July August 2024

EUROPEAN UNION

ARTIFICIAL INTELLIGENCE ACT (AIA)

- EU publishes the AI Act
- EC publishes press release on AI Act coming into force

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

- ESAs publish joint final Report on draft RTS on subcontracting under DORA

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

- EC adopts ELTIF Regulation Delegated Act
- ESMA consults on Liquidity Management Tools under AIFMD II and UCITS VI
- EU publishes Regulation (EU) 2024/1988 of the ECB of 27 June 2024 concerning statistics on investment funds

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

- ESMA launches new consultations under MiFIR Review
- ESMA publishes statement on transition to new regime for post-trade transparency of OTC-transactions
- ESMA consults on firms' order execution policies under MiFID II

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- ESAs publish second batch of policy products under DORA

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- ESMA updates its Q&A on MiCA (04/07/2024)
- ESAs consult on Guidelines under MiCA
- ESMA publishes second Final Report under MiCA
- EBA consults on draft Guidelines on reporting of data to assist authorities in their supervisory duties and significance assessment under MiCAR

SUSTAINABILITY

- ESMA updates consolidated Q&A on SFDR
- EC publishes FAQs on the implementation of the EU corporate sustainability reporting rules
- ESMA publishes translations of its Guidelines on funds' names

SUSTAINABLE FINANCE / GREEN FINANCE

- ESMA puts forward measures to support corporate sustainability reporting

BELGIUM

GOVERNANCE

- FSMA publishes communication on amendment of FSMA Regulation on authorisation of compliance officers

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

- FSMA announces technical adaptations in the questionnaires to be completed by the effective management for OPCs
- FSMA updates communication on national provisions governing marketing requirements applicable to UCITS and OPCAs
- FSMA publishes communication on exercise of activities on a cross-border basis by OPCs managers under Belgian law
- FSMA publishes conclusions on liquidity stress tests carried out by Belgian managers
- FSMA updates communication on the electronic transmission of information on UCIs
- FSMA updates study on costs charged by Belgian public UCIs

SUSTAINABILITY

- FSMA publishes Information Sheet on CSRD Reporting

BRAZIL

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

- CVM releases FATF statement on countries with potential risk to the financial system

ARTIFICIAL INTELLIGENCE

- ANBIMA publishes Guide on Artificial Intelligence

CAPITAL MARKETS UNION (CMU)

- CVM issues Rules for portability of capital market investments

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- ANBIMA announces Crypto Funds gain New Governance and Due Diligence Rules

FINANCIAL INSTRUMENTS

- CVM advises on use of theoretical price for Fixed Income ETF quotas
- CVM promotes specific changes in Resolutions 47, 80, 160 and 161
- BCB publishes CMN Resolution No. 5,166 on issuing Certificates of Structured Operations (COE)

FINANCIAL SUPERVISION

- BCB publishes Resolution No. 400 on Guidelines for the establishment of Open Finance Governance Structure

FINANCIAL SYSTEM STABILITY

- ANBIMA informs of future FSB Evaluation of Brazil's Regulatory Practices and Policies

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

- ANBIMA and CVM include offerings from Fiagros-FII and infrastructure funds in Agreement
- CVM publishes information on searching for investment fund information on CVM Open Data Portal
- ANBIMA publishes Official Letter to CVM with considerations to Annexes II, III and IV of CVM Resolution 175

INVESTOR PROTECTION / CONSUMER PROTECTION

- ANBIMA announces new Guidance on conflicts of interest
- CVM publishes Circular Letter CVM/SMI/SIN 01/2024 on interpretations of the suitability rule

REMUNERATION POLICIES

- ANBIMA announces Transparency rules on remuneration for product distribution enter public hearing

SENIOR MANAGERS & CERTIFICATION REGIME (SM&CR)

- ANBIMA announces Certification Code is discontinued and rules for performance of professionals in financial institutions enter public hearing

COLOMBIA

SECURITIES

- Banco de la República publishes DCV Bulletin 339 on Disabling Securities Accounts

FRANCE

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

- Ministère de l'Economie publishes a press release on the overhaul of access procedures to the UBO register / Le ministère de l'Economie publie un communiqué de presse sur la refonte des procédures d'accès au registre UBO

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- AMF announces filing of Applications for Approval as CASP is now possible under MiCA / L'AMF annonce le dépôt des demandes d'agrément en tant que PSAN est désormais possible dans le cadre de MiCA

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

- France publishes Decree n.2024-752 on State guarantee for AIFMs that subscribe to “transition bonds” / La France publie le décret n°2024-752 relatif à la garantie de l’État pour les GFIA qui souscrivent aux « obligations de transition »
- France publishes Order of 27 June 2024 approving modifications to the general regulations of AMF / La France publie l'ordonnance du 27 juin 2024 portant approbation des modifications du règlement général de l'AMF
- France publishes Order No. 2024-662 of 3 July 2024 modernizing the regime of alternative investment funds / La France publie l'ordonnance n° 2024-662 du 3 juillet 2024 modernisant le régime des fonds d'investissement alternatifs
- AMF updates notification forms for management companies and cross-border marketing of UCITS and AIFs / L'AMF met à jour les formulaires de déclaration des sociétés de gestion et de commercialisation transfrontalière des OPCVM et FIA

LIQUIDITY

- FPM publishes Market Practice on liquidity risk management tools / FPM publie une pratique de marché sur les outils de gestion de risque de liquidité

PAYMENT AND SETTLEMENT SYSTEMS

- AMF and Banque de France publish position paper on switch to T+1 Settlement / L'AMF et la Banque de France publient une note de position sur le passage au règlement T+1

REPORTING

- AFG publishes update on application of sustainability reporting to asset management / L'AFG publie une mise à jour sur l'application du reporting de développement durable à la gestion d'actifs

SUPERVISION

- AFG announces depositary controls on the extra-financial ratios of management companies / L'AFG annonce des contrôles dépositaires sur les ratios extra-financiers des sociétés de gestion

SUSTAINABLE FINANCE / GREEN FINANCE

- AMF publishes summary of SPOT checks on quality of commercial documentation and integration of ESG criteria / L'AMF publie la synthèse des contrôles SPOT sur la qualité de la documentation commerciale et l'intégration des critères ESG

GERMANY

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

- BaFin updates its page on marketing in Germany

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

- BaFin publishes consultation on guidance on interpretation and application of the GwG
- BaFin publishes circular on third countries that have strategic deficiencies in their AML/CFT systems
- Bundesfinanzministerium publishes Draft Ordinance amending the Ordinance on Reporting Obligations in Real Estate under the Money Laundering Act

CAPITAL RAISING PROCESS

- Bundesfinanzministerium publishes Bill of the Second Act on the Financing of Future-Securing Investments

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

- Bundesrat publishes Bill on the Implementation of the NIS2 Directive and the Regulation of Essential Principles of Information Security Management in the Federal Administration

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

- BaFin publishes English translations of guidance notices on the marketing of foreign AIF or domestic special feeder AIF or EU feeder AIF or domestic AIF
- BaFin updates Guidance Notice for Marketing according to § 323 KAGB

INVESTOR PROTECTION / CONSUMER PROTECTION

- Germany publishes Second Act on the Reform of the Capital Investor Model Case Act

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- BaFin updates its articles on ICT risk management and ICT third-party risk management

SUSTAINABILITY

- Bundesrat publishes Bill implementing Directive (EU) 2022/2464 as regards corporate sustainability reporting

SUSTAINABLE FINANCE / GREEN FINANCE

- Bundesrat publishes resolution: Suspension of the LkGS until the implementation of CSDDD
- BaFin publishes supervisory notice on ESMA Guidelines on Fund Names
- BVI publishes Article on BaFin's application of ESMA guidelines for the German market

UCITS V / ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD)

- Federal Ministry of Finance publishes Bill to strengthen German fund market and implement Directive (EU) 2024/927 as regards delegation agreements, liquidity risk management, supervisory reporting, custody and depository services and lending by AIFs
- BaFin publishes Guidance Notice on marketing of EU UCITS in Germany

HONG KONG

BANK CRISIS MANAGEMENT AND DEPOSIT INSURANCE (CMDI)

- Hong Kong publishes Cap. 628 Financial Institutions (Resolution) Ordinance

GOVERNANCE

- SFC publishes circular to licensed corporations on financial resources management and compliance with the Securities and Futures (Financial Resources) Rules

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

- SFC publishes Asset and Wealth Management Activities Survey 2023

IRELAND

COMPANY LAW

- Irish Department of Enterprise, Trade and Employment publishes General Scheme of Registration of Limited Partnerships and Business Names Bill 2024

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- CBI issues Industry Briefing on MiCAR

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

- DPC publishes Guidance on AI, Large Language Models and Data Protection

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

- CBI updates on Implementing DORA

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

- Ireland initiates Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2024

- CBI publishes feedback statement on macroprudential policy for investment funds
- CBI publishes new templates for cross-border marketing notification letters for UCITS
- CBI publishes new templates for cross-border marketing notification letters for AIFs

SUPERVISION

- CBI publishes Review of Fitness and Probity Regime

ITALY

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

- Banca d'Italia publishes consultation on amendments to the Provisions on organisation, procedures and internal controls for AML purposes of 26 March 2019

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

- Italy publishes Cybersecurity Law
- Council of ministers approves NIS2 Directive transposition decree- Preliminary examination (draft legislative decree)

EUROPEAN CROWDFUNDING SERVICE PROVIDERS (ECSP) REGULATION

- CONSOB publishes consultation on proposals to redefine the supervisory fee payable by entities carrying out securitisation transactions and crowdfunding service providers

FINANCIAL SUPERVISION

- CONSOB publishes the document containing the Regulatory Activities Plan for 2024 and the Regulatory Impact Assessment Plan for the two-year period 2024-2025

INTERNAL CONTROL

- Banca d'Italia publishes instructions for the exercise of enhanced controls on the work of qualified intermediaries

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- Bank of Italy issues communication on MiCAR

SECURITIES

- CONSOB publishes Securitisations FAQs to assist market participants in the application of the current regulatory framework

SECURITISATION REGULATION

- CONSOB publishes resolution on national discretion provided for in art. 26-sexies, paragraph 10, of the Securitisation Regulation (EU) 2017/2402

SUSTAINABILITY

- CONSOB publishes call for attention to intermediaries on ESG issues for less sophisticated customers
- Council of ministers approves the CSRD directive transposition decree- Preliminary examination (draft legislative decree)

JERSEY

BLOCKCHAIN / DISTRIBUTED LEDGER TECHNOLOGY (DLT)

- JFSC publishes asset tokenisation and initial coin/token offerings guidance

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

- JFSC publishes Updated Jersey Private Fund Guide

LUXEMBOURG

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

- CSSF publishes Notification Letter for AIFMs who wish to manage AIFs in another Member State or establish a branch / La CSSF publie une lettre de notification pour des GFIA souhaitant gérer des FIA dans un autre État membre ou établir une succursale

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

- CSSF publishes Annex of Circular CSSF 22/822 (Version of 1 July 2024) on high-risk and monitored jurisdictions / La CSSF publie l'annexe de la circulaire CSSF 22/822 (version du 1er juillet 2024) relative aux juridictions à haut risque et surveillées
- PFI publishes Circular 882 on the creation of an AML/CFT unit / Le PFI publie la circulaire 882 relative à la création d'une unité de LBC/FT

BLOCKCHAIN / DISTRIBUTED LEDGER TECHNOLOGY (DLT)

- Luxembourg publishes Bill 8425 (Blockchain Law IV) / Le Luxembourg publie le projet de loi 8425 (loi Blockchain IV)

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- Chambre des députés publishes a press release on cryptoassets / La Chambre des députés publie un communiqué sur les cryptoactifs

CUSTODIANS / DEPOSITARIES

- CSSF clarifies controls to be implemented by Luxembourg depositaries for AIFs investing in illiquid assets / La CSSF clarifie les contrôles à mettre en œuvre par les dépositaires luxembourgeois pour les FIA investissant dans des actifs illiquides

DIRECTIVE ON CREDIT SERVICERS AND CREDIT PURCHASERS

- CSSF updates Notification Form for provision of credit servicing activities in another Member State / La CSSF met à jour le formulaire de notification pour la fourniture d'activités de gestion de crédit dans un autre État membre

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF)

- CSSF updates ELTIF Application Questionnaire / La CSSF met à jour le questionnaire de candidature ELTIF

FINANCIAL SUPERVISION

- CSSF publishes a Reminder on the mode of transmission of KIDs and official documents / La CSSF publie un rappel sur le mode de transmission des KID et documents officiels

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

- CSSF informs of publication of three European Commission Q&As on investment-management-related queries / La CSSF informe sur la publication de trois FAQs de la Commission européenne sur la gestion des investissements

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- CSSF publishes DORA Readiness Survey / La CSSF publie une enquête sur l'état de préparation à DORA

SUSTAINABLE FINANCE / GREEN FINANCE

- CSSF updates on the ESMA Guidelines on the use of ESG or sustainability-related terms in fund names / La CSSF fait le point sur les lignes directrices de l'ESMA concernant l'utilisation de termes ESG ou liés à la durabilité dans les noms des fonds

MALAYSIA

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- SC Malaysia publishes Practice Note No.1/2024 on Digital Asset Custodian specified as “Custodian” Under Section 121(G) of the Capital Markets and Services Act 2007

CYBERSECURITY

- SC Malaysia announces Guidelines on Technology Risk Management take effect

GOVERNANCE

- SC Malaysia reminds of requirements to implement control measures when accepting third party deposits

NON-BANK FINANCIAL INTERMEDIATION

- SC Malaysia publishes Reminder to all Capital Market intermediaries to ensure continuous compliance with the Minimum Financial Requirements

MEXICO

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

- SHCP updates on Mexico's FATF Presidency

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

- Banxico publishes consultation of draft provisions to amend the Repo Rules to establish rules applicable to hedge funds

NETHERLANDS

FINANCIAL SUPERVISION

- Overheid amends Financial Supervision Act, the Supervision Act Trust Offices 2018 and certain other laws in the field of the financial markets (Financial Markets Amendment Act 2024)

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- AFM publishes checklist for DORA readiness

SPAIN

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- CNMV publishes Authorisation Manual and Information Notification Model for CASPs

SWITZERLAND

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- FINMA publishes Guidance on stablecoins / La FINMA publie un guide sur les monnaies stables

UNITED KINGDOM

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

- FCA publishes guidance consultation on proposed amendments to treatment of PEPs and multi-firm review on treatment of PEPs

BOND MARKETS

- FCA publishes page on bond consolidated tape

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- FCA helps improve crypto firms’ compliance with new marketing rules

FINANCIAL SUPERVISION

- FCA updates on sponsor regime

FINANCIAL SYSTEM STABILITY

- BoE publishes financial stability paper on operational resilience in a macroprudential framework

GOVERNANCE

- FRC announces significant update to the UK Stewardship Code

INTEREST RATE

- FCA updates on LIBOR transition

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

- FCA publishes Direction under regulation 67A(2) of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019
- FCA publishes new webpage "Apply to be UK UCITS Man Co"
- FCA publishes policy statement on implementing the Overseas Funds Regime
- FCA updates on Overseas Funds Regime
- FCA publishes Connect OFR Registration User Guide

SUSTAINABILITY

- FCA updates on sustainability disclosure and labelling regime

LISTING / TRADING RULES

- FCA sets out rules and proposals to build up UK wholesale markets

INTERNATIONAL

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

- The Wolfsberg Group publishes statement on effective monitoring for suspicious activity

CONTACTS

EUROPEAN UNION

ARTIFICIAL INTELLIGENCE ACT (AIA)

EU publishes the AI Act

On 12 July 2024, the European Union published the Artificial Intelligence (AI) Act.

The purpose of this Regulation is to improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of AI systems in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy AI while ensuring a high level of protection of health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union Charter, including democracy, the rule of law and environmental protection, to protect against the harmful effects of AI systems in the Union, and to support innovation. This Regulation ensures the free movement, cross-border, of AI-based goods and services, thus preventing Member States from imposing restrictions on the development, marketing and use of AI systems, unless explicitly authorised by this Regulation.

This Regulation should be applied in accordance with the values of the Union enshrined as in the Charter, facilitating the protection of natural persons, undertakings, democracy, the rule of law and environmental protection, while boosting innovation and employment and making the Union a leader in the uptake of trustworthy AI.

This Regulation lays down:

- harmonised rules for the placing on the market, the putting into service, and the use of AI systems in the Union;
- prohibitions of certain AI practices;
- specific requirements for high-risk AI systems and obligations for operators of such systems;
- harmonised transparency rules for certain AI systems;
- harmonised rules for the placing on the market of general-purpose AI models;
- rules on market monitoring, market surveillance, governance and enforcement;
- measures to support innovation, with a particular focus on SMEs, including start-ups.

The Regulation enters into force on 1 August 2024. It shall apply from 2 August 2026.

Chapters I (General Provisions) and II (Prohibited AI Practices) shall apply from 2 February 2025. Chapter III (High-risk AI System) Section 4 (Notifying authorities and notified bodies), Chapter V (General Purpose AI Models), Chapter VII (Governance) and Chapter XII (Penalties) and Article 78 (Confidentiality) shall apply from 2 August 2025, with the exception of Article 101. Article 6 (1) and the corresponding obligations in this Regulation shall apply from 2 August 2027.

EC publishes press release on AI Act coming into force

On 1 August 2024, the European Commission published a press release on artificial intelligence (AI) Act coming into force.

On 1 August 2024, the EU AI Act is coming into force.

The AI Act introduces a forward-looking definition of AI, based on a product safety and risk-based approach in the EU:

- Minimal risk: Most AI systems, such as AI-enabled recommender systems and spam filters, fall into this category. These systems face no obligations under the AI Act due to their minimal risk to citizens' rights and safety. Companies can voluntarily adopt additional codes of conduct.
- Specific transparency risk: AI systems like chatbots must clearly disclose to users that they are interacting with a machine. Certain AI-generated content, including deep fakes, must be labelled as such, and users need to be informed when biometric categorisation or emotion recognition systems are being used. In addition, providers will have to design systems in a way that synthetic audio, video, text and images content is marked in a machine-readable format, and detectable as artificially generated or manipulated.
- High risk: AI systems identified as high-risk will be required to comply with strict requirements, including risk-mitigation systems, high quality of data sets, logging of activity, detailed documentation, clear user information, human oversight, and a high level of robustness, accuracy, and cybersecurity. Regulatory sandboxes will facilitate responsible innovation and the development of compliant AI systems. Such high-risk AI systems include for example AI systems used for recruitment, or to assess whether somebody is entitled to get a loan, or to run autonomous robots.
- Unacceptable risk: AI systems considered a clear threat to the fundamental rights of people will be banned. This includes AI systems or applications that manipulate human behaviour to circumvent users' free will, such as toys using voice assistance encouraging dangerous behaviour of minors, systems that allow 'social scoring' by governments or companies, and certain applications of predictive policing. In addition, some uses of biometric systems will be prohibited, for example emotion recognition systems used at the workplace and some systems for categorising people or real time remote biometric identification for law enforcement purposes in publicly accessible spaces (with narrow exceptions).

To complement this system, the AI Act also introduces rules for so-called general-purpose AI models, which are highly capable AI models that are designed to perform a wide variety of tasks like generating human-like text. General-purpose AI models are increasingly used as components of AI applications. The AI Act will ensure transparency along the value chain and addresses possible systemic risks of the most capable models.

Member States have until 2 August 2025 to designate national competent authorities, who will oversee the application of the rules for AI systems and carry out market surveillance activities. The Commission's AI Office will be the key implementation body for the AI Act at EU-level, as well as the enforcer for the rules for general-purpose AI models.

Three advisory bodies will support the implementation of the rules. The European Artificial Intelligence Board will ensure a uniform application of the AI Act across EU Member States and will act as the main body for cooperation between the Commission and the Member States. A scientific panel of independent experts will

offer technical advice and input on enforcement. In particular, this panel can issue alerts to the AI Office about risks associated to general-purpose AI models. The AI Office can also receive guidance from an advisory forum, composed of a diverse set of stakeholders.

Companies not complying with the rules will be fined. Fines could go up to 7% of the global annual turnover for violations of banned AI applications, up to 3% for violations of other obligations and up to 1.5% for supplying incorrect information.

The majority of rules of the AI Act will start applying on 2 August 2026. However, prohibitions of AI systems deemed to present an unacceptable risk will already apply after six months, while the rules for so-called General-Purpose AI models will apply after 12 months.

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

ESAs publish joint final Report on draft RTS on subcontracting under DORA

On 26 July 2024, the European Supervisory Authorities (ESAs) published a joint final Report on the draft technical standards on subcontracting under Digital Operational Resilience Act (DORA).

These RTS aim at enhancing the digital operational resilience of the EU financial sector by strengthening the financial entities' ICT risk management over the use of subcontracting.

These RTS focus on ICT services provided by ICT subcontractors that support critical or important functions, or material parts of them. In addition, they specify the requirements throughout the lifecycle of contractual arrangements between financial entities and ICT third-party service providers. In particular, they require financial entities to assess the risks associated with subcontracting during the precontractual phase, including the due diligence process.

Requirements for the implementation and management of contractual arrangements on subcontracting conditions are defined with these RTS, to ensure that financial entities effectively monitor the subcontractors effectively underpinning the ICT services that support critical or important functions and remain in control of their risks.

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

ESMA consults on Liquidity Management Tools under AIFMD II and UCITS VI

On 8 July 2024, the European Securities and Markets Authority (ESMA) published Consultations on Liquidity Management Tools (LMTs) for funds.

ESMA is seeking input on draft guidelines and technical standards under the revised AIFM and the UCITS Directives. Both Directives aim to mitigate potential financial stability risks and promote harmonisation of liquidity risk management in the investment funds sector.

- Consultation Paper on the Draft RTS on LMTs under the AIFMD and UCITSD to determine the characteristics of LMTs available to AIFMs managing open-ended AIFs and to UCITS.
- Consultation Paper on the Guidelines on LMTs of UCITS and open-ended AIFs regarding the selection and calibration of LMTs for liquidity risk management and for mitigating financial stability risks. Those guidelines recognise that the primary responsibility for liquidity risk management remains with the UCITS and AIFM, and include indications as to the circumstances in which side pockets can be activated and allow adequate time for adaptation before they apply, in particular for existing UCITS and open-ended AIFs.

ESMA welcomes responses to the consultations by 8 October 2024. Following this, ESMA will deliver the final RTS and guidelines by 16 April 2025.

EC adopts ELTIF Regulation Delegated Act

On 19 July 2024, the European Commission published a draft Commission Delegated Regulation supplementing Regulation (EU) 2015/760 with regard to RTS specifying when derivatives will be used solely for hedging the risks inherent to other investments of ELTIFs, the requirements for an ELTIF's redemption policy and LMTs, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure.

The revised regulatory framework for ELTIFs is a part of the Capital Markets Union (CMU) initiative, a plan to create a single market for capital to get investments and savings flowing across all Member States to the benefit of citizens, businesses, and investors.

ELTIF Regulation was amended by Regulation (EU) 2023/606, which was adopted on 15 March 2023, published in the Official Journal on 20 April 2023 and applies since 10 January 2024.

The RTS aim to specify the following:

- when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF
- the requirements for an ELTIF's redemption policy and LMTs
- the circumstances for the matching of transfer requests of units or shares of the ELTIF
- certain criteria for the disposal of ELTIF assets, and
- certain elements of the cost disclosure.

ELTIFs are the only type of funds dedicated to long-term investments which can be distributed on a cross-border basis to both professional and retail investors. ELTIFs are well placed to help finance the energy, social and transport infrastructure projects, promote the green and digital transitions, the Union's real economy at large, as well as to enable a more integrated CMU.

The finalised version of the RTS brings considerable improvements to the previous proposed versions with an aim to boost investor protection and provide market clarity.

It is reminded that the first draft RTS proposed by ESMA in December 2023 were rejected by the EC, and a revised version as instructed by the EC was re-proposed by ESMA in April 2024.

The RTS shall enter into force on the day following the publication in the EU OJ. They are binding and directly applicable in all Member States.

EU publishes Regulation (EU) 2024/1988 of the ECB of 27 June 2024 concerning statistics on investment funds

On 23 July 2024, the European Union published a Regulation (EU) 2024/1988 of the ECB of 27 June 2024 concerning statistics on investment funds (IFs) and repealing Decision (EU) 2015/32 (ECB/2014/62) (ECB/2024/17) (recast).

This Regulation establishes the reporting requirements for IFs, and in certain cases other financial intermediaries (OFIs) and monetary financial institutions (MFIs), with regard to statistical information on their assets, liabilities, income received, dividends paid, and fees paid by the shareholders to the IF.

Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (ECB/2013/38) needs to be substantially amended, in particular in light of the need to collect additional and more frequent statistical information on investment funds (IFs).

The population of IFs covered by this Regulation should include alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS) established within the territories of the Member States. To ensure consistency and comparability of statistics, it is important that all entities classified in the "Non-MMF investment funds (S.124)" subsector of the European system of national and regional accounts in the European Union (ESA 2010) laid down in Regulation (EU) No 549/2013 are included in the actual reporting population. In some cases the definition of IFs may therefore include entities which do not fall within the scope of the AIFMD or UCITSD.

The principal purpose of such information is to provide the ECB with a comprehensive statistical picture of the IF subsector in the Member States whose currency is the euro, which are viewed as one economic territory.

This Regulation lays down requirements primarily with regard to IFs. However, complete statistical information on holders of bearer shares issued by IFs may not be directly available from IFs. Therefore, it is necessary to make arrangements to allow NCBs to collect that statistical information, including from other sources and entities, in line with the most effective and accurate methods available at national level.

This Regulation entered into force on 12 August 2024. It shall apply from 1 December 2025, with the exception of Article 10, which shall apply from the entry into force of this Regulation.

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

ESMA launches new consultations under MiFIR Review

On 9 July 2024, the European Securities and Markets Authority (ESMA) published a package of Consultations with the objective of increasing transparency and system resilience in financial markets, reducing reporting burden and promoting convergence in the supervisory approach under the Markets in Financial Instruments Regulation (MiFIR) review.

The Amending Regulation and the Amending Directive following the review of the MIFIR and of the second Markets in Financial Instruments Directive (MiFID II) were published in the Official Journal of the EU on 8 March 2024.

This consultation paper (CP) includes:

(i) the amendment of the L2 provisions specifying the requirements on equity transparency, covering technical advice to the Commission and amendments to the RTS on equity transparency,

(ii) a new implementing technical standard for the notification of investment firms acting as Systematic Internalisers (SIs) to competent authorities,

(iii) the amendment of the RTS specifying the volume cap

(iv) the amendments of the RTS specifying organisational requirements for trading venues in order to integrate the new empowerment on circuit breakers and reflecting the changes stemming from DORA,

(v) a new RTS on input/output data for the equity CTP,

(vi) a proposal on flags for post-trade transparency for the transparency requirements for non-equity instruments, notably bonds.

Stakeholders are invited to provide comments by 15 September 2024 for the proposals on equity transparency (Sections 3-4, the RTS on input/output data for the equity CTP (Section 8) and the flags on post-trade transparency for non-equity instruments (Section 9). Stakeholders are invited to provide feedback by 15 October 2024 on the remaining sections, i.e. sections 5-7.

ESMA will consider the feedback received during this consultation and expect to publish a final report covering the proposals in Sections 3, 4, 8 and 9 in December 2024, and the proposals on the remaining mandates (i.e Sections 5-7) in March 2025. The delivery of the amendments to the L2 provisions on equity transparency ahead of the legal deadline is necessary to ensure full alignment between the transparency requirements with the CTP requirements, to ensure clear requirements for the equity CTP applicants and ultimately contribute to a successful selection procedure for the equity CTP.

ESMA consults on firms' order execution policies under MiFID II

On 16 July 2024, the European Securities and Markets Authority (ESMA) published a Consultation on firms' order execution policies under Markets in Financial Instruments Directive (MiFID II).

The Directive amending MiFID II was published in the Official Journal of the EU on 8 March 2024. The ESMA has been empowered to develop RTS specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies, accounting for whether the orders are executed on behalf of retail or professional clients.

Section 3 sets out the legal and policy backgrounds of the proposed draft RTS as well as the key elements included in the draft RTS. Annex I summarises the questions to stakeholders, Annex II contains the full text of the draft RTS.

ESMA will consider all comments received by 16 October 2024. ESMA will consider the feedback received to this consultation and expects to publish a final report and submit the draft technical standards to the European Commission for endorsement by 29 December 2024.

ESMA publishes statement on transition to new regime for post-trade transparency of OTC-transactions

On 22 July 2024, the European Securities and Markets Authority (ESMA) published a statement on the transition to the new regime for post-trade transparency of over-the-counter (OTC) transactions as introduced by the MiFIR review.

This public statement complements ESMA's Public Statement of 27 March 2024 and aims at providing further practical guidance to market participants.

The MiFIR review introduced provisions empowering National Competent Authorities (NCAs) to grant the status of Designated Publishing Entity (DPE) to investment firms. According to Article 21a of MiFIR, DPEs, when they are party to a transaction, shall be responsible for making the transaction public through an approved publication arrangement (APA). The Regulation requires ESMA to establish by 29 September 2024 a public register of all DPEs, specifying their identity and the classes of financial instruments for which they act as DPEs.

The MiFIR review does not provide for a transitional provision for the application of the DPE regime for post-trade transparency.

Considering the need to ensure an orderly transition to the DPE regime, ESMA and NCAs have agreed on a two-steps approach:

i) ESMA starts publishing the DPE register on 29 September 2024; and

ii) The new DPE regime for post-trade transparency becomes fully operational on 3 February 2025. Therefore, ESMA expects that as of 3 February 2025, registered DPEs, which are party to a transaction, will make the transaction public through an APA. At the same time, ESMA expects that the current approach relying on Systematic Internalisers (SIs) to make transactions public through an APA should stop applying as of this date.

Investment firms intending to become DPEs are encouraged to register with their NCA, indicating the classes of financial instruments for which they wish to take up this function along with other identifying information requested by the NCAs (e.g. LEIs). NCAs will transmit the information regarding the DPEs for specific classes of financial instruments to ESMA so that the information is included in the future DPE public register. The granting of the DPE status can start anytime from now on.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

ESAs publish second batch of policy products under DORA

On 17 July 2024, the European Supervisory Authorities (ESAs) published a second batch of policy products under Digital Operational Resilience Act (DORA).

This batch consists of 4 final draft RTS, 1 set of ITS and 2 Guidelines, all of which aim at enhancing the digital operational resilience of the EU's financial sector.

The package focuses on the reporting framework for ICT-related incidents (reporting clarity, templates) and threat-led penetration testing while also introducing some requirements on the design of the oversight framework, which enhance the digital operational resilience of the EU financial sector, thus also ensuring continuous and uninterrupted provision of financial services to customers and safety of their data.

- RTS and ITS on the content, format, templates and timelines for reporting major ICT-related incidents and significant cyber threats;
- RTS on the harmonization of conditions enabling the conduct of the oversight activities;
- RTS specifying the criteria for determining the composition of the joint examination team (JET); and
- RTS on threat-led penetration testing (TLPT).

The set of guidelines include:

- Guidelines on the estimation of aggregated costs/losses caused by major ICT-related incidents; and
- Guidelines on oversight cooperation.

The final draft technical standards have been submitted to the European Commission, which will work on their review with the objective to adopt these policy products in the coming months. The remaining RTS on Subcontracting will be published in due course.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

ESMA publishes second Final Report under MiCA

On 4 July 2024, the European Securities and Markets Authority (ESMA) published a second Final Report under the Markets in Crypto-Assets Regulation (MiCA).

The Report covers 8 draft technical standards that aim to provide more transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements, and data standards to facilitate supervision by National Competent Authorities (NCAs).

The final report includes the following draft technical standards:

- sustainability indicators for crypto-asset consensus mechanisms;
- business continuity measures for crypto-asset service providers (CASPs);

- trade transparency;
- content and format of orderbooks and record-keeping by CASPs;
- machine readability of white papers and the register of white papers; and
- public disclosure of inside information.

The draft standards provide market participants with technical requirements to ensure human and machine readability of crypto-asset white papers, as well as templates and formats for CASP order and transaction records. The rules also detail how CASP trading platforms should publish the data required for pre-and post-trade transparency. Once in place, this will ensure that NCAs have access to the information needed for effective supervision of the EU crypto-asset market.

Finally, the report covers public disclosures, helping investors to understand the impact on the climate and the environment of the consensus mechanisms underpinning the crypto-assets they hold, as well as descriptions on how issuers should disclose price-sensitive information to the public to prevent market abuses, such as insider dealing.

The draft standards are to be submitted to the European Commission for adoption. In accordance with Articles 10 and 15 of Regulation (EU) 1095/2010, the Commission shall decide whether to adopt the technical standards within 3 months.

ESAs consult on Guidelines under MiCA

On 12 July 2024, the European Supervisory Authorities (ESAs) published a Consultation paper on Guidelines under Markets in Crypto-assets Regulation (MiCA).

The Guidelines establish templates for explanations and legal opinions regarding the classification of crypto-assets along with a standardised test to foster a common approach to classification.

The Guidelines propose a standardised test, as well as templates for explanations and legal opinions that provide descriptions of the regulatory classification of crypto-assets in the following cases:

- Asset-referenced tokens (ARTs): The white paper for the issuance of ARTs, which contains comprehensive information about the crypto asset, must be accompanied by a legal opinion that explains the classification of the crypto asset – in particular, the fact it is not an Electronic Money Token (EMT) nor a crypto-asset that could be considered excluded from the scope of MiCA.
- Crypto-assets that are not ARTs or EMTs under MiCA: The white paper for the crypto-asset must be accompanied by an explanation of the classification of the crypto asset – in particular, the fact it is not an EMT, ART or crypto-asset excluded from the scope of MiCA.

The deadline for the submission of comments is 12 October 2024.

ESMA updates its Q&A on MiCA (04/07/2024)

On 4 July 2024, the European Securities and Markets Authority (ESMA) updated its Q&A on Markets in Crypto-Assets Regulation (MiCA).

The questions contained in the update are as follows:

- Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has applied for but has not been granted or refused authorisation by the end of the transition period, can this entity continue providing services until it is granted or refused authorisation?
- What happens to an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 that has not applied for authorisation as a CASP, or whose application for authorisation as a CASP has been refused by the end of the transition period?

