bbbfs) relating to the violation of the obligation to report to the supervisory authority if the financial company gets a new policymaker (Article VI). Such reporting obligations had varying categories of fines, both the first and second categories, and this decision equalizes this on the second category of fines. This equalization also bears contribute to the effective enforcement of the main legal standards of suitability and reliability where violation thereof is fined with the third category.

This collective decision contains adjustments of a technical nature. This is what this is all about to make adjustments within already existing legal frameworks. The decision therefore contains new tasks or powers for DNB and the AFM, which, as supervisors, are charged with the implementation of laws and regulations in the field of financial markets. A preliminary design of the Financial Markets Amendment Decree 2022 has been submitted to DNB and the AFM. They have each indicated that the adjustments to the collective decision that are relevant to them do not affect the performance of their tasks.

### INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

#### **AFM publishes Decree of 13 December 2022 amending Further Rules on conduct of business supervision financial undertakings Wft (Detailed rules for the supervision of the conduct of financial undertakings) Wft 2023**

On 2 January 2023, the Autoriteit Financiële Markten (AFM) published the Decree of 13 December 2022, amending the Further Rules on conduct of business supervision financial undertakings Wft, in connection with the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS), rules on asset segregation for investment firms and some technical adjustments (Detailed rules for the supervision of the conduct of financial undertakings) Wft 2023.

As a result of the introduction of the separate power account as intended In Section 4:87aa of the Wft in 2022, the Nrgfo is brought into line with Section 4:87aa of the Wft.

The following technical adjustments were made:

In Article 2:3, in line with the general explanation, references to the ECI and removed the corresponding risk indicator. The article now refers to all complex investment products and third pillar pension products by risk indicator that conform Essential Information Documents Regulation and the Essential Delegated

Regulation information documents should be included in EID. The article applies to investment funds, UCITS and other complex investment products and third pillar pension products.

In Article 2:3a, in line with the general explanation, references to the ECI and removed the associated risk indicator. The article only refers to the risk indicator that complies with the Key Information Documents Regulation and the Delegated Regulation on key information documents in EID should be recorded. The article applies to investment funds, UCITS and other complex investment products and third pillar pension products.

With this change, Article 2:4 only refers to the representation of the actual (historical) return for complex investment products and third pillar pension products that do not UCITS, investment institution or annuity investment rights. To understand the scope of this article and to clarify the layout of this chapter, the rules concerning the representation of return forecasts, costs and risks (being former Article 2:4(two) to and with seven) included in article 2:6.

Article 2:5 provides rules for the representation of the actual (historical) return for investment vehicles and UCITS. Because the Essential Information Documents Regulation and the Delegated Regulation on Key Information Documents lays down additional rules for calculating actual (historical) returns for investment funds and UCITS, these rules are displayed separately and are not fully connected to the rules as included in article 2:4. In addition, for the reference periods, annexed to the Guidelines on marketing communications under of the Regulation on the cross-border distribution of funds<sup>5</sup>. Since annuity investment rights also include units in an investment enterprise or UCITS, it has been chosen to apply in the rules for actual returns for align those units with Annex VIII to the Delegated Regulation key information documents.

After the change, Section 2:6 focuses on the presentation of return forecasts and costs in advertisements for investment funds, UCITS, other complex investment products and third pillar pension products. With the transition from the EIB to EID for investment funds and UCITS, the same rules may be referred to for the underlying methodology. To demonstrate future returns for UCITS and investment funds, is now also linked to the display of scenarios from the essential regulation information documents and the Delegated Regulation key information documents. The rules relating to the return forecasts laid down in the former Article 2:6 are dropped to create a clear representation.

The explanation of the amendment of this scheme in 2017 (Government Gazette 2017, 72502) describes how such a return scenario is included. Also showing costs is now connected for UCITS and investment funds to the Key Information Documents Regulation and the Delegated Regulation key information documents.

