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**December 21<sup>th</sup>, 2022 - European Banking Authority publishes new technical standards for identifying groups of connected customer**

On December 21<sup>th</sup>, 2022, the European Banking Authority published its [final draft regulatory technical standards \(RTS\)](#) on the identification of a group of connected customers (CCG) under Article 4 §1 of the Capital Requirements Regulation (CRR).

This draft RTS, in addition to the [EBA guidelines on connected clients](#), provides the complete framework for the identification of two or more natural or legal persons who are closely related by identical risk factors and for whom it appears more prudent to treat them as a single risk.

The draft RTS standards establish the following conditions for identifying two or more related legal entities:

- Both persons are part of the same consolidated financial statements, even if there is no exposure to the controlling person or entity. The draft RTS also provides a non-exhaustive list of circumstances, criteria and control indicators for assessing whether a parent-subsidiary-similar relationship exists between individuals and/or legal entities ;
- Financial difficulties of one natural or legal person extend to one or more others, with a potential impact on the full and timely repayment of debts ;

Control and economic dependence coexist within a group of related customers in such a way that all the natural persons and/or legal entities concerned constitute a single risk.

**December 16<sup>th</sup>, 2022 - European Banking Authority publishes technical implementation standards for information to be provided when selling non-performing loans**

On December 16<sup>th</sup>, 2022, the European Banking Authority (EBA) [published](#) the final version of its draft Implementation Technical Standards (ITS) specifying the information requirements that credit institutions selling non-performing loans (NPLs) must provide to potential buyers.

The objective of the draft ITS is to establish a common standard for sales or transfers of NPLs in the EU and to allow for cross-country comparison and thus reduce information asymmetries between sellers and buyers of NPLs, in order to improve the functioning of secondary markets for NPLs.

The ITS project focuses on the models to be used for the provision of loan-by-loan information when selling or transferring NPL portfolios. The templates cover information about:

- The counterparties related to the loan ;
- The contractual characteristics of the loan itself ;
- Collateral and guarantees provided ;
- Legal and enforcement procedures in place ;
- The repayment history of the loan.

The disclosure templates developed by EBA for NPL transactions build on previous voluntary templates and take into account the experience of market participants, both sellers and buyers, gathered during the consultation conducted in 2021. A data glossary and instructions for completing the templates are also incorporated into the ITS.

The draft ITS is based on strong proportionality provisions, focusing on sales of NPL portfolios and setting different information requirements depending on the nature of the borrowers and loans included in the

portfolios to be sold, specifying mandatory data fields. Proportionality is further enhanced by allowing all data fields to be treated as non-mandatory for certain types of transactions.

Finally, EBA clarifies that it does not encourage sales or transfers of NPLs as a primary strategy for reducing NPLs and considers them only as a possible tool available to credit institutions. EBA emphasizes that it is up to credit institutions to determine the best strategy for reducing NPLs in accordance with the [guidelines](#) that the Authority has previously issued on the management of non-performing exposures.

**Next steps :**

**The draft implementing technical standards are submitted to the European Commission for adoption (in the form of an implementing act).**

**December 14<sup>th</sup>, 2022 - Basel Committee on Banking Supervision publishes assessment of impact and effectiveness of Basel III reforms**

On December 14<sup>th</sup>, 2022, the Basel Committee on Banking Supervision [published](#) its third assessment to measure the impact and effectiveness of the Basel III reforms undertaken (see [appendix](#) for details).

The report's analysis provides evidence on:

- The impact of capital and liquidity requirement reforms on bank resilience and systemic risk ;
- Their potential secondary effects on banks' costs of lending and capital;
- The interactions between the elements of the reforms and the complexity of regulation under the Basel accords.

The report demonstrates that the overall resilience of the banking sector has increased since the implementation of the Basel III reforms. In addition, the analyses show greater improvements for institutions that were more heavily impacted by the reforms.

There is no strong evidence, however, but only some indication that banks with lower initial CET1 ratios and liquidity coverage ratios (LCRs) had lower loan growth than their peers.

With the overall goal of the reforms being to strengthen the banking system and mitigate contagion to other parts of the financial system, the report also analyzes market-based measures of systemic risk, which have improved significantly after the reforms were implemented.

The Basel Committee's analysis also shows that, in addition to their capital positions, banks have also improved their liquidity positions. They did this by increasing their levels of high quality liquid assets (HQLA) and reducing their reliance on unstable and short-term funding sources. Similarly, banks with larger LCR deficits at the time the reforms were introduced subsequently increased their LCRs more than banks with smaller or no deficits.

**Supervision of climate-related financial risks**

In parallel, the Basel Committee for Banking Supervision has [issued](#) a discussion paper (FAQs) with the objective of clarifying how climate-related financial risks can be taken into account in the Basel framework.

The paper aims to develop a globally consistent interpretation of existing Pillar 1 standards, taking into account the unique characteristics of climate-related financial risks, and is part of the Committee's overall approach to addressing climate-related financial risks in the global banking system.

**December 14<sup>th</sup>, 2022 - European Banking Authority publishes report on transparency of fees in the banking sector and on the level of charges for retail banking products**

On December 14<sup>th</sup>, 2022, the European Banking Authority (EBA) [published](#) a report on the transparency and level of fees and charges levied by financial institutions on retail banking products across the EU.

Firstly, the report highlights that fees and charges vary considerably in terms of level and category, not only within the European Union (EU) market but also between financial institutions in the same jurisdiction.

In addition, the diversity of fee and commission types results in different levels of consumer detriment and, with the exception of payment accounts, fees and commissions remain difficult to compare across providers.

The EBA study notes that:

- National legal frameworks are for the most part subject to the general principle of contractual freedom.
- Despite the improvements in consumer protection brought about by several sectoral directives introduced over the last decade to regulate retail banking products, market practices regarding fees and charges are likely to cause consumer detriment.
- The low level of harmonization and standardization of fees across EU member states (with the exception of payment accounts) can be detrimental to consumers when comparing the actual costs of products and services offered by financial institutions.
- Fees and charges remain an important source of revenue for financial institutions.

The EBA study covers mortgage credit, consumer credit, deposits, payment accounts, payment services and e-money services. EBA relied on input from national competent authorities, a sample of European and national consumer associations and a sample of 140 financial institutions.

#### **December 12<sup>th</sup>, 2022 - The European Central Bank presents its banking supervision program for 2023/2025**

On December 12<sup>th</sup>, 2022, the European Central Bank (ECB) [published](#) its banking supervision priorities for the next three years.

Among the issues that the central bank wants to address first are the existing shortcomings in credit risk management, including exposures to the most vulnerable sectors. According to the ECB, banks should be able to effectively address structural deficiencies in their credit risk management cycle from lending to risk mitigation and monitoring. With this in mind, the ECB envisages the following supervisory priorities:

- Targeted reviews of loan origination and monitoring, assessing compliance with related EBA guidelines with a focus on residential real estate portfolios;
- Targeted IFRS 9 reviews to assess compliance of selected banks with supervisory expectations (focus on residual issues and review of specific modeling aspects);
- IFRS 9 on-site inspection campaigns: focused on large corporates, small and medium-sized enterprises and retail portfolios as well as commercial real estate/collateral.
- Targeted on-site/internal model investigations for certain large portfolios in vulnerable sectors to assess the adequacy of the corresponding internal ratings-based (IRB) models, accounting models and credit risk management frameworks.

The ECB also points to the lack of diversification of funding sources and the gaps that may exist in funding plans. According to the ECB, banks report a high concentration of funding sources and should further diversify their funding structure through the development of sound multi-year funding plans that take into account the challenges arising from changing funding conditions.

**Figure 1**

Supervisory priorities for 2023-2025, addressing identified vulnerabilities in banks



Source: ECB.

## November 22<sup>nd</sup> – The European Commission requests the EBA to publish a technical advice on the development of green loans for individuals

On November 22<sup>nd</sup> 2022, the European Commission [published](#) a request for technical advice to the European Banking Authority (EBA) on green loans and mortgages.

### ***Purpose of the technical advice***

The EBA's technical advice will provide the European Commission with an overview of current market practices and of the presence of green loans in the banking market while proposing a draft for an EU definition of green loans and mortgages.

EBA's advice will enable the European Commission to consider measures to encourage the development of the green loan and mortgage market and access to green finance by retail borrowers and SMEs.

The technical advice will also need to take into account other regulatory initiatives under review, such as the proposed Directive on Consumer Empowerment for Green Transition, the proposed revision of the Consumer Credit Directive, and the proposals on energy efficiency and energy performance of buildings currently under

consideration by the co-legislators. The EBA's advice will also need to be consistent with the work being done in the context of the [Call for advice](#) to European Supervisory Authorities on the risks of greenwashing launched in May 2022.

In addition, the Commission is currently considering a review of the Mortgage Credit Directive (2014/17/EU). The response to the call for technical advice will therefore also need to incorporate the EBA's conclusions, [published](#) in June 2022, following a request from the Commission on the possible reform of the Mortgage Credit Directive, addressing, among other things, possible ways to encourage the uptake of green mortgages at EU level as well as climate risks to real estate and mortgages.

### **Content of the Technical Advice**

The recommendations contained in the technical advice should address lending to retail borrowers, such as households and SMEs.

The recommendations should include regulatory and legislative measures, including the development of a EU definition of green loans, based on the EU taxonomy, as well as drafting the key elements regarding the lending process, the pre-contractual information and advice to be provided to the borrower, the necessary information about the credit institution, the advertisement, and the product governance.

The EBA's recommendations may also address other non-regulatory measures, such as measures aimed at improving the provision of information, training tools, access to data, or technical advice to borrowers and lenders.

The EBA is asked to identify and assess potential legislative and non-legislative measures to encourage and facilitate the adoption of green loans by retail borrowers and to stimulate the green loan market. In order to encourage the development of the supply of such assets by credit institutions, the EBA may propose further measures to improve comparability, reliability and transparency of green retail lending activities.

### **Next steps :**

**The response to the request for technical advice must be released by the EBA no later than December 29<sup>th</sup> 2023.**

### **November 8<sup>th</sup> 2022 – Council agrees on a common position on CRR**

On November 8<sup>th</sup> 2022, the Council [agreed](#) on a common position on CRR on 8 November 2022.

The Council amended CRR on several points :

- **New definition of default (NDoD)** : the Czech Presidency introduced a **new recital (21a)** stating that : *“the severe, double economic shock caused by the COVID-19 pandemic and the Russian invasion of Ukraine might have far-reaching impacts on the European economy and disrupt businesses. Institutions will have a key role in contributing to the recovery also by extending proactive debt restructuring measures towards worthy debtors facing or about to face difficulties in meeting their financial commitments. In this regard, institutions should not be discouraged to extend meaningful concessions to the obligors when deemed appropriate, by a potential and warranted classification of counterparties as “defaulted” where such concessions restore their likeliness to pay the remainder of their debt obligations. When developing guidelines on the definition of default of an obligor or credit facility, the EBA shall duly consider the need for providing adequate flexibility to institutions”*. Article 151 was not amended.
- **Ancillary services** : factoring would no longer be considered as an *“ancillary service”*;

- **Fraud by the obligor** : in article 183 (iii) the words “any credit protection contract which can, in the event of fraud of the obligor, be cancelled or of which the extent of credit protection can be diminished, shall not be considered as unconditional” would be **deleted**.
- **Risk-weighted exposures** : in article 157 (6), the EBA is entrusted to develop guidelines on “the methodology for the calculation of risk-weighted exposure amount for dilution risk of purchased receivables” before the 31 December 2025 rather than 2026.

**Next steps :**

**From now on, the Council will wait for the trilogue: the Swedish presidency will be negotiating on behalf of the Council since the EP will not adopt a position before the end of 2022.**

**November 3<sup>rd</sup> 2022 – The European Banking Authority raises question about the relevance of continuing to apply the support factor from a prudential perspective**

On November 3<sup>rd</sup> 2022, the European Banking Authority (EBA) [published](#) a report to assess the implementation of the infrastructure support factor. In particular, the report analyzes several qualitative and quantitative aspects of lending trends as well as the riskiness of infrastructure loans that have received a capital reduction due to the introduction of the infrastructure support factor (ISF) under the Capital Requirements Regulation (CRR).

The data collected by the EBA is not sufficient, according to the report, to conclude on an impact of the ISF on lending or on the consistency between the riskiness of the loans concerned with respect to capital requirements.

Based on this report and in line with its [previous recommendations on credit risk](#) (August 2019), the EBA questions the appropriateness of further application of the FSI from a prudential perspective.

In addition, due to the latest changes in Basel III and the proposed revision of the CRR currently under review, which guarantee an increased risk sensitivity of the standardized approach and contribute to preserving the risk sensitivity of the IRB model, the relevance of applying an FSI is further questioned.

**October 31<sup>st</sup> 2022 – ECB publishes its response to the 2021 Report on Banking Union adopted by the European Parliament in July 2022**

On October 31<sup>st</sup> 2022, the European Central Bank (ECB) [published](#) a response to the 2021 Report on Banking Union [adopted](#) by the European Parliament in July 2022.

The ECB confirms in its response that, despite the Covid-19 pandemic and the crisis in Ukraine, banks remain resilient. The Central Bank will continue to monitor the financial health of banks and remains ready to act in the event that macroeconomic conditions deteriorate.

The Central Bank responds to several points raised in the Parliament's report:

- **Digital Euro**: the Digital Euro is not intended to change the role of banks as financial intermediaries and banks will be integrated into the payment system enabled by the Digital Euro.
- **Gender equality**: the ECB regrets that not all financial institutions have gender equality policies and will continue to work to increase diversity on boards.
- **Climate and environmental risk**: the ECB will continue to monitor climate risk and the risk it poses to banks. The Central Bank also considers it important to introduce prudential rules on green transition in the Capital Requirements Directive (CRD VI). The ECB recommends to the co-legislators to introduce in CRD VI intermediate targets for the financial sector to become carbon neutral by 2050.



- **European Deposit Insurance Scheme (EDIS):** The ECB shares the Parliament's view that EDIS is a key milestone in strengthening the resilience of the European banking system. The ECB regrets that the EUROGROUP has not yet found a common position on this issue.

**October 24<sup>th</sup> 2022 - The President of the European Banking Authority underlines the increase in capital required by the Basel III agreements before the ECON Committee**

On October 24<sup>th</sup> 2022, the President of the European Banking Authority (EBA), José Manuel Campa, [delivered its opinion](#) to members of the European Parliament's Economic Affairs Committee (ECON) about the ongoing CRR/CRD review.

The EBA President said that in order to fully comply with the prudential requirements under the Basel III Agreements by 2028, EU banks will need to raise an additional €1.2 billion of high quality capital (Tier 1). Such an increase would correspond to a 15% increase in current capital requirements.

Regarding the introduction of a minimum capital threshold for European banks using internal models for the calculation of their capital requirements, **the EBA President stated that he considered the proposals to be pragmatic as long as the provisions to mitigate the impact of the introduction of the output floor remain transitional.**

The EBA Chairman also emphasized that the banking sector remains solid, with Tier 1 capital ratios at an average level of 15% and large liquidity buffers. He noted, however, several signs of a deterioration in the quality of bank loans despite a decreasing level of non-performing loans in 2022.

In response to questions from MEPs about the vulnerability of businesses and households in the current economic climate, he recommended to give consumers the option of choosing between fixed and flexible rates when formalizing their loans, and that banks be more cautious when granting loans.

With regard to the supervision of ESG risks, the EBA President stressed the importance for supervisors' prudential control to remain risk-based.

**October 21<sup>th</sup> 2022 – European Commission publishes a Communication on guidelines for a best-execution process for sales of non-performing loans on secondary markets**

On October 21<sup>th</sup> 2022, the European Commission [published](#) a Communication on guidelines for a best-execution process for sales of non-performing loans (NPL) on secondary markets.

The purpose of the Commission's Communication - and the guidelines contained in it - is to encourage good practices on both the sell-side and the buy-side and, in particular, to assist those sellers and buyers who may have less experience in secondary market transactions. Thus, the guidelines provide clear suggestions for an effective approach and detail the key documents to be provided to external investors in standard market transactions.

The European Commission defines a standard market transaction as "an extended auction process of several phases, the two main ones being: a non-binding bid phase (phase 1) and a binding bid phase (phase 2)".

Therefore, the guidelines are structured in a chronological manner and include the different phases of the transaction process:

1. Structuring of the transaction: selection of the portfolio;

2. Preparation;
3. Pre-marketing;
4. Non-binding phase, known as "phase 1";
5. Binding phase, known as "phase 2";
6. Signing of the transaction and closing;
7. Post-closing.

Finally, the European Commission states that it is impossible to standardize the entire process, and that these guidelines are not intended to do so.

#### **October 20<sup>th</sup> 2022 – The European Banking Authority publishes its revised guidelines regarding credit spread risk related to non-trading book activities**

On October 20<sup>th</sup> 2022, the European Banking Authority (EBA) published [guidelines](#) and two draft regulatory technical standards (RTS) specifying the technical aspects of the regulatory framework for interest rate risk arising from non-trading book positions (IRRBB).

The guidelines presented by EBA on interest rate risk arising from non-trading book positions (IRRBB) and credit spread risk arising from non-trading book activities (CSRBB) will replace the [current guidelines on technical aspects of managing interest rate risk arising from non-trading book activities in the supervisory review process \(SREP\)](#) published in 2018.

The new guidelines incorporate new aspects, including criteria for identifying unsatisfactory internal models for managing the supervisory review and evaluation process (SREP) and criteria for assessing and monitoring the credit spread risk (CSRBB). EBA will closely monitor the implementation of specific aspects of the guidelines, including the 5-year repricing maturity cap on non-maturity deposits, with a view to assessing any adverse effects.

Besides new guidelines, the EBA published two draft regulatory technical standards (RTS) aiming to complete the incorporation into EU law of the Basel provisions on interest rate risks related to non-trading book positions:

- [Draft Regulatory Technical Standards specifying standardised and simplified standardised methodologies to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities](#) : it specifies criteria for assessing risks arising from potential changes in interest rates that would affect both the economic value of equity (EVE) and net interest income (NII) of non-trading book activities. The technical standards also provide a simplified standardized approach for smaller, non-complex institutions. To ensure greater proportionality, the EBA's proposed standards include adjusted thresholds for modeling behavioral assumptions to be used in combination with standardized constraints and assumptions.
- [Draft Regulatory Technical Standards specifying supervisory shock scenarios, common modelling and parametric assumptions and what constitutes a large decline for the calculation of the economic value of equity and of the net interest income](#) : it specifies modeling assumptions and supervisory shock scenarios to identify institutions for which the economic value of equity (EVE) would decline by more than 15% of core capital, as well as to assess whether there is a sharp decline in net interest income, which could trigger supervisory action.

#### **Next steps:**

**The new guidelines will be applicable from June 30<sup>th</sup> 2023, except for the part on CSRBB, which will be applicable from December 31<sup>st</sup> 2023.**

The EBA has stated that it will closely monitor the implementation of its technical guidelines and standards and more generally the impact of interest rate developments on interest rate risk management for non-trading book positions and other related prudential issues.

**October 17<sup>th</sup> 2022 – EBA issues an opinion on the European Commission's proposed amendments to the EBA final draft technical standards on Pillar 3 disclosures on ESG risks**

On October 17<sup>th</sup> 2022, the European Banking Authority [published](#) an opinion on the European Commission's proposed amendments to its [draft implementing technical standards](#) for environmental, social and governance (ESG) risk disclosures to be published as part of the prudential disclosures referred to in Article 449a of [the Capital Requirements Regulation \(CRR\)](#).

The [technical implementation standards \(ITS\)](#) proposed by EBA in January 2022 regarding the ESG risk disclosures under Pillar 3 propose comparable quantitative information on physical and transitional climate change risks, including information on exposures to carbon assets and assets subject to chronic and acute climate change events. They also include quantitative information on mitigation actions taken by institutions to support their counterparties in transitioning to a carbon-neutral economy and in adapting to climate change. In addition, they include a green asset ratio, which identifies the assets of institutions financing environmentally sustainable activities according to the EU taxonomy.

The European Commission's version of the ITS, compared to the final draft of the ITS submitted by the EBA, includes two substantial changes, mainly regarding the calculation and disclosure of the BTAR ("Banking Book Taxonomy Alignment Ratio"). In particular, the Commission proposes changes to emphasize:

- 1/ Institutions 'may' choose to disclose this information, instead of being required to do it on a 'a best effort basis', and ;
- 2/ Collection of the information from the counterparties will be on a 'voluntary basis', including that institutions need to inform the counterparties about the voluntary nature of this request of information.

In its opinion, EBA recognizes the importance of proportionality and accepts the amendments proposed by the European Commission.

However, EBA wishes to emphasize that the objective of the Banking Book Taxonomy Alignment Ratio (BTAR) is to prevent asymmetric treatment of exposures to counterparties that may present a similar level of risk to the institution and insists on the importance for institutions to do their utmost to disclose this ratio and to collect relevant information from their counterparties in order to mitigate the effects of internal and external shocks.

**October 12<sup>th</sup> 2022 – The EBA clarifies guidelines' implementation regarding 3<sup>rd</sup> pillar disclosures**

On October 12<sup>th</sup> 2022, the European Banking Authority (EBA) published clarifications on the applicability of several of its guidelines with regards to mandatory disclosures, in particular when they are intended to be superseded by the technical implementation standards (ITS) on Pillar 3 disclosures.

First, given the overlap of [the ITS on Pillar 3 disclosures](#), EBA is repealing three guidelines that are no longer relevant, namely:

- [The guidelines on disclosure requirements under Part 8 of Regulation \(EU\) No 575/2013 \(CRR\);](#)
- [The guidelines on the disclosure of the liquidity coverage ratio \(LCR\) to complement the disclosure of liquidity risk management ;](#)
- [The guidelines on the disclosure of encumbered and unencumbered assets.](#)

The [ITS on Pillar 3 disclosures](#) also specify the disclosure requirements for forborne exposures which are only applicable to large and other listed institutions in accordance with Article 442 of [Regulation 575/2013 \(CRR\)](#).

The EBA believes that the limited scope of the ITS compromises external stakeholders' access to relevant information on the credit quality of exposures of small, non-complex and other non-rated institutions. Therefore, EBA has amended [its guidelines to adjust the scope of the disclosure guidelines to forborne exposures](#) with the objective of making them applicable to small and non-complex listed institutions and other medium-sized non-rated institutions.

**Next Steps:**

The [EBA's consolidated guidelines on disclosure requirements for forborne exposures will](#) apply as of December 31, 2022.

**October 6<sup>th</sup> 2022 – The EBA publishes its updated risk dashboard for the second quarter of 2022**

On October 6<sup>th</sup> 2022, the European Banking Authority (EBA) [published](#) its quarterly risk dashboard highlighting the risks and vulnerabilities of the EU banking sector. EBA's risk analysis highlights that, while banks currently have sufficient liquidity buffers, future funding conditions are likely to become more difficult due to a deteriorating macroeconomic and geopolitical situation.

After analysis of the data, EBA's main conclusions are the following:

- The average CET1 ratio remained unchanged at 15%;
- Overall, banks showed **robust liquidity ratios**: the average liquidity coverage ratio (LCR) reached 164.9% and the net stable funding ratio (NSFR) stood at 126.9%;
- While the non-performing loans (NPL) ratio for EU/EEA banks continued to decline (from 1.9% to 1.8%), the Tier 2 ratio increased again (from 9.1% to 9.5%);
- The return on equity (RoE) for EU/EEA banks was 7.9 percent (it was 6.7 percent in 1Q 2022). The increase in profitability was particularly supported by net interest income.

**October 4<sup>th</sup> and 5<sup>th</sup> 2022 - Basel Committee publishes two additional reports on the implementation of Basel III rules**

On October 4<sup>th</sup> 2022, the Basel Committee [released](#) the latest update to its Regulatory Consistency Assessment Programme (RCAP), which allows the committee to monitor the implementation of the Basel III accords.

Through the RCAP, the committee highlights the status of transposition of the new 2017 and 2019 rules in each signatory jurisdiction. It notes that significant progress has been made in this area since the previous exercise in September 2021 and recalls the committee's expectations: the "full and consistent" implementation of all aspects of Basel III "as soon as possible" to ensure similar regulatory treatment for all international banks.

On October 5<sup>th</sup> 2022, the same committee also [published](#) a second report assessing the consequences and effectiveness of the rules on the usability and cyclicity of the various buffers of funds: capital buffer usability, countercyclical capital policy, liquidity buffer usability, and expected credit loss provisioning, capital and procyclicality.

The Committee highlights the following conclusions from this report:

- The positive relationship between the amount of leeway banks are allowed in their capital buffers and lending during the post-covid economic recovery phase;

- The limited evidence that the limited use of liquid reserves would have affected market and lending activities and that the situation and the introduction of expected credit loss (ECL) rules would have had pro-cyclical effects on lending activities.

Finally, the Committee calls for caution in the build-up and use of reserves by banks to mitigate the effects of both internal and external shocks.

#### **Next steps**

**The rules resulting from the Basel III agreements are supposed to come into force on January 1<sup>st</sup> 2023.**

#### **October 4<sup>th</sup> 2022 – Council formally adopts the “Daisy Chain” regulation**

On October 4<sup>th</sup> 2022, the Regulation regarding the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities, or "Daisy Chain" regulation, was formally adopted by the Council. The regulation was [published](#) in the Official Journal of the European Union on October 25<sup>th</sup> 2022.

As a reminder, this regulation strengthens the prudential regulatory framework applicable to credit institutions operating in the Union. The regulation on daisy chains provides targeted adjustments that improve bank resolution. It helps to ensure that banks remain resilient and able to withstand shocks by proposing, among other things :

- Specific treatment for the indirect underwriting of eligible instruments for the purposes of the internal minimum capital requirement and eligible liabilities (MREL) ;
- Aligning the treatment of global systemically important groups of institutions with a multiple entry point resolution strategy with the treatment described in the international standard on total loss-absorbing capacity (TLAC);
- Clarification of the eligibility criteria for instruments issued under the internal TLAC requirement.

#### **Next Steps:**

**The regulation has entered into force on November 14<sup>th</sup> 2022.**

#### **October 3<sup>rd</sup> 2022 – The EBA assesses the dependency of EU banking system to non-EU counterparties**

On October 3<sup>rd</sup> 2022, the European Banking Authority (EBA) [published](#) a report on the dependency of the European financial sector on third parties entities, operators and funding originating from outside the single market.

Based on an analysis of 2021 figures, the EBA highlights that out of 3,688 credit institutions operating in the EU, 360 banks (including 243 subsidiaries and 117 branches/branches) were controlled by non-EU entities.

Moreover, the report highlights the following facts:

- Foreign banks and entities hold 12% of the total assets of the EU banking sector;
- Foreign banks and entities hold 11.4% of outstanding loans;
- Foreign banks and entities hold 6.6% of debt securities;
- Foreign banks and entities hold 31.4% of the derivatives market.

The report also points out that non-EU banking entities mainly provide wholesale banking services to their EU counterparts. It is also worth noting that non-EU entities in the single market provide nearly 20% of their

financing in the EU in foreign currencies and that this financing is intended to be invested in loans and advances to retail consumers and non-financial businesses.

These results reflect, according to the report, the high degree of openness of the European economy within the global financial system. EBA notes, however, that while raising funds from sources outside the EU offers opportunities, it can also create vulnerabilities in some areas. In this context, matching foreign currency assets with liabilities denominated in the same currency is generally considered as prudent risk management.

This report comes in response to [a request](#) from the European Commission to 1/ better assess the dependency of EU banks on non-EU entities and 2/ have a clearer view of the share of foreign currency funding in the EU.

#### **September 30<sup>th</sup> 2022 – The European Banking Authority publishes its 2021 Basel III monitoring**

On September 30<sup>th</sup> 2022, the European Banking Authority (EBA) [published](#) the first edition of its Basel III Monitoring Report, which aims to assess the impact of the implementation of the Basel III accords on EU banks by 2028.

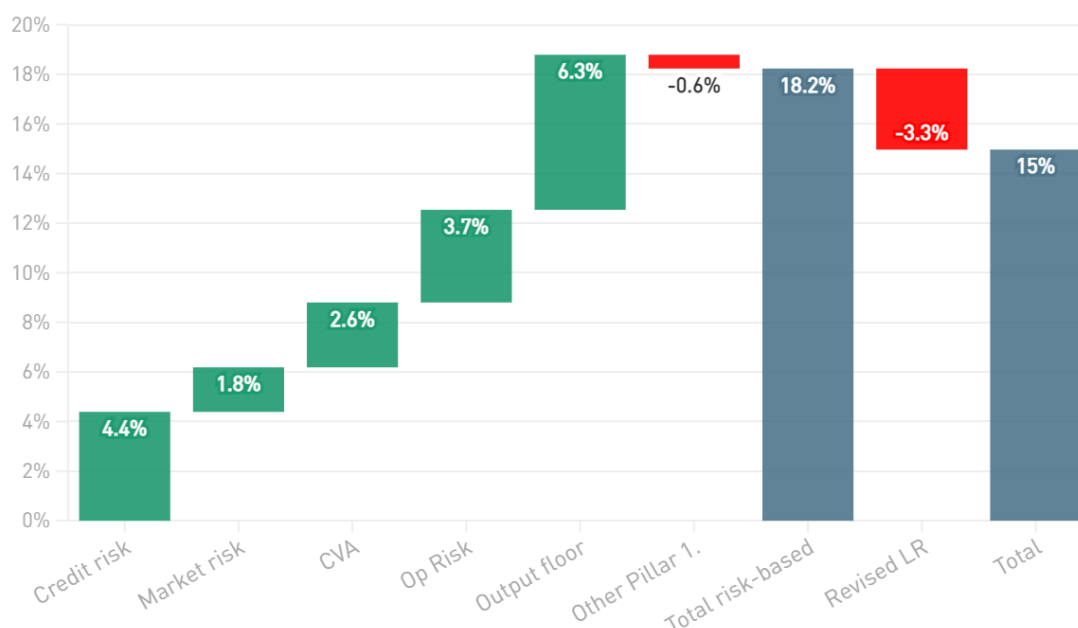
The assessment report is based on a sample of 160 banks and uses the same methodology as the Basel Committee for Banking Supervision. The report assesses the impact on EU banks of the final revisions related to credit risk, operational risk and leverage ratio frameworks, as well as in relation to the introduction of the aggregate output floor. It also quantifies the impact of the new standards on market risk (FRTB) and credit value adjustments (CVA).

The assessment concludes that full implementation of Basel III (expected in 2028) would result in an average increase of 15.0% in the current minimum Tier 1 capital requirement for EU banks. To comply with the new framework, EU banks would thus need an additional €1.2 billion of Tier 1 capital.

Excluding the contribution of the leverage ratio, the impact of the reforms is 18.2%, of which the main factors are the production floor (6.3%) and credit risk (4.4%). The minimum tier 1 capital requirement for large and internationally active banks (group 1) would increase by 16.0%. The respective requirement for global systemically important institutions (G-SII) and Group 2 banks would increase by 24.7% and 9.6% respectively.

### Change in total T1 MRC, as a percentage of the overall current Tier 1 MRC, due to the full implementation of Basel III (2028) (weighted averages, in %)

All banks ▼



Source: EBA Quantitative Impact Study (QIS) data (December 2021)



The report also includes [an annex](#) on the impact of the implementation of proposed EU specific adjustments provides an assessment of the impact of the Basel III framework with additional implementation features that are included in the EU Commission legislative proposals on the implementation of Basel III in the EU.

#### September 30<sup>th</sup> 2022 - The Basel Committee on banking supervision publishes its Basel III monitoring report

On September 30<sup>th</sup> 2022, the Basel Committee on Banking Supervision [released](#) the results of its supervisory exercise on the impact of the implementation of Basel III.

According to the results of the exercise, the Basel III capital ratios of the world's largest banks increased last year to the highest level since the results of the assessment were first published in 2012. After a decline in the previous period, the leverage ratio increased, led by European banks.

The report outlines the impact of the Basel III framework, including the December 2017 finalization of the Basel III reforms and the January 2019 finalization of the market risk framework.

The report reiterates that the final Basel III minimum requirements will be implemented by January 1, 2023 and phased in by January 1, 2028. As of June 2021, the average impact of the fully implemented final Basel III framework on Group 1 banks' Tier 1 minimum capital requirement (MRC) is +2.4%, compared to an increase of 3.3% at end-December 2020. For this reporting date, Group 1 banks reported regulatory capital shortfalls amounting to €0.1 billion, compared to a shortfall of €2.3 billion at end-June 2021.

The supervisory exercise also collected bank data on Basel III liquidity requirements. The weighted average liquidity coverage ratio (LCR) decreased to 141 percent for the sample of Group 1 banks and 224 percent for Group 2 banks. In the current reporting period, six banks in Group 1 have LCRs below 100 percent. This is due

to the fact that banks used up LCR reserves during the Covid-19 pandemic. All Group 2 banks have LCRs well above the minimum requirement of 100 percent.

The weighted average net stable funding ratio (NSFR) has increased to 125% for Group 1 banks. As of December 2021, all banks in the supervised sample reported a ratio at or above 100% for the NSFR.

#### **September 29<sup>th</sup> 2022 - The European Banking Authority published its work program for 2023**

On September 29<sup>th</sup> 2022, the European Banking Authority published its work program for the year 2023.

5 strategic priorities are highlighted by the EBA's work program:

- Finalize the implementation of the Basel III accords in the EU.
- Conduct an enhanced stress test to assess the resilience of European banks with more criteria.
- Provide more data to stakeholders.
- Address new challenges brought by the digitization of financial services and fulfill the mandates given to it under MiCA and DORA.
- Contribute to strengthening the European capacity to fight money laundering and terrorist financing and to protect EU consumers from fraud.

In addition, the EBA has announced that it will continue its work on sustainable finance through its regulatory and climate-related financial risk assessment mandates.

Among the activities and deliverables announced for 2023, EBA also plans to publish guidelines specifying activities that are a direct extension of banking activities, ancillary activities and similar activities.

EBA also includes in its work program its willingness to continue monitoring national liquidity practices, particularly with respect to the practical implementation of the liquidity coverage ratio (LCR) rules and definitions. The publication of a report on the monitoring of interdependent assets and liabilities in the context of the liquidity coverage ratio is scheduled for the second half of the year.

A report comparing IRB models is scheduled for publication in the first quarter of 2023.

#### **September 13<sup>th</sup> 2022 – “Daisy chain” : the European Parliament adopts the provisional agreement reached in trilogues**

On September 13<sup>th</sup> 2022, the European Parliament [adopted](#) by a large majority the provisional agreement reached at the end of the trilogues on the proposed "daisy chain" directive.

The purpose of this proposal is to provide a framework for the resolution of failing systemically important banking groups. The revision includes targeted adjustments aimed at improving the solvency of banking institutions:

- specific treatment for the indirect underwriting of eligible instruments for the purposes of the internal minimum capital requirement and eligible liabilities (MREL) ;
- aligning the treatment of global systemically important groups of institutions with a multiple entry point resolution strategy with the treatment described in the international standard on total loss-absorbing capacity (TLAC);
- Clarification of the eligibility criteria for instruments issued under the internal TLAC requirement.

**Next steps:**



**The EU Council will formally approve the agreement reached in trilogues in October before the publication in the Official Journal of the European Union**

**September 12<sup>th</sup> 2022 – The European Supervision Authorities (EBA, ESMA, EIOPA) have published a joint report on the risks to the financial sector in the current economic environment**

On September 12<sup>th</sup> 2022, the European Supervision Authorities (EBA, ESMA, EIOPA) [have published](#) a joint report on the risks and vulnerabilities to the financial sector in the current economic context.

The report highlights the fact that Russia's war with Ukraine and the disruption of the post-pandemic recovery have led to a rapid deterioration in the economic outlook. In addition to pre-existing inflationary pressures, the sharp rise in energy and commodity prices and the growing imbalance between supply and demand have contributed to a weakening of household purchasing power. The report also points out the increasing risk of persistent inflation and stagflation.

All of these factors, combined with the deteriorating economic outlook, are having a significant impact on the risk environment of the financial sector.

The report highlights the fact that the combination of high funding costs and lower economic output could put pressure on government, corporate and household debt refinancing, while negatively impacting the credit quality of financial institutions' loan portfolios. Similarly, the reduction in real yields by higher inflation could encourage investors to take on more risk at a time when rate increases trigger significant portfolio rebalancing.

However, the Supervisory Authorities emphasize that the financial system has so far demonstrate resilience in the face of growing political and economic uncertainty. In light of the risks outlined above, the ESAs issue recommendations to national competent authorities, financial institutions and market participants:

- Prepare for a deterioration of asset quality in the financial sector and closely monitor developments, particularly with respect to assets that have benefited from temporary measures related to the pandemic and those that are particularly vulnerable to inflation;
- Continuously monitor the impact of further policy rate hikes and possible sudden increases in risk premiums on financial institutions and market participants in general;
- Closely monitor the risks faced by retail investors, particularly with respect to products where consumers may not fully realize the magnitude of the risks involved, such as crypto assets;

Continue to carefully manage environmental and cyber risks in the face of increasing threats to information security and business continuity.

**August 31<sup>st</sup> - CRR/CRD : exchange of views between rapporteur and shadow rapporteurs in ECON committee on the controversial amendments**

On August 31<sup>st</sup> 2022, the MEPs of the committee on Economic and Monetary Affairs (ECON) met to discuss the amendments previously tabled (*see dedicated message*) concerning the proposals on the revision of the Capital Requirements Regulation and Directive (CRR/CRD).

First of all, the rapporteur on the two legislative proposals, **Jonas FERNANDEZ** (S&D; SP), recalled that he was in favor of the gradual introduction of a threshold at the consolidated group level. He also recalled that the transposition into EU law should take into account the diversity of national banking systems while giving precedence to the faithfulness to the Basel III agreements over the protection of a particular national banking sector, notably with regard to internal models.

The shadow rapporteur for the EPP group, **Othmar KARAS** (AT), insisted on the need to reach a compromise between political groups which enables the preservation of the competitiveness and resilience of EU banks on an international scale. According to him, the diversity of economic contexts and banking markets in the EU requires that a differentiated implementation of the Basel III agreements needs to be envisaged on the European territory.

For the EPP, the priority objectives in the finalization of the transposition of the Basel III agreements are:

- To avoid any significant increase in capital requirements, a measure which will not, according to the rapporteur, contribute to improving the resistance of banks to crises;
- To ensure the application of the principle of proportionality and to develop regulations that put all players in the banking sector on an equal footing with regard to capital requirements;
- To harmonize capital floors between member states and implement an *output floor* at the highest consolidated level;
- With regard to the ESG factors to be integrated into the prudential framework, the EPP group stresses the lack of accessible and verified data. It suggests that a review of the ESG factors to be included in the prudential framework should be carried out at a later stage and based on a review of the correct data.
- To ensure that a risk factor is not double counted in the prudential framework.
- For companies with a complex structure, the EPP believes that it is necessary to ensure the correct application of the principle of proportionality in prudential matters as well as a harmonized implementation of the disclosure obligation.
- More regulation of third country branches operating in the EU and the development of a capital adequacy regulation that guarantees the EU's place on international markets.

**Gilles BOYER** (Renew; FR), shadow rapporteur for the Renew group, also wants to avoid any significant increase in capital requirements. He affirmed that the priorities of the Renew group remain the same since the first presentation of the text by the European Commission, i.e. to achieve a balance between the stability of the banking system and the preservation of growth and access to credit.

As far as the implementation of the output floor is concerned, the shadow rapporteur would like to see it implemented in accordance with the provisions negotiated in the Basel III agreements and in conformity with the opinion given by the ECB. He stresses, as the previous speakers, that the negotiations of most discussed amendments are more a matter of national divisions between parliamentarians than based on the membership to a political group.

With respect to the transitional measures, the shadow rapporteur has a divided opinion on the position to be taken. He is in favor of taking into account the national specificities of the European banking sector. He also believes that each transitional measure should be examined individually with objective criteria to determine whether it is strictly necessary and when it should be terminated, In particular with regard to unrated companies.

Regarding the matter raised by the standard approach and internal models, Gilles BOYER acknowledges doubts about the way the grandfathering clause is drafted. He believes that the same risk weighting should be guaranteed for similar risks, but remains open on this question.