EBA consults on draft Guidelines on reporting of data to assist authorities in their supervisory duties and significance assessment under MiCAR

On 15 July 2024, the European Banking Authority (EBA) published a Consultation on draft Guidelines on reporting requirements to assist competent authorities and the EBA in performing their duties under the Markets in Crypto-assets Regulation (MiCAR).

These Guidelines should ensure that Competent Authorities have sufficient comparable information to supervise compliance of issuers with MiCAR requirements and provide the EBA with the information necessary to conduct the significance assessment under MiCAR.

Issuers of asset-referenced tokens (ARTs) and certain e-money tokens (EMTs) are required to report specific information defined under Article 22 MiCAR. These data provisions by the issuers are not enough to allow competent authorities and the EBA to discharge their supervisory tasks and the significance assessment tasks under MiCAR. The EBA has identified these data gaps and is consulting on draft Guidelines specifying common templates and instructions for issuers to provide the EBA and competent authorities with the necessary information to cover these gaps. In addition, these Guidelines include common templates and instructions that issuers should use to collect the data they need from the relevant Crypto-Asset Service Providers (CASPs).

The consultation closes on 11 October 2024.

SUSTAINABILITY

ESMA updates consolidated Q&A on SFDR

On 25 July 2024, the European Securities and Markets Authority (ESMA) updated its consolidated Q&A on the Sustainable Finance Disclosure Regulation (SFDR).

The questions contained in the update are as follows:

- For financial products falling under Article 8 or 9 SFDR, where the financial market participant making available those products is a registered AIFM which has not set up a website, must that registered AIFM establish a website in order to comply with Article 10 of SFDR and Chapter IV of the SFDR Delegated Regulation for those financial products.

- Can a financial market participant rely on disclosures under Article 6(1) second sub paragraph of the SFDR (which allow financial market participants to disclose in pre contractual disclosures that it "deems sustainability risks not to be relevant" for its investment decisions) in order to disapply other obligations on taking into account sustainability risks in EU law, such as Article 18(5) of Commission Delegated Regulation (EU) No 231/2013 which requires Alternative Investment Fund Managers to take into account sustainability risks when complying with their due diligence obligations?
- Should PAI indicator 4 in Table 1, Annex I of the SFDR Delegated Regulation ("Exposure to companies active in the fossil fuel sector") be calculated on a look-through (i.e. share of fossil fuel activities) or pass/fail (i.e. whole company active within the fossil fuel sector) basis? I.e., is there a threshold level of fossil fuel related economic activity required before a company becomes "active in the fossil fuel sector" or is any activity sufficient to make a company "active in the fossil fuel sector"?
- Should PAI indicator 6 in Table 1 of Annex I of the SFDR Delegated Regulation ("Energy consumption intensity per high impact climate sector") be disclosed on an aggregated basis (i.e. each high impact sector added together) for all investments or should each high impact climate sector be disclosed separately?
- How should values in currencies other than EUR be converted to EUR? E.g. at the point of reporting, the point of the impact or an average value in EUR of values in currencies converted to EUR at different reference points over the entire reference period?
- With regard to how a financial market participant (e.g. a UCITS management company) discloses PAI indicator 1 in Table 1 of Annex I of the SFDR Delegated Regulation in relation to its financial products (e.g. a UCITS), how should the financial market participant include the financed emissions from its investments through the financial products (e.g. a UCITS) under the financial market participants' scope 1, 2 or 3 GHG emissions in PAI indicator 1 of Annex 1 of the SFDR Delegated Regulation? Should investments managed on behalf of products (e.g. a UCITS) be included under scope 1/2 or under scope 3 for the company managing the product (e.g. a UCITS management company)?
- I am trying to figure out how exactly to calculate the share of sustainable investment that qualify as environmentally sustainable under the EU Taxonomy (SDFR Template, Annex II, first question). Let's take for example company X: According to company X's latest annual report, 18% of sales, 78% of CAPEX and 23% of OPEX qualify as Taxonomy aligned. So how much of an investment in company X would qualify as sustainable under the EU Taxonomy?
- Given the Commission's interpretative Q&A II.1 notes that sustainable investments can be measured at economic activity and at the investment level, how can financial products do this in practice?
- Can a sustainable investment pursuant to Article 2(17) SFDR also be made by investing in another financial product, e.g. a UCITS fund?
- a) In situations where financial market participants delegate management, is the application of the definition of "sustainable investment" in Article 2, point (17) SFDR an exclusive prerogative of the delegating financial market participant? Or can the definition of "sustainable investment" used by the delegating financial market participant be different depending on the delegations granted for the financial products concerned?
  It seems widespread practice that most delegating financial market participants use the application provided by the delegate which can lead to situations where the same instrument can be considered as sustainable or not sustainable for a given financial market participant depending on the delegation. Depending on the answer provided, it would be useful to clarify who is responsible in case of non-compliance of this definition in SFDR.
  b) Where passively managed financial products disclosing under Articles 8 or 9 make sustainable investments, can they use the sustainable investment definition of the index provider? If they can, could it raise the risk that since the same asset could be both sustainable and not sustainable depending on if the product is a passively or an actively managed fund where the financial market participant reaches a different conclusion compared to the index provider?
- In line with SFDR Delegated Regulation and the SFDR Q&As (JC 2023 18), a UCITS management company disclosing its UCITS under Article 9 SFDR may next to "sustainable investments" (i.e. in the "remaining portion" of the investment portfolio), also include "investments for certain specific purposes such as hedging or liquidity", provided that those are in line with the sustainable investment objective of the UCITS.
  a) Can efficient portfolio management techniques (EPM) be considered "investments for certain specific purposes such as hedging or liquidity"?
  b) Can money market funds be considered as "investments for certain specific purposes such as hedging or liquidity"?
- What information should financial market participants disclose about financial products passively tracking a PAB or CTB?
- Are financial market participants obliged to publish the pre-contractual or periodic product templates on their websites based on the SFDR, or does that depend on the sectoral law on publication of the documents referred to under Article 6(3) or 11(2) SFDR to which the templates have to be attached? Article 10 SFDR refers to the information under Article 8, 9 or 11 of that Regulation, but not the actual documents under 6(3) or 11(2).
- Should a fund invest in for example cars or real estate assets, through special purposes vehicles ("SPVs") or holding companies, would those SPVs/holding companies be considered as the "companies" covered by Article 8 SFDR, that need to follow good governance practices?
- Following the answer to Q&A V.9, where financial products are passively tracking Paris Aligned Benchmarks (PABs) and Climate Transition Benchmarks (CTBs), it can be considered they do not fall under Article 9(3) second subparagraph. Consequently, financial market participants do not have to provide a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long?term global warming objectives of the Paris Agreement, as these products are deemed to have sustainable investments as defined in Article 2(17) SFDR as their objective. If a financial product applies all the requirements applicable to PABs or CTBs laid down Commission Delegated Regulation (EU) 2020/1818, can that financial product disclose under Article 9(3) SFDR?

EC publishes FAQs on the implementation of the EU corporate sustainability reporting rules

On 7 August 2024, the European Commission published an FAQ on the implementation of the EU corporate sustainability reporting rules.

This set of FAQs clarifies the interpretation of certain provisions on sustainability reporting introduced by the CSRD (Directive (EU) 2022/2464)) into the Accounting Directive (Directive 2013/34/EU), the Audit Directive (Directive 2006/43/EC), the Audit Regulation (Regulation (EU) No 537/2014), and the Transparency Directive (Directive 2004/109/EC) with the aim of facilitating their implementation by undertakings. It also clarifies certain provisions of the SFDR (Regulation (EU) 2019/2088).

This set of FAQs also includes a limited number of clarifications concerning the interpretation of certain provisions of the first set of ESRS (Commission Delegated Regulation (EU) 2023/2772). Undertakings and other stakeholders may also wish to consult the implementation guidance on ESRS published by EFRAG, the multistakeholder advisory body tasked with advising the Commission on ESRS.

Through this set of FAQs, the Commission intends to facilitate the compliance of stakeholders with the regulatory requirements in a cost-effective way and to ensure the usability and comparability of the reported information on sustainability. By providing greater clarity and certainty to companies, this set of FAQs will contribute to the Commission's objective of reducing administrative burdens on undertakings associated with sustainability reporting.

ESMA publishes translations of its Guidelines on funds' names

BACKGROUND

The objective of the European Securities and Markets Authority (ESMA) Guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names. These guidelines are based on Article 23(7) of the AIFMD, Article 69(6) of the UCITS Directive and Article 16(1) of the ESMA Regulation.

The name of a fund is a means of communicating information about the fund to investors and is also an important marketing tool for the fund. A fund's name is often the first piece of fund information investors see and, while investors should go beyond the name itself and look closely at a fund's underlying disclosures, a fund's name can have a significant impact on their investment decisions.

These guidelines apply to UCITS management companies, including any UCITS which has not designated a UCITS management company, Alternative Investment Fund Managers including internally managed AIFs, EuVECA, EuSEF and ELTIF and MMFs managers as well as competent authorities.

WHAT'S NEW?

On 21 August 2024, the ESMA published translations of its Guidelines on funds' names.

The Guidelines will start applying three months after this publication, on 21 November 2024.

Managers of any new funds created after the date of application of the guidelines, should apply these guidelines immediately in respect of those funds. Managers of funds existing before the date of application of these guidelines should apply these guidelines in respect of those funds after six months from the application date of the Guidelines, i.e. 21 May 2025.

The following explanations are relevant for the key terms mentioned in the below sections of these Guidelines:

- "Transition"-related terms encompass any terms derived from the base word "transition", e.g. "transitioning", "transitional" etc. and those terms deriving from "improve", "progress", "evolution", "transformation", "net-zero", etc.
- "Environmental"-related terms mean any words giving the investor any impression of the promotion of environmental characteristics, e.g., "green", "environmental", "climate", etc. These terms may also include "ESG10" and "SRI11" abbreviations.
- "Social"-related terms mean any words giving the investor any impression of the promotion of social characteristics, e.g., "social", "equality", etc.
- "Governance"-related terms mean any words giving the investor any impression of a focus on governance, e.g., "governance", "controversies", etc.
- "Impact"-related terms mean any terms derived from the base word "impact", e.g., "impacting", "impactful", etc.
- "Sustainability"-related terms mean any terms only derived from the base word "sustainable", e.g., "sustainably, "sustainability" etc.

WHAT'S NEXT?

Within two months of the date of publication of the Guidelines, on 21 October 2024, national competent authorities must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.

Competent authorities should consider that inputs warranting further investigation and a supervisory dialogue with the Fund Manager include the following:

- Discrepancies in the level of the quantitative threshold which are not passive breaches;A Fund that does not demonstrate sufficiently high level of investments to use transition-, ESG-, impact- or sustainability-related terms in its name; or
- Where the competent authority considers that using transition-, ESG-, impact- or sustainability-related terms in the Fund name would result in investors receiving unfair or unclear information or in a failure of the manager to act honestly or fairly thus misleading investors.

SUSTAINABLE FINANCE / GREEN FINANCE

ESMA puts forward measures to support corporate sustainability reporting

On 5 July 2024, the European Securities and Markets Association (ESMA) published a Final Report on the Guidelines on Enforcement of Sustainability Information (GLESI) and a Public Statement on the first application of the European Sustainability Reporting Standards (ESRS).

These documents will support the consistent application and supervision of sustainability reporting requirements.

The purpose of the GLESI is to provide guidance to build convergence on supervisory practices on sustainability reporting. Through the Public Statement on the first-time application of the ESRS, ESMA intends to support large issuers in going through the learning curve associated with the implementation of these new reporting requirements.

The guidelines and statement published are in line with recommendations proposed in the recently published ESMA Position Paper "Building more effective and attractive capital markets in the EU" namely:

- promoting EU capital markets as a hub for green finance – this should include efforts to clarify the disclosure of sustainability information to aid comprehension by investors, also through the use of sustainability labels/categories as necessary; reducing complexity and enhancing clarity for the industry can also serve to ease compliance burdens; and
- improving supervisory consistency amongst EU NCAs – fostering harmonised enforcement outcomes through enhanced cooperation and convergence

ESMA will continue to monitor the sustainability reporting practices in 2025 as well as the application of the GLESI. ESMA will translate the GLESI in all EU languages and make these translations available on its website.

In addition, ESMA will release in 2024 Q4 recommendations in relation to the sustainability statements of listed companies in its Public Statement on the 2024 European Common Enforcement Priorities.

BELGIUM

GOVERNANCE

FSMA publishes communication on amendment of FSMA Regulation on authorisation of compliance officers

On 10 July 2024, the Financial Services and Markets Authority (FSMA) published a communication on amendment of the FSMA Regulation on the authorisation of compliance officers.

The FSMA Regulation of 20 December 2023 entered into force on 13 June 2024. It amends the FSMA Regulation of 27 October 2011 on the authorisation of compliance officers.

This communication briefly summarises the main changes made:

- The three-year experience requirement is relaxed for small companies.
  In recent years, some regulated companies have encountered difficulties in recruiting a compliance manager who meets all the necessary approval requirements and, in particular, the requirement of adequate experience of three years.
  This condition is now relaxed in certain circumstances, which take account of the application of the principle of proportionality. Thus, when a compliance officer candidate is appointed to a company whose activities, size and nature, scale and complexity of risks to customer protection justify it, he or she may be exempted from the requirement of adequate experience of three years.
- The provisional list of compliance officers is abolished.
  From now on, approved compliance officers will be included on a single list. A specific mention will be included in the list of compliance officers approved by the FSMA, to inform the public of compliance officers who have not yet passed the exam and/or who are being accompanied by an expert. This amendment pursues only the objective of administrative simplification. It does not change the fact that candidates who cannot demonstrate that they have passed the examination at the time of the application for accreditation have a period of one year from the date of accreditation to do so. Companies must provide proof of successful completion of this examination.

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

FSMA announces technical adaptations in the questionnaires to be completed by the effective management for OPCs

On 8 July 2024, the Financial Services and Markets Authority (FSMA) announced technical adaptations in the questionnaires to be completed by the effective management for collective investment undertakings.

The FSMA has made technical adjustments to the questionnaire to be completed by the effective management of self-managed investment companies with variable capital (SICAVs) in order to report on internal control, as well as to the periodic questionnaire for public collective investment undertakings that have appointed a management company.

The purpose of these adaptations is to improve the quality of the data contained in the reports and to facilitate their analysis. The FSMA has also drafted an explanatory commentary on how the questionnaires must be completed.

The new version of the questionnaires will be applicable to reports relating to the financial year ended on 31 December 2024 or later.

FSMA publishes communication on exercise of activities on a cross-border basis by OPCs managers under Belgian law

On 24 July 2024, the Financial Services and Markets Authority (FSMA) published a communication on exercise of activities on a cross-border basis by Collective Investment Undertakings (OPCs) management companies and OPC managers under Belgian law.

Efforts are being made at European level to harmonise the form and content of the information that UCI management companies and UCIT managers must disclose on their cross-border activities. This has led to the development of harmonised forms that these entities are required to submit to the FSMA before they can start or change their cross-border activities.

These harmonised forms must be completed by any management company or AIFM intending to carry on business in the territory of another EEA Member State, whether (i) by establishing a branch or (ii) under the freedom to provide services.

FSMA updates communication on national provisions governing marketing requirements applicable to UCITS and OPCAs

On 23 July 2024, the Financial Services and Markets Authority (FSMA) updated its communication on national provisions governing the marketing requirements applicable to undertaking for collective investment in transferable securities (UCITS) and approved joint collection bodies (OPCAs).

This Communication contains information on the Belgian laws, regulations and administrative provisions governing marketing requirements, as referred to in Article 5(1) of Regulation (EU) 2019/1156 to facilitate the cross-border distribution of collective investment undertakings.

Units of Belgian UCITS and their sub-funds may only be marketed to the public in Belgium if they are included on the list referred to in Article 33 of the UCITS Law, which is drawn up by the FSMA. The FSMA publishes this list on its website. The conditions to be met in order to be included on this list are also set out in this law (Articles 34 et seq.).

The articles of association/ management regulations of the UCITS must also be subject to prior approval by the FSMA.

Belgian UCITS that intend to market their units in another EEA Member State must follow the notification procedure described in Circular FSMA_2013_04.

Authorised manager of an OPCA under Belgian law must submit a prior notification pursuant to Article 86 of the OPCA Law (Article 31 of the AIFM Directive) to the address amc@fsma.be. This notification must be made by means of the model letter set out in Annex I to the implementing technical standards defined for the application of the AIFM Directive (Commission Implementing Regulation (EU) 2024/913).

The AIFM may, pursuant to Article 124 of the OPCA Law, market the OPCA units upon receipt by the FSMA of the documents referred to in Article 32 of the AIFMD. For retail investors, financial facilities must be made available, more specifically with regard to the processing of subscription, payment, redemption and redemption orders as well as the provision of information.

FSMA updates study on costs charged by Belgian public UCIs

On 19 August 2024, the Financial Services and Markets Authority (FSMA) updated the study on the costs charged by Belgian public collective investment undertaking (UCIs).

This study allows consumers to better understand and compare the fees they are charged when investing in a fund. The study now includes an additional section that explains the main factors that influence these costs.

Investment funds are popular investments, both in Belgium and elsewhere in Europe. Retail investors particularly appreciate the wide choice of strategies available and the diversification offered by these funds. In Belgium, investment funds have been very successful, with net assets of €216 billion as of 31 March 2024.

As part of its mission to protect and educate financial consumers, the FSMA wishes to make the information it collects available to consumers to enable them to better understand these costs.

It therefore publishes a study that aims to:

- Detail the various fees that can be linked to a fund;
- Explain what factors can influence the level of fees of a fund;
- To make it easier for retail investors to compare the fees they pay with those usually charged by Belgian funds; and
- To highlight the impact that a fund's fees have on the final return for the investor.

The main findings of the FSMA's study on Belgian funds are as follows:

- The average maximum entry cost, all strategies combined, is 2.1%, the low average is at 0.8% and the high average at 3.5%;
- The average management and other administrative and operating expenses for all strategies is 1.4% per annum, the low average is 0.6% per annum and the high average is 1.9% per annum;
- Mixed funds have on average the highest management and other administrative and operating costs at 1.6% per year.

In addition to updating the figures, this study includes a new section highlighting certain factors that can influence the level of fees such as the distribution model and the strategy followed. The terminology has also been adapted to be consistent with that of the new key information documents.

FSMA updates communication on the electronic transmission of information on UCIs

On 26 August 2024, the Financial Services and Markets Authority (FSMA) published an update on its communication on the electronic transmission of information on collective investment schemes (UCIs) to the FSMA.

UCIs must regularly report information to the FSMA. They communicate this information electronically, in the form of documents and data, via the platforms made available by the FSMA and for this purpose. This Communication describes the practical arrangements for the transmission of this information via these platforms. It is regularly updated to take account of new developments in the information to be transmitted, underlying technical changes to the platforms and procedural optimisations.

To this update is added the procedures for sending and updating the questionnaire on the appointment of a depositary for undertakings for collective investment in transferable securities (UCITS) under Belgian law. This update also specifies the procedure to be followed by the UCIs in order to communicate the different categories of contact persons, such as general contact persons, persons authorised to transmit certain information and persons responsible for contacts with the FSMA on specific subjects.

This document outlines the procedure to be followed when:

- the transmission of statistical information and periodic questionnaires via the FiMiS platform;
- the transmission of periodic documents via the eCorporate platform;
- transmission by e-mail;
- communication of contact persons to the FSMA.

FSMA publishes conclusions on liquidity stress tests carried out by Belgian managers

On 27 August 2024, the Financial Services and Markets Authority (FSMA) published conclusions on liquidity stress tests carried out by Belgian asset managers.

This communication is addressed to the following institutions:

- Belgian management companies of collective investment undertakings (UCIs);
- Belgian management companies of alternative collective investment undertakings (OPCAs).

The FSMA examined the extent to which Belgian managers of UCIs (A) carry out liquidity stress tests for the funds they manage, what principles and assumptions they use for this purpose and how they organise these stress tests. This review has drawn a number of conclusions, both positive findings and points of attention from which managers can deduce several good practices.

In 2023 and 2024, the FSMA examined with a number of Belgian UCI and OPCA managers the extent to which they carried out liquidity stress tests (LSTs) for the funds they manage, what principles and assumptions they used for this purpose and how they organised these stress tests.

In particular, the FSMA's objective was to verify how AIFMs complied with ESMA's guidelines on liquidity stress testing in UCIs(A). The LSTs are intended to provide managers with a more accurate view of the extent to which the funds they manage have sufficient liquidity, even in more challenging market conditions, to meet redemption requests made by investors. The latter is essential to ensure investor protection, well-functioning financial markets and financial stability.

The FSMA has used the above-mentioned guidelines as a guideline for examining the specific LSTs carried out by Alternative Investment Fund Managers (AIFMs), their periodicity and the criteria applied in this context. This review has drawn a number of conclusions, both positive findings and points of attention from which managers can deduce several good practices.

The positive findings are as follows:

- All managers have, during the reporting period (2020-2022), carried out LSTs for the selected funds and have an elaborate framework in place to carry out these LSTs;
- The LSTs carried out did not reveal any major liquidity problems with the selected funds;
- If concerns have nevertheless arisen about the liquidity risk of a selected fund, appropriate follow-up action has been taken. These measures have always been communicated to the relevant bodies of the company, mentioned in the LST policy;
- All managers use LSTs that take into account both the assets and liabilities of the funds under management.

The points of attention identified by the FSMA will allow managers to derive several good practices concerning, on the one hand, the methodology they use when carrying out LSTs and, on the other hand, the organisational aspects.

SUSTAINABILITY

FSMA publishes Information Sheet on CSRD Reporting

On 4 July 2024, the Financial Services and Markets Authority (FSMA) published an information sheet on Corporate Sustainability Reporting Directive (CSRD) reporting.

This scheme is made available to help companies prepare for the entry into force of the CSRD. As the Directive has not yet been transposed into Belgian law, this publication, carried out in July 2024, is subject to any adaptations that may be necessary following the transposition work.

The document contains information on which entities are subject to disclosure of sustainability information from when and according to what standards.

BRAZIL

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

CVM releases FATF statement on countries with potential risk to the financial system

On 9 July 2024, the Comissão de Valores Mobiliários (CVM) released a General Authority for Investment and Free Zones and Financial Action Task Force (GAFI/FATF) statement on countries with potential risk to the financial system.

The GAFI/FATF statement deals with the Financial Action Task Force's communication against Money Laundering and the Financing of Terrorism regarding countries and jurisdictions that, according to the agency, have strategic deficiencies in the prevention of this type of crime. The communiqué refers to the plenary meeting held in June 2024 and was translated on the website of the Council for the Control of Financial Activities (COAF). The measure allows market participants to have access to up-to-date subsidies in the indispensable and constant process of rationalization and monitoring of their operations and their customers.

CVM emphasizes that the disclosure of this Report and the Group's communiqués is part of the articulation of the Center for the Prevention of Money Laundering, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction of the General Superintendence (SGE) of the Autarchy with the Superintendencies of Market Relations and Intermediaries (SMI), Supervision of Institutional Investors (SIN) and Securitization and Agribusiness (SSE).

The monitoring by obligated persons of GAFI/FATF communications on jurisdictions with strategic deficiencies in AML/FTP is an integral part of the requirements set forth in CVM Resolution 50.

ARTIFICIAL INTELLIGENCE

ANBIMA publishes Guide on Artificial Intelligence

On 23 July 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published a guide on artificial intelligence (AI).

The use of AI is growing exponentially and has been redesigning activities in the most varied areas of business. In the context of financial and capital markets, it has proven to be a disruptive force, opening up a range of possibilities in areas such as data analysis, risk management and service personalization.

The expectation is that generative AI will further expand these horizons. It represents a paradigm shift that could redefine the structure of our industry as we know it today. A transformation of this magnitude requires a detailed analysis, which not only allows technology to be integrated into business strategies, but also considers risks such as data protection and the integrity of operations.

This involves continuing education for professionals in the sector and recommending good practices to our associates. Being attentive and up to date with technological innovations that impact the daily lives of institutions is essential, and one of the technologies emerging in the current scenario is AI.

This unprecedented Guide is a living and dynamic document, which will evolve along with the rapid transformations observed in artificial intelligence, aiming to stimulate the development, acquisition and ethical use of this technology. The material is an invitation for the market to continually update the innovations that influence the sector, ensuring that AI is effectively integrated and used to advance the investment industry.

CAPITAL MARKETS UNION (CMU)

CVM issues Rules for portability of capital market investments

On 26 August 2024, the Comissão de Valores Mobiliários (CVM) issued rules for portability of capital market investments.

The CVM issued:

- CVM Resolution 210, which establishes rules and procedures for the portability of investments in securities.
- CVM Resolution 209, which promotes specific changes in other rules, complementing CVM Resolution 210.

Highlights of the standards are the following:

- Digital interface for the portability request, which does not require the filling out of physical forms or the notarization of signatures.
- Possibility for the investor to choose the point of request for portability: at origin, at destination or with the central depositary.
- Transparency in the estimated deadlines for completion of portability.
- Possibility for the investor to follow the progress of the process in real time.
- Staggering of deadlines for carrying out portability, depending on the operational complexity of each group of securities.
- Provision of quantitative data on portability to the CVM and self-regulatory entities, allowing the identification of institutions that present repeated delays in carrying out portability or a high number of refusals to portability requests.
- Characterization as a serious infraction in cases of systematic non-compliance with deadlines for carrying out portability, or unjustified damming of portability processing.

Changes made by the public consultation are the following:

The proposed changes were presented to the public through Public Consultation 02/23. Regarding the version that received comments from the public, the main changes were:

- Rearrangement in the procedures for portability, having replaced the set of three distinct stages – preliminary diligences, complementary diligences and implementation, by a single stage of implementation, which encompasses the acts aimed at identifying and overcoming impediments and the effectiveness of portability.

- Acting by the custodian or destination intermediary as an assistant to the investor in portability, interacting with the custodian or intermediary of origin to monitor the progress of portability and facilitate the overcoming of impediments to portability.
- Possibility of requesting portability through physical forms to accommodate the demand of investors who prefer to use this form of request.
- Central depositories and bookkeepers will not have the duty to store historical information on unit price and acquisition price on deposited and booked securities, respectively, and the duty to store and transmit historical information will fall only on the custodian or intermediary of origin.
- Transfers with change of ownership will not be included in the portability rule, without prejudice to compliance with the guidelines released by the CVM on best practices in relation to the verifications to be carried out and the documents to be obtained prior to the transfer with change of ownership.
- Registration entities may receive portability requests, provided that they comply with all rules of conduct and procedures for portability applicable to central depositories.
- Portability of derivatives restricted to contracts that have the interposition of a central guarantor counterparty, therefore not covering cases that would cause a change in counterparty resulting from contractual assignment.
- Transfers between central depositories or registration entities will not be subject to the portability rule, without prejudice to the matter being revisited as soon as interoperability between central depositories and between registration entities is equated in the Brazilian capital market.

The advances introduced by the securities portability rule will be enhanced with the use of Open Finance, since participating institutions can carry out automated consultations with each other on investors' registration data and on their positions in securities investments, upon prior authorization from each investor.

Open Finance's standardized application programming interfaces (APIs) will facilitate the overcoming of impediments to portability. They will also create opportunities for prospecting customers, fostering competition in the provision of services in the capital market.

In parallel with the issuance of the portability rule, the CVM began negotiations with the Central Bank of Brazil to develop a securities portability service integrated with Open Finance, which will increase the degree of automation of the process, reinforcing the CVM's commitment to improve the user experience with portability, towards a more open capital market.

The setting of the deadline took into account the need for institutions to adapt their interfaces, systems and internal procedures to the new requirements without having to request extensions from the CVM in the future.

CVM Resolutions 209 and 210 enter into force on 7 January 2025.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

ANBIMA announces Crypto Funds gain New Governance and Due Diligence Rules

On 10 July 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced that Crypto Funds gain New Governance and Due Diligence Rules.

The new governance and due diligence rules for funds and managed portfolios that invest directly in crypto assets were published. Among other points, the methodologies for selecting and pricing investments should be described in specific policies. New versions of the Third-Party Resource Administration and Management, Qualified Services, Distribution and Public Offerings codes, and their respective rules and procedures, have also been published.

The following have changed:

Crypto Investing

The new rules sought to standardize the minimum governance and diligence requirements for essential service providers (managers and administrators) in line with CVM Resolution 175. With the changes, managers, when directly acquiring cryptoassets, must have a policy that describes the controls adopted for the management of these assets, containing the area responsible for the investment decision and the criteria used for the selection of cryptoassets, including the procedures related to the monitoring of the trading environments used and custody.

In addition, the methodology for the pricing of cryptoassets should be included in the institutions' Pricing Manuals (which compile the criteria for setting asset prices).

The new rules, which are in the Rules and Procedures for Administration and Management of Third-Party Resources, were approved in a public hearing last month. At the time it was accepted that specific adjustments to the text in order to maintain the clarity of the rules.

The update goes into effect on 1 October 2024 and entities have until 30 June 2025 to adapt. The initiative is part of our ANBIMA in Action Market Development Agenda, a set of priorities for the year.

New version of the codes

The codes underwent a revision of texts to facilitate the understanding of the standards and standardize nomenclatures defined in the ANBIMA Glossary. Some general concepts common to all codes have been improved in order to avoid legal uncertainty and uncertainties. In the Code of Administration and Management of Third-Party Resources, the article that restricted amortization in classes of FIFs (financial investment funds) every 12 months was also excluded, in line with Law 14,754/23, which deals with the taxation of closed-end funds.

FINANCIAL INSTRUMENTS

CVM advises on use of theoretical price for Fixed Income ETF quotas

On 6 August 2024, the Comissão de Valores Mobiliários (CVM)'s technical area advises on the use of the theoretical price for Fixed Income ETF quotas.

The Superintendence for the Supervision of Institutional Investors (SIN) released the CVM/SIN Circular Letter 4/2024. The document aims to clarify the possibility of using a theoretical price for the shares of Fixed Income ETFs that are now made available by B3 S.A. – Brasil, Bolsa e Balcão, in compliance with Normative Annex V of CVM Resolution 175.

The technical area highlights that the information made available by B3 in an External Statement, published in August 2024, is intended to serve as an additional reference for the market in times of low liquidity.

The CVM understands that the theoretical price of the Fixed Income ETF quota disclosed by B3 contributes to an adequate price formation of Fixed Income ETF quotas, and can be used for their marking, in addition to contributing to the reduction of informational asymmetries and to the making of informed decisions by investors.

BCB publishes CMN Resolution No. 5,166 on issuing Certificates of Structured Operations (COE)

On 22 August 2024, the Banco Central do Brasil (BCB) published the CMN Resolution No. 5,166.

It provides for the conditions for issuing Certificate of Structured Operations – COE by the financial institutions it specifies.

Only the following may issue COE:

I - multiple banks;

II - commercial banks;

III - investment banks;

IV - Caixa Econômica Federal;

V - the National Bank for Economic and Social Development – BNDES; and SAW - credit, financing and investment companies – SCFI.

The COE is certificate issued against initial investment, representing a a single, indivisible set of rights and obligations, with a structure of returns that have characteristics of financial instruments Derivatives. Institutions issuing EOCs must comply with the specific criteria regarding the initial investment mentioned in the caput, the profitability structure and the potential results expected for the Certificate at the time of issuance.

The COE must be issued exclusively in book-entry form, by means of a entry in electronic system of the emitter. The registration or centralized warehouse in which the COE is registered or deposited must maintain record of the historical sequence of negotiations, including the identification of the certificate holders. The issuer must report monthly to the registration or deposit system, with reference to the last working day of the month previous:

- the value resulting from the valuation at market value of the certificate, calculated from in accordance with the minimum requirements established in the current regulation for financial instruments valued at market value; and
- the certificate values resulting from sensitivity analysis performed according to the specific methodology released by the Central Bank of Brazil.

The administrator of the systems must keep a record of the historical sequence of the information provided.

The COE issued in the market risk modality must meet, at least, the following requirements with regard to refers to its underlying assets:

- price indices, securities indices, stock indices securities, interest rates and exchange rates used as References must have a regularly calculated series and be subject to disclosure Public; and
- the securities and other underlying assets must present Quotes publicly disclosed.

The COE issued in the credit risk modality must meet the following requirements with regard to the payments to be made:

- the issuing institution must pay the investor for the investment added to or deducted from the return, in the amount and manner set out in the certificate;
- the return mentioned in item I of the caput must Understand,
- in the event of the occurrence of any credit event provided for in the certificate, may be due early or liquidated financial or physical, total or partial, as stipulated between the parties.

The COE issued In the credit risk modality must meet the following requirements, according to the profile of the investor:

- when issued to investors who are not considered investors professionals, under the terms defined in the rules of the Brazilian Securities and Exchange Commission, must have as reference entities only the following types of institutions
- when issued to investors who are not considered investors qualified, under the terms defined in the rules of the Brazilian Securities and Exchange Commission.

The underlying assets or benchmark bonds, when disclosed or traded only in the abroad, must meet, in the countries in which they are disclosed or traded, the same requirements of those disclosed or traded in the country.

This Resolution is published in the Official Gazette on 26 August 2024, and entered into force on 2 September 2024.

CVM promotes specific changes in Resolutions 47, 80, 160 and 161

On 13 August 2024, the Comissão de Valores Mobiliários (CVM) promoted specific changes in Resolutions 47, 80, 160 and 161.

The changes brought by CVM Resolution 207 are related to the collection of punitive fines in the event of delay in the delivery of information and standardization of the restrictions applicable to the trading in the secondary market of certain securitization securities acquired in public offerings of distribution.

Key changes are the following:

Adjustments to Annex A of CVM Resolution 47 to:

- Inclusion of the coordinators of public offerings among the agents subject to the punitive fine, with the establishment of daily fines for delays in the delivery of the reference form (R$ 600.00) and other documents (R$ 500.00).
- Adaptation of the Annex to changes resulting from CVM Resolution 175, which consolidated periodic obligations of investment funds.
- Modification of article 63 of CVM Resolution 80 to provide for the possibility of applying fines for delays in the provision of eventual information.
- Addition of article 22-A to CVM Resolution 161 in order to expressly provide for the application of daily fines for coordinators who fail to comply with the deadlines for submission of periodic information.
- -Clarification of the deadline for sending and provision for directing the report referred to in paragraph 1 of article 18 of CVM Resolution 161 to the Superintendence of Securities Registration (SRE).