Sections 4.1 and 4.2 in Chapter 5 are renumbered 5.1 and 5.2

Sections 5.1, 5.2 and 5.3 in Chapter 6 are renumbered 6., 6.2 and 6.3.

Sections 6.1 and 6.2 in Chapter 7 are renumbered as sections 7.1 and 7.2.

Investment firms must take adequate measures pursuant to Section 4:87 of the Act to protect the rights of clients in funds belonging to them. In accordance with Article 165, second paragraph, of the BGfo, the AFM has, in Articles 7:15 to and including 7:19 of this regulation prescribes the ways in which an investment firm can meet this requirement. Article 7:20 of this regulation also states that a investment firm may make arrangements other than those referred to in Articles 7:15 to 7:19. Another regulation requires prior approval from the AFM. As of 7 July 2022 a 'separate capital account' has been introduced in Section 4:87aa of the Act as a new option for investment firms to protect clients' rights in relation to to protect the funds entrusted by them to the investment firm. In in line with this, the AFM amends Article 7:20, so that it is clear that no permission is given need be asked of the AFM when an investment firm makes use of the separate power account.

In line with the general explanation are references to the ECI, and the accompanying risk indicator in Annex 1.4 removed. The attachment only displays views of the Eid risk indicator, which now also applies to units in a fiscal investment enterprise or UCITS.

# UNITED KINGDOM

## AUDIT MATTER

### FRC updates 2021 Statement of Intent on ESG

On 30 January 2023, the Financial Reporting Council (FRC) published its first Statement of Intent on Environmental, Social and Governance (ESG) in 2021, which identified underlying issues with the production, audit and assurance, distribution, consumption, supervision and regulation of ESG information. Since then, it has undertaken a significant number of initiatives both in the UK and internationally, to assist and support its wide range of stakeholders and drive best practice in high-quality and comparable ESG reporting and disclosure.

Today the FRC has published an update to its 2021 Statement, setting out areas where there remain ongoing challenges in ESG reporting, suggesting actions for preparers to produce decision relevant information, and the FRC's plans to engage with the market to ensure that stakeholder needs are being met as demand for ESG information continues to evolve.

In 2022 the FRC established the FRC ESG Group, an advisory body that provides cross-FRC thinking and response to ESG challenges and allows the FRC to respond more quickly and effectively to meet stakeholder needs.

Today's update not only outlines the vast amount of helpful material that the FRC has produced since 2021 including thematic, guidance and examples of best practice but also the FRC's continued commitment to working internationally, supporting efforts towards a common international framework for sustainability disclosures, including key projects underway by the International Auditing and Assurance Standards Board (IAASB) and the International Ethics Standards Board for Accountants (IESBA) to develop international ethical, independence and assurance standards.

Today's report also highlights the FRC's key areas of focus regarding ESG reporting during 2023 which include projects and thematic on -

- ESG Data - how and where to find it and use it effectively
- Materiality disclosures - what should be considered when determining what are material issues?
- Support for FRS102 Preparers
- What are the ESG reporting requirements of the Corporate Governance Code?
- The link between investors and ESG reporting

## CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

### PRA publishes Dear CEO letter on 2023 supervisory priorities for UK deposit takers

On 10 January 2023, the Prudential Regulation Authority (PRA) published a Dear CEO letter on 2023 supervisory priorities for UK deposit takers.

The priorities include the following:

**Credit risk:** In recent years, firms have tightened underwriting standards, enhanced forbearance tools, and increased operational preparedness for collections. However, these enhancements are untested under the current combination of risk factors. Therefore, it is important that firms ensure their credit risk management practices are robust, portfolios are closely monitored, customer support and collections arrangements are appropriately scaled, and expected credit loss provisions are recognised in a timely manner.

