

FINANCIAL REGULATION WEEKLY BULLETIN

Major UK and European regulatory developments of interest to banks insurers and reinsurers, asset managers and other market participants

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If you have any comments or questions, please contact:

[Selmin Hakki](#).

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact: [Beth Dobson](#).

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GENERAL //

1 EUROPEAN SUPERVISORY AUTHORITIES

- 1.1 **DORA - ESAs publish first set of final draft RTS and ITS - 17 January 2024** - The European Supervisory Authorities (ESAs) (comprising the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) have published the first set of final draft regulatory technical standards (RTS) and implementing technical standards (ITS) under the Regulation on digital operational resilience in the financial sector ((EU) 2022/2554) (DORA). DORA entered into force on 16 January 2023 and will apply from 17 January 2025.

The RTS aim to ensure a consistent and harmonised ICT risk management framework, specify the criteria for the classification of major ICT-related incidents, and specify requirements for the policy of financial entities on their use of ICT third-party service providers as required under DORA. The ITS set out the templates to be maintained and updated by financial entities in relation to their contractual arrangements with ICT third-party service providers.

The final draft technical standards have been submitted to the European Commission for endorsement, with a view to their adoption in the coming months.

[Final report on draft RTS specifying the criteria for the classification of ICT related incidents, materiality thresholds for major incidents and significant cyber threats under DORA \(JC 2023 83\)](#)

[Final report on draft RTS to specify the detailed content of the policy in relation to the contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers as mandated by DORA \(JC 2023 84\)](#)

[Final Report on draft ITS on the standard templates for the purposes of the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers under Article 28\(9\) of DORA \(JC 2023 85\)](#)

[Final report on draft RTS to further harmonise ICT risk management tools, methods, processes and policies as mandated under Articles 15 and 16\(3\) of DORA \(JC 2023 86\)](#)

[Press release](#)

2 FINANCIAL CONDUCT AUTHORITY

- 2.1 **SDR and investment labels - FCA establishes industry-led working group for financial advisers - 16 January 2024** - The FCA has announced the establishment of a new industry-led working group for financial advisers to support the industry in advising consumers on products making claims about sustainability. This follows the publication of the FCA's Policy Statement (PS23/16) on sustainability disclosure requirements (SDR) and investment labels in November 2023.

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The FCA will sit as an active observer of the group, and has asked that it be ready to report on how the advice sector can be supported in delivering good practice in the second half of 2024.

[Press release](#)

BANKING AND FINANCE //

3 EUROPEAN BANKING AUTHORITY

- 3.1 CRR - EBA publishes report on specific aspects of the net stable funding ratio framework - 16 January 2024** - The European Banking Authority (EBA) has published a report on aspects of the net stable funding ratio (NSFR) framework under the Capital Requirements Regulation (575/2013) (CRR). Specifically, the report analyses the funding risk linked to derivative contracts, to securities financing transactions and unsecured transactions with a residual maturity of less than six months with financial customers, and to institutions' holdings of securities to hedge derivative contracts.

For the items in relation to which data is available, the report evaluates the materiality of the phenomena and assesses the impact of possible changes to the current prudential treatment. On the basis of this analysis and coupled with the fact that the current treatment appears to be aligned with other jurisdictions, the EBA concludes that changes to the current legislation are not necessary.

[EBA report on specific aspects of the NSFR framework under Article 510 \(4\), \(6\) and \(9\) of Regulation \(EU\) 575/2013 \(EBA/Rep/2024/01\)](#)

[Press release](#)

- 3.2 CRR - EBA publishes Consultation Paper on targeted amendments to prudential valuation framework - 16 January 2024** - The EBA has published a Consultation Paper on targeted amendments to Commission Delegated Regulation (EU) 2016/101, which sets out the regulatory technical standards (RTS) on the prudential valuation of fair-valued financial instruments under the Capital Requirements Regulation (575/2013) (CRR).

The amendments aim to promote a more harmonised application of the RTS and to reduce the observed variability of additional value adjustments under the core approach, as well as to set the rules for the application of the prudent valuation framework in extraordinary circumstances. The consultation will be open until 16 April 2024, and a public hearing will also take place via webinar on 4 March 2024.