Finally, Gilles BOYER underlines that the rapporteur FERNANDEZ maintains in his draft report the calculation of the internal loss multiplier at 1 and proposes an alternative to this method of calculation which would avoid "rewarding" banks with an unsound operational risk management system. The objective of this method of calculation would be to apply a multiplier that is proportionate to the activity of the institution and that would be based on three indicators according to the level of activity of the banking group: for banks whose activity is less than 750 million euros, for those whose activity is between 750 and 1 billion and another for those whose

activity is greater than 1 billion. This method of calculation would be in line with the opinion of the EBA and the provisions negotiated with the Basel III agreements.

With regard to ESG risks, Gilles BOYER proposes, in collaboration with Pascal CANFIN (Renew; FR), to implement a differentiated risk weighting for fossil fuel exposures, which constitute an additional risk to be taken into account in the prudential framework. He also underlined in this context that transition risks are currently not or poorly taken into account in the prudential framework and suggested, in this same perspective, to improve the sensitivity to risks in key areas (local authorities, specialized financing, etc.).

Finally, Gilles BOYER concluded his speech by recalling the three pillars defended by the Renew group in the perspective of a compromise:

- The deepening of the banking union;
- The preservation of equity between EU banks and international jurisdictions in the transposition of the Basel III agreements;
- The development of the most adequate risk sensitivity possible while taking into account the specificities of the EU real economy.

On behalf of the Greens/EFA group, shadow rapporteur Ville Niinistö (FI) advocated in favor of the introduction of a minimum capital requirement for banks using an internal model at all levels of a group. He wants to avoid the risk of "undercapitalization" of certain entities in a group, in order to reduce capital requirements, as this would potentially undermine their own stability.

#### **Next steps:**

**The rapporteur underlined the following points as remaining under discussion for the next shadow rapporteurs' meetings: the scope of transitional measures to spread the impact of the introduction of the output floor, the consideration of ESG risks, and the supervision of branches of third country banking groups operating in the EU.**

**The vote on the final report in the ECON committee is scheduled for December 5<sup>th</sup> 2022.**

#### **August 22nd - European Parliament publishes the amendments tabled by MEPs on CRD review**

On August 22nd 2022, the amendments tabled by MEPS (Part 1 and 2) concerning the proposal on the revision of the Capital Requirements Directive (CRD 6) were published by the committee on Economic and Monetary Affairs (ECON).

Most notably, Markus FERBER (EPP; DE) proposes to exclude factoring from the scope of the new requirements applying to third country entities.

Markus FERBER (EPP; DE) suggests to delete any reference made by the European Commission to take sustainability into account. On the contrary, the Renew group and the Greens/ALE group want to further ensure that transition plans are consistent with the recently adopted [Corporate Sustainability Reporting Directive](#) (CSRD).

Jonas Fernandez (S&D ; ES) and Paul TANG (S&D; NL) are in favor of including the future Anti-money laundering Authority (AMLA) in the development of guidelines concerning anti-money laundering and allowing supervisors to access AMLA centralized database before granting an authorization to third country entities branches.

Ville NIINISTO (Greens/EFA; FI) wants to allow supervisors to be able to suspend the distribution of dividends during turmoil in the financial markets. He also supports that third country entities should only be able to

establish EU branches if their home country supervisor has previously signed a memorandum of understanding with EU authorities.

**Next steps :**

**The vote on the final report in the ECON committee is scheduled for December 5th 2022.**

**August 17<sup>th</sup> 2022- European Parliament publishes the amendments tabled by MEPs on CRR review**

On August 17<sup>th</sup> 2022, the Committee on Economic and Monetary Affairs (ECON) of the European Parliament published the amendments concerning the [review](#) of the Capital Requirement Regulation (CRR3) :

- i. [Amendments 313 to 587](#)
- ii. [Amendments 588 to 901](#)
- iii. [Amendments 902 to 1197](#)
- iv. [Amendments 1198 to 1561](#)

Several amendments are relevant for factoring and EUF members :

- **Article 4 (18) on the definition of ancillary services** : Engin EROGLU (EPP; DE) proposes to **exclude from the definition** Special Securitization Purposes Entities (SSPE) and Collective Investment Undertakings (CIU) and **operational leasing**. He also proposes to **define as ancillary activities those that are “ancillary to the principal activity of one or more institutions”**.
- **Article 151 on prudential treatment of corporate purchased receivables** : Gilles Boyer (Renew; FR) and the Renew group put forward that **EBA should develop Regulatory Technical Standards (RTS) for “the treatment applicable to exposures to purchased receivables under the Standardised Approach for Credit Risk”**.
- **Article 157 on risk weighted exposure amounts for dilution risk of purchased receivables** : Gilles Boyer (Renew; FR) and the Renew group propose that the draft RTS developed by EBA regarding the methodology for the calculation of risk-weighted exposure amount for dilution risk of purchased receivables shall be submitted by 31 December 2025 rather than 2026.
- **Article 162 on purchased receivables maturity** : Engin EROGLU (EPP; DE) introduces that *“for self-liquidating short-term trade finance transactions connected to the exchange of goods or services, including corporate purchased receivables for which M shall be effective, the effective maturity M as set out in paragraph 2, taking into account the provisions laid out in paragraph 3 of this Article”*. Which means that **purchased receivables would be exempted from using a maturity value set to 2,5 years**. Furthermore EPP and Renew MEPs **suggest returning to the approach of actual maturity**. Finally, through several amendments Gilles Boyer (Renew; FR) and the Renew group that **effective maturity with a one-day floor can be applied to both A-IRB and F-IRB for short-term exposures**.
- **Article 178 on the definition of default** : Boyer (Renew; FR) and the Renew group include **“purchased receivables”** as a case in which institutions may **apply the definition of default at the level of an individual credit facility** rather than in relation to the total obligations of a borrower.
- **Article 183 (iii) on fraud by the obligor** : Esther de LANGE (EPP; NL) and Caroline NAGTEGAAL (Renew; NL) add that an unconditional guarantee should not contain any clause that would *“prevent the guarantor from being obliged to pay out in a timely manner pursuant to the default of the obligor”*, and that the mention *“guarantees where the payment by the guarantor is subject to the lending institution first having to pursue the obligor and that only cover losses remaining after the institutions has completed the workout process shall be considered as unconditional”* is deleted .

- **Article 506 on the use of policy insurance as a CRM technique** : Frances Fitzgerald (EPP; IE) and Othmar KARAS (EPP; AT) propose that EBA analyses the **eligibility of policy insurance as a CRM technique**, and its outcomes in terms of own funds requirements.

#### Next steps

The vote on the final report in the ECON committee is scheduled for December 5<sup>th</sup> 2022.

#### July 22<sup>nd</sup> 2022 - The European Banking Authority publishes an analysis of the use of exemptions under the large exposure regime

On July 22<sup>nd</sup> 2022, the European Banking Authority (EBA) [published](#) a report on the use of exemptions under the large exposure regime. Article 507(1) of Regulation 575/2013 on prudential requirements for credit institutions and investment firms mandates the European Banking Authority to monitor the use of a specific subset of exemptions to large exposure limits.

The purpose of the report is to analyze banks' use of various exemptions and seeks to quantify the impact of a possible removal of several exemptions under the large exposures regime. Overall, the report demonstrated that some of the exemptions assessed are widely used in the EU and their removal would have a significant impact, while other exemptions are widely used in the EU but their removal would have little impact. In addition, some exemptions are only relevant to certain Member States or appear to be rarely used.

The EBA's analysis does not contain any specific recommendations or measures to be adopted.

#### July 15<sup>th</sup> 2022 – The European Systemic Risk Board publishes its annual report on the monitoring of risks related to non-bank financial intermediation.

On July 15<sup>th</sup> 2022, the European Systemic Risk Board (ESRB) published its [annual report](#) on the monitoring of risk concerning non-bank financial intermediation (*NBFI Risk Monitor 2022*).

The purpose of this annual report is to identify and monitor systemic risks and vulnerabilities related to non-bank financial intermediation activities such as investment funds, financial vehicle companies, securities and derivatives dealers, and financial companies engaged in lending. The entity-based analysis is complemented by an activity-based assessment that examines risks and vulnerabilities in securities financing, derivatives, and securitizations, and where risks may arise from the use and reuse of financial collateral.

In 2021, the total assets of EU investment funds and OFIs increased by 9.2 percent, from €39 trillion to €42.6 trillion.

The 2022 report highlights the following risks:

- disorderly market corrections that could lead to losses, large redemption requests, and liquidity stress for some investment funds holding less liquid assets;
- increased liquidity and credit risks as bond funds further increase their holdings of lower-rated fixed income securities;
- excessive use of leverage and interlinking that could amplify shocks to financial stability.

#### July 12<sup>th</sup> 2022 - The ECB publishes its recommendations for improving the treatment of banks in resolution and liquidation in the context of the consultation on the state aid scheme for distressed banks

On July 12<sup>th</sup> 2022, the European Central Bank (ECB) [published](#) its response to the [European Commission's consultation](#) on state aid rules for banks in difficulty.

The ECB welcomes the European Commission's choice to assess the state aid rules. On the one hand, the ECB is of the opinion that public support to banks should be reduced to a minimum. On the other hand, it considers it necessary that the regulatory framework for state aid continues to be able to deal with failing banks and systemic shocks, and to facilitate the timely exit of unsound banks from the market.

The ECB's contribution offers several suggestions for improving the level playing field between banks in resolution and liquidation:

- First, improve access to the Single Resolution Fund (SRF), so that it can more effectively support resolutions in systemic crises and for more banks, for example by allowing national deposit guarantee schemes (DGSs) to extend their funding for the purpose of unlocking access to the SRF.
- Second, the need for liquidation assistance could be further limited by giving all EU deposit guarantee schemes the ability to support the sale of a failed bank to a buyer.
- In cases where the liquidation aid option is considered, the Commission could consider broadening the scope of burden sharing beyond subordinated creditors but excluding depositors. This would be considered on a case-by-case basis where the financial stability risks of bailing out creditors (excluding depositors) are limited.

Given the close links between the state aid rules and the crisis management and deposit insurance framework (CMDI), the ECB considers that the review of both regimes should go hand in hand. Changes to the State aid rules should therefore only be considered after access to the Single Resolution Fund has been improved.

Finally, the ECB recommends avoiding aligning the State aid rules with the current inflexible conditions for access to the Single Resolution Fund, in particular the minimum bail-in of 8% of total liabilities and own funds.

#### **July 6<sup>th</sup> 2022 - The European Banking Authority analyzes prudential treatment related to legacy instruments and highlights mitigation of their contagion risk**

On July 6<sup>th</sup> 2022, the European Banking Authority [published](#) an analysis of the implementation of its [Opinion on the prudential treatment of legacy instruments](#), published in October 2020.

Since the publication of its Opinion in 2020, the EBA has worked cooperatively with competent authorities to monitor actions taken by financial institutions to mitigate contagion risks related to legacy instruments. The EBA's analysis concludes that financial institutions and competent authorities have made significant efforts to follow the European Banking Authority's guidance effectively and consistently.

The EBA analysis states that institutions have made considerable efforts to address the problems associated with legacy instruments, primarily by redeeming or repurchasing these instruments or changing their terms. In several national jurisdictions, the transposition of Article 48 (7) of the Bank Recovery and Resolution Directive (BRRD) has helped to mitigate infection risk by ensuring that all claims arising from equity items have a lower priority in national laws governing normal insolvency proceedings than any claim not arising from an equity item.

For a limited number of instruments, actions are still in progress or under consideration, with call options scheduled to be exercised in 2022. A few instruments, however, will remain in a lower category of equity or as eligible liabilities or on the balance sheet as non-regulatory capital.

**Next steps:**

**EBA invites institutions and national competent authorities to apply existing guidance consistently, taking into account the new grandfathering period generated until June 2025 by the more recent amendments to the Capital Requirements Regulation (CRR II). In this context, EBA will again assess in due course the need for an additional review of the stock of CRR2 legacy instruments.**

**July 1<sup>st</sup> 2022 - The European Central Bank analyzes the impact of stress tests and capital requirement changes on banks' lending and risk-taking decisions**

On July 1<sup>st</sup> 2022, the European Central Bank [published](#) a study analyzing the impact of stress tests and changes in capital requirements on banks' risk-taking and lending decisions.

The ECB finds that banks participating in the stress tests are reallocating loans from the riskiest to the safest borrowers in the household sector, making them generally safer but also less profitable.

The ECB's analysis confirms that disclosure of capital requirements can have a disciplinary effect, as banks that disclose their requirements tend to have more robust capital ratios, which improves both market discipline and financial stability. The analysis also points out that market discipline improves the ability of customers, investors, and intermediaries to monitor and influence bank management while adding a new dimension to the regulatory process as banks' risk taking is closely monitored, thereby improving financial stability.

**July 1<sup>st</sup> 2022 - The EBA's Risk Dashboard for the first part of 2022**

On July 1<sup>st</sup> 2022, the European Banking Authority (EBA) [published](#) a risk dashboard for the first quarter of 2022.

The EBA's analysis of the scorecard highlights a high capital and liquidity ratio. The Authority also indicates that the first signs of deterioration in asset quality related to the current geopolitical situation are starting to appear.

The main takeaways from the risk scorecard are as follows:

- Banks' liquidity buffers are still abundant despite a decline in the liquidity coverage ratio (LCR).
- Non-performing loans (NPLs) continued to decline, but Tier 2 loans and cost of risk increased.
- Banks' return on equity (RoE) declined due to higher impairments and lower positive one-offs. Going forward, analysts expect higher impairments to offset the positive impact of higher rates on earnings.
- Cyber and operational risk, arising from geopolitical tensions, remains at a high level for banks and financial institutions.

**July 1<sup>st</sup> 2022 - The European Banking Authority adopts decision on fraud reporting**

On July 1<sup>st</sup> 2022, the European Banking Authority (EBA) [adopted](#) a decision on the reporting by competent authorities of payment fraud data under the Payment Services Directive (PSD2).

According to the [EBA's guidelines on fraud reporting](#), competent authorities must report payment fraud data under PSD2 to the EBA within 6 months via the European Centralized Data Infrastructure (EUCLID) and in accordance with the Data Point Model (DPM).

This decision allows for the establishment of a streamlined flow mechanism through which the European Central Bank, on behalf of the relevant competent authorities, could submit data to the EUCLID infrastructure.

**June 29<sup>th</sup> 2022- The Council adopts its position on the European Single Access Point (ESAP)**



On June 29<sup>th</sup> 2022, the Council [has adopted](#) its position on the proposal for a regulation on the establishment of a European Single Access Point (ESAP). This proposal aims to create a single point of access to publicly available corporate information with the objective of making EU companies and financial products more attractive to investors. A single point of access would allow easy and rapid access to relevant and comparable information needed for investment decisions.

The Council's position specifies that the competent national authorities will be the collection bodies for the information to be provided on the ESAP platform. Furthermore, the Council recalls that this regulation will not create new reporting obligations for EU companies but will bring together the data produced by the following mandatory reporting:

- annual financial statements;
- consolidated management reports;
- audit reports;
- reports on payments made to governments.

The European Insurance and Occupational Pensions Authority (EIOPA) will also be responsible for developing draft implementing technical standards to determine several elements including additional metadata to accompanying information, the structure of the data and information for which a machine-readable format is required. EIOPA will submit these draft implementing technical standards to the Commission, which will have the power to adopt them.

The Council specifies in its position that the ESAP platform will have to be implemented gradually and that its essential parts will have to be operational between 2026 and 2030.

**Next steps:**

**ECON committee's member are currently reviewing the text. The draft report by the rapporteur Pedro Silva (S&D; PT) is expected to be presented in committee in October 2022.**

**June 17<sup>th</sup> 2022 - EBA's conference on the role of environmental risks in the prudential framework**

On June 17<sup>th</sup> 2022, the European Banking Authority (EBA) held a conference on the role of environmental risks in the banking prudential framework, as part of a [consultation](#) the Authority is organizing on the same topic. The conference was organized by Jacob GYNTELBERG, Director of Prudential Risk at the European Banking Authority and Dorota SIWEK, in charge of the unit working on ESG risks at EBA.

As presented in the [consultation document](#), EBA's analysis of the role of environmental risks is funded on a risk-based approach. The primary objective remains financial sector risk resilience, financial stability and transition financing. To this end, EBA emphasizes that capital requirements should reflect actual risk exposures. According to the EBA presentation, which emphasizes a holistic approach to the regulatory framework, Pillar 1 is not the only tool that can be mobilized: the accounting framework, Pillar 2 requirements in the context of supervisory activities, Pillar 2 guidelines and the conduct of resilience tests in the context of supervision, and macroprudential buffers are also adequate tools.

The EBA's primary conclusions currently open to contributions are the following:

- A risk-based approach is crucial to maintain the soundness of the prudential framework.
- Pillar 1 requirements are not intended to cover all risks and a holistic approach allowing the use of all appropriate tools should be considered to adequately address environmental risk factors. However, EBA warns against double counting: to the extent that environmental risks are already taken into



account in the prudential framework, any additional adjustments should be designed to prevent double counting of risks in order to ensure the consistency and robustness of the framework.

- Better use of existing mechanisms and the adoption of targeted adjustments to the prudential framework would, in EBA's view, be a better way to take account of environmental risks than dedicated risk weighting adjustment factors;
- A key challenge is how to capture the forward-looking nature of environmental risk factors. To do this, improving data collection and analysis is essential.
- The prudential framework must remain based on empirical/scientific evidence: substantial investments to improve risk monitoring and measurement are needed. At this stage, the focus should be on collecting environmental risk data and developing risk management tools and practices.
- The supervisory framework should not consider other policy objectives and stick to the "one tool, one objective" rule.

**Next step:**

[EBA's consultation](#) is open until August 2<sup>nd</sup> 2022. A final report, after collection and analysis of the contributions by EBA, is expected in 2023. The report could lead to a legislative proposal if the European Commission deems it necessary.

**June 16<sup>th</sup> 2022 - Eurogroup: adoption of the work programme to complete the banking union by 2030**

On June 16<sup>th</sup> 2022, the Eurozone's economic and finance ministers [met and adopted](#) their work program for the second half of 2022. With regard to the banking union in particular, the eurozone finance ministers have agreed on a comprehensive work program to complete the banking union by 2030.

If the proposal for a banking union work program drawn up in early May by Eurogroup President Paschal Donohoe included four components, the Eurozone Member States have opted to advance in priority the "*financial crisis management and the national deposit guarantee schemes*" dimension. The Eurogroup stresses that the role of a effective framework for managing failing banks is to ensure financial stability, create a level playing field, and protect depositors and taxpayers through consistent burden sharing and safety nets funded by the financial sector.

In its [statement](#), the Eurogroup detailed the elements of a reformed banking crisis management framework that could be adopted by the end of the legislature:

- a clarified and harmonized public interest assessment prior to any resolution of a failing bank ;
- a broader application of resolution tools at the European and national levels, including for non-systemic banks, financed by MREL (*Minimum requirement for own funds and eligible liabilities*) and by safety nets provided by the private sector;
- further harmonization of national deposit guarantee funds (DGS), with the introduction of a harmonized least-cost test to govern the use of these guarantee funds;
- harmonization of targeted features of national insolvency regimes.

The decision to move forward only on the 'banking crisis management' aspect comes in the context of the recent turbulence observed on the sovereign debt markets and following the ECB's announcements on raising key rates. Southern European countries have thus considered it too risky to move forward on all aspects of the banking union, particularly on the aspect relating to the diversification of bank exposure to sovereign debt.

**Next steps:**

**The Eurogroup statement calls on the co-legislators to complete by 2024 the legislative provisions necessary to implement an effective banking and financial crisis management framework. The publication of a**

**legislative package on the revision of the banking crisis management and deposit guarantee framework is scheduled for December 21<sup>st</sup> 2022.**

**June 13<sup>th</sup> 2022- CCR/CRD : first exchange of views in Parliament**

On July 13<sup>th</sup> 2022, rapporteur Jonas FERNANDEZ (S&D, ES) [presented](#) his draft report on the ongoing review of the capital requirement regulation and directive to the Economic and Monetary Affairs Committee (ECON). The rapporteur stated that he was not in favor of decreasing capital requirements for banks. He also added that "internal model abusers" would be strongly affected by these changes. He introduced several of its proposed amendments including :

- Introducing an output floor consolidated at group level.
- Ending the transitory regime.
- Harmonizing reporting requirement for banks whatever their size.
- Taking into account ESG for mortgage credit collaterals.

EPP and ID MEPs were opposed to this report and strongly advocated in favor of ensuring European banks remained competitive. Both were also in favor of granting SMEs lighter reporting rules.

Shadow rapporteur Gilles BOYER (Renew, FR) declared to be supportive of keeping European banks competitive. Thus, he was in favor of the consolidated output floor. At the difference of the ID MEP he was not against taking into account climate risk in the Basel III framework.

FERNANDEZ's report did not differ much from the Commission proposal. No amendment suggested significant modifications to article 147 par. 2 and the point referring to corporate receivables. Furthermore, the definition of loss given default would not be based on the concept of "expected ratio" but on actual ratio.

**Next steps:**

- **Deadline for tabling amendments is set to July 11<sup>th</sup> 2022.**
- **Amendments will be examined on September 8<sup>th</sup> 2022.**
- **The vote in the ECON committee is expected to take place on December 5<sup>th</sup> 2022.**

**June 10<sup>th</sup> 2022 - CRR/CRD : EBA's contribution to the European Commission report on prudential risks**

On June 10<sup>th</sup> 2022, the contribution of the European Banking Authority (EBA) to the European Commission's future report on prudential risks under the Article 459 of the Capital Requirements Regulation (CRR) [was published](#). At the request of the Commission, the Authority is providing an analysis of banking markets and developments in those markets that may create macro- and micro-prudential risks in all or most Member States.

It considers that the funding and liquidity profiles of European banks and their capital ratios and reserves are "comfortable".

The main risk for the European banking sector is, in its view, the consequences of the Covid-19 pandemic and in particular the economic uncertainty that it causes, which makes it difficult to predict the levels and timing of possible defaults and losses. The Authority notes, however, that the sector "was part of the solution" by continuing to provide financing to the real economy and not a source of aggravation as during the great crisis of 1929.

**June 1<sup>st</sup> 2022- Main outcomes of the Capital Markets Union Conference and coming initiatives to be presented**

On June 1<sup>st</sup> 2022, the European Commission organized a [conference](#) on the Capital Markets Union with the aim of brainstorming on how to further encourage retail investments in the EU.

The various panelists discussed, among other things, the increasing digitization of retail financial services, the practical ways for developing financial skills of EU citizens, and the role of professional advice in developing sustainable investments as the key issues for developing the Capital Markets Union.

The obstacles to deepen the Capital Markets Union, as highlighted by the panelists, are market fragmentation and the relatively small size of the European market. The European Commissioner for the Economy, Paolo GENTILONI, also recalled that in the United States, two-thirds of non-financial companies are financed by negotiable instruments, compared to only one-third in the EU, where companies are much more dependent on bank loans.

The lack of tax transparency between states and the fragmentation of national insolvency regimes have also been pointed as barriers to cross-border investments and harmonization of financing costs. The European Commissioner in charge of financial services, Mairead MCGUINNESS, also pointed out the lack of integration of capital markets at the EU level. She added in her [speech](#) that "the completion of the Capital Markets Union would make Europe stronger on the world stage" and is thus a top priority for the EU.

The European Commissioner then listed the future initiatives that the European Commission will present in the coming months to further develop the Capital Markets Union:

- an initiative to harmonize corporate insolvency procedures is planned for fall 2022;
- an initiative that will improve companies' access to capital by facilitating the listing of securities is scheduled for the end of 2022;
- a legislative package to make EU-based central counterparties safer and more attractive is scheduled for the end of 2022;
- a renewed strategy for retail investment is announced for 2023.

#### **May 23rd – Rapporteur Jonas Fernandez presented his draft report on CRR/CRD**

MEP Jonas FERNANDEZ (S&D, ES), rapporteur of the Economic and Monetary Affairs Committee (ECON) on both the legislative proposals amending the capital requirements regulation and directive, presented his draft reports on May 23<sup>rd</sup> 2022.

1. [The draft report on the legislative proposal amending the capital requirements regulation](#) (CRR) as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor.
2. [The draft report on the legislative proposal amending the capital requirements directive](#) (CRD) as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks.

The rapporteur proposes to reconsider the transitional regimes - and therefore the corresponding derogations - notably for credit ratings for large companies or for the treatment of equity exposures. He suggests that only simplified resolution requirements for small and non-complex institutions are authorized and no exemptions. He also proposes to take better account of environmental, social and governance (ESG) risks.

Many of the amendments proposed by the rapporteur in his draft report do not significantly alter the provisions initially proposed by the European Commission.

The CRR draft report contains several amendments to be noted for factoring activities:

- Amendment 312 (article 506, par. 1) : the report on the eligibility and use of credit insurance as a credit risk mitigation technique (CRM) would still be drafted by the EBA by 31 December 2026. However, the EBA would have to draft it in cooperation with the EIOPA;

- **No amendment suggests significant modifications to article 147 par. 2 and the point referring to corporate receivable** (amendments 109, 110 and 112 are only changes in wording);
- Amendment 130 (article 151, par. 13): **this amendment does not include the proposal to extend EBA's mandate to the standard approach**. Yet, the changes in the articles 153 and 154 referred to and from the section *"Permission by the competent authorities to use the IRB approach"* of CRR to the section *"Calculation of risk-weighted exposure amounts"* (but still into the Chapter 3 dedicated to the IRB approach) have to be further analyzed to assess their impact;
- The rapporteur proposes two amendments to paragraph 6 of Article 157, but these are simple changes of wording (*see amendments 134 and 135*). **The scope of the regulatory technical standards (RTS) on the method for calculating the risk-weighted exposure amount for dilution risk of purchased receivables and the assessment of the negligible criterion for certain exposures arising from purchased corporate and retail receivables and the date for the submission of the RTS - before 31 December 2026 - remain unchanged;**
- Amendment 168 (article 178, par. 1, point b): the rapporteur suggests defining default as *« 90 consecutive days past due on any material credit obligation »* but doesn't introduce the EUF proposed amendment to apply such definition to the level of an individual credit facility for retail exposures and purchased receivables;
- The definition of loss given default (LGD) would no longer be based on the concept of "expected ratio" but on actual ratio. The amendment also proposes to consider loss given dilution only on the basis of exposures to purchased receivables (*excluding pledged receivables*) (*see Amendment 21*);
- Amendments 181 and 204: **as suggested by the EUF, the words "Any credit protection contract which can, in the event of fraud of the obligor, be cancelled or of which the extent of credit protection can be diminished, shall be considered to not meet those requirements" are deleted** in both Article 183(b)(iii) and Article 213(1)(d);
- **Last, the rapporteur does not propose to amend the definition of an "ancillary services undertaking"** (Article 4, point 18 of CRR) but proposes that the concept of "parent institution in a Member State" should not apply to relations with ancillary services undertakings (*see amendment 9*).

**Next steps:**

**The draft reports will be discussed for the first time by ECON committee members on June 13<sup>th</sup> 2022.**

**The vote for the final adoption of the report in the ECON committee is scheduled on December 5<sup>th</sup> 2022.**

**May 18<sup>th</sup> – The EBA published its decision regarding supervisory reporting for IPU threshold monitoring**

On May 18<sup>th</sup>, the European Banking Authority [published](#) its decision on supervisory reporting for monitoring the threshold of Intermediate Parent Undertakings (IPUs) in the EU.

As part of the [guidelines](#) on how to calculate and monitor the total value of assets of IPUs in the EU (adopted in July 2021), the EBA adopted a decision on supervisory reporting for the monitoring of the EU parent undertaking threshold for entities belonging to third country groups, including third country branches.

Competent authorities will be required to report to the EBA information on the total value of assets held by such entities in their jurisdiction in the format specified in the [annexes](#) to the decision.

The EBA in turn undertakes to provide information to the relevant competent authorities for each group of third countries. The objective is to facilitate cooperation between competent authorities and to support their decision-making process regarding threshold supervision.

**May 11<sup>th</sup> – The EBA published its annual report on supervisory convergence**

On May 11<sup>th</sup>, the European Banking Authority [published](#) its annual report on convergence of supervisory practices in 2021.

Based on its analysis, the EBA notes progress by national competent authorities in implementing the Supervisory Review and Evaluation Process (SREP) guidelines.

However, the report highlights EBA's additional expectations on topics such as information and communication technology (ICT) risks, cyber risk and the challenges of digital transformation. The report also highlights the need to develop more harmonized practices with respect to the determination of capital surcharges.

The EBA believes that there is still room for further convergence in the use of internal capital adequacy assessment (ICAAP) as well as in the consistent treatment of risks across the EU and in setting Pillar 2 (P2G) guidelines.

The report further notes that most of the supervisory attention in 2021 has been focused on capital management, asset quality and credit risk management, due to the impact of the COVID-19 pandemic on credit quality and on the level of non-performing loan (NPL) exposures.

**May 11<sup>th</sup> - Laying down rules on a debt-equity bias reduction allowance: the European Commission published its legislative proposal on “DEBRA”**

On May 11<sup>th</sup>, the European Commission [published](#) its directive proposal on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (entitled DEBRA - *Debt-Equity Bias Reduction Allowance*).

The initiative refers to a premium (via a system of deductions) for new investments by companies financed by equity, in order to reduce the tax incentive to take on debt.

According to the European Commission, there is a bias in favor of debt, which manifests itself in the possibility for companies to deduct the interest linked to borrowing for an investment. It is therefore necessary, in the Commission's view, to promote a rebalancing of tax incentives and to balance the conditions of competition. The approach of combining an equity exemption with a limitation of the interest deduction is expected to increase investment by 0.26% of GDP and GDP by 0.018%.

***Functioning of the allowance***

The system would apply to taxpayers subject to corporate income tax but would not apply to financial sector's companies : credit institutions, investment companies, alternative investment funds, insurance companies, etc. The allowance will allow the taxpayer to deduct from his taxable base the increase in his equity from one tax period to the next. The allowance would be calculated by multiplying the increase in equity by an interest rate based on a risk-free interest rate as defined by EU regulations. The allowance would be equal to the allowance base multiplied by the 10-year risk-free interest rate for the relevant currency plus a risk premium of 1% or, where the taxpayer is an SME, a risk premium of 1.5%.

The allowance would be limited in time: it would be deductible from the taxpayer's taxable base for corporate tax purposes for 10 consecutive tax years; and in amount: up to 30% of earnings before interest, taxes, depreciation and amortization.

**Next steps:**

The European Commission has launched a [call for contributions](#) on the DEBRA proposal which is opened until July 11<sup>th</sup> 2022.

The proposed directive is under consideration by the EU Council. The proposal is subject to the special "consultation" procedure, which is applied in the area of tax matters. In this case, the Council of the EU decides unanimously and the European Parliament only provides an advisory opinion.

**May 11<sup>th</sup> - New proposal amending rules concerning financial services contracts concluded at a distance published by the European Commission**

On May 11<sup>th</sup>, the European Commission [published](#) its new legislative proposal amending rules concerning financial services contracts at a distance.

The main measures concern :

- **The right of withdrawal.** The directive's proposal provides a 14-day withdrawal period from the conclusion of the contract. Moreover, professionals should facilitate the exercise of this right of withdrawal: a button should for example be provided for online sales. The professional would be required to send a notification of the right of withdrawal if the pre-contractual information is received less than one day before the conclusion of the contract.
- **Pre-contractual information.** The proposal clarifies the information to be provided to the consumer and the time limits for doing so: the consumer should receive the information at least one day before the conclusion of the contract. If the deadline is not met, the consumer should be informed by a reminder message.
- **Transparency and guarantees when using automatic tools:** chatbots, advice via computer programs (robo advisors) are mentioned in the proposal and should bring greater protection guarantee to the consumer.
- **Enforcement.** In case of large-scale cross-border infringements, national competent authorities could impose sanctions of up to 4% of annual turnover.

Finally, the proposed directive would work in a specific way: the harmonized set of rules is intended to act as a safety net where more advanced sectoral rules are not available.

**Next steps:**

**Stakeholders can submit their contributions on the directive's proposal at the latest on July 8<sup>th</sup> 2022.**

**Member States will have two years after the directive adoption to transpose the directive.**

**May 4<sup>th</sup> - Consumer Credit Directive : ECON committee adopted its opinion**

On May 4<sup>th</sup>, the opinion report [adopted](#) by the ECON committee on the Consumer Credit directive's proposal has been published.

The ECON committee's opinion has been substantially amended from Marek BELKA's original proposal. The new provisions contain more flexibility while offering some additional guarantees for consumers. The central demands of the proposal such as the introduction of proportional measures for small credits or the merger of SECCI and SECCO are included in the opinion report.

On the other hand, the conditions are stricter with regard to the deadlines for the conclusion of the contract and the information to the consumers.

For the record, the ECON Committee is mobilized as an advisory committee. Its opinion - containing the amendments proposed by the committee - is not legally binding. It will be forwarded to the main committee (Internal Market and Consumer Affairs - IMCO) for consideration.

**Next steps :**

The [ECON opinion report](#) is forwarded to the IMCO committee for consideration.

The draft report of Katerina KONECNA (GUE/NGL, CZ) and its amendments will be submitted for adoption in IMCO committee on June 16<sup>th</sup> 2022.

**May 4th – EBA’s report on non-bank lending (see the dedicated note for more detailed information on the report)**

The European Banking Authority (EBA) published on May 4th a [report on non-bank lending](#) in response to the European Commission’s February 2021 [Call for Advice](#) on digital finance.

Firstly, the EBA’s report underlines that the scope of non-bank lending in the EU remains limited compared to credit provided by banks. Fintech activities have nevertheless significantly increased over the last years and the development on non-traditional actors in lending operations have similarly rose.

The EBA’s recommendations aim at addressing risks arising from the provision of lending by non-bank entities in the areas of supervision, consumer protection, anti-money laundering and countering the financing of terrorism (AML/CFT), macro and micro prudential risks.

Regarding the prevention of macro-prudential risks, the EBA proposes to strengthen the provisions in terms of authorization and admission to lending activities. In order to achieve a more effective supervision, the EBA asks for a clarification of both the prudential perimeter and the supervisory responsibilities in the situation of cross-border provision of services.

Furthermore, the EBA supports the enhancement of the monitoring and reporting frameworks to avoid that any sudden increase of macroprudential risks remain unaddressed. According to the EBA, an oversight and monitoring system at EU level for regulated and unregulated non-bank lenders would help assess the build-up of systemic risks as well as identify the most compelling risks at macro level.

The EBA also considers the introduction of activity-based macro-prudential measures to cover all credit providers, including non-banking lenders.

**Other findings of the report on factoring:**

- Factoring is often offered by banks or non-bank entities belonging to banking groups.
- Innovative technologies, digitalization and new market entrants such as FinTech have played a role in the factoring and invoice trading market over recent years. For instance, most factoring companies have currently digitalized or are in the process of digitalizing a significant share of the front-end processes.
- Despite an increase of the role of FinTech players, the role of FinTechs in actually providing factoring services (as opposed to only providing technology-based trading or brokerage platforms) is still rather marginal with respect to the total EU factoring market.
- Nevertheless, the interest of BigTechs in financial markets and products and their increasing engagement in this field may change this situation in the future. Moreover, many authorities are of the



view that this trend must be monitored closely, due to the fast-paced growth experienced by non-bank entities over recent years and based on their potential to increase their activities rapidly.

#### **May 2022 - Completion of the Banking Union: Eurogroup work program to be agreed in June**

According to the latest negotiations on the subject on May 23<sup>rd</sup>, several Member States seem ready to compromise on the draft work program aiming at completing the banking union in the euro zone by 2030, previously submitted by Eurogroup President Paschal Donohoe.

However, other Member States are standing on their ground and refusing to make any concessions: while Italy is advocating strong risk-sharing measures, as proposed by the EDIS bank deposit guarantee scheme, and refusing any quantification of sovereign risk, Germany, on the other hand, does not want to hear about the pooling of potential losses within EDIS and is pressing for a reduction of risk-sharing in the EU financial system.

After two meetings of the Eurogroup in an enlarged format, a next meeting is scheduled for June 16<sup>th</sup> in Luxembourg in order to reach an agreement on the work program.

As a reminder, on April 29<sup>th</sup>, the president of the Eurogroup, Paschal Donohoe, [presented](#) his proposed plan to finalize the banking union to the European finance ministers. His [detailed proposal](#) to finalize the banking union is divided into four areas of work:

- improving crisis management in the banking sector
- creation of a European deposit guarantee scheme
- deepening the single banking market
- dealing with sovereign risk.

Each area of work is divided into two phases depending on the progress of the work and the degree of ambition of the Member States. A first milestone is planned for 2028 to allow Member States to agree by consensus on the launch of the second phase, if the first phase has been completed as foreseen in the future work program.

The first phase focuses on priority measures, which should be adopted during this institutional cycle and implemented simultaneously in the four work streams mentioned above. The second phase contains a set of additional measures, the introduction of which will be gradual and depend on both the progress of the first phase and the political will of the Member States.

#### **April 29<sup>th</sup> – EBA advice to the European Commission on the improvement and simplification of the current macroprudential framework**

The European Banking Authority [published](#) on April 29<sup>th</sup> its response to the European Commission's [call for advice](#) on the review of the macroprudential framework. The [EBA's report](#) includes a set of recommendations to simplify the procedures around some of the existing macroprudential tools and to increase harmonization for others.

The EBA's advice includes the following recommendations:

- rebuild regulatory capital buffers to sufficient levels so that they can be released when needed again in the future;
- undertake a comprehensive evaluation of the interaction of macroprudential measures with other capital requirements, such as leverage ratio, own funds and eligible liabilities (MREL) requirements;
- maintain clear roles and responsibilities of the different authorities involved in microprudential and macroprudential policy as well as close coordination between them;



- include a legal mandate in the Capital Requirements Directive (CRD) to develop methodologies covering both the identification of other systemically important institutions (O-SIIs) and the setting of buffer rates and simplify the text of the CRD and the Capital Requirements Regulation (CRR) around governance procedures for some macroprudential measures;
- establish an oversight and monitoring system for non-bank lenders and enlarge the scope of the macroprudential framework to cover non-bank lenders.

Furthermore, in view of the potential risks engendered by non-bank lending as demonstrated by the report, the EBA recommends other measures to be adopted:

1. the **establishment of an oversight and monitoring system at national and/or EU level for non-bank lenders**, which would help assess the build-up of systemic risks on a timely basis, as well as identify and address the most compelling risks at a macro level.
2. the **development of a minimum set of EU-wide activity-based rules for lending** based on a minimum harmonization of the main elements of already widely applied activity-based instruments, such as macroprudential BBMs for new residential real estate financing, in order to facilitate their reciprocity among Member States.
3. **all credit providers (i.e. not only credit institutions but also non-bank lenders) may be covered by a macroprudential framework**, allowing for the possibility to introduce activity-based macroprudential measures, which should consider also the application of any requirement at entity level. In turn, this may also reduce the scope of regulatory arbitrage.

#### April 28<sup>th</sup> - “Daisy chain proposal” the co-legislators reach a provisional agreement

On April 28<sup>th</sup>, the European Parliament and the Council of the EU reached a [provisional agreement](#) in the inter-institutional negotiations (“trilogues”) on the [proposed “daisy chain” directive](#), which is part of the “[Banking Package](#)” to be presented in October 2021. The text of the agreement has not yet been communicated.

The co-legislators finally agreed on the two main controversial points of the proposal which are:

- The deduction regime for own funds and eligible assets. The political agreement mentions a new deduction regime in order to avoid double counting of items meeting the resolution loss absorption requirements (or **MREL Minimum Requirements for Eligible Liabilities**) for intermediate entities. A review clause was also added to the proposed directive to modify this provision at a later stage, if necessary.
- Prudential treatment of groups via a multiple entry point strategy. The provisional agreement provides for a transitional regime until the end of 2024.