**Financial resilience:** The PRA will continue to focus on financial resilience, through ongoing assessment of individual firm's capital and liquidity positions as well as how these may evolve in light of potential headwinds. The PRA expects firms to take proactive steps to assess the implications of the evolving economic outlook on the sustainability of their business models. This should include consideration of broader structural changes to the banking sector such as the evolution of new financial technology competition. In terms of risk management and governance, the market reaction to Russia's invasion of Ukraine, and volatility in the nickel and long-dated gilt markets, reinforced the importance of a robust risk culture and sound risk management practices at firms. In 2023 firms must ensure that the lessons from past crises are definitively learned in full, and thoroughly embedded across the first and second lines of defence. The PRA will continue to assess firms' risk management and control frameworks through individual and cross thematic reviews.

**Operational risk and resilience:** Following PRA Supervisory Statement 1/21 'Operational resilience: Impact tolerances for important business services' firms are, by now, expected to have identified and mapped their important business services (IBS), set impact tolerances for these, and commenced a programme of scenario testing. In the coming year, the PRA's focus will be on using this framework, and the testing that firms are conducting, to assess whether they can remain within their impact tolerances for each IBS in the event of a severe but plausible disruption to their operations. Furthermore, the PRA has seen a material increase in services being outsourced, particularly to cloud providers, as such, firms are expected to manage the risk arising from this accordingly. The PRA will also be continuing to monitor firms' use of new technologies, such as crypto products, and advancements in asset tokenisation. The PRA expects firms to have fully understood the impact of offering crypto products on their operational resilience, and to have met the supervisory expectations set out in SS1/21 before engaging with these opportunities in any material way.

**Real Time Gross Settlement (RTGS):** The Bank of England (BoE) is introducing the delivery of ISO 20022 messaging in CHAPS on 19 June 2023 as part of the RTGS Renewal programme. The PRA expects firms to be ready for this change, ensuring cut-over to the new messaging standard without interruption to customer payments or liquidity management. A number of similar ISO migrations are happening in parallel, and firms should be clear on the dependencies between them in their own systems, including in the event of further changes to the timelines for one of more of these events.

**Model risk:** To support the strengthening of model risk management (MRM) practices in firms, the PRA published Consultation Paper 6/22 'Model risk management principles for banks' and expects to publish finalised MRM principles in H1 2023. The PRA will expect firms to review these and make any changes to their MRM approach that are necessary to ensure they comply with the principles.

Data: Firms should consider the thematic findings set out in the PRA's communications on regulatory reporting to inform how best to improve their submissions going forward. The PRA will continue to use skilled person's reviews in this area in 2023. Furthermore, the PRA will be engaging with firms in 2023 on which data they collect as part of the Banking Data Review, and will continue to consult firms on the long-term reforms to the way they collect data as part of the Transforming Data Collection Programme.

Financial risks arising from climate change: The PRA has found that firms have taken tangible and positive steps to implement the PRA's expectations, however, the level of embeddedness varies from firm to firm and further progress is needed by all firms within scope of Supervisory Statement 3/19 'Enhancing banks' and insurers' approaches to managing the financial risks from climate change'. Firms are expected to take a proactive approach to addressing risks in this area, with the recent Dear CEO letter highlighting the progress made by firms since the publication of SS3/19 providing some specific examples of areas where, by now, firms would be expected to demonstrate capabilities in meeting supervisory expectations.

Other areas of supervisory focus: Diversity, equity and inclusion (DEI) remains an important focus and a topic the PRA expects firms to continue to embed in their cultures. The PRA plans to issue a consultation paper in 2023 setting out proposals to introduce a new regulatory framework on DEI in the financial sector. Finally, the Bank, as resolution authority, and the PRA continue to prioritise resolution as this is an important component of ensuring that the UK has a resilient, efficient and competitive banking system. The Resolvability Assessment Framework (RAF) applies to firms where the preferred resolution strategy is bail-in or partial-transfer. These firms should continue to work to ensure that they achieve and can continue to maintain, the resolvability outcomes of the RAF, and ensure that they are transparent in their disclosures about their preparations for resolution

## FINANCIAL SUPERVISION

### FCA publishes Handbook Notice 106

On 27 January 2023, the Financial Conduct Authority (FCA) published Handbook Notice 106.