[EBA Consultation Paper: Amending Draft RTS on prudent valuation under Article 105\(14\) of Regulation \(EU\) No 575/2013 \(EBA/CP/2024/001\)](#)

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4 FINANCIAL CONDUCT AUTHORITY

4.1 Loan-based peer-to-peer lending platforms - FCA publishes portfolio letter setting out expectations - 15 January 2024 - The FCA has published a portfolio letter setting out its expectations for loan-based peer-to-peer (P2P) lending platforms. The letter outlines the harms to consumers and markets that are most likely to arise from P2P business models, and the FCA's strategy to address such harms.

Key areas of focus include:

- fully embedding the FCA's new financial promotion rules for high-risk investments and firms approving financial promotions, as set out in FCA Policy Statement 22/10 published in August 2022;
- wind-down plans, their triggers and liquidity monitoring where the FCA is asking firms to complete a 'Self-Certification Attestation' confirming that they have taken, or will take, any action the FCA requires; and
- the Consumer Duty where (among other things) the FCA flags the risks to consumers that can arise where borrowers seek to raise loans for a number of inter-connected entities on platforms.

[FCA portfolio letter](#)

4.2 Investment-based crowdfunding platforms - FCA publishes portfolio letter setting out expectations - 15 January 2024 - The FCA has published a portfolio letter setting out its expectations for investment-based crowdfunding platforms. The letter outlines the harms to consumers and markets most likely to arise from crowdfunding business models, and the FCA's strategy to address such harms.

Key areas of focus include:

- concerns that firms could be misusing the one-off non-real time communications exemption under Article 28 of the FSMA 2000 (Financial Promotion) Order 2005 through the use of 'restricted documents';
- firms' compliance with the FCA's Policy Statement 23/11, published in July 2023, on the trading venue perimeter guidance, where the FCA is looking into feedback from crowdfunding platforms in respect of operating a secondary market;
- applications for permission to approve financial promotions under the new gateway system (which will need to be made before 6 February 2024 to take advantage of transitional arrangements); and
- financial resilience, with regulatory returns from the crowdfunding portfolio suggesting that income streams are inconsistent or 'lumpy', thereby putting firms' business models at risk of being financially unviable.

[FCA portfolio letter](#)

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SECURITIES AND MARKETS //

5 BASEL COMMITTEE ON BANKING SUPERVISION AND OTHERS

- 5.1 **Transparency and responsiveness of initial margin in centrally cleared markets - BCBS, CPMI and IOSCO launch joint consultation - 16 January 2024** - The Basel Committee on Banking Supervision (BCBS), the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a consultative report on transparency and responsiveness of initial margin (IM) in centrally cleared markets.

The report sets out 10 policy proposals which aim to increase the resilience of the centrally cleared ecosystem by improving participants' understanding of central counterparties' IM calculations and potential future margin requirements. The report will be open for comments until 16 April 2024.

[BCBS, CPMI and IOSCO consultative report: Transparency and responsiveness of initial margin in centrally cleared markets - review and policy proposals \(CR01/24\)](#)

[Press release](#)

6 BASEL COMMITTEE ON BANKING SUPERVISION AND INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

- 6.1 **Streamlining variation margin processes and initial margin responsiveness of margin models in non-centrally cleared markets - BCBS and IOSCO publish report - 17 January 2024** - The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) have published a consultative report on streamlining variation margin processes and initial margin responsiveness of margin models in non-centrally cleared markets. The report sets out eight recommendations to encourage the implementation of good market practices but does not propose any policy changes to the BCBS-IOSCO frameworks.

The report will be open for comments until 17 April 2024.

[BCBS and IOSCO report: Streamlining VM processes and IM responsiveness of margin models in non-centrally cleared markets \(CR02/2024\)](#)

[Press release](#)

7 EUROPEAN PARLIAMENT

- 7.1 **BMR - ECON publishes draft report - 15 January 2024** - The European Parliament's Economic and Monetary Affairs Committee (ECON) has published its draft report on the European Commission's proposal for a regulation amending the Benchmarks Regulation ((EU) 2016/1011) (BMR) regarding the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an

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administrator in a third country and certain reporting requirements. This follows the European Commission's adoption of the proposal in October 2023.