CVM Resolution 208 amends CVM Resolution 160, equating the restrictions applicable to the resale of debentures issued by frequent debt issuers (EFRFs) to restrictions applicable to the resale of securitization securities with a single debtor classified as EFRF or issuer of shares with large market exposure (EGEM).

The objective is to standardize the restrictions on trading these assets, in view of the similarities between these financial instruments from an economic and financial point of view.

In addition, the following are subject to amendment:

- Article 28, for the inclusion of express mention of subsequent offerings of level III sponsored BDR among the offerings subject to the ordinary registration procedure.
- Article 87, for rectification of references involving article 26, VII, with express mention of subparagraphs "c" and "d" of such provision.

CVM Resolutions 207 and 208 entered into force on 2 September 2024.

FINANCIAL SUPERVISION

BCB publishes Resolution No. 400 on Guidelines for the establishment of Open Finance Governance Structure

On 4 July 2024, the Banco Central do Brasil (BCB) published Resolution No. 400 on guidelines for the establishment of the Open Finance Governance Structure.

The beginning of the operation of the Open Finance Governance Structure is expected to take place by 2 January 2025.

The sharing of information must be carried out through open and integrated platforms and/or infrastructures of information systems, in a safe, swift, and convenient way. The participants of Open Finance environment are responsible for ensuring the transparency, data quality (reliability, integrity, and availability), security and privacy of data and services shared, non-discriminatory treatment, reciprocity, and interoperability.

For specified purposes, the customers' authorization for the sharing of their data or services must be a free, informed, previous, and unequivocal manifestation of will. Specifically, this consent for sharing specified data must be made through a dedicated electronic interface in a secure, prompt, accurate, and convenient manner. It is important to emphasize that the authorization can be revoked at any given time upon the customer's request, through secure, agile, precise and convenient procedures. As importantly, the data sharing procedures must comply with the General Data Protection Law (No. 13,709/2018).

The Open Finance model in Brazil lays down that the participating institutions, through the structure responsible for the governance of the implementation process, will themselves agree on technology standards, operational procedures, safety standards and certificates, and the implementation of interfaces. The number of votes to which each institution shall be entitled to the deliberations of the governance body be proportional to their participation in the funding of the Open Governance Structure Finance, according to parameters set and updated by the Central Bank of Brazil. The decisions of the shall be taken by a simple majority vote of the members present, any abstentions disregarded.

Regulation allows the partnership between institutions licensed to operate by BCB and non-regulated entities, including those located abroad, for the sharing data of customers who are common to both institutions — upon customer’s prior and explicit consent. Prior to the partnership formalization, the Director of the licensed institution responsible for the sharing within the scope of Open Finance must issue a favorable statement on this partnership.

The Open Finance Governance Structure is composed of:

- The Deliberative Council – decisions on issues related the implementation of Open Finance and propositions of technical standards to BCB.
- Technical groups – studies and technical proposals for the Open Finance ecosystem.
- The Secretariat – organization and coordination of the Struture's working agenda.

FINANCIAL SYSTEM STABILITY

ANBIMA informs of future FSB Evaluation of Brazil's Regulatory Practices and Policies

On 11 July 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) informed of the future Financial Stability Board (FSB)'s Evaluation of Brazil's Regulatory Practices and Policies.

The FSB delegation talked to market institutions and regulators, with the objective of evaluating Brazil's regulatory practices and policies in relation to international standards, focused on investment funds – a process called Peer Review. The meeting with ANBIMA had four main topics: the association's performance, the existing agreements with the CVM, the relationship with international regulators and possible vulnerabilities in the industry.

The FSB has shown interest in understanding how ANBIMA organizes its self-regulatory activities, reconciling the functions of representation and supervision of the market. ANBIMA's relationship with the Brazilian Securities and Exchange Commission (CVM) was also addressed at the meeting, especially with regard to fund agreements.

Regarding possible vulnerabilities in the industry, the conversation was restricted to two topics: liquidity and leverage. The expectation is that, at the end of the mission, the FSB will issue a report with the result of its evaluation and possible recommendations, as happened in 2017, when the last round of evaluation of Brazil

was carried out.

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

ANBIMA and CVM include offerings from Fiagros-FII and infrastructure funds in Agreement

On 8 July 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) and Comissão de Valores Mobiliários (CVM) included offerings from Investment Funds in Agroindustrial Chains of the real estate type (Fiagros-FII) and infrastructure funds in agreement.

ANBIMA expanded the scope of work of the agreement with the CVM for the analysis of public offerings and, from now on, the issuances of Fiagros-FII and infrastructure funds will also be eligible for evaluation by the Association. The change was approved on June 28 2024 and takes effect from 8 July 2024.

The main motivations for the inclusion of these new securities were the expansion of Fiagros-FII and infrastructure fund offerings to the general public, observed in 2023 and 2024, and the market demand for the addition of these funds for analysis by the agreement. The evaluation of the offerings by ANBIMA dispenses with the need for review by the CVM and provides a reduction in the analysis period, maintaining access to the target audience originally provided for ordinary offerings.

In addition to the Fiagros-FII and the infrastructure funds now included, ANBIMA is already analyzing share offerings (IPOs and follow-ons), debentures, promissory notes, CRIs (for specific backings) and real estate funds. The agreement with the agency allows ANBIMA to evaluate requests for registration of offers that, after the analysis rite and the opinion without restrictions, can be automatically registered with the CVM.

The institutions have been in partnership within the scope of the registration activities of public offerings for the distribution of securities since August 2008, when an agreement was entered into that deals with the prior analysis under the simplified procedure for registration of public offerings for the distribution of securities referred to in CVM Instruction 471 --revoked on the same date with the execution of the new cooperation agreement in 2022, due to CVM Resolutions 160 and 161.

In April 2024, there was the first conclusion of an offering that went through the CVM/ANBIMA Agreement after the reformulation: an offering of real estate fund shares that raised R$ 991.2 million in the market.

CVM publishes information on searching for investment fund information on CVM Open Data Portal

On 11 July 2024, the Comissão de Valores Mobiliários (CVM) published information on searching for investment fund information on the CVM Open Data Portal.

Investment funds, a segment with a significant volume of registrations with the CVM (more than 30 thousand funds), enable several types of research and analysis based on the available data:

- Enable comparisons: with the same base date, it is possible to verify the information of all investment funds that are registered with the CVM.
- Identify macro trends: possibility for economists or university students, for example, who are doing research on the subject. With a breadth of data on the segment, it is possible to make projections, estimates, trend analysis, etc.
- Search tool: Use filters and keyword search to make your searches easier.

Some of the datasets available on the Portal are as follows:

- Daily Report: presents the history of the value of the 555 funds (current Financial Investment Funds - FIF, with the validity of CVM Resolution 175). Understand the profitability of these ends through the history of the value of the quota. For example, when selecting the specific period you want in a certain fund category, check which yielded more, less, or average return. Other information available in this mass of data is the amount of application and redemption on each accrual date, which can indicate which fund is receiving the most resources or the one that is receiving the most redemption. The mass of data is segmented by accrual period.
- CDA: document details all active FIF investments. Also broken down by month, it allows the user to know which assets the funds are investing in. There are 8 different blocks of information separated by types of investments made by FIFs (government bonds, investment fund quotas, investment abroad, among others).
- Registration information: a feature that allows the first filter for analysis. A lot of registration information already shows the characteristics of the fund: whether it invests abroad or not, whether or not it has more than 50% in private credit, among others. Thus, it makes it possible to create a sample of the funds of interest to make an analysis on another mass of data.

ANBIMA publishes Official Letter to CVM with considerations to Annexes II, III and IV of CVM Resolution 175

On 19 August 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published an Official Letter to CVM with considerations to Annexes II, III and IV of CVM Resolution 175.

The Official Letter presents the main points of doubts and observations raised during the discussions held at ANBIMA regarding annexes II, III and IV of CVM Resolution 175, which support the proposal for editorial adjustment presented with the objective of increasing clarity and facilitating the understanding of the rules that govern the investment fund market.

These refer to the deadline for delivery of periodic information, professional investors, the repurchase of property values, administrative tax, the contracting of services, and the definition of credit, among others.

INVESTOR PROTECTION / CONSUMER PROTECTION

ANBIMA announces new Guidance on conflicts of interest

On 14 August 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced the Ethics Council issued new guidance on conflict of interest.

ANBIMA's Ethics Council has issued guidance related to conflict of interest for companies that seek to adhere to any of our self-regulation codes or that are subject to other processes analyzed by the council. The document explains how conflict situations should be handled ethically and diligently.

The recommendations are for institutions that seek to follow ANBIMA's codes of good practice.

The recommendation, focused on transparency for the investor, is that situations of conflict of interest be previously informed to the client of the institutions involved, as well as the measures to circumvent the situation.

Situations involving cross-links with investment advisors, securitization companies, asset managers and securities consulting, among others, are read as conflicts of interest.

The recommendations are in line with the rules of ANBIMA Code of Ethics, which brings together the best practices of conduct for institutions that voluntarily follow the codes of good practice.

CVM publishes Circular Letter CVM/SMI/SIN 01/2024 on interpretations of the suitability rule

On 30 August 2024, the Comissão de Valores Mobiliários (CVM) published the Circular Letter CVM/SMI/SIN 01/2024 on interpretations of the suitability rule.

The objective is to disclose additional interpretations of the technical areas on article 4 of CVM Resolution 30, which deals with the process of evaluating and classifying the client into risk profile categories previously established by the intermediaries.

According to the document, from now on it is possible to classify new customers into low risk profiles without the need for the investor to answer a specific questionnaire, as long as the procedure is provided for in the institution's internal rules and procedures.

In addition, the letter ensures that the products offered are compatible with the risk profile and investment objectives of each client.

The document also highlights the need for these procedures to be integrated into the internal policies of intermediaries, especially in relation to the prevention of money laundering, risk assessment and internal controls.

REMUNERATION POLICIES

ANBIMA announces Transparency rules on remuneration for product distribution enter public hearing

On 22 August 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced Transparency rules on remuneration for product distribution enter public hearing.

ANBIMA opened a public hearing to standardize the way in which institutions, such as distributors and banks, should define and disclose the remuneration received for the sale of investment services and products. The proposals are part of the adjustments of our Distribution and Trading codes to Resolution 179, published in February 2023, by the CVM (Brazilian Securities and Exchange Commission). The resolution deals with the transparency of remuneration in the marketing of products and the potential conflicts of interest in this relationship.

Since June last year, the CVM has already required institutions to inform on websites or internet pages the qualitative description of remuneration and potential conflicts of interest. Our self-regulation has already provided for this disclosure since 2021.

As of November 1 of this year, institutions must also maintain, in the logged-in part of their websites and applications, the quantitative information on remuneration related to the trading of securities. In this way, the investor will know what the distributors' remuneration will be when they make the investment or redemption. If the service is, for example, in branches or by telephone, the report must be made available within three business days.

Investors should also have access to a quarterly statement with this information. The CVM accepted ANBIMA's suggestion that the first document, relating to November and December 2024, be made available in January 2025. The others will be provided quarterly, always with information from the previous three months.

The proposed update to the Trading Code aims to help institutions define the remuneration received for the distribution of some products. The list includes: LIG (Guaranteed Real Estate Bill) and Financial Bill distributed publicly and COE (Certificate of Structured Operations). The intermediation of some models of over-the-counter derivatives offered massively and other securities traded in the secondary market are also part of the rule.

The various changes in self-regulation that we have had in recent months are part of ANBIMA in Action's Market Development agenda, a set of activities that we have chosen as priorities for the 2023/24 biennium. This strategic planning was prepared based on a broad consultation with our members, partner institutions, regulators and ANBIMA leaders and resulted in major work agendas: Investor Centrality, Structuring, Services and Market Development.

New rules come into force on 1 November 2024, along with the CVM Resolution 179.

SENIOR MANAGERS & CERTIFICATION REGIME (SM&CR)

ANBIMA announces Certification Code is discontinued and rules for performance of professionals in financial institutions enter public hearing

On 20 August 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced the Certification Code is discontinued and rules for the performance of professionals in financial institutions enter public hearing.

ANBIMA opened a public hearing on the Certification Rules and Procedures document, which from now on will be linked to the Distribution and Administration and Management of Third-Party Resource codes. With the change, the Certification Code will be discontinued.

The new rules and procedures document consolidates self-regulation requirements that were already contained, in part, in the Certification Code. Topics such as scope, principles that participating institutions must ensure for professionals and the certifications required for the management and distribution of financial products were not substantially changed.

In addition to the document under consultation, ANBIMA also publish technical guidelines aimed at professionals who have or wish to apply for ANBIMA certifications.

The document establishes the obligation for the institution to have, or hire, substitute professional for cases in which the person responsible for managing resources is absent, such as vacation or leave. Both professionals must have certifications related to the function. The rule reinforces that only certified professionals can be responsible for decision-making in this activity.

In addition to the rules and procedures document, ANBIMA published technical guidelines for professionals and, as they are not subject to self-regulation governance, they are not subject to public consultation. These are operational standards for conducting exams, such as registration guidelines and new parameters for exemption, expiration and updating of certifications.

The regulation takes effect from 2 January 2025. These changes are unrelated to the new Distribution certifications, which take effect in January 2026.

COLOMBIA

SECURITIES

Banco de la República publishes DCV Bulletin 339 on Disabling Securities Accounts

On 15 August 2024, the Banco de la República published the DCV Bulletin 339 on Disabling Securities Accounts.

Disable Securities Accounts functionality is available in the Central Securities Depository (CSD), which will allow Direct Depositors to manually disable securities accounts in own and client positions, without the intervention of the CSD administrator.

The Direct Depositor's delegated profile administrator must associate the "Disable" Securities Accounts option with the profile they select, so that users with that profile have the functionality available in the account menu.

FRANCE

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

Ministère de l'Economie publishes a press release on the overhaul of access procedures to the UBO register / Le ministère de l'Economie publie un communiqué de presse sur la refonte des procédures d'accès au registre UBO

On 29 July 2024, the Ministère de l'Economie published a press release on the overhaul of access procedures to the UBO register.

The document details changes to the access modalities for the register of beneficial owners, following a ruling by the Court of Justice of the European Union (CJEU). On 22 November 2022, the CJEU invalidated the requirement for public access to beneficial owner information, citing it as a serious infringement of privacy and data protection rights guaranteed by the EU Charter of Fundamental Rights.

Initially, public access to beneficial owner data in national and local company registries was maintained while awaiting the implementation of new measures.

Published in the Official Journal of the European Union on 19 June 2024, the 6th Anti-Money Laundering Directive provides necessary clarifications on restructuring access to beneficial owner data. In light of this, France has introduced a filtering system to allow access only to those with legitimate interests.

The system aims to balance transparency, economic conduct, and financial crime prevention with privacy and personal data protection. Competent authorities will maintain full access to beneficial owner data. Businesses can continue to access necessary data through user accounts for due diligence and customer knowledge obligations. The new access system administered by the National Institute of Industrial Property (INPI) will be effective from 31 July 2024. Requests must be submitted via a form on the INPI website with relevant documentation.

This shift in access aims to ensure stringent data protection while maintaining necessary transparency for economic and legal purposes.

Version française

Le 29 juillet 2024, le ministère de l'Economie a publié un communiqué de presse sur la refonte des modalités d'accès au registre des bénéficiaires effectifs.

Le document détaille les modifications des modalités d'accès au registre des bénéficiaires effectifs, suite à un arrêt de la Cour de justice de l'Union européenne (CJUE). Le 22 novembre 2022, la CJUE a invalidé l'exigence d'accès du public aux informations sur les bénéficiaires effectifs, la citant comme une atteinte grave aux droits à la vie privée et à la protection des données garantis par la Charte des droits fondamentaux de l'UE.

Dans un premier temps, l'accès du public aux données sur les bénéficiaires effectifs dans les registres nationaux et locaux des sociétés a été maintenu en attendant la mise en œuvre de nouvelles mesures.

Publiée au Journal officiel de l'Union européenne le 19 juin 2024, la 6e directive anti-blanchiment apporte les précisions nécessaires sur la restructuration de l'accès aux données sur les bénéficiaires effectifs. Dans ce contexte, la France a mis en place un système de filtrage pour n'autoriser l'accès qu'aux personnes ayant des intérêts légitimes.

Le système vise à équilibrer la transparence, la conduite économique et la prévention de la criminalité financière avec la protection de la vie privée et des données personnelles. Les autorités compétentes conserveront un accès complet aux données des bénéficiaires effectifs. Les entreprises peuvent continuer à accéder aux données nécessaires via des comptes utilisateurs pour les obligations de diligence raisonnable et de connaissance des clients. Le nouveau système d'accès administré par l'Institut national de la propriété industrielle (INPI) entrera en vigueur à partir du 31 juillet 2024. Les demandes doivent être soumises via un formulaire sur le site Web de l'INPI avec la documentation pertinente.

Ce changement d'accès vise à assurer une protection rigoureuse des données tout en maintenant la transparence nécessaire à des fins économiques et juridiques.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

AMF announces filing of Applications for Approval as CASP is now possible under MiCA / L'AMF annonce le dépôt des demandes d'agrément en tant que PSAN est désormais possible dans le cadre de MiCA

On 2 August 2024, the Autorité des marchés financiers (AMF) announced that the filing of applications for approval as CASP (Crypto Asset Service Provider) with the AMF is now possible under the MiCA (Markets in Crypto-Assets) Regulation.

The European MiCA Regulation stipulates that, starting from December 30, 2024, any entity intending to offer crypto-asset services within the European Union must obtain the necessary approval from the AMF. This regulation affects ten specific services, which include:

- Custody and administration of crypto-assets for clients
- Operation of a trading platform for crypto-assets
- Exchange of crypto-assets for funds
- Exchange of crypto-assets for other crypto-assets
- Execution of orders on crypto-assets for clients
- Placement of crypto-assets
- Receipt and transmission of orders on crypto-assets for clients
- Advisory on crypto-assets
- Management of crypto-asset portfolios
- Transfer of crypto-assets for clients

Providers must adhere to a common set of rules covering areas such as:

- Anti-money laundering (AML) and combating the financing of terrorism (CFT)

- Cybersecurity
- Integrity and competence standards
- Good conduct and governance
- Conflict of interest management
- Safeguarding of funds and asset segregation, where applicable

MiCA also outlines specific obligations based on the nature of the services provided.

A transitional phase is in place until 30 June 2026, for current service providers operating under France's PACTE law classifications. These include:

- PSAN (Prestataire de Services sur Actifs Numériques) with "simple" registration
- PSAN with "enhanced" registration
- Optionally approved PSANs
- Service providers offering non-mandatory registration activities (e.g., CIFs advising on crypto-assets)

During this period, these providers must obtain MiCA approval to continue operations post-July 1, 2026. However, it's important to note that "simple" and "enhanced" PSAN registrations, as well as optional approvals, do not grant European passporting rights during the transitional phase. Therefore, providers must ensure their services comply with the regulations in other Member States during this period.

Given the more stringent requirements of MiCA compared to France's existing regulations, the AMF urges interested parties to start preparing early. To assist with understanding the new European framework, its timeline, and the steps for dossier preparation and submission, the AMF provides a dedicated thematic dossier on its website.

Version française

Le 2 août 2024, l'Autorité des marchés financiers (AMF) a annoncé que le dépôt de demandes d'agrément en tant que PSAN (Prestataire de Services sur Actifs Numériques) auprès de l'AMF est désormais possible dans le cadre du règlement MiCA (Markets in Crypto-Assets).

Le règlement européen MiCA prévoit qu'à compter du 30 décembre 2024, toute entité souhaitant proposer des services de crypto-actifs au sein de l'Union européenne devra obtenir l'agrément nécessaire auprès de l'AMF) Ce règlement concerne dix services spécifiques, parmi lesquels :

- *La garde et l'administration de crypto-actifs pour les clients*
- *L'exploitation d'une plateforme de trading de crypto-actifs*
- *L'échange de crypto-actifs contre des fonds*
- *L'échange de crypto-actifs contre d'autres crypto-actifs*
- *L'exécution d'ordres sur crypto-actifs pour les clients*
- *Le placement de crypto-actifs*
- *La réception et la transmission d'ordres sur crypto-actifs pour les clients*
- *Le conseil sur les crypto-actifs*
- *La gestion de portefeuilles de crypto-actifs*
- *Le transfert de crypto-actifs pour les clients*

Les prestataires doivent adhérer à un ensemble commun de règles couvrant des domaines tels que :

- *La lutte contre le blanchiment d'argent (AML) et le financement du terrorisme (CFT)*
- *La cybersécurité*
- *Les normes d'intégrité et de compétence*
- *La bonne conduite et la gouvernance*
- *La gestion des conflits d'intérêts*
- *La protection des fonds et la ségrégation des actifs, le cas échéant*

MiCA décrit également des obligations spécifiques en fonction de la nature des services fournis.

Une phase transitoire est en place jusqu'au 30 juin 2026, pour les prestataires de services actuels opérant sous les classifications de la loi PACTE. Il s'agit notamment de :

- *PSAN avec enregistrement « simple »*
- *PSAN avec enregistrement « renforcé »*
- *PSAN agréés facultativement*
- *Prestataires de services proposant des activités d'enregistrement non obligatoire (par exemple, les OPCVM conseillant sur les crypto-actifs)*

Pendant cette période, ces prestataires doivent obtenir l'agrément MiCA pour poursuivre leurs activités après le 1er juillet 2026. Il est toutefois important de noter que les enregistrements PSAN « simples » et « renforcés » ainsi que les agréments facultatifs ne confèrent pas de droits de passeport européen pendant la phase transitoire. Par conséquent, les prestataires doivent s'assurer que leurs services sont conformes à la réglementation des autres États membres pendant cette période.

Compte tenu des exigences plus strictes du MiCA par rapport à la réglementation française existante, l'AMF exhorte les parties intéressées à commencer à se préparer au plus tôt. Afin d'aider à la compréhension du nouveau cadre européen, de son calendrier et des étapes de constitution et de dépôt des dossiers, l'AMF met à disposition sur son site un dossier thématique dédié.

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

France publishes Decree n.2024-752 on State guarantee for AIFMs that subscribe to “transition bonds” / La France publie le décret n°2024-752 relatif à la garantie de l’État pour les GFIA qui souscrivent aux « obligations de transition »

On 8 July 2024, France published the Decree n.2024-752 of 7 July 2024 relating to the State guarantee provided for in Article 185 of Law No. 2023-1322 of 29 December 2023 on finances for 2024.

The decree provides for the conditions of application of the State guarantee provided for in article 185 of law no. 2023-1322 of December 29, 2023 on finance for 2024, which the minister responsible for the economy may grant to alternative investment fund companies that subscribe to “transition bonds”.

Article 185 of the finance law for 2024 refers to a decree in the Council of State the conditions of application of the State guarantee that the Minister can grant to the participatory transition loan (PPT) and transition bond (OT) funds.

The decree aims to define the content of the agreements which bind the State and the investment funds benefiting from the guarantee. It determines the characteristics of the bonds that can be subscribed to by these funds, and the conditions that must be respected with regard to the European state aid framework. It then defines the eligibility rules for small, medium or intermediate-sized companies that can issue these so-called “transition” bonds. In addition, it establishes the typology of projects recognized as improving the environmental performance of companies and the methods of verification by independent third parties of compliance by issuing companies with this typology.

The decree also specifies that small and medium-sized businesses can also, beyond financing projects to improve their environmental performance, issue a “transition” bond to finance a productive investment, provided they demonstrate that through their main activity, or by planning their own reduction of greenhouse gas emissions, they contribute to the ecological transition. Then, the decree determines the state aid ceilings and eligible costs.

Finally, it specifies the terms of exercise of the guarantee, in particular its cost, and the manner in which it is exercised upon its expiry, the recovery of debts being entrusted by the State to the guaranteed investment funds.

Version française

Le 8 juillet 2024, la France a publié le décret n°2024-752 du 7 juillet 2024 relatif à la garantie de l’État prévue à l’article 185 de la loi n°2023-1322 du 29 décembre 2023 de finances pour 2024.

Le décret prévoit les conditions d’application de la garantie de l’État prévue à l’article 185 de la loi n°2023-1322 du 29 décembre 2023 de finances pour 2024, que le ministre chargé de l’économie peut accorder aux sociétés de fonds d’investissement alternatifs qui souscrivent à des « obligations de transition ».

L’article 185 de la loi de finances pour 2024 renvoie par décret en Conseil d’État les conditions d’application de la garantie de l’État que le ministre peut accorder aux fonds de prêts participatifs de transition (PPT) et d’obligations de transition (OT).

Le décret vise à définir le contenu des conventions qui lient l’État et les fonds d’investissement bénéficiant de la garantie. Il détermine les caractéristiques des obligations qui peuvent être souscrites par ces fonds, et les conditions qui doivent être respectées au regard de l’encadrement européen des aides d’État. Il définit ensuite les règles d’éligibilité des petites, moyennes ou ETI qui peuvent émettre ces obligations dites « de transition ». En outre, il établit la typologie des projets reconnus comme améliorant la performance environnementale des entreprises et les modalités de vérification par des tiers indépendants du respect par les entreprises émettrices de cette typologie.

Le décret précise également que les petites et moyennes entreprises peuvent également, au-delà du financement de projets visant à améliorer leur performance environnementale, émettre une obligation « de transition » pour financer un investissement productif, à condition de démontrer que par leur activité principale, ou en planifiant leur propre réduction des émissions de gaz à effet de serre, elles contribuent à la transition écologique. Ensuite, le décret détermine les plafonds des aides d’État et les coûts éligibles.

Enfin, il précise les modalités d’exercice de la garantie, notamment son coût, et les modalités de son exercice à son échéance, le recouvrement des créances étant confié par l’État aux fonds d’investissement garantis.

France publishes Order of 27 June 2024 approving modifications to the general regulations of AMF / La France publie l'ordonnance du 27 juin 2024 portant approbation des modifications du règlement général de l'AMF

On 3 July 2024, France published order of 27 June 2024 approving modifications to the general regulations of the Financial Markets Authority.

Article 422-36 is amended as follows:

1° The first paragraph is supplemented by the following sentence:

"This report includes in particular the information mentioned in Article 11 of Regulation (EU) 2019/2088 of the European Parliament and of the Council. This information may nevertheless be made available to the auditor by the SICAV or the FCP's portfolio management company, separately, within an additional period of forty-five days for the SICAV and sixty days for the FCP."

2° In the second paragraph, after the words: “portfolio of the FCP,” the words are inserted: “where applicable without the information mentioned in Article 11 of Regulation (EU) 2019/2088 of the European Parliament and of the Council,".

3° The second paragraph is supplemented by the following sentence:

"When the SICAV or the portfolio management company makes use of the additional period mentioned in the first paragraph, the auditor also has an additional period of thirty days for the SICAV and forty-five days for the FCP, from upon receipt of the information, to file its reports at the head office of the SICAV or the portfolio management company."

Version française

Le 3 juillet 2024, la France a publié l'arrêté du 27 juin 2024 portant approbation des modifications du règlement général de l'Autorité des marchés financiers.

L'article 422-36 est ainsi modifié :

1° Le premier alinéa est complété par la phrase suivante :

« Ce rapport comprend notamment les informations mentionnées à l'article 11 du règlement (UE) 2019/2088 du Parlement européen et du Conseil. Ces informations peuvent néanmoins être mises à disposition du commissaire aux comptes par la SICAV ou la société de gestion de portefeuille du FCP, séparément, dans un délai supplémentaire de quarante-cinq jours pour la SICAV et de soixante jours pour le FCP. »

2° Au deuxième alinéa, après les mots : « portefeuille du FCP », sont insérés les mots : « le cas échéant sans les informations mentionnées à l'article 11 du Règlement (UE) 2019/2088 du Parlement européen et du Conseil, ».

3° Le deuxième alinéa est complété par la phrase suivante :

« Lorsque la SICAV ou la société de gestion de portefeuille fait usage du délai supplémentaire mentionné au premier alinéa, le commissaire aux comptes dispose également d'un délai supplémentaire de trente jours pour la SICAV et de quarante-cinq jours pour le FCP, à compter de la réception des informations, pour déposer ses rapports au siège social de la SICAV ou de la société de gestion de portefeuille. »

France publishes Order No. 2024-662 of 3 July 2024 modernizing the regime of alternative investment funds / La France publie l'ordonnance n° 2024-662 du 3 juillet 2024 modernisant le régime des fonds d'investissement alternatifs

On 4 July 2024, France published the Order No. 2024-662 of July 3, 2024 modernizing the regime of alternative investment funds.

This has consequently initiated the expansion of the new improved ELTIF 2.0 regime in France. The ELTIF 2.0 regime aims to encourage savers and investors to finance the economy more easily in the long term. With the publication of this ordinance, several measures have been implemented to improve the attractiveness of French legal frameworks, following the introduction of the ELTIF 2.0 regulation.

The ordinance contains three sets of measures for simplification and modernization:

- Professional alternative investment funds ("AIF") are modernized to establish them asprimary vehicles for structuring ELTIF 2.0-labeled funds.
- The rules applicable to AIFs open to non-professional investors are adapted to ensure their complementarity with professional funds labeled ELTIF 2.0.
- Employee savings funds are now permitted to invest in ELTIF 2.0.

The AMF, the financial markets authority of France, applauds the declaration of the ordinance, which is a starting point for launching ELTIFs 2.0 in France. With scope for a more flexible framework, the ELTIF 2.0 has potential to become successful, thereby enabling savers and investors to finance the long-term economy more effectively.

These measures are yet to be ratified by parliament, and a ratification bill must be submitted before the deadline stipulated by the Green Industry Law (three months from publication), else the ordinance will become null and void. Once ratified by parliament, the measures adopted will carry legislative value

Version française

Le 4 juillet 2024, la France a publié l'ordonnance n° 2024-662 du 3 juillet 2024 modernisant le régime des fonds d'investissement alternatifs.

Elle a par conséquent initié l'expansion du nouveau régime amélioré ELTIF 2.0 en France. Le régime ELTIF 2.0 vise à inciter les épargnants et les investisseurs à financer l'économie plus facilement sur le long terme. Avec la publication de cette ordonnance, plusieurs mesures ont été mises en œuvre pour améliorer l'attractivité des cadres juridiques français, suite à l'introduction du règlement ELTIF 2.0.

L'ordonnance contient trois séries de mesures de simplification et de modernisation :

- *Les fonds d'investissement alternatifs professionnels (« FIA ») sont modernisés pour en faire des véhicules principaux de structuration des fonds labellisés ELTIF 2.0.*
- *Les règles applicables aux FIA ouverts aux investisseurs non professionnels sont adaptées pour assurer leur complémentarité avec les fonds professionnels labellisés ELTIF 2.0.*
- *Les fonds d'épargne salariale sont désormais autorisés à investir dans les ELTIF 2.0.*

L'AMF, l'autorité des marchés financiers française, salue la promulgation de l'ordonnance, qui constitue un point de départ pour le lancement des ELTIF 2.0 en France. Avec la possibilité d'un cadre plus flexible, les ELTIF 2.0 ont le potentiel de devenir un succès, permettant ainsi aux épargnants et aux investisseurs de financer plus efficacement l'économie à long terme.

Ces mesures doivent encore être ratifiées par le Parlement, et un projet de loi de ratification doit être déposé avant le délai prévu par la loi sur l'industrie verte (trois mois à compter de sa publication), sous peine de nullité de l'ordonnance. Une fois ratifiées par le Parlement, les mesures adoptées auront valeur législative.

AMF updates notification forms for management companies and cross-border marketing of UCITS and AIFs / L'AMF met à jour les formulaires de déclaration des sociétés de gestion et de commercialisation transfrontalière des OPCVM et FIA

On 15 July 2024, the Autorité des marchés financiers (AMF) updated their forms for notification of the exercise of activities of management companies and the marketing of UCITS and AIFs on a cross-border basis.

There are recent updates by the AMF regarding the notification forms required for the cross-border activities of management companies and the marketing of UCITS (Undertakings for Collective Investment in Transferable Securities) and AIFs (Alternative Investment Funds). These updates follow the European harmonization efforts under Directive 2019/1160, known as the "CBDF Directive."

Directive 2019/1160 aims to harmonize the rules for cross-border distribution of UCITS and AIFs within the EU. The European Commission published two delegated regulations on March 25, 2024, to support this directive.

The AMF has provided new European notification forms for passporting requirements. These forms streamline and standardize the data required, reducing administrative burdens for management companies.

Specific Updates:

- Inclusion of the Legal Entity Identification (LEI).
- Enrichment of information on delegations relating to cross-border activities.
- Additional details required about branch managers in a new annex.
- Creation of a specific form for management companies operating an UCITS authorized in another member state.

Administrative Certificates:

- New models for administrative certificates concerning compliance with UCITS and AIFM directives.
- Management companies need to provide these updated filings when applying for passporting.

Implementation:

- The new forms replace the existing models found in AMF instructions.
- Effective from July 14, 2024, for all new notifications.

The AMF has detailed the instructions and annexes in its official publication on its website. Reference documents include AMF Instruction DOC-2011-19 and DOC-2014-03.

Timeline:

- March 25, 2024: European Commission publishes two delegated regulations.
- July 14, 2024: Implementation date for new notification forms.

Version française

Le 15 juillet 2024, l'Autorité des marchés financiers (AMF) a mis à jour ses formulaires de notification de l'exercice des activités des sociétés de gestion et de la commercialisation d'OPCVM et de FIA ??sur une base transfrontalière.

L'AMF a récemment mis à jour les formulaires de notification requis pour les activités transfrontalières des sociétés de gestion et la commercialisation d'OPCVM (Organismes de Placement Collectif en Valeurs Mobilières) et de FIA ??(Fonds d'Investissement Alternatif). Ces mises à jour font suite aux efforts d'harmonisation européens dans le cadre de la directive 2019/1160, dite « Directive CBDF ».

La directive 2019/1160 vise à harmoniser les règles de distribution transfrontalière des OPCVM et des FIA au sein de l'UE. La Commission européenne a publié deux règlements délégués le 25 mars 2024 pour soutenir cette directive.