As a reminder, the European Commission’s proposal introduces targeted adjustments to improve banks’ ability to face resolution situations. It modifies certain aspects of the prudential treatment for global systemically important groups of institutions (G-SIIs) with respect to the resolution strategy, and develops the so-called “multiple entry point” approach to resolution. This approach modifies the allocation of responsibilities between subsidiary and parent institution within banking groups in the event of resolution

The three main modifications that this proposal introduces to the EU’s resolution framework are:

- Introducing a specific treatment for the indirect underwriting of instruments eligible for the minimum capital requirements and eligible liabilities (MREL).
- Aligning the treatment of groups of global systemically important institutions (G-SII), concerned by the multiple entry point resolution strategy, with the treatment described in the Financial Stability Board (FSB) [fact sheet](#) on Total Loss Absorption Capacity (TLAC)
- Clarifying the eligibility of instruments in the context of the internal TLAC standard

The Council of the European Union had adopted its [position](#) on December 21<sup>st</sup>, 2021. The European Parliament adopted its [position](#) on February 4<sup>th</sup>, 2022.

Le Conseil de l'UE avait adopté sa [position](#) le 21 décembre 2021, et le Parlement européen la [sienna](#) le 4 février 2022.

**Next steps:**

**The text of the agreement must now be validated by the European Parliament and the Council of the EU and then be formally adopted by both institutions.**

**April 27<sup>th</sup> – CRD: the ECB publishes its opinion on the proposal**

On April 27<sup>th</sup>, 2022, the European Central Bank (ECB) published its [opinion](#) on the European Commission's [proposal](#) for the revision of the Capital Requirements Directive ([CRD](#)).

The ECB's main remarks are as follows:

- Improving the consideration of environmental, social and governance (ESG) risk by imposing stricter requirements and complementing the range of supervisory tools available in that area will help to ensure that this type of risk is considered. Credit institutions would be encouraged to develop better ESG risk management frameworks, which in turn would help to reduce the likelihood of excessive risk accumulation.
- Faithful implementation of the output floor will reduce “unjustified” variability in risk weights, but operational complexities should be avoided
- Harmonisation of provisions for the assessment of directors and key bank personnel (fit and proper assessment) will facilitate supervision and an effective control system.
- The common set of rules applicable to branches of third country banking groups operating in Member States will strengthen the single market as it will replace the national approaches which remain heterogeneous.

Finally, the ECB proposes 42 amendments to the European Commission's proposal, mainly to adjust technical parameters and to streamline supervision measures.

**April 22<sup>nd</sup>: the EBA observes progress being made in reducing the gap for MREL funds**

On April 22<sup>nd</sup>, the EBA published its annual [quantitative MREL report](#) on data as of December 2020. MREL – or *Minimum Requirements in Eligible Funds* – refer to the establishment and maintenance of liabilities and funds eligible to be relied on in case of resolution, as required by the [Directive](#) on loss-absorbing and recapitalization capacity of credit institutions and investment firms.

The EBA welcomed the efforts made by credit institutions as the MREL asset gap has been reduced from 110 to 67,6 billion in 2020. In the end of 2019, the shortfall was of 115 billion. However, the European Banking Authority notes that the increase in MREL assets is largely due to large institutions and that efforts are still needed on the part of smaller institutions. One of the main reasons for this discrepancy is that decisions concerning large institutions were adopted before those concerning smaller institutions.

**April 20<sup>th</sup> – first exchange of views on CRR/CRD review in the ECON committee**

Introducing the exchange of views, the **rapporteur Jonas Fernandez (S&D; ES)** came back on the main issues of the CRR and CRD review proposals that will be debated in the next few months in the Economic and Monetary Affairs Committee (ECON).

His position on the transposition of the Basel III rules into European law is to defend a common EU approach of the international rules and not to underestimate the recommendations made by the Basel Committee following the 2008 financial crisis. Jonas Fernandez recalled that, although the position of the Council of the EU is to avoid an overbidding of capital requirements, the figures put forward for an increase in capital in connection with the Basel agreement seem moderate to him.

Internal models will have to be subject to stricter supervision because it is no longer possible, according to him, for capital requirements to be reduced by non-standardized internal calculations that could jeopardize financial stability. He thus wishes to find a middle ground for the calculation of capital, between regulatory standards and internal models. Concerning the output floor, the rapporteur believes that it is possible to integrate EU and national specificities while taking into account the rules decided at the international level.

The introduction of temporary exemption regimes should also be debated in order to verify that they are both strictly necessary and temporary. The rapporteur stated that he is against the long-term establishment of transitional regimes.

**Othmar Karas (AT), shadow rapporteur for the EPP group**, reiterated his wish not to see a significant increase in capital requirements. The priority objectives in the transposition of the Basel III agreement into European legislation are, according to him the consideration of SMEs characteristics with regard to their use of credit and their financing capacity and the adoption of an output floor that corresponds to the specificities of the EU banking sector.

**Gilles Boyer (FR), shadow rapporteur for the Renew group on the CRR proposal**, stressed the need to strike a balance between the preservation of financial stability, especially in the current context, and the ability of SMEs to continue to finance themselves easily. Like Othmar Karas, Gilles Boyer specifies that he does not wish to see a significant and general increase in the capital requirements of European banks, a measure that could harm the competitiveness of European banks vis-à-vis American and Asian banks. Finally, he emphasizes during his intervention the need to take into account the national specificities and European banking networks when transposing the Basel III agreement into European legislation.

#### **Next steps:**

**The rapporteur Jonas Fernandez must now present his draft report, which should be published in late May. The other members of the ECON committee will then have two to three weeks to submit their amendments.**

**A vote will then be held in the ECON committee at the end of 2022.**

#### **April 12<sup>th</sup> – The ECB publishes its new Bank Lending Survey**

On April 12<sup>th</sup>, the European Central Bank (ECB) published its new [Bank Lending Survey](#) – a report on lending conditions and sources of funding for businesses in the euro area published four times a year.

The main findings of the report are:

#### **As regards lending conditions:**

- Lending has undergone restrictions: banks have implemented stricter internal rules – for businesses and real estate lending – but consumers loans and other forms of lending to households have increased
- Banks' terms and conditions in loan contracts have moderately tightened for business and home loans in the first quarter of 2021

#### **As regards banks' conclusions on current market conditions:**

- Banks overall reported a continued increase in demand for loans or credit line openings from businesses in the first quarter of 2022. Loan demand has been driven by an increase in the need for working capital for business operations, reflecting supply chain disruptions as well as precautionary inventory making and cash holdings.
- According to the banks surveyed, access to wholesale funding deteriorated in the first quarter of 2022, because of more tense market conditions for banks. Banks indicated that the ECB's asset purchase programme and the third round of targeted longer-term refinancing operations (TLTROIII) continued to have a positive impact on liquidity positions and market funding conditions. Banks expect this impact to reduce in the case of TLTROS and the ECB's asset purchase programme over the next six months

**April 8<sup>th</sup> - CRR: the EBA publishes an opinion on amendments made by the European Commission to regulatory technical standards for own funds and eligible liabilities**

On April 8<sup>th</sup>, the EBA published its opinion on the amendments proposed by the European Commission to the EBA's [draft regulatory technical standards \(RTS\) on own funds and eligible liabilities](#) that credit institutions may rely on in case of resolution.

The EBA disagrees with two changes proposed by the European Commission relating to:

- The provisions covering the concept of direct and indirect funding
- The prior authorization process for certain types of liquidating entities (entities legally tasked with ensuring the liquidation process)

The EBA considers that the RTS it proposed to the Commission already contain, from a prudential point of view, the principles and tools necessary to account for all cases of direct or indirect financing in a resolution situation. Furthermore, it specifies that its final draft RTS contain sufficient details on a prior authorization regime proportionate to the objectives of the regulation.

The former draft RTS were sent by the EBA to the European Commission on May 26<sup>th</sup>, 2021. It provides clarifications on eligibility criteria for own funds and specifies in particular that:

- The acquisition of eligible assets must not be financed directly or indirectly by the resolution entity (which is the entity in charge of the resolution)
- Eligible liabilities may only be recalled, redeemed, or repurchased after prior authorization by the resolution

**April 8<sup>th</sup> – The ratio of non-performing loans keeps decreasing according to the ECB**

On April 8<sup>th</sup>, the ECB – in line with its role as European banking supervisor – published new wide-ranging [statistics](#) on the banking sector.

The report provides statistics such as the number of significant institutions per country, asset ranking and concentration among institutions, information on the state of banks' balance sheets, profitability, capital adequacy, leverage, asset quality, funding sources and liquidity levels (through the LCR – *liquidity coverage ratio*).

The main points of the statistical report regarding NPLs are:

- Between the third and the fourth quarter of 2021, the level of non-performing loans fell from 2.17% (401€ billion) to 2.06% (374€ billion) of total outstanding loans. This is the lowest level recorded since 2015.
- The highest level of NPLs is in Greece (7.04%)

- In the fourth quarter of 2021, the level of bank loans placed in “category 2” (loans in arrears) but less than three months (which is the criteria for entering “category 3”) increased from 8.85% to 9.14% for the first time in 2021

With regard to **capital requirements levels**, the average level of high-quality capital (CET1 – *Capital Equity Tier 1*) remained high and stable for banking groups directly supervised by the ECB.

**T03.01.2 Total capital ratio and its components by country**  
(EUR billions; percentages)

| Country<br>(Q4 2021)   | Total risk exposure<br>amount | Total capital <sup>2)</sup> |               | Tier 1 <sup>2)</sup> |               | CET1 <sup>2) 3)</sup> |               |
|------------------------|-------------------------------|-----------------------------|---------------|----------------------|---------------|-----------------------|---------------|
|                        |                               | Amount                      | Ratio         | Amount               | Ratio         | Amount                | Ratio         |
| Belgium                | 195.53                        | 41.29                       | 21.12%        | 37.80                | 19.33%        | 35.72                 | 18.27%        |
| Bulgaria               | C                             | C                           | C             | C                    | C             | C                     | C             |
| Germany                | 1,289.27                      | 256.17                      | 19.87%        | 216.32               | 16.78%        | 198.13                | 15.37%        |
| Estonia                | 14.95                         | 3.88                        | 25.92%        | 3.87                 | 25.91%        | 3.87                  | 25.91%        |
| Ireland                | 239.76                        | 55.69                       | 23.23%        | 49.84                | 20.79%        | 46.94                 | 19.58%        |
| Greece                 | 141.69                        | 21.82                       | 15.40%        | 18.74                | 13.23%        | 18.14                 | 12.80%        |
| Spain                  | 1,358.68                      | 231.58                      | 17.04%        | 198.95               | 14.64%        | 173.91                | 12.80%        |
| France                 | 2,674.41                      | 522.96                      | 19.55%        | 450.12               | 16.83%        | 426.40                | 15.94%        |
| Croatia <sup>1)</sup>  | -                             | -                           | -             | -                    | -             | -                     | -             |
| Italy                  | 997.76                        | 191.05                      | 19.15%        | 167.31               | 16.77%        | 152.76                | 15.31%        |
| Cyprus                 | 18.55                         | 3.79                        | 20.42%        | 3.49                 | 18.81%        | 3.14                  | 16.92%        |
| Latvia                 | C                             | C                           | 25.43%        | C                    | 24.46%        | C                     | 24.46%        |
| Lithuania              | 9.58                          | 2.13                        | 22.22%        | 2.10                 | 21.96%        | 2.10                  | 21.96%        |
| Luxembourg             | 68.51                         | 16.88                       | 24.64%        | 13.09                | 19.11%        | 12.79                 | 18.67%        |
| Malta                  | 8.08                          | 1.87                        | 23.09%        | 1.59                 | 19.72%        | 1.59                  | 19.72%        |
| Netherlands            | 696.49                        | 154.51                      | 22.18%        | 132.29               | 18.99%        | 118.17                | 16.97%        |
| Austria                | 291.82                        | 53.77                       | 18.42%        | 45.81                | 15.70%        | 41.23                 | 14.13%        |
| Portugal               | 113.60                        | 18.62                       | 16.39%        | 16.13                | 14.20%        | 15.51                 | 13.66%        |
| Slovenia               | 20.74                         | 3.76                        | 18.13%        | 3.40                 | 16.37%        | 3.39                  | 16.35%        |
| Slovakia <sup>1)</sup> | -                             | -                           | -             | -                    | -             | -                     | -             |
| Finland                | 219.12                        | 47.44                       | 21.65%        | 42.73                | 19.50%        | 39.25                 | 17.91%        |
| <b>Total</b>           | <b>8,372.64</b>               | <b>1,630.61</b>             | <b>19.48%</b> | <b>1,406.94</b>      | <b>16.80%</b> | <b>1,296.39</b>       | <b>15.48%</b> |

**Average capital ratios by country (ECB)**

**April 5<sup>th</sup> - PSD2: the EBA proposes new draft RTS on the exemption to strong customer authentication for account access**

On April 5<sup>th</sup>, the European Banking Authority (EBA) published [draft regulatory technical standards](#) (RTS) amending the [existing RTS](#) on strong authentication and secure communications in line with the Payment Services Directive ([PSD2](#)). The amendments aim to make it easier for customer to use the services.

The changes include:

- A mandatory exemption to strong authentication: account providers would be required, under certain conditions, not to apply strong authentication when account information providers (AISPs – applications or websites that aggregate and share account information) request access to account information.
- The extension of the frequency of mandatory renewal of strong authentication from 90 days to 180 days

The EBA is proposing these new RTS following a [consultation](#) that received over 1,200 responses. Under PSD2, users must renew their strong authentication every 90 days. Strong customer authentication is defined as user identification by at least two factors such as, for instance, a password and a code sent to the user’s cell phone.

**Next steps:**

**The draft RTS must be adopted by the European Commission through a delegated act. They will apply 7 months after their publication in the Official Journal of the EU (OJEU).**

**April 1<sup>st</sup> - Trends and risks: EBA says banking sector remains strong despite economic and geopolitical conditions**

On April 1<sup>st</sup>, the European Banking Authority updated its [risk dashboard](#) with relevant data for the fourth quarter of 2021. Through this dashboard, the EBA reports on its key analyses about financial stability risk.

EBA's main conclusions on this new data are:

- Risks from Russia's invasion of Ukraine do not represent a "fundamental threat" to the stability of the European banking system in the short term but there may be longer-term risk
- Capital and liquidity ratios remain strong and stable
- Capital and liquidity ratios remain strong and stable
- Profitability has stabilized at a higher level than before the pandemic
- Non-performing loans (NPL) ratios continue to decline as asset quality improves
- The level of risk linked to information and communication technologies (ICT) remains high

Regarding risk linked to the invasion of Ukraine by Russia, the EBA notes that short-term risk is low due to low direct exposures to Russia, Ukraine, and Belarus. In the longer-term however, European banks may suffer from a degradation of the global financial outlook.

#### **March 14<sup>th</sup> - Climate risk exposure: ECB not satisfied of current transparency level**

On March 14th, the European Central Bank [published](#) the results of its second assessment, conducted as the direct supervisor in the euro area, to measure the progress of European banks in terms of transparency of climate and environmental risk exposure.

In conclusion, the ECB considers that despite some improvements in relation to the assessment carried out in 2020, consolidated information on climate risk exposure of supervised banking groups is still insufficient.

For example, more than 70% of banks report on how their board of directors oversees climate and environmental risks, compared to 50% in November 2020, when the first assessment was conducted. On the other hand, about 75% of the analyzed banks do not say what impact these risks have on their risk profile, even though half of the banks concerned acknowledge to the ECB that they are indeed exposed. Finally, nearly 30% of the banks in the panel, which have committed to aligning their exposures with the objectives of the Paris Agreement, do not provide any information to support this commitment.

Among good practices observed, the ECB reports regarding one bank that, having set a goal of climate neutrality by 2050, published progress on self-imposed interim targets. Some banks also publish dashboards on the performance of their loan portfolios in sectors particularly affected by the climate transition process (electricity, oil and gas, automotive).

#### **March 17<sup>th</sup> - Banking Union: the Eurogroup President presented his finalization plan**

On March 14<sup>th</sup>, the President of the Eurogroup, Paschal Donohoe, [presented](#) to the Member States the approach he has developed with the aim of completing the banking union in the euro zone, via the implementation of a European guarantee for bank deposits (EDIS).

Its approach comprises 4 work dimensions:

- setting up the EDIS system in two steps (provision of liquidity followed by a gradual mutualization of losses);
- the improvement of financial crisis management in the event of a bank failure;
- increased integration of the European banking market;
- diversification of banks' exposure to sovereign risk.

In addition, the President of the Eurogroup would like the European Commission to propose, by the end of the current mandate, a set of legislative proposals aimed at preparing the euro zone's response capacity to crises.

**Next step:**

**The president of the Eurogroup will submit a draft framework for the finalization of the banking union to the ministers in April or May with the aim of reaching a political agreement in June, before the eurozone summit.**

**March 17<sup>th</sup> - Banking Package: the ECB releases its opinion on the review of the banking resolution framework**

On March 17<sup>th</sup>, 2022, the European Central Bank's [opinion](#) on the proposal for a targeted review of the banking group resolution framework (the "daisy chain" proposal, which is part of the October 27<sup>th</sup> [Banking Package](#)). The Commission's proposal aims to review certain aspects of the prudential treatment of global systematically important institutions.

The ECB welcomes the Commission's proposal for a regulation. However, the institution notes that the proposal should allow for better harmonization between the provisions of the Capital Requirements Regulation (CRR) and the provisions of the Bank Recovery and Resolution Directive (BRRD).

**Next steps :**

**The Commission's proposal is being studied by the co-legislators. As the Council of the EU and the European Parliament have adopted their positions, the trilogues have started or should start.**

**March 18<sup>th</sup> Supervisory review and evaluation process: EBA published updated guidelines on common procedures and methodologies**

On March 18<sup>th</sup>, the European Banking Authority [published](#) its final report on the update of the guidelines on common procedures and methodologies regarding the supervisory review and evaluation process (SREP) and the organization of supervisory review tests. This update is intended to implement changes to the Capital Requirements Directive ([CRD V](#)) and to the Capital Requirements Regulation ([CRR II](#)) and to promote convergence towards supervisory best practices.

The changes to these guidelines do not alter the overall SREP framework but affect its main elements, including (i) the analysis of the business model, (ii) the assessment of internal governance arrangements and institution-wide controls, (iii) the assessment of risks to capital and adequacy of capital to cover these risks, (iv) the assessment of risks to liquidity and adequacy of liquidity resources to cover these risks.

The main changes aim to:

- better articulate the proportionality principle, through the categorization of institutions and the application of the minimum commitment model ;
- fully integrate the assessment of money laundering and terrorist financing risks (ML/TF), in accordance with the EBA advice on how to take into account financial crime risks in the SREP;
- review the Pillar 2 supplementary capital provisions to ensure that they reflect a micro-prudential perspective and appropriately implement the leverage ratio-based capital requirements;
- align the assessment of interest rate risk in the non-trading book and the assessment of liquidity risk with the current regulatory framework;



- strengthen dialogue between financial institutions and supervisors regarding the setting of Pillar 2 requirements.

**March 21<sup>st</sup> - CRR: European Banking Authority published draft RTS on requirements that an internal methodology or external sources used under the internal default risk model need to fulfil for estimating default probabilities and loss given default**

On March 21<sup>st</sup>, the European Banking Authority (EBA) [published](#) draft regulatory technical standards (RTS) specifying the requirements that an institution's internal methodology or external sources have to fulfil for estimating default probabilities and loss given default (LGD) in accordance with point (e) of Article 325bp(5) and point (d) of Article 325bp(6) of the [Capital Requirement Regulation \(CRR\)](#).

In order to simulate the default of issuers under the internal default risk model, institutions need to estimate the probabilities of default (PDs) of these issuers in accordance with the requirements set out in paragraph 5 of Article 325bp of the CRR. In particular, institutions that have not been granted permission to estimate PDs in accordance with Section 1 of Chapter 3 of Title II of Part Three (permission to use the IRB approach) are required to develop an internal methodology or use external sources to estimate PDs for default risk capital (DRC) purposes.

With respect to the requirements that an internal methodology needs to satisfy in order to estimate PDs and LGDs under the DRC, the EBA's draft RTS clarify that they should encompass all the requirements applicable to the corresponding IRB approach (i.e., the requirements set out in Section 1 of Chapter 3 of Title II of Part Three of the CRR).

In addition, the draft RTS also envisage the possibility for institutions to use 'fallback' PD and LGD values under such an internal methodology. The draft RTS set out alternative requirements ensuring that conservative 'fallback' PDs and LGDs are obtained and specify the conditions under which these 'fallback' PDs and LGDs can be produced and used. Where different parts of an institution's internal methodology are used to produce PDs and LGDs for different issuers and positions, these parts should either meet the requirements applicable to the corresponding IRB approach or meet the alternative requirements for 'fallback' PDs and LGDs.

The draft RTS represent a deliverable of the second phase of the EBA roadmap for the new market and counterparty credit risk approaches [published](#) on 27 June 2019. They constitute a further contribution to a harmonized implementation of the Fundamental Review of the Trading Book (FRTB) international standards in the EU.

**March 24<sup>th</sup> – Basel III: The ECB publishes its opinion on the European Commission's legislative proposal**

On March 24<sup>th</sup>, the European Central Bank (ECB) published its [opinion](#) on the Commission's proposal to transpose the final Basel III standards into European law.

For the ECB, the legislator should not create exceptions to international rules in particular when it comes to risk related to derivatives and the real estate market. Indeed, the ECB – in its capacity as European banking supervisor – argues that there should be no additional flexibility in the way banks calculate their exposures to residential real estate, derivatives and unrated corporates when calculating their minimum capital levels.

With regard to the output floor, the ECB is in favor of applying it at the European level rather than the national level. It calls on the Commission to set a roadmap for the implementing acts for the recognition of market risk



The ECB notes that the transitional treatment of residential real estate exposures raises several issues. This treatment, perceived as differentiated by the supervisor, would weaken the backstop function of the capital floor, while loans linked to residential real estate may endanger financial stability: the level of household debt and the overvaluation of assets linked to residential real estate points to a fragile situation, as [highlighted](#) by the European Systemic Risk Board (or ESRB).

With regard to the credit risk framework, the ECB expressed its concerns about what it perceives as deviations from the Basel III framework relating to:

- Specialised lending exposures;
- Retail exposures;
- Collateral valuation methodologies for exposures secured by real estate.

The document also contains the ECB's amendment suggestions, related to the above recommendations. Among the suggested amendments, the following may be of interest to the SRA:

- **Amendment 17:** the ECB proposes to amend the definition of "specialized lending exposures" in Article 1 point 41 of the proposed regulation. The ECB wishes to remove the reference to the fact that the physical asset can be financed and pledged or assigned to the lender by one or more third parties. In the ECB's view, it is not possible for a physical asset to be financed and pledged or assigned by third parties because only the owner of the financed physical asset is legally able to pledge or assign such assets to the lender.
- **Amendment 18:** the ECB opposes an 80% risk for object finance, arguing that the Basel standards contain a 100% risk weight for all object finance exposures
- **Amendment 83:** the ECB proposes to delete article 495d which contains transitional derogations for unconditionally cancellable commitments
- **Amendment 79:** the ECB proposes to delete Article 465(3) on derogations for the risk weighting of exposures to unrated corporates.

#### Next steps:

**The ECB's opinion is not legally binding. It will be considered by the co-legislators.**

**The proposal is being studied by the European Parliament and the Council of the EU.**

#### **March 31<sup>st</sup> - Basel III: Hearing of experts in ECON parliamentary committee to discuss issues related to the transposition of standards into European law**

On March 31<sup>st</sup>, MEPs of the Economic and Monetary Affairs Committee (ECON) organized a [public hearing](#) of several experts in the frame of the [legislative package](#) aiming at transposing the final standards of the Basel III agreement into EU law. The [program](#) of the hearing and its [replay](#) are available.

The hearing addressed the main issues of the CRR III and CRD VI legislative proposals with the objective of informing the parliamentarians in view of the preparation of the Parliament's position. The hearing began with an introduction by **rapporteur Jonas Fernandez (S&D; ES)** during which he stressed the temporary nature of the transitional measures and the need to reduce cyclical risks to the banking system. The MEPs Aurore Lalucq (S&D; FR), Kira Peter-Hansen (Greens; DK) and Antonio Rinaldi (ID; IT) also intervened in the second part of the hearing in order to question the panelists on, among other things, the consideration of NPLs and climate risks in the prudential framework provided for by the CRR revision.

First of all, the Chairman of the European Banking Authority, **José Manuel Campa (EBA)**, [spoke](#) on the points he considered to be the most important:

- regarding the output floor, the implementation chosen by the European Commission seems reasonable to him in the sense that it faithfully applies the agreement reached in Basel and limits the advantages of using internal models to calculate lower prudential capital requirements. A standardized approach would ensure a more level playing field between banks according to him.
- However, the current output floor proposal includes transitional provisions for mortgages, unrated companies and derivatives. EBA, says José Manuel Campa, does not see the need for transitional provisions, especially since they seem to open the way, according to him, to speculations that are not justified from the point of view of the risk approach.
- Finally, he calls on the European Parliament to keep in mind the Basel Committee's 2014 report, which lists many aspects for which the internal control system needs to be adapted, and to carefully reassess the need for internal control adaptation in the regulatory provisions.

**Win Mijs**, executive director of the European Banking Federation (EBF), [insisted](#) that the opinions of European banking stakeholders need to be taken into account when adopting this legislative package.

Regarding corporate lending, the EBF director said that the transitional arrangements for unrated companies should be maintained and extended to banks using the standardized approach until a solution is in place to have an external rating for most European companies.

**Thierry Philipponnat**, economist and advocacy director of Finance Watch, [called for](#) a faithful implementation of the Basel III framework in European law as well as the consideration of climate change risks in Pillar I. He stressed the importance of the output floor for the preservation of financial stability and international competitiveness.

He also called for the rejection of transitional provisions that allow for preferential treatment of certain exposures (notably to unrated companies and mortgages), which he said have a negative impact on the resilience of the banking system.

**Rosa M. Lastra**, Professor of Banking Law at Queen Mary University of London, [concluded](#) the hearing by emphasizing several points:

- The Basel III finalization package does not include climate risks and other ESG factors and is therefore likely to be obsolete before its implementation date.
- While more and better capital is a fundamental part of banking legislation and the imposition of limits prevent gaming of capital ratios, there remain risks in the provision of banking and payment services caused by FinTechs, BigTechs, and other entities that are part of the shadow banking system, which is an unregulated or less regulated sector than the traditional banking sector.

#### **February 4<sup>th</sup> - The ECON committee adopted Jonas Fernandez's draft report on the "daisy chain" regulation proposal**

On February 4<sup>th</sup>, 2022, the European Parliament's Committee on Economic and Monetary Affairs (ECON) adopted Jonas Fernandez's (S&D, ES) [draft report](#) on the proposal for a regulation on the prudential treatment of globally systematically important institution groups with a multiple entry point resolution strategy (or "[daisy chain" proposal](#)").

The ECON committee's report, introduces the following main changes:

- A maximum limit to the deductible capital mechanism that was proposed by the European Commission;
- A request to the European Commission to precisely assess the consequences of the new regulatory framework on the different banking structures;

- A transitional agreement to allow the Single Resolution Board (SRB) to apply a transitional deduction regime for banking groups using a multiple point of entry resolution strategy.

The proposal for a regulation known as “Daisy Chain”, which is a reference to the multi-point resolution structure it aims to introduce, is part of the October 2021 [“Banking Package”](#), aiming to transpose the final Basel III standards into EU law.

The proposal for a regulation consists in targeted adjustments to improve banks’ ability to cope with resolution situations. It would modify certain aspects of the prudential treatment of global systematically important groups of institutions with regard to the resolution strategy, and develops the so-called “multiple entry point” approach to resolution, which modifies the distribution of responsibilities within banking groups in the event of a resolution.

The Council of the European Union had adopted its [position](#) on December 21<sup>st</sup>, 2021.

#### **Next steps:**

**The report now constitutes the European Parliament’s position for the interinstitutional negotiations (trilogues). As the two institutions adopted their position, the trilogues can begin.**

#### **February 10<sup>th</sup> - The ECB publishes the result of the annual Supervisory Review and Evaluation Process**

On February 10<sup>th</sup>, the European Central Bank (ECB) published the [results](#) of the annual Supervisory Review and Evaluation process (SREP).

The ECB observed that banks have maintained an adequate level of capital. Nevertheless, considering the uncertainties in the economy due to the COVID-19 pandemic, the ECB has decided:

- To increase the average level of capital requirements from 14,9% of risk-weighted assets to 15,1%
- To increase the Capital Equity Tier 1 (CET1) requirement from 10,5% of risk weighted assets to 10,6%

The European Central Bank also notes that the number of Non-Performing Loans (NPLs) continues to decline. The level of NPLs is now at 2,2% of total loans. However, the situation must continue to be monitored carefully because of the risk of deterioration in credit quality due to the phasing out of COVID-19 support measures.

Finally, while the macroeconomic framework tends to stabilize, uncertainties remain around:

- Cyber risk (cyber-attacks, threats to operational resilience);
- Climate and environmental risk;
- A potential end to the low interest rate environment which would create disruptions, notably a sudden correction in asset prices.

The SREP summarized the findings of prudential authorities over the course of a year. As a result, changes to the obligations imposed on banks may be decided.

#### **February 10<sup>th</sup>, 2022 - A legislative proposal on instant payments expected in the second half of 2022.**

On February 10<sup>th</sup>, 2022, Mairead McGuinness announced that the European Commission will present a legislative initiative on instant payments in the second half of 2022.

According to the [roadmap](#), which was subject to a public consultation in 2021, measures under consideration could include:

- creating incentives for payment services providers (PSPs) to offer instant transfers in euros
- Targeted measures for consumer protection and fight against fraud
- Measures to address the issues raised by consumer fees for instant transfers
- Measures to address liquidity risk, for example by acting on the crisis management framework of financial institutions

The objective of the initiative is to foster pan-European initiatives for the development of the instant payments market in particular for credit transfers.

**Next steps:**

**The instant payments initiative is expected before June 1<sup>st</sup>, 2022.**

**February 18<sup>th</sup> – ECB reminds there is still work to do to fully integrate climate-related risks in the banking sector**

On February 18<sup>th</sup>, Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board, [delivered](#) a speech on climate and environmental risk management and supervision and the current state of banking practices in managing these specific risks.

The Vice Chair stated that 2022 would be the year in which climate and environmental risks would be integrated into the ECB's daily supervisory activities. They will from now on become an integral part of the ongoing dialogue with supervised entities and the Supervisory Review and Evaluation Process (SREP).

Together with the annual supervisory stress test, the ECB's supervisory roadmap includes a thematic assessment to ensure that banks adequately integrate climate change risk management. The ECB notes that most banks still have a long way to go in developing their climate risk management capabilities. According to the results published last year by ECB, 90% of banks' practices are partially or not at all in line with ECB's expectations for monitoring climate-related financial risks.

In 2022, the ECB wants to see clear progress in how banks integrate environmental credit risks into their risk management, including using the full range of risk management tools at their disposal: strategically realigning portfolios, setting clear risk appetites, developing mitigation strategies, adjusting qualitative credit criteria, quantifying and holding sufficient capital. Another key area where banks can make progress, according to the ECB, is in supporting their clients to mitigate their exposure and adapt their business models to climate-related risks.

Among the measures the ECB wants to take as part of its supervisory mandate are the revisions to the Capital Requirements Regulation (CRR) and Directive (CRD). This would include further integrating climate and environmental risks into the legal and supervisory framework and requiring banks to develop transition plans. Similarly, the ECB will require banks to look ahead 30 years when defining their transition plans and to set intermediate targets for their risk exposures. The objective remains that bank risk management practices are fit with the ambition of a net zero emissions economy by 2050.

**February 28<sup>th</sup> - Non-bank lenders: BIS published a report assessing the risks they contribute to in the syndicated loans market**

On February 28<sup>th</sup>, the Bank for International Settlements (BIS) [released](#) a report on non-bank lenders in the syndicated loan market.

The report provides an overview of syndicated loans by non-bank lenders and compares them to those granted by banks. It also examines the role of non-bank lenders in cross-border financial crises.

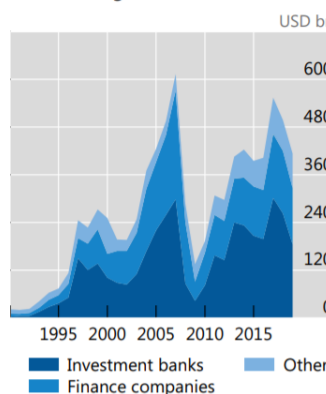
The report argues that the growing footprint of non-bank financial intermediaries inevitably puts them on the policy agenda: while such lending can indeed contribute to a more diversified and efficient financial system, nonbank intermediaries represent a source of instability due to, among other things, liquidity mismatches.

1. Non-bank lenders play an important role in the syndicated loan market, but their lending models differ from those of banks. They have increased their annual syndicated lending twenty-fold over the past three decades, with borrowers in all major regions and sectors of the economy. However, the report notes that non-bank lending is more concentrated by geographic location and sector than bank syndicated lending. While the supply of credit from non-bank intermediaries tends to fluctuate in tandem with that from banks, it contracted in a larger way during the last major financial crisis in addition to be more volatile.
2. Syndicated loans arranged by non-banks carry a significantly higher spread compared to those by banks, consistent with the pattern that firms borrowing from non-banks are more leveraged and less profitable, ie riskier. Non-banks generally grant a smaller share of their new loans to foreign borrowers than banks do. During domestic financial crises, they reduce this share further, exacerbating the global transmission of shocks.

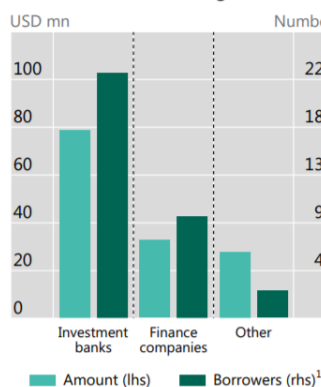
Different types of non-bank lender in the syndicated loan market

Graph A

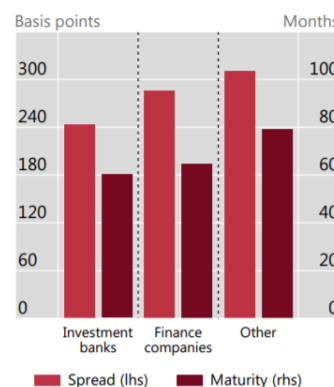
Investment banks dominate non-bank lending volumes...



...serving more borrowers than other non-banks, and with larger amounts



Other key loan terms do not differ much across non-bank lenders<sup>2</sup>



The centre and right-hand panels show average results for the full sample (1990–2019).

<sup>1</sup> Number of distinct borrowers in a given year. <sup>2</sup> Spread and maturity are winsorised at the 1st and 99th percentiles. The spread refers to the all-in drawn spread, weighted by loan volume.

Sources: Thomson Reuters DealScan; authors' calculations.

This report finds that, relative to banks, non-banks lend to a riskier pool of borrowers. To the extent that such firms have limited access to financing non-bank lenders contribute to a more diversified and efficient financial system. That said, the global footprint of non-bank lenders may be a destabilizing force. Not only is their credit provision more volatile, possibly reflecting their greater reliance on wholesale funding, but it is also more concentrated than that of banks. The resulting procyclicality of non-bank lending warrants continued analysis, as does the tendency of non-bank lenders to transmit shocks across borders to a larger extent than banks do.

**February 2022 – The ECB publishes a study on the effects of Fintech lending to SMEs**

In February 2022, the European Central Bank (ECB) published a [study](#) on the effects of lending by Fintechs to SMEs. The authors, as part of an ECB research program, investigated SME loan applications through the database of a P2B (*peer to business* – connects SMEs looking to borrow with retail investors looking to lend) platform.

The authors of the study point out to the following:

- **P2B platforms tend to appeal to “high quality” companies** with high profitability and low credit risk. Companies seeking P2B financing are much more likely to have bank debt on their balance sheets. P2B platforms would therefore be in a direct competition with banks for the same segment of businesses and do not cater to a different category of businesses with higher risk levels as is generally assumed.
- **Fintechs offer companies an alternative way to access unsecured long-term financing.** This would be due to the fact that most SMEs are limited in their availability of collateral, and stricter regulations with higher capital requirements make unsecured lending to SMEs less attractive to banks.
- **Fintech lending platforms have advantages for SMEs, but they do not seem to serve unproven start-ups that lack access to bank loans, contrary to the common assumption.** While they do not appear to be a driver of financial inclusion for small businesses, Fintechs do allow “high quality” SMEs to finance their growth and diversify their loan sources. It may also be a way for SMEs to protect themselves against a potential restriction of bank credit supply (“*credit supply shock*”)

#### **January 5<sup>th</sup> - EBA alerts on the impact of unwarranted de-risking and ineffective management of money laundering and terrorist financing risks**

On January 5<sup>th</sup>, the European Banking Authority (EBA) [published](#) a detailed report on the extent and impact of de-risking.

The findings of this report suggest that the practice of de-risking has a negative impact on the achievement of the EU's objectives, in particular with regard to the fight against financial crime, the promotion of financial inclusion and stability within the Single Market.

The EBA identified a number of factors that drive institutions' decisions to de-risk. These factors are not mutually exclusive and in practice are often combined. They include situations where ML/TF risks or reputational risks exceed institutions' risk appetite, where the institutions lack the relevant knowledge or expertise to assess the risks associated with specific business models or where the real or expected cost of compliance exceeds profits.

The report identifies measures and guidelines that competent authorities should adopt to prevent unwarranted de-risking, including those relating to the management of money laundering and terrorist financing risks. It also encourages competent authorities to engage more actively with concerned institutions and customers to make them aware of their respective rights and responsibilities.

The EBA advises the European Commission to clarify, in the Payment Account Directive ([PAD](#)), the interaction between AML/CFT requirements and the right to open and use a payment account with basic features, and to take advantage of the forthcoming review of the Payment Services Directive (PSD2) to ensure more convergence in the way payment institutions access credit institutions' payment accounts services.

The EBA is also committed to following up with the competent authorities on the measures they have taken to tackle unwarranted de-risking in the future.

#### **January 10<sup>th</sup> – The EBA publishes its quarterly risk dashboard**

On January 10<sup>th</sup>, 2022, the European Banking Authority published its quarterly “[Risk Dashboard](#)”, covering data for the third quarter of 2021. The table summarized developments for the main categories of risk facing the banking sector.

The report contains the following main observations

- Capital ratios have improved: the level of high-quality capital (or CET1) reached 15,4% of total banking assets in the third quarter of 2021. The leverage ratio stabilized at 5,7%.
- The decline in non-performing loans (NPL) continued: NPLs accounted for 2,1% of total outstanding assets in the third quarter (down from 2,3% in the second quarter).
- Sectors most vulnerable to health measures in response to the COVID-19 crisis still show higher NPL levels despite some improvements.
- Loans volumes under moratoria continued to decline (50 billion in the third quarter of 2021 compared to 125 billion in the second quarter of 2021.) A significant share of banks (55%) may expect an increase in operational risk (in 90% of cases the increase concerns cyber risk and data security).

In addition, the report shows changes in the way banks take ESG risk into account. 80% of banks consider environmental, social and governance (ESG) risk as credit risk, and 70% qualify them as reputational and operational risk.

#### **January 12<sup>th</sup> - Banking union: the European parliament close to adopt its annual report**

On January 12<sup>th</sup>, the rapporteur Patryk Jaki (ECR; PL) presented his own-initiative draft report on the banking union to the economic affairs parliamentary committee (ECON).

On supervision, the draft report recalls that the reduction of non-performing loans must remain a priority, while according to the MEP, their numbers are likely to increase as the support measures implemented during the pandemic are gradually lifted.

The rapporteur also expresses concern about the rising level of sovereign debt on banks' balance sheets. He stresses that government bonds are not without risk for financial stability and that banks' exposure to sovereign bonds must be monitored.

On sustainable finance, the draft report highlights that the transition to a low-carbon economy presents new challenges and risks related to the preference for sustainable investments and supports the need for a thorough analysis of the economic efficiency of sustainable investments to avoid a future green asset bubble. It also calls for banks to be provided with clear guidance based on economic data about sustainable investments.

On consolidation, the draft report states that the trend towards consolidation in the banking sector is likely to increase as a result of the pandemic and the upcoming recovery.