This Handbook Notice discusses the following instruments that the FCA board approved on 26 January 2023:

- British Steel Pension Scheme (Financial Resilience) (No 2) Instrument 2023.
- Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023.

In relation to the latter instrument it makes changes to the Handbook so that only firms that would have been both significant IFPR firms and IFPRU investment firms under pre-Investment Firm Prudential Regime arrangements fall within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope Senior Managers and Certification regime. The instrument came into force on 27 January 2023.

## INVESTOR PROTECTION / CONSUMER PROTECTION

### FCA highlights areas of focus for firms implementing the Consumer Duty

On 25 January 2023, the Financial Conduct Authority (FCA) published a review of how firms are planning to implement the Duty.

The FCA reviewed a sample of implementation plans and found that many firms show they understand and embrace the shift to delivering good customer outcomes, which the Duty will bring, and have established extensive programmes of work to comply with it properly.

However, the FCA also found that some firms are further behind in their planning, so there is a risk that they may struggle to apply the Duty effectively once the rules come into force. Over the remaining 6 months of this implementation period, the FCA wants firms to particularly focus on:

- Prioritising: firms should make sure they are prioritising effectively, with a focus on the areas that will make the biggest impact on outcomes for consumers.
- Making the changes needed: the FCA urges firms to ensure they are making the changes needed so consumers receive communications they can understand, products and services that meet their needs and offer fair value, and they get the customer support they need, when they need it.
- Working with other firms: firms need to share information and work closely with their commercial partners to make sure they are all delivering good customer outcomes. The FCA has found that some firms need to accelerate this work to implement the Duty on time.

The Consumer Duty is a cornerstone of the FCA's three-year strategy and will help the FCA set and test higher standards, and reduce and prevent serious harm. Parliament has given the FCA a mandate to introduce the Duty through the Financial Services Act 2021.

The rules come into force on 31 July 2023 for new and existing products or services that are open to sale or renewal, and 31 July 2024 for closed products or services.

## PAYMENT SYSTEMS

### UK Government launches consultation on Payment Services Regulations review and call for evidence

On 13 January 2022, the UK Government opened a consultation on Payment Services Regulations review as well as launched a call for evidence.

The review finds that the 2017 Regulations have fostered a strong and competitive UK payments sector. However, the 2017 Regulations in themselves have not gone far enough in isolation, as evidenced in particular by the UK's work to foster meaningful competition via open banking. The pace of market change has also made the UK heed broader developments in payments to ensure that regulation keeps pace with change, including, but not limited to, the emergence of crypto-assets. In light of market developments and the UK's ability to now determine its own approach to payments regulation, there are certain areas where the regulatory framework for payments is potentially not working as well as it could. Therefore alongside the review the government is launching a call for evidence on how UK payments regulation should evolve. As part of the call for evidence the government is also seeking evidence on the Electronic Money Regulations 2011, cross border payments regulation, other areas of payments law covering specific issues which are not closely connected with the 2017 Regulations including the Interchange Fee Regulation and participation in the Single Euro Payments Area. The call for evidence closes on 7 April 2023.

The government is also publishing a Post Implementation review of the Payment Card Interchange Fee Regulations 2015. The Interchange Fee Regulations 2015 (IFR), which covers the substance of interchange fee policy and regulation, is not subject to this review. The 2015 Regulations principally designated the Payment Systems Regulator as the competent authority to monitor the IFR. The government assess that the policy objective of appointing an appropriate competent authority with powers to enforce the IFR has been achieved.

## PENSION SCHEMES

### UK publishes the Pensions Act 2004 (Disclosure of Restricted Information by the Pensions Regulator) (Amendment of Specified Persons) Order 2022

On 5 December 2022, the UK publishes the Pensions Act 2004 (Disclosure of Restricted Information by the Pensions Regulator) (Amendment of Specified Persons) Order 2022.