L'AMF a mis à disposition de nouveaux formulaires de notification européens pour les exigences de passeportage. Ces formulaires rationalisent et standardisent les données requises, réduisant ainsi les charges administratives pour les sociétés de gestion.

Mises à jour spécifiques :

- *Ajout de l'identification d'entité juridique (LEI).*
- *Enrichissement des informations sur les délégations relatives aux activités transfrontalières.*
- *Détails supplémentaires requis sur les directeurs de succursales dans une nouvelle annexe.*
- *Création d'un formulaire spécifique pour les sociétés de gestion exploitant un OPCVM agréé dans un autre État membre.*

Certificats administratifs :

- *Nouveaux modèles de certificats administratifs concernant la conformité aux directives OPCVM et AIFM.*
- *Les sociétés de gestion doivent fournir ces dépôts mis à jour lors de leur demande de passeport.*

Mise en œuvre :

- *Les nouveaux formulaires remplacent les modèles existants figurant dans les instructions de l'AMF.*
- *En vigueur à compter du 14 juillet 2024, pour toutes les nouvelles notifications.*

L'AMF a détaillé les instructions et les annexes dans sa publication officielle sur son site Internet. Les documents de référence comprennent l'instruction AMF DOC-2011-19 et DOC-2014-03.

Calendrier :

- *25 mars 2024 : la Commission européenne publie deux règlements délégués.*
- *14 juillet 2024 : Date de mise en œuvre des nouveaux formulaires de notification.*

LIQUIDITY

FPM publishes Market Practice on liquidity risk management tools / FPM publie une pratique de marché sur les outils de gestion de risque de liquidité

On 6 August 2024, the France Post Marché (FPM) published a market practice on liquidity risk management tools: Definition of the technical model for processing the Anti-Dilution Levy (ADL) method between market players.

The document focuses on establishing a standardized market practice for handling liquidity risk management tools, specifically the Anti-Dilution Levy (ADL) method, among various financial actors in France. Prepared by France Post-Marché under the Comité Français d'Organisation et de Normalisation Bancaires (CFONB), it aims to provide a uniform technical model for processing ADL, normalizing its operational treatment, and evolving SWIFT messages for transparency in subscription and redemption orders.

The main objectives are to create a consistent technical model for ADL treatment, standardize operational processes among stakeholders, and ensure complete transparency on fees and rights applied to transactions, both standard and ADL-specific. Key modifications include updates to SWIFT message formats (MX and MT) and manual order information exchange between centralizers and account holders. These updates are meant to convey detailed information on all applied rights, ensuring operational efficiency and security.

Stakeholders are strongly recommended to adhere to the specified standards to achieve better efficiency and clarity in the handling of ADL transactions.

Version française

Le 6 août 2024, France Post Marché (FPM) a publié une pratique de marché sur les outils de gestion de risque de liquidité : Définition du modèle technique de traitement de la méthode Anti-Dilution Levy (ADL) entre les acteurs de marché.

Le document vise à établir une pratique de marché standardisée pour le traitement des outils de gestion du risque de liquidité, notamment la méthode Anti-Dilution Levy (ADL), entre les différents acteurs financiers en France. Préparé par France Post-Marché dans le cadre du Comité Français d'Organisation et de Normalisation Bancaires (CFONB), il vise à fournir un modèle technique uniforme pour le traitement de l'ADL, à normaliser son traitement opérationnel et à faire évoluer les messages SWIFT pour la transparence des ordres de souscription et de rachat.

Les principaux objectifs sont de créer un modèle technique cohérent pour le traitement de l'ADL, de normaliser les processus opérationnels entre les parties prenantes et d'assurer une transparence complète sur les frais et droits appliqués aux transactions, qu'ils soient standards ou spécifiques à l'ADL. Les principales modifications comprennent les mises à jour des formats de messages SWIFT (MX et MT) et l'échange manuel d'informations sur les ordres entre les centralisateurs et les titulaires de comptes. Ces mises à jour visent à transmettre des informations détaillées sur tous les droits appliqués, garantissant ainsi l'efficacité et la sécurité opérationnelles.

Il est fortement recommandé aux parties prenantes de respecter les normes spécifiées pour obtenir une meilleure efficacité et une plus grande clarté dans le traitement des transactions ADL.

PAYMENT AND SETTLEMENT SYSTEMS

AMF and Banque de France publish position paper on switch to T+1 Settlement / L'AMF et la Banque de France publient une note de position sur le passage au règlement T+1

On 22 July 2024, the AMF (Autorité des Marchés Financiers) and Banque de France published a position paper on the switch to T+1 Settlement.

The AMF and the Banque de France are actively contributing to the debate on the transition to a T+1 settlement cycle within the European Union. Their goal is to offer a structured approach to this significant operational shift. They emphasize the necessity of strong coordination with other European jurisdictions to align timelines and address the technical challenges involved.

They propose a two-step approach: initially ensuring all trade confirmations and allocations occur on trade date, followed by gradual settlement cycle reduction contingent on operational readiness and lessons learned from other regions like the US and UK.

The AMF and Banque de France's involvement underscores the commitment to ensuring that market stability and efficiency are maintained throughout the transition process.

Version française

Le 22 juillet 2024, l'AMF (Autorité des Marchés Financiers) et la Banque de France ont publié une note de position sur le passage au règlement-livraison T+1.

L'AMF et la Banque de France contribuent activement au débat sur la transition vers un cycle de règlement-livraison T+1 au sein de l'Union européenne. Leur objectif est de proposer une approche structurée de ce changement opérationnel important. Elles soulignent la nécessité d'une coordination étroite avec d'autres juridictions européennes pour aligner les calendriers et relever les défis techniques impliqués.

Elles proposent une approche en deux étapes : dans un premier temps, s'assurer que toutes les confirmations et allocations de transactions ont lieu à la date de transaction, puis réduire progressivement le cycle de règlement en fonction de la préparation opérationnelle et des enseignements tirés d'autres régions comme les États-Unis et le Royaume-Uni.

L'implication de l'AMF et de la Banque de France souligne l'engagement de garantir que la stabilité et l'efficacité du marché soient maintenues tout au long du processus de transition.

REPORTING

AFG publishes update on application of sustainability reporting to asset management / L'AFG publie une mise à jour sur l'application du reporting de développement durable à la gestion d'actifs

On 29 July 2024, the Association Française de Gestion (AFG) published an update on the application of sustainability reporting (CSRD) to asset management.

The document provides essential information on the application of the Corporate Sustainability Reporting Directive (CSRD) to asset management companies (SGPs) and collective investment schemes (OPCs). As of 1 January 2024, the directive 2022/2464, amending directive 2013/34, began its phased implementation

across the European Union, based on company size and listing status.

In France, this has been transposed via Ordinance No. 2023-1142 and Decree No. 2023-1394, published on 7 December and 31 December 2023, respectively. Larger companies need to start reporting in 2025 based on 2024 data, while smaller companies have different deadlines. Exemptions are available for subsidiaries of larger groups if they report consolidatively at the group level.

Additionally, listed small and medium-sized enterprises (SMEs) can opt out of the CSRD requirements until 2028 by providing a brief justification in their management reports.

Version française

Le 29 juillet 2024, l'Association Française de Gestion (AFG) a publié une mise à jour sur l'application du reporting de développement durable (CSRD) à la gestion d'actifs.

Le document fournit des informations essentielles sur l'application de la directive sur le reporting de développement durable (CSRD) aux sociétés de gestion d'actifs (SGP) et aux organismes de placement collectif (OPC). Depuis le 1er janvier 2024, la directive 2022/2464, modifiant la directive 2013/34, a commencé sa mise en œuvre progressive dans l'ensemble de l'Union européenne, en fonction de la taille de l'entreprise et du statut de cotation.

En France, cela a été transposé via l'ordonnance n° 2023-1142 et le décret n° 2023-1394, publiés respectivement le 7 décembre et le 31 décembre 2023. Les grandes entreprises doivent commencer à publier leurs rapports en 2025 sur la base des données de 2024, tandis que les petites entreprises ont des délais différents. Des exemptions sont disponibles pour les filiales de groupes plus importants si elles publient des rapports consolidés au niveau du groupe.

De plus, les petites et moyennes entreprises (PME) cotées en bourse peuvent se soustraire aux exigences CSRD jusqu'en 2028 en fournissant une brève justification dans leurs rapports de gestion.

SUPERVISION

AFG announces depositary controls on the extra-financial ratios of management companies / L'AFG annonce des contrôles dépositaires sur les ratios extra-financiers des sociétés de gestion

On 30 July 2024, the Association Française de Gestion (AFG) announced depositary controls on the extra-financial ratios of management companies.

The AMF (Autorité des Marchés Financiers) has mandated that custodians implement controls over extra-financial ratios. To establish a common approach, the AMF requested input from associations such as AFG, ASPIM, France Invest, and France Post Marché. After extensive discussions, they found the final proposal from AFG to be satisfactory.

The operational setup will be based on three pillars, with implementation starting at the end of September:

Quarterly Reporting: Portfolio Management Companies (SGPs) will provide custodians with a shared quarterly report on the breaches of extra-financial ratios, both active and passive, for the previous period. This report will follow the existing AMF breach reporting format. For real assets, a different approach could be adopted, such as an annual frequency for sharing breaches.

Custodians will perform two types of sample controls:

1. Comprehensive control of all extra-financial ratios of one or two funds over one or potentially two consecutive net asset value (NAV) calculations.
2. Comprehensive control of one or two extra-financial ratios across all funds managed by the SGP over one or two consecutive NAV calculations.

Custodians will conduct periodic reviews of procedures, methodologies, resources, and control systems in place through audits conducted on the SGPs. These audits will ensure the effectiveness and adequacy of the control measures implemented.

Discussions among the associations are ongoing to determine the nomenclature associated with these breaches.

Version française

Le 30 juillet 2024, l'Association Française de Gestion (AFG) a annoncé la mise en place de contrôles dépositaires sur les ratios extra-financiers des sociétés de gestion.

L'AMF (Autorité des Marchés Financiers) a demandé aux dépositaires de mettre en place des contrôles sur les ratios extra-financiers. Pour établir une approche commune, l'AMF a sollicité l'avis d'associations telles que l'AFG, l'ASPIM, France Invest et France Post Marché. Après de longues discussions, elles ont jugé satisfaisante la proposition finale de l'AFG.

Le dispositif opérationnel reposera sur trois piliers, avec une mise en œuvre à partir de fin septembre :

Reporting trimestriel : les sociétés de gestion de portefeuille (SGP) fourniront aux dépositaires un rapport trimestriel partagé sur les dépassements de ratios extra-financiers, actifs et passifs, pour la période précédente. Ce rapport suivra le format de rapport de dépassement existant de l'AMF. Pour les actifs réels, une approche différente pourrait être adoptée, comme une fréquence annuelle de partage des dépassements.

Les dépositaires effectueront deux types de contrôles par échantillonnage :

1. *Contrôle complet de tous les ratios extra-financiers d'un ou deux fonds sur un ou potentiellement deux calculs consécutifs de valeur liquidative (VL).*
2. *Contrôle complet d'un ou deux ratios extra-financiers de tous les fonds gérés par la SGP sur un ou deux calculs consécutifs de VL.*

Les dépositaires procéderont à des examens périodiques des procédures, méthodologies, ressources et systèmes de contrôle en place par le biais d'audits menés sur les SGP. Ces audits permettront de s'assurer de l'efficacité et de l'adéquation des mesures de contrôle mises en œuvre.

Des discussions entre les associations sont en cours pour déterminer la nomenclature associée à ces manquements.

SUSTAINABLE FINANCE / GREEN FINANCE

AMF publishes summary of SPOT checks on quality of commercial documentation and integration of ESG criteria / L'AMF publie la synthèse des contrôles SPOT sur la qualité de la documentation commerciale et l'intégration des critères ESG

On 11 July 2024, the Autorité des marchés financiers (AMF) published a summary of its SPOT (Supervisory priorities and organisation of themes) checks on the quality of commercial documentation and the integration of ESG (Environmental, Social, and Governance) criteria into asset management.

The checks revealed several weaknesses in the clarity, accuracy, and non-misleading nature of ESG product commercial documents due to inconsistencies between regulatory and commercial documents. The AMF reiterated that distributors bear the final responsibility for promotional communication clarity, and encouraged asset management firms to include commercial documents in their control map targeted at the products they distribute.

The checks also showed a lack of traceability of commercial documents provided to clients and a need for restrictions on internal access to these documents. Best practices included the validation of commercial documents by asset management firms and dissemination in PDF format to prevent modifications post-validation.

On ESG document analysis, the AMF found that some monthly reports were considered promotional documents due to their commercial argumentation, even if they were not directly distributed to clients. The AMF emphasized that commercial or marketing claims regarding ESG characteristics of a financial product in any document must be proportional and coherent with the content of the regulatory documentation.

In a context of combating "greenwashing", the AMF's controls aimed to ensure that investors were well-informed and protected from fraudulent ESG claims.

Version française

Le 11 juillet 2024, l'Autorité des marchés financiers (AMF) a publié une synthèse de ses contrôles SPOT (Priorités de contrôle et organisation thématique) sur la qualité de la documentation commerciale et l'intégration des critères ESG (Environnementaux, Sociaux et de Gouvernance) dans la gestion d'actifs.

Les contrôles ont révélé plusieurs faiblesses dans la clarté, l'exactitude et le caractère non trompeur des documents commerciaux des produits ESG en raison d'incohérences entre les documents réglementaires et commerciaux. L'AMF a rappelé que les distributeurs sont les derniers responsables de la clarté de la communication promotionnelle et a encouragé les sociétés de gestion à inclure les documents commerciaux dans leur cartographie de contrôle destinée aux produits qu'elles distribuent.

Les contrôles ont également montré un manque de traçabilité des documents commerciaux fournis aux clients et la nécessité de restreindre l'accès interne à ces documents. Les bonnes pratiques incluent la validation des documents commerciaux par les sociétés de gestion et leur diffusion au format PDF pour éviter les modifications post-validation.

Sur l'analyse des documents ESG, l'AMF a constaté que certains rapports mensuels étaient considérés comme des documents promotionnels en raison de leur argumentation commerciale, même s'ils n'étaient pas directement diffusés aux clients. L'AMF a souligné que les allégations commerciales ou marketing concernant les caractéristiques ESG d'un produit financier dans tout document doivent être proportionnées et cohérentes avec le contenu de la documentation réglementaire.

Dans un contexte de lutte contre le « greenwashing », les contrôles de l'AMF visaient à s'assurer que les investisseurs étaient bien informés et protégés des allégations ESG frauduleuses.

GERMANY

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

BaFin updates its page on marketing in Germany

On 26 July 2024, the Federal Financial Supervisory Authority (BaFin) updated its page on marketing in Germany.

Companies wishing to market shares or units in investment funds must first undergo a marketing notification procedure at BaFin. The type and scope of the necessary documentation depends on where the (asset) management company has its registered office and where the investment fund is situated/where the latter has its registered office.

The page contains the links for further information for the following:

- EU Undertakings for the Collective Investment in Transferable Securities (UCITS) in Germany pursuant to section 310 of the German Investment Code for investment management (KAGB),
- Notification requirement for EU Alternative Investment Fund (AIF) management companies intending to market EU AIFs to semi-professional and professional investors in Germany pursuant to section 323 of the KAGB,
- Notification requirement for foreign AIF management companies intending to market foreign AIFs or EU AIFs managed by them to semi-professional and professional investors in Germany pursuant to section 330 of the KAGB,

The changes concern:

- Notification requirement for EU AIF management companies or foreign AIF management companies intending to market units or shares in EU AIFs managed by them or in foreign AIFs to retail investors in Germany according to section 320 of the KAGB
- Notification requirement for domestic or EU AIF management companies intending to market foreign AIF or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF to professional or semi-professional investors in Germany pursuant to section 329 of the KAGB, where the BaFin published their translated version.

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

BaFin publishes consultation on guidance on interpretation and application of the GwG

On 9 July 2024, the Federal Financial Supervisory Authority (BaFin) published a consultation on guidance on interpretation and application of the Money Laundering Act pursuant to Section 51 (8) Anti-Money Laundering Act (GwG).

The revised edition will supersede the prior guidance and relates to the proposed amendments to the GwG. These amendments stem from the Financial Market Digitisation Act and the Financial Crime Prevention Act, both of which are presently in the legislative process.

It provides detailed instructions on the identification and verification processes, the handling of risk analyses, and the documentation and reporting requirements for obliged entities under the GwG.

It concerns all obliged entities under the GwG.

The document introduces new or updated regulations and guidelines that affect various aspects of compliance with the Anti-Money Laundering Act. Key changes include:

- Enhanced requirements for the documentation and verification of customer identification.
- Specific rules for using electronic identification and qualified electronic signatures.
- Clarifications on the reporting obligations for entities when suspicious activities are detected.
- Requirements for regular risk analysis reviews and potential updates based on internal or external risk factors.
- Expanded obligations for the transmission of information related to politically exposed persons (PePs) and contract partners.
- Definitions and compliance requirements for various types of financial entities, including their registration with the BaFin

The deadline for comments is by 9 August 2024.

BaFin publishes circular on third countries that have strategic deficiencies in their AML/CFT systems

On 29 July 2024, the Federal Financial Supervisory Authority (BaFin) published a circular on third countries that have strategic deficiencies in their anti-money laundering and combating the financing of terrorism (AML/CFT) systems that pose material risks to the international financial system (high-risk jurisdictions).

On the basis of Article 9 of the Fourth Anti-Money Laundering Directive (EU) 2015/849, the European Commission has defined high-risk third countries with Delegated Regulation (EU) 2016/1675.

The Commission adopts delegated acts to identify high-risk third countries, taking into account the strategic deficiencies. In accordance with Article 9(4) of Directive (EU) 2015/849, the Commission shall take into account the latest available information, in particular the latest public announcements by the FATF, the FATF Jurisdictions under Increased Monitoring lists and the FATF reports for the review of international cooperation on the risks posed by individual third countries. The identified high-risk third countries can be found in the applicable Delegated Regulation.

Due to the increased risks of financing proliferations, the FATF reaffirms in its Declaration of 28 June 2024 its call for the use of countermeasures in relation to the Democratic People's Republic of Korea (North Korea) and Iran.

Since the FATF's statement of 21 October 2022, Myanmar has been classified as a country subject to a request by the FATF to its members and other countries to apply enhanced due diligence measures that are proportionate to the risks posed by this country. In this context, the FATF requires financial institutions to increase the scope and nature of the monitoring of the business relationship as part of the enhanced due diligence requirements to determine whether transactions or activities appear unusual or suspicious.

As part of the ongoing country reviews by the FATF and the FATF Regional Groups (FSRBs), individual countries continued to show deficits with regard to key FATF recommendations. Two countries have also been added to the list, Monaco and Venezuela. Jamaica and Turkey were removed from the list.

The Circular also mentions the legal consequences and measures taken by BaFin with relation to these jurisdictions.

This circular replaces the previous circulars on the contents of the EU and FATF country lists due to deficiencies in the fight against money laundering, terrorist financing and proliferation financing.

Bundesfinanzministerium publishes Draft Ordinance amending the Ordinance on Reporting Obligations in Real Estate under the Money Laundering Act

On 2 August 2024, the Bundesfinanzministerium (Federal Ministry of Finance) published a Draft Ordinance Amending the Ordinance on Matters Subject to Reporting Obligations in the Real Estate Sector under the Money Laundering Act (AMLA).

The core concern of the draft ordinance is to reflect the provisions of Section 16a of the German Money Laundering Act (GwG) on the prohibition of cash payments when purchasing real estate in the reporting offences of the GwGMeldV-Immobilien.

FTwo new reporting events:

- Proof of Non-Cash Consideration: Creating a new event to report instances where proof is not provided that the consideration for acquiring a property was made without using cash (Section 6 (4) of the GwGMeldV Real Estate Draft). If the proof that a non-cash payment was made is not provided, this creates a new “reporting event.” The responsible party (e.g., real estate broker, or financial institution) must report this lack of proof to the relevant authorities.
- Delayed Consideration: Another event covers agreements where the payment consideration is to be provided more than one year after the application for the purchaser’s registration as the owner has been submitted to the land registry office. This helps to avoid attempts at circumventing the non-cash proof requirement (Section 6 (1) no. 5 GwGMeldV Real Estate Draft).

Evaluation and Exclusion of Ineffective Reports: Incorporating the results of the evaluation of the existing reporting facts under AMLA real estate, the ordinance aims to exclude reports that are not valuable in preventing and combating money laundering and terrorist financing.

In essence, this ordinance is about tightening the scrutiny and reporting requirements in real estate transactions to better combat money laundering activities by enforcing non-cash payment proof and timely payment documentation while weeding out ineffective reporting practices.

CAPITAL RAISING PROCESS

Bundesfinanzministerium publishes Bill of the Second Act on the Financing of Future-Securing Investments

On 27 August 2024, the Bundesfinanzministerium (Federal Ministry of Finance) published a draft of a Second Act on the Financing of Future-Securing Investments (Second Future Financing Act – ZuFinG II).

Stable, efficient and deep capital markets are crucial for innovation, private investment and growth. The Future Financing Act has already introduced numerous measures to improve the framework conditions for capital markets and start-ups. The aim of this draft law is – building on the Future Financing Act – to further strengthen the competitiveness and attractiveness of Germany as a financial centre and, in particular, to improve the financing options for young, dynamic companies. This particularly includes the tax framework, which is an important factor in investment decisions. The conditions for companies to access the capital market are to be further improved, making financing easier for them. This is intended to make a significant contribution to dynamising the German economy and mobilising private growth and innovation capital.

The draft law serves to implement the growth initiative adopted by the Federal Cabinet on17 July 2024. With the growth initiative, the Federal Government wants to give the economy additional growth impulses and make Germany a competitive and future-proof business location.

Another aim of the bill is to make capital resources more widely available for investments in infrastructure and renewable energies. Given the enormous need for investment in infrastructure and renewable energies, it is important to create a legally secure framework for investments in renewable energies and infrastructure in addition to the measures already in place to safeguard investments in renewable energies, such as the Renewable Energy Sources Act, in order to implement the urgently needed projects and accelerate the transition to a more sustainable future.

The draft of the Second Future Financing Act presents comprehensive measures to facilitate access to the capital market for companies, to promote the fund market and thus also the venture capital ecosystem, and to streamline supervisory requirements. The law aims to provide positive impetus for the mobilization of private financial resources and the growth of the German economy.

To implement the growth initiative, the draft law introduces measures that will strengthen Germany as a financial centre and mobilise more growth capital (section 29 of the growth initiative):

- Improvement of the tax framework for investments in venture capital, in particular through (1.) adjustments to the taxation of investments in commercial partnerships by funds subject to the Investment Tax Act and (2.) adjustments to the taxation of profits from the sale of shareholdings in corporations when these are reinvested (“roll-over”);
- Possibility of English-language prospectuses including summaries, thereby facilitating the EU-wide distribution of securities.

In order to make the framework conditions more flexible for top earners in the financial sector, the protection against dismissal for very high-income earners in the financial sector will also be relaxed by extending the existing regulations for risk-bearers in systemically important banks to non-systemically important banks as

well as insurance companies, securities institutions and investment companies (section 36 of the Growth Initiative).

The proposed new investment tax regulation is intended to remove obstacles to investments in infrastructure and renewable energies. Amendments to the Investment Tax Act and the Capital Investment Code will create a legally secure investment framework for investments in renewable energies and infrastructure. These measures to strengthen the fund location are also intended to facilitate investments in venture capital. For this purpose, investment funds and special investment funds will in future be allowed to invest in commercial venture capital funds to an essentially unlimited extent.

The draft law also contains further measures, particularly to improve the financing conditions for companies and to reduce bureaucracy, which were identified in the context of practical tests and exchange formats with affected actors such as the Federal Financial Supervisory Authority (BaFin) and the business community. The measures to reduce bureaucracy focus on requirements where the bureaucratic burden for companies does not correspond to an adequate gain in knowledge for BaFin, such as the abolition of the employee and complaints register at BaFin, the restriction of the requirement to submit a certificate of compliance with the supervisory requirements for non-listed derivatives (OTC derivatives) to companies that are relevant from a risk perspective, and an increase in the reporting thresholds for million-euro loan reporting from 1 to 2 million euros.

As a further measure to facilitate access to the capital market, especially for growth companies, the possibility is being created for companies to issue shares with a nominal value of less than one euro. This is intended to further promote the equity culture and thus further strengthen the IPO market as an exit channel for venture capital.

Key Tax Law Adjustments:

a. Increase in Maximum Amount for Transfer of Hidden Reserves:

- Section 6b (10) of the Income Tax Act (so-called roll-over) is amended to raise the maximum amount from EUR 500,000 to EUR 5,000,000.
- This increase applies to profits from the sale of shares in corporations in financial years starting after the promulgation day.

b. Promotion of Investments in Renewable Energies and Infrastructure:

- Adaptations in the Investment Tax Act to foster investments in these sectors.

c. Additional changes are planned in the following codes and laws:

- German Commercial Code (HGB)
- Aktiengesetz (AktG)
- Börsengesetz (BörsG)
- Wirtschaftsprüferordnung (WPO)
- REIT-Gesetz (REITG)
- Kreditwesengesetz (KWG)

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

Bundesrat publishes Bill on the Implementation of the NIS2 Directive and the Regulation of Essential Principles of Information Security Management in the Federal Administration

On 16 August 2024, the Bundesrat published a draft Act on the Implementation of the NIS 2 Directive and on the Regulation of Essential Principles of Information Security Management in the Federal Administration.

The cybersecurity requirements for legal and natural persons providing essential services or activities, which have increased against this background, are brought into line with Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 and repealing Directive (EU) 2016/1148 (NIS 2 Directive) throughout the European Union. As a result of Russia's war of aggression on Ukraine, which violates international law, the IT security situation has worsened overall, according to the Federal Office for Information Security (BSI) in the 2023 report on the state of IT security in Germany. In the business sector, this includes ransomware attacks, exploitation of vulnerabilities, open or misconfigured online servers, as well as dependencies on the IT supply chain and, in this context, cyber attacks in particular.

For information security management in the Federal Administration, the existing control instruments have not proven to be sufficiently effective to achieve a nationwide effective increase in the level of security, mainly on a sub-statutory basis. This has been confirmed in particular by status surveys on the federal implementation plan and audits by the German Federal Audit Office (BRH). Against the backdrop of the threat situation, which has once again been exacerbated by current geopolitical developments ("Zeitenwende"), the risk of state institutions being restricted in their ability to act by threats from cyberspace has also increased further.

This draft is part of the efforts of the European Union and its member states to increase economic security and improve resilience in response to new geopolitical conditions. With the European Economic Security Strategy published on 20 June 2023, the European Commission identifies the risk to the security of critical infrastructure from physical and cyber attacks as one of four main risks for the European economy.

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

BaFin publishes English translations of guidance notices on the marketing of foreign AIF or domestic special feeder AIF or EU feeder AIF or domestic AIF

On 25 July 2024, the Federal Financial Supervisory Authority (BaFin) published the English translations of guidance notices on the marketing pursuant to section 329 of the German Investment Code for investment management (KAGB) of foreign alternative investment fund (AIF) or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF and marketing according to § 320 KAGB.

The published translations are related to the following guidance notices:

- Guidance Notice on the marketing pursuant to section 329 of the KAGB of foreign AIF or domestic special feeder AIF or EU feeder AIF whose master AIF is not an EU AIF or domestic AIF.
  This Guidance Notice sets out the basic features of the notification procedure in accordance with section 329 of the KAGB and explains the conditions for marketing units or shares in a domestic special feeder AIF or EU feeder AIF which is managed by an EU AIF management company or a German AIF management company and whose master AIF is not an EU AIF or domestic AIF which is managed by an EU AIF management company or a German AIF management company or in foreign AIF to professional or semi-professional investors in the Federal Republic of Germany.
  The marketing of units or shares in the above-mentioned types of AIF to professional or semi-professional investors in the Federal Republic of Germany is governed by the provisions of the KAGB. Under section 329 (2) sentence 1 of the KAGB, the BaFin must be notified of the envisaged marketing of these units and shares.
- Guidance notice for marketing according to § 320 KAGB.
  This Guidance Notice presents the main features of the notification procedure in accordance with section 320 of the KAGB and explains the prerequisites for marketing units and shares of EU AIFs or foreign AIFs to retail investors in the Federal Republic of Germany.
  The marketing of units or shares of EU AIFs or foreign AIFs to retail investors in the Federal Republic of Germany is subject to the provisions of the KAGB. In accordance with section 320 (1) sentence 1 of the KAGB , the BaFin must be notified of any intention to market such units and shares.

BaFin updates Guidance Notice for Marketing according to § 323 KAGB

On 14 August 2024, the Federal Financial Supervisory Authority (BaFin) updated its Guidance notice for marketing according to § 323 KAGB.

This Guidance Notice (2013) relates to the marketing units or shares of EU AIFs or domestic special AIFs (Spezial-AIF) managed by an EU AIF management company to semi-professional and professional investors in the Federal Republic of Germany pursuant to section 323 of the Investment Code (Kapitalanlagegesetzbuch – KAGB).

General arrangements regarding marketing

In order to be able to check that the EU AIF management company can fulfil the marketing requirements of the KAGB, the EU AIF management company must state in the notification letter:

- Whether it has established internal arrangements to ensure that the duties to inform specified in sections 307 and 308 of the KAGB have been complied with (e.g. through relevant instructions and training for staff); and
- Whether it has concluded agreements with all marketing partners acting on behalf of the EU AIF management company which compel these partners to comply with the duties to inform specified in section 307 of the KAGB.

Regarding the arrangements to prevent marketing to retail investors, the EU AIF management company must state whether

- It has established internal arrangements to ensure that units or shares of the notified EU AIF or special AIF will not be offered to or placed with retail investors; and
- If the marketing is conducted via the Internet or other electronic systems, there are separate and access-protected access channels for each type of investor (retail, semi-professional and professional investors).

It must further state whether an agreement has been concluded with all marketing partners, according to which

- Units or shares of the notified EU AIF or special AIF must not be offered to or placed with retail investors; and
- If the marketing is conducted via the Internet or other electronic systems, there are separate and access-protected access channels for each type of investor (retail, semi-professional and professional investors).

For processing the notification, BaFin charges a fee amounting to €466 (in the case of umbrella schemes, each investment compartment is subject to the duty to pay fees).

When marketing or purchasing units and shares, the requirements specified in sections 293, 295, 307 and 308 of the KAGB are to be considered.

Updates or changes to the information and documents contained in the notification letter, including de-notification of the arrangements made for marketing EU AIFs or domestic special AIFs or individual investment compartments of an EU AIF or domestic special AIF which are authorised for marketing, are to be notified to the competent authority in the home member state.

INVESTOR PROTECTION / CONSUMER PROTECTION

Germany publishes Second Act on the Reform of the Capital Investor Model Case Act

On 19 July 2024, Germany published the Second Act on the Reform of the Capital Investor Model Case Act.

The second reform of the KapMuG aimed to accelerate and simplify model proceedings under the KapMuG, making them more effective. The Law concerns, among other, providers of financial services and assets, and providers of crypto-asset services.

This Act shall apply in civil disputes in which one of the following claims is asserted:

- a claim for damages due to false, misleading or omitted public capital market information,
- a claim for damages due to the use of false or misleading public capital market information or for failure to provide the necessary information that public capital market information is false or misleading,
- a claim for performance arising from a contract based on an offer pursuant to the Securities Acquisition and Takeover Act, including a claim pursuant to Section 39 (3) sentences 3 and 4 of the Stock Exchange Act, or

- a claim for damages pursuant to Article 75(8) of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.

The KapMuG establishes a model case procedure at Higher Regional Courts for claims related to incorrect, misleading, or omitted capital market information. If at least ten individual applications based on the same facts are submitted, a model case is initiated, and all individual actions are stayed. The Higher Regional Court clarifies common facts or legal questions in the model case, after which individual actions resume to address specific issues such as damages or causation. Final enforceable titles are obtained through these individual proceedings, not through the KapMuG model case procedure. This system aims to efficiently resolve common issues while ensuring individual case-specific determinations.

Summary of the new bill's changes to KapMuG proceedings:

- **Streamlined Initiation**
  Faster and simpler process for starting model proceedings.
- **Higher Regional Courts' Role**
  Higher Regional Courts will now set declaratory objectives based on model case applications.
- **Fewer Parties**
  Only those who apply will be included in model proceedings, reducing the number of parties.
- **Selective Stays**
  Courts will not automatically stay all related proceedings; only those with a model case application will be stayed. Other proceedings may be stayed upon request.
- **Evidence Submission**
  Parties can request necessary documents from opponents or third parties, bolstering their claims.
  Relation with Representative Actions: KapMuG proceedings can occur alongside representative actions, with room for divergent decisions and appeals.
- **Electronic File Management**
  All case files will be managed electronically starting January 1, 2025, to prevent delays.
- **Evaluation**
  The new KapMuG will be evaluated five years after implementation.
- **Various EU Regulations and Directives**
  These changes involve updates to ensure the national laws align with EU regulations concerning crypto-assets, securities, and market abuse. e.g., specific requirements for whitepapers related to crypto-assets, insider information to be communicated in line with the updated EU Market Abuse Regulation, prospectuses updates for standardization of information, Regulations for crowdfunding service providers, Ratings related to securities and investment entities now comply with the updated EU regulations.

Other Changes:

- Numerical Reference Updates: Numerous sections in different laws have been updated to refer to new numeric sections.
- Jurisdiction and Admissibility: The amendments clarify the exclusive jurisdiction of sample procedures and the admissibility of collective actions even with ongoing related procedures.
- Cost and Fee Adjustments: Legal costs and compensations schedules have been modified to reflect current requirements.
- EU Compliance: Integrations and updates ensure national laws adhere to recent EU regulatory changes.

For companies, these changes pose the risk of facing a larger number of individual lawsuits in addition to the KapMuG proceedings, as well as the potential for conflicting decisions.

This Act entered into force on 20 July 2024.

At the same time, the Capital Investor Model Case Act of 19 October 2012 (Federal Law Gazette I p. 2182), which was last amended by Article 7 of the Act of 8 October 2023 (Federal Law Gazette 2023 I No. 272), shall cease to be in force.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

BaFin updates its articles on ICT risk management and ICT third-party risk management

On 4 July 2024, the Federal Financial Supervisory Authority (BaFin) updated its articles on information and communications technology (ICT) risk management and ICT third-party risk management.