On resolution, the report welcomes the activities of the Single Resolution Board for the year 2021, particularly with respect to the continued establishment of the Single Resolution Fund. It also takes note of the Single Resolution Board's work program for the coming years, which includes making possible the effective resolution of all banks under its jurisdiction by 2023.

With regard to the European Deposit Guarantee Scheme, the report mentions its support for the specification of the Public Interest Assessment (PIA) criteria and proposes that an alternative liquidation regime for small



and medium-sized banks be considered. It also calls for a more proportionate setting of the level of the minimum capital requirement and eligible liabilities (MREL).

Finally, the draft report recognizes that a European Deposit Insurance Scheme (EDIS) would significantly improve depositor protection in the EU. Assuming that the obstacles to the development of EDIS lie primarily for some member states in the risks posed by some national banking systems, the implementation of credible and effective risk mitigation measures would allow for agreement on EDIS.

The rapporteur likewise supports streamlining the crisis management framework to make it more credible, coherent and effective.

Next step:

The deadline for amendments to the draft report is February 15<sup>th</sup> 2022.

#### **January 24<sup>th</sup> – EBA publishes draft implementing technical standards on prudential disclosures on ESG risks**

On January 24<sup>th</sup>, the European Banking Authority [published](#) its draft implementing technical standards (ITS) on environmental, social and governance (ESG) risk disclosures under Pillar 3 of the Basel framework.

The draft technical standards set out mandatory and consistent disclosure requirements, including granular templates, tables, and associated instructions.

These implementing standards aim to set up comparable disclosures to demonstrate how climate change may exacerbate other risks on financial institutions' balance sheets and how they are working to mitigate these same risks and their ratios. The ratio of "green" assets, assets considered sustainable according to the EU taxonomy, is also taken into account.

Progress towards compliance with the objectives of the European green deal and of the Paris Agreement are also among the elements to be published.

Finally, the final draft ITS provide qualitative information on how institutions are embedding ESG considerations in their governance, business model, strategy and risk management framework.

The EBA underlined the fact it has integrated proportionality measures in order to facilitate institutions' disclosures, including transitional periods and the use of estimates.

#### **January 27<sup>th</sup> - ECB Banking Supervision launches 2022 climate risk stress test**

On January 27<sup>th</sup>, the European Central Bank's supervision division [announced](#) the launch of its climate risk stress test. The objective of this specific stress test is to assess the level of preparedness of EU banks should they face potential economic and financial climate-related shocks.

The Central Bank says the test is a learning exercise for both banks and supervisors: it aims to identify vulnerabilities, best practices and challenges that banks face when managing climate-related risks.

The [stress test](#) comprises three distinct modules:

1. An **overarching questionnaire** to assess how banks are building their climate stress test capabilities for use as a risk management tool. It will provide an overview of where banks are in this process.
2. A **peer review benchmark** to compare banks across a common set of climate risk metrics. These metrics include how much banks rely on income from carbon-intensive industries and what volume of greenhouse gas emissions banks finance. The aim of this module is to provide an indicative proxy

for the sustainability of banks' business models and how exposed banks are to emission-intensive companies.

3. A **bottom-up stress test** targeting transition and physical risks. The stress test assesses how extreme weather events would affect banks over the next year, how vulnerable banks are to a sharp increase in the price of carbon emissions over the next three years and how banks would respond to transition scenarios over the next 30 years.

The test will use macro-financial scenarios inspired by those developed by the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). These [scenarios](#) take into account physical risks such as heat, droughts and floods, as well as short- and long-term risks arising from the transition to a more sustainable economy.

The ECB has announced that the results of the stress test will feed into the Supervisory Review and Evaluation Process (SREP) and may therefore indirectly impact Pillar 2 requirements through the Supervisory Risk and Evaluation Process (SREP) scores which can result in capital add-ons. However, it is excluded that the results will have a direct impact on capital requirements under Pillar 2 itself.

**Next steps:**

**The exercise will be conducted in the first half of 2022, with results expected to be published by the ECB by July 2022.**

**Banks are invited to submit their [climate risk stress test models](#) to the ECB for assessment from March 2022.**

**January - Basel III: Member-States pursue technical negotiations in the Council of the EU**

In January, Member-States in the Council pursued their negotiations at technical level on the transposition of final Basel III norms in EU law. A working document from the Council on the proposal to amend the Capital Requirements Regulation ([CRR](#)) was circulated among delegations on January 13<sup>th</sup>. It is a non-public document.

The working document lists the position of delegations that expressed themselves on the text and each provision. At this stage, Member-States are divided on the issue of the "output floor" with many delegations opposing the calculation of the output floor at consolidated level.

***For more details, please consult the EURALIA note which was sent on January 31<sup>st</sup>.***

**European Analytical Credit Dataset**

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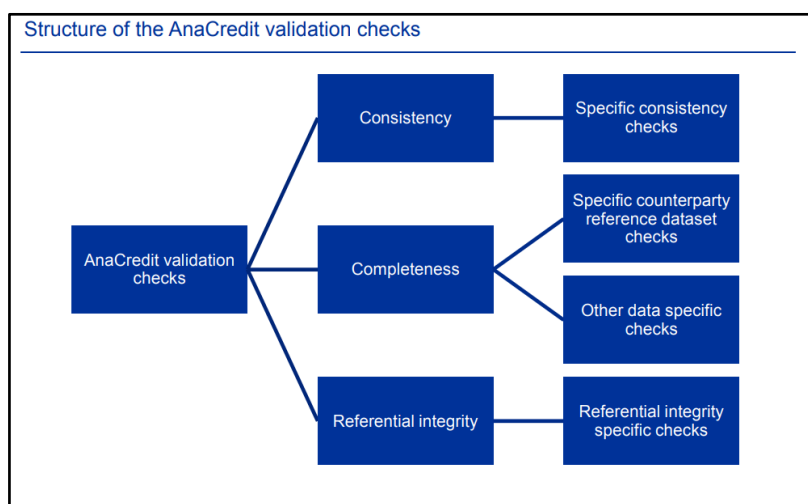
***No update in November 2022.***

16<sup>th</sup> September 2019 – AnaCredit: ECB publishes the validation checks

On the 16<sup>th</sup> of September 2019, the European Central Bank (ECB) published a [document](#) explaining the main set of validation checks regarding the AnaCredit reporting requirements. This document supplements the AnaCredit Reporting Manuals ( [Anacredit Manual Part I](#), [AnaCredit Manual Part II](#) et [AnaCredit Manual Part III](#) ).

These validation checks will ensure that the quality of the data is satisfactory: the information registered in AnaCredit must comply with the AnaCredit data model. This document aims at providing detailed information and guidance on the AnaCredit reporting requirements but it does not add new requirements and is not legally binding.

The ECB defines those validation checks as “a minimum set of self-contained rules which the data reported to AnaCredit must satisfy in order to comply with the completeness and consistency requirements stipulated”.



The ECB invites reporting agents to follow those validation checks and to enhance their existing data quality management systems. However, the Authority warns that due to the complexity of the financial structures recorded in AnaCredit by means of instruments or of counterparties, these validation checks might not be suited to all business checks.

## Shadow Banking

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**No update in November 2022.**

### **July 26<sup>th</sup> - Shadow banking: the EBA is launching a consultation on technical standards to set up identification criteria for shadow banking identities**

The European Banking Authority (EBA) published on July 26<sup>th</sup>, an [open consultation](#) on technical standards (regulatory technical standards – RTS) to determine appropriate criteria to identify shadow banking entities as mentioned in the [regulation \(EU\) n 575/2013](#) (*Capital requirements regulation – CRR II*).

The major challenge is that the Commission invite entities regulated under CRR II to report their “10 largest exposures to shadow banking entities which carry out banking activities outside the regulated framework on a consolidated basis”.

#### **1. Determination of identification criteria for shadow banking entities**

The RTS proposal includes 3 main provisions to identify accordingly shadow banking entities :

- a. a criteria for identifying both shadow banking and non-shadow banking entities;
- b. a criteria for defining banking activities and services;
- c. a criteria for excluding entities established in third countries from being deemed as shadow banking entities.

Additionally, the EBA will have to take into consideration whether :

- the relation with an individual entity or a group of entities may carry risks for the institution’s solvency or liquidity position;
- entities that are subject to solvency or liquidity requirements similar to those imposed by this [Regulation](#) and [Directive 2013/36/EU](#) should be excluded from the obligation to report on shadow banking entities.

#### **2. Entities and activities potentially concerned by the implementation of identification criteria**

In the first place, **entities that carry out banking activities or services and have been authorized and are supervised in accordance with the current regulatory framework and entities that are specifically exempted or excluded from the application of some of legal provisions, notably the CRR, the CRD, EMIR and Solvency II, shall not be considered as shadow banking entities.**

Then, in view of their interlinkages and the level of risks they represent for the financial system, those specific activities are more especially targeted by the European Single Resolution Board (ESRB) as belonging to the shadow banking entities:

- **Lending activities (FCL): financial leasing, factoring, mortgage lending and consumer lending when those activities are carried out by non-banking entities specialized in asset financing for households and non-financial corporations.**
- Investment funds managed by financial non-banking entities
- Bond funds
- Money market funds (MMFs)
- Hedge funds
- Private equity funds

- Financial vehicle corporations (FVCs) engaged in securitization activity
- etc.

These aforesaid activities, when operated by non-banking financial entities, have for common point to engage to a lesser or greater extent in credit intermediation activities (maturity transformation, liquidity transformation, leverage or transfer of credit risk) while operating so far under a regulated framework.

**Next steps:**

The consultation is [opened](#) to submissions until the 26 October 2021.

A [public hearing](#) will take place via conference call on 29 September 2021 from 10:00 to 12:00 CEST.

The EBA will submit for endorsement its regulatory technical standards' proposal (RTS) to the Commission to December the latest.

The proposal will then go under the scrutiny of the Parliament and the Council before any official adoption .

**July 16<sup>th</sup> - Shadow banking: the European Parliament think tank opens a debate on the implementation of a prudential policy**

The European Parliament's think tank, the EPRS, [published](#) on July 16 a report on shadow banking and questioned the possibility of implementing a prudential policy towards it.

***The actors of shadow banking***

According to the EPRS, shadow banking, also known as **non-bank financial intermediation**, operates in areas of activity that benefit from a more flexible regulatory framework than the one enjoyed by traditional banks. A very large number of actors are involved, including money market funds (MMFs), actors engaging in securitisation, financial companies engaged in credit activities, digital actors, etc.

The Financial Stability Board (FSB) distinguishes "other financial intermediaries" (OFIs) from "**non-bank financial intermediation**" (NBFIs), **whose specificity is to be dependent on short-term financing**.

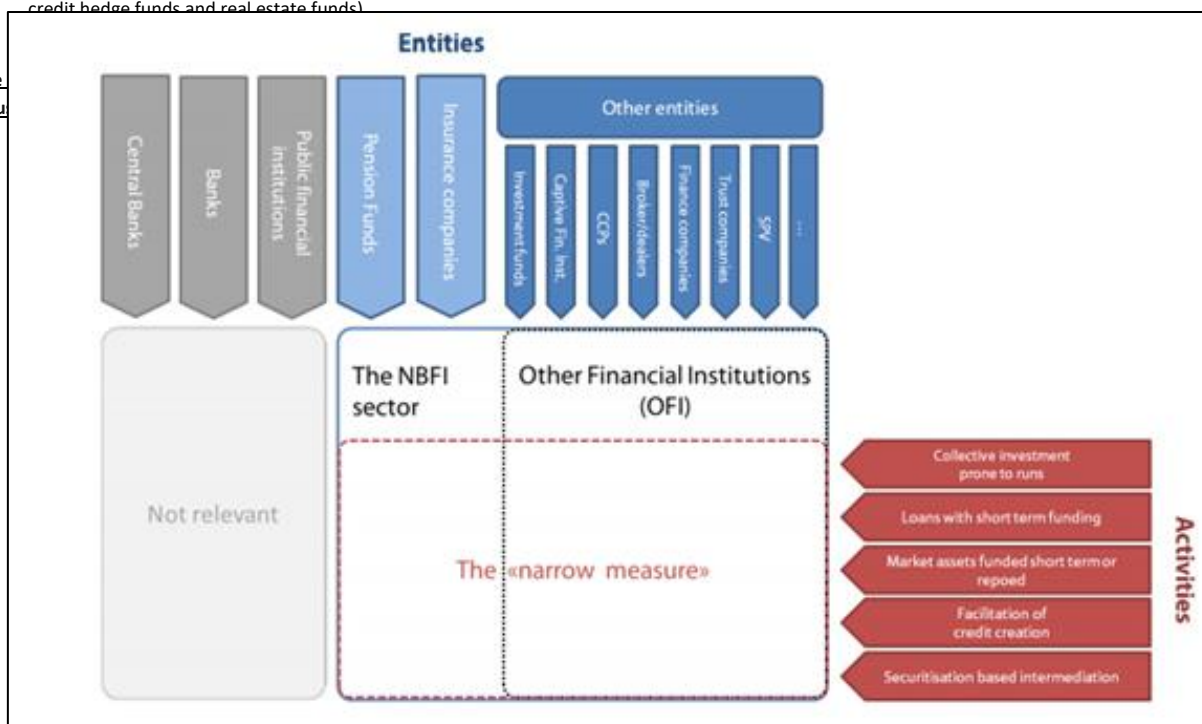
This category includes "financial corporations engaged in lending" (FCLs), with **notably factoring, leasing, consumer credit and real estate lending**. FCLs are generally not considered to be "shadow banking" because, according to the European Systemic Risk Council, "**systemic risks emanating from this type of entities are low when leverage, liquidity and interconnectedness channels are considered**". Credits allocated by FCLs accounted for €335.8 billion, with total assets worth €476.5 billion.

A study published in 2017 for the ECB shows that FCLs' assets are mainly concentrated in three EU jurisdictions: the Netherlands (32%), Italy (27%) and Belgium (20%), while the shares of France and Germany are considerably lower (5% and 4% respectively). According to this study, although these entities are mostly consolidated in banking groups, bank financing does not appear to be their main source of funding.

The EPRS also notes, quoting the report of the European Banking Authority (EBA) [published](#) in 2017, that the **prudential treatment in national law is "remarkably heterogeneous"**. Some jurisdictions have prudential regulation in place to address liquidity and leverage risk, although these regimes vary considerably across member states. For example, in some countries, FCLs are partly consolidated within banking groups, while in others they are not subject to any prudential requirements.

- intermediation of market activities that depend on short-term financing or secure financing of clients' assets (investment firms that provide investment services, brokers, etc.);
- credit creation facilitation mechanisms (credit insurance companies, financial guarantors, monoliners);
- credit intermediation based on securitization and financing of financial entities (securitization vehicles, structured finance vehicles, asset-backed securities)
- management of collective investment vehicles "with characteristics that make them sensitive to runs" (examples of institutions engaged in this activity are money market funds, bond funds, mixed funds, credit hedge funds and real estate funds)

To be  
because



Shadow banking classification, see page 37 of the report

### Associated risks and proposed measures

According to the EPRS, while shadow banking activities make the financial sector more resilient and provide diversified financing, they also generate systemic risks. The think tank notes, for example, "excessive" leverage or flawed credit risk assessments.

The EPRS notes that part of the development of shadow banking lies in the transfer by banking actors of activities outside the regulatory scope. A prudential policy aiming to provide a better framework is therefore envisaged, in particular for allowing regulatory buffers imposed on banking players to also be applied to non-banking players, via "mirror" measures. For the EPRS, the same constraints should apply to all entities carrying out the same economic activity. In particular, FinTechs should be covered by harmonized European regulations.

Other measures would aim to discourage investors from withdrawing quickly, for example by imposing barriers or redemption fees. The EPRS also believes that STS securitization could be further promoted.

The main solutions considered to remedy the negative externalities and vulnerabilities of shadow banking are the following:

1. Ensure the viability of business models over the long term and thus avoid any risk of inconsistency or conflict of interest;
2. **Reduce the risk of a sudden withdrawal and drop in liquidity by establishing minimum prudential buffer in times of financial expansion;**
3. **Establish a clear regulatory framework to end any ambiguity about "shadow banking" activities and its possible abuses, including the presumption that liabilities Issued by non-bank entities "remain liquid under most market scenarios."**

### **31<sup>st</sup> October : CRR/CRD – Trilogue raise questions on shadow banking**

The trilogue negotiations on the amendment of the Capital Requirements Directive ([CRD IV](#)) and the Capital Requirements Regulation ([CRR](#)) have opened several fault lines between the European Parliament and the Council of the EU.

In particular, the European Parliament and the Council held opposing views regarding the follow-up after the EBA published in December 2015 its guidelines on *"Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395( Limits to large exposures) of CRR"*.

Unlike the Council, the European Commission and the Parliament want to make the guidelines legally binding by transforming them in Regulatory Technical Standards (RTS). The Parliament would even like the European Banking Authority ( EBA) to *"develop a methodological standard for competent authorities specifying an appropriate aggregate limit on exposures to shadow banking (SB) entities which carry out banking activities outside a regulated framework, as well as individualized exposure limits to such entities"*.

As a reminder, on December 15<sup>th</sup>, the European Banking Authority (EBA) published both a [report](#) and its final [guidelines](#) regarding exposures of credit institutions to shadow banking entities, i.e. entities carrying *"bank-like activities outside of a regulatory framework"*. The Guidelines define an approach aiming at allowing EU credit institutions to set *"internal limits"* for their exposures to shadow banking entities.

This guidelines give the following definition of *"shadow banking entities"*: *"undertakings that carry out one or more credit intermediation activities and that are not excluded undertakings"* (see p.20). This very broad definitions is completed by a list of undertakings which are excluded from the scope of the guidelines (see pp.20-24).

The EP could agree to keep the form of the guidelines for reporting issues if only the shadow banking limits are defined by RTS.

The EBA specifies in its analysis of the received responses to the consultation that clarifications have been made about the definition of *"financial institution"* so that it is *"interpreted in line with Article 119(5) of the CRR" in order to take into account factoring companies' specificities* (see p. 46 & pp.48-49).

**When a factoring company is subject to a prudential framework comparable to the 'financial institution' regime, the entity shall not be treated as a 'shadow banking entity' for the purposes of the guidelines.**

Current work of the Council and the EP could have a legal impact on those guidelines – and on how factoring players in the EU are considered depending on the prudential regime they have to abide by.



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|---|---------------------------------|
| <b>Insurance Mediation Directive II</b> | <a href="#">Back to summary</a> |
| <b>No update in December 2022.</b>      |                                 |

|  |                                 |
|--|---------------------------------|
| <b>Rome I regulation / Contract law / Insolvency law</b>   | <a href="#">Back to summary</a> |
| <p><b>December 7<sup>th</sup>, 2022 - European Commission publishes a new legislative proposal regarding the harmonization of certain aspects of insolvency law</b></p> <p>On December 7<sup>th</sup>, 2022 the European Commission presented a <a href="#">new proposal for a directive</a> to harmonize certain aspects of insolvency proceedings at the EU level. With this new initiative, the European Commission seeks to encourage cross-border investment in the single market through the adoption of common minimum standards for insolvency proceedings. The EU executive estimates that the benefits of this proposal, once implemented, will be worth €10 billion per year.</p> <p>Commissioner McGuinness stated at the presentation of the initiative that <i>"this proposal will give investors a clearer picture of how long insolvency proceedings will take and how much they could recover, and they will therefore be more likely to invest in companies located in another Member State"</i>.</p> <p>The European Commission's proposal serves three distinct purposes:</p> <ul style="list-style-type: none"> <li>▪ To ensure that creditors can recover the maximum value of the company placed in liquidation;</li> <li>▪ To improve the efficiency of insolvency proceedings ;</li> <li>▪ Lay the foundation for a predictable and fair distribution of the value recovered among creditors.</li> </ul> <p>With the objective of converging insolvency procedures and reducing the existing fragmentation between the different national insolvency regimes, the proposed Directive provides for the following:</p> <ul style="list-style-type: none"> <li>▪ <b>Measures to preserve the insolvency estate (i.e. avoid actions by debtors that would reduce the value that can be recovered by creditors) ;</b></li> <li>▪ <b>The establishment of creditors' committees to ensure a fair distribution of the value recovered among creditors ;</b></li> <li>▪ The implementation of so-called "pre-pack" procedures in which the sale of the business is concluded prior to the commencement of insolvency proceedings ;</li> <li>▪ The obligation for companies to apply promptly for the opening of insolvency proceedings in order to prevent the company from losing value ;</li> </ul> |                                 |

- The proposed directive also provides for the introduction of a simplified regime for micro-enterprises that will reduce the cost of their liquidation and relieve their owners of their debts.

Finally, the directive includes provisions to require member states to produce an information sheet summarizing the main elements of their national insolvency legislation, in order to reduce the cost of information gathering and to facilitate decision-making by cross-border investors.

**Next steps:**

A [consultation](#) is open by the European Commission until March 1<sup>st</sup>, 2023 to gather stakeholders' views on the proposed provisions.

The text is transmitted to the European Parliament and the Council of the EU. The 2 co-legislators will be asked to adopt a position on this text according to the ordinary legislative procedure.

**September 21<sup>st</sup> – European Parliament Research Services publishes a briefing on the law applicable to the third-party effects of assignments of claims**

On September 21<sup>st</sup> 2022, the European Parliament Research Service (EPRS) [published](#) a briefing on the [draft regulation on the law applicable to the third-party effects of assignments of claims](#).

The rapporteur of this text for the Legal Affairs Committee is Jiří POSPÍŠIL (EPP, CZ). Parliament [adopted](#) its position on 13 February 2019 while the Council [adopted](#) its position on 28 May 2021, following which, on 15 November 2021 the co-legislators entered the negotiation phase in trilogues.

As a reminder, this draft regulation provides for clarifying the resolution of disputes in the case of factoring, when the original creditor (the assignor) assigns his claim to a third party who then becomes the new creditor (the assignee).

In its report, the European Parliament Research Services identifies factoring as an important source of liquidity for companies, and more generally, it stresses the fact that SMEs are the main beneficiaries of factoring services, since they may have difficulties in accessing traditional lending services. The Parliament also highlights the fact that Europe is the leading region in the world for factoring, accounting for 66% of the global market.

**February 14<sup>th</sup>- Personal insolvency: Finance Watch calls on the European Commission to propose harmonised procedures on the European level that are more protective of consumers**

On February 14<sup>th</sup>, the NGO Finance Watch published a [press release](#) on the issue of insolvency procedures and in which they stress the need to develop a common European framework for insolvency proceedings.

Finance Watch also notes that the current legal framework remains too fragmented between Member-States and calls on the European Commission to propose a specific directive on consumer insolvency.

According to the NGO's [detailed report](#) on the subject, the directive should:

- Ensure that payment and asset liquidation plans are compatible with decent living conditions for the borrower;
- Ensure as full a discharge of debt as possible in three years, procedures should not exceed this limit;
- Take into account the “good faith” of the borrowers, not the amount of debt;
- Allowing automatic debt cancellation procedures and/or moratoria on collection procedures when consumers are identified as being unable to meet their contractual repayment obligations based on objective criteria;

- Establish a mechanism to direct over-indebted individuals to where they can obtain over-indebtedness counsel

**VAT on financial services**

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**No update in December 2022.**

**February 12<sup>th</sup> - Tax on financial transactions : Council has resumed work without significant breakthrough**

According to a February 12<sup>th</sup> [note](#), the Portuguese presidency of the Council of the EU is attempting to tackle the issue of the financial transactions tax (FTT) in “inclusive format”, meaning with all Member-States. The process marks the start of negotiations with all Member-States while previous discussions revolved around a circle of 10 Member-States that were leading the way.

The matter was discussed among finance ministers of the EU-27 on 24<sup>th</sup> February at a ECOFIN meeting. The objective was to evaluate the points of view of Member-States. Finance ministers welcomed that this topic is discussed in inclusive format (with all member states) and some expressed they would like to pursue discussions on a more concrete proposal. However, there was no significant shift in the Member-States position.

Previous attempts to set up a FTT met several obstacles. A cooperation among ten Member-States was set up in 2014 but has not yet made great progress. The debate on the FTT however was re-started in the COVID-19 context as it was seen as a potential way to bring additional resources at EU level. The 10 Member-States process is based on a system of legal differentiation known as “enhanced cooperation”: it might make the FTT possible in 2026. The challenge is bringing to EU-27 level and gathering the votes of every Member-State.

Fiscal matters, including the FTT, are subject to the special procedure known as “consultation”. The Council decides on its own by unanimity and the Parliament is only consulted.

**December 18<sup>th</sup> - VAT rules: the Commission’s proposal to review decision-making processes over VAT**

On December 18<sup>th</sup>, the European Commission made a [proposal](#) for a directive amending the decision-making for VAT rules. Stakeholders can offer contributions on the proposal through a [consultation](#) open until February 15<sup>th</sup>.

The proposal aims to revise the main directive on VAT (2006 VAT directive) in order to introduce implementing powers for the European Commission. The proposal would also turn the VAT advisory committee into a “comitology” committee.

These changes mean that instead of deciding through the consultation procedure which is slow and requires unanimity in the Council of the EU, the Commission would be able to autonomously decide on implementing acts amending certain provisions of the VAT Directive. These “implementing acts” would then be submitted in a second stage to the so-called “comitology” committee in which Member-States are represented by experts who may decide on their behalf.

Implementing acts are possible for those provisions of the Directive which require uniform application in the EU. The Commission could thus decide on implementing acts modifying in particular: taxable persons, taxable transactions, liability for VAT taxable amount. Exemptions for certain products or services (under title IX of the VAT directive) which include financial services could be revised by the Commission with executive acts. Modifying the tax rates, the scope or derogations remain subject to the consultation procedure and unanimity decision in the Council as they are sensitive matters for Member-States.

The initiative highlights the Commission's intention to progress in its competence over fiscal matters which is traditionally a Council prerogative.

#### Anti-Money Laundering Directive/Tax fraud and tax evasion

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#### December 7<sup>th</sup>, 2022 - the Council adopts its position on the anti-money laundering regulation and directive

On December 7<sup>th</sup>, 2022, the Council of the EU [adopted](#) its position on the anti-money laundering regulation and the revised AML directive 6, which aim, among other things, to broaden the scope of the existing regulatory framework and to close any loopholes.

The Council's position follows the European Commission's original proposal and includes a ban on cash payments of more than EUR 10,000. However, Member States will have the option to impose a lower maximum limit, if they so choose.

Cryptoasset service providers will have to verify facts and information about their customers. The Council has required them to apply customer due diligence measures when conducting transactions of €1,000 or more. Measures to mitigate the risks associated with transactions with self-hosted portfolios are also included. The Council introduced specific enhanced due diligence measures for cross-border correspondent relationships of cryptoasset service providers.

Regarding beneficial ownership rules, the Council clarified that beneficial ownership is based on two components - ownership and control. The Council detailed how to identify and verify the identity of beneficial owners for all types of entities, including non-EU ones. Provisions on data protection and record keeping are also clarified in order to facilitate and accelerate the work of the competent authorities.

On the European Parliament side, the two rapporteurs of the text, Luděk NIEDERMAYER (EPP, CZ) and Paul TANG (S&D, NL), reacted on December 6, to the EU Court of Justice's ruling of November 22, 2022 on limiting public access to beneficial ownership registers. They believe that this decision "may undermine the ability of Member States' authorities to effectively combat money laundering and terrorist financing".

In line with the decision of the CJEU of 22 November 2022, Article 12 of the compromise text adopted by the Council specifies that "natural or legal persons who have a legitimate interest in accessing the information" are allowed to have access to this information, thus including journalists and civil society organizations linked to the prevention and fight against money laundering and terrorist financing.

On the same subject, the European Parliament's research department has [published](#) a summary note on the main issues at stake in the revision of the anti-money laundering regulatory framework currently in force. The services of the European Parliament have also [published](#) a study (in the form of a critical assessment) on the proposals of the anti-money laundering package published in 2021 by the European Commission.

#### Next steps:

The European Parliament is expected to adopt its final position in March 2023 (no voting date is set at this time).

#### December 6<sup>th</sup>, 2022 – the Parliament publishes its draft report regarding the directive proposal to tackle debt-equity bias in taxation under the special legislative consultation procedure

On December 6<sup>th</sup>, 2022, the rapporteur Ludek NIEDERMAYER (EPP, CZ) [published](#) in the Committee on Economic and Monetary Affairs (ECON) of the European Parliament his draft report on the [proposal](#) for a directive on a debt-equity bias reduction allowance (DEBRA).

The rapporteur proposes to make the right to deduct an allowance for increases in equity irrevocable once a company has met the criteria for it, even if the size of the company changes. It also proposes to offer SMEs more favourable conditions, in particular through a longer tax deductibility period.

In view of the economic difficulties of some companies, the rapporteur suggests that the provisions relating to the limitation of the deductibility of debt financing costs should only be introduced from 2027 onwards and should not be applied to loans taken out by smaller companies.

Ludek NIEDERMAYER also wants the European Commission to include an analysis of the consequences of the DEBRA directive for the improvement of equity financing for SMEs in its report on the effectiveness of the directive.

Under Article 115 of the Treaty on the Functioning of the European Union (TFEU), the Council acts unanimously -in accordance with the special legislative procedure- on directives that have a direct impact on the functioning of the internal market. Although the Council is objectively the only "legislator" in this procedure, it must first consult the European Parliament and the European Economic and Social Committee (EESC). The Council is not obliged to follow the proposals made by the Parliament or the EESC.

#### **Next Steps:**

**The deadline for tabling amendments is set to 18 January 2023. Under the special legislative consultation procedure, the Council is required to adopt the legislative proposal after Parliament has given its opinion.**

#### **October 27<sup>th</sup> 2022 – The European Commission publishes its 2022 SNRA report**

On October 27<sup>th</sup> 2022, the European Commission [published](#) a report on the assessment of the risk of money laundering and terrorist financing affecting the internal market. The Supranational Risk Assessment Report (SNRA) is [accompanied](#) by a Commission Staff Working Document detailing the report's findings and methodology.

The report states that due to the war in Ukraine new money laundering and financing terrorism risks have emerged. Based on the 2019 Supranational Risk Assessment Report (SNRA), the Commission analyzed these new risks. Regarding the financial sector the activities that are most exposed include :

- **Banking sector:** the European Commission considers that the banking sector is amongst financial services the most exposed sector to money laundering risk. In particular, retail banks are identified as being highly vulnerable to money laundering risk and to terrorist financing risk.
- **Crypto assets:** the report recommends paying special attention to crypto assets , not only in terms of consumer protection but also in terms of anti-money laundering.
- **Investment funds:** partly due to exposure to high-risk clients and the complexity of the operations, the report considers that investment funds are also highly exposed to the risk of money laundering.
- **Insurance:** the insurance sector, and in particular life insurance, remains slightly exposed to money laundering risk.

The report considers that the last legislative package proposed by the Commission will allow an effective response to the risk posed by money laundering and does not consider that new legislative initiatives are necessary.

However, the Commission recommends that Member States strengthen controls and monitoring of these risks, in particular by carrying out on-site inspections and developing training for professionals.

Finally, the European Commission has [published](#) a preliminary report on establishing public-private partnerships (PPPs) while avoiding money laundering and terrorist financing.

**Next steps :**

**The Commission will publish a new SNRA report in 2024.**

**On public-private partnerships (PPPs), the European Commission plans to adopt a document to help Member States establishing PPPs and avoiding the risks of money laundering and terrorist financing.**

**September 16<sup>th</sup> 2022 – European Commissioner for Financial Services discusses the establishment of the future European Anti-Money Laundering Authority**

On September 16<sup>th</sup> 2022, European Commissioner for Financial Services Mairead McGuinness discussed the creation of the new European supervisory agency in the field of anti-money laundering at a seminar organized by the European Court of Auditors (read the [full speech](#)).

The European Commissioner presented in detail the characteristics of the future European Authority (AMLA), including its coordination role in the non-financial sector, as well as the cooperation and interaction between the AMLA and the national supervisory authorities.

She also discussed the role that the European Commission will play once the future Authority is operational. The European executive will be in charge of transposing into legislation, via delegated acts, the technical regulatory standards that the AMLA will have the task of developing in order to complete the future regulation, notably in terms of supervision of national authorities in the AML/CFT field.

The European Commission will also be responsible for establishing the methodology for setting fees that will contribute to the future Authority's budget. However, the question of the financing of the AMLA is being debated in the European Parliament, as MEPs would like to see an Authority with strong competences and adequate financing.

As regards the governance of the future institution, it is also planned that the European Commission will sit on the Executive Board and the General Council of the future European Authority.

In the context of the debates currently taking place in the Joint Committee on Economic Affairs (ECON) and Civil Liberties (LIBE), the European Parliament's research department has [published](#) a note summarizing the key provisions and issues surrounding the establishment of the future European Anti-Money Laundering and Anti-Terrorism Authority.

**Next steps:**

**The future European Authority should be operational in 2024. Its direct supervisory powers should be fully exercised in 2026.**

**September 1<sup>st</sup> 2022 – AML/CFT: European Banking Authority calls for proactive and enhanced information exchange between colleges of supervisors**



On September 1<sup>st</sup> 2022, the European Banking Authority (EBA) [published](#) a report on the functioning of AML/CFT colleges of supervisors.

The report concludes that while national competent authorities are committed to implementing the AML/CFT college operating framework developed by the EBA, they need to do more to ensure ongoing collaboration and proactive information exchange between colleges.

The EBA report also highlights its observations in terms of "good practices" to help competent authorities improve their efficiency. These good practices concern in particular the structure of college meetings, the organization of information sharing and the cooperation between supervisory authorities.

The report also highlights several areas for improvement, notably:

- **Improving the integration of supervisory processes.** For example, the report reminds supervisors of the importance of sharing information across colleges on an ongoing basis and without delay, particularly when material AML/CFT weaknesses have been identified within the institution.
- **Organizing the operation of supervisory colleges using a risk-based approach.** In this context, EBA highlights the possibility of increasing the frequency of organizing meetings between colleges, particularly for cross-border institutions exposed to higher ML/TF risks.

This EBA report assessing the functioning of colleges of supervisors in the area of money laundering is based on the guidelines jointly developed in 2019 by the European Supervisory Authorities (ESAs): [Joint Guidelines on Cooperation and information exchange between competent authorities supervising credit and financial institutions](#).

#### **July 1st 2022 – Rapporteur publishes his draft report regarding the access of competent authorities to centralised bank account registries through the single access point**

On July 1<sup>st</sup> 2022 rapporteur Emil RADEV (EPP ; BG) [published](#) his draft report on the [review](#) of the directive regarding the access of competent authorities to centralised bank account registries through the single access point.

The rapporteur's draft report shares most of the European Commission proposal. Yet, he considers that it would be necessary to strengthen the respect of fundamental rights. He also added that the use of a centralised data base should be supervised to ensure that personal data are protected.

During the exchange of views that took place on July 13<sup>th</sup> 2022, Members of Parliament agreed upon the remarks made by the rapporteur and asked for the text to be compliant with the General Data Protection Regulation.

In the report for opinion from the Committee on Economic and Monetary Affairs (ECON) the rapporteur asked for Financial Intelligence Units to be able to exchange financial information and analysis.

#### **July 2022 – AML/CFT: Publication of the amendments to the proposal for a regulation on the prevention of the use of financial system for the purpose of money laundering**

In July 2022, the amendments tabled, following the presentation of the draft report by co-rapporteurs Damien CAREME (Greens/EFA; FR) and Eero HEINÄLUOMA (S&D; FL), were published concerning [the proposal for a](#)

[regulation on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.](#)

Several proposed amendments concern **Article 2 on the definition and Article 3 on the obliged entities** and the scope of the future regulation. Changes to the definition of beneficial owners, to business relationships and to activities covered by the future Regulation have been proposed by MEPs from all political groups.

Regarding **Article 13 on the requirements applicable to groups**, the S&D group asks that risk assessment, risk management procedures and policies to be carried out at group level, considering the risks identified by all the branches of the group. Thus, obliged entities that are part of a group would be required to implement the policies, controls and procedures developed at the group level, considering their specificities and the risks to which they are particularly exposed. The S&D group also maintains that group-wide policies should allow for the sharing of information within a group where such sharing is considered relevant from an AML perspective, including in terms of risk management and customer due diligence.

The EPP group proposes the introduction of a new subparagraph stating that entities within the same group should be allowed to use information when it is provided by another entity within the group and that the shared information is considered up to date using a risk-based approach.

Concerning **Article 16 on due diligence measures to be adopted for the identification of customers**, Markus FERBER (EPP; DE) proposes that the identification of beneficial owners and the verification of their identity should be carried out only in high-risk situations. Ralf SEEKATZ (EPP; DE) and Karolin BRAUNSBERGER-REINHOLD (EPP; DE) also propose that identity verification should only be carried out in cases where an assessment has shown an increased risk of fraud.

Several members of the S&D and Greens/EFA groups also propose referring to the new Anti-Money Laundering Authority the drawing up of guidelines on the provisions to be applied by obliged entities to assess whether a customer or a beneficial owner is subject to financial penalties.

**Concerning Article 18 on customer identification and verification**, Ralf SEEKATZ (EPP; DE) and Karolin BRAUNSBERGER-REINHOLD (EPP; DE) propose the adoption of a risk-based approach to the collection of information. They propose the collection of the name and surname and if necessary, in the light of the risks identified, of more information. Dorien ROOKMAKER (ECR; NL) proposes that only the surname, first name and date of birth should be collected.

Concerning **article 18, paragraph 3 on the provision of proof of identity**, Frances FITZGERALD introduces the possibility of collecting formal proof of identity or collecting the information through an independent and reliable sources. She adds that there should be no limits on the types of documents or information that can be provided, and on which obligated entities could rely to confirm an identity.

**In Article 27 on simplified customer due diligence measures**, Frances FITZGERALD proposes adding the phrase "risk-based approach" to paragraph (a) providing for verification of the identity of the customer and the beneficial owner after the business relationship has been established. It also proposes the deletion of the reference to the 30-day period after the establishment of the business relationship for verifying the identity of the customer that the European Commission had provided for in its proposal. Ralf SEEKATZ (EPP; DE) and Karolin BRAUNSBERGER-REINHOLD (EPP; DE) propose in their amendments the introduction of a 60-day period.

**June 15<sup>th</sup> 2022 –The regulation’s proposal on the establishment of an Anti-Money Laundering Authority makes progress in the Council and in the Parliament**

On June 15<sup>th</sup> 2022, co-rapporteurs Luis GARICANO (Renew, ES) and Emil RADEV (PPE, BG) [presented](#) their draft report on the [regulation proposal establishing an Anti-money Laundering Authority \(AMLA\)](#) to the joint parliamentary committee gathering Economic and monetary affairs committee (ECON) and Civil Liberties, Justice and Home Affairs Committee (LIBE) Members of parliament.

Overall, the co-rapporteurs considered that the Commission proposal was insufficient and introduced several amendments including :

- Regarding the extension of the scope of Authority with the increasing of the number of entities directly supervised by the Anti-money Laundering Authority (AMLA).
- Regarding the choice of the Parliament to decide the headquarter of the authority.
- Regarding the creation of a centralized and standardized database gathering all relevant information. The database should be accessible to all national competent authorities.

MEPs from all parties have been broadly supportive of the report. Yet, some of them also suggested some changes : Greens MEPs, for example, proposed to review the selection threshold for entities under direct supervision; and the EPP supported the introduction of new amendments to mitigate third country threats.

On June 29<sup>th</sup> 2022, the Council has [agreed](#) its partial position on AMLA regulation's proposal. Member States enhanced AMLA's scope of action with the supervision of up to 40 entities and the inclusion of crypto-assets service providers

**Next steps:**

**Parliament has yet to agree on a common position before entering inter-institutional negotiation.**

**June 14<sup>th</sup> 2022 - AML/CFT: the European Banking Authority issues guidelines defining the role and responsibilities of compliance officers**

On June 14<sup>th</sup> 2022, the European Banking Authority [published](#) new guidelines to specify the role and responsibilities of compliance officers in charge of ensuring the proper application of anti-money laundering and counter terrorist financing measures.

The purpose of these guidelines is to ensure a common understanding and appropriate implementation of internal AML/CFT governance arrangements in accordance with current regulatory requirements.