Article 2 of this Order amends Schedule 3 to the Pensions Act 2004 to enable the Pensions Regulator to disclose restricted information to the Money and Pensions Service ("MaPS") to facilitate the exercise by MaPS of certain functions. These are MaPS functions under: (a) sections 238A to 238G of the Pensions Act 2004, as inserted by the Pension Schemes Act 2021, in respect of which the Pensions Dashboard Regulations 2022/1220 have been made, and (b) the Financial Guidance and Claims Act 2018 in relation to the dashboard ecosystem and pensions dashboard services.

A pensions dashboard service is an electronic communications service intended to enable individuals (or other authorised persons) to request and view information relating to an individual's pension entitlements electronically. The dashboards ecosystem is a term used and defined in the Pensions Dashboards Regulations 2022 for the interconnected system that enables pensions dashboard services to work in accordance with those Regulations.

The functions exercised by MaPS include setting standards on matters such as connection and security and the provision of the dashboards ecosystem including the connection and disconnection of pension schemes to it.

## REPORTING

### FCA opens CP23/23 on streamlining rules on structured digital reporting of financial statements

On 12 January 2023, the Financial Conduct Authority (FCA) opened a consultation on streamlining rules on structured digital reporting of financial statements.

Structured digital reporting can improve transparency of market disclosures by applying 'tags' to the information. This makes it easier for market participants to extract, compare and analyse it. This supports efficient price formation and investors' decision making.

The FCA proposes:

- Simplifying the content and arrangement of our existing requirements by revoking the Technical Standard where they are currently set out, and putting the key provisions directly in the Disclosure, Guidance and Transparency Rules (DTRs).
- Making a new rule in DTRs requiring issuers to tag their annual financial statements using a 'generally accepted taxonomy' for annual corporate reporting in UK regulated markets.
- Issuing guidance on 'generally accepted taxonomies' in a new Technical Note. We will be able to keep this Technical Note updated more quickly than has been possible in updating the permitted taxonomies in the Technical Standard.

The consultation is intended for:

- All companies who are required to prepare and publish an annual financial report under DTR 4.1 in the format specified in the Technical Standard cross-referenced in DTR4.1.14R.
- Advisory firms and service providers who support companies in this field.
- Software vendors and other service providers who supply the products and technology to enable digital reporting.

The consultation is open until 24 February 2023.

# BRAZIL

## FINANCIAL MARKET INFRASTRUCTURE (FMI)

### [CVM publishes Circular Letter No. 1/2023-CVM/SRE regarding new guidelines for automatic registration of public offerings for the distribution of securities](#)

On 13 January 2023, Comissão de Valores Mobiliários (CVM) published Circular Letter No. 1/2023-CVM/SRE regarding new guidelines for automatic registration of public offerings for the distribution of securities.

This Circular Letter complements Circular Letter No. 3/2022-CVM/SRE ( CVM/SRE Circular Letter 03/22), disclosed on 12/30/2022, and must be read together with that document, for the purposes of clarifications regarding the request for registration of public offerings for the distribution of securities.

CVM reiterated the relevant regulatory change regarding the end of the rite of offers automatically exempted from registration, then governed by CVM Instruction No. 476/09. In that sense, in procedural terms, it is no longer possible to "communicate" a public offer of distribution on a date subsequent to its effective start.

CVM reinforced that all offers disciplined by the RCVM 160 (except for the hypotheses mentioned in article 8 of this resolution) must be submitted to distribution registration.

Furthermore, CVM provided guidelines on aspects that were the subject of recurring doubts on the part of the coordinators in the first 10 days of operation of the SRE -Order Registration System ("SRE - CVM System" or "System").

### [CVM publishes Circular Letter No. 2/2023-CVM/SRE regarding new guidelines on procedures for automatic registration of public offerings regarding the distribution of securities](#)

On 19 January 2023, Comissão de Valores Mobiliários (CVM) published Circular Letter No. 2/2023-CVM/SRE regarding new guidelines on procedures for automatic registration of public offerings regarding the distribution of securities

This Circular Letter complements the previous Circular Letters No. 3/2022-CVM/SRE (Circular Letter CVM/SRE 03/22), disclosed on 30 December 2022 , and No. 1/2023-CVM/SRE (Current Letter CVM/SRE 01/23), disclosed on 13 January 2023, and must be read together with those documents

CVM provided guidelines on aspects that have been improved in relation to the parameterizations of the SRE - Order Registration System ("SRE - CVM System" or "System"), with a view to providing greater clarity at the time of completion of the Electronic Application Form for the Offering by the Lead Coordinators.