For ICT risk management, Digital Operational Resilience Act (DORA) sets out harmonised and uniform requirements across the financial sectors in Chapter II.

These requirements are intended to help maintain or, if necessary, restore the functionality of financial companies, especially with regard to cyber threats. In this way, they ensure that financial companies achieve a digital operational resilience that is appropriate for them – i.e. that they are resilient and adaptable enough to maintain their digital operational processes during and after a disruption.

With the requirements in the area of governance and organization, DORA establishes a central building block for achieving the goal of a high level of digital resilience of the financial company by establishing an internal governance and control framework to ensure prudent management of ICT risks. This importance is also reflected in the prominent role of the management body in the text of the regulation: it has ultimate responsibility for managing the financial entity's ICT risks. It also has important responsibilities such as overall responsibility for defining and approving the Digital Operational Resilience Strategy and allocating appropriate budgetary resources to the ICT risk management framework. In addition, the members of the management body are required to actively keep sufficient knowledge and skills up to date in order to be able to perform their duties adequately.

As a second building block of ICT risk management, a robust, comprehensive and well-documented ICT risk management framework should help to adequately address the ICT risks faced by the financial entity. As part of overall risk management, the framework includes the following elements:

- Identification
- Protection and prevention,
- Recognition
- Countermeasures and recovery,
- Learning, and
- Further development and communication.

The requirements associated with the elements are based on international, national and industry-specific best practices as well as standards.

Their overall standard- and technology-neutral properties enable financial companies to implement the requirements in a risk-oriented and proportional manner. The idea of proportionality, which DORA emphasizes centrally in Art. 4 with the principle of proportionality, is also evident elsewhere in ICT risk management: Article 16 DORA provides for simplified requirements for the ICT risk management framework for certain financial entities.

DORA also keeps an eye on the risks that may arise from the use of ICT services with ICT third-party service providers. DORA requires financial companies to assess and monitor ICT third-party risks throughout the entire lifecycle of the purchase.

An important prerequisite for this is that a risk analysis and due diligence take place before the contract is signed. In doing so, financial companies should take into account, for example, how dependent they are on the respective ICT third-party service provider and what risks could arise from the contractual relationship. DORA also formulates requirements for the contractual provisions: The regulation stipulates, for example, that the contractual partner of the financial company must undertake to provide support in the event of ICT incidents relating to the services purchased. In addition, financial companies must be able to demonstrate an exit strategy for critical or important functions.

Financial undertakings must enter their concluded ICT contractual relationships in an information register. This register fulfils several functions: First, it is a practical tool for financial companies to manage their ICT third-party risks in a structured way. Secondly, it serves as a basis for supervisors to be able to identify the critical ICT third-party service providers. Thus, the information from the register provides an essential input for the European monitoring framework for critical ICT third-party service providers.

SUSTAINABILITY

Bundesrat publishes Bill implementing Directive (EU) 2022/2464 as regards corporate sustainability reporting

On 16 August 2024, the Bundesrat published a draft implementing Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards corporate sustainability reporting.

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards corporate sustainability reporting (Corporate Sustainability Reporting Directive, CSRD) obliges Member States to introduce sustainability reporting for companies defined under accounting law as large, small or medium-sized capital market-oriented companies by 6 July 2024 and to review the corresponding sustainability reporting. In this way, the law contributes in particular to the timely achievement of Goal 12 of the UN 2030 Agenda for Sustainable Development to ensure sustainable consumption and production patterns. This obligation is implemented by this Act. In the course of implementation, the existing legal framework will also be reviewed and adapted selectively.

In order to implement the objectives mentioned above, amendments are necessary, among other things, to the Commercial Code, the Securities Trading Act and the Auditors' Regulation.

Germany is implementing CSRD without major deviations, however, there are some deviations- specific amendments, including changes to the Lieferkettensorgfaltspflichtengesetz to prevent duplicate reporting obligations and modifications to various sections of the Handelsgesetzbuch (HGB) to align with the new requirements.

More precisely:

Changes in HGB

- Amendments have been made to the Handelsgesetzbuch (HGB) to reflect the replacement of the non-financial declaration with sustainability reporting (§ 289e HGB).
- Descriptions of the diversity concept as per Article 20(1)(1g) of the Accounting Directive, which now fall under § 289f(3) HGB, are required for large publicly listed companies.

Reporting Scope for Smaller Firms

- Section 289d HGB-E allows smaller capital market-oriented companies to limit their sustainability reporting to specific information related to their business model and strategy.

Verordnungsermächtigung

- A regulation authority is introduced under § 289d(3) HGB-E, allowing the Justice Ministry to specify delegated legal acts upon their enactment or amendment.

Penalties and Compliance

- Amendments to § 334 HGB-E introduce administrative fines related to the new sustainability reporting requirements, especially concerning intentional violations of specified detail regulations in the ESRS.
- These adjustments are aimed at aligning national law with the new EU directive while maintaining coherence with existing national legislation.

The law enters into force the day after its promulgation, with the exception of Article 25 (further amendment to the Wirtschaftsprüferordnung (Public Accountants Act)), which enters into force on January 1, 2026.

SUSTAINABLE FINANCE / GREEN FINANCE

Bundesrat publishes resolution: Suspension of the LkGS until the implementation of CSDDD

On 3 July 2024, the Bundesrat published its resolution on suspension of the Supply Chain Due Diligence Act until the implementation of Corporate Sustainability Due Diligence Directive (CSDDD).

The Bundesrat notes that the CSDDD which was finally confirmed by the Council of the European Union on 23 May 2024, has far-reaching consequences for the functioning of international value chains.

In particular, the CSDDD, which must be transposed into national law within two years, goes beyond the regulations of international value chains already in place in Germany under the Supply Chain Due Diligence Act (LkGS), which came into force in 2023. This applies in particular to:

- the contained provisions on civil liability for damages resulting from the breach of due diligence obligations,
- the size of the companies in the value chain of the companies within the scope of the Directive (upstream and parts of downstream) that are indirectly affected by the due diligence obligations.
- the much more extensive anchoring of environmental issues in the EU Directive.

Therefore, the Bundesrat called the Federal Government:

a) to suspend LkGS until the CSDDD is transposed into national law. In order to create an EU-wide level playing field with regard to the regulation of international value chains and thus increase acceptance among acceptance by companies, the first step should be to harmonise the existing Germany's existing legislation on the regulation of international supply chains;

b) Low-bureaucracy implementation of the CSDDD into national law;

Following the suspension of the CSDDD, the implementation of the EU directive must must be based on the following points, among others:

- Avoidance of any gold plating.
- The implementation of the EU Directive in Germany should be organised in such a way that German companies can benefit from their preparatory work for compliance with the LkSG.
- Enforcement should be limited even more to controls in high-risk sectors.
- The required reporting under the CSDDD should be harmonised with reporting obligations as part of sustainability reporting in order to avoid duplication.
- The indirect SME impact of the EU Directive is even more extensive due to the consideration of the entire upstream and parts of the downstream value chain. In implementation, these SMEs should be supported more strongly with industry solutions (e.g. templates for codes of conduct, etc.).

In addition, the LkSG sometimes imposes completely different requirements on the companies concerned than the CSDDD. If the LkSG were to be applied unchanged, many companies would therefore be forced to pursue two different paths in parallel for a certain period of time and then discontinue one of them. This would put German companies at a massive disadvantage compared to European competitors.

BaFin publishes supervisory notice on ESMA Guidelines on Fund Names

On 25 July 2024, the Federal Financial Supervisory Authority (BaFin) published a supervisory notice on European Securities and Markets Authority (ESMA) Guidelines on Fund Names.

The ESMA published guidelines for fund names on 14 May 2024. The Guidelines deal with the question of the conditions under which a fund can use words such as environment, social, governance or other sustainability-related terms in its name. This is the first time that there are uniform requirements throughout Europe in this field. BaFin will take the ESMA guidelines into account in its administrative practice. These will completely replace BaFin's previous administrative practice on sustainable investment funds.

The name of a fund gives a first impression of the investment strategy and objectives of the product and influences investors' decisions. For the EU legislator, too, it is a matter of great importance in the recently published Alteration Alternative Investment Fund Managers Directive and the Undertakings for Collective Investment in Transferable Securities Directive (Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024) and the Investment Management Companies (AIFMs)) of its obligation in that regard. They must ensure that the information regarding their products is accurate, honest and clear and does not convey a misleading or confusing message that would falsely influence investors. This amending directive includes a mandate for ESMA to develop guidelines on fund names.

The ESMA Guidelines distinguish between three groups of terms:

- Transition, social, or governance-related terms,
- Environmental or impact-related terms,
- Sustainability-related terms.

BaFin had already established an administrative practice for the use of sustainability terms in the name of German mutual funds. The ESMA guidelines, on the other hand, are now aimed at all funds regulated in the EU, including special funds that can only be purchased by professional investors. In addition to funds whose names

contain sustainability terms, funds that were marketed to investors as sustainable also fell within the scope of BaFin's administrative practice. For example, it was sufficient if the fund was presented in the marketing materials as an explicitly sustainable product.

From now on, BaFin will only take into account the requirements of the ESMA guidelines for the processing of all newly received applications. In particular, this also means that the mere presence of sustainability terms in the fund name now justifies an examination of the investment conditions in the sense of the previous examination for compliance with the requirements of BaFin administrative practice. The question of whether a fund is marketed as "explicitly sustainable" no longer plays a role in this context.

When converting existing funds with a sustainability focus to the requirements of the ESMA Guidelines, BaFin generally considers an adjustment of the investment conditions neither as a change in the investment principles nor as a change in material investor rights that would be detrimental to investors. This applies in particular if the investment conditions already meet the requirements of BaFin's previous administrative practice on sustainable investment funds. This also applies if the disclosures in the pre-contractual ESG appendix to the prospectus of funds that disclose their sustainability characteristics in accordance with Article 8 or Article 9 of the EU Disclosure Regulation (Regulation (EU) 2019/2088, SFDR) already contain minimum commitments and exclusion criteria as binding features of the ESG strategy that are comparable to the exclusions of the ESMA Guidelines.

BVI publishes Article on BaFin's application of ESMA guidelines for the German market

On 2 August 2024, the Bundesverband Investment und Asset Management e.V. (BVI) Bpublished article on BaFin's application of ESMA guidelines for the German market.

BaFin has published a supervisory communication on the application of the ESMA guidelines for fund names in the German market. In it, it explains the requirements of the guideline and the timetable for its implementation. Answers to the questions BVI raised about the practical application of the ESMA Guidelines have also been included in the Communication.

The following information from BaFin are particularly relevant:

- BaFin already applies the ESMA guidelines in its administrative practice and from now on only takes into account the EU requirements for the processing of all newly received applications. This means that funds will only be checked for the requirements of the guideline if sustainability terms are present in the name. The question of whether a fund is sold as "explicitly sustainable", which was previously important in the context of BaFin's national administrative practice, will no longer play a role in the future.
- For the equivalence of green bonds in accordance with the ESMA guidelines, BaFin clarifies that the relevant minimum exclusions (PAB or CTB) must be examined in relation to the issuer. From BaFin's point of view, this means that transition funds in particular can invest in green bonds, as less strict criteria apply here.

UCITS V / ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD)

Federal Ministry of Finance publishes Bill to strengthen German fund market and implement Directive (EU) 2024/927 as regards delegation agreements, liquidity risk management, supervisory reporting, custody and depository services and lending by AIFs

On 5 August 2024, the Bundesfinanzministerium (Federal Ministry of Finance) published a Draft law to strengthen the German fund market and implement Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2009/65/EC and 2011/61/EU as regards delegation agreements, liquidity risk management, supervisory reporting, the provision of custody and depository services and lending by alternative investment funds.

The draft law will amend the amendments to the European Investment Fund Directives (Directive 2009/65/EC (so-called UCITS Directive) and 2011/61/EU (so-called AIFM Directive) by the new Directive (EU) 2024/927 amending Directives 2009/65/EC and 2011/61/EU with regard to delegation agreements, liquidity risk management, supervisory reporting, the provision of custody and depository services and lending by alternative investment funds on a 1:1 basis.

In addition, the possibility of launching closed-end special funds in the mutual fund sector will also be created. It should also be easier for providers of closed-end funds to offer citizen participation in the field of renewable energies.

BaFin publishes Guidance Notice on marketing of EU UCITS in Germany

On 14 August 2024, the Federal Financial Supervisory Authority (BaFin) published Guidance Notice on marketing of EU UCITS in Germany.

Marketing will be carried out by the management company of the EU UCITS which is the subject of the notification referred to in section 310 of the Investment Code.

Marketing in the Federal Republic of Germany will be carried out by credit institutions within the meaning of section 1 (1) of the Banking Act.

Marketing in the Federal Republic of Germany will be carried out by authorised financial services institutions with a corresponding authorisation under section 1 (1a) of the Banking Act.

BaFin must be informed of any amendments to the sales documentation without undue (i.e., culpable) delay. Amendments to certain information in the notification letter must be notified to BaFin prior to their implementation.

The updates compared to the previous version concern:

- De-notification of Cross-Border Marketing Arrangements;
- Key Information Documents;
- Documentation Updates;
- Changes in Marketing Arrangements;

- Translation Requirements;
- Liquidation of UCITS

HONG KONG

BANK CRISIS MANAGEMENT AND DEPOSIT INSURANCE (CMDI)

Hong Kong publishes Cap. 628 Financial Institutions (Resolution) Ordinance

On 2 July 2024, Hong Kong published Cap. 628 Financial Institutions (Resolution) Ordinance.

An Ordinance to establish a regime for the orderly resolution of financial institutions with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; for that purpose to confer powers on the Insurance Authority, the Monetary Authority and the Securities and Futures Commission; to make consequential and related amendments to certain enactments; and to provide for incidental and related matters.

In performing, or considering performing, any function under this Ordinance, a resolution authority must have regard to the following objectives:

(a) to promote, and seek to maintain, the stability and effective working of the financial system of Hong Kong, including the continued performance of critical financial functions;

(b) to seek to protect deposits or insurance policies of a within scope financial institution to no less an extent than they would be protected under a protective scheme mentioned in Schedule 1 on a winding up of the financial institution;

(c) to seek to protect client assets of a within scope financial institution to no less an extent than they would be protected on a winding up of the financial institution;

(d) subject to paragraphs (a), (b) and (c), to seek to contain the costs of resolution and, in so doing, protect public money.

In carrying out a resolution of a within scope financial institution, a resolution authority must seek to act in the way that the resolution authority considers at the time of acting to be most appropriate for meeting the resolution objectives.

GOVERNANCE

SFC publishes circular to licensed corporations on financial resources management and compliance with the Securities and Futures (Financial Resources) Rules

On 3 July 2024, the Securities and Futures Commission (SFC) published a circular to licensed corporations on financial resources management and compliance with the Securities and Futures (Financial Resources) Rules (FRR).

This circular elaborates on the SFC expectations regarding the governance and internal control standards of licensed corporations (LCs) for monitoring the adequacy of financial resources and compliance with the Securities and Futures FRR.

During its monitoring of LCs' financial resources adequacy, the SFC has observed various undesirable practices and internal control deficiencies that led to abrupt declines in excess liquid capital (ELC), or breaches of the liquid capital requirement under the FRR. In some cases, deficits in the required liquid capital (RLC deficits) remained outstanding for months. Typical deficiencies include:

- inadequate or ineffective controls over liquid capital monitoring;
- failure to make proper accruals or accounting provisions; and
- incorrect treatments of certain assets or liabilities for liquid capital computation.

These deficiencies are mainly attributable to:

- ineffective management oversight; and
- failure to employ competent and qualified persons for calculating and monitoring liquid capital, as well as preparing and reviewing financial returns (FRR returns).

Some LCs were also late in reporting their RLC deficits to the SFC, thus contravening the relevant notification requirements under the Securities and Futures Ordinance (SFO), the FRR and the Code of Conduct. While these problems were predominantly found in LCs with smaller operations and those with weaker governance, all LCs should comply with the FRR and employ adequate resources to properly carry out their business activities.

Pursuant to section 6(1) of the FRR, an LC must at all times maintain liquid capital which is not less than its required liquid capital. Under sections 146(1) and (2) of the SFO, an LC shall notify the SFC in writing and immediately cease carrying on any regulated activity for which it is licensed if it becomes aware that it is unable to maintain, or to ascertain whether it maintains, the financial resources required of it, unless otherwise permitted by the SFC.

Under General Principle 3 of the Code of Conduct, an LC is required to have and effectively employ the resources and procedures which are needed for the proper performance of its business activities. This includes the need for sufficient liquid capital that enables the LC to operate in the normal course of business as a going concern.

Inadequate internal controls over FRR compliance may lead to an abrupt cessation or interruption of an LC's regulated activities and impact its clients' interests. In addition, poor controls may expose an LC to the risk of theft, fraud, and other dishonest acts, professional misconduct or omissions.

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

SFC publishes Asset and Wealth Management Activities Survey 2023

On 12 July 2024, the Securities and Futures Commission (SFC) published the Asset and Wealth Management Activities Survey 2023.

The key benchmarking metrics in an annual survey by the SFC reaffirmed Hong Kong's position as a premier asset and wealth management hub with a highly-diversified investor base, globalised asset allocation and robust fund inflows.

According to the SFC's Asset and Wealth Management Activities Survey 2023 published, investors outside Mainland China and Hong Kong have consistently accounted for 54-56% of total asset under management (AUM) in the past five years, while 60% of the assets managed in Hong Kong are allocated to overseas markets. Over the past three years, the city also saw the number of Type 9 licensed firms (ie, asset management) increase steadily by 12% to 2,161 as of June 2024.

Overall AUM grew 2% year-on-year in 2023, while net fund inflows surged 342%. In addition, Hong Kong-domiciled funds authorised by the SFC also showed strength. They continued to see net fund inflows of $33 billion (US$4.2 billion) in the first quarter of 2024 after rebounding by a robust 93% to $87 billion (US$11.1 billion) last year. Their AUM also further increased 3% for the first quarter after growing 5% in 2023.

Other highlights of the report include:

- Mainland-related firms continued to expand their footprint in the city, as the AUM of their asset and wealth management business grew 4% to $2,676 billion (US$343 billion), outperforming the industry average for another year. Their net fund inflows increased 16% to $153 billion (US$20 billion).
- The strong growth momentum for open-ended fund companies (OFCs) persisted, as the number of registered OFCs more than doubled (up 118%) from 2022, showing asset managers continued to take advantage of the corporate fund structure in Hong Kong and the associated government grants.

IRELAND

COMPANY LAW

Irish Department of Enterprise, Trade and Employment publishes General Scheme of Registration of Limited Partnerships and Business Names Bill 2024

On 24 July 2024, the Irish Department of Enterprise, Trade and Employment published the General Scheme of Registration of Limited Partnerships and Business Names Bill 2024.

The General Scheme repeals and replaces the Limited Partnerships Act 1907 and the Registration of Business Names Act 1963. Both Acts require updating to provide for modern business practices and a robust, transparent, and fit for purpose regulatory framework for those engaged in business using a business name or the limited partnership model.

These objectives will be achieved by additional information and reporting requirements; additional powers for the Registrar consistent with those for companies to ensure the integrity of the Registers are upheld; and enhanced enforcement and compliance provisions; whilst retaining the nature of the limited partnership framework.

The General Scheme introduces transparency provisions, including:

1. verification of the identity of partners whether natural or legal persons
2. a register of beneficial ownership of partners of a limited partnership incorporated or administered outside the EEA
3. a requirement to have at least one EEA-resident general partner for the duration of a limited partnership
4. a requirement for an ongoing connection with the State for the duration of a limited partnership via a registered office or place of business in the State
5. Limited partnerships and business names registered under the 1907 Act and 1963 Act respectively, will be required to comply with the new registration requirements within twelve months of the notice from the Registrar (to be issued within thirty months of commencement of the new Act).

Existing limited partnerships and existing registered business names will not be affected by the repeal done by this Bill, subject to any specific transitional measures to ensure compliance with the new provisions.

The Registrar of Companies is the Registrar for the Bill in accordance with section 887(9)(b) and (c) of the Companies Act 2014. The Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies is required to keep a register of beneficial ownership of partners incorporated or administered outside the EEA.

The General Scheme is accompanied by a Regulatory Impact Analysis.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

CBI issues Industry Briefing on MiCAR

On 18 July 2024, the Central Bank of Ireland (CBI) issued an Industry Briefing on Markets in Crypto-Asset Regulation (MiCAR).

In 2020, the European Commission introduced its digital finance package, including a digital finance strategy and legislative proposals on crypto-assets and digital resilience. The package reflected the EU's ambition to embrace a digital transition, to help modernise the European economy across sectors, and to turn Europe into a global digital player.

MiCAR is a very important step forward in the regulation of crypto activities in Europe while also leading the way on the regulation of the crypto sector globally. For the first time, the EU will have a harmonised regulatory framework for this sector that introduces prudential and conduct obligations for issuers of e-money tokens, asset-referenced tokens, and for crypto-asset service providers. There are also obligations for offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens.

The CBI is keen to ensure consumers have clarity around risks when they make financial decisions. Its objective is to ensure the regulatory environment enables the potential benefits of innovation for consumers, businesses and society to be realised, while the risks are effectively managed and mitigated.

The potential for crypto and blockchain to build financial inclusivity or democratise finance has long been a theme of discussion in the sector. Crypto enthusiasts speak readily to how crypto and blockchain technologies, paired with global internet access, can provide easy and immediate access to people across the world to financial services and achieve a level of financial inclusivity that the traditional financial services cannot. While this is an exciting prospect, it cannot be achieved without guardrails.

Consumer and investor protection begins with firms themselves. For the crypto sector to succeed, compliance and a customer centric approach should not be seen as a cost of doing business, but rather, they have the potential to be a competitive advantage. The provision of financial services is about helping others make financial decisions; it is also about the provision of choice for consumers and importantly, the provision of products that are suitable for consumers. Selecting financial services or financial products often involves taking risks. The stronger the firms risk management, the better position they are in to understand, calculate and mitigate risks, therefore strengthening their business model, and their relationship with their customers

The importance of good culture and conduct risk management in delivering on new obligations under MiCAR cannot be overstated. It is not merely a regulatory requirement; it should be viewed as a fundamental component of maintaining trust, integrity and stability within the sector.

Effective organisational culture builds on shared purpose and standards such as professionalism, honesty, integrity and accountability to deliver fair outcomes that have the interests of consumers and investors at heart.

The Central Bank expects to see such standards and values embedded in all the firms we regulate. The importance of tone from the top, and the critical role of directors, cannot be overstated.

Where higher inherent conduct and consumer protection risks in products are seen, the CBI will have higher expectations of firm's to adhere to high standards. The CBI will take a sceptical view on business models where profitability is driven from the heavy marketing, offering and distribution of unbacked crypto to retail customers for speculative purposes.

Additionally, governance and safeguarding of client assets are critical considerations for the CBI. Regardless of the services, the target customer base, or whether it is retail focused or aimed at institutional clients, governance and safeguarding of client assets are key in shaping our view of risk.

Crucially, European work is focused on driving a convergent approach to the implementation of MiCAR in authorities authorisation and supervision processes. This will help prevent arbitrage or jurisdiction shopping based on actual or perceived differences in approach.

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

DPC publishes Guidance on AI, Large Language Models and Data Protection

On 18 July 2024, the Irish Data Protection Commission (DPC) published Guidance on Artificial Intelligence (AI), Large Language Models and Data Protection.

AI and, particularly, chatbots based on Generative AI (Gen-AI) are chatbot systems able to respond to input questions or tasks accurately because they use an underlying model that have been through a process of training, often based on many large datasets, sometimes including data that are publicly accessible on the internet.

These systems, known as Large Language Models (LLMs) often use a process known as Natural Language Processing, to learn and mimic how human speech is naturally used. Such LLMs can be packaged and tuned for many different use cases including chat, but also for internet search, creative writing, assistance with software writing, creating multimedia, assisting with essay writing, providing possible answers to maths or science problems and a range of other purposes.

There are many other AI systems and products available for use or purchase, to perform other kinds of tasks. These can include summarising documents or extracting keywords; assisting with industrial, financial, legal, educational, retail, media, advertising, medical, or scientific analysis; performing repetitive, simple or high volume tasks.

Some of these AI systems can also be further specialised by "re-training", "augmenting" or "fine tuning" with specific datasets related to a particular task or with particular information. Often this is done by using cloud based AI products or by licensing an existing model. Sometimes, these can then also be offered to others as a new product but which now includes your specialised information embedded in it.

In using AI systems like this, there is potential for personal data processing both in the development of an AI model and their further usage. Where personal data is involved, GDPR and data protection regulations come in to play, for individuals and organisations using AI systems, as well as for the model/product providers.

As a user of an AI product relying on personal data an organisation could be a data controller and if so a formal risk assessment should be considered. Before starting using an AI system, the organisation should first understand what personal data it uses, how it uses it, where the personal data goes in situations where a third-party is involved in the processing, whether it is retained by the provider of the AI product or re-used in any way, and how the product allows the organisation to meet its GDPR obligations. Their documentation should clearly specify this in an understandable and accessible form.

Some of risks in using AI products, either supplied by a third party or developed and used by your own organisation might be:

- Risks can arise from unwanted, unneeded or unanticipated processing of personal data input to or used to train or fine tune an AI model
- Processes should be in place to facilitate the exercise of data subject rights related to the engagement with the AI products
- Where an organisation is using an AI product supplied by a third party, it may result in additional security or other data protection risks for the organisation arising from the use of personal data that the employees (or the data subjects) input to the AI tool
- Some AI models have inherent risks relating to the way in which they respond to inputs or "prompts", such as memorisation, which can cause passages of (personal) training data to be unintentionally regurgitated by the product
- Sometimes, AI products rely on a process of "filtering" to prevent certain types of data (such as personal data, inappropriate data, and copyright data) to be provided to a user in response to a query or prompt. In some cases, those filters can be attacked and circumvented to cause such data to be made available or processed in unintended, unauthorised, insecure or risky ways.
- AI products – such as LLMs – can be prone to producing inaccurate or biased information. If outputs of these products are relied upon without critical human analysis or intervention , "automated decision making" risks are generated.
- Without a retention schedule and associated processes, an organisation risks non-compliance with the principle of 'storage limitation'

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

CBI updates on Implementing DORA

On 1 July 2024, the Central Bank of Ireland (CBI) updates on Implementing DORA - Achieving enhanced digital operational resilience in European financial services.

Given the very wide range of firms subject to DORA and the need for the framework to be fit for application to firms of all types, sizes, shapes, and levels of complexity, proportionality was an essential principle, in the work of the ESAs' Joint Committee on DORA.

Digital operational resilience is a fundamental underpinning of a resilient and well-functioning financial system supporting the economy and serving the needs of citizens. Financial services are fundamentally about information and data. So the threat surface is large, the risks are significant and increasing, and the potential impact is great.

Momentum has been one of our key working principles. The delivery of the DORA regulatory implementation work has been split into two phases with a 12-month and an 18-month deadline respectively. The phase 1 proposals were submitted to the Commission earlier this year on 17 January 2024. Three regulatory technical standards (RTS) from this phase have been adopted by the Commission on 13 March 2024 and published in the Official Journal of the EU on 25 June 2024. These RTSs set out the requirements on ICT risk management; detail the criteria for the classification of ICT-related incidents; and prescribe the required elements in financial entities' policies governing outsourcing of ICT services to third parties. The fourth phase 1 proposal is an implementing technical standard, or ITS, that provides the templates for the registers of information on ICT outsourcing. The implementation of the new oversight framework for critical third party service providers (CTPPs) is dependent upon the information which will be made available through these registers.

The proposed draft ITS on the registers has been submitted to the European Commission for its approval in January. We of course encourage the European Commission to adopt this ITS as soon as possible to facilitate the timely implementation of the registers. To the extent that enhancements might be considered, I would encourage people to adopt the pragmatic approach which we regulators have adopted. In particular, as I will mention below, we have not sought to achieve perfection in all respects now, recognising that there is a multi-year aspect to this work and enhancements can certainly be achieved in the years to come.

Turning for a moment to the Phase 2 proposals: following the public consultation earlier this year and the 480 comments received, these draft technical standards are now being finalised and are on-track for submission to the Commission on time by 17 July 2024. These standards will contain the requirements for subcontracting ICT services that support critical or important functions within a financial entity; the requirements for conducting a thread-led penetration test; and the content, timelines and templates for the reporting of major ICT-related incidents.

The RTS on the classification of ICT related incidents as major (and hence reportable) was amended so that it is clearer, simpler and straight forward for financial firms to perform the classification of major ICT incidents under DORA at a time when the financial entity is dealing with an incident. For example, the criterion 'critical services affected' is now a mandatory condition that should aid a quick triage of ICT incidents. Also, a number of the materiality thresholds have been changed based on feedback received and the approach for recurring incidents was simplified to minimise reporting burdens.

In relation to the register of information on third party arrangements the quantity of information requested is proposed to be further reduced and rationalised, notably the approach to reporting at entity level and at sub-consolidated level.

Bringing critical third-party providers of ICT services to financial entities under an oversight regime reflects the important role that these technology firms have in the functioning of the financial system. At the same time it recognises that these technology firms are not providers of financial services but rather the providers of outsourced activities. And financial entities, receiving services from CTPPs, remain fully responsibility for the respective ICT outsourcing activities and ICT services received.

Over recent months, the ESAs and national competent authorities have established a High-Level Group on Oversight that is helping oversee the establishment of the operational aspects of the new framework.

One key aspect will be the designation of those third party ICT service providers which should be considered critical (so-called Critical Third Party Providers or CTPPs) in accordance with the delegated act adopted in February. Work is under way to develop the arrangements to put in place the new Joint Examination Teams (JETs) which will be the collaborative teams established under the coordination of the Lead Overseer to carry out the oversight of individual CTPPs.

Given the challenges that will inevitably be faced in setting up and running a wholly new oversight framework such as this, high quality cooperation and collaboration will be essential to success. This is particularly the case given the general scarcity of the expert resources that will be needed to implement a regime at once technically, logistically, and strategically as complex as this.

While legal requirements remain legal requirements, there is often merit in seeing the value in a committed journey by firms and supervisors from initial implementation and compliance to a richer, more fully achieved implementation over time.

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

Ireland initiates Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2024

On 5 July 2024, the Houses of the Oireachtas (Ireland's National Parliament) laid the Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2024 (S.I. No. 334 of 2024).

The purpose of these Regulations is to amend the Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) Regulations 2021 (S.I. No. 335 of 2021).

Levy contributions:

1. Investment Limited Partnerships = € 638
2. Common Contractual Funds = € 638
3. Irish Collective Asset Management Vehicles = € 638
4. Unit Trusts = € 638
5. Credit Unions = € 638

These Regulations came into operation on 8 July 2024.

CBI publishes feedback statement on macroprudential policy for investment funds

On 23 July 2024, the Central Bank of Ireland (CBI) published a feedback statement on the macroprudential policy for investment funds.

Strengthening the macroprudential lens in the oversight of the sector remains a priority for the CBI. The CBI's focus is on the implementation of the recently updated FSB recommendations on open-ended funds in Europe and the FSB's ongoing work on addressing vulnerabilities from non-bank leverage. Building on the

Discussion Paper, and the feedback received, the CBI will also be contributing to the European Commission's consultation on a macroprudential framework for non-bank financial intermediation. Furthermore, the CBI's focus is on evaluating the implementation of the two macroprudential measures already introduced, for Irish authorised property funds and Irish authorised GBP-denominated LDI funds.

The Discussion Paper outlined why a macroprudential perspective is needed for the funds sector. It outlined the systemic

risk posed by the sector and how – in the face of financial vulnerabilities – it is typically the collective action of funds that has the potential to generate this risk. It also highlighted that while the current investor protection-focused regulatory framework for the funds sector can help to address some fund-specific elements of systemic risk, it does not fully address them all. The key aim of macroprudential policy for the funds sector would be to ensure that this growing segment of the financial sector is more resilient to stresses and less likely to amplify adverse shocks.

The Discussion Paper also set out principles that should underpin the design of a macroprudential framework for funds, including that:

(i) resilience-enhancing measures should target fund cohorts;

(ii) resilience should be built before crisis conditions occur;

(iii) policy measures could either seek to limit underlying vulnerabilities and/or be targeted at the interconnectedness of the sector;

(iv) policies should seek to have a degree of flexibility over time;

(v) policy intervention should be the result of a careful balance between costs and benefits for the broader economy; and (vi) global coordination is a critical enabler to macroprudential policy for funds and macroprudential measures should take a system-wide perspective to guard against the possibility that risks shift to other parts of the financial system.

The CBI recognises that focusing on cohorts of funds and the systemic risk that they can generate in light of financial vulnerabilities is a new perspective in the oversight of investment management. Traditionally, the perspective has been to focus on risk management by individual fund managers relating to investor protection. When vulnerabilities such as leverage and liquidity mismatch are present in funds, fund managers may resort to asset sales in response to a shock. From an individual perspective, asset disposals in stressed market conditions can be a rational response. Systemic problems can arise, however, when collectively many fund managers are having to sell, contributing to market disruption. While the Central Bank acknowledges that decisions taken by individual fund managers in response to shocks are often rational at an individual level, these decisions can generate negative spillover effects when aggregated across entire cohorts of funds. Therefore, a macroprudential perspective focused on this systemic dimension is warranted to complement an investor protection focus.

One of the main areas of focus for the Central Bank in the coming years is actively engaging in the various international work to strengthen resilience of the NBFI sector, including funds. The focus will now shift to the implementation of the FSB recommendations and IOSCO guidance on liquidity management for open-ended funds, and the CBI will support work at a European level to implement these liquidity recommendations. The CBI is undertaking work domestically to understand better how price-based LMTs are used by Irish-domiciled funds, as well as exploring in more depth, some of the key implementation challenges to inform operational discussions internationally on this issue.

CBI publishes new templates for cross-border marketing notification letters for AIFs

On 17 July 2024, the Central Bank of Ireland (CBI) published new templates for cross-border marketing notification letters for AIFs.