They set out clear expectations regarding the role, duties and responsibilities of both AML/CFT compliance officers and management body. To this end, they specify that credit or financial institutions must designate a member of their management body to be considered ultimately responsible for the implementation of AML/CFT obligations. When the credit or financial institution is part of a group, the guidelines require the appointment of a group-wide AML/CFT compliance officer and specify the duties and responsibilities of that person.

Those guidelines supplement but do not replace the relevant guidelines issued by the EBA on governance arrangements and adequacy controls.

**June 1<sup>st</sup> 2022 - ESA publishes report on the withdrawal of financial institution licenses for AML/CFT violations**

On June 1<sup>st</sup> 2022, the European Supervisory Authorities (ESAs) published a [joint report](#) on the withdrawal of licenses from financial institutions in case of serious violations of anti-money laundering and financing of terrorism rules (AML/CFT).

The report provides a complete analysis of the comprehensiveness, adequacy, and consistency of applicable laws and practices regarding license revocation for serious AML/CFT violations.

The joint report calls for:

- The introduction in all relevant EU sectoral legislation of a specific legal ground for the withdrawal of license in case of serious violation of AML/CFT rules. According to the survey results, competent authorities across the financial sector can only invoke non-specific grounds based on EU or national law. Indeed, only the [Directive \(2013/36/EU\)](#) on the taking up and pursuit of the business of credit institutions and on the prudential supervision of credit institutions and investment firms currently provides an explicit ground for the withdrawal of a license, in case of a serious breach of anti-money laundering and anti-terrorist financing rules.
- The assessment by competent authorities of the adequacy of arrangements and processes in order to ensure compliance with AML/CFT rules be a condition for granting authorization or registration.
- An appropriate integration of AML/CFT issues into prudential regulation and supervision, including in the proposed Regulation on Cryptoasset Markets (MiCA), currently under inter-institutional negotiations.

In addition, the ESA report clarifies the decision to revoke licenses as a measure of last resort, subject to discretionary and proportionality assessment.

It also establishes uniform criteria for the concept of a serious violation of AML/CFT rules, emphasizing that the identification of a serious violation is subject to a case-by-case assessment by the AML supervisory authority.

#### **May 23th - The draft report on the AML Authority regulation proposal is presented to the ECON/LIBE committees**

Rapporteurs Emil Radev (PPE ; BG) and Luis Garicano (RENEW ; ES) [presented](#) their draft report on the Anti-Money Laundering Authority (AMLA) [regulation](#) proposal. Their amendments includes:

- The selection of the supervised entities based on their money laundering risk exposure (Am 5 and Am 13).
- Taking into account residual risk (and not only inherent risk) while selecting supervised entities. AMLA will have to develop residual risk benchmarks.
- The introduction of a new article on the information requested directly to obliged entities (Am 63).
- Additional data protection for information transmitted to AMLA including a retention period of 5 years (Am 8 and 62).

#### **Next steps**

Deadline for tabling amendments is set to June 17<sup>th</sup>.2022.

#### **May 23th - The draft report on the anti-money laundering and countering financing terrorists directive proposal (AML/CFT) is presented to the ECON/LIBE committees**

Rapporteurs Paul Tang (S&D ; NL) and Luděk Niedermayer (PPE ; CZ) [presented](#) their draft report on the [directive proposal](#) concerning the prevention of the use of the financial system for the purposes of money

laundrying or terrorist financing is presented to the ECON/LIBE committees. Their amendments (Am) included :

- The implementation of additional requirements for obliged entities and the possibility to fine obliged entities in the case of inconsistencies or incoherencies.
- The definition by AMLA, through Regulatory Technical Standards (RTS), of “good repute” for senior management (Am 5 and Am 75).
- The end of restrictions concerning the access of the public to legal information about the effective ownerships of trusts.

During the presentation of their report, the rapporteurs highlighted that the current difficulties to identify and sanction assets and trusts linked to Russian interests are due to the weakness of EU current anti-money laundering framework.

#### **Next steps**

**Deadline for tabling amendments is set to June 18<sup>th</sup>.**

#### **April 15<sup>th</sup> - International tax policy reform: Member-States in the Council of the EU fail to reach an agreement**

On April 5<sup>th</sup>, Member States within the Council of the EU met to discuss the proposal for a directive to transpose in European law the [OECD agreement](#) on a global minimum tax rate of 15% for multinationals. Warsaw opposed the proposal. Poland is the only reluctant Member-State at this stage.

The European Parliament, for its part, called on April 20<sup>th</sup>, during the debate on the [draft opinion](#) of Aurore Lalucq (S&D, FR) on the proposal, for a rapid transposition of the agreement.

The legislative proposals, published on December 22<sup>nd</sup>, 2021, aims to introduce a minimum corporate tax of 15% for multinationals in order to level the playing field in tax matters.

The proposal is subject to a special procedure applicable to fiscal matters, known as the consultation procedure. Member-States are the only competent legislator and unanimity is required. The European Parliament provides an advisory opinion. The transposition of the agreement is a priority for the French Presidency of the Council of the EU.

#### **Next steps:**

**Member-States will resume talks until an unanimous agreement is reached.**

#### **March 22<sup>nd</sup> - AML/CFT: European Banking Authority warns of ineffective supervision in the area of financial crime**

On March 22<sup>nd</sup>, the European Banking Authority (EBA) [published](#) the findings of its assessment of the competent authorities in the area of banking supervision in the fight against money laundering and terrorist financing (AML/CFT).

In its conclusions, EBA notes that significant challenges remain in important areas, such as the identification and assessment of money laundering risks, despite the fact that national supervisors have begun to adopt significant reforms to improve their supervision in this area.

EBA observes that most of the assessed competent authorities have taken steps to implement a comprehensive approach to money laundering and terrorist financing risks in the banking sector. The findings also highlight the fact that changes introduced after the recent transposition of EU legislation in this area, such as stronger enforcement powers, have started to make a difference.

In addition, the EBA points out that the teams in charge in almost all of the competent authorities examined have considerably developed and that cooperation with prudential supervisors and other AML/CFT supervisors in the EU has become a clear priority for all, in line with the EBA's guidelines.

Among the common challenges that supervisors still face, however, the EBA report emphasizes in particular:

- (i) the identification of money laundering and terrorist financing risks by banking sector participants,
- (ii) the translation of ML and TF risk assessments into risk-based supervisory strategies,
- (iii) the effective use of available resources, including sufficiently intrusive on-site and off-site surveillance,
- (iv) the adoption of proportionate and sufficiently dissuasive enforcement measures to address AML/CFT compliance weaknesses.

The EBA also found that cooperation with Financial Intelligence Units (FIUs) was not always systematic and often ineffective in terms of information exchange due to sharing and communication mechanisms between competent authorities not always operational.

#### **March 22<sup>nd</sup> - AML/CFT: Hearing on the legislative package in joint parliamentary committees**

On March 22<sup>nd</sup>, the ECON and LIBE parliamentary committees, joint committees on the [AML/CFT legislative package](#), [heard](#) 6 experts on the topic of the fight against financial crime.

All the experts agreed on the necessity to strengthen the powers of the future European Anti-Money Laundering Authority as well as on the importance of establishing, in the long run, information standards at the European level to facilitate sharing and cooperation. The experts also felt that an authority should also be responsible for sanctioning countries that do not respect the criteria for information exchange.

The representative of the Latvian Financial Intelligence Unit, Ilze Znotina, underlined the existing gaps in terms of cooperation at the European level in terms of financial intelligence, an essential element in the effective fight against money laundering and which is missing according to her in the AML/CFT legislative package presented in July 2021.

The director of TRACFIN, the French financial intelligence unit, Guillaume Valette-Valla, raised the material issue underlying effective information sharing. According to him, the transfer of information to the European Commission works well but could work better with an operational support with new software to deal with the blockchain.

According to Marcus Pleyer, president of the Financial Action Task Force (FATF), an intergovernmental body to combat money laundering and terrorist financing, interoperability involves "the need to interconnect transparency registers and transfer them to third countries to remove loopholes.

#### **February 21<sup>st</sup> - AML/CFT : ECB supervision division stands in favor of a strong AML authority and pleads for increasing banking supervision practices convergence across EU**

On February 21<sup>st</sup>, Edouard Fernandez-Bollo, member of the European Central Bank's Supervisory Board, [published](#) an article arguing for the need to establish a European authority dedicated to the fight against money laundering with a broad scope of competence and adequate resources.

As a member of the Supervision Board, he states that many banks encounter difficulties in the field of prevention and fight against money laundering, whether in terms of structural deficiencies, governance arrangements or internal control mechanisms. As anti-money laundering is not directly within the ECB's field of banking supervision, he argues that the new authority could fully play a role in this area.

Based on the European Commission's proposal for a regulation laying the foundations for the creation of the new European authority, the ECB's Supervisory Board emphasizes two points:

- **convergence of supervisory practices and harmonization of the anti-money laundering regulatory framework at the EU level.** Beyond the challenge of creating a European supervisory authority from scratch, Edouard Fernandez-Bollo stresses the need to put in place "a true European culture of banking supervision". He therefore recommends creating a common approach to prudential supervision to ensure that national practices are aligned. Objective criteria based on risk factors, such as certain aspects of cross-border activities, would be preferable to develop common practices without disclosing risk scores that could stigmatize certain entities.
- **cooperation among all relevant supervisory authorities at the national and EU levels.** The new authority should not simply add another layer to the existing AML/CFT supervisors, according to Edouard Fernandez-Bollo, but rather play a central role in strengthening cooperation and facilitating the flow of information between all regulatory and supervisory authorities involved: AML/CFT authorities, prudential supervisors, financial intelligence units, European supervisory authorities.

#### **February 22<sup>nd</sup> – “Luanda Leaks”: EBA published the conclusions of its investigation**

On February 22<sup>nd</sup>, the European Banking Authority (EBA) [published](#) its conclusions on the "Luanda Leaks" investigation opened on European Parliament's request in 2020.

The EBA found that competent authorities in the EU adopted different approaches in order to identify and address money laundering and terrorist financing risks in the “Luanda Leaks” case. These approaches varied beyond what the EBA would have expected from a risk-based approach and recalls its guidelines for the identification and management of AML/CFT risks.

In addition, the investigation revealed shortcomings in some national competent authorities (NCAs) in identifying and combating money laundering and terrorist financing risks. The EBA also points out that some NCAs do not make sufficient use of existing cooperation channels to exchange information and improve their risk assessment procedures in the area of money laundering.

#### **January 19<sup>th</sup> - AML/CFT: French presidency of the Council declares expecting concrete evolutions on the AML Authority legislative proposal**

On January 19<sup>th</sup>, the French Ministry of the Economy and Finance [organized](#) a conference on the fight against financial crime and terrorist financing as well as cooperation' matters in this area, as part of the French Presidency of the Council of the EU.

The starting point of the conference was the legislative package, [presented](#) last July by the European Commission. The discussions focused in particular on the future anti-money laundering authority (AMLA). This



European Authority would have the task, as of 2023, of coordinating Member States' actions in this area and guaranteeing a uniform application of European rules on money laundering.

According to the participants, the European Authority should benefit from adequate financial and human means to be proactive and in capacity of covering a wide range of actors. Sylvie Goulard, deputy governor of the Bank of France, considered that AMLA should not only supervise the financial authorities but also ensure that the free movement of capital does not undermine the rule of law. The former MEP also fears that crypto-actives, new means of payment and the entrance of unconventional players in the financial services field could complicate the Authority's task.

The text's rapporteur in the European Parliament, Luis Garicano (RE; SP), said that he believes it is necessary for the new Authority's scope of supervision to go beyond banks and cover all actors potentially involved in money laundering activities.

Eduardo Fernández-Bollo, member of the ECB's Single Supervisory Board, underlined the necessity of efficient communication between the different national authorities for effective action and the strengthening of the overall credibility of EU's action in this specific area.

#### **January 20<sup>th</sup> - AML/CFT legislative package: nomination of rapporteurs in parliamentary committees**

On January 20<sup>th</sup>, it has been announced in plenary that the legislative proposals of the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) [package](#) would go through a joint committee procedure. The two responsible committees are the economic and monetary affairs committee (ECON) and the civil liberties committee (LIBE).

For the [proposal](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, the rapporteurs are Eero Heinaluoma (S&D; FL) for the ECON committee and Damien Carême (Greens/EFA; FR) for the LIBE committee.

For the [proposal](#) on the creation of the anti-money laundering Authority (AMLA), the rapporteurs are Emil Radev (EPP; BG) for the ECON committee and Luis Garicano (RE; SP) for the LIBE committee.

For the [proposal](#) on information accompanying transfers of funds and certain crypto-assets, the rapporteurs are Ernest Urtasun (Greens/EFA; SP) for the ECON committee and Assita Kanko (ECR; BE) for the LIBE committee.

For the [proposal](#) on the prevention of the use of the financial system for the purposes of money laundering and the mechanism to be put in place by Member states, the rapporteurs are Ludek Niedermayer (PPE; CZ) for the ECON committee and Paul Tang (S&D; NL) for the LIBE committee.

#### **Next steps:**

**The parliamentary process will go on and the rapporteurs are expected to produce a joint report for each legislative proposal.**

#### **January 20<sup>th</sup> - Court of Justice of the EU: EU provisions governing public access to information on beneficial owners of companies are legal**

The Advocate General [delivered](#) his opinion on January 20<sup>th</sup> regarding preliminary ruling by the Court of Luxembourg in the case of Sovim v Luxembourg Business Registers. He concludes that EU law governing public access to information on beneficial owners of companies is valid.

For the purposes of combating and preventing money laundering and terrorist financing, the Anti-Money Laundering (AML) [Directive](#) requires Member States to maintain a register containing information on beneficial owners who control companies and other legal entities incorporated in their territory. In 2018, some of this information was made publicly available without justification of a legitimate interest through a legislative revision.

However, Member States may provide exemptions regarding access to such information where public access would expose the beneficial owner to a disproportionate risk, a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or incapacitated.

**January 31<sup>st</sup> – EBA launches “EuReCa”, the EU’s central database for anti-money laundering and counter-terrorism financing**

The European banking Authority [launched](#) on January 31st its central database for anti-money laundering and counter-terrorist financing (AML/CFT).

The database, named EuReCA, will contain information on material weaknesses in individual financial institutions in the EU that competent authorities have identified. Competent authorities will also be reporting the measures they have imposed on financial institutions to rectify those material weaknesses.

The EBA will use information from EuReCA to feed into its analysis of ML/TF risks affecting the EU financial sector. It will also share information from EuReCA with competent authorities when appropriate, to support them at every stage of the supervisory process and, in particular, should specific ML/TF risks or trends emerge. In this regard, EuReCA will act as an early warning tool and help competent authorities to act before ML/TF risk crystallises.

Examples of material weaknesses will include:

- the lack of adequate AML/CFT policies and procedures including the absence of transaction monitoring at the group level and the absence of policies and procedures for high-risk customers, which increase the ML/TF risk associated with the financial institution.
- internal audit findings identified by a prudential authority during an on-site inspection about which the management body of the senior management appeared to have been informed and decided not to remediate.

**Next steps:**

**EuReCA will not start to collect personal data until the approval of the [draft RTS](#) by the European Commission.**

**Data protection**

[Back to summary](#)

**No update in december 2022.**

25<sup>th</sup> January 2018: the European Commission publishes a new website to prepare for the implementation of the GDPR

The European Commission published a new [page](#) on its website, dedicated to the implementation of the [General Regulation on Data Protection](#) (GDPR). The page offers several facts sheets addressed to individuals as well as businesses. Simultaneously, the European Commission published a [communication](#) providing guidance on the direct application of the GDPR. It recalls objectives of the GDPR and reviews the preparatory

| Guidelines/working documents by the Article 29 Working Party in view of the entry into application of the Regulation <sup>26</sup> |                             |
|--|-----------------------------|
| Right to data portability  | Adopted on 4-5 April 2017   |
| Data protection officers   |                             |
| Designation of the lead Supervisory Authority  |                             |
| Data protection impact assessment  | Adopted on 3-4 October 2017 |
| Administrative fines   | Adopted on 3-4 October 2017 |
| Profiling  | Work ongoing                |
| Data breach  | Work ongoing                |
| Consent  | Work ongoing                |
| Transparency   | Work ongoing                |
| Certification and accreditation  | Work ongoing                |
| Adequacy referential   | Work ongoing                |
| Binding corporate rules for controllers  | Work ongoing                |
| Binding corporate rules for processors   | Work ongoing                |

measures already taken at the European level.

**KEY MESSAGES FROM THE EU COMMISSION**

The communication reminds stakeholders of keys elements introduced by the new data protection rules:

- **A single set of rules for the whole European Union**, which would guarantee legal certainty for companies and a consistent level of data protection for all citizens.
- **Same rule will apply to all companies providing services in the EU**, even if those companies are based outside of the EU.
- **New and stronger rights for citizens**: the rights to information, data access and to be forgotten are strengthened. **A new right regarding the portability of data allows citizens to transfer their data from a company to another.** This should open new business opportunities for companies.
- **Protection against data breach is reinforced**: a company incurring a data breach needs to inform the data protection authority within 72 hours.
- **Binding rules and deterring fines**: all data protection authorities will be able to impose fines up to 20 million euros or, for corporates, up to 4% of the yearly global turnover.

The Commission's communication also reviews progress made by the Article 29 Working Party, which gathers national data protection authorities from all Member States.

The Commission highlights how important it is that the guidelines drafted by the Article 26 Working Party are subject to **public consultation before they are adopted**.

Taking into account the fact that the benefits and new opportunities brought by the new data protection rules are not uniformly spread across the EU, the Commission launched a new [online platform](#) targeting **SMEs** and aiming at assisting them in complying and taking advantage of the GDPR. The Commission specifies that information available online will be regularly updated to adjust to new questions raised by stakeholders.

#### **FACT SHEETS FOR STAKEHOLDERS**

Finally, as a complement to its Communication, the European Commission published a set of fact sheets, regarding [implementation](#), [advantages for companies](#) and the [role of stakeholders](#).

The Commission also recommends to companies which are not confident about their compliance status to get in touch with the relevant national data protection authorities.

The European Commission calls on Member States to accelerate the transposition of the GDPR in their national law. To date, only Germany and Austria fully transposed the GDPR, even though it **will enter into force on 25<sup>th</sup> May 2018**.

## E-invoicing

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### December 8<sup>th</sup>, 2022 - the European Commission releases its proposals for modernizing VAT rules for the digital age

On December 8<sup>th</sup> 2022, the European Commission published its “VAT in the digital age” package.

The package is composed of three interlinked legislative proposals :

- [Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age](#)
- [Proposal for a COUNCIL REGULATION amending Regulation \(EU\) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age](#)
- [Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation \(EU\) No 282/2011 as regards information requirements for certain VAT schemes](#)

To be noted also, a [series of reports](#) on to prepare such initiatives. [Volume 1 is dedicated to digital reporting requirements](#) and includes a comprehensive state of play of national rules on e-invoicing.

#### 1. Modernizing VAT reporting obligations with a new system allowing real-time digital reporting based on e-invoicing

The new system displayed by the European Commission has for objective to allow real-time digital reporting for VAT based on e-invoicing.

Different types of digital reporting requirements are currently in place in several Member States: clearance e-invoicing (Italy), real-time reporting (Hungary, Spain), SAF-T reporting (Lithuania, Poland, Portugal), VAT listing (Bulgaria, Croatia, Czechia, Estonia, Latvia, Slovak Republic) and some Member States publicly announced upcoming reporting requirements (France, Greece, Romania).

The Digital Reporting Requirements (DRRs), as displayed in the proposal, will standardize the information that needs to be submitted by taxable persons on each transaction to the tax authorities in an electronic format. The proposal also impose the use of e-invoicing for cross-border transactions.

- **Objectives of the European Commission with the implementation of a digital reporting for VAT purposes**

The aim of this proposal is, in the first place, to modernize and make the EU's Value-Added Tax (VAT) system work better for businesses and more resilient to fraud through digitalisation.

By introducing digital reporting for VAT purposes based on e-invoicing, Member states will access valuable information to fight against VAT fraud, especially carousel fraud. The EU executive estimates that the new system will help reduce VAT fraud by up to €11 billion a year and bring down administrative and compliance costs for EU traders by over €4.1 billion per year over the next ten years.

The new system will also ensure that existing national systems converge across the EU while paving the way for Member States to set up national digital reporting systems for domestic trade in the coming years.

- **Digital reporting system for intra-Community transactions (Articles 262 to 271)**

**Article 263** provides for the main features of the new digital reporting system: the information has to be transmitted on a transaction-by-transaction basis, the deadline for the transmission of the data is two working days after the issuance of the invoice, or after the date the invoice should have been issued in case the taxable person has not complied with their obligation to issue an invoice, the transmission of the data has to be carried out electronically, and Member States will provide the means for that transmission.

Finally, the information can be submitted directly by the taxable person or by a third party on their behalf. The transmission of the data can be done according to the European Standard. Member States can provide for the transmission of the data from electronic invoices issued under a different format, as long as they also allow the use of the European Standard. In any case, the data formats allowed by Member States will have to guarantee the interoperability with the European standard.

**Article 264** provides for the information that has to be submitted for each transaction. Basically, this information is the same that had to be submitted in the recapitulative statements, but detailed for each transaction instead of aggregated by customer. However, there are new fields that have been added to improve the detection of fraud. These new fields are the reference to the previous invoice in case of rectification of invoices, the identification of the bank account into which the payment for the invoice will be credited and the dates agreed for the payment of the amount of the transaction. With a view to a full standardization and interoperability, implementing rules shall be adopted by the Commission to define a common electronic message to this purpose.

- **Digital reporting system for supplies of goods and services for consideration carried out within the territory of one Member State (Articles 271a to 273)**

The features of the reporting system in **Article 271b** are similar to the one designed for intra-community transactions:

- reporting on a transaction-by-transaction basis,
- transmission of the data two working days after the issuance of the invoice, or after the date the invoice should have been issued where the taxable person has not complied with their obligation to issue an invoice,
- the possibility of transmitting the data directly by the taxable person or through a service provider,
- and the possibility to transmit the data according to the European Standard.

Member States can put at the disposal of taxable persons additional tools to transmit the data. The objective is, once again, to provide enough flexibility to Member States and taxable persons to use different methods for the transmission of the data.

- **Member States should not be obliged to implement a digital reporting requirement for supplies of goods and services within their territory**

Member States should not be obliged to implement a digital reporting requirement for supplies of goods and services for consideration between taxable persons within their territory. However, if they are to implement such a requirement, they should align it with the digital reporting requirements for intra-Community transactions. Member States which already have a reporting system for these transactions in place should adapt such systems to ensure that the data are reported in accordance with the digital reporting requirements for intra-Community transactions.

The recital 19 of the proposal precises that, in order to evaluate the effectiveness of the digital reporting requirements, the Commission will prepare an assessment report evaluating the impact of digital reporting

requirements on the reduction of the VAT gap and in the implementation and compliance costs for taxable persons and tax administrations, in order to verify whether the system has achieved its objectives or needs further adjustments.

## **2. Updating VAT rules for passenger transport and short-term accommodation platforms**

Platform economy operators in those sectors will become responsible for collecting and remitting VAT to tax authorities. The updated rule will ensure a uniform approach across all Member States and contribute to a more level playing field between online and traditional short-term accommodation and transport services.

## **3. Introduction of a single VAT registration across the EU**

Based on the already existing “VAT one stop shop” model for online shopping companies, the European Commission proposes an unique registration for VAT purposes for businesses selling to consumers across the EU. The VAT obligations could be fulfilled through a single online portal in one single language.

According to the European Commission estimations, the single VAT registration in the EU could save businesses, especially SMEs, some €8.7bn in registration and administrative costs over ten years.

### **Next steps :**

**A consultation on all the proposals made by the Commission is [open](#) until 16 February 2023.**

**A specific consultation on the rules proposed by the European Commission on administrative cooperation and exchange of information is [open](#) until 16 February 2023.**

## **February 10<sup>th</sup> - Electronic invoicing : the French Presidency of the Council of the EU relaunched the discussions at EU level**

On February 10<sup>th</sup>, a ministerial conference on electronic invoicing [was held](#) in Paris at the Ministry of Economy and Finance. This conference, organized within the framework of the French Presidency of the Council of the EU, reflects the wish to relaunch discussions between Member States on the generalization and harmonization of electronic invoicing at EU level.

The conference aimed therefore at exchanging experiences between companies and national administrations, as well as prospected for convergence of national regulations and potential developments in European legislation in this specific area.

The French Minister of Economy presented electronic invoicing as a simplification tool for companies, first of all in terms of taxation, but also in terms of competitiveness, with a total gain linked to the digitization of invoicing estimated at 4.5 billion euros for SMEs.

From a tax point of view, the objective put forward is double: it would both simplify the tax environment of companies and fight against tax fraud.

Business-to-business electronic invoicing is one of the areas in which European VAT rules are being developed. The European Commission [launched](#) a consultation on this topic on January 20<sup>th</sup>, which includes not only electronic invoicing, but also VAT reporting obligations and the registration of the single VAT within the EU.

## **2021 - Update on the e-Invoicing initiative**



It has to be noted that the E-invoicing initiative' website is no longer updated by the European Commission. It has indeed been incorporated as part of the new [Digital Europe Programme](#) which aims at accelerating the digital transformation of European businesses.

Digital Europe Programme foresees to deploy “ [European digital transformation hubs](#)”, which includes developing digital service infrastructures and interoperability solutions (such as eID, eInvoicing, eSignature, etc) for European citizens and businesses.

Moreover, in the frame of the French presidency of the Council of the EU, a conference entitled [Electronic invoicing: an instrument for the digital transformation of businesses and government](#) will be held on February; 10<sup>th</sup> 2022 with the aim of making progress on the ongoing initiative.

#### European Account Preservation Order for the attachment of bank accounts

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**No update in December 2022.**

#### Financial transaction tax

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**No update in December 2022.**

#### September 16<sup>th</sup>, 2020 - Financial transaction tax : MEPs mobilized in favor of including the FTT in the new resources of the European Union

The debates on a tax for financial transactions have gained a new dynamism in the context of the work on the own resources of the European Union and the recovery plan.

As a reminder, in 2018, the European Commission made a [proposal](#) for a Council decision on new resources for the European Union. Following refusal on the part of the Member-States, it was decided not to include a tax on financial transactions (FTT).

On 16 September 2020, the European Parliament adopted a [resolution](#) on this proposal in accordance with the consultation procedure mandatory for tax matters. In this procedure, the Council is the one to make a decision by unanimity but the European Parliament is required to give an opinion. In its resolution, the European Parliament called for a number of amendments making a tax on financial transactions mandatory by 1<sup>st</sup> January 2020.

Specifically, the European Parliament wishes for the following amendment: “*The Commission will make the necessary proposals to turn the Financial Transaction Tax (FTT) into a basis for an own resource as of 2024*”. As such, the MEPs showed a strong will to put the financial transactions tax back on the table.

As a reminder, a project for a tax on financial transactions was tabled in 2011 and was rejected by the Member States in the Council of the EU. In 2013, the European Commission made a proposal for a financial transactions tax in 10 Member-States according to the enhanced cooperation procedure that allows for differentiated measures to be set up, but the procedure has not been completed.

The inclusion of a financial transactions tax officially has the support of the German Presidency of the Council of the EU. In its initial [program](#), Germany expressed a commitment for a tax on financial transactions. Olaf Scholz, the German finances minister was [heard](#) in early September by the European Parliament. He stated the importance of the European Union having its own resources, especially as it would be a way to pay back more efficiently the debt contracted for the recovery plan.

**Next steps**

**The proposal for a Council decision is now to be studied by the Member-States in the Council. They can adopt some amendments asked for by the European Parliament, or none of them but the MEPs spoke with one voice for a financial transactions tax to be part of the decision.**

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|--|---------------------------------|
| <b>No update in December 2022.</b>   |                                 |
| <p><u>17<sup>th</sup> January 2018: EFRAG publishes preliminary findings of its assessment of IFRS 9 impact's on long-term investments in equity instruments</u></p> <p>The European Financial Reporting Advisory Group (EFRAG) published <a href="#">letter</a> sent to Olivier Guersent, the Director General of DG FISMA at the European Commission. Annexed to the letter, EFRAG also released preliminary findings of its impact assessment of IFRS 9's effects on long-term investment.</p> <p>Following on to a request for technical advice sent on 29th March 2017, EFRAG collected <b>quantitative data on the impact of IFRS 9 on equity instruments</b>. This data was gathered through a public consultation and the analysis of annual reports.</p> <p>EFRAG's early finding show that investment strategies are shaped by multiple factors, including regulatory factors but also economical and commercial factors. Respondents to the public consultation indicated that the implementation of IFRS 9 <b>should not impact the holding period for equities</b>. They mention that they plan on making use of the election in IFRS 9 to measure investments in equities measurement at <b>fair value through other comprehensive income</b> ('FVOCI').</p> <p>According to data collected by EFRAG, there is <b>no strong view on the impact of IFRS 9 on asset allocation</b>. EFRAG observes that insurance companies say they are considering modifying their asset allocation decisions, without indicating how. Some respondents to the public consultation indicate that they consider allocating assets in different classes. In particular, EFRAG notes a trend to use unquoted equities as an alternative to quoted equities, since unquoted equities are less volatile and mostly collected as dividends - which are recognized in profit or loss.</p> <p>EFRAG will continue its work to assess the impact of IFRS 9 in long-term investment and should publish its final report during the second semester 2018.</p> |                                 |
| <p><u>12<sup>th</sup> January: EBA published guidelines on disclosure requirements of IFRS 9 transitional arrangements</u></p> <p>The European Banking Authority (EBA) published final <a href="#">guidelines</a> regarding the disclosure requirements of IFRS 9 transitional arrangements or analogous expected credit losses (ECLs).</p> <p>The new global accounting standard for financial instruments, IFRS 9, entered into force on 1st January 2018. In the European Union, transitional provisions provide for a progressive implementation of IFRS 9 over five years.</p> <p>In its guidelines, the EBA provides a template to be used by financial institutions when reporting to supervisors on own funds, capital and leverage ratios.</p> <p>The objective of these guidelines is to ensure the consistency and comparability of data reported by credit institutions during the transition period towards the full implementation of IFRS 9.</p> <p>The guidelines will become applicable two months after their publication in all official languages of the European Union.</p>   |                                 |

**FinTech/ Digital Finance**

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**December 20<sup>th</sup>, 2022 – the French Financial Markets Authority (AMF) publishes its proposals for an "Open Finance" framework adapted to investors' needs**

On December 20<sup>th</sup>, 2022, the French Financial Markets Authority (AMF) [published](#) its proposals for giving open access to data in financial services within a secure framework that respects the fundamental principles and rights of data protection set out by law.

According to the AMF, the regulatory framework for data access should pursue the following objectives :

- Facilitate competition in the provision of financial services on fair terms for incumbent providers
- Provide a framework to secure the use of data retained by financial services providers in order to better fight fraud.

Among the potential areas and uses that could benefit from the opening of data, the AMF identifies first and foremost ESG profiling of clients, SME financing opportunities (investments, loans) as well as a consolidated view of all client financial assets (identification of investment opportunities, optimization of financial savings management).

The AMF also defends the position that players whose corporate purpose is not the provision of financial services, such as social networking platforms or other marketplaces, should not be able to access European investors' data to market financial services unrelated to their core business. According to the Authority, if the scope of data theoretically accessible by a third party were to be sufficiently broad to allow the emergence of innovative services, only the data strictly necessary for the provision of these services should be used by that party.

With regard to the explicit consent of customers for the sharing of their data, the AMF is in favor of an explicit consent in favor of a clearly identified provider or service. This consent should be withdrawable at any time, or explicitly renewed if the customer wishes to continue to benefit from the services offered by the provider. The provider should not be able to transfer the data to a third party without this consent, including to another entity within the same group.

Finally, the AMF proposes to consider the creation of a regulatory status for "providers of related services" provided on the basis of open data, subject to a registration requirement in the European Union. This status would make it possible to supervise and control the provision of such services, including by new entrants or players established outside the European Union.

**Next Steps:**

**The European Commission plans to present a legislative initiative on open data in the financial sector on June 28, 2023**

**December 6<sup>th</sup>, 2022 –the Council adopts its position for the trilogues regarding the European Digital Identity Wallet regulation**

On December 6<sup>th</sup>, 2022, the Council [adopted](#) its final position on the proposal for a Regulation on a European Digital Identity Framework.

The purpose of this regulation is to provide the framework for each Member State to be able to provide an interoperable digital identity recognized in all 27 Member States. The wallet, as intended by the Council, will be based on common technical standards and will follow a mandatory conformity assessment.

The Council's version proposes a hybrid solution based on the degree of assurance to be met, which will allow Member States with weaker authentication systems than proposed by the Commission to maintain them through additional remote integration procedures.

The portfolio will be established in two security levels:

- A substantial level that will have to remain optional and will be simple and ergonomic appropriate for everyday uses, in order to allow a wide adoption of the digital wallet among European consumers;
- A high level for access to public services, where access to the most sensitive services will require additional high security requirements and the use of a secure element controlled by the Member States (to be defined later).

The initial objective of the regulation was to enable at least 80% of European citizens to use a digital solution to identify themselves and access key public services.

The impact of the text on the electronic identification solutions already deployed by the various Member States is yet to be determined. Recital 10b added by the Council should allow, on a transitional basis, the use of external security components, such as the electronic national identity card.

**Next steps:**

**On the European Parliament side, the adoption of the report by the Industry Committee (ITRE), which is responsible for this dossier, is expected in February 2023.**

**November 21<sup>st</sup> 2022 - Distance marketing of financial services: presentation of the draft report in the IMCO Committee**

On November 21<sup>st</sup> 2022, the rapporteur Arba KOKALARI (EPP; SW) [presented](#) her draft report to the IMCO Committee.

The rapporteur proposes to add a reminder of the prevalence of sectoral rules on the present directive (amendment 3) in order to guarantee legal certainty and to prevent any regulatory overlap with regard to the distribution of financial services. Similarly, amendment 4 recalls the principle of proportionality and the need not to create an additional burden for SMEs.

The rapporteur also proposes that it should be mentioned on the online interface, where appropriate, that human intervention is available to the customer (amendments 2 and 30).

As regards the reception of pre-contractual information, the rapporteur would like to see the term "in good time" included (amendments 5 and 20), as drafted in the revised directive on consumer credit recently agreed in trilogues. She also suggests that account be taken of the consumer's choice as regards the provision of pre-contractual information, in particular via electronic communications if they wish so.

The rapporteur considers that pre-contractual information should be provided in good time, which may vary according to the services provided. The Commission proposes the right to information within 24 hours: the rapporteur believes that some flexibility is required as for certain sectors covered by this directive consumers contracts are concluded within a very short period of time.

The reference to the withdrawal button is deleted by amendment 26. Amendments 8 and 26 reiterate that the customer should be able to exercise his right of withdrawal electronically in a simple and rapid manner. The rapporteur also proposes that the trader should make information on the consequences of withdrawal easily accessible to consumers and that the trader should not make withdrawal more burdensome for the clients than the conclusion of the contract.

Amendment 23 states that if the trader has not provided consumers with the contractual terms and conditions, the withdrawal period expires twelve months and fourteen calendar days after the day of the conclusion of the distance contract.

**Next steps:**

**The draft report by Arba KOKALARI (EPP; SW) is expected to be presented to the IMCO committee members on 12 December 2022. The deadline for tabling amendments is 11 January 2023.**

**November 18<sup>th</sup> 2022 - Member States agree on a position on the regulation establishing the digital identity portfolio**

On November 18, 2022, the Czech Presidency of the Council of the EU [presented](#) its compromise proposal for the Regulation establishing a European Digital Identity Framework to the EU Permanent Representatives.

The only remaining point of disagreement on the issue of the level of assurance of the information included in the wallet has been resolved: Member States that have weaker authentication systems in place than the Commission proposed will be able to maintain them with additional integration procedures.

The adopted compromise text also mentions the establishment of a "unique and persistent" identifier to match a digital and physical identity. The compromise specifies that this identifier may consist of a combination of several national and sectoral identifiers, as long as it serves its purpose.

At the request of Germany, a safeguard provision has been incorporated that member states must ensure the protection of personal data and prevent any possibility of user profiling.

**Next steps :**

**On December 6<sup>th</sup> 2022 Member States have formally agreed their common position on the text**

**November 18<sup>th</sup> 2022 – The Council adopts its position on IA regulation**

On November 18, 2022, the representatives of the national delegations [adopted](#) a general approach regarding the regulation on the harmonization of rules on artificial intelligence (AI Act) at the Committee of Permanent Representatives (COREPER).

According to the position adopted by the Council, AI systems used to determine the credit rating or assess the creditworthiness of an individual should be considered as high-risk systems since they determine the access of these individuals to financial resources and services considered essential (housing, electricity and telecommunications services).

The list of all AI systems considered high risk is included in Annex III of the compromise proposal.

AI systems classified as high risk are subject to several requirements (Chapter 2 of the proposed regulation) and obligations (Chapter 3 of the proposed regulation).

Regarding the pre-commissioning requirements for high risk AI systems (Chapter 2):

- A risk management system (Article 9) must be in place and regularly updated by the users of the AI system. The risk management system should be understood as a continuous process, planned and executed throughout the life cycle of a high-risk AI system, requiring regular systematic updating.
- The technical documentation (Section 11) of a high-risk AI system shall be established prior to its release or commissioning and maintained. The technical documentation shall be established to demonstrate that the high risk AI system complies with the requirements set out in Chapter 2. The documentation shall also provide the national competent authorities and notified bodies with all the information necessary, in a clear and complete form, to assess the conformity of the AI system with the requirements.
- Record keeping is set out in Article 12. High-risk AI systems must allow for the automatic recording of events throughout the life cycle of the system. In order to ensure a level of traceability of the operation of the AI system appropriate to the purpose of the system, the automatic logging capabilities shall allow for the recording of events relevant to (i) the identification of situations that may lead to the AI system posing a risk as defined in Article 65

or to a substantial change; (ii) the facilitation of post-marketing surveillance as referred to in Article 61; and (iii) the monitoring of the operation of high-risk AI systems referred to in Article 29.

- The requirements for transparency and provision of information to users are set out in Article 13. High-risk AI systems shall be designed and developed in such a way that their operation is sufficiently transparent to ensure compliance with the relevant user and provider obligations set out in Chapter 3.
- High-risk AI systems shall be accompanied by operating instructions in an appropriate digital or other format that incorporate concise, complete, correct and clear information that is relevant, accessible and understandable to users.
- The conditions for human supervision are set out in Article 14. The purpose of human supervision is to prevent or minimize risks to health, safety or fundamental rights.
- Article 15 addresses the requirements for accuracy and robustness of the AI system as well as cybersecurity. The article states that high-risk AI systems will need to be designed and developed to achieve an appropriate level of accuracy, robustness, and cybersecurity, given their purpose, and to exhibit consistent performance throughout their life cycle.

Regarding obligations for the use of high-risk AI systems (Chapter 3):

Article 17 enacts that providers of high-risk AI systems will be required to establish a quality management system to ensure compliance with this regulation. This system shall be documented in a systematic manner and cover written policies, procedures and instructions. At a minimum, it shall incorporate the following:

- (a) a regulatory compliance strategy, including adherence to compliance assessment procedures and procedures for managing changes to the high-risk AI system;
- (b) the techniques, procedures, and systematic actions to be used for the design, design control, and design verification of the high-risk AI system;
- (c) the review, testing, and validation procedures to be performed before, during, and after the development of the high-risk AI system, and the frequency with which they are to be performed;
- (d) the technical specifications, including standards, to be applied and, where the relevant harmonized standards are not applied in full, the means to be used to ensure that the high-risk AI system complies with the requirements set forth in chapter 2 of this title;
- (e) the data management systems and procedures, including data collection, data analysis, data labeling, data storage, data filtering, data retrieval, data aggregation, data retention, and any other operations with respect to the data that are performed prior to and for the purpose of placing the high-risk AI systems on the market or putting them into service;
- (f) the risk management system referred to in section 9 ;
- (g) the establishment, implementation and maintenance of a post-marketing surveillance system in accordance with Article 61;
- (h) procedures for the notification of a serious incident in accordance with section 62;
- (i) the management of communication with national competent authorities, competent authorities, including sectoral authorities, providing or supporting access to data, notified bodies, other operators, customers or other interested parties;

Conformity assessment (Article 19), information obligations (Article 22) and the framework for cooperation with competent authorities (Article 23) are also set out in Chapter 3 of the Regulation.