The circular clarifies the points regarding:

- Errors in completing the Electronic Offer Request Form
- Offers with communicating vessels
- Requirements regarding "With bookbuilding"
- Issue number field
- New parameterized document
- Support contact

# INTERNATIONAL

## BENCHMARKS

### ISDA updates Bloomberg Rulebook for IBOR Fallback Methodology

On 31 January 2023, the International Swaps and Derivatives Association (ISDA) updated the Bloomberg Rulebook for IBOR Fallback Methodology.

In July 2019, ISDA announced that Bloomberg Index Services Limited (BISL) was selected to calculate and publish adjustments related to fallbacks that ISDA intends to implement for certain interest rate benchmarks in its 2006 ISDA Definitions. These adjustments related to fallbacks and the 'all in' fallback rates calculated by Bloomberg are also available through authorized redistributors which include: Refinitiv.

On the same day, the ISDA updated the ISDA/Bloomberg/Linklaters IBOR Fallbacks Factsheet and IBOR Fallback Rate Adjustments FAQs. The FAQs relate to:

- Which IBOR benchmarks are covered?
- How are the Reference rate Spot Lag and IBOR Value Log Determined?
- What data has been used to calculate Spread Adjustments prior to the development of RFRs such as SOFR and €STR=
- When the market closed for a typhoon warning and no HKD HONIA rate was published, why did BISL treat Tuesday 13th October 2020 as good business day for the purposes of inclusion in the accrual period for HKD HIBOR fallbacks?
- At what times of the day is the data published?
- Bloomberg tickers.

## CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

### ISDA publishes Standard Definitions for Digital Asset Derivatives and whitepaper on Bankruptcy in Digital Asset Markets

On 26 January 2023, International Swaps and Derivatives Association (ISDA) published Standard Definitions for Digital Asset Derivatives and whitepaper on Bankruptcy in Digital Asset Markets titled "Navigating Bankruptcy in Digital Asset Markets: Netting and Collateral Enforceability".

ISDA has published new standard documentation for the trading of digital asset derivatives, alongside a whitepaper that addresses some of the legal issues raised by the recent bankruptcies of major crypto exchanges and market participants.

The ISDA Digital Asset Derivatives Definitions are intended to bring greater clarity to this nascent asset class by creating an unambiguous contractual framework for digital asset derivatives under the umbrella of the ISDA Master Agreement, reducing credit and market risk by setting clear provisions for execution and settlement.

The definitions initially cover non-deliverable forwards and options on Bitcoin and Ether, but could be expanded in future to cover additional product types, including tokenized securities and other digital assets executed on distributed ledger technology (DLT). Importantly, the definitions have been drafted using a controlled language structure to define the processes contained in the document, facilitating integration with the Common Domain Model and automation within smart contracts.

The accompanying whitepaper is the first of two publications that explore legal questions raised by the collapse of FTX and others, including ownership and intermediation of customer assets in the crypto space. The first paper focuses on the importance of close-out netting and collateral arrangements for derivatives referencing digital assets and identifies several areas of focus for policymakers and market participants to ensure greater certainty. This includes use of standardized contractual frameworks like the ISDA Digital Asset Derivatives Definitions and further legal clarity from national authorities on the property status of digital assets. The second paper, due for publication later in the first quarter of 2023, will focus on issues related to customer assets held with intermediaries.

## DERIVATIVE FINANCIAL INSTRUMENTS (DERIVATIVES)

### ISDA updates OTC derivatives compliance calendar (03/01/2023)

On 3 January 2023, International Swaps and Derivatives Association (ISDA) updated OTC derivatives compliance calendar (03/01/2023).