The CBI updated its Article 31 and Article 32 AIFMD Notification Letters. For the marketing of units or shares of EU AIFs/ELTIFs in Member States and/or home State of the AIFM, the content of the CBI Notification letters for AIFs is exactly the same as the new templates included in the Commission Implementing Regulation (EU) 2024/913.

The CBI completely revised the format and content of their De-notification letter template for EU AIF managed by Irish AIFM marketed under Article 32 AIFMD.

The main changes to the De-notification Letter are the following (same as the UCITS de-notification letters):

- Part I and Part II are aligned with the new notification letter templates and concerning the information about the AIFM and the AIF. The scope table additionally requires stating the effective de-notification date.
- Part III relates to the "Blanket offer for the repurchase or redemption of units held by investors in the Host Member State". In particular:
- there is an additional tickbox concerning remaining investors "information not available" whereby the requirements are identical to the ones if ticking "yes"
- it is required to state by which entity the blanket offer is addressed to investors
- it is required to specify the exact dates of the 30 days period during which the blanket offer must be available
- it is required to specify the medium by which the known investors will be informed personally
- Part IV relates to the "Intention to terminate arrangements made for marketing the units of AIF".

CBI publishes new templates for cross-border marketing notification letters for UCITS

On 17 July 2024, the Central Bank of Ireland (CBI) published new templates for cross-border marketing notification letters for UCITS.

The new templates to use for UCITS are the following:

- Notification Letter, to be used in case of initial notification and/or (this is new!) in case of updates to information already provided in an initial notification/additional share classes for an already notified sub-fund/compartment
- De-notification Letter compartment, for de-notification of a whole sub-fund or fund
- De-notification Letter share class, for de-notification of only certain share classes of a sub-fund

Please find the new CBI templates for UCITS attached.

The content of the CBI UCITS Notification letter is exactly the same the new template included in the Annex 1 of the Commission Implementing Regulation (EU) 2024/910.

The CBI has separate de-notification letters for de-notification of sub-funds/funds and for de-notification of specific share classes and they have completely revised the format and content of their denotification letters.

The main changes to the De-notification Letters are the following (same applies to both):

- Part I and Part II are aligned with the new notification letter template and concerning the information about the Management Company and the UCITS. The scope table additionally requires stating the effective de-notification date.
- Part III relates to the "Blanket offer for the repurchase or redemption of units held by investors in the Host Member State". In particular please note:
- there is an additional tickbox concerning remaining investors "information not available" whereby the requirements are identical to the ones if ticking "yes"
- it is required to state by which entity the blanket offer is addressed to investors
- it is required to specify the exact dates of the 30 days period during which the blanket offer must be available
- it is required to specify the medium by which the known investors will be informed personally
- Part IV relates to the "Intention to terminate arrangements made for marketing the units of UCITS".

SUPERVISION

CBI publishes Review of Fitness and Probity Regime

On 11 July 2024, the Central Bank of Ireland (CBI) published an independent review of the Fitness and Probity (F&P) Regime.

The F&P regime is aimed at ensuring that individuals in key roles within regulated entities in the financial sector are fit and proper to carry out their responsibilities. In the last 4 years (2020-2023), the Central Bank approved over 11,000 individual roles.

The competence and integrity of individuals taking up key responsibilities within financial firms is paramount for ensuring that the provision of financial services in Ireland is developed on strong foundations in terms of accountability, effective risk management and overall culture and behaviour oriented to the benefit of the final users and the respect of the regulatory framework.

An effective gatekeeping function requires three ingredients to be in place:

1. a clear framework in which supervisory judgement is exercised according to principles that are well understood by all parties,
2. financial firms taking ownership of the process, with rigorous vetting of potential candidates and choice of board members and key function holders that ensure the highest standards of professionalism and ethical behaviour, matching the complexity and sensitivity of the business conducted by the firm,
3. fair procedures being strictly observed throughout the F&P process, reflecting the sensitive nature of the assessment, for both firms and individuals, including the constitutional principles in place in Ireland to protect the individual right to earn a living.

An extensive analysis of good practices at other supervisory authorities in the EU, the UK and Australia was a key element of the review.

The review concludes that the conduct of the F&P regime at the Central Bank is broadly in line with peer regulators in different jurisdictions across a number of dimensions:

- standards are comparable and robust supervisory judgement is utilised;
- statistics on outcomes (approvals, withdrawals of applications, refusals) are in line with other supervisory authorities and - do not signal either a particular stringency or leniency of the process; and
- timelines are well aligned with the target service standards and generally faster than in other countries.

The review also highlighted the need for targeted improvements in process consistency across firms of different sizes which are operating in different financial sectors. The recommendations focus on three areas: clarity of supervisory expectations, governance of the process, and the fairness, efficiency and transparency of the process. The review identified a number of areas in which the operation of the F&P regime could be improved including the creation of a new unit to bring together all F&P work.

The recommendations of the review will be implemented over the coming months and should be in place by the end of the year.

ITALY

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

Banca d'Italia publishes consultation on amendments to the Provisions on organisation, procedures and internal controls for AML purposes of 26 March 2019

On 31 July 2024, the Banca d'Italia published a consultation on amendments to the Provisions on organisation, procedures and internal controls for anti-money laundering (AML) purposes of 26 March 2019.

The consultation is aimed at collecting comments and observations on the new aspects brought about by the proposed amendments to the Provisions on AML internal organisation and controls and by the Manual for periodic anti-money laundering reporting, which is an integral part of the aforementioned provisions

The draft of the amendments to the "Provisions on the organisation and internal controls of AML", supplemented to introduce the obligation for banking and financial intermediaries to transmit periodic anti-money laundering reports to the Banca d'Italia, and of the "Manual for anti-money laundering supervisory reports", which identifies the reports and sets the rules for their compilation, is submitted to public consultation.

The acquisition of structured AML/CFT information is essential for the Banca d'Italia's definition of efficient processes for the analysis of money laundering and terrorist financing risk; the data transmitted by intermediaries with prudential supervisory reports and aggregated SARA reports do not represent a sufficient basis for achieving this objective. For this reason, the Banca d'Italia, starting from 2022, has launched a structural collection of data and information relevant for AML/CFT purposes through an anti-money laundering questionnaire submitted in excel format to all supervised intermediaries, according to a widespread practice the European level.

According to art. 7, paragraph 2, letter b), of Legislative Decree no. 231/2007 – which allows the Supervisory Authorities to request the sending of periodic reports relevant for the purposes of preventing money laundering and terrorist financing, in the manner and within the terms established in its Secondary Provisions – it is considered appropriate to transform the collection of data carried out through the questionnaire into a report that presents the form, the schemes and controls typical of the Banca d'Italia's reporting system.

The new method of transmitting information will allow the Banca d'Italia to acquire the data set in a systematic and structured way and, at the same time, intermediaries to make their systems for the transmission of information more efficient through, for example, the use of forms of automation.

The consultation closes on 14 September 2024.

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

Italy publishes Cybersecurity Law

On 2 July 2024, Italy published on its Official Gazette no. 153/2024, the law relating to strengthening cybersecurity and computer crimes.

The Law introduces stringent requirements for public administrations, for entities falling under the Cybersecurity Perimeter, and for companies falling under the NIS1 and the NIS2 Directives.

It also tightens penalties to counter cybercrime.

The main changes introduced by the law are:

- Establishment of the Interministerial Committee for Cybersecurity (CIC): this body will have the task of coordinating national cybersecurity policies and defining strategies for preventing and responding to cyber attacks.
- Srengthening of the National Cybersecurity Agency (ACN): the competences and resources of the ACN are expanded, making it the national reference point for cyber security.
- Introduction of new crimes: New computer crimes are defined, including the abusive access to critical computer systems and the spread of malware, with harsher penalties for those who commit these crimes.
- Notification obligation for companies: companies operating in strategic sectors will have to promptly notify the ACN of any IT security incidents.
- Training and awareness programs: The law provides for the implementation of educational programs in schools and universities to raise awareness of cyber risks.
- Creation of a National Coordination Centre: this centre will be responsible for coordinating the activities of preventing and combating cyber threats at national level.
- Incentives for companies: tax incentives are introduced for companies that invest in cybersecurity technologies and training.
- International collaboration: The law promotes greater cooperation with other countries and international organizations to counter transnational cyber threats.

Council of ministers approves NIS2 Directive transposition decree- Preliminary examination (draft legislative decree)

On 10 June 2024, the Council of ministers approved the NIS2 Directive Transposition Decree.

The scheme under consideration aims to transpose Directive (EU) 2022/2555 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 and repealing Directive (EU) 2016/1148

Directive (EU) 2022/2555 responds to the need to strengthen the resilience and security of network and information systems in the EU.

The main innovations introduced are:

- the expansion of the subjective scope of application of the discipline;

- distinction between "essential subjects" and "important subjects" the adoption of a dimensional criterion for their identification;
- the rationalisation of minimum security requirements and mandatory notification procedures;
- the adoption of a "multi-risk" approach;
- the regulation of coordinated vulnerability disclosure (CVD) and the specific coordination functions attributed to national CSIRTs;
- the implementation of cooperation measures, in order to support the coordinated management of large-scale cybersecurity incidents and crises at the operational level.

The new directive excludes from the scope of application entities operating in areas such as national security, public security or defence, law enforcement, including the prevention, investigation, detection and prosecution of crimes, parliaments and central banks. The chapter relating to supervision and sanctions does not apply to constitutional bodies and bodies of constitutional importance.

On the subject of cooperation, it introduces the NIS2 Cooperation Group.

It provides for a specific sanctioning system, stricter and harmonised at European level, in order to ensure greater uniformity and deterrence throughout the EU. The penalties are adapted to the provisions of the Directive and provide for administrative fines of up to €10,000,000.

The legislative decree is submitted to the Council of Ministers for preliminary approval and, after obtaining the other opinions provided for by law, it will be transmitted to the Chamber of Deputies and to the Senate of the Republic and submitted to the opinion of competent parliamentary bodies.

Once the opinion of the parliamentary bodies has been obtained, the measure will be again submitted to the Council of Ministers for final approval.

EUROPEAN CROWDFUNDING SERVICE PROVIDERS (ECSP) REGULATION

CONSOB publishes consultation on proposals to redefine the supervisory fee payable by entities carrying out securitisation transactions and crowdfunding service providers

On 31 July 2024, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published the annual contribution 2024.

Consob proceeds annually to determine, pursuant to art. 40 of law no. 724/1994, the subjects required to contribute, the amount of the contribution due, as well as the methods and terms of payment of this contribution.

Consob, with resolution no. 22915 of 6 December 2023, made necessary following the amendments to the regulatory framework, effective from January 2024.

In the current contribution regime, they are subject to the payment of the contribution supervises securitization special purpose vehicles (SSPEs), originators, promoters and lenders originating under the supervision of Consob pursuant to art. 4-septies.2 paragraph 6 of Legislative Decree no. 58/1998 in the period from 1 January 2023 to 31 December 2023 (art. 3, letter z) resolution 22915/23.

The CONSOB intends to redefine the contribution case by providing that the person designated pursuant to Article 7(2) of Regulation (EU) 2017/2402 (SECR), who is responsible for fulfilling the information obligations referred to in paragraphs 1, first subparagraph, letters a), b), d), e), f) and g) of the same Regulation, is required to pay, and that the amount of the contribution, calculated at a fixed rate, is diversified to take into account the different supervision carried out on transactions under the responsibility of CONSOB pursuant to Articles 6 to 9 of the SECR (Article 4 septies.2, paragraph 6 letter b) of Legislative Decree no. 58/1998), compared to STS securitisations (Article 4 septies.2, paragraph 6 letter c) of Legislative Decree no. no. 58/1998).

As far as crowdfunding service providers are concerned, with the issuance of Law No. 238 of 23 December 2021 (European Law 2019-2020) and Legislative Decree no. 30 of 10 March 2023, the primary legislation has been adapted to Directive (EU) 2020/1504 and Regulation (EU) 2020/1503 on European crowdfunding service providers for businesses, respectively. In particular, the Directive and the Regulation have supplemented the relevant discipline by allowing crowdfunding service providers to promote both lending offers and financial instruments (lending-based crowdfunding and investment-based crowdfunding) at the same time. With resolution no. 22720 of 1 June 2023, CONSOB adopted the Regulation on crowdfunding services in implementation of Regulation (EU) 2020/1503 and Articles 4-sexies.1 and 100-ter of the Consolidated Law on Finance.

For the purposes of subjecting the category to contributions, it is necessary to amend the provision on the contribution regime in force, precisely defining the subjective scope of application of the contribution pursuant to the new rules.

As regards the pricing criterion, in consideration of the start-up phase of the adoption of the new legislation, which does not currently allow quantitative data referring to the activity (such as revenues or turnover), the contribution will be commensurate with the number of crowdfunding services and providing that the contribution is increased by an additional amount, if the provider is also authorised to carry out the individual management of loan portfolios.

Comments on the consultation document must be received by 2 August 2024.

FINANCIAL SUPERVISION

CONSOB publishes the document containing the Regulatory Activities Plan for 2024 and the Regulatory Impact Assessment Plan for the two-year period 2024-2025

On 1 July 2024, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published the document containing the Regulatory Activities Plan for 2024 and the Regulatory Impact Assessment Plan for the two-year period 2024-2025.

The purpose of this document is to inform the public on the main issues that will be the subject of Consob's regulatory activity, or on which it intends to carry out regulatory impact checks to assess the suitability of its regulatory activity to achieve the purposes pursued, in relation to the onerous nature of the regulatory framework.

The document contains a brief introduction on the developments of the European and national regulatory framework in the previous year (2023), their expected evolution for 2024, and a table containing the programme of planned regulatory interventions.

These include:

- The regulatory adjustment activity deriving from the issuance of Law No. 21 of 5 March 2024 (the so-called "Capital Law"), with particular regard to the definition of procedural rules aimed at regulating the submission of commitments by the recipients of a letter of objection from Consob, which will be followed by the activity of implementation of the amendments to the Consolidated Law on Finance - Consolidated Law on Finance that will be defined as part of the delegation provided for in Article 19 of the Capital Law;
- The revision of the Markets Regulation to adapt the Institute's rules to Regulation (EU) 2022/2554 on digital operational resilience for the financial sector ("DORA"), Regulation (EU) 2024/791 (amending MiFIR) and Directive (EU) 2024/790 (amending MiFIDII);
- The exercise of the additional regulatory powers provided for by Decree-Law No. 25 of 17 March 2023, converted with amendments by Law No. 52 of 10 May 2023 ("FinTech Decree")");
- The revision of Regulation no. 20267, of 18 January 2018, on the disclosure of non-financial information, in order to adapt the rules contained therein to Directive (EU) 2022/2464, on corporate sustainability reporting ("CSRD")");
- The activity of adapting to Regulation (EU) 2023/1114 on markets in crypto-assets ("MiCA Regulation");
- The activity of adapting secondary legislation to Regulation (EU) 2023/2631 on European Green Bonds and on voluntary disclosure for bonds marketed as environmentally sustainable bonds and for sustainability-linked bonds ("EuGB Regulation");
- The adoption of a Regulation on the authorisation and supervision of entities entitled to submit bids in the emission allowance auction market pursuant to Article 20-ter, paragraph 1, of the Consolidated Law on Finance;
- The audit of the regulatory provisions on the supervision of third-country auditors and the independence of auditors of public-interest entities ("PPIs").

Finally, in 2024, further regulatory interventions have been envisaged in order to regulate the use of the new powers pertaining to the so-called mystery shopping, attributed to Consob by the Consumer Code, as amended by European Law 2019-2020.

The planning document also presents the table of regulatory impact assessment (VIR) activities that Consob intends to carry out during the two-year period 2024-2025 concerning:

the provisions of the Issuers' Regulation on takeover bids;

- Communication no. 1/23 - "Capital strengthening transactions reserved for a single investor: non-Standard POC, SEDA, SEF and other transactions with similar characteristics - Requests pursuant to Article 114, paragraph 5, of Legislative Decree no. No 58/1998".
- Finally, stakeholders are provided with a brief overview of the activities concerning the adoption and/or amendment of soft law acts that the Institute intends to launch during 2024.

INTERNAL CONTROL

Banca d'Italia publishes instructions for the exercise of enhanced controls on the work of qualified intermediaries

On 26 July 2024, the Banca d'Italia published instructions for the exercise of enhanced controls on the work of qualified intermediaries.

The instructions are published alongside with Istituto per la vigilanza sulle assicurazioni (IVASS), Ministry of Economy and Finance of Italy and Commissione di vigilanza sui fondi pensione (COVIP).

Authorised intermediaries shall adopt appropriate procedural safeguards – possibly adapting or supplementing the existing risk management system – according to a risk-based approach and on the basis of the principle of proportionality, based on the type of activity carried out, size and operational complexity, appropriately formalised in internal regulations and aimed at ensuring compliance with the prohibition on financing the companies referred to in Article 1, paragraph 1, of the Law. These safeguards are defined in accordance with the provisions on the governance, organisation and internal control system contained in the sector regulations applicable to each authorised intermediary.

The safeguards are defined taking into account the operations of the authorised intermediary and the companies controlled by it.

They include at least the obligation to consult "publicly available lists of companies producing anti-personnel mines and cluster munitions and submunitions" (Article 4 of the Act) before making the financing. To this end, the authorised intermediaries shall adopt control procedures capable of determining the correspondence of the identification data of the company receiving the loan, based in Italy or abroad, and of the subsidiaries or associated companies, with those contained in the aforementioned lists. Authorised intermediaries may also use, where available, the identification data acquired as part of customer due diligence activities to combat money laundering and terrorist financing.

The authorised intermediaries shall establish adequate information flows aimed at ensuring that the bodies are fully aware and governable of the organisational safeguards adopted to verify compliance with the prohibition on financing, as well as timely knowledge of any violations of the prohibition.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

Bank of Italy issues communication on MiCAR

On 22 July 2024, the Banca d'Italia issued a communication on MiCAR.

At the national level, on 20 February the draft legislative decrees containing the provisions for the adaptation of the national regulatory framework to MiCAR and TFR recast were submitted to public consultation. In particular, within the framework defined therein, the Bank of Italy and Consob will be designated as competent authorities pursuant to MiCAR, with the attribution to the Bank of Italy of competences in the field of prudential supervision with reference to both EMT and ART issuers (also with regard to market access) and CASPs. The Institute will also be competent, limited to EMT issuers, for transparency, fairness of conduct and protection of EMT holders in relation to the issuance of such instruments. The Bank of Italy will also be the competent authority for supervising compliance with anti-money laundering obligations by crypto-asset service providers. The Institute's powers to supervise the regular functioning of the payment system remain unaffected.

With the launch of the new regime, the Bank of Italy considers it appropriate to once again draw the attention of stakeholders and users to the differences between the different categories of crypto-assets. In particular, the Communication: i) reiterates the unsuitability of so-called other-than crypto-assets - especially where they are not hedged by underlying assets (so-called unbacked) - to be used for payment purposes; ii) calls for particular attention to be paid when ARTs are offered to customers for payment purposes, due to the potential fluctuations in the value of these instruments and the consequent absence of the fiduciary element based primarily on repayment at nominal value; iii) in line with the provisions of MiCAR, it recalls that EMTs are instead inherent in a payment function.

With reference to the protection of EMT holders, stakeholders must ensure that potential holders are fully aware of both the potential risks associated with the technology used and the rights and obligations due in relation to the specific token.

The specific characteristics of the different types of crypto-assets and enabling technologies and their suitability to perform or not perform a payment function are also of central importance from the point of view of the sound and prudent management of the company. These aspects must therefore be adequately taken into account by entities intending to initiate activities governed by MiCAR, in order to define sustainable business models and to identify and mitigate specific risk profiles not only of a financial but also of an operational nature, also taking into account the high interconnection between the entities operating in these markets.

In addition, the parties involved in carrying out the new activities will have to ensure full compliance with the provisions on the fight against money laundering and terrorist financing, also ensuring the adequacy of the related organisational and control structures.

The Bank of Italy reiterates that it will carry out the tasks entrusted to it also taking into account the impact that a crypto-asset can have on the regular functioning of the payment system. The Communication invites all parties who intend to carry out the activities regulated by MiCAR to assess in advance the possible effects of initiatives and projects on the regular functioning of the payment system and to start in time the assessment of the interventions necessary to ensure compliance with the new requirements provided for by the reference regulations. The Bank of Italy reserves the right to exercise the powers referred to in art. 146, paragraph 2, of the TUB where the relevant conditions are met, in order to safeguard the functioning of the payment system, its reliability and efficiency, as well as the protection of payment service users.

In order to facilitate an orderly start of the new regime, pending the completion of the national legislation, with the Communication the Bank of Italy makes itself available for informal discussions to guide interested parties to launch initiatives in this sector. To this end, a further communication will be published to invite operators to contact the competent structures, before the formal submission of notifications and authorisation applications, as well as to provide information on how to transmit the relevant documentation.

The MiCAR will be fully applicable from 30 December 2024; the rules on the issuance, offer to the public and admission to trading of EMTs and ARTs apply from 30 June 2024.

Starting from the dates mentioned above, the issuance, offer to the public and admission to trading of ART or EMT, as well as the provision of services for crypto-assets, are therefore reserved for the categories of entities expressly identified by MiCAR.

The new European regulation on crypto-assets is completed by Regulation (EU) 2023/1113 (so-called Transfer of Funds Regulation recast - TFR recast), which extended all the anti-money laundering obligations provided for financial intermediaries to crypto-asset service providers.

SECURITIES

CONSOB publishes Securitisations FAQs to assist market participants in the application of the current regulatory framework

On 9 August 2024, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published Securitisations FAQs to assist market participants in the application of the current regulatory framework.

The FAQs have been prepared to provide clarifications on issues raised by market participants following the publication of Resolution 22833/2023. They are not binding, but serve as a guide for parties to a securitisation transaction at the time of transmission of information to CONSOB pursuant to the Securitisation Regulation.

Notification of Securitisation Transactions is containing questions regarding:

a. Notification operating modes;

b. Timing and methods of compliance with disclosure obligations;

c. Disclosure of significant events;

d. Coordination with the Bank of Italy and other national competent authorities (re-notifications);

e. The declaration of compliance with the requirements of the SECR.

SECURITISATION REGULATION

CONSOB publishes resolution on national discretion provided for in art. 26-sexies, paragraph 10, of the Securitisation Regulation (EU) 2017/2402

On 18 July 2024, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published a resolution on national discretion provided for in Art. 26-sexies, paragraph 10, of the Securitisation Regulation (EU) 2017/2402.

This regulation lays down a general framework for securitisation and creates specific frameworks for simple, transparent, and standardised (STS) securitisation. It aims to enhance market stability and investor protection.

It addresses issues related to the structure and characteristics of securitised financial products, improving transparency and standardising them to reduce risk and enhance market functioning.

Amendments via Regulation (EU) 2021/557:

The regulation was amended to support recovery from the COVID-19 crisis. It introduced frameworks for "on-balance-sheet" and "on-balance-sheet synthetic" securitisations, which involve retaining securitised assets on the originator's balance sheet.

Under certain conditions, competent authorities can allow collateral in the form of a cash deposit with the originator or its affiliates. This discretion is provided when there are market difficulties or objective impediments due to the credit quality assigned to institutions or the significant concentration of financial entities. Credit Quality Step 3: A lower credit quality than typically required (Step 2) can be accepted if justified by local market conditions.

In the case of on-balance-sheet synthetic securitisations, in cases where other credit protection is provided pursuant to Article 26-sexies(8)(c) of the Securitisation Regulation, in accordance with the provisions of Article 26-sexies(10), subparagraph 3, collateral in the form of cash deposit with the originator or one of its affiliates, if the originator or one of its affiliates meets the requirement of credit quality step 3, in line with the attribution of the assessments referred to in Article 136 of Regulation (EU) No 575/2013.

This resolution is published on CONSOB's website and in the Official Gazette of the Italian Republic. It enters into force on the day following the date of publication in the Official Journal.

SUSTAINABILITY

CONSOB publishes call for attention to intermediaries on ESG issues for less sophisticated customers

On 29 July 2024, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published a call for attention to intermediaries on ESG issues.

Consob intervenes to make ensure that the information on sustainable finance relating to ESG (Environmental, Social, Governance) issues is increasingly clear, concise and understandable even for less sophisticated customers. Clients' preferences and needs on these issues must also be effectively considered in the assessment of the adequacy of investments and in the governance of products.

In particular, CONSOB, in the light of the monitoring activity conducted on the matter and the operational approaches detected, underlines some key elements worthy of careful consideration in the current stage of implementation of the regulatory framework. The reminder is accompanied by a list of first positive and negative operating practices that have emerged in practice, which may be useful to support intermediaries in the adoption of more consistent and advanced application methods, for the purpose of better compliance with the discipline.

The Attention Call - which does not introduce new rules, but leverages prescriptions already in force - was made appropriate due to the voluminous production of EU legislation, which has rapidly stratified over the last few years.

Also in light of the recall, Consob will continue to exercise careful supervision over intermediaries to verify full compliance with the complex regulatory framework governing sustainable finance.

Council of ministers approves the CSRD directive transposition decree- Preliminary examination (draft legislative decree)

On 10 June 2024, the Italian Council of Ministers approved the CSRD Transposition Decree.

The Council of Ministers, on the proposal of the Ministers for European Affairs, the South, Cohesion Policies and the NRRP, Raffaele Fitto, and for the Economy and Finance, Giancarlo Giorgetti, approved a legislative decree transposing Directive (EU) 2022/2464, amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting, and for the adaptation of national legislation.

The draft legislative decree transposes Directive 2022/2464/EU (CSRD) which strengthens and extends the sustainability reporting obligations already imposed on companies by Directive 2014/95/EU (NFRD), concluding a path undertaken, at EU level, with the 2015 Paris Agreement and continued with the 2018 Sustainable Action Plan, as well as the 2019 European Green Deal.

In particular, Directive 2022/2464/EU, in order to strengthen non-strictly financial reporting obligations, provides:

- extension of non-financial reporting obligations to SMEs (other than micro-enterprises) while the obligations provided for by the NFRD are addressed only to 'large companies that are public-interest entities and which, at the balance sheet date, have an average number of employees employed equal to 500', the reporting obligations introduced by the CSRD are incumbent, in addition to all large enterprises, also to small and medium-sized enterprises (with the exception of micro-enterprises) that are public interest entities;
- replacement of "non-financial reporting" (concerning "environmental, social, employee-related information, respect for human rights, the fight against active and passive corruption to the extent necessary for understanding the company's performance, its results, its situation and the impact of its activity" pursuant to Article 1, paragraph 1, NFRD) with "sustainability reporting" (consisting of "information necessary for understanding the impact on sustainability matters, as well as information necessary to understand how sustainability matters affect the company's performance, performance and position').

The legislative decree was now submitted to the Council of Ministers for preliminary approval and, after obtaining the other opinions provided for by law, it will be transmitted to the Chamber of Deputies and to the Senate of the Republic and submitted to the opinion of competent parliamentary bodies.

Once the opinion of the parliamentary bodies has been obtained, the measure will be again submitted to the Council of Ministers for final approval.

JERSEY

BLOCKCHAIN / DISTRIBUTED LEDGER TECHNOLOGY (DLT)

JFSC publishes asset tokenisation and initial coin/token offerings guidance

On 28 August 2024, the Jersey Financial Services Commission (JFSC) published asset tokenisation and initial coin/token offerings guidance.

JFSC has published new guidance in response to the growing trend of asset tokenisation. They recognise the innovative potential of blockchain technology and the benefits that tokenisation can facilitate for the finance industry, such as liquidity, accessibility and transparency.

JFSC monitors global regulatory developments in this space and, in response to the potential benefits and growing demand, this guidance seeks to promote Jersey's competitiveness as an international finance centre and support industry by clarifying their regulatory expectations when it comes to this technology.

This guidance is principles-based, allowing its application to a wide array of tokenised products, including equities, units in a fund, and bonds. Issuers of tokenised assets are required to consider the nature of the underlying asset, product and activities when submitting their application.

JFSC has also published updated initial coin/token offerings (IC/TO) guidance. This guidance refreshes their original guidance published in July 2018 and reflects updated terminology. Together with the tokenisation of real world assets guidance, it achieves a set of regulatory guidance that more effectively responds to the distinct nature and use of these assets.

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

JFSC publishes Updated Jersey Private Fund Guide

On 2 July 2024, the Jersey Financial Services Commission (JFSC) published Updated Jersey Private Fund Guide.

Jersey Private Fund Guide is updated to improve the Jersey Private Fund regime.

The updates are the product of significant collaboration with the Government of Jersey, the Jersey Funds Association (JFA), the Jersey Association of Trust Companies (JATCo) and Jersey Finance Limited.

The Jersey Private Fund (JPF) Guide sets out the JPF regime. The JPF Guide provides fund promoters with a cost-effective, fast-track (48 hour) regulatory approval process for their private fund, which can be offered to up to 50 investors that meet certain eligibility requirements.

The changes are designed to keep the JPF Guide up-to-date and include:

- **Carry and/or co-investment vehicles**
  A recognition that co-investment can, in some cases, form part of a fund's carry/incentive arrangement.
- **Investor eligibility**
  General: they have clarified that investor eligibility is satisfied upon admission. That eligibility can continue to be relied upon despite a status change, for example a departing 'employee, director, partner or expert consultant'.

Transfers (for example death or bankruptcy): for any involuntary interest, such as on death or bankruptcy, there is no requirement for the transferee to qualify through the same criteria as the transferor, but the transferee will, itself, need to meet the investor eligibility requirements as defined in the JPF Guide.

Service providers: they have expanded the categories of 'professional investor' for the benefit of the JPF's service providers, by:

- Replacing 'senior employee' with 'financially sophisticated employee' to take a more inclusive approach to the changing demographics within JPF fund management and/or advisory teams;
- Iincluding a reference to 'expert consultant' for added flexibility;
- Governing body.

They have clarified that their expectation is that there should be at least one or more Jersey resident directors appointed to a JPF board or to its governing body. The 2024 JPF annual compliance return will request additional data by asking how many Jersey resident or non-Jersey resident directors are on the board of the JPF or its governing body, and how many of those directors are employees of the Jersey-based designated service provider (DSP) or a group entity of the DSP.

Arrangements that fall outside of JPF

They have made changes to the section that deals with arrangements that are not to be treated as JPFs. These include certain family (including family office) arrangements as well as some incentive arrangements (for example carry and/or co-investment vehicles).

The definitions of employees and family connections (including the term 'relative') have been widened and now include trusts established for a person satisfying the wider definition of 'family connection' (not just for a specific person or their dependents).

They have also clarified their expectation that a JPF should:

- Be established in Jersey and/or,
- Have its governing body and management and control in Jersey.

Where a JPF is established in a country or territory outside of Jersey, having its governing body and management and control outside of Jersey, post authorisation they will request additional data on the JPF from the DSP, to establish the JPF's indirect but relevant nexus to Jersey.

Additional key changes

They have added certain consequential changes/references to the Money Laundering (Jersey) Order 2008 and the JFSC's Outsourcing Policy in the guide.

From July 2024, they have removed the optionality for a regulated person who is only registered for investment business under the Financial Services (Jersey) Law 1998 to apply to act as the DSP for a 'very private' (15 or fewer offers/investors) JPF.

The JPF Guide has been updated to reflect this change of policy.

LUXEMBOURG

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

CSSF publishes Notification Letter for AIFMs who wish to manage AIFs in another Member State or establish a branch / La CSSF publie une lettre de notification pour des GFIA souhaitant gérer des FIA dans un autre État membre ou établir une succursale

On 23 July 2024, the Commission de Surveillance du secteur financier (CSSF) published the notification letter for AIFMs who intends to manage AIFs established in a Member State other than its Home Member State or to establish a branch under the AIFMD.

This notification form should be used by any AIFM intending to manage AIFs in another member state or to establish a branch as per the provisions of the AIFMD.

Version française

Le 23 juillet 2024, la Commission de Surveillance du Secteur Financier (CSSF) a publié la lettre de notification destinée aux gestionnaires de FIA qui souhaitent gérer des FIA établis dans un État membre autre que leur État membre d'origine ou établir une succursale conformément à la directive AIFM.

Ce formulaire de notification doit être utilisé par tout gestionnaire de FIA qui souhaite gérer des FIA dans un autre État membre ou établir une succursale conformément aux dispositions de la directive AIFM.

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

CSSF publishes Annex of Circular CSSF 22/822 (Version of 1 July 2024) on high-risk and monitored jurisdictions / La CSSF publie l'annexe de la circulaire CSSF 22/822 (version du 1er juillet 2024) relative aux juridictions à haut risque et surveillées

On 2 July 2024, the Commission de Surveillance du secteur financier (CSSF) published the Annex of Circular CSSF 22/822 (Version of 1 July 2024) on high-risk and monitored jurisdictions.

The high-risk jurisdictions are:

- Democratic People's Republic of Korea
- Iran
- Myanmar

Two jurisdictions have been added to the list of jurisdictions under increased monitoring of the FATF:

- Monaco
- Venezuela

Version française

Le 2 juillet 2024, la Commission de Surveillance du secteur financier (CSSF) a publié l'Annexe de la Circulaire CSSF 22/822 (Version du 1er juillet 2024) relative aux juridictions à haut risque et surveillées.

Les juridictions à haut risque sont :

- *la République populaire démocratique de Corée*
- *l'Iran*
- *le Myanmar*

Deux juridictions ont été ajoutées à la liste des juridictions sous surveillance renforcée du GAFI :

- *Monaco*
- *le Venezuela*

PFI publishes Circular 882 on the creation of an AML/CFT unit / Le PFI publie la circulaire 882 relative à la création d'une unité de LBC/FT

On 18 July 2024, the Luxembourg Tax Authority - Portail de la fiscalité indirecte (PFI) published the Circular 882 on the creation of an AML/CFT unit.

The Luxembourg government has issued Circulaire ? 822, dated 18 July 2024, announcing the creation of a Service de Contrôle Blanchiment under the AED. This move is part of efforts to address shortcomings identified by the Council of Europe and the Financial Action Task Force (FATF) regarding the effectiveness of on-site anti-money laundering controls due to limited human resources.

The new anti-money laundering service, stationed in Luxembourg, will specialize in combating money laundering, terrorism financing, and monitoring the application of restrictive financial measures. Under the guidance of a chief officer, supported by deputy chiefs and other staff, this unit aims to enhance the regulatory compliance and oversight capacity of the administration.