**Next steps :**

**The Council has adopted its common position the 6 December 2022. The Parliament has now to adopt its position before entering in trilogues.**

**November 10<sup>th</sup> 2022 - co-legislators continue to work on a compromise on e-privacy**



On November 10, 2022, the co-legislators met for a technical discussion on the proposed e-privacy regulation, which has been stalled in trilogues since February 2021.

The discussion paper prepared jointly by the Czech Presidency of the Council and the rapporteur, Birgit SIPPEL (S&D; DE), proposes ways to relaunch the negotiations on Article 6 regarding the processing of electronic communications.

According to the terms of the discussion paper, electronic communications data may only be processed to the extent that it is strictly necessary to carry out the transmission of the communication and to ensure the security of communications networks. The paper states that the conditions for processing electronic communications data should be assessed only on the basis of objective technical considerations and not on the basis of commercial considerations.

Additional wording is introduced to cover specific situations where the storage of the transmitted electronic communication is part of the users' communication request (e.g. for e-mail services where e-mails are stored on a cloud where the user can search them at a later stage).

With regard to electronic communications metadata (i.e. information about who is communicating and how: time, location, IP address), the discussion paper states that processing can only be allowed in specific scenarios provided for in the compromise text :

- 1/ the 1st scenario is where users have given their explicit consent for one or more purposes that cannot be achieved without this metadata. However, if there is a high risk of jeopardizing users' rights and freedoms, a data protection impact assessment will have to be carried out beforehand.
- 2/ the second scenario is where the processing of metadata is strictly necessary for billing, determining interconnection payments and detecting or stopping fraudulent or abusive use of electronic communications services
- 3/ the 3rd scenario is where the analysis of metadata is necessary for the telecommunications sector to comply with the European Electronic Communications Code, avoid network congestion in accordance with the Open Internet Regulation, and/or optimize network performance.

Regarding location data, the idea of the co-legislators is to allow processing to the extent that it is strictly necessary to protect the vital interest of a person in case of emergency, and only when the data subject cannot give consent. In addition, location data could be stored at the request of a public authority or on the basis of a specific contractual obligation for statistical analyses.

The issue of data retention was put on hold and deferred to a future technical meeting.

Finally, the discussion paper indicates the conditions under which communication service providers can process content. One possibility is that all relevant end-users have given their consent for the processing of the communication content for one or more specific purposes. A second possibility is that an individual user requests a communication service that cannot be provided without processing the content of the communication and under the condition that such processing does not adversely affect the fundamental rights and interests of another data subject. In this case as well, the service provider will have to carry out a data protection impact assessment of the communication.

**Next steps :**

**The compromise proposal was discussed during the Telecom meeting on December 6<sup>th</sup> 2022.**

**November 7<sup>th</sup> 2022 - Christine Lagarde speaks about the digital euro**

On November 7<sup>th</sup>, 2022, European Central Bank (ECB) President Christine LAGARDE [spoke](#) at a conference organized by the European regarding the future legislative proposal for the digital euro Commission.

The ECB President stated that she wants to have a solid regulatory framework regarding the field of digital payments. The President also emphasized that it is important that digital money enjoys the same level of trust as cash-based payment instruments, which an initiative such as the digital euro would help to ensure.

Christine LAGARDE noted, however, that the equilibrium between privacy and the fight against money laundering and terrorist financing has still to be addressed. The President thus, specified that the ECB was working with the Commission on how to transpose, to a certain extent, the anonymity of cash to digital payments

**October 25<sup>th</sup> 2022 - Ongoing review of the Distance Marketing of Financial Services Directive : the ECON rapporteur for opinion presents her draft report**

On October 25<sup>th</sup> 2022, Stéphanie YON-COURTIN (Renew; FR) [presented](#) to the members of the Committee on Economic and Monetary Affairs (ECON) her draft opinion on the [proposal for a revision of the directive on distance contracts for financial services](#).

In the presentation of her draft report for opinion, she stressed in particular that this revision should first of all make the rules clearer and more consistent, and should also help to strengthen consumer protection (including with regards to the prevention of abusive commercial practices and the introduction of adequate penalties and appropriate means of appeal for consumers).

The rapporteure welcomes the European Commission's proposal and stresses several key points for the ongoing review of the directive:

1. **Affirming the prevalence of sectoral legislation** (consumer credit, mortgage credit) over this general directive.
2. **Aligning the provisions of this directive with those of the revised consumer credit directive.** In particular, the rapporteur would like to return to the "in good time" wording with regard to the receipt of pre-contractual information by the consumer. In the rapporteur's view, the Commission's proposal to give the information one day before does not, leave enough flexibility for contracts concluded over the telephone.
3. As crypto assets are now regulated by MiCA Regulation, the revision of the Directive on Distance Marketing for Financial Services should exclude them from its scope permanently in the name of legal clarity.
4. With regard to **the withdrawal button**, Stéphanie YON-COURTIN proposes to keep the button but simplify the requirements. Therefore, she suggested that the actors remain free on how to proceed for the implementation of such a mechanism as long as the consumer remains able to withdraw quickly and simply (she cites, for example, the implementation of a button that refers to an already existing withdrawal form).

The amendments to the Commission's proposal [were published](#) by the secretariat of the ECON committee on November 2<sup>nd</sup> 2022.

**Next steps:**

The next exchange of views will be held on November 30<sup>th</sup> 2022 in the ECON Committee. The vote of the ECON Committee's report for opinion is scheduled for January 24, 2023.

The vote on the report of the IMCO Committee, which is the committee responsible for the proposal, is scheduled for March 2023.

**October 24<sup>th</sup> 2022- Open Finance Framework: the European Commission publishes its experts group's report**

On October 24<sup>th</sup> 2022, the European Commission published a report on "Open Finance". The report was prepared by the Expert Group for a European Digital Finance Area, mandated in June 2021 by the European Commission. to provide expertise on the preparation of legislative initiatives in the area of data sharing in the financial sector and on the establishment of a common financial data space in the EU.

The report highlights two purposes for a EU Open Finance framework : improve financial products and services and create new opportunities for consumers and businesses in terms of targeted advice and personalized services.

#### **The benefits of an effective regulatory framework for open finance**

The report points out that in terms of consumer experience, increased data sharing would allow for a wider choice of services as well as personalized services and products that are better adapted to customer profiles.

In terms of financial inclusion, open finance would improve access to and use of financial services by all segments of consumers and businesses, including SMEs and the financially excluded. In terms of innovation, a EU framework for open finance would facilitate greater data interoperability and support the development of artificial intelligence/machine learning models adapted to the financial services sector.

#### **Conditions and risks to anticipate in order to establish a European framework that works**

The experts mandated by the European Commission emphasize that data sharing, as foreseen by an Open Finance framework, could only work if a high level of customer trust is established regarding the sharing and re-use of their data, especially personal data.

In this respect, the risks related to access and use of data by a third party must be addressed in order to effectively protect consumer and business data and thus maintain a high level of trust, these risks include : unfair use of data, mis-selling, fraud or lack of expected protection of a service or product due to incorrect advice or incomplete information ; operational risks, related in particular to the complexity of data management, and cyber threats.

#### **Data Sharing Models**

An integrated data sharing market can be organized around two models of data sharing, access, and reuse: voluntary (through contractual relationships) or mandatory framework (PSD2, GDPR). This report does not recommend a particular model and leaves it to the European Commission the choice on the models to develop. However, the experts emphasize that an effective framework must take into account the existing or potential data flow between actors in the value chain. Several elements of the data flow chain must therefore be defined upstream:

1. **Who initiates the sharing of data:** the user of the data, the holder of the data or the person concerned. Open finance models can differ depending on the actors involved in data sharing: data sharing can take place between financial institutions; between financial institutions and non-financial institutions.
2. **What is the legal basis used for data processing:** data sharing can be based on consent, on contract, or on legitimate interest.
3. **What are the conditions under which data is shared** (via contract or obligation)
4. **How the data is shared:** directly or indirectly between the data holder and the data user.

#### **September 15<sup>th</sup> 2022 – Data Act: Czech Presidency of the Council of the EU presents its first compromise text**

On September 15<sup>th</sup> 2022, the Czech Presidency of the Council of the EU [published](#) a new partial compromise proposal for the [proposed regulation](#) establishing harmonized rules for fair access and use of data (*Data Act*).

In addition to corrections to several definitions, including "operators in data spaces", the text now also includes virtual assistants in the scope of the future regulation.

The new compromise proposal also addresses the issue of contractual conditions when changing data processing service providers. Several mentions aiming at guaranteeing a high level of security throughout the data porting process have been added in the compromise and it also provides the possibility for a customer to request the complete deletion of all his data within a reasonable period of time.

The changes in the proposed text require data processing service providers to provide an open interface for data retrieval for the customer and force them to remove barriers that could prevent customers from having functional equivalence when moving to a new provider.

The Czech Presidency has also clarified the various tasks of the competent authorities and introduced an article detailing the role of the future European Innovation Committee (Article 34a) under the future regulation.

#### **September 14<sup>th</sup> 2022 – European Digital Identity: Progress in the European parliament and in the Council of the EU**

On September 14<sup>th</sup> 2022, the Committee on Internal Market and Consumer Protection (IMCO) adopted the [report for opinion](#) of Andrus Ansip (Renew; EE) on the [proposal for a regulation](#) establishing a European Digital Identity Framework.

The European Commission published its proposal for a regulation on electronic identification (eIDAS) in June 2021. The European Digital Identity Framework aims to require Member states to issue a European Digital Identity wallet as part of an electronic identification system.

The compromise amendments adopted by IMCO received the support of a large majority of parliamentarians, notably on the fact that the text is binding for the Member States but that the use of the digital wallet remains voluntary for citizens.

In the Council of the European Union, the Czech Presidency shared the [fourth compromise text](#) on the eIDAS proposal following the meeting of the working group on telecommunications on September 28<sup>th</sup>. The Council is focusing on issues related to the practical application of the European digital identity portfolio. In addition to some changes concerning some specific definitions, the compromise document returns to several central issues, including offline use, data archiving, registration of user parties and user data protection.

#### **Next steps:**

**In the European parliament, the final adoption of the report in the ITRE associated committee is scheduled for October 26<sup>th</sup> and the vote in plenary is scheduled for November 9<sup>th</sup> 2022.**

#### **September 5<sup>th</sup> 2022 – Regulation on artificial intelligence: The committee on legal affairs adopts its opinion and the Council considers a third compromise proposal**

On September 5<sup>th</sup> 2022, the Committee on Legal Affairs (JURI) adopted the [report for opinion](#) of Axel Voss (EPP; DE) on the [proposal for a regulation](#) on harmonized rules on artificial intelligence. The JURI Committee has exclusive competence over the provisions concerning transparency (Articles 13 and 52), human monitoring (Article 14) and codes of conduct (Article 69).

The MEPs supported by a large majority the [compromise amendments](#), negotiated after lively discussions between parliamentary groups. Among the points that were the subject of divisions, we note the amendments relating to transparency and human control over systems using AI. Compromise 6 specifies that the transparency requirements

should help to combat "dark patterns". Compromise 7 insists on the need to provide adequate training and resources to those responsible for ensuring human control of high-risk systems.

Only the proposed [amendment 450](#) was rejected by the JURI committee. It was intended to exclude AI systems developed or used exclusively for military purposes from the scope of the regulation.

For its part, the Council of the European Union examined a [third round of compromises](#) on Articles 30 to 85 of the AI Regulation on September 29<sup>th</sup>. Artificial intelligence systems with general-purpose were questioned during the meeting of the Telecoms working group, but they seem to be maintained within the scope of the regulation.

**Next steps:**

**The Internal Market (IMCO) and Civil Liberties (LIBE) committees, which are responsible for the substance, are currently discussing the amendments tabled. The final adoption of the report in the joint IMCO-LIBE committee is scheduled for October 26<sup>th</sup> and the vote in plenary is scheduled for November 1<sup>st</sup> 2022.**

**A fourth set of compromises will be discussed in the Telecom Council on 19 December.**

**August 25<sup>th</sup> - European Digital Identity: new compromise proposal by the Czech presidency of the Council of the EU**

The Czech Presidency of the Council of the EU [published](#) a new compromise proposal on the regulation's proposal on the future digital identity portfolio (E-ID) on August 25<sup>th</sup> 2022, ahead of the EU Council's working meeting on telecommunications.

The compromise proposal includes a redefinition of both the role of the Member States as well as the obligations regarding trust service providers. Changes are also made to the terms "digital identification" and "trust services".

In addition, the position developed in this new compromise version provides that qualified trust service providers that decide to outsource one or more of their operations outside the EU will have to provide guarantees that monitoring and auditing activities can be applied in the same way as if these operations were carried out within the EU.

In cases where compliance with the regulation cannot be ensured, the Czech Presidency of the Council proposes that supervisory bodies should have the ability to adopt proportionate and justified measures, including the withdrawal of the qualified status of the trust service providers.

In addition, there are several additions to the EU Commission's original proposal to clarify the interconnection of the text with the Digital Markets Act (DMA) and the NIS2 Directive. On this point, the Czech Presidency would like to give the authorities responsible for supervision under the NIS2 Directive a two-month deadline to provide the supervisory authorities with information on compliance with the NIS2 rules on cyber security.

Finally, the Czech Presidency's compromise document leaves the door open for discussions on several points, including the implementation period of the text and the implementation of additional functionalities for electronic wallets. The issues of interoperability with existing national means of electronic identification and the deadlines for trust service providers to notify supervisory authorities of breaches and disruptions in the provision of their services will still need to be discussed between national delegations at the upcoming working meetings.

**Next steps:**

**The next working party on Telecom will be held on September 5th and 8th, 2022**

**July 2022 - Artificial Intelligence : latest developments *In the Council***

On July 15<sup>th</sup>, 2022, the Czech Presidency of the Council of the EU presented its [second compromise proposal](#) on the [proposed AI regulation](#). This new compromise version was discussed on July 20<sup>th</sup> at the Telecom Working Group in the Council.

Among other things, this compromise proposal restricts the definition of AI to systems designed to act with a certain level of autonomy via machine learning techniques or "knowledge-based" approaches. The list of high-risk systems is also modified. The part of the AI in the final decision and the "immediacy of the effect" of the decision must now be taken into account to qualify system as high-risk. Member States considered the definition proposed by the previous French Presidency of the EU Council "too broad and ambiguous" and feared that the distinction criteria would not be sufficient to distinguish AI systems from other "classic" software.

The compromise proposal also reviews the powers of the European Commission. The Commission's power to update the definition of AI systems via delegated acts has been removed and replaced with recitals clarifying what is meant by "machine learning" and "logic and knowledge-based approaches." However, the executive branch would retain the power to adopt implementing acts to "specify and update" techniques under machine learning and logic and knowledge-based approaches.

#### ***In the European Parliament***

On July 11<sup>th</sup> 2022, the first technical meeting between rapporteurs and shadow rapporteurs was held on the [proposal for a regulation](#) on the harmonization of European rules on AI. As a reminder, more than 3000 amendments have been submitted to the Internal Market (IMCO) and Civil Liberties (LIBE) Committees.

On the occasion of the first technical meeting, the co-rapporteurs, Dragoş TUDORACHE (Renew; RO) and Brando BENIFEI (S&D; IT), presented a first set of compromise amendments on the less controversial parts of the text. The most important change in this first set of compromise amendments is that the two rapporteurs have completely deleted the provisions on the derogation from the conformity assessment procedure.

The rest of the changes mainly concern the administrative procedure and the requirements for the establishment of bodies that must be notified before an AI system is placed on the market to assess whether it complies with EU rules. Regarding the compliance document, vendors will have to keep their EU compliance statement only for high-risk systems, either for ten years or for the entire life cycle of the system. The document will have to detail compliance with the AI regulation and EU data protection legislation.

#### **Next steps:**

**The next technical meeting between the IMCO and LIBE committees will take place on September 14<sup>th</sup> 2022. Technical meetings to discuss amendments to be adopted are planned until the end of October 2022. The vote in the IMCO/LIBE committee is scheduled for October 26<sup>th</sup> 2022.**

**The vote on the report for opinion of the Legal Affairs Committee (JURI), presented by Axel VOSS (EPP; DE), has been postponed to 5 September 2022 due to a lack of consensus among MEPs. The JURI committee's competences on this text concern transparency (art. 13 and 52), human monitoring (art. 14) and codes of conduct (art. 69).**

#### **June 28<sup>th</sup> 2022- "How to unlock the potential for instant payments ?": the EU credit research center publishes its analysis**

On June 28<sup>th</sup> 2022, the European Credit Research Institute (ECRI) [published](#) a short analysis of the issues surrounding instant payments and the barriers to its development in the EU.

According to the researchers, instant payments can offer multiple advantages over traditional card payments in terms of reduced costs, increased liquidity, trust and economic growth. However, instant payment solutions have been developed for their respective national markets and consumers cannot use them for cross-border payments or when traveling to other EU countries. A European payment initiative would therefore aim to remedy this situation by creating a pan-European instant payment system as a real alternative to international card systems.

The main benefit would be lower transaction costs, primarily due to the reduction of cash tied up in the system. In addition, instant payments have a lower level of fraud and fewer failed transactions, which is especially important for SMEs that are more often required to provide proof of payment.

Interoperability and payment consolidation are therefore necessary, according to the authors of the analysis, to enable instant payments to work across borders. Interoperability would require either a coordinated effort between different national instant payment solutions via common standards, regulatory intervention, or the development of new solutions based on common standards. A system based on interoperability or a new pan-European solution would nevertheless require significant investments in infrastructure and connectivity.

#### **Next steps:**

**The European Commission's initiative on instant payments is expected to be presented in September 2022. It would take the form of an amendment to the 2012 SEPA regulation and will set criteria at EU level to allow the coexistence of different instant payment solutions. The proposal will include four elements to further develop the instant payments market:**

- **An obligation or mandate on instant payments for all relevant credit institutions;**
- **Pricing rules to ensure that instant payments are not more expensive than standard payments;**
- **To ensure the security of instant payments, several initiatives are being considered, including automatic verification of the IBAN name to detect possible discrepancies between the name inserted and the name connected to the receiving bank account;**
- **The proposed initiative will also provide clarity on liability and data protection issues as well as a solution to reduce the number of false positives in checks.**

#### **June 2022 - E-ID: latest developments on the regulation's proposal**

##### ***Latest developments at the EU Council***

The Telecommunications Ministers of the Member States [met on June 3<sup>rd</sup> 2022](#) to take stock of the progress made on the [proposal for a regulation](#) on the establishment of a European digital identity framework.

As a reminder, the initiative, which amends the 2014 *eIDAS* regulation establishing the framework needed to access online services, aims to improve the feasibility and security of online and cross-border transactions in the EU.

Several political questions remain nevertheless unanswered, including how the future wallet will fit in with existing national means of identification. Discussions also focused on trust services, in particular those responsible for the electronic archiving of data and electronic registers, and on the liability regime for trust service providers and their supervision. Several Member States expressed their desire to opt for a "highly secure" solution, allowing citizens to retain control over their data.

The French Presidency of the EU Council [prepared](#) a second compromise proposal on June 7<sup>th</sup>. The main changes concern the information obligations of supervisory bodies and the introduction of new information requirements for qualified trust service providers.

##### ***Latest developments in the European Parliament***



On June 30<sup>th</sup> 2022, the rapporteur, Pascal Arimont (EPP; BE) presented his [draft opinion](#) to the members of the Legal Affairs Committee (JURI). The committee responsible is the Committee on Industry, Research and Energy (ITRE), whose [draft report](#) was published at the end of May. It insisted in particular on the interoperability of such an instrument, both between private and public sectors and from one Member State to another, as well as on the protection of consumers' data, who must at all times be able to regain control over their data.

#### June 2022 - Data Act : latest developments on the regulation's proposal

The [Telecom Council](#) of June 3<sup>rd</sup> 2022 took stock of the progress made on the Data Act proposal.

The French Presidency of the Council of the EU had published a first [progress report](#) on the text after a first reading and listed the issues requiring further discussion. Member States have asked for clarifications, in particular on the data sharing framework, while keeping in mind the importance of building a reliable and fair competition model taking into consideration security issues.

In particular, the following points appear to be particularly sensitive: the scope of application (the decision to focus solely on Internet of things data is not unanimously supported); the articulation with other horizontal legislation, in particular the RGPD; the requirements for data transfer to public and governmental actors; and the interoperability of cloud services.

As the discussions are still at an early stage, not all Member states have yet defined their position. However, the Netherlands has called for a redefinition of the conditions under which data can be transferred to governments, so that this measure is not used too frequently. The Dutch minister would also like to ensure that the text allows "users to use the data processing services of several providers simultaneously. Italy, for its part, has called for a review of the definition of user, to avoid opportunistic behavior, and for public interest or national security considerations to be added to the list of exceptional needs justifying data transfer to authorities.

As a reminder, the Data Governance Act is an initiative presented in February 2022 and developed at the initiative of Internal Market Commissioner Thierry Breton. Together with the Data Governance Act, they form the foundations of the future European data spaces.

#### June 2022 - Artificial Intelligence Act: latest developments in the Parliament and in the Council

##### *In the European Parliament*

The members of the Internal Market and Consumer Protection Committee (IMCO) and the Civil Liberties, Justice and Home Affairs Committee (LIBE) exchanged views on June 30<sup>th</sup> on the amendments tabled concerning the [proposal for a regulation](#) on the establishment of harmonized rules on artificial intelligence. All the amendments tabled were published in blocks: [1](#) - [2](#) - [3](#) - [4](#) - [5](#) - [6](#) - [7](#) - [8](#) - [9](#).

For the co-rapporteurs whose [joint draft report](#) was presented last April - Brando BENIFEI (rapporteur for the IMCO Committee; S&D; IT) and Dragos TUDORACHE (rapporteur for the LIBE Committee; Renew; RO) - the proposal for a regulation is an opportunity to assert EU standards for the protection of fundamental rights and to lay down foundations for privacy-friendly AI systems.

For the IMCO Committee's shadow rapporteur, Deirdre CLUNE (EPP; IE) those are the priorities that the future regulation will have to take into account:

- Establish a **more precise definition of AI systems** in order to obtain a clear distinction between systems based on artificial intelligence and ordinary software;
- Ensure consistency and **avoid duplication of provisions** between the future AI regulation on the one hand and the GDPR and sectoral legislation on the other hand;

- Find a **balance and a proportionate approach to clarify responsibilities** along the value chain;
- Developing an adequate framework for regulatory sandboxes that is conducive to the development of EU innovative AI systems.

The issue of the definition of AI systems has been raised many times during the exchanges between parliamentarians. While some calling for the most precise definition possible or, like Axel VOSS (shadow rapporteur for the EPP, DE), for not including certain static algorithms, others believe that the definition should be as broad as possible so as not to close the door to certain applications that could be problematic in the future.

#### ***In the Council of the EU***

On June 3<sup>rd</sup> 2022, the French Presidency of the Council of the EU published a [progress report](#) on the negotiations between Member States on the proposed regulation establishing harmonized rules on artificial intelligence.

Several Member States have expressed their reservations about the European Commission's proposed definition of AI, which lacks precision. Belgium and Finland in particular have called for the exclusion of the simplest software known as "non-intelligent". The second point of division concerns high-risk systems. The Netherlands would like to see a better evaluation of the risk categories to ensure that they are understandable and justified for systems classified as high risk.

#### **May 6<sup>th</sup> - Results of the 2021 BIS survey on central bank digital currencies**

The Bank for International Settlements (BIS) [released](#) on May 6<sup>th</sup> the results of its survey on central banks' interest in digital currencies.

The study is the result of a survey of 81 central banks on their work on centralized digital currency (CBDC) and their motivations and future intentions for issuing CBDCs. The survey also asked central banks about the use of stablecoins and other crypto-currencies in their jurisdictions.

Nine out of ten central banks are currently studying centralized digital currencies and more than half of them are currently developing them or conducting concrete experiments on the matter.

According to the study, the pandemic and the rapid emergence of stablecoins and other crypto-currencies has helped accelerate work on digital currencies, particularly in the most developed economies where central banks stated that financial stability is an increasingly important motive to justify their supervision.

Globally, more than two-thirds of central banks see themselves as likely to issue a retail CBDC in the short to medium term. Work on CBDCs is also increasingly motivated by reasons related to the efficiency of cross-border payments. Indeed, central banks believe that CBDCs would be able to alleviate existing problems such as the limited hours of operation of current payment systems and the length of certain current transaction chains.

#### **May 2022 - E-ID : latest developments**

##### ***Council of the EU and progress report of the French presidency of the Council***

On May 5<sup>th</sup> 2022, Member States discussed the [legislative proposal](#) on the European Digital Identity Framework in the Telecommunications Working Group of the Council of the EU.

On this occasion, Member States discussed cost-benefit assessments and user experiences of digital identity schemes already in place at national level. They discussed continuity with existing ecosystems. Among the points of debate at this stage are the level of security, electronic certificates, and the prevention of the risk of "tracing" citizens.

On May 17<sup>th</sup> 2022, the French Presidency of the Council of the EU published a [progress report](#) for the future Czech Presidency, which will take office as head of the Council of the EU on July 1<sup>st</sup>.

Among the key issues that still cause differences of opinion between Member States is the European Digital Identity Portfolio (EDIP) and how it relates to national means of electronic identification. Its level of guarantee in terms of security and the possibility of sharing different types of data also raises questions for several national delegations.

Discussions also remain on the issue of the unique identifier. For several Member States that support the Commission's proposal, the identifier should be "unique and persistent" in order to facilitate data matching. Others, on the contrary, believe that a unique and persistent identifier could facilitate profiling and tracking of citizens.

This progress report will be discussed at the Telecom Council on June 3<sup>rd</sup> 2022.

#### **Presentation of the draft opinion report of the JURI committee**

On April 29<sup>th</sup> 2022, Pascal ARIMONT (EPP, BE) [published](#) his draft opinion report for the European Parliament's Legal Affairs Committee (JURI) on the European Digital Identity Framework.

The JURI committee is an associated committee, which means that its opinion will be binding for the aspects of the proposal falling within its area of competence. For other parts of the text, the opinion will be non-binding.

On the principle of the portfolio, the changes suggested by Pascal ARIMONT aim to strengthen the provisions on transparency and security. The rapporteur wishes to specify that users can "freely choose" the identification service they wish to use and seeks to promote "electronic seals" within the proposed regulation.

The [draft report](#) of the rapporteur Romana JERKOVIC (S&D; HRV) was published on May 31<sup>st</sup> and will be presented shortly in the Industry, Research and Energy committee (ITRE) to MEPs.

#### **April 25<sup>th</sup> – AI Act : Publication of the draft report**

On April 25<sup>th</sup>, Brando Benifei (S&D, PT) and Dragos Tudorache (RE, RO) have released their [draft report](#) on the proposed regulation on artificial intelligence ("AI Act").

##### **1. Key points of the report**

The two co-rapporteurs propose 297 amendments to the European Commission's proposal. As this is a specific procedure where the co-rapporteurs are on equal footing, they have chosen to focus their report on changes agreed between them. This choice was indicated in public statements and reiterated in the explanatory memorandum. Therefore, the draft report does not reflect all the points identified as issues by the Members of the European Parliament. Further discussions on compromise amendments will address these issues.

##### ***Prohibited practices***

One of the main changes to the regulation proposed by the co-rapporteurs is the inclusion of "predictive policing" in forbidden practices. The concept is defined as AI tools used to predict the likelihood that an individual will offend or re-offend.

##### ***High-risk AI***

The co-rapporteurs suggest expanding the list of high-risk uses of AI by adding:

- Systems which interact with children, for instance in the context of education
- Systems used in electoral context to campaign and to count votes
- Systems used to determine the eligibility of individuals for life or medical insurance

#### ***Legal consistency and implementation***

The co-rapporteurs propose to clearly indicate the alignment of the proposed regulation with the General Data Protection Regulation ([GDPR](#)). Strengthening the alignment with the GDPR has the effect of clarifying the framework for certain uses of AI, in particular when it comes to biometric data.

In addition, they propose to introduce an “enforcement mechanism” that could be triggered in case of widespread infringement defined as the situation where the regulation is not or not properly applied in three or more Member-States. This mechanism could confer market surveillance powers to the European Commission.

Finally, the co-rapporteurs propose to:

- strengthen access to justice when the rights of legal or natural persons are not respected when they interact with AI system
- strengthen the involvement of stakeholders and civil society organisations

#### **2. Proposed amendments of interest for financial institutions**

In regard to the measures that would apply to financial institutions, the co-rapporteurs propose the following changes.

##### ***Use of AI to calculate credit scores and assess borrower creditworthiness***

Dragos Tudorache and Brando Benifei propose to remove the exemption for AI systems used for the purpose of creditworthiness assessment and credit scoring when put into service by small-scale providers for their own use (**amendment 24, amendment 290**).

As a reminder, in the European Commission’s proposal, “small-scale providers” are exempted from the obligations applicable to high-risk AI systems (in which systems for creditworthiness assessments are included), as long as they do not make the tools available to other actors. Small-scale providers are defined as **those that meet the criteria of a micro or small undertaking**, according to the European Commission’s 2003 [recommendation](#) on the definition of micro, small and medium-sized enterprise meaning **undertakings which do not exceed a threshold of 50 employees or 10 million euros for small enterprises and which do not exceed the threshold of 10 employees or 2 million euros in turnover for micro enterprises**.

The co-rapporteurs also propose to strengthen conformity assessment for AI systems used by credit institutions.

#### **Next steps:**

**An exchange of views will take place in the IMCO and LIBE committees on May 11<sup>th</sup>, 2022. The deadline for tabling amendments is May 18<sup>th</sup>, 2022.**

**The vote in the committees is expected on October 26<sup>th</sup> or 27<sup>th</sup>.**

#### **April 8<sup>th</sup> – Launch of the digital finance platform by the European Commission**

On April 8<sup>th</sup>, the European Commission organized a conference to introduce the [Platform for Sustainable Finance](#).

Announced as part of the Digital Finance Strategy in September 2020, the Platform for Digital Finance is designed to develop interactions between innovative financial companies and supervisory authorities.

With a view to strengthening the financial services union, the Platform's aim is to address the fragmentation of digital financial services while supporting the development of innovative Fintechs at the EU level.

The Platform is divided into two parts:

- an observatory offering interactive features such as a map of Fintechs, events, and a section where users will be able to share relevant research papers ;
- a gateway that will serve as a single point of access for supervisory authorities and will aggregate information on national innovation centers, regulatory sandboxes, and licensing requirements across EU countries. This part of the Platform will also host functionalities related to cross-border testing in order to allow companies to involve multiple national authorities in the testing of new products or applications.

#### **April 5<sup>th</sup> – The European Commission is consulting on the digital Euro project**

On April 5<sup>th</sup>, the European Commission [opened](#) a consultation on the digital euro project, currently under scrutiny by the European Commission and the European Central Bank.

The purpose of a legislative initiative would be to define and regulate the basic aspects around the introduction of the digital euro as a new form of central bank money. The digital euro could be issued by the European Central Bank/Eurosystem alongside banknotes and coins in line with their respective objectives and mandates.

#### **Next step:**

The consultation [is open](#) until June 14<sup>th</sup>, 2022.

#### **March 9<sup>th</sup> - Artificial Intelligence: Axel Voss releases its draft opinion on the “AI Act”**

On March 9<sup>th</sup>, Axel Voss (EPP, DE) released its [draft opinion](#) for the JURI committee on the “[AI Act](#)” regulation proposal.

Among other things, the German MEP proposes to further clarify the definition of “high-risk” AI systems, a category subject to special obligations. This category includes, for instance biometric identification, the use of AI in automated recruitment procedures, or the use of AI to assess borrowers' creditworthiness when applying for credit. Axel Voss also calls for proportionate obligations for SMEs.

The JURI committee is mobilised as an associated committee for this proposed regulation, meaning its opinion will be binding on specific parts of the text under its competence.

#### **March 15<sup>th</sup> - “VAT in the digital age”: the Council of the EU adopts conclusions**

On March 15<sup>th</sup>, the Council of the EU adopted [conclusions](#) proposed by the French Presidency of the Council of the EU on the implementation of the VAT for e-commerce package. The conclusions aim to express the Council's support to the European Commission's plan to review VAT rules to bring them in line with the digital age.

The Commission's initiative was foreseen in its 2020 “Action plan for fair and simple taxation in support of the recovery strategy”.

In its roadmap (available on the [consultation page](#)), the Commission states that the upcoming initiative should deal with:

- VAT reporting obligations and electronic invoicing;
- The VAT regime applicable to the platform economy;
- Single VAT registration within the EU.

On e-invoicing, according to the roadmap, the Commission is considering at this stage partial (limited to cross-border transactions) or fully harmonized (covering both domestic and cross-border transactions) digital reporting requirements which include e-invoicing.

**Next steps:**

**Rapporteur Jonas Fernandez must now prepare a report on the proposed regulation and the proposed directive. The first exchange of views on the CRR and CRD proposals between parliamentarians in the ECON committee is scheduled for April 20.**

**March 21<sup>st</sup> - Financial Stability Board observes acceleration of digitalization of retail financial services as main aftermaths of Covid-19 pandemic**

On March 21<sup>st</sup>, the Financial Stability Board [published](#) a report entitled “Fintech and Market Structure in the Covid-19 pandemic: implications for financial stability”.

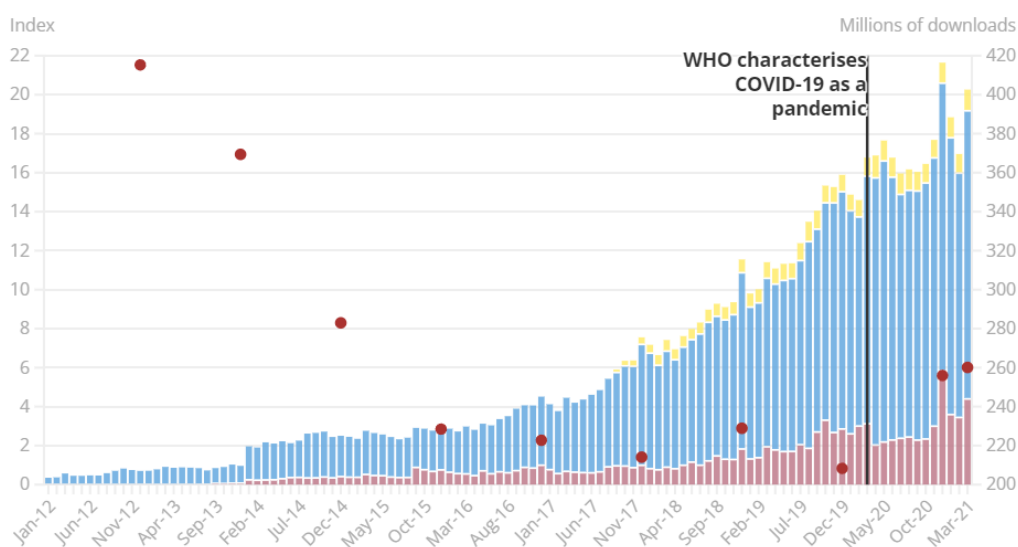
The report examines whether the COVID-19 pandemic has changed the way individuals and businesses engage with innovative financial service providers and traditional financial operators. Its main conclusion is that the pandemic has accelerated the trend toward digitization of retail financial services.

Comprehensive data on the market shares of FinTechs, BigTechs and incumbent financial institutions in digital retail services is scarce. However, available indicators and information from market participants suggest that BigTechs have further expanded their presence in the financial services sector.

### Downloads of payment apps of FinTechs, BigTechs and incumbents

Advanced economies

Herfindahl-Hirschman Index BigTechs FinTechs Incumbent financial institutions



Sources: Sensor Tower, Croxson et al (2022) • Downloads of all payment apps among the top 50 finance apps as classified by Sensor Tower. “FinTech” refers to apps by new entrants specialised in financial technology, “BigTech” refers to apps by large technology companies whose primary activity is digital services, rather than financial services, and “Incumbent financial institutions” refers to apps from commercial banks, insurers, card networks and other financial institutions.

The report also examines benefits from the accelerated digitization of financial services during the pandemic and asks whether the observed changes may be structural or revert to pre-pandemic levels once normal sanitary conditions return. The report further examines implications of this accelerated digitization trend on financial stability, such as potential market dominance by certain players, as well as concerns that incumbent financial institutions may fall behind in terms of online service offerings.

The Small Business Administration (SBA) reported that FinTechs processed 1.4 million PPP loans totalling \$27.9 billion throughout 2020-2021. Reports published on the Paycheck Protection Program (PPP) also highlighted that non-bank lenders reached smaller businesses and businesses in low- and middle-income areas with a higher proportion of their loans than most other types of lenders, including banks, credit unions, and community financial institutions

The report finally describes the range of policy actions taken by authorities during the pandemic that may impact market structure and the role of FinTechs, BigTechs and incumbent financial institutions. These actions range from financial stability, competition, and data privacy to governance issues. In parallel, the report underlined that international work on third-party dependencies of the financial sector, for instance in cloud computing, highlights the importance of cooperation between regulatory and supervisory authorities, including those charged with overseeing the bank and non-bank sectors, and where relevant, with competition and data protection authorities.

To conclude, the report emphasizes the importance of cooperation among regulators and supervisors, including those responsible for overseeing banking and nonbanking sectors, and, where appropriate, with competition and data protection authorities.

#### **March 30<sup>th</sup> - Development of a digital euro: ECB presents report on EU payments habits and digital payments trends**

On March 30<sup>th</sup>, the European Central Bank [presented](#) a report, as part of the Digital Euro Project, analyzing the payment habits of euro area citizens and their attitudes towards new digital payment methods.

In particular, the analysis aims to explore euro users' views on new digital payment methods and the elements that could encourage the adoption of a new digital payment method, such as a possible digital euro.

Based on the responses from focus groups and online communities in euro zone member countries, the report shows a strong preference for payment methods with a pan-European reach and universal acceptance in physical stores and online. Participants value the ability to make instant, contactless payments, regardless of platform or device.

Safety and security were also among the concerns of respondents, who wanted more safeguards against fraud and hacking as well as secure authentication methods. Biometric methods of payment verification, such as those using iris technology, were widely supported by participants, while flexible and adjustable privacy settings were likewise deemed desirable.

#### **Next step:**

**The ECB stated assessing the possible introduction of a digital euro will be terminated in October 2023.**

#### **February 4<sup>th</sup>– e-ID: public hearing in the European Parliament**

On February 4<sup>th</sup>, Members of the European Parliament in the ITRE (Industry, Research and Energy) committee debated the European Commission's [proposal](#) on the European Digital Identity Framework Regulation (or e-ID)

The Members of the European Parliament underlined:



- That the interoperability of the device, meaning its ability to give access to different services in different Member-States, is of the utmost importance hence the need to solve questions related to trans-border communication and data transfers;
- That citizen support and trust for the device is essential, and special attention must be given to trust parameters such as data privacy guarantees;

The E-ID proposal aims to set up a common framework in the EU for digital identification. The solution would be based on a digital wallet, which would contain the citizens' documents and would be intended for private and public uses; for instance: tax procedures or opening bank account.

#### **February 23<sup>rd</sup> - Data Act : main elements of the regulation proposal**

On February 23<sup>rd</sup>, the European Commission [published](#) its regulation proposal entitled "Data Act", the latest element of its [2020 European data strategy](#). While the Data Governance Regulation creates the processes and structures to facilitate data sharing between businesses, individuals and the public sector, the Data Regulation clarifies who can create value from data, and under what conditions.

Some of the key measures in the data regulation proposal include:

- measures to allow users of connected devices to access the data they generate and to share that data with third parties for specific purposes such as after-sales services. The data made available can be reused for free or for compensation. The proposed regulation maintains the incentive for manufacturers to continue to invest in the production of high quality data, including covering their transfer costs.
- measures to rebalance the bargaining power of SMEs by preventing excessive contractual imbalances in data sharing contracts. The regulation will protect SMEs from unfair contract terms imposed by a party with superior bargaining power. The Commission will also develop model contractual clauses to help these businesses draft and negotiate fair data sharing contracts.
- provisions for public sector agencies to access and use data held by the private sector that is needed to address exceptional circumstances, such as a public emergency or to carry out a legal mandate if the data is not otherwise made available.
- new rules allowing customers to efficiently switch cloud data service providers and putting safeguards in place against unlawful data transfers.