[ECON draft report on the proposal for a regulation of the European Parliament and of the Council amending Regulation \(EU\) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements \(2023/0379\(COD\)\)](#)

- 7.2 MiFIR and MiFID II - European Parliament votes to adopt new rules on market data transparency - 16 January 2024** - The European Parliament has voted to adopt proposals to amend the Markets in Financial Instruments Regulation (2014/600/EU) (MiFIR) (2021/0385 (COD)) and the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) (2021/0384 (COD)). The amendments are intended to reduce information asymmetries between market participants and improve orderly trading in commodity derivatives concerning energy and food. They also ban the practice of receiving payments for forwarding client orders for execution in order to protect investors from suboptimal trading decisions.

The next step is for the Council of the European Union to formally adopt the proposals, which will then enter into force on the 20th day after publication in the Official Journal of the European Union.

[Press release](#)

INSURANCE //

8 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

- 8.1 IDD - EIOPA publishes second report on application - 15 January 2024** - The European Insurance and Occupational Pensions Authority (EIOPA) has published its second report on the application of the Insurance Distribution Directive (EU/2016/97) (IDD). The report provides an overview of the impact of the IDD on consumers, insurance distributors and supervisory activities over 2022 and 2023, following input from national competent authorities (NCAs) and external stakeholders.

The report's main findings include:

- the number of registered intermediaries has further decreased over the past two years;
- initial evidence from NCAs about the application of the new sustainability rules illustrate challenges for consumers to understand the disclosures and complex concepts introduced by the new rules;
- insurance distributors faced challenges in applying the IDD in relation to new technologies, such as digital platforms and artificial intelligence; and
- the quality of advice and selling methods has improved in some member states, whereas in others mystery shopping activities have revealed significant shortcomings related to advice and selling methods.

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FINANCIAL CRIME //

9 COUNCIL OF THE EUROPEAN UNION AND EUROPEAN PARLIAMENT

9.1 AML/CTF - Council of the European Union and the European Parliament reach provisional agreement on proposed AML Regulation and MLD6 - 18 January 2024

- The Council of the European Union (the Council) and the European Parliament (the Parliament) have published press releases announcing that they have reached a provisional agreement on:

- the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Regulation); and
- the proposed Directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (Sixth Money Laundering Directive or MLD6).

The AML Regulation, among other things, expands the list of obliged entities to new bodies (including most of the crypto sector and professional football clubs and agents), sets an EU-wide maximum limit of EUR10,000 for cash payments and makes the rules on beneficial ownership more harmonised and transparent. MLD 6, among other things, grants more powers to financial intelligence units and further harmonises the content and functioning of beneficial owners' registers.

The texts of the AML Regulation and MLD6 (which have not yet been published) will now be finalised before they are formally adopted by the Council and the Parliament.

[European Parliament press release: AML Regulation](#)

[European Parliament press release: MLD6](#)

[European Parliament press release: AML/CTF legislative package](#)

[Council of the European Union press release](#)

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ENFORCEMENT //

10 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

10.1 IDD - EIOPA publishes Annual Report on administrative sanctions and other measures - 17

January 2024 - The European Insurance and Occupational Pensions Authority (EIOPA) has published its fourth Annual Report on administrative sanctions and other measures imposed during 2022 by national competent authorities (NCAs) under the Insurance Distribution Directive ((EU) 2016/97) (IDD). Among other things, the report notes:

- NCAs imposed a total of 2,762 sanctions across 21 EU member states in 2022;
- since the implementation of the IDD in 2018, and in particular between 2021 and 2022, there has been a rise in the number of sanctions relating to information and conduct of business requirements; and
- there are material differences in the number of sanctions relating to requirements on professional and organisational measures between member states, likely due to differences in national legal or procedural aspects.

[EIOPA 4th Annual Report on administrative sanctions and other measures under the IDD \(2022\) \(EIOPA-BoS23/520\)](#)

[Webpage](#)

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This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London. The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element. We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website [here](#).

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