The oversight of this bureau's activities will be managed by the Financial Crime Division, as per the service note from 10 June 2024.

Version française

Le 18 juillet 2024, le Portail de la fiscalité indirecte (PFI) a publié la circulaire 882 relative à la création d'une unité de lutte contre le blanchiment de capitaux et le financement du terrorisme.

Le gouvernement luxembourgeois a publié la circulaire 822, datée du 18 juillet 2024, annonçant la création d'un Service de Contrôle Blanchiment au sein de l'AED. Cette initiative s'inscrit dans le cadre des efforts visant à remédier aux lacunes identifiées par le Conseil de l'Europe et le Groupe d'action financière (GAFI) concernant l'efficacité des contrôles anti-blanchiment sur place en raison de ressources humaines limitées.

Le nouveau service de lutte contre le blanchiment de capitaux, basé au Luxembourg, sera spécialisé dans la lutte contre le blanchiment de capitaux, le financement du terrorisme et le suivi de l'application des mesures financières restrictives. Sous la direction d'un chef de service, soutenu par des chefs adjoints et d'autres membres du personnel, cette unité vise à renforcer la conformité réglementaire et la capacité de surveillance de l'administration.

La surveillance des activités de ce bureau sera assurée par la Division de la criminalité financière, conformément à la note de service du 10 juin 2024.

BLOCKCHAIN / DISTRIBUTED LEDGER TECHNOLOGY (DLT)

Luxembourg publishes Bill 8425 (Blockchain Law IV) / Le Luxembourg publie le projet de loi 8425 (loi Blockchain IV)

On 25 July 2024, the Chambre des députés de Luxembourg published the Bill 8425 on the distributed ledger technology (DLT) regime.

The proposed law aims to introduce targeted amendments to the modified Law of 6 April 2013, related to dematerialized securities. These changes aim to allow the financial sector to leverage new technologies, particularly DLT, while ensuring enhanced legal security. The government's goal is to boost the attractiveness and competitiveness of Luxembourg's financial marketplace by creating a legal framework supportive of digital securities, providing more flexibility, security, and transparency for issuers and investors. This initiative is a continuation of Luxembourg's pioneering laws on distributed ledger technology, often referred to as "Blockchain" laws.

A significant feature of the proposed law is the introduction of a control agent for securities issuance. This control agent will fully utilize DLT to secure and share information on the holding of issued securities among market actors. Their duties will include maintaining the issuance account, monitoring the securities holding chain, and reconciling the issued securities. This new model offers an alternative to the existing dual-tiered holding chain model between the central account holder and secondary account holders. Dematerialized securities recorded in an issuance account maintained by a control agent can thus be held by account holders in securities accounts within a distributed ledger.

This regime is optional for issuers and complements the existing legal framework by recognizing the potential of new technologies without compromising certainty and security for issuers and investors. The proposed law represents a significant step towards facilitating the use of DLT in the financial sector, aiming to solidify Luxembourg's position as a leading center in the European Union for the use of DLT, particularly in the issuance of dematerialized securities.

Furthermore, targeted amendments are proposed for the modified law of 5 April 1993, related to the financial sector, and the modified law of 23 December 1998, which established a supervisory commission for the financial sector. These changes account for the introduction of the control agent activity in the modified law of 6 April 2013, concerning dematerialized securities.

Version française

Le 25 juillet 2024, la Chambre des députés - Luxembourg a publié le projet de loi 8425 sur le régime DLT.

La proposition de loi vise à introduire des modifications ciblées à la loi modifiée du 6 avril 2013, relative aux titres dématérialisés. Ces changements visent à permettre au secteur financier de tirer parti des nouvelles technologies, notamment de la technologie des registres distribués (DLT), tout en garantissant une sécurité juridique renforcée. L'objectif du gouvernement est de renforcer l'attractivité et la compétitivité de la place financière luxembourgeoise en créant un cadre juridique favorable aux titres numériques, offrant plus de flexibilité, de sécurité et de transparence aux émetteurs et aux investisseurs. Cette initiative s'inscrit dans la continuité des lois pionnières du Luxembourg sur la technologie des registres distribués, souvent appelées lois « Blockchain ».

Une caractéristique importante de la proposition de loi est l'introduction d'un agent de contrôle pour l'émission de titres. Cet agent de contrôle utilisera pleinement la DLT pour sécuriser et partager les informations sur la détention des titres émis entre les acteurs du marché. Ses fonctions comprendront la tenue du compte d'émission, le suivi de la chaîne de détention des titres et le rapprochement des titres émis. Ce nouveau modèle offre une alternative au modèle existant de chaîne de détention à deux niveaux entre le titulaire de compte central et les titulaires de comptes secondaires. Les titres dématérialisés enregistrés sur un compte d'émission tenu par un agent de contrôle peuvent ainsi être détenus par les titulaires de compte sur des comptes-titres au sein d'un registre distribué.

Ce régime est facultatif pour les émetteurs et complète le cadre juridique existant en reconnaissant le potentiel des nouvelles technologies sans compromettre la certitude et la sécurité pour les émetteurs et les investisseurs. La loi proposée représente une étape importante vers la facilitation de l'utilisation de la DLT dans le secteur financier, visant à consolider la position du Luxembourg en tant que centre de premier plan dans l'Union européenne pour l'utilisation de la DLT, notamment dans l'émission de titres dématérialisés.

De plus, des modifications ciblées sont proposées pour la loi modifiée du 5 avril 1993 relative au secteur financier et la loi modifiée du 23 décembre 1998 instituant une commission de surveillance du secteur financier. Ces changements expliquent l'introduction de l'activité d'agent de contrôle dans la loi modifiée du 6 avril 2013 relative aux titres dématérialisés.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

Chambre des députés publishes a press release on cryptoassets / La Chambre des députés publie un communiqué sur les cryptoactifs

On 9 July 2024, the Chambre des députés du Luxembourg published a press release on cryptoassets.

The Bill 8387 aims to transpose several European regulations into national law, impacting both the crypto-asset market and European green bonds.

The bill is aligned with the European "MiCA" (Market in crypto assets) framework. It will be effective from 30 December 2024. There are 13 crypto-asset service providers (CASPs) in Luxembourg that need to comply with new regulatory standards set by the CSSF. The goal is to establish trust within the crypto industry and safeguard investors by leveraging CSSF's reputable oversight.

The bill also defines the standards for issuers to label their bonds as "green bonds," verified by financial rating agencies. The European framework is mandatory; Luxembourg cannot impose stricter criteria. A Transparency Clause requires disclosure of nuclear or gas components in the green bonds.

Version française

Le 9 juillet 2024, la Chambre des députés - Luxembourg a publié un communiqué de presse sur les crypto-actifs.

Le projet de loi 8387 vise à transposer en droit national plusieurs réglementations européennes, impactant à la fois le marché des crypto-actifs et les obligations vertes européennes. Texte hétérogène de 392 pages, il aborde la réglementation des crypto-actifs et les critères des « obligations vertes européennes » (EuGB).

Le projet de loi s'aligne sur le cadre européen « MiCA » (Market in crypto assets). Il entrera en vigueur à partir du 30 décembre 2024. Il existe 13 prestataires de services sur crypto-actifs (CASP) au Luxembourg qui doivent se conformer aux nouvelles normes réglementaires fixées par la CSSF. L'objectif est d'établir la confiance au sein de l'industrie des crypto-actifs et de protéger les investisseurs en tirant parti de la surveillance réputée de la CSSF.

Le projet de loi définit également les normes permettant aux émetteurs d'étiqueter leurs obligations comme « obligations vertes », vérifiées par les agences de notation financière.

Le cadre européen est obligatoire ; le Luxembourg ne peut pas imposer de critères plus stricts.

Clause de transparence : exige la divulgation des composants nucléaires ou gaziers des obligations vertes.

Des questions ont été soulevées sur la volatilité et les risques potentiels des crypto-actifs, notamment leur utilisation par le crime organisé. Le ministère a souligné l'importance de la réglementation pour équilibrer l'innovation du marché et la sécurité. En outre, des préoccupations concernant les critères nationaux et européens pour le label des obligations vertes ont été abordées. Le cadre adhère aux normes européennes, garantissant l'absence de critères nationaux supplémentaires, à l'exception des divulgations liées à la transparence.

CUSTODIANS / DEPOSITARIES

CSSF clarifies controls to be implemented by Luxembourg depositaries for AIFs investing in illiquid assets / La CSSF clarifie les contrôles à mettre en œuvre par les dépositaires luxembourgeois pour les FIA investissant dans des actifs illiquides

On 24 July 2024, the Commission de Surveillance du secteur financier (CSSF) published a clarification regarding controls to be implemented by Luxembourg depositaries in relation to Alternative Investment Funds (AIFs) investing in illiquid assets.

The CSSF has recently noted varying approaches among Luxembourg depositaries regarding the controls for executing their safekeeping duties related to ownership verification and record-keeping for AIFs investing in illiquid assets. Some depositaries conduct several checks and collect transaction documents before making investments, while others rely on ex-post checks.

The CSSF emphasizes that checks and controls must be conducted before the acquisition of illiquid assets (ex-ante) to comply fully with the safekeeping duties under Article 90 of AIFMR, as well as duties regarding timely settlement of transactions per Article 96 of AIFMR. Specifically, the CSSF expects the following procedures:

- Prior to Payment: The AIFM should notify the depositary of the transaction beforehand, along with supporting documents (drafts if applicable) to allow the depositary to verify the transaction's existence, the relevant assets, the transaction's structure, and counterparties before authorizing or proceeding with payments.
- At the Time of Payment: Consistency checks between payment instructions and the prior documents.
- After Payment: Verification of effective ownership of the assets by the AIF based on final executed transaction documents and, when applicable, an extract from an external register (e.g., land register, commercial register).

Additionally, Luxembourg-authorized AIFMs are required to provide relevant information to depositaries in a timely manner to enable them to fulfill their safekeeping duties regarding ownership verification and record-keeping as outlined in Article 90(2) of AIFMR. This requirement includes the mandated ex-ante controls.

Version française

Le 24 juillet 2024, la Commission de Surveillance du secteur financier (CSSF) a publié une clarification concernant les contrôles à mettre en œuvre par les dépositaires luxembourgeois en ce qui concerne les FIA investissant dans des actifs illiquides.

La CSSF a récemment constaté des approches différentes parmi les dépositaires luxembourgeois concernant les contrôles pour l'exécution de leurs obligations de conservation liées à la vérification de la propriété et à la tenue de registres pour les fonds d'investissement alternatifs (FIA) investissant dans des actifs illiquides. Certains dépositaires effectuent plusieurs contrôles et collectent les documents de transaction avant de procéder à des investissements, tandis que d'autres s'appuient sur des contrôles ex post.

La CSSF souligne que des contrôles doivent être effectués avant l'acquisition d'actifs illiquides (ex ante) pour se conformer pleinement aux obligations de conservation prévues à l'article 90 du règlement délégué (UE) n° 231/2013 de la Commission (AIFMR), ainsi qu'aux obligations concernant le règlement en temps voulu des transactions conformément à l'article 96 de l'AIFMR. Plus précisément, la CSSF s'attend à ce que les procédures suivantes soient suivies :

- *Avant le paiement : le gestionnaire de FIA doit informer le dépositaire de la transaction au préalable, ainsi que des pièces justificatives (projets le cas échéant) pour permettre au dépositaire de vérifier l'existence de la transaction, les actifs concernés, la structure de la transaction et les contreparties avant d'autoriser ou de procéder aux paiements.*
- *Au moment du paiement : contrôles de cohérence entre les instructions de paiement et les documents antérieurs.*

- *Après le paiement : vérification de la propriété effective des actifs par le FIA sur la base des documents de transaction définitifs exécutés et, le cas échéant, d'un extrait d'un registre externe (par exemple, registre foncier, registre du commerce).*

En outre, les gestionnaires de FIA agréés au Luxembourg sont tenus de fournir en temps utile les informations pertinentes aux dépositaires pour leur permettre de remplir leurs obligations de conservation concernant la vérification de la propriété et la tenue des registres, comme indiqué à l'article 90(2) du règlement AIFM. Cette exigence comprend les contrôles ex ante obligatoires.

DIRECTIVE ON CREDIT SERVICERS AND CREDIT PURCHASERS

CSSF updates Notification Form for provision of credit servicing activities in another Member State / La CSSF met à jour le formulaire de notification pour la fourniture d'activités de gestion de crédit dans un autre État membre

On 13 August 2024, the Commission de Surveillance du secteur financier (CSSF) updated the notification form for the provision of credit servicing activities in another member state.

Version française

Le 13 août 2024, la Commission de Surveillance du secteur financier (CSSF) a mis à jour le formulaire de notification pour la fourniture d'activités de gestion de crédit dans un autre État membre.

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF)

CSSF updates ELTIF Application Questionnaire / La CSSF met à jour le questionnaire de candidature ELTIF

On 29 July 2024, the Commission de Surveillance du secteur financier (CSSF) updated its ELTIF (European Long-Term Investment Fund) application questionnaire to simplify the authorisation procedures, following the amendments introduced by Regulation (EU) 2023/606 to Regulation (EU) 2015/760.

Applicable since 10 January 2024, the updates aim to streamline and accelerate new ELTIF authorisation requests and subsequent amendments. The updated questionnaire, available on the CSSF website, clarifies key points early in the authorisation process and eliminates the need to separately complete the "Questionnaire for approval of a new sub-fund" when registering an ELTIF within an existing UCI Part II, SIF, or SICAR.

The questionnaire also provides for optional requests, where non-applicable content will be greyed out, ensuring relevance and efficiency. This updated process is mandatory for all new authorisation requests submitted after 29 July 2024 and must also be used for substantial changes to existing ELTIFs.

Version française

Le 29 juillet 2024, la Commission de Surveillance du Secteur Financier (CSSF) a mis à jour son questionnaire de demande d'agrément ELTIF (European Long-Term Investment Fund) afin de simplifier les procédures d'agrément, suite aux modifications introduites par le Règlement (UE) 2023/606 au Règlement (UE) 2015/760.

Applicables depuis le 10 janvier 2024, les mises à jour visent à rationaliser et accélérer les nouvelles demandes d'agrément ELTIF et les modifications ultérieures. Le questionnaire mis à jour, disponible sur le site Internet de la CSSF, clarifie les points clés au début du processus d'agrément et élimine la nécessité de remplir séparément le « Questionnaire d'agrément d'un nouveau compartiment » lors de l'enregistrement d'un ELTIF au sein d'un OPC Partie II, d'un FIS ou d'une SICAR existant.

Le questionnaire prévoit également des demandes facultatives, dont le contenu non applicable sera grisé, garantissant ainsi la pertinence et l'efficacité. Ce processus mis à jour est obligatoire pour toutes les nouvelles demandes d'agrément soumises après le 29 juillet 2024 et doit également être utilisé pour les modifications substantielles apportées aux ELTIF existants.

FINANCIAL SUPERVISION

CSSF publishes a Reminder on the mode of transmission of KIDs and official documents / La CSSF publie un rappel sur le mode de transmission des KID et documents officiels

On 21 August 2024, the Commission de Surveillance du secteur financier (CSSF) published a reminder on the mode of transmission of Key Information Documents (KID) and official documents.

As announced in the 5 April 2024 communication regarding the direct submission of filings to the CSSF, the collection procedures for the KID and the official documents will change starting 15 November 2024.

These documents will be collected exclusively through the following two methods, free of charge:

- Document upload via the dedicated eDesk procedure
- Automated submission of the documents via API (S3 protocol)

A user guide detailing the submission procedures for the Key Information Document and the official documents will be made available soon.

Version française

Le 21 août 2024, la Commission de Surveillance du secteur financier (CSSF) a publié un rappel sur le mode de transmission du Document d'Information Clé (KID) et des documents officiels.

Comme annoncé dans la communication du 5 avril 2024 relative au dépôt direct des dossiers auprès de la CSSF, les modalités de collecte du KID et des documents officiels (MR/AI) changeront à compter du 15 novembre 2024.

Ces documents seront collectés exclusivement via les deux méthodes suivantes, gratuitement :

- *Téléchargement des documents via la procédure dédiée eDesk*
- *Soumission automatisée des documents via API (protocole S3)*

Un guide d'utilisation détaillant les modalités de soumission du Document d'Information Clé et des documents officiels sera prochainement mis à disposition.

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

CSSF informs of publication of three European Commission Q&As on investment-management-related queries / La CSSF informe sur la publication de trois FAQs de la Commission européenne sur la gestion des investissements

On 4 July 2024, the Commission de Surveillance du secteur financier (CSSF) published a press release on the Publication of three new Q&As provided by the European Commission on investment management-related queries.

- Clarification on the date of application of the six-month derogation from the investment restrictions foreseen in Articles 52 to 55 of the UCITS Directive for newly authorised UCITS under Article 57(1) of the UCITS Directive.
- Initial capital and additional own funds requirements for internally managed AIF under Article 9 of the AIFMD and self-managed UCITS under Articles 7 and 29 of the UCITS Directive.
- Notification pursuant to Article33(2) and (3) of the AIFMD by an AIFM upon establishment of a branch in another Member State for the sole purpose of carrying out any activity referred to in point (2)(c) of Annex I to the AIFMD.

Version française

Le 4 juillet 2024, la Commission de Surveillance du secteur financier (CSSF) a publié un communiqué de presse sur la publication de trois nouvelles questions-réponses fournies par la Commission européenne sur des questions relatives à la gestion des investissements.

La CSSF informe tous les gestionnaires de fonds d'investissement et autres parties prenantes concernées que la Commission européenne a récemment fourni des réponses à trois questions relatives à la gestion des investissements.

- *Clarification sur la date d'application de la dérogation de six mois aux restrictions d'investissement prévues aux articles 52 à 55 de la directive 2009/65/CE, telle que modifiée (« Directive OPCVM ») pour les organismes de placement collectif en valeurs mobilières (« OPCVM ») nouvellement agréés en vertu de l'article 57(1) de la directive OPCVM.*
- *Exigences en matière de capital initial et de fonds propres supplémentaires pour les fonds d'investissement alternatifs à gestion interne en vertu de l'article 9 de la directive 2011/61/UE, telle que modifiée (« AIFM ») et les OPCVM autogérés en vertu des articles 7 et 29 de la directive OPCVM.*
- *Notification conformément à l'article 33(2) et (3) de la directive AIFM par un gestionnaire de fonds d'investissement alternatif lors de l'établissement d'une succursale dans un autre État membre aux seules fins d'exercer une activité visée au point (2)(c) de l'annexe I de la directive AIFM.*

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

CSSF publishes DORA Readiness Survey / La CSSF publie une enquête sur l'état de préparation à DORA

On 19 August 2024, the Commission de Surveillance du secteur financier (CSSF) published a DORA readiness survey.

The CSSF would like to assess the level of readiness of financial market participants ahead of DORA's application date on 17 January 2025.

For this reason, companies are strongly encouraged to fill in the short survey available on eDesk regarding their status as of 1 September 2024.

The process remains open until 15 September 2024.

Version française

Le 19 août 2024, la Commission de Surveillance du secteur financier (CSSF) a publié une enquête sur l'état de préparation de DORA.

La CSSF souhaite évaluer le niveau de préparation des acteurs des marchés financiers avant la date d'application de DORA, le 17 janvier 2025.

Pour cette raison, les entreprises sont vivement encouragées à remplir la courte enquête disponible sur eDesk concernant leur statut au 1er septembre 2024.

Le processus reste ouvert jusqu'au 15 septembre 2024.

SUSTAINABLE FINANCE / GREEN FINANCE

CSSF updates on the ESMA Guidelines on the use of ESG or sustainability-related terms in fund names / La CSSF fait le point sur les lignes directrices de l'ESMA concernant l'utilisation de termes ESG ou liés à la durabilité dans les noms des fonds

On 21 August 2021, the Commission de Surveillance du secteur financier (CSSF) published a press release on the ESMA guidelines on the use of ESG or sustainability-related terms in fund names.

The ESMA has released translations of its Guidelines on the use of ESG or sustainability-related terms in fund names, which follows the announcement by CSSF on 15 May 2024 regarding the publication of ESMA's Final Report on the same.

The translations in all official EU languages were made available on ESMA's website on 21 August 2024. The CSSF reminds market participants that these Guidelines will become applicable starting on 21 November 2024, with a further six-month transition period for existing funds. This means the Guidelines will apply to new funds beginning 21 November 2024 and to existing funds starting 21 May 2025.

Version française

Le 21 août 2021, la Commission de Surveillance du Secteur Financier (CSSF) a publié un communiqué de presse sur les lignes directrices de l'Autorité européenne des marchés financiers (AEMF) concernant l'utilisation de termes ESG ou liés à la durabilité dans les noms de fonds.

L'AEMF a publié des traductions de ses lignes directrices sur l'utilisation de termes ESG ou liés à la durabilité dans les noms de fonds, suite à l'annonce de la CSSF du 15 mai 2024 concernant la publication du rapport final de l'AEMF sur ce sujet. Les traductions dans toutes les langues officielles de l'UE ont été mises à disposition sur le site Web de l'AEMF le 21 août 2024. La CSSF rappelle également aux acteurs du marché que ces lignes directrices seront applicables à partir du 21 novembre 2024, avec une période de transition supplémentaire de six mois pour les fonds existants. Cela signifie que les lignes directrices s'appliqueront aux nouveaux fonds à partir du 21 novembre 2024 et aux fonds existants à partir du 21 mai 2025.

MALAYSIA

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

SC Malaysia publishes Practice Note No.1/2024 on Digital Asset Custodian specified as "Custodian" Under Section 121(G) of the Capital Markets and Services Act 2007

On 26 August 2024, the Securities Commission Malaysia (SC Malaysia) published the Practice Note No.1/2024 on Digital Asset Custodian specified as "Custodian" Under Section 121(G) of the Capital Markets and Services Act 2007.

This Practice Note cames into effect on 26 August 2024.

The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (Prescription Order 2019) prescribed digital currency and digital token that fulfil the relevant criteria as securities for the purposes of securities laws.

For avoidance of doubt, digital currency and digital token that has been prescribed as securities under the Prescription Order 2019 shall herein be collectively referred to as "digital assets".

To facilitate trading in digital assets that has been prescribed as securities, the SC has introduced the regulatory framework for digital asset custodians (DAC). Any person who provides the services of safekeeping, storing, holding or maintaining custody of digital assets for the account of another person is required to be registered as a DAC with the SC pursuant to section 76A of the CMSA 2007.

Pursuant to section 121(g) of the CMSA 2007, a DAC registered with the SC is specified to be a "custodian". In this regard, the relevant Capital Markets Services Licence (CMSL) holder may deposit their client's digital assets with a DAC.

Such DAC must also ensure compliance with the relevant requirements under the relevant securities laws and guidelines including but not limited to the Guidelines on Compliance Function for Fund Management Companies in relation to client assets protection.

CYBERSECURITY

SC Malaysia announces Guidelines on Technology Risk Management take effect

On 19 August 2024, the Securities Commission Malaysia (SC Malaysia) announced Guidelines on Technology Risk Management Take Effect.

The Guidelines supersede the Guidelines on Management of Cyber Risk (GMCR).

The Guidelines were initially released in August 2023 for capital market entities to be familiar with risk management practices, which now expand beyond cyber security to include technology risks, among others.

The revised Guidelines emphasise the significance of strengthening operational reliability, security and resilience against technology disruptions. The Guidelines also set out the SC's expectations on risk management practices to be adopted by industry.

The key areas covered include 'change management' process, third party service providers, reporting requirements, technology audit, board oversight and accountability over technology risks.

In light of this incident, it is imperative that all capital market entities recognise the importance of observing the Guidelines. This not only protects against immediate technology risks, but also builds a resilient, secure, and ethical technological landscape for the future.

This initiative underscores the SC's ongoing efforts to strengthen Malaysia's capital market and investor confidence.

GOVERNANCE

SC Malaysia reminds of requirements to implement control measures when accepting third party deposits

On 18 July 2024, the Securities Commission Malaysia (SC Malaysia) reminded of the requirements to implement control measures in accepting third party deposits.

The SC Malaysia has observed certain deficiencies in the controls over the acceptance of third-party deposits among some intermediaries within the capital market. These inadequacies have led to delays or failures in detecting frauds and misappropriations, resulting in financial losses. In light of these observations, the SC Malaysia wishes to emphasize the importance of implementing robust controls to mitigate the risks associated with third-party deposits, as outlined in the SC Malaysia's Guidelines on Prevention of Money Laundering, Countering Financing of Terrorism, Countering Proliferation Financing, and Targeted Financial Sanctions for Reporting Institutions in the Capital Market.

To ensure compliance and enhance the integrity of the capital market, the SC Malaysia expects all intermediaries to undertake the following measures:

- Conduct a comprehensive risk assessment to determine the circumstances under which third-party deposits can be accepted.
- Establish and enforce clear, comprehensive, and effective policies and procedures for monitoring third-party deposits.
- Perform due diligence on third-party deposits to ascertain: the identity of the third-party payor, including identification number, residential address, and contact number, the relationship between the customer and the third-party payor, the reason for making deposits into the customer's account.
- Implement effective monitoring systems and controls to identify and accept third-party deposits into customer accounts, including obtaining relevant supporting documents from customers to verify the payor of the transactions.
- Prohibit the acceptance of cash or cash deposits from customers into the intermediary's bank account(s).
- Prohibit Unit Trust Consultants (UTCs) from: accepting deposits such as cash and online/bank transfers from customers into their personal bank account(s) and making payments on behalf of customers from their personal bank account(s).

The SC Malaysia expects all intermediaries to take these directives seriously and to implement the necessary controls without delay. Compliance with these measures is critical to maintaining the integrity of the capital market and protecting investors from financial harm.

NON-BANK FINANCIAL INTERMEDIATION

SC Malaysia publishes Reminder to all Capital Market intermediaries to ensure continuous compliance with the Minimum Financial Requirements

On 13 August 2024, the Securities Commission Malaysia (SC Malaysia) published a Reminder to all Capital Market intermediaries to ensure continuous compliance with the Minimum Financial Requirements.

AC Malaysia has observed with concern several instances where intermediaries have failed to maintain the minimum financial requirements at all times, as stipulated in subparagraph 4.04 (2) of the SC's the Licensing Handbook. This non-compliance poses significant risks to the integrity of the capital market and the protection of investors.

The purpose of this circular is to underscore the critical importance of adhering to the minimum financial requirements at all times. These requirements are designed to ensure that intermediaries are sufficiently capitalised to endure financial pressures and to safeguard investors from potential losses incurred by intermediaries.

All intermediaries are hereby reminded that should your financial position fall below the stipulated minimum financial requirements, you are prohibited from continuing to engage in regulated activities without prior written consent from the SC, pursuant to section 67 of the Capital Markets and Services Act 2007. In the event of a potential or actual breach of these requirements, you must notify the SC in writing immediately, detailing the corrective actions you intend to take.

To ensure ongoing compliance with the minimum financial requirements, the SC expects all intermediaries to implement the following measures:

- Establish and enforce clear, comprehensive, and effective monitoring and control mechanisms to prevent their financial positions from falling below the minimum requirements. For intermediaries engaged in multiple regulated activities, the highest minimum financial requirements must be met.
- Pro-actively identify and address any potential issues that could lead to a breach of the minimum financial requirements.
- Notify the SC immediately in the event of a breach or potential breach of minimum financial requirements, providing details of the proposed rectification measures and the expected timeline for resolution.

The SC requires all intermediaries to treat these reminders with the utmost seriousness and implement the necessary controls without delay. Non-compliance with the minimum financial requirements may lead to regulatory actions, up to and including the suspension or cessation of your ability to conduct regulated activities.

MEXICO

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

SHCP updates on Mexico's FATF Presidency

On 1 July 2024, the Secretaría de Hacienda y Crédito Público (SHCP) published a Press Release on Mexico's Presidency of the Financial Action Task Force.

With this position, Mexico seeks to continue contributing, from the multilateral sphere to the security of nations and their economies, as well as the integrity of the international financial system, in line with the FATF's mandate.

The work program will be guided by the principle of inclusion, which seeks to promote financial inclusion, the cohesion of the Global Network -made up of more than 200 jurisdictions-, a greater integration of key international actors and the private sector in the work of the group and promote greater diversity in the governance of the FATF.

The priorities of the current FATF presidency will be:

- Promote financial inclusion to reduce the use of cash and unregulated channels, in order to reduce the risks of money laundering and terrorist financing.
- Ensure that the reports of the 5th Round of Evaluations, which will begin in the presidency of Mexico, are of high quality and consistency, with a technical approach and free from political considerations.
- Improve the cohesion of the FATF Global Network under the principles of inclusion and collaboration. The more than 200 jurisdictions have committed to implementing the organization's standards. It will also seek to be sensitive to the challenges of less developed countries with limited capacities, as well as to promote regional and international cooperation.
- Support the effective implementation of FATF standards in three key areas:
  a) Controlling beneficiary. Identify the true owners of legal entities or financial transactions so that authorities can trace resources of illicit origin and increase transparency in financial systems.
  b) Virtual assets. To prevent money laundering and terrorist financing from being incurred through their use.
  c) Asset recovery. Strengthen the capacity of national authorities to freeze and recover assets, thereby restituting victims and deterring criminals.
- Prevent and combat the financing of terrorism and the financing of the proliferation of weapons of mass destruction. To this end, it seeks to increase and update the global understanding of the risks of these two activities.

These priorities were unanimously adopted by the FATF membership at the plenary meeting held in Singapore on 26-28 June 2024. The membership recognized the leadership and capacity of Mexico and the new president to carry out the task.

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

Banxico publishes consultation of draft provisions to amend the Repo Rules to establish rules applicable to hedge funds

On 5 August 2024, the Banco de México (Banxico) published a public consultation of the draft provisions to amend the Repo Rules, in order to establish rules applicable to hedge funds.

In order to continue promoting the healthy development of the financial system, promoting the proper functioning of payment systems and the protection of the interests of the public, Banxico submits to public consultation the draft provisions to modify the "Rules to which credit institutions, brokerage houses, investment funds, specialized investment companies of retirement funds, general deposit warehouses, insurance institutions, bonding institutions, regulated multi-purpose financial companies that maintain equity links with a credit institution and the National Financing for Agricultural, Rural, Forestry and Fisheries Development, in their repo operations", with the purpose of establishing rules applicable to hedge investment funds in their repo operations.

The foregoing, in compliance with the "Decree amending, adding and repealing various provisions of the Securities Market Law and the Investment Funds Law", published in the Official Gazette of the Federation on December 28, 2023, through which hedge investment funds were recognized as a new type of investment fund, whose repo transactions must be subject to the general provisions issued for this purpose by Banxico.

NETHERLANDS

FINANCIAL SUPERVISION

Overheid amends Financial Supervision Act, the Supervision Act Trust Offices 2018 and certain other laws in the field of the financial markets (Financial Markets Amendment Act 2024)

On 30 August 2024, the Overheid (Government Documents in the Netherlands) amended the Financial Supervision Act, the Supervision Act Trust Offices 2018 and certain other laws in the field of the financial markets (Financial Markets Amendment Act 2024).

The amendments to the Financial Supervision Act and other related laws introduce several significant changes.

Crowdfunding Service Providers:

- A new definition of crowdfunding service providers for businesses is added, referencing EU Regulation (EU) 2020/1503.
- Supervisors are granted powers to suspend, prohibit, or impose conditions on crowdfunding offers and services if there are reasonable grounds to believe that the regulations are being breached. This includes the ability to suspend marketing communications or transfer contracts to another provider.

Administrative and Regulatory Adjustments:

- Modifications to various articles streamline the legal text, update references to EU regulations, and adjust supervisory powers. For example, the supervisor can now impose administrative fines with broader discretion and enforce conditions or restrictions attached to licenses.

Investment Policies and Prudence:

- New provisions require insurers and risk entities to follow investment policies that adhere to the prudent-person rule. Any reinsurance agreements must be approved by the Dutch Central Bank to ensure compliance with this rule.

Trust Offices Supervision Act:

- The definition of trust services is refined, particularly regarding who can act as a director or provide postal addresses for companies.
- Trust offices are now explicitly prohibited from combining trust services with tax advice to the same client, ensuring a separation of roles.

Money Laundering and Terrorist Financing Act:

- Adjustments clarify the application of certain provisions, including extending reporting deadlines and updating references to officials responsible for oversight.

Bankruptcy Act and Nuclear Accident Liability Act:

- Minor textual corrections and updates to reflect changes in EU directives and government ministries.

Banking Act:

- A new article specifies the process for assessing the failure or probable failure of entities under supervision, ensuring that the responsible director has the authority to make final decisions in such cases.
- These amendments aim to align national legislation with EU regulations, enhance supervisory powers, and ensure more robust financial oversight.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

AFM publishes checklist for DORA readiness

On 5 July 2024, the Autoriteit Financiële Markten (AFM) published a checklist for DORA readiness.

Financial institutions must comply with the Digital Operational Resilience Act (DORA) from 17 January 2025. DORA is a European regulation with the aim of enabling financial organisations to better manage IT risks and thus become more resilient to cyber threats. Based on previous inquiries on IT management measures, the Netherlands Authority for the Financial Markets (AFM) has looked at how financial service providers, capital market parties and investment firms scored themselves and has translated this into ten important DORA themes. Organisations can use these findings, in combination with the checklist developed by the AFM, to evaluate their preparation for DORA.

Control measures often not yet at a sufficient level

The AFM continuously monitors the quality of information security within the financial sector. Part of this are the studies in which companies themselves score the maturity of

IT management measures. The AFM has made a link between the scores for control measures and ten important themes from DORA. This link is our own interpretation and does not include all requirements from DORA. The scores show that the control measures were often not at a sufficient level and that considerable work still needs to be done before DORA becomes applicable in January 2025.

Improvement of ICT risk management needed

DORA's goal is for financial institutions to better manage ICT risks and thus become more resilient to cyber threats and ICT disruptions. Good ICT risk management enables companies to detect and manage risks in a timely and effective manner.

For ICT risk management, many companies did not fully meet the expected level. This applies to 81% of financial service providers, 58% of capital market participants and 42% of investment firms.

Several companies also need to improve their governance around ICT risk management, the ICT asset inventory and the risk management of third-party providers.

Most organizations scored sufficiently on the design of backup and recovery options, but DORA sets additional and detailed requirements for this.