#### **February – Artificial Intelligence: latest developments**

Over the course of February, work on the proposed regulation on artificial intelligence ("[AI act](#)") has continued with several key developments.

The French Presidency of the Council of the EU has continued to put forward its proposals for partial compromises.

On February 22<sup>nd</sup>, the French Presidency of the Council of the EU transmitted to the delegations of the Member States a third proposal for a partial compromise on articles [40 to 52](#) of the European Commission's proposal (after having already put forward a first proposal on articles [8 to 15](#) and another on articles [16 to 29](#)).

The latest proposal deals with the obligations that entities using or producing AI systems deemed "high-risk" under this proposal should comply with. The list of systems deemed to be high-risk includes AI systems used for creditworthiness assessment or credit rating. The French Presidency proposes a more detailed list of these obligations with, for example, evidence from the organizations concerned of "best efforts" to comply with the obligations. Some changes have been made to the governance of the system: mandatory consultation of the future dedicated advisory body (European Committee on Artificial Intelligence) when the Commission wishes to adapt existing standards, and greater involvement of Member States.

The second compromise proposal (articles 16 to 29) focuses on the responsibilities of suppliers and manufacturers and the conditions to be included in each of these categories.

On February 2<sup>nd</sup>, the European Commission published a note on priority areas for normative action (rulemaking and harmonization). The areas identified are those that need to be adapted to comply with expected levels of safety, health protection, consumer protection and environmental protection. The aim is to review existing legislation to adapt it for overall consistency and relevance to the latest innovations.

The attached list includes mainly legislation related to the industry, but also artificial intelligence with regard to the proposed regulation on AI. The European Commission will try to ensure consistency through this proposal and the review of affected pieces of legislation.

**January 26<sup>th</sup> - "Digital decade": European Commission issued a declaration of rights and principles to path the way towards digital transformation**

On January 26<sup>th</sup>, the European Commission published a declaration, jointly with the European Parliament and the Council of the EU, setting out rights and principles to guide the EU's digital transformation.

This declaration is intended to serve as a reference framework for policy makers, businesses and digital actors operating in the EU to ensure that new technologies launched on the European market correspond to the European values.

It should be noted that the declaration does not create any new rights or principles and tends to enshrine the existence of citizens' rights online.

The declaration is structured around 6 axes:

1. putting citizens at the heart of the digital transformation (responsibility of digital actors for a secure environment)
2. Solidarity and inclusion (including the right to high-speed digital connection throughout the EU and digital literacy and education)
3. Freedom of choice (algorithms, AI systems respecting human rights)
4. Participation in the digital public space
5. Safety, security and empowerment (safe environment and right to privacy)
6. Sustainability (sustainable technologies and reduction of their environmental impact)

European Commissioner Thierry Breton, in charge of the internal market, described the declaration as a "constitutional basis for the online space".

**January 31<sup>st</sup> – Digital finance: ESA's joint report recommend actions to ensure EU's regulatory and supervisory framework is adapted to the digital age**

The three European Supervisory Authorities (EBA, EIOPA and ESMA) [published](#) on January, 31<sup>st</sup> a joint report in response to the European Commission's February 2021 [Call for Advice on Digital Finance](#) and related issues.

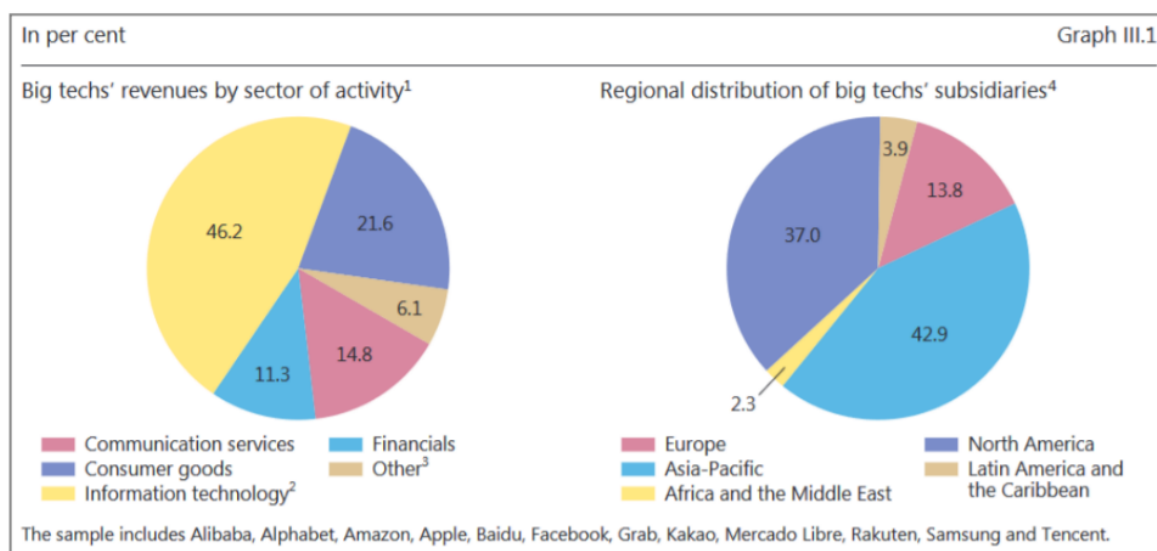
The proposals put forward aim at addressing issues arising from the transformation of value chains, platformisation and the emergence of new 'mixed-activity groups', that is to say groups combining financial and non-financial activities. These new trends and market developments open up a range of opportunities for both EU consumers and financial institutions, but also pose new risks.

Technology firms have primarily been active in the EU market as ICT providers to financial institutions (e.g. as third-party service providers, and fall within the scope of the DORA legislative proposal). Aside from their core business of tech services like cloud services, they have penetrated financial sector market segments, such as retail payments, via the provision of infrastructure as the interface between financial institutions and end users.

Monitoring MAGs and Big tech companies is thus necessary not only due to the interconnectedness risk with the finance sector, but also for their potential to undermine financial stability, as demonstrated by the ESAs.

The ESAs' recommendations to address these risks include:

**Figure 3: The share of financial services in big tech business**



Source: BIS (2019).

- the adoption of an holistic approach to the regulation and supervision of the financial services value chain;
- the strengthening of consumer protection in a digital context, including through enhanced disclosures, complaints handling mechanisms, measures aimed at preventing the mis-selling of tied/bundled products, and improved digital and financial literacy;
- the acceleration of further convergence in the classification of cross-border services;
- the acceleration of further convergence in addressing money laundering and financing of terrorism risks in a digital context;
- the reinforcement of effective regulation and supervision of 'mixed-activity groups', including a review of prudential consolidation requirements;
- the reinforcement of supervisory resources and cooperation between financial and other relevant authorities, including on a cross-border and multi-disciplinary basis;
- the development of active monitoring of the use of social media in financial services.

### January - AI: Latest developments

#### ***Exchange of views in the European Parliament***

On January 25<sup>th</sup>, 2022, members of the European Parliament debated with the European Commission the proposed regulation on artificial intelligence ("[AI Act](#)").

The members of the single market and consumers (IMCO) committee and of the civil liberties (LIBE) committees of the European Parliament welcomed the proposal but put forward concerns. The concerns expressed by the Members of the European Parliament dealt with use of AI together with biometric identification for surveillance. A major issue for the MEPs is the fact that the regulation only prohibits uses of such systems by public authorities and leaves aside private uses. Other Members called to a more precise definition of what is an “AI system”.

#### ***Draft partial compromise proposal in the Council of the EU***

On January 13th, 2022, the French Presidency of the Council of the EU published a [partial compromise proposal](#) on the “AI act”. The main amendments proposed by the French presidency deal with data used by AI systems: while the European Commission proposes that data sets be totally neutral in order to not discriminate users, the French presidency of the Council proposes that data be “as neutral as possible”. Other changes relate to the definition of AI and the technical documentation that must be made available by system providers.

#### **December 1<sup>st</sup> - Cybersecurity : Parliament and Council made consistent progress on the proposal “DORA”**

On December 1<sup>st</sup>, the Economic Affairs committee (ECON) of the European Parliament adopted its report on the [DORA](#) (“*Digital Operational Resilience Act*”) proposal. The report will constitute its negotiating position in trilogues with the Council of the EU. Members of the European Parliament voted to decide on the opening of inter-institutional negotiations on December 15<sup>th</sup>.

The Council of the EU had already adopted its position on the “DORA” regulation proposal, on November 24<sup>th</sup>. The Council's position constitutes its negotiating mandate, also allowing for inter-institutional negotiations to start.

The ‘DORA’ (*Digital Operational Resilience for the financial sector*) regulation proposal aims to prevent and mitigate cyber risks in the financial sector. The proposed regulation sets out obligations for financial entities in order to make them able to detect and manage all types of risks related to information and communication technologies.

Among the obligations that financial actors would have to comply with are:

- the creation of an internal function dedicated to ICT-related cyber risks coupled with the obligation to verify that third-party companies, to which they entrust IT tasks, manage ICT-related risks in accordance with new regulation’s provisions.
- the obligation to keep a record of all incidents that have had an impact on the continuity and quality of their services was also maintained by the Parliament.

In terms of transparency, financial entities would have to communicate on major incidents they had to deal with. The Commission will furthermore be responsible for studying the feasibility of creating a European register of detected ICT-related incidents.

The 'DORA' regulation also establishes a supervisory framework for ICT service providers to which financial entities delegate certain activities, such as cloud computing.

#### **December 6<sup>th</sup> - Data Governance Act : provisional agreement reached between Council and Parliament**

On December 6<sup>th</sup>, the provisional agreement [reached](#) by the Council of the EU and the European Parliament in inter-institutional negotiations, on the proposed regulation on data governance was adopted by the parliamentary committee in charge of industry, energy and research (ITRE).

The legislative initiative aims at strengthening the single market for data, in application of the European data strategy. Regarding the Council's position, the consensus obtained during the trilogues was presented to the permanent representatives on December 15<sup>th</sup> before definitive approval by Member States.

According to the provisional agreement and the Commission's initial proposal:

- Data intermediation services would take the form of digital platforms that would allow the voluntary sharing of data between companies. Through these services, companies would be able to share their data without fear of misuse or loss of competitive advantage. In addition, data intermediation service providers would have to be registered in a specific registry and would not be allowed to use the shared data for other purposes. They would not be able to take advantage of the data, for example by selling it, but would be able to charge for the transactions they perform.
- Exclusive agreements with the public sector would be possible for the re-use of data if they are justified by a service of general interest. The Commission would also set up a single European access point to facilitate the consultation of public sector data.
- The regulation proposal's plan the creation of a new structure, the European Data Innovation Board, to advise the Commission on enhancing the interoperability of data intermediation services.

**Next steps:**

- **The provisional agreement reached on November 30<sup>th</sup> must now be formally approved by the Parliament through a plenary vote (which is expected in March).**
- **The new provisions will apply 15 months after the entry into force of the regulation, as wanted by the Council.**

**Other topics of interest**

[Back to summary](#)

**December 9<sup>th</sup>, 2022 - The European Banking Authority publishes its annual risk assessment and warns of deteriorating asset quality due to an unfavorable macroeconomic environment**

On December 9<sup>th</sup>, 2022, the European Banking Authority (EBA) [published](#) the conclusions of its annual risk assessment for the European banking system.

The findings of the assessment lead EBA to alert financial institutions to the potential deterioration of asset quality in the near future. In addition, EBA calls on EU financial institutions to strengthen their controls and screening systems to ensure strict compliance with recently adopted sanctions and to prevent legal and reputational risks.

Among the report's key findings are the following:

- Banks' profitability has recently improved, but a positive development remains uncertain in an environment of low growth and rising interest rates.
- Banks' capital and liquidity ratios remain high, but have declined slightly year-over-year. The average core capital ratio (CET1) reached 15.0 percent and the liquidity coverage ratio (LCR) 165.1 percent.
- Despite low volumes of nonperforming loans (NPLs), banks classified 9.5 percent of loans as Stage 2, the highest level since 2018, when this specific reporting was initiated.

Credit spreads have widened for bank debt instruments.

**December 6<sup>th</sup>, 2022 – Council and Parliament reach a provisional agreement regarding the Deforestation regulation**

On December 6<sup>th</sup>, 2022, the Parliament and the Council [reached](#) a provisional agreement following trilogues on the content and scope of the regulation regarding the prevention of risks of deforestation through the import of products from deforestation into the single market.

In addition to the fact that co-legislators agreed on a common definition of deforestation and on the list of products imported into the single market that should be subject to enhanced monitoring, the provisional agreement excludes the provision of financial services from the list of intermediaries that must put in place enhanced due diligence measures in order to prevent any participation in environmental degradation. A two-year review clause, obtained by Parliament representatives, will allow the inclusion of the provision of financial services to be reconsidered at a later date.

As a reminder, the MEPs had voted to include financial service providers when they adopted their position on July 11<sup>th</sup>, 2022. The Council, like the European Commission, wanted only commercial operators to be included in the scope of the text.

#### **December 1<sup>st</sup> 2022 – The Council of the EU adopts its position on the directive proposal on corporate sustainability due diligence**

On December 1<sup>st</sup> 2022, the Council [adopted](#) its position on the directive's proposal on corporate sustainability due diligence.

Regarding in particular the matter of the inclusion of financial service providers in the scope of the future directive, which divided the Member States so far, **the Council chose to leave the Member States the option of applying or not the directive to the provision of financial services when transposing it into national law**, while excluding investment activities because of their specificities.

**Recital 19 states that "for regulated financial undertakings, the definition of 'chain of activities' ... should also include the provision of financial services ... if the Member State decides to apply this Directive also to the provision of such services".**

Another significant change was adopted by the Council to order to reach compromise between Member States: **replace the term "value chain", proposed by the Commission, with the term "chain of activities"**. The term "chain of activities" includes not only the production of goods but also the supply by a trading partner.

Therefore, if a Member State chooses to include the provision of financial services in the scope of the future directive, the definition of the term "chain of activities" will have to be adapted in order to encompass activities that allocate capital and provide insurance cover to the real economy and to take into account the specificities of this type of business. The compromise text adopted by the Council states that the definition of the term "chain of activities" should only include financial services that directly allocate capital or provide insurance or reinsurance coverage.

**In addition, the compromise text adopted provides that if the Member State decides to apply the Directive to the provision of financial services by regulated financial undertakings, they should only be required to identify the negative impacts of the activities of their business partners prior to the provision of the financial service (Article 6.3).** An exemption has been introduced in Article 10(2) from the obligation to monitor adverse effects, so that in relation to the activities of the business partners of the firms to which they provide financial services, the firms are only required to monitor those adverse effects identified prior to the provision of the financial service.

Finally, as the rapporteur Lara WOLTERS, the text drawn up by the Czech Presidency proposes to abolish the concept of **established commercial relationship**. Thus, the obligations set out in the text of the directive would apply to the entire chain of activity and no longer only to business partners with whom a business relationship has been established beforehand.

The compromise proposal drawn up by the Czech Presidency also suggests a gradation of the levels of responsibility of companies that have caused or contributed to a negative effect on the environment and human rights. The new compromise thus proposes to hold companies legally responsible when 4 conditions are met :

- damage is actually caused to a legal or natural person ;
- the company has failed to fulfil its obligations under the directive;
- there is a link between the failure and the damage caused;
- the company has acted deliberately or negligently.

**Next steps:**

**Trilogues will begin once the Parliament has adopted its final position, expected in March 2023.**

**The rapporteur's position seems to include the provision of services in the scope at the moment: it thus remains to be seen whether this opt-out provision regarding the inclusion of the provision of financial services will be maintained in the scope of the directive during the trilogues.**

**November 2<sup>nd</sup> 2022 – The European Central Bank publishes a report highlighting the positive and negative practices of the banking sector in terms of climate risk management**

On November 2<sup>nd</sup> 2022, the European Central Bank (ECB) [published](#) a report with the aim of highlighting the current practices of the banking sector with regard to the management of climate and environmental risks. In particular, the report seeks to present an inventory of the practices currently used by banks to integrate the climate factor into their daily and long-term activities.

In terms of negative practices, the report points out that 96% of the banks analyzed struggle to identify the real extent of climate risks, in particular because they do not collect enough relevant data from their counterparts (study conducted on a panel of 186 European financial institutions).

In addition, the report highlights that banks that make commitments to climate neutrality do not define precisely how they intend to achieve this goal progressively and do not set quantified targets.

Finally, the ECB points out that some credit institutions, who recently adopted climate commitments, tend to exempt some of their clients with a negative climate record from their greening policy.

Several good practices are however highlighted by the report. The European Central Bank notes that banks are already using planning tools to align their investment portfolios with the objectives of the Paris Climate Agreement. Some financial institutions have also clearly defined their data requirements for financial reporting and risk management.

**Next steps:**

**The ECB concludes that despite major progress, banks need to do more to identify and better manage climate and environmental risks. The [ECB sets the end of 2024](#) as the deadline for European banks to progressively meet all of its expectations in terms of climate and environmental risks management.**



**October 26<sup>th</sup> 2022 - the European Economic and Social Committee (EESC) publishes an own-initiative opinion on the recapitalization of EU companies**

On 26 October 2022, the European Economic and Social Committee (EESC) [published](#) an own-initiative opinion on the recapitalization of EU companies.

In its opinion, the EESC considers that the Union lacks equity financing capacity and is too dependent on bank loans. The EESC therefore recommends developing "highly subordinated loans" for small businesses with financing needs. This means that these loans would have the status of "quasi-equity" thus, allowing small and medium-sized enterprises (SMEs) not to be considered over-indebted.

According to the Committee, developing such an instrument at EU level would create a new, well-defined asset class.

Moreover, the EESC believes that this initiative would be fully compatible with the European Long Term Investment Fund (ELTIF) and the Debt/Equity Bias Reduction Allowance (DEBRA) initiative. This new instrument would then allow retail investors to access the private debt market and finance the real economy.

**October 26<sup>th</sup> 2022 – Ongoing review of the consumer credit directive: feedback on the trilogues negotiations**

On October 27<sup>th</sup> 2022, at the occasion of the Internal Market and Consumer Protection Committee (IMCO) meeting, the rapporteur on the consumer credit directive's proposal, **Katerina KONECNA (GUE/NGL; CZ)**, provided to MEPs her feedback on the exchanges that had taken place during the 2<sup>nd</sup> trilogue meeting between the co-legislators on the 26 of October.

Among the points discussed on the 26 of October were the scope, definitions and early repayment. The rapporteur underlines that clear progress has been made in the negotiations with the Council, especially on the issue of the proportionality clause.

In particular, the issue of deferred payments has been discussed: the three institutions seem to share a common vision that now needs to be translated "technically". According to our information, they wish to exempt deferred payments, but under strict conditions that will allow "buy now, pay later" services to not benefit from such an exemption. The conditions to benefit from the exemption would be the following:

- A maximum time limit of 60 days;
- Not involve a third party (financing) provider;
- Not to impose penalties or charges in excess of what is provided for in civil law (to be specified legally).

The European Commission has insisted on the necessity to include "buy now, pay later" products in the scope of the directive and that such a service would require the transmission of pre-contractual information and a credit assessment.

Several issues have not yet been addressed by the co-legislators: the exclusion of deferred debit cards and crowdfunding services from the scope of the directive, as requested by the Council, as well as the provisions relating to creditworthiness assessment.

**Next Steps:**

**The next trilogue meeting is scheduled on the 1<sup>st</sup> of December 2022. The rapporteur remains relatively confident that a compromise will be reached in December under the Czech Presidency of the EU Council.**

### October 18<sup>th</sup> 2022 – European Commission publishes its work programme for 2023

On October 18<sup>th</sup> 2022, the European Commission [presented](#) its 2023 work program entitled "A Union standing firm and united". The work program for 2023 includes several of the initiatives previously mentioned by the President of the European Commission on 14 September 2022 during the State of the Union Address.

The annexes to the 2023 work programme [present](#) the legislative proposals that the Commission considers to be priorities and which it would like to see adopted before the end of its term (mid-2024).

#### The new financial services initiatives on the Commission's agenda for 2023 are :

- **A proposal on the revision of the Late Payments Directive is scheduled for Q3 2023;**
- **A proposal to revise the European rules on payment services is planned for Q2 2023;**
- **An initiative on "Open finance" is planned for Q2 2023;**
- A legislative package regarding the Retail Investment Strategy (RIS) is expected Q1 2023;
- A proposal for a common framework for the taxation of European companies, "BEFIT" is expected Q3 2023;

Regarding the strengthening of the role of the Euro as an international currency the Commission plans several new initiatives:

- An initiative on the launch of the digital Euro is planned for the second quarter of 2023.
- A proposal on the scope and effects of legal tender of Euro banknotes and coins is scheduled for the second quarter of 2023.

Finally, the texts considered as priorities by the European Commission, and on which it wishes to see a concrete progress of the current legislative procedure, are the following :

- **The revision of the Capital Requirements Regulation and Directive (CRR/CRD);**
- **The proposed regulation on the law applicable to the third-party effects of assignments of claims (Rome I);**
- The proposal for a regulation on the implementation and operation of a European Single Access Point (ESAP);
- The revision of the Consumer Credit Directive (CCD);
- **The legislative package on the fight against money laundering and terrorist financing;**

The revision of the directive regarding markets in financial instruments (MiFID II).

### October 11<sup>th</sup> 2022 – The Platform for sustainable finance published a report on the implementation and usability of the EU Taxonomy

On October 11<sup>th</sup> 2022, the Platform for sustainable finance [published](#) a report on the implementation and usability of the Taxonomy in the EU.

Through this report, the Sustainable Finance Platform aims to identify the users of the Taxonomy in the financial sector as well as the main challenges that users are facing in implementing the Taxonomy and the underlying legislation. The Platform also publishes recommendations to facilitate the implementation of EU sustainability regulations.

The Platform recommends that the European Commission welcomes the inclusion of fees and charges that encourage the credit institution to offer Taxonomy-aligned products and services to its clients. While these fees are generated by activities that have the capacity to influence the flow of capital towards more sustainable investments, they should be included in both the numerator and denominator according to the Platform. In order to allow for comparison between banks, the Platform recommends that the denominator reflect only those fees and commissions considered eligible for reporting to the Taxonomy (and not all fees and commissions, as currently written).

In addition, the Platform asks the European Commission to include the numerator and denominator using an approved estimation methodology for the “Do not significant harm” (DNSH) criteria until the information is made available to credit institutions for mortgages, building renovation loans, and car loans.

In the context of the sustainability-related disclosures in the area of financial services regulation (SFDR), the Platform calls for clear requirements for equivalent information to be set by the European Commission and European Supervisory Authorities so that auditors can refer to a fixed framework for certifying SFDR reporting.

Finally, the Platform recommends that a European accreditation system on sustainability reporting assurance, as foreseen in particular by the Corporate Sustainability Reporting Directive (CSRD), be put in place for all verifiers and auditors to ensure that they have the right level of knowledge and expertise and that the rules for sustainability assurance are harmonized through the EU.

#### **October 7<sup>th</sup> 2022 - Corporate Sustainable Due Diligence Directive : concrete evolutions on the proposal for both the Parliament and the Council**

The Committee on Economic and Monetary Affairs (ECON) was presented on October 7<sup>th</sup> 2022 by the rapporteur for opinion, René REPASI (S&D; DE), a [draft opinion](#) on the [proposal for a directive on corporate due diligence](#).

The draft opinion report proposes in particular to exclude micro-enterprises (amendment 5) from the entities entering the value chain and which should therefore be subject to a reinforced duty of care. The rapporteur also calls for support for SMEs in order to relieve them of the administrative and financial burden of the due diligence obligations included in the directive’s proposal.

**The draft report for opinion also insists in Amendment 7 on the decisive role of financial actors in the value chain and the importance of their presence in the scope of the future directive.**

Finally, the rapporteur calls for the inclusion in the proposed directive of the objectives of climate neutrality by 2050 and a 55% reduction in greenhouse gas emissions by 2030, as expected by the European Green Deal.

The Czech Presidency of the Council of the EU presented to the national delegations [a new draft compromise](#), released on the 7<sup>th</sup> of October, with the aim of finding of compromise with the Member States on the scope of the future directive.

The European Commission's initial proposal provides that all companies with more than 500 employees and a turnover of more than 150 million should be subject to obligations to prevent their activities from having an adverse effect on the environment and human rights. With this new compromise, the Czech Presidency proposes that subsidiaries and parent companies should be taken into account equally in determining which companies fall within the scope of the directive. Thus, the Czech Presidency opts for a "consolidated

approach", with a determination at group level of the application of the directive, whereas the European Commission had chosen to present an individualized approach.

The compromise details three possibilities as to the obligations that would be imposed on these subsidiaries and parent companies: 1/ the entire group falls under the scope of the directive as soon as the group exceeds the thresholds of application; 2/ parent companies are covered but not subsidiaries, whatever their size; 3/ only subsidiaries or parent companies meeting the criteria of the directive's scope (and therefore independent of each other) are concerned. The last option refers to the European Commission's initial proposal.

However, if the "consolidated" approach is adopted by Member States, a revision of the application thresholds would be necessary in order for the future directive to have a real impact on the traceability of value chains.

#### **September 19<sup>th</sup> 2022 – The European Central Bank confirms its wish of decarbonize its assets portfolio and launches a “climate score” to evaluate the climate commitments of companies**

On September 19<sup>th</sup> 2022, the European Central Bank [published](#) a statement on the greening of its asset portfolio and on how it wishes to guide its future securities purchases in the financial markets in line with the objectives established by the Paris Climate Agreement.

From now on, the ECB's securities purchase decision will be based on three criteria:

- Issuers' past emissions compared with their peers in a specific sector as well as compared with all eligible bond issuers;
- Targets set by issuers to reduce their greenhouse gas emissions in the future;
- Quality of reporting and communication by issuers with respect to their greenhouse gas emissions.

The objective of the implementation of this "climate score" by the ECB is to influence the climate performance of companies. The "climate scores" of issuers will indeed have an impact on their listing among the corporate bond purchases being reinvested by the Eurosystem.

The Eurosystem will also use the "climate score" to adjust its primary market offerings to favor issuers with better climate performance and to impose maturity limits on the bonds of lower-rated issuers.

#### **September 14<sup>th</sup> – Energy performance of buildings: co-legislators consider loan and investment options**

On September 14<sup>th</sup> 2022, the Czech Presidency of the Council of the EU [published](#) a draft compromise on the European Commission's [proposal for a directive](#).

The draft compromise emphasizes the importance for Member States to act to mobilize funds and develop financing tools for energy renovation of buildings and includes the wording of the Commission's proposal citing the establishment of loans and mortgages for building renovation, energy performance contracts, tax incentives, billing schemes, guarantee funds, funds targeting deep renovations, funds targeting renovations with a significant minimum threshold of targeted energy savings and development of mortgage portfolio standards.

In the European Parliament, the lead committee is the Industry, Research and Energy (ITRE) Committee. The draft report by rapporteur Ciaran CUFFE (Greens/EFA; IRL) was [published](#) on 6 June 2022. Amendment 177 proposes, in addition to the financing arrangements proposed by the European Commission, that all energy renovation tools should include a section dedicated to vulnerable groups and minimum financing targets

reserved for a percentage of households that cannot access traditional financing, such as people on low incomes, the elderly, single-parent households and households at risk of energy scarcity.

The draft report ([part 1](#) - [part 2](#)) of the Environment Committee (ENVI), carried by Radan KANEV (EPP; BG) also contains an amendment aimed at facilitating access to financing for targeted groups. It is aimed in particular at people in a situation of fuel poverty, vulnerable households, as well as owners of the least efficient collective buildings and buildings located in rural areas, without prejudice to income criteria.

The draft report also contains a proposed amendment on the "financial mechanism of payment according to savings". The rapporteur proposes the establishment of a loan system dedicated solely to energy performance improvements that would ensure that the loan repayment costs would not exceed the energy savings achieved on a monthly or annual average.

#### **September 14<sup>th</sup> 2022 – The European Parliament’s research department publishes a study on consumer protection in the context of overdraft facilities and overrunning**

On September 14<sup>th</sup> 2022, the European Parliament's Research Department [published](#) a study entitled "*Consumer protection in the context of overdraft facilities and overrunning*".

The study was provided at the request of the Parliament's Internal Market and Consumer Protection (IMCO) Committee to investigate how and under what conditions a bank can offer overdraft facilities and overrunning and how many consumers make use of them per year. The study also details the legal protection mechanisms that consumers can use against banks in this specific context.

The study concludes that there is little evidence of a single European market for consumer credit in the form of overdraft facilities and overrunning. However, the study tends to point out that there are significant differences between Member States regarding interest rates for loans granted in the form of overdraft facilities and overrunning.

According to the authors of the study, there are several indications demonstrating that facility interest rates are too high. They also point out that an increase in the refinancing rate is usually reflected immediately in the interest rate, whereas a decrease in the refinancing rate is reflected in the interest rate only with a certain time (e.g. Germany) or only to a very small extent (e.g. Spain). This finding is problematic for the authors because such practices could allow creditors to profit from the economic distress of already vulnerable households.

The study also points out that the Consumer Credit Directive (CCD) is only applicable to credit agreements in the form of overdraft facilities or overrunning if they are concluded in the context of current accounts. In addition, a prior contractual agreement on the use is required between the creditor and the consumer. Under these circumstances, a large number of credit agreements, especially in the form of overdrafts, are not automatically covered by the directive. Consequently, it cannot be said that an adequate level of protection for all types of credit granted through overdraft facilities is implemented.

According to the CJEU, member states can only guarantee consumer protection against excessive interest rates and charges under certain conditions through the application of national usury rules. However, there are rarely specific usury limits for consumer loans in the Member States. At the EU level, the European Economic and Social Committee (EESC) and the Committee on Economic and Monetary Affairs (ECON) require interest rate ceilings. Some Member States explicitly warn against the use of these types of credit by consumers, precisely because they are likely to lead to over indebtedness. An economic analysis between

effort and price also argues for regulation. This regulation could be based on a national standard that has already proved its worth (the study highlights France as an example).

For credit agreements in the form of overruns, a credit check could be explicitly provided for at EU level. Since such a check is generally to be regarded as a consumer protection obligation under civil law, Member States should be allowed to provide for such a check in their national regulations. The obligations to provide information to consumers could also be strengthened (e.g. the monthly charge for these credit agreements could be communicated as an absolute figure and the violation of the information obligations could not remain without consequences for the creditor).

Furthermore, as a protection against the regular use of such credit agreements, the study suggests that a right to an alternative product or appropriate advice to the consumer could be put in place in order to combat over-indebtedness. In this respect, the obligation for the creditor to provide a standardized comparative calculation with an alternative product such as a standard loan could also be considered. Finally, the authors believe that it should be examined whether and how the possibilities for credit institutions to immediately terminate credit agreements in the form of overdraft or overrunning could be limited.

#### **September 14<sup>th</sup> 2022 – SMEs: The European Commission announces new measures to address late payments**

On September 14<sup>th</sup> 2022, during the “State of the Union” address, the President of the European Commission announced a new set of measures for SMEs to support them in a context of high inflation and rising energy prices.

Without elaborating further on the proposals, Ursula von der Leyen announced two initiatives for 2023:

- A proposal for a single set of rules for corporate income taxation, called “BEFIT”;
- A revision of the Payment Directive with the objective of ending late payment that puts small businesses' cash flow in difficulty. This initiative had already been mentioned during the presentation of the SME strategy in February 2020.

In parallel, the European Commission would like to set up an observatory on late payments, which would be operational from 2023.

#### **September 13<sup>th</sup> 2022 – Regulation on imported deforestation: Parliament extends the scope of the text**

On September 13<sup>th</sup> 2022, the MEPs [adopted](#) their final position on the [proposed regulation](#) on imported deforestation by voting by a large majority in favor of the report of Christophe HANSEN (EPP; LX).

The regulation, which aims to adopt measures to significantly reduce the involvement of EU actors in deforestation on a global scale, has seen its scope broadened by the EP's position, which now includes financial institutions in addition to operational and commercial actors. In particular, the regulation provides for a duty of vigilance on the entire value chain for the actors falling within its scope.

##### **Next steps:**

The Council already [adopted](#) its position in June. The first triologue started on September 27<sup>th</sup> 2022.

In addition to the inclusion or not of financial institutions in the scope of the regulation, triologue discussions should also focus on the products covered by the regulation. The definition of “forest degradation” also divides the Member states.

**August 31<sup>st</sup> - Sustainability reporting standards : ECON MEPs discuss with ISSB Chair on the matter of compatibility between EU and international standards**

On August 31<sup>st</sup> 2022, MEPs from the Economic Affairs Committee (ECON) [met](#) to discuss the issues surrounding the development and implementation of sustainability reporting standards with the Chairman of the International Sustainability Standards Board (ISSB).

The Chairman of the International Sustainability Standards Board (ISSB), Emmanuel FABER, emphasized the importance of the capital market for non-financial reporting by companies. According to him, "capital markets are, in essence, the natural fundamental means of financing the transition that companies will have to make to implement more resilient economic, social and environmental models". He also emphasized the leading role of the European Union, which has decided to define its own reporting standards through the recently adopted directive on corporate sustainability reporting (CSRD). It thus recognizes the "leadership" of the EU in this area, which is working, via the work in progress of EFRAG, to develop ambitious non-financial reporting standards.

The MEPs expressed their concerns regarding the compatibility between the future EU standards and the international standards under development. Mr. Faber recalled that there is a bilateral dialogue process with the EU, notably with the European Commission's Directorate General for Financial Stability, Financial Services and Capital Markets (DG FISMA) as well as with the European Financial Reporting Advisory Group (EFRAG). He underlined the fact that the subject of climate change in particular seems to be a matter of consensus between the two levels of standard-setting authorities with regard to the elements that should be the subject of non-financial reporting.

**Next steps:**

Following the presentation of its [preliminary draft reporting standards opened to consultation](#), EFRAG will submit its final draft sustainability reporting standards in November 2022 to the European Commission for approval.

**In accordance with the Corporate Sustainability Reporting Directive (CSRD), the first non-financial reporting will have to be carried out from 2024 onwards (for the year 2023).**

**August 8<sup>th</sup> - Finance Watch criticizes Basel Committee's approach to banking supervision on climate risk**

On August 8<sup>th</sup> 2022, Finance Watch [published](#) an article analyzing the [principles developed by the Basel Committee](#) for an effective management and supervision of climate-related financial risks.

The NGO recognizes that these principles represent an attempt to bring consistency to practices in the supervision of climate-related financial risks. However, it deplores the lack of new concrete instruments and tools.

The Basel Committee would not, according to the NGO, recognize that climate-related financial risks differ from "traditional" types of risk and that they increase with time of inaction and lead to irreversible changes that will affect the economy and the financial system in the long term. Finance Watch points out that while it would seem appropriate to incorporate climate risks into all aspects of corporate governance, the current guidance is fairly generic and does not address the current challenges of managing climate-related financial risks.

Finance Watch also calls for the consideration of dual materiality in both financial and environmental terms. According to the NGO, there is a vicious circle whereby financial institutions participate in financing activities that contribute to climate change through their greenhouse gas emissions.



Finally, the absence of concrete measures or referenced best practices, according to Finance Watch, will limit the real impact of the Principles in terms of climate-related financial risk management. The NGO therefore invites the Basel Committee to present new and more concrete measures.

**July 28<sup>th</sup> 2022 – SFDR Regulation: European Supervisory Authorities publish a report assessing the scope of voluntary disclosure of the principal adverse impact**

On July 28<sup>th</sup> 2022, the European Supervisory Authorities (EBA, EIOPA, ESMA) published the first edition of a joint annual report on the scope of voluntary disclosure of the principal adverse impact under Article 18 of the [regulation on sustainability-related disclosures in the financial service sector \(SFDR\)](#)

Based on data collected from national competent authorities, the European Supervisory Authorities have prepared a report summarizing indicative "best practices" for sustainability reporting under the SFDR.

The main points of the report are the following:

- the degree of compliance with voluntary disclosures varies considerably from respondent to respondent, but overall, the first disclosures since the SFDR regulation came into effect are not very detailed;
- the degree of alignment with the goals set by the Paris Agreement is low overall, and when reported, is often not very specific;
- the level of compliance with the details required to explain why financial market actors are not considering the negative impact of their investment decisions is low.

The report also includes a series of recommendations for national competent authorities to ensure appropriate supervision of the practices of financial market participants, for example by conducting regular surveys of the extent to which the SFDR is being applied in their own markets.

**July 26<sup>th</sup> 2022 – ECB and European Systemic Risk Council agree on the systemic nature of climate risk and start thinking about an adequate macroprudential response**

On July 26<sup>th</sup> 2022, the European Central Bank (ECB) and the European Systemic Risk Board (ESRB) [jointly published](#) a report on the macroprudential challenges of climate change and how climate shocks may affect the European financial system.

The report's findings demonstrate that climate risks can quickly spread throughout the financial system and significantly affect companies and banks. The report identifies several amplifiers of climate risk in the financial system:

- transition risks due to the existing economic and financial linkages between banks and businesses. For example, a rise in carbon prices could increase the likelihood that the failure of one company will lead to the failure of another. While this applies particularly to high-emitting firms, it could also affect their lower-carbon providers and counterparties.
- Interrelated natural hazards-such as floods, heat waves, and wildfires-can amplify physical climate risk, as they can cluster and exacerbate each other.
- Market dynamics can also amplify the financial impact of physical risks. For example, a climate shock could lead to a sudden repricing of climate risk, triggering fire sales, where financial institutions-especially those with overlapping portfolios-quickly sell large numbers of exposed assets at the same time at throwaway prices.

The analysis of different scenarios suggests that climate risks could take shape in the financial system in a specific order. First, unexpected climate shocks could have a sudden impact on market prices, hitting the portfolios of investment funds, pension funds and insurance companies first. Second, this sudden re-pricing could cause companies to default, resulting in losses for exposed banks.

In a disorderly transition scenario, marked by an immediate and substantial increase in carbon prices, the respective market losses of insurers and investment funds could potentially amount to 3% and 25% on short-term stressed assets. Instead, the report tends to show that an orderly transition with a "net zero emissions" scenario by 2050 could mitigate these shocks and limit the consequences for companies and banks, reducing the probability of corporate default by about 13-20% in 2050 compared to current policies. This would also reduce credit losses for banks.

The report finally assesses the scope of macroprudential policies as part of a broader policy response to address the financial impact of climate change. It makes the case for adapting existing instruments, such as systemic risk buffers or concentration thresholds. These measures could, according to the report's authors, complement efforts at the micro-prudential level, such as the ECB's climate risk monitoring program, including a climate risk stress test.

**July 25th 2022 – SFDR: the delegated act on implementation of the “do no significant harm” principle has been published in the Official Journal of the European Union**

On July 25th 2022, the [Delegated Regulation](#), presented by the European Commission in April 2022, on technical standards specifying the details of the content and presentation of the information in relation to the principle of “do no significant harm” was published in the Official Journal of the European Union.

This Delegated Regulation specifies the content, methods and presentation of information relating to sustainability indicators and negative sustainability impacts. It also details the content and form that information on the promotion of environmental or social characteristics and sustainable investment objectives must take in pre-contractual documents, on websites and in periodic reports.

This delegated Act is part of the [Regulation on sustainability reporting in the financial services sector \(SFDR\)](#) which aims to provide end-investors with access to reliable, clear, and accurate information to enable them to make informed decisions.

To this end, the European Insurance and Pensions Authority [also published](#) on July 26<sup>th</sup> 2022 several annexes to the delegated act including model publications for pre-contractual environmental and social information and for the statement on key adverse sustainability impacts.

**Next step:**

**The delegated regulation will enter into force on January 1<sup>st</sup> 2023.**

**July 12<sup>th</sup> 2022 - The Internal Market and Consumer Protection (IMCO) committee adopts its report on the proposed revision of the Consumer Credit Directive.**

On July 12<sup>th</sup> 2022, the members of the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) adopted their report on [the proposed revision of the Consumer Credit Directive](#). The report was adopted with a large majority of 42 votes to 1 (and 1 abstention).