ISDA has updated its global calendar of compliance deadlines and regulatory dates for the over-the-counter (OTC) derivatives space.

## FINANCIAL MARKET INFRASTRUCTURE (FMI)

### ICMA updates its Secondary Market Rules & Recommendations to consolidate a number of updates over recent years in a single document

On 25 January 2023, ICMA - International Capital Market Association has updated its Secondary Market Rules & Recommendations to consolidate a number of updates over recent years in a single document.

The Secondary Market Rules & Recommendations ("The Rules") apply to all transactions conducted by members as buyer or seller, in either a principal or agency capacity in international securities.

The Rules cover a range of secondary market practices, including calculating coupon accruals, trading defaulted securities, interest claims for settlement fails, and, perhaps most famously, the process for issuing and executing buy-ins.

The latest version of the Rules includes the recently approved best practice recommendations to support settlement efficiency, which provides guidelines for shaping bond transactions into maximum lot sizes, partialing trades, and using CSD auto-borrow and lending programmes. It also incorporates the 2017 revisions to the Buy-in and Sell-out Rules.

With the Rules automatically applying between ICMA members, it is one of the benefits of membership. Non-member firms can also elect to apply the Rules with their counterparts by incorporation through reference in their general terms of business.

The document is available for members only.

## MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

**IOSCO revises its 2011 Principles for the Regulation and Supervision of Commodity Derivatives Markets to ensure market integrity**

On 31 January 2023, the International Organization of Securities Commissions (IOSCO) revised its 2011 Principles for the Regulation and Supervision of Commodity Derivatives Markets to ensure market integrity.

While the Principles reflected the characteristics of commodity derivatives markets in 2011, these markets have continued to evolve over the past decade, spurred by various market developments and international events in the form of external disruptions, such as the COVID-19 pandemic and the Russia-Ukraine conflict.

The 24 revised Principles seek to support the physical commodity derivatives markets in providing their fundamental price discovery and hedging functions, while operating free from manipulation and abusive trading schemes.

In revising its Principles, IOSCO focused on market surveillance; transparency; price discovery; the correlation with physical markets; addressing disorderly markets; responding to market abuse; and strengthening the enforcement powers of trading venues against end-user behaviors. The Principles in general and the revisions address various issues highlighted during the recent commodity markets turmoil and volatility. Specifically, the new Principle 16 on Unexpected Disruptions aims to guide regulators in restoring orderly markets in the case of an unexpected disruption and ensure market participants have a process and adequate plans to address these events.

IOSCO believes that relevant Market Authorities should review their policies and regulation to ensure that the Principles are put into effect.

## OTC DERIVATIVES

**ISDA updates OTC Derivatives Compliance Calendar**

On 30 January 2023, the International Swaps and Derivatives Association (ISDA) Updated OTC Derivatives Compliance Calendar.

ISDA has updated its global calendar of compliance deadlines and regulatory dates for the over-the-counter (OTC) derivatives space.

## SUSTAINABLE FINANCE / GREEN FINANCE

**ICMA publishes response to the FCA's consultation on Sustainability Disclosure Requirements (SDR) and investment labels**

On 25 January 2023, ICMA - International Capital Market Association published response to the FCA's consultation on Sustainability Disclosure Requirements (SDR) and investment labels.

ICMA welcomes the FCA's consultation paper (CP) on its proposed sustainability disclosure requirements and investment labels. ICMA agrees that the financial services sector has an important role to play in helping the UK economy adapt to the transition to net zero and a more sustainable future. Relatedly ICMA welcomes the FCA's initiative to propose new rules helping consumers navigate the landscape of products offered to them by the financial services sector. ICMA also thinks that the rules set forth in CP 22/20 will provide clearer guidance to asset managers on how to label and market their funds.

**ISLA publishes response to Consultation on SDR & Investment Labels**

On 25 January 2023, International Securities Lending Association (ISLA) published the response to Consultation on SDR & Investment Labels.