DORA Checklist

It is important that companies get a clear picture of where they stand in terms of digital resilience in a timely manner and what steps still need to be taken to meet the requirements in DORA.

Companies can use the DORA checklist as a starting point to clarify a number of points what is still needed in terms of policies and procedures to comply with the requirements of DORA. Due to the size of DORA, the checklist is not exhaustive. The full requirements are set out in the Regulation and associated RTS and ITS. More information can be found on our website.

SPAIN

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

CNMV publishes Authorisation Manual and Information Notification Model for CASPs

On 23 July 2024, the Comisión Nacional del Mercado de Valores (CNMV) published authorisation manual and the information notification model for crypto-asset service providers (CASPs).

Both documents are intended to facilitate the authorisation processes of crypto-asset service providers and notification of financial institutions wishing to provide these services. The manual and the model are a guide on the documentation and information required of interested parties. This publication fulfils one of the objectives of the CNMV's Activity Plan for 2024, aimed at facilitating the preparation of interested financial intermediaries for the entry into force of the aforementioned Regulation.

In fact, the CNMV anticipates the dissemination of both documents to the approval, still pending at the European level, of the implementing rules of the Markets in Crypto-Assets Regulation (MiCA) (regulatory technical standards (RTS) and implementation standards (ITS)) related to the authorisation and notification procedures. In any case, the manual and the model have been prepared from the latest available drafts of the aforementioned implementing standards, and will be adjusted (if necessary) to their final contents. The MiCA is not applicable until 30 December 2024, so the CNMV will not authorize any entity to provide crypto-asset services until that time. However, those interested will be able to submit their applications from September 2024 to facilitate and speed up the process.

The manual and the notification form will be mandatory. Both documents will facilitate the management of the files received by the Department of Authorisation and Registrations of Entities (DARE) of the CNMV.

SWITZERLAND

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

FINMA publishes Guidance on stablecoins / La FINMA publie un guide sur les monnaies stables

On 26 July 2024, the Eidgenössische Finanzmarktaufsicht (FINMA) published a guidance on stablecoins.

In recent years, projects seeking to issue stablecoins have also gained in importance in Switzerland. They generally pursue the goal of providing a means of payment with low price volatility on a blockchain. FINMA has already commented on this in its supplement to the ICO guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs) from September 2019.

In the guidance, FINMA provides information on aspects of financial market law that arise in relation to stablecoin projects and the impact of such projects on the supervised institutions. In connection with stablecoin projects, FINMA draws attention to the increased risks in the areas of money laundering, terrorist financing and the circumvention of sanctions. These also result in reputational risks for the Swiss financial centre as a whole.

FINMA notes that various issuers of stablecoins in Switzerland use default guarantees from banks, which means that they often do not require a licence from FINMA under banking law. This creates risks for both the stablecoin holders and the banks providing the guarantee. In addition, FINMA provides information on its minimum requirements for default guarantees in order to protect depositors. These also apply when dealing with stablecoins.

Version française

Le 26 juillet 2024, la FINMA a publié une directive sur les stablecoins.

Ces dernières années, les projets visant à émettre des stablecoins ont également gagné en importance en Suisse. Ils visent généralement à fournir un moyen de paiement à faible volatilité des prix sur une blockchain. La FINMA s'est déjà prononcée à ce sujet dans son supplément aux directives de l'ICO pour les demandes de renseignements sur le cadre réglementaire des Initial Coin Offerings (ICO) de septembre 2019.

Dans cette directive, la FINMA informe sur les aspects du droit des marchés financiers qui se posent en relation avec les projets de stablecoins et sur les conséquences de ces projets pour les établissements assujettis. Dans le cadre des projets de stablecoins, la FINMA attire l'attention sur les risques accrus dans les domaines du blanchiment d'argent, du financement du terrorisme et du contournement des sanctions. Ceux-ci entraînent également des risques de réputation pour la place financière suisse dans son ensemble.

La FINMA constate que plusieurs émetteurs de stablecoins en Suisse ont recours à des garanties de défaut de la part des banques, ce qui signifie qu'ils n'ont souvent pas besoin d'une licence de la FINMA en vertu du droit bancaire. Cela entraîne des risques tant pour les détenteurs de stablecoins que pour les banques qui fournissent la garantie. La FINMA fournit en outre des informations sur les exigences minimales en matière de garanties de défaut afin de protéger les déposants. Ces exigences s'appliquent également aux transactions sur stablecoins.

UNITED KINGDOM

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

FCA publishes guidance consultation on proposed amendments to treatment of PEPs and multi-firm review on treatment of PEPs

On 18 July 2024, the Financial Conduct Authority (FCA) published a guidance consultation on proposed amendments to treatment of politically exposed persons (PEPs)and multi-firm review on treatment of PEPs.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations') set out requirements that those subject to that legislation like banks and lenders need to follow. This includes applying 'enhanced customer due diligence' (EDD) when a customer is a politically exposed person (PEP) defined as someone holding a prominent public position entrusted with prominent public functions either in the UK or elsewhere in the world. The Regulations also require EDD to be applied to close family members or known close associates of a PEP.

The Regulations are legislative requirements that apply to organisations across sectors including, but not limited to, FCA regulated financial services firms. In July 2017, the FCA published Guidance FG17/6 (Guidance) to help the firms the FCA supervises under the Regulations apply a proportionate and risk-based approach to PEPs. This Guidance makes clear that domestic PEPs, and their family members or known close associates, should be treated as 'lower risk', as long as there are not any other risk factors outside of their position as a PEP. The Guidance clarifies expectations and provides an approach firms can take to meet the legislative requirements set out in the regulations; they do not establish rules for firms.

Section 78 of the Financial Services and Markets Act 2023 requires the FCA to review the way that firms are applying the Guidance and, following that assessment, to consider whether the Guidance in FG17/6 remains appropriate or requires amendment.

The FCA has now published the outcomes of this review which sets out the findings. The FCA concludes that, generally, the Guidance remains appropriate and have not identified significant changes needed to FG17/6. However, the FCA has identified room for improvement in the way in which firms are putting the Guidance into practice.

The FCA has identified some areas of the Guidance that need to be updated or amended as a result of changes in the legislative framework in the UK since the original Guidance was published. The FCA has highlighted some areas where the Guidance could be clarified to facilitate effective compliance by firms.

There are four areas that the FCA is seeking to make changes to the Guidance:

- Non-executive board members (NEBMs) of civil service departments: Non executives are appointed to government departments from the public, private and voluntary sectors. Their role is to provide advice and bring an external perspective. As such these NEBMs do not have any executive authority. During the review the FCA were made aware that some firms might be treating NEBMs as a PEP. The FCA proposes to clarify in the Guidance that these aren't roles, in the UK context, a firm should be treating as a PEP.
- Sign off for PEP relationships: The Regulations require that all PEP relationships are signed off by senior management. The Regulations require that the Guidance should interpret, for the financial sector, which appropriate functions should be considered as senior management. the Guidance sets the expectation all PEP relationships to be signed off at a minimum by the Money Laundering Reporting Office (MLRO) with higher risk relationships potentially being signed off at higher level. Feedback from the industry is that this part of the Guidance causes concerns about the MLRO's independence. The FCA proposes to amend the Guidance to allow for alternative approaches provided the MLRO continues to have oversight of all PEP relationships within the firm.
- Reflecting changes to the Regulations: The Guidance provides that firms should treat domestic PEPs as lower risk unless there are other risk factors apparent that are unrelated to their PEP status. In January 2024, the Government updated the Regulations to require that the starting point for a firm's risk assessment is that domestic PEPs are lower risk than foreign PEPs. The FCA proposes to make targeted amendments to reflect this legislative change within theGuidance.
- Minor additional changes: The FCA has also taken the opportunity to review the Guidance. As a result of this review, the FCA proposes a small number of minor and mostly non-substantive changes to the Guidance. This includes removing outdated references to EU Guidance that no longer applies in UK law.

The consultation closes on 18 October 2024.

The FCA has found that most firms had systems and controls designed to implement the Guidance. However, there was room for improvement in all the firms the FCA assessed. The issues included:

- Some firms included definitions for PEPs and relatives and close associates (RCAs) that are not in line with the regulations and the Guidance.
- Some firms did not have effective arrangements in place to review PEPs and RCAs to ensure the PEP classification remained appropriate after the PEP had left public office
- A small number of firms did not effectively consider the customer's actual risk in their assessment and rating
- Despite the need to improve the firms' policies and procedures, customer file testing did not show firms regularly applying excessive enhanced due diligence measures (EDD) for customers
- All of the 15 firms were clear that they would not decline products or services to UK PEPs or their RCAs simply because of PEP status.
- Firms need to improve the clarity and detail of communications with PEP and RCA customers.
- Most of the 15 firms needed to improve staff training
- Ten of the 15 firms had made changes and improvements following the recent amendment to Regulation 35 (which sets out firms' AML obligations on PEPs under the Regulation) but some needed to update their policies to reflect this legislative development.

BOND MARKETS

FCA publishes page on bond consolidated tape

On 13 August 2024, the Financial Conduct Authority (FCA) published its page on bond consolidated tape (CT).

The FCA is establishing a CT for bonds to collate market data.

In July 2023, the FCA published CP23/15, setting out proposals for a UK bond CT framework.

In December 2023, the FCA published CP23/33 which largely finalised the rules consulted on in CP23/15 but also included consultation questions on payments from the bond CT provider (CTP) to data providers (trading venues and Approved Publication Arrangements). In April 2024, the FCA published Handbook Notice 117 (PDF) confirming that the FCA would not require that the bond CTP make payments to data providers.

The FCA is also considering the design of a CT for equities (shares and exchange traded funds (ETFs)).

The market for bond data is distinct from that for equities and the two need distinct assessments of the potential role of a CTP, its characteristics, the appropriate economic model for the CT and its benefits in the relevant trade data market.

A CT collates market data, such as prices and volumes associated with trades in a financial market. It aims to provide a comprehensive picture of transactions in a specific asset class.

It will bring together trades executed on trading venues as well as those arranged over-the-counter.

The FCA expects a CT to strengthen UK markets by making them more transparent and liquid.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

FCA helps improve crypto firms' compliance with new marketing rules

On 7 August 2024, the Financial Conduct Authority (FCA) helped improve crypto firms' compliance with new marketing rules.

FCA recently reviewed several crypto firms' compliance with certain financial promotion rules designed to help people better understand the risks of investing in crypto.

The regime, introduced in October 2023, followed detailed consultation and a change in legislation.

This review looked at how firms are implementing personalised risk warnings, the 24-hour cooling off period, client categorisation and appropriateness assessments.

What their review found:

They recognise this is the first set of rules for all crypto firms marketing to UK consumers and adjusting to new regulation can be challenging.

Firms have requested additional clarity on their expectations for these rules. They want to work collaboratively with the sector to raise standards and this publication will help firms meet their obligations and support consumers in making informed decisions.

They found some examples of firms demonstrating good practice which we have shared in our good and poor practice to help firms get their compliance with the rules right.

However, they also found multiple instances where firms did not meet the required standards.

Where they identified concerns, they have worked extensively with individual firms to make significant improvements in line with their objectives. But more work needs to be done to improve compliance.

They urge all firms to read good and poor practice, as well our previously published guidance GC23/1 (PDF).

FCA have seen firms relying on industry comparisons to benchmark what is acceptable. Given the levels of poor practice in the market, firms should not be doing this. Instead, FCA expect firms to engage with us directly to drive up standards across the sector.

All firms communicating or approving financial promotions must make sure they have strong systems and controls for compliance in place.

If firms do not improve, FCA will act. FCA will also consider firms' compliance with regulatory requirements, including the financial promotions regime, as part of any application to be authorised under the future financial services regulatory regime for cryptoassets.

FCA will continue to work with industry on this and other parts of the current an upcoming crypto regime.

FINANCIAL SUPERVISION

FCA updates on sponsor regime

On 2 August 2024, the Financial Conduct Authority (FCA) updated page on sponsor regime.

Sponsors are firms FCA approves to advise issuers with a listing of equity shares in, or applying for admission of equity shares to, the following categories:

- the equity shares (commercial companies) category;
- the closed-ended investment funds category; or
- the equity shares (shell companies) category

Sponsors perform a unique, dual role:

- they provide expert guidance and advice on our rules

- they provide us with key confirmations that we rely on when making decisions, for example, to admit securities to the Official List.

A firm wishing to become a sponsor must first be approved by us. The list of sponsors includes firms with a range of business models, such as investment banks, corporate finance houses and accounting and legal firms.

The FCA's strategic objective is to ensure that relevant markets function well. We see maintaining the integrity of the Listing regime as a fundamental part of that objective.

The sponsor regime supports this by helping to ensure that an issuer is supported and receives high-quality, expert advice during the preparation and submission of an application to list, or whilst undertaking other actions once listed. The FCA is also able to rely on a sponsor's skill and experience in the course of processing listing applications and when it requires assurance in relation to matters relating to a listing decision. The Sponsor regime is not intended to result in zero failure. Rather, it helps to ensure issuers are able to meet their listing obligations especially around governance and disclosure, which allows investors to make well-informed investment decisions. This helps to increase investors' confidence and participation in the market for listed securities.

The sponsor regime benefits a number of stakeholders including:

- The FCA. We rely on the confirmations given to us by sponsors, for instance in relation to whether a company meets our eligibility requirements, or will be able to comply with its ongoing obligations as a listed company.
- Investors, who will perform their own due diligence but can take additional comfort from the knowledge that the sponsor will carry out due diligence and provide important confirmations to us.
- Issuers seeking or with a listing in the categories to which the regime applies, which are required to appoint a sponsor upon IPO and in targeted circumstances thereafter.

Sponsors provide guidance and advice to their clients as well as liaising with the FCA on their behalf. Sponsors help maintain high standards for listing which in turn contributes to the status and reputation of the Official List, to the benefit of listed companies.

FINANCIAL SYSTEM STABILITY

BoE publishes financial stability paper on operational resilience in a macroprudential framework

On 27 August 2024, the Bank of England (BoE) published a financial stability paper on operational resilience in a macroprudential framework.

Operational resilience is the ability of individual financial firms, financial market infrastructures (FMIs) and the wider financial system to prevent, adapt and respond to, as well as recover and learn from, operational disruptions. Operational disruptions have the potential to create financial stability impacts due to the structure of the financial system, and the behaviour of institutions and other participants.

In March 2024, the BoE's Financial Policy Committee (FPC) published a Financial Stability in Focus on its macroprudential approach to operational resilience. This paper supplements that with further staff analysis and includes supporting detail and additional examples. Its purpose is to further illustrate how financial stability can be impacted by the crystallisation of operational risk.

As previous incidents highlight, operational resilience has become more important to maintaining financial stability, particularly as the financial system has become more digitalised and interconnected. Recent operational incidents include the July 2024 worldwide IT outage caused by a flawed update distributed by CrowdStrike (a cyber-security technology firm), a July 2024 outage at Swift (a global messaging service) impacting wholesale payments in the UK and other countries, as well as cyber-attacks on ICBC Financial Services (a US broker-dealer) and ION (a third-party provider of derivatives clearing services) in November and February 2023 respectively. Looking ahead, the importance of operational resilience will continue to grow as developments in technology play a greater role in the provision of financial services and as business models continue to change.

The FPC's macroprudential approach identifies vulnerabilities and transmission channels that can amplify operational incidents in ways that could impact financial stability. These incidents can stem from a range of sources, including internally in a firm or FMI, from a third-party service provider, or from external shocks. Vulnerabilities are the weaknesses and dependencies that can be exposed in a shock, and they exist at the firm and system level. Firm-level vulnerabilities are specific to the business models or operational arrangements of individual entities. However, vulnerabilities can also exist at the system level. Firms and FMIs can have dependencies on each other, and interact with each other in markets, which means disruption in one can affect the services provided by another (ie they are interconnected). There can also be a reliance on common technologies across the financial system which means multiple entities can be affected at the same time by a disruption. Transmission channels are the means by which operational incidents can spread across the financial system and lead to potential financial stability impacts.

An operational incident can create financial stability risks by disrupting the provision of vital services. This can either be directly because of the disruption itself, or indirectly through impacts on systemically important institutions or systemically important markets. Vital services include:

- the provision of payment and settlement services;
- intermediating between savers and borrowers (and channelling savings into investment); and
- insuring against and dispersing risk.

Operational disruptions at systemically important institutions or in systemically important financial markets – including via the disruption of material services provided by third-party service providers – can directly affect the ability of the financial system to supply vital services. The provision of vital services by the financial system matters because if it is disrupted, it could impact the ability of financial sector participants, households and businesses to transact or to access financing. Importantly, if there is disruption to vital service provision it could undermine confidence in the financial system.

In considering the macroprudential risks, it is important to first take account of the level of operational resilience at firms, FMIs and across the wider financial system. Firm-level resilience can help to reduce the risk of operational incidents occurring, and mitigate the risk of systemic impacts when there is an incident.

Firm-level operational resilience, built by individual firms and FMIs, provides the essential foundation for operational resilience across the system. The likelihood that an individual firm or FMI will experience an operational incident is determined by its vulnerabilities. These include operational weaknesses, risks associated with transformation and the need to adapt or deliver change programmes, and firm-level dependence on data to support the provision of services.

These vulnerabilities should be, and can only be, addressed by firms' and FMIs' operational risk management processes, and by implementing the operational resilience policies set by their microprudential regulators. These regulators in the UK include the BoE, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), and their policies aim to ensure that any disruption to important business services does not impact the objectives of those regulators and the BoE's financial stability objective.

The operational resilience polices set by the BoE, the PRA and the FCA help to bridge the gap between firm-level and system-wide operational resilience. Individual firms and FMIs are required to ensure that if there is any disruption to the important business services that they provide, the impact of that does not exceed certain tolerable levels. In the March 2024 Financial Stability in Focus, the FPC set out its expectation that relevant firms and FMIs should consider the vital services that are important to financial stability when they identify their important business services. More broadly, the FPC said that firms and FMIs must also factor in the potential impacts on the wider financial system from weaknesses in their own operational resilience and actions they might take in response to incidents, as they take steps to build their resilience.

But system-level vulnerabilities mean that the resilience of individual firms and FMIs alone may not be sufficient to ensure system-wide resilience. These vulnerabilities include: interconnectedness, complexity and opacity; concentration; correlation and common vulnerabilities; and system-wide dependence on data. These vulnerabilities mean that operational incidents can lead to contagion across the financial system and therefore system-wide policies and tools are needed in addition to firm-level measures.

System-wide operational resilience is supported by other system-wide policies and tools. The FPC has established an expectation for how quickly critical payments should be able to be made following an operational incident (known as the 'FPC's impact tolerance for critical payments') as well as the incoming regime to raise the resilience of material services provided by critical third parties to firms and FMIs. The FPC has acted to reduce systemic risks from operational issues through a programme of work, including stress tests, to improve the financial system's resilience to cyber-attacks. System-wide resilience is supported further by the collaborative approach between the UK financial authorities and the financial sector through collective action and wider sector engagement. And given the interconnected nature of the global financial system, the UK authorities engage internationally through a range of multilateral and bilateral channels, including through the Financial Stability Board (FSB), the international standard-setting bodies, and the G7 Cyber Expert Group.

GOVERNANCE

FRC announces significant update to the UK Stewardship Code

On 22 July 2024, the Financial Reporting Council (FRC) announced a significant update to the UK Stewardship Code.

FRC has today announced significant revisions to the UK Stewardship Code application process and committed to five priority areas of review as it continues its revision the Code. Together, they ensure that the Code is supporting UK capital markets, reducing reporting burdens and driving better stewardship outcomes.

Following extensive engagement with over 1,500 stakeholders across the FRC's ecosystem during early 2024, the FRC will now focus on five themes in the new phase of the Code's revision the Code:

- Purpose – The FRC will consider all stakeholder views and set out its expectation of what defines effective stewardship, what this looks like in practice, and how reporting against the Code can help to deliver this.
- Principles – The FRC is considering what reporting will be necessary to deliver on a renewed purpose of the Code.
- Proxy Advisors – The FRC will carefully consider how the Code might support greater transparency of their activities.
- Process – The FRC will take forward proposals to reduce the reporting burden currently associated with being a Code signatory and ensure that information included in reports is useful and accessible to all underlying investors and other stakeholders.
- Positioning – The FRC is working closely with other regulators such as the DWP, TPR and the FCA to support clarity in understanding the revised Code and its successful implementation. The Code will continue to support the objectives of those other regulators to avoid any confusion and duplication that signatories may encounter.

The FRC is also making five immediate changes to significantly reduce the reporting burden on existing signatories. These changes will:

- Remove the requirement to annually disclose all 'Context' reporting expectations, except for new reports or material changes.
- Remove the requirement to annually disclose against 'Activity' and 'Outcome' reporting expectations for some Principles.
- Explicitly allow use of content from previous reporting and cross-referencing of such reports.
- Set clear expectations of what is considered an 'outcome' for stewardship purposes.
- Emphasise the ability to exercise reporting against Principles 10, collaborative engagement, and 11 escalation 'where necessary'.

This will provide clarity on areas signatories outlined as challenging to address, reduce the volume of reporting and provide flexibility for signatories in defining how they undertake stewardship.

These reporting changes to the Code will apply for the next application window (31 October 2024) and the FRC will be writing to signatories individually to inform them of how these changes impact them. We are confident that these early changes to the reporting process will significantly reduce application and reporting burdens for signatories going forward. The FRC will launch a formal public consultation on the Code later this year, but given the significance of these changes, the FRC will be hosting a further phase of focussed engagement with the stakeholders throughout August and September on the five topics listed above.

INTEREST RATE

FCA updates on LIBOR transition

On 2 August 2024, the Financial Conduct Authority (FCA) updated the page about the LIBOR transition.

Before end-2021, LIBOR was produced in 7 tenors (overnight/spot next, 1 week, 1-month, 2-month, 3-month, 6-month and 12-month) across 5 currencies. Each of these LIBOR settings was based on submissions provided by a panel of banks.

These submissions were intended to reflect the interest rate at which banks could borrow money on unsecured terms in wholesale markets. All LIBOR panels have now ended and the majority of their settings ceased or become permanently unrepresentative.

Following the final publication of the 3-month synthetic sterling LIBOR setting on 28 March 2024, all sterling LIBOR settings have now permanently ceased.

The overnight and 12-month US dollar LIBOR settings ceased permanently at the end of June 2023. The 1-month, 3-month and 6-month synthetic US dollar LIBOR settings are the final remaining LIBOR settings.

FCA continues to require LIBOR's administrator, ICE Benchmark Administration, to publish the 1-month, 3-month and 6-month US dollar LIBOR settings using a synthetic methodology. FCA expects these settings to cease permanently at the end of September 2024.

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

FCA publishes Direction under regulation 67A(2) of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

On 5 July 2024, the Financial Conduct Authority (FCA) published a Direction under regulation 67A(2) of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019.

This direction is given by the FCA under regulation 67A(2) of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (the Regulations).

The FCA directs that the operator of a stand-alone scheme that is a recognised scheme by virtue of regulation 62 of the Regulations; or an umbrella scheme of one or more sub-funds that are recognised schemes under that regulation (whether or not relating to those sub-funds) must not apply to be a recognised scheme under section 271A of the Financial Services and Markets Act 2000 until such period as the FCA may specifically direct.

In this direction: references to 'stand-alone scheme', 'sub-fund', and 'operator' have the meanings given in the relevant paragraphs of regulation 61 of the Regulations.

FCA publishes policy statement on implementing the Overseas Funds Regime

On 17 July 2024, the Financial Conduct Authority (FCA) published a policy statement on implementing the Overseas Funds Regime (OFR).

This Policy Statement sets out the FCA's response to the feedback the FCA received to Consultation Paper CP23/26, proposing rules and guidance necessary to implement the Overseas Funds Regime (OFR). It details the final rules and guidance that the FCA is introducing following the consultation.

Many of the funds offered to investors in the UK are from outside the country. In 2021, the Government legislated – through changes to the Financial Services and Markets Act 2000 (FSMA) – to create a new streamlined process to recognise overseas collective investment schemes, the OFR. The regime is based on principles of equivalence: jurisdictions can be approved by the Government if they offer adequate co-operation arrangements between the FCA and relevant national competent authorities (NCAs), and if they provide equivalent investor protection outcomes to comparable UK-authorised schemes.

On 30 January 2024, the UK Government announced the first equivalence decision, in relation to Undertakings for Collective Investment in Transferable Securities (UCITS) established and authorised in states in the European Economic Area (EEA), including European Union (EU) member states. The Government has granted equivalence in respect of EEA UCITS (except for money-market funds), meaning that they can apply to the FCA for recognition to market to UK retail investors. Many of these UCITS are currently accessing the UK market through the Temporary Marketing Permissions Regime (TMPR). The TMPR is currently due to end in December 2025, but the Government can extend it further.

In May 2024, together with HM Treasury, the FCA published a roadmap setting out the key dates and processes for operators of overseas funds to apply for OFR recognition. The FCA also published a webpage setting out when and how operators in scope of the Government's decision should apply for recognition. The FCA is working to open the gateway for EEA UCITS to apply for OFR recognition later this year.

These new rules set out the information the FCA requires to determine an application for recognition. The requirements the FCA is making are informed by the FCA's experience of authorising UK funds and the consultation feedback to CP23/26. The FCA has sought to streamline the recognition process. The FCA will be requesting information that allows the FCA to spot outliers and funds with unusual features.

Following the feedback to CP23/26, the FCA has:

- removed the proposed 30-day period between notifying the FCA of changes to OFR funds and when those changes could take effect in the UK;
- provided further explanation and clarification as to which categories of changes should be notified;
- included guidance relating to additional information in disclosures for fund prospectus' and point of sale information;
- clarified which UK fund prospectus requirements apply to OFR funds.

The new Handbook rules and guidance to support the implementation of the OFR will come into force on 31 July 2024.

FCA publishes new webpage "Apply to be UK UCITS Man Co"

On 31 July 2024, the Financial Conduct Authority (FCA) published a new webpage "Apply to be UK Undertakings for the Collective Investment in Transferable Securities (UCITS) Man Co".

The webpage provides information for firms that wish to become a management company of a UK UCITS, what permissions they will need and how much they will pay.

The page contains the following information, among other:

- They will only be eligible to apply for the permission of managing a UK UCITS if they will be managing a fund established in the UK that is either an investment company with variable capital, an authorised unit trust or an authorised contractual scheme, which are all types of authorised fund.
- If they are intending to apply for permission of managing a UK UCITS, before making an application they should request a meeting through the FCA's Pre-Application Support Service.
- If they are intending to manage a non-UK UCITS, they should read the FCA's webpages on Alternative Investment Fund Managers or Investment Managers depending on the intended business model.

FCA publishes Connect OFR Registration User Guide

On 12 August 2024, the Financial Conduct Authority (FCA) published the Connect OFR Registration User Guide.

This user guide will help to:

- Register for Connect as a New User.
- Submit the Overseas Operator Enrolment application on Connect and become the Principal User (PU) for a firm.

Use this Guide if the firm is:

- An Existing Operator, that has been assigned a landing slot to make an application in respect of your Recognised EEA (European Economic Area) UCITS in TMPR to the OFR (Overseas Funds Regime).
- An Overseas Operator looking to apply to the FCA for recognition of a qualifying fund under OFR.

FCA updates on Overseas Funds Regime

On 22 August 2024, the Financial Conduct Authority (FCA) updated its page on the Overseas Funds Regime (OFR).

To become recognised under the OFR and be able to market to UK retail investors, all operators of EEA UCITS will need to complete an application form and pay the FCA a fee. The FCA uses the term 'fund operator' to mean either the management company of a UCITS, or a self-managed investment company, as applicable. Fund operators should apply online via the FCA Connect system.

The FCA will open the gateway to new schemes (i.e, those not in TMPR) on 30 September 2024. New schemes will be able to apply at any time from that date without a landing slot.

For schemes in the TMPR, landing slots will start in October 2024 and will be available for operators of stand-alone EEA UCITS. After that, the FCA intends to issue landing slots to operators of umbrella UCITS by alphabetical order of the fund operator's name. The sequence of landing slots is then staggered monthly to help with operational efficiency.

SUSTAINABILITY

FCA updates on sustainability disclosure and labelling regime

On 19 August 2024, the Financial Conduct Authority (FCA) updated its page on sustainability disclosure and labelling regime.

The update relates to the addition of a new section on downloadable labels.

This section is for distributors who are subject to ESG 4.1.16R – 4.1.19R (under our Sustainability Disclosure Requirements (SDR) and investment label regime). It provides distributors with access to the investment labels and has information on their terms of use.

The FCA asserts its exclusive rights to the trademarked investment label logos under UK law, prohibiting any unauthorised use, reproduction, or modification without our prior written consent.

LISTING / TRADING RULES

FCA sets out rules and proposals to build up UK wholesale markets

On 26 July 2024, the Financial Conduct Authority (FCA) has set out a package of measures designed to help strengthen the UK's capital markets and position as a global and vibrant financial centre.

The measures are as follows:

Proposals for new public offers and admissions to trading regime

Key to the package are proposed rules to establish the new Public Offers and Admissions to Trading Regime (POATRs), which will replace the existing UK Prospectus Regulation.

Under the proposals, companies will still be required to publish a prospectus when first admitting securities to public markets. However, a prospectus would not be required when a company raises further capital except in limited circumstances.

Together with other existing disclosure obligations, these proposals will make sure investors get the information they need while significantly reducing the costs associated with further capital raises for companies.

The FCA is also consulting on proposals for a new activity of operating a public offer platform. These platforms will offer an alternative route for companies to raise capital outside public markets including from retail investors. The introduction of the platforms should promote scale-up capital raising for smaller companies while ensuring that investors get the right disclosures on the key terms and risks of an investment.

Final rules on new payment option for investment research

The FCA has also confirmed new rules that give asset managers greater freedom in how they pay for investment research, by allowing the 'bundling' of payments for research and trade execution. These new rules aim to improve competition in the market for the benefit of investors. The new payment option is also compatible with rules in other jurisdictions, making it easier for asset managers to buy research across borders.

The FCA has engaged extensively as part of developing these rules. Following careful consideration of responses to the consultation, significant changes have been made to the conditions attached to using the new payment option. The FCA wants to make sure it is operationally efficient to use and adaptable to different types of firms, but also make sure it secures an appropriate degree of protection for consumers, and there is not a return to historic poor practice in this area.

From 1 August 2024 onwards, if a market participant wants to take up the new payment option, they must make sure that they comply with the FCA's requirements and that you have updated their internal procedures.

They should make sure that they are familiar with the FCA's new requirements, as summarised in this Policy Statement "PS24/9: Payment optionality for investment research".

The final part of the package is a consultation outlining proposals for the derivatives trading obligations to help improve the regulation of secondary markets, reduce systemic risk and disruption to firms.

The feedback period for consultation papers "CP24/13: New regime for public offer platforms" and "CP24/12: Consultation on the new Public Offers and Admission to Trading Regulations regime (POATRs)" closes on 18 October 2024. The feedback period for the consultation "CP24/14: Consultation on the derivatives trading obligation and post-trade risk reduction services" closes on 30 September 2024.

INTERNATIONAL

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

The Wolfsberg Group publishes statement on effective monitoring for suspicious activity

On 1 July 2024, the Wolfsberg Group published a statement on effective monitoring for suspicious activity.

The Wolfsberg Group is delighted to publish a Statement on Monitoring for Suspicious Activity in line with the Wolfsberg Factors from 2019.

The Group does not believe that the value being derived from the (constantly increasing) volume of SARs/STRs is contributing proportionately to effective outcomes in the fight against financial crime. While the concept of effectiveness has been discussed for many years by lawmakers, regulators, supervisors, standard setters as well as the private sector, the Group believes it has yet to be fully integrated into the overall FCRM framework which will require acceptance and alignment across public and private sectors.

This paper seeks to describe how consideration of the Wolfsberg Factors can be translated into a more effective approach to Monitoring for Suspicious Activity (MSA). The Group has deliberately chosen to characterise this as MSA to cast a wider net than just Transaction Monitoring because customer behaviour and customer attributes, when combined with the consideration of transactions, can provide a broader insight into potentially suspicious activity. Transaction Monitoring is therefore a sub-set of MSA, which might also include concepts such as ongoing Customer Due Diligence (CDD).

This paper encourages all parties to be proactive in the development of innovative techniques and supporting technologies which the Group believe will deliver more effective end-to end risk detection capabilities.

CONTACTS

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.

Editors
Gaëlle Kerboeuf, Group General Secretary, Legal Department
Marie Marion, Group Head of Transversal Functions, Compliance Department

Permanent Editorial Committee
Gaëlle Kerboeuf, Group General Secretary, Legal Department
Marie Marion, Group Head of Transversal Functions, Compliance Department
Corinne Brand, Group Communications Manager

Local
François Honnay, Head of Legal and Compliance (Belgium)
Fanny Thomas, Legal Supervisor (France)
Aude Levant, Group Compliance
Yves Gaveau, Senior Expert Veille réglementaire AdF
Stefan Ullrich, Head of Legal (Germany)
Robin Donagh, Legal Advisor (Ireland)
Costanza Bucci, Head of Legal & Compliance (Italy)
Luciana Vertulli, Compliance Officer (Italy)
Fernand Costinha, Head of Legal (Luxembourg)
Julien Fetick, Senior Financial Lawyer (Luxembourg)
Gérald Stadelmann, Head of Legal (Luxcellence Luxembourg)
Alessandra Cremonesi, Head of Legal (Switzerland)
Sarah Anderson, Head of Legal (UK)
Olga Kitenge, Legal, Risk & Compliance (UK)
Chelsea Chan, Head of Trustee and Legal (Hong Kong)
Henk Brink (The Netherlands)
Beatriz Sanchez Jete, Compliance (Spain)
Arrate Okerantza Elejalde, Legal (Spain)
Jessica Silva, Compliance (Brazil)
Luiz Fernando Silva, Compliance (Brazil)
Libia Andrea Carvajal, Compliance (Colombia)
Daiana Garcia, Compliance (Colombia)
Karim Martínez, Compliance (Mexico)
Edgar Zugasti, Compliance (Mexico)

Design
CACEIS Group Communications

Photos credit
CACEIS, Adobe Stock

CACEIS
89-91 rue Gabriel Péri
92120 Montrouge