The International Securities Lending Association (ISLA) responded to the Consultation Paper 22/20 on Sustainability Disclosure Requirements and Investment Labels by the Financial Conduct Authority (FCA). ISLA supports the FCA's endorsement of securities lending and its role in deep and liquid capital markets. They raised concerns raised by respondents in the FCA's Discussion Paper 21/4 regarding the practice of securities lending and its compatibility with sustainable investing. ISLA stressed that securities lending should not impede an investor's ability to vote and provided guidance and examples of how to ensure this. ISLA also addressed concerns that securities lending may facilitate short selling of securities by companies with strong sustainability credentials. They explained that short selling can also contribute to positive sustainability outcomes and is banned in the UK under the Short Selling Regulation. ISLA referred to the United Nations Principles for Responsible Investment's review on shorting and responsible investment, which suggests shorting can express views that an entity is mispriced and not incorporating ESG factors.

**UNEP FI publishes third edition of Target-Setting Protocol**

On 31 January 2023, the United Nations Environment Programme – Finance Initiative (UNEP FI) published the third edition of Target-Setting Protocol.

Investment portfolio emissions typically represent the vast majority of an asset owner's emissions. The latest Protocol expands its methodology and clarifies its expectations to members, ensuring they set short-term decarbonisation targets that put them on a pathway to reaching net-zero greenhouse gas (GHG) emissions in their investment portfolios by 2050.

The Alliance's latest Protocol demonstrates that its members remain steadfastly committed to achieving net zero and aligning with 1.5°C pathways with no or limited overshoot.

Based on the Intergovernmental Panel on Climate Change's (IPCC) most recent pathways, the Alliance identified emissions reduction requirements for sub-portfolio targets in the range of -22% to -32% by 2025 and -40% to -60% by 2030.

Given that data has been less readily available for unlisted equity (compared to their publicly listed counterparts), setting decarbonisation targets for private equity portfolios presents a bigger challenge. However, the latest Protocol formulates the methodology for direct private equity investments and requires members to commence setting targets in 2023 and cover all new private equity assets by 2025.

For the first time, the Target Setting Protocol also includes guidance on carbon accounting for sovereign debt, which is a significant asset class for many asset owners. The Alliance has joined forces with PCAF (Partnership for Carbon Accounting Financials) and ASCOR (Assessing Sovereign Climate-related Opportunities and Risks) to develop the accounting and assessment standards respectively. Once finalised, the methodologies developed will offer investors a tool for a common understanding of sovereign exposure and climate alignment.

Lastly, the Alliance members are also asked to phase in target-setting on new commercial real estate loans using the Carbon Risk Real Estate Monitor (CRREM) 1.5°C national pathways or the IPCC's no or limited overshoot 1.5°C global range. In 2024, the members will also report the share of the portfolio that is covered by the disclosure target on new investments.

According to the Alliance's Commitment, members are required to give due consideration to societal impacts when steering their portfolios towards net-zero economy alignment. This year's Protocol explicitly asks members to consider Just Transition impacts — ensuring the benefits of the low carbon transition are widely and fairly shared — to their decarbonisation targets. When setting Climate Solutions Investment targets, members are encouraged to focus on emerging markets, which typically are most vulnerable to climate change and have fewer resources to transition from fossil fuel dependence.

The Alliance's stance on carbon removals, previously outlined in the The Net in Net-Zero position paper, have also been incorporated in the target-setting framework. With carbon removal technologies yet to impact at scale, the Alliance guides members to encourage investee companies to prioritise emission reductions and disallows the use of carbon removals to achieve intermediary emission targets that detract from these efforts.

The Alliance aims to continue to enhance the depth and coverage of this Protocol and the public may expect updated editions to be released on an annual basis.

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This publication is produced by the Projects & Regulatory Monitoring teams as well as experts from the Legal Department and the Compliance Department of CACEIS entities, together with the close support of the Communications Department.

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