Pending the publication of the actual voted report, [the compromise amendments](#), which were agreed between parliamentary groups prior to the vote, have been published.

According to the adopted report, the revised directive should cover credit agreements up to 100,000 euros. A higher limit (EUR 150,000) could, however, be determined by the competent national authorities based on the economic situation of a member state. Small loans (less than 200 euros), interest-free loans and loans that must be repaid within three months and are subject to low taxes would be excluded from the scope of the directive. Leases, where there is no obligation to purchase, and purchases with deferred payments are also excluded from the scope.

- **Specific provisions:**

- 1. Clear and easily accessible pre-contractual information for consumers**

Consumers must have access to clear, harmonized and sufficiently understandable information to compare different offers. The information must be in the foreground and presented in an understandable way. It is specified that consumers must be able to see all essential information easily, even on their telephone. A warning of the legal and financial consequences of late payment or non-repayment of a loan must also be included in the pre-contractual information to be provided.

The pre-contractual information must be provided in paper form or in any other format chosen by the consumer. In addition, it must be provided to the consumer in a timely manner and in any case before the consumer is bound by a loan offer or contract, including when distance communication means are used. Likewise, consumers will have to receive a communication indicating that they have a right of withdrawal of 14 calendar days from the signing of the credit agreement or the contract for the provision of participatory credit services without having to give any justification.

Finally, adequate explanations must be provided to consumers free of charge and prior to the conclusion of a contract, regarding the legal and financial consequences that may arise from a breach of contractual obligations. Member States may require creditors and credit intermediaries to document in what form and at what time these explanations must be given.

- 2. Assessment of creditworthiness**

The MEPs have introduced additional criteria for assessing the creditworthiness of parties taking out a loan before it is granted. In order to assess the creditworthiness of consumers with little or no credit history, other information may be considered, including from non-bank lenders, telecommunications providers, and utilities. However, social network data and health information should not be considered. Similarly, MEPs state in their report that the right to be forgotten should be guaranteed.

MEPs also agreed that the European Banking Authority (EBA) should draw up guidelines specifying how lenders and providers of participatory credit services should carry out this credit assessment.

- 3. Consumer protection and measures to combat over indebtedness**

The MEPs stressed that advertisements for credit must contain a clear and prominent warning to reduce the risk of mis-selling and to warn that borrowing money also costs money. The MEPS also expressed their wish to regulate overdraft facilities and overdrafts to increase the level of consumer protection and avoid over indebtedness.

**Next steps:**

The report adopted by the parliamentarians of the IMCO committee still needs to be voted in the plenary session in September 2022 (*tbc*). Inter-institutional negotiations will start once the European Parliament has adopted its formal position.

**July 12th 2022 – Deforestation Regulation: MEPs adopt their position and extend due diligence requirements to financial institutions**

On July 12<sup>th</sup> 2022, the members of the Environment and Public Health Committee (ENVI) [adopted](#) their report on the [proposed regulation to curb global deforestation](#). The purpose of the regulation is to strengthen the EU's contribution to the fight against deforestation, particularly imported deforestation, by ensuring that EU supply chains are free of products linked to deforestation or forest degradation.

The [report adopted](#) by the parliamentarians is more ambitious than the European Commission's initial proposal and provides for, among other things, a broader scope of application and a higher due diligence requirement.

According to the adopted report, companies introducing and marketing products on the EU market will be required to assess the risks in their supply chain. **MEPs also extended the due diligence requirements to European financial institutions**, whose investment portfolios would have to be screened for links to projects and companies involved in forest destruction. MEPs' position on the extension of the scope was the subject of a broad consensus between the political groups (via amendments tabled by Renew, S&D, Greens/EFA) and is justified by the fact that MEPs want to prevent financial institutions, such as banks, insurance companies and investment firms, from supporting projects directly or indirectly linked to deforestation.

MEPs maintained the system of classifying countries into three risk categories (high, medium, and low). Within 6 months of the Regulation coming into force, the Commission would establish the classification of countries based on a transparent assessment. Imports from low-risk countries would be subject to simplified due diligence with lesser obligations.

**Next steps:**

As the Council also adopted its [position](#) in June, trilogues can start as soon as the Parliament has adopted its position in plenary session. It should be noted that neither the Council's position nor the European Commission's initial proposal foresees the extension of the scope of the Deforestation Regulation to financial institutions.

**July 8th 2022 – The European Central Bank publishes the results of its climate risk stress test**

On July 8<sup>th</sup> 2022, the European Central Bank [published](#) the results of its climate risk stress test, conducted on a sample of 104 EU banks. The results show that European banks are not sufficiently incorporating climate risks into their internal models despite significant progress made in 2020.

The analysis of the results highlights 3 main conclusions:

- Most banks are able to produce comprehensive and innovative information on their climate risk. However, 60% of banks have not yet developed a framework to test their climate risk resilience. Similarly, most banks do not include climate risk in their credit risk models and only 20% consider climate risk when making loans. The ECB test also showed that banks fall short of "best practice", according to which they should implement climate stress testing capabilities that include multiple climate risk transmission channels (market and credit risks) and multiple portfolios (corporates, mortgages, etc.).

- Most banks lack robust climate risk stress testing frameworks and lack relevant data to assess the climate risks they face.
- Regarding banks' long-term projections under different climate risk scenarios, the results show that an orderly green transition results in smaller losses than haphazard actions taken quickly in the absence of policy measures. However, the ECB points out that few banks differentiate between the different scenarios in the long term because they lack robust strategies, other than the tendency to reduce exposures to the most polluting sectors and support lower-carbon emitting companies. Banks therefore need to take greater account of direct and indirect transmission channels in their long-term strategies.

This stress test, which is part of the ECB's climate roadmap, is not a capital adequacy exercise but rather a learning exercise for banks and supervisors. Its objective is to collect qualitative and quantitative information, with a view to assessing the sector's preparedness for climate risks and gathering best practices in climate risk management.

**Next steps:**

**The ECB says the results of this stress test will contribute to the Supervisory Review and Evaluation Process (SREP). There will be no direct impact on capital through Pillar 2 guidance this year.**

**All participating banks have received individual feedback and are expected to take action accordingly, in line with the "best practices" that the ECB will publish in the last quarter of 2022.**

**July 7<sup>th</sup> 2022 - European Commission publishes its SME referral report**

On July 7<sup>th</sup> 2022, the European Commission [published](#) its report regarding the feasibility of implementing a SME referral scheme. This scheme would require banks to direct SMEs to an alternative source of funding in case they turn down their funding application.

The report highlights that a SME whose loan had been denied could still be deemed suitable by other financial institutions such as different sectorial or geographic banks, business angels or private equity funds.

The European Commission analyzes three ways of approaching this issue:

- The **first option** is that banks would send the information from SMEs whose loan application was denied to all the financial institutions members of the referral scheme. To reduce costs for banks the information would be sent on a non-standardized format. However, the Commission considers that option as hardly feasible as it would be very costly for supervisors and would not solve the issue of promoting cross-border funding.
- The **second option** would be that SMEs whose funding request was rejected receive from the bank an information sheet compiling all the information in a standardized format. This option would be cost-efficient and easy to implement but would not *per se* help SMEs in finding new sources of funding.
- Lastly, the **third option** would be to make **banks upload the information from SMEs whose loan was denied into the European Single Access Point (ESAP) platform**. It would be highly feasible and would incur no heavy costs for scheme participants.

The European Commission judges that the **third option would be the most suitable to achieve the aims of the SME referral scheme**, yet, it considers that it would have to wait until the ESAP proposal is formally adopted by co-legislators.

**July 6<sup>th</sup> 2022 – The Commission's taxonomy delegated act on the classification of energy activities finally adopted**

On July 6<sup>th</sup> 2022, [members of the European Parliament did not object](#) in a plenary vote to the draft complementary delegated act to the EU Taxonomy classifying energy activities and declaring gas and nuclear as transitional activities. The objection, which took the form of a [motion for a resolution](#), received only 278 votes. An absolute majority would have been necessary to reject the act proposed by the European Commission.

A large majority of the EPP, Renew, ECR and ID members de facto approved the decision of the European executive by refusing to vote on the objection. On the contrary, the Greens and the radical left have constantly denounced the "greenwashing" of gas and nuclear power. The Social Democrats (S&D) also voted in favour of the objection, apart from about 20 members.

On July 11<sup>th</sup> 2022, the period available to EU co-legislators to object to the draft delegated act classifying energy activities in the EU taxonomy expired. In the absence of a sufficient majority of member states to oppose the delegated act, the text was adopted by the EU Council under a silent procedure.

**Next steps:**

**The delegated act, now approved by the co-legislators and [published](#) on July 15<sup>th</sup> 2022, in the Official Journal of the EU, will enter into force on January 1<sup>st</sup> 2023.**

**Austria and Luxembourg have already stated that they will take the delegated act to the EU Court of Justice to denounce it as illegal.**

**June 22<sup>nd</sup> 2022 - Corporate Sustainability Reporting Directive: colegislators agreed on a compromise position**

On June 22<sup>nd</sup> 2022, negotiators from the Council and the European Parliament [have reached](#) a provisional agreement on the Corporate Sustainability Reporting Directive (CSRD).

The CSRD introduces more detailed requirements for non-financial reporting than the 2014 Non-Financial Reporting Directive (NFRD), particularly with regard to sustainability issues such as environmental rights, social rights, human rights and governance. The objective is to put financial and non-financial information on an equal footing and to ensure that investors and the public have access to reliable, transparent and comparable data.

To ensure that companies comply with the reporting rules, an independent auditor or certifier will ensure that the sustainability information complies with the certification standards adopted by the Union. The European Financial Reporting Advisory Group (EFRAG) will be responsible for setting European sustainability reporting standards.

Regarding the scope, the new sustainability reporting standards will apply to all large companies (more than 250 employees and €40 million in revenue, as per the Accounting Directive), whether publicly traded or not. These companies will also be responsible for assessing the information at the level of their subsidiaries. For non-EU companies, MEPs argued that foreign companies with substantial activity in the EU market (€150 million annual turnover in the EU) will have to follow similar reporting rules. Listed SMEs will be subject to lighter reporting standards.

The regulation will be implemented in three stages:

1. Large companies already subject to the Non-Financial Reporting Directive (NFRD) will be required to publish a sustainability reporting from 2024.

2. Large companies not currently subject to the NFRD will have to implement reporting from 1 January 2025.
3. The effective date is shifted to 2026 for listed SMEs, as well as for small and non-complex credit institutions and captive insurance companies, with an opt-out possibility until 2028 for listed SMEs.

**Next steps:**

**The Parliament and Council will now have to formally approve the agreement before it is published in the Journal official of the EU**

**June 20<sup>th</sup> - The European Banking Federation publishes its position on the new Corporate Sustainability Due Diligence Directive proposal**

On June 20<sup>th</sup> 2022, the European Banking Federation (EBF) [published](#) its position on the proposed Corporate Sustainability Due Diligence Directive (CSDD).

The main points put forward by the European Banking Federation are the following:

- The directive should clarify whether financial entities should identify the negative impact only once at customer onboarding or for each new product/service a company sells to that same customer.
- The EBF believes that the due diligence requirements developed by this directive should apply at the consolidated group level and that subsidiaries should be exempted.
- The notion of "directors" mentioned in the proposed directive should be clarified according to the EBF: the proposal does not seem to distinguish between executive and non-executive directors, or even between board members and senior management.

Finally, the EBF strongly opposes the inclusion in the Directive of the proposed provisions on civil liability (Article 22) and the payment of damages to affected persons and/or communities (Article 8). In EBF's view, they run counter to established principles of national civil law and create an unjustified and uncertain legal risk for companies.

**June 15<sup>th</sup> 2022 - Priorities of the Czech Presidency of the Council for the coming 6 months**

On June 15<sup>th</sup> 2022, the Czech Republic, which will succeed France as President of the Council of the EU on July 1<sup>st</sup>, [presented](#) the political priorities they wish to implement during their term.

The top political priorities put forward are:

- the **War in Ukraine** and the management and coordination of measures adopted in response by Member States;
- **Energy security**, with the emphasis on the "RePowerEU" plan recently presented by the European Commission;
- Strengthening the **EU's defense capabilities** and cyberspace security.

**Regarding the economy in particular, the Czech Presidency intends to emphasize the EU's economic resilience and competitiveness in its program.** Strengthening trade relations with democratic third countries, promoting domestic production capacity and increasing European independence from foreign production chains (e.g. Chips European Act) are among the priority measures of the upcoming Council Presidency. The deepening of transatlantic cooperation in the framework of the EU-US Trade and Technology Council is also mentioned in the program.



**Regarding digital issues, the Czech Presidency has chosen to focus on the Artificial Intelligence (AI) Regulation, the Digital Identity Regulation (E-ID) and the Data Act,** proposals on which the Czech Republic expects to adopt a position or at least to make positive progress before December 2022. In parallel, the Czech Presidency wishes to make concrete progress on cybersecurity issues with the adoption of the Digital Decade Agenda and the advancement of negotiations on the Cyber Resilience Act and the Connectivity Act. The E-privacy regulation should see trilogues continue without the promise of a conclusion in the next 6 months.

#### **May 30<sup>th</sup> 2022- The European Council agrees on a 6<sup>th</sup> package of sanctions against Russia**

The European Council [agreed](#) to intensify pressure on Russia through a 6<sup>th</sup> package of sanctions. The sanctions will cover crude oil as well as petroleum products but will temporary exempt crude oil delivered by pipeline. The European Council also agreed on additional measures to support Ukraine such as a new exceptional macro-financial assistance of up to EUR 9 billion in 2022.

#### **May 2022- Taxonomy latest developments**

##### ***European Parliament latest developments***

On May 30<sup>th</sup>, the Economic and Monetary Affairs (ECON) and the Environment, Public Health and Food Safety (ENVI) joint committee met to discuss the Taxonomy complementary delegated act on the inclusion of gas and nuclear as transition activities.

The existing text raised a number of criticism against the inclusion of gas and nuclear activities as it is not seen as a based on scientific evidence. MEPs are now regretting that this delegated act proposal is being inconsistent with EU aim to end its dependance on Russian gas.

##### ***Council latest developments***

On May 13<sup>th</sup>, Germany announced its decision to oppose the complementary delegated act on nuclear and gas. Member states already opposing the complementary delegated act include Austria, Luxembourg, Denmark.

French Presidency of the Council of the European Union announced it was planning on putting a vote on the agenda before the end of its presidency that is to say before June 30<sup>th</sup>.

##### **Next steps:**

**The joint committee ECON/ENVI will vote on the delegated act proposal on June 14<sup>th</sup>. The plenary vote is expected to take place on July 9<sup>th</sup> 2022.**

**Council and European Parliament have until July 10<sup>th</sup> to oppose the act, if they choose to, according to the deadline fixed by the Commission.**

#### **April 28<sup>th</sup> - Introduction of the Corporate Sustainability Due Diligence Directive proposal to MEPs**

On April 28<sup>th</sup>, representatives of the European Commission introduced more in detail the content of the [directive proposal on Corporate Sustainability Due Diligence](#) (CSDD) to parliamentarians of the ENVI committee in the European Parliament.

The aim of this proposal is to encourage a change in the behavior of companies by inciting them to act on the potential harmful consequences they may have on the environment all along the value chain.

The European Commission insisted on the double responsibility that will be established by this directive:

- the **responsibility of the company**, which will have to implement governance practices and procedures to ensure that operations carried out internally and all along the value chain (including direct suppliers) respect the environment and human rights in accordance with the “do not harm” principle.
- the **responsibility of directors** by proposing to index their bonus on the company's performance in terms of sustainability. This provision aims to encourage operational managers to integrate into their role due diligence missions.

Then, the rules developed with the sustainability due diligence directive will be based on the following principles:

- **legal certainty:** the provisions will be based on already existing voluntary standards such as the OECD guidelines and the UN guidelines for corporate due diligence.
- **proportionality:** SMEs are excluded from the scope of application of the proposal. Moreover, the obligations are obligations of means and not of performance for companies entering into the scope. Finally, the notion of value chain is limited to already established business relationships and the responsibility of the company is limited to direct suppliers.
- **cooperation:** the European Commission wishes to develop cooperation on the ground in terms of due diligence and work on reducing the burden on companies in terms of compliance by proposing supporting measures.

Parliamentarians are already divided on the content of the future directive and an opposition is already visible between on one hand those stating that the proposed provisions could harm international competitiveness of EU companies and on the other hand those denouncing the lack of ambition of the proposal and asking for an extension of the scope of the directive to all EU companies.

#### April - Taxonomy : latest developments

##### **Divisions persists among Member states and MEPS on the delegated act related to the classification of energy activities**

Member States and parliamentarians are called to vote before summer on whether or not to include nuclear energy and gas in the taxonomy.

Member States have indeed 4 months to express their opposition to the delegated act, failing which it will be adopted at the end of the period. The French Presidency of the Council of the EU would like Member States to confirm them before 30 April whether or not they wish to oppose the text with a view to organising a vote, before the end of the mandate of the French Presidency of the Council of the EU, to validate or not the adoption of the commission's delegated act. Despite strong opposition from several Member States, the current context of energy crisis could influence the final vote of approval of the delegated act. Austria, Luxembourg and Germany could potentially vote against it.

As for the European Parliament, MEPs have until the end of May to file motions of objection if they would like to. The ENVI and ECON committees will then be in charge of submitting them to the vote of their members. The final vote of the European Parliament is scheduled for the plenary session of the first week of July 2022.

##### **The taxonomy impact on SME's and bank lending**

On April 5<sup>th</sup>, a conference on the challenges of taxonomy for SMEs and bank lending brought together key European stakeholders currently working on the topic: the Co-Director of Sustainability at Mazars, a representative of Business Europe working on corporate reporting issues, as well as a representative of the European Banking Federation and a representative of SMEUnited.

Mazars' Director of Sustainability began the conference by noting that while SMEs are not primarily affected by the classification created by the taxonomy and the reporting obligations arising from its implementation, their interaction with broader stakeholders forces them to comply indirectly with the taxonomy's requirements. Lending is particularly affected: as banks are required to disclose their climate risk exposures and their green asset ratio, SMEs receiving loans to finance their activities will be indirectly impacted depending on their sector of activity.

Two priorities emerge from the debate: the simplification of reporting and compliance processes to facilitate their appropriation by SMEs and the creation of incentives to encourage SMEs to accelerate their compliance with the objectives of the EU taxonomy.

### **March 1<sup>st</sup> - Joint EU/US Statement on the Bilateral Financial Regulatory Forum**

On March 1<sup>st</sup> and 2<sup>nd</sup>, EU and U.S. representatives [met](#) at the Financial Regulatory Forum to exchange views on current financial topics interesting both parties.

As they considered issues related to sustainable finance, participants discussed ongoing work on climate and sustainability-related financial reporting. The European Union representatives discussed its future directive on corporate sustainability reporting ([CSRD](#)). Representatives of the SEC (Securities and Exchange Commission) provided an update on its work to develop rules on climate risk and human capital disclosures. Both sides recognized the value of continuing bilateral exchanges at the technical level on sustainability disclosures. Participants also discussed the assessment of climate-related financial risks and possible financial regulatory and supervisory responses, including in the insurance sector.

With respect to capital markets, participants discussed the ongoing monitoring of the benchmark rate transition and the progress of their respective legislative efforts to ensure a smooth transition away from LIBOR. Participants also discussed the U.S. implementation of new capital and financial reporting requirements for swap dealers. Recent SEC regulatory proposals regarding Treasury trading platforms, settlement cycle, reporting of large security-based swap positions and securities lending were also discussed.

The EU's review of the Markets in Financial Instruments Directive and Regulation and European Market Infrastructure Regulation (*MiFID* and *MiFIR*) were discussed. The two sides also compared their respective efforts in the area of fund reform and took stock of ongoing discussions regarding data transfers and the registration of EU funds in the United States.

With regard to the banking sector in particular, the participants discussed the implementation of the Basel III reforms and the treatment of foreign bank branches, as well as the implementation in the EU of the rules on investment firms.

### **March 15<sup>th</sup> - CSRD: latest developments**

#### **1. The European Parliament adopts its position**

On March 15<sup>th</sup>, the European Parliament's committee on Legal Affairs (JURI) adopted Pascal Durand (RE,FR)'s [draft report](#) on the corporate sustainability reporting directive proposal ([CSRD](#)) with 22 votes in favor, 1 against and 0 abstentions

The adopted report contains the following modifications:

- Maintaining the 250 employee threshold but excluding listed SMEs

- Establishing support mechanisms at Member-State level to assist companies in their reporting obligations.
- Mandating the European Commission to draw up a list of high-risk sectors for which there would be specific obligations
- Including third country companies of the same size operating in the EU
- Postponing the application date by one year “first reporting in 2025 on 2024 data, rather than 2024 on 2023 data according to the European Commission proposal.
- Prohibiting corporate auditors from performing sustainability information assurance: two different providers would need to be responsible for corporate audit and sustainability information assurance.

According to the European Parliament’s version, all SMEs would be able to use disclosure standards on a voluntary basis.

As the Council of the EU had already adopted its position on February 24<sup>th</sup>, trilogues may now begin.

## **2. Beginning of trilogues**

On March 28<sup>th</sup>, the first session of inter-institutional negotiations (“trilogues”) on the CSRD.

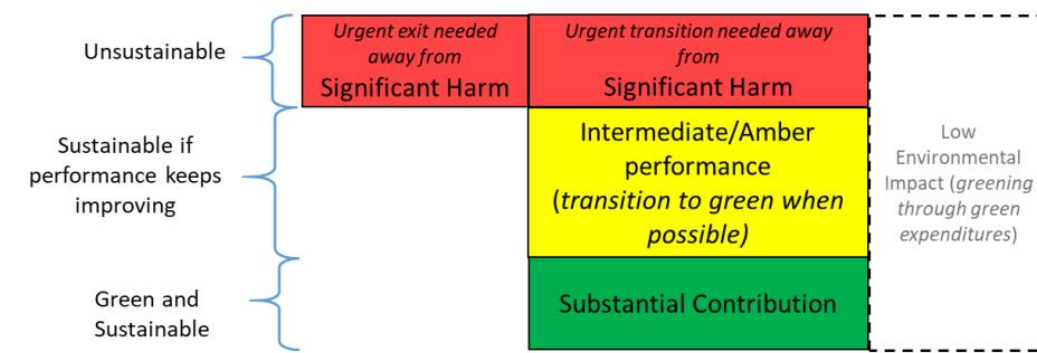
A first [“four-column” table](#) has been drawn to be used in negotiations. This document gathers the initial proposal of the European Commission, the position of the European Parliament and the position of the Council of the EU. The last column is dedicated to potential agreements.

### **March 29<sup>th</sup> – EU Taxonomy: the Platform for sustainable finance proposes an extension of current classification and creation of new intermediate categories**

On March 29<sup>th</sup>, the Platform for Sustainable Finance [published](#) a report recommending the extension of the current scope of the EU taxonomy and the creation of new intermediate categories.

The Platform’s objective behind this new publication is to encourage investments in so-called intermediate economic activities in term of their environmental impact in order to make them eligible to transition financing and ultimately improve their environmental performance. According to the Platform’s experts, this would also increase transparency in terms of asset allocation and prevent any risk of greenwashing as only truly sustainable activities could be qualified as such.

**Diagram 1. Simplified graphic showing how an extended environmental Taxonomy fits across the whole economy**



While the Commission has recently adopted a draft delegated act aiming at including gas and nuclear power plants in the EU taxonomy as “transitional activities”, the Platform, which has been very critical of the delegated act, would like to bring more clarity to the classification of economic activities.

Thus, the Platform recommends the extension of the current framework of the EU taxonomy beyond economically sustainable activities by creating new categories:

- Two lower categories (red) would cover activities considered “unsustainable” by distinguishing between those that could benefit from investment recognized by the taxonomy as part of a transition plan to improve their environmental performance and those that will remain considered significantly environmentally harmful.
- An intermediate category (orange) would be those activities with average environmental performance. These are defined by the report as activities that fall between the first two categories above and the sustainable category (green, the category that currently exists) and that could therefore benefit from a taxonomy-recognized investment as part of a transition plan to reach the green category.
- Finally, a last category would be low environmental impact activities, i.e., those that do not significantly harm the environment but also do not substantially contribute to any of the 6 environmental objectives of the taxonomy.

#### **February 17<sup>th</sup> – Financial Stability Board addressed G20 Finance Ministers and Central Bank Governors**

On February 17<sup>th</sup>, ahead of the G20 finance ministers' meeting, the Financial Stability Board (FSB) [issued](#) a letter outlining key issues for financial resilience in 2022. The letter identifies heightened economic uncertainty and potentially changes in the global economy as having the potential to significantly affect interest rates and asset prices on the long term.

The letter also notes that digital innovation and more sustainable and innovative forms of financing remain promising areas but open the door to new vulnerabilities. The letter also outlines the main points of the Financial Stability Committee's work program from a global financial resilience perspective:

- Supporting the adjustment of financial markets to a post-COVID world, via work on ways to support a smoother, sustainable, and inclusive global recovery as well as on effective financial sector practices for national authorities;
- Strengthening financial system resilience in light of the COVID experience with a focus on work related to the resilience of non-bank financial intermediation (NBFI) sector;
- Harnessing the benefits of digitization while containing the associated risks, including implementing the G20 roadmap on cross-border payments, addressing the financial risks posed by crypto assets, and developing best practices for regulatory reporting of cyber incidents;
- Addressing financial risks arising from climate change. Works in this area will focus on advancing the FSB's roadmap on the management of climate-related financial risks.

**February 23<sup>rd</sup> - Corporate sustainability and due diligence: the European Commission published its legislative proposal.**

On February 23<sup>rd</sup>, 2022, the European Commission published its [legislative proposal](#) (and [annex](#)) on Corporate Sustainability Due Diligence (CSDD). The proposal aims to regulate how companies identify and respond to the environmental and human rights impacts of their activities.

The proposed directive would only apply to large companies of more than 500 employees and of more than 150 million euros net worldwide turnover.

Companies in high-risk sector, with more than 250 employees and with a net worldwide turnover of more than 40 million euros may also be subject to requirements, with an adaptation period of three years starting from the date of transposition.

The main measures proposed are:

- **Duty of care:** companies should identify potential negative consequences on human rights, climate and the environment and propose solutions
- **Value chain compliance:** these measures would cover the company, and its value chain (subcontractors without limit of degree).
- **Implementation:** supervisory authorities would be designated in each member state and a civil liability mechanism would be put in place.
- **Remuneration of directors:** Member States would be responsible for coordinating directors' remuneration with achieving the objectives of the company's sustainability plans.
- **Directors' duty of care:** the directive would enshrine a specific responsibility of directors ("directors' duty of care") which would mainly consist in:
  - Taking into account human rights, climate change and the environment in their decisions, including in a long-term perspective; this being defined as part of "acting in the best interest of the company".
  - Implementing and monitoring actions related to the "duty of care".
  - Adopting an internal policy on due diligence and integrating it into the company's management practices, and consult stakeholders on this issue.
  - Adapting the company's general strategy to the actual and potential impacts that are identified.
  - Adopting a global plan for the company's sustainable transition and compliance with the climate objectives in accordance with the Paris Agreement (limiting global warming to 1,5°). If climate risk is identified as a major risk for the company's activities, the plan must include emission reduction targets.

### ***Specific provisions for companies in the financial sector***

Financial sector companies, including credit institutions under CRR, are included in the scope. They should also conduct a due diligence process (identification of human rights and environmental impacts) before providing financing solutions or insurance policies.

This due diligence process would be limited to the activities for which the contract is concluded, and the subcontractors involved in those activities. Contracts with households, individuals and SMEs are not affected. The due diligence process for companies in the financial sector should be conducted before the contract is concluded.

#### **Next steps:**

**The proposal for a directive will now be studied by the co-legislators**

### **February 24<sup>th</sup> - CSRD: the Council of the EU agrees on its position**

On February 24<sup>th</sup>, 2022, the Council of the EU adopted its “[general approach](#)” on the proposal for a *Corporate Sustainability Reporting Directive (CSRD)*.

The main changes to the text, compared to the Commission’s initial proposal relate to:

- **the scope:** the Council clarifies how requirements apply to banks and insurance companies. The turnover criterion is clarified for credit institutions and insurance companies.
- **the location of sustainability information:** the Council specifies that the information must be published in a clearly identifiable section of the management report.
- **intangible assets**, the definition of which has been clarified
- **the inclusion of SMEs in the scope of the obligations:** on this point, a compromise has been found which consists in limiting the information to be provided for this category of actors and in an exemption when the reporting is carried out at the consolidated level (the parent company also published the data relating to subsidiaries).
- **the information certification regime** and the conditions for auditors performing this assurance
- **the single electronic reporting format** to be used for the publication of this information
- **beginning of the sustainability reporting**, for which the Council has determined the following dates:
  - 2025, with data starting from January 1<sup>st</sup>, 2024, for companies already subject to non-financial reporting under the existing directive (NFRD)
  - 2026, with data starting from January 1<sup>st</sup>, 2025, for large companies which are not currently subject to non-financial reporting under the existing directive (NFRD)
  - 2027, with data starting from January 1<sup>st</sup>, 2026, for listed SMEs as well as for small and non-complex credit institutions and captive insurance companies.

The Commission's proposal aims to extend the scope of the obligations to publish information on the environmental, social and governance (ESG) impact of companies - or non-financial reporting. It extends this obligation, currently limited to very large companies, to all large companies and all listed companies. Unlisted SMEs can adopt the standards on a voluntary basis.

Also, under the proposal, the information will have to be certified by an independent third party (such as auditors) and the reports will have to be produced in accordance with standards decided at European level, both for the content of the information and the structure of the reporting.



**Next steps:**

The council of the EU will use this text as a basis for inter-institutional negotiations, which can begin as soon as the European Parliament adopts its position.

The vote in the JURI committee of the European Parliament of Pascal Durand (RE, FR)'s draft report on the CSRD will take place on March 14<sup>th</sup> or 15<sup>th</sup>. The report once adopted will constitute the European Parliament's position.

**January 11<sup>th</sup> - Financial literacy : European Commission and OECD join forces to develop a common framework of fundamentals competences**

On January 11<sup>th</sup>, the European Commission, together with the OECD's International Network for Financial Education, published a common framework of financial competences for European adults. The framework aims to improve the basic financial skills of individuals that an individual needs to have in order to make informed financial decisions

The framework of competences, as presented by the Commission, emphasizes that understanding of the following topics needs to be developed in particular:

- payment and purchases ;
- saving (including managing household income and expenditure, and how savings and interest rates work);
- credit, debt and associated risks (including calculating interest rates, identifying sources of risk, and the specific risks associated with financial products available online);
- retail investments, pensions and insurance (the notion of financial security is especially underlined);
- consumer protection (including data protection, right to prior information, financial education, redress in case of fraud).

The framework will support the development of public policies and educational programmes by Member States, educational institutions and the financial institutions. It will also support the exchange of good practice between policy makers and stakeholders in the EU.

The Financial Competence Framework is part of the Capital Markets Union Action Plan published by the European Commission in September 2020.

**January - CSRD: latest developments**

***MEPS in the JURI committee discuss proposed amendments***

On January 10<sup>th</sup>, 2022, the Members of the European Parliament in the JURI committee discussed proposed amendments to the Corporate Sustainability Reporting Directive ([CSRD](#)) proposal.

The rapporteur, Pascal Durand (RE, FR) recalled the main points of the text and the discussion, in line with the approach of his draft [report](#). He shared his analysis on points subject to agreement (protecting EU companies by applying the same standards to third-country companies) and disagreement (the scope of the obligations).

The **EPP** insisted on "the threats to our entrepreneurs' and called for caution in the implementation of what is perceived as an administrative burden for companies. For the EPP group, sustainability reporting standards should only concern large companies and those from third countries operating in the Union. The **S&D**,

**Greens/EFA and Left** political groups asked to raise the level of ambition of the text by extending the number of companies concerned by the reporting obligations and by putting in place more precise reporting standards.

### ***Compromise proposal in the Council of the EU***

On January 28<sup>th</sup>, the French presidency of the Council of the EU put forward a first compromise proposal on the proposed Directive on the publication of sustainability information by certain companies (CSRD).

Among the main changes, the French presidency of the Council proposes

- to remove the obligation to prepare financial statements with the single European electronic format (ESEF);
- to give more flexibility to the Member States for the choice of the entities in charge of the assurance of sustainability information;
- to better define the scope, without changing it;
- to slightly limit flexibility for the publication of certain information (e.g. data on value chains would be published when “possible” and not when “appropriate”;
- to specify the modalities for publication (“*via a dedicated section of the management report*”).

### **Next steps :**

**Pascal Durand’s draft report will be subject to the vote of the members of the JURI committee on March 16<sup>th</sup>.**

**In the Council, the draft compromise proposal will be subject to vote on February 24<sup>th</sup>.**

**When the co-legislators have each adopted their position, the trilogues may start.**

### **February 2<sup>nd</sup> - Taxonomy: latest developments**

On February 2<sup>nd</sup>, the European Commission [adopted](#) the final version of the Delegated Act of the Taxonomy Regulation aiming at classifying energy activities. Similar in many respects to its draft act published on December 30, fossil gas and nuclear energy remain included in the EU taxonomy under the heading of "transitional activity".

The Commission states that certain gas and nuclear activities contribute to the transition to climate neutrality. With regard to nuclear activities in particular, the Commission emphasizes that they must meet nuclear and environmental safety requirements. Other more specific conditions aimed at ensuring transparency are set out in the delegated act: companies operating in the gas and nuclear sectors will be subject to specific information requirements for investors to make informed choices.

Previously, on January 24<sup>th</sup>, the Sustainable Finance Platform [published](#) a negative opinion on the open consultation on the draft delegated act. According to the Platform's experts, "the technical selection criteria differ fundamentally from those of the already existing climate delegated act and are not consistent with the provisions of the regulation", particularly with regard to the article on "transitional" activities. As for nuclear power, although greenhouse gas emissions from nuclear power are low, this "does not make the activity green and sustainable for the purposes of the taxonomy," underlined the assessment published by the Platform.

On Member States' side, several ministers (Spain, Austria, Denmark, Luxembourg) [co-signed](#) a letter calling on the European Commission to revise its draft delegated act before its publication in order not to include nuclear energy.

The Council of the EU and the European Parliament have 4 months to approve or oppose the delegated act published on February 2. A qualified majority of 55% of the Member States and 65% of the population is needed to successfully reject the delegated act in the Council. A simple majority will be sufficient in the Parliament.

## COVID-19

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### **December 16<sup>th</sup>, 2022 - European Banking Authority ends reporting requirements developed during Covid-19 pandemic**

On December 16<sup>th</sup>, 2022, the European Banking Authority (EBA) [published](#) a report on the measures adopted during Covid-19, which provides an overview of the various policy measures taken during the pandemic, their status, and their termination where applicable.

The report notes that the volumes of loans subject to various forms of public guarantees and moratoriums on payment and repayment of loans under the reporting guidelines put in place during Covid-19 have continued to decline during 2022, in the context of the normalization of the health situation.

In this context and in application of the principle of proportionality, EBA has announced its decision to terminate as of January 1, 2023 the guidelines on reporting and prudential reporting put in place during the pandemic. However, EBA calls for a certain level of vigilance to be maintained by financial institutions.

The report notes that, overall, the EU banking system has weathered the Covid-19 crisis well, preserving adequate capital ratios, displaying good asset quality and continuing to hold significant liquidity. In conclusion, EBA calls for a fair and swift implementation of the Basel III reforms in the EU in order to strengthen the prudential banking framework in the long term.

### **June 21<sup>st</sup> 2022 - The European Banking Authority is publishing principles to be applied to ensure representativeness of the IRB-relevant data impacted by the COVID-19 pandemic**

On June 21<sup>st</sup> 2022, the European Banking Authority (EBA) [issued](#) four principles to guide supervisors in assessing data impacted by COVID-19 with respect to banks using internal ratings-based (IRB) models.

The first principle states that the guidance on assessing the representativeness of data set forth in the EBA's guidelines on default probabilities and loss given default estimates should also be applied in the case of COVID-19-impacted data.

The second principle states that a significant decrease in risk parameters from pre-crisis levels indicates a potential lack of representativeness and should be further analyzed.

The third principle addresses the default and loss rates observed during the pandemic and states that if these rates are not representative, recalibration should be deferred to lower long-term averages.

Finally, the fourth principle addresses the validation and recalibration of recession losses in the context of the COVID-19 pandemic. In this context, EBA recommends that potential downward recalibrations be deferred at least until the effects of the crisis have fully materialized in observed loss rates.

**Next steps:**

**These 4 principles are part of a supervisory manual, which EBA will publish later in 2022, with the aim of ensuring a harmonized approach of COVID-19 impacted data, particularly where the use of moratoria and other support measures has led to changes in default rates.**

**March 28<sup>th</sup> - COVID-19: the ECB published a report on vulnerabilities for eurozone firms**

On March 28<sup>th</sup>, 2022, the European Central Bank (ECB) released a [report](#) on the vulnerabilities of eurozone firms after the COVID-19 crisis in terms of financing.

The ECB report highlights the shock that the COVID-19 crisis represented for the European non-financial sector. It led to a significant drop in sales, and therefore revenues, but firms met difficulties to adjust their costs quickly to the drop in revenue.

However, companies' liquidity needs could have turned into solvency issues, leading to an increase in defaults and bankruptcies, but this scenario has been avoided for the moment.

The main findings of the report are:

- The service sector and small businesses have been particularly affected, especially since small businesses are more prevalent in sectors at risk of transmission of the disease and which have been subject to restrictive measures.
- Fiscal, monetary and supervisory support measures prevented large losses for firms and increased non-performing loans for banks. Government supported firms to reduce their costs and provided liquidity support. Monetary policy measures, on the other hand, helped maintain favorable lending conditions. The number of bankruptcies in the past two years was consequently exceptionally low. short-term vulnerabilities have diminished, but long-term risk remains : corporate balance sheets are more fragile and debt ratios are heterogeneous, which may create risk for the economic recovery.
- Companies are also facing structural challenges. The pandemic has accelerated structural transformations already underway in the eurozone economy: new forms of work, use of e-commerce, the role of digital technology and reconfiguration of global value chains. These changes may be more difficult for small and medium-sized enterprises to adapt to.

## Consultations

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### December 8<sup>th</sup>, 2022 - European Banking Authority consults stakeholders on changes to data collection for 2024 benchmarking exercise

On December 8<sup>th</sup>, 2022, the European Banking Authority (EBA) [opened](#) a consultation on its [draft amendment to the Technical Implementation Standards \(ITS\)](#) on benchmarking of credit risk, market risk and IFRS 9 models for financial instruments for the financial year 2024.

#### 1. Changes in IFRS9 benchmarking

With regard to IFRS 9 benchmarking, following the phased approach presented in the IFRS 9 roadmap, the EBA proposes to gradually extend the following data collection and benchmarking to portfolios with high default risk (HDP). EBA proposes to make amendments to the ITS appendices to specify the new portfolios that will fall within the scope of 2024 and the set of quantitative models that will be used to collect all relevant quantitative information.

#### 2. Changes to market and credit risk benchmarking

For market risk benchmarking, the most significant change proposed by EBA is the provision of new models for the collection of the Default Risk Charge (DRC) and Residual Risk Add-On (RRAO).

For credit risk benchmarking, EBA proposes to add a limited number of PDHs to ensure that the credit risk and IFRS9 models relate to a common list of portfolios for which the measures specified in the different models should be reported.

#### Next steps :

The consultation is [open](#) until February 28, 2022.

A public hearing is [scheduled](#) by the EBA on February 9 to discuss the purpose and issues of the consultation and the proposed amendments.

### November 15<sup>th</sup> 2022 - The European Supervisory Authorities opens a call for evidence on the topic of greenwashing

On 15 November 2022, the three European Supervisory Authorities (ESA) jointly [opened](#) a call for evidence with the aim of gathering stakeholders' views on the factors and risks of greenwashing. The call for evidence also aims to collect information on existing greenwashing practices.

The call for contribution is part of a more general perspective to better understand greenwashing practices throughout the life cycle of financial products as well as to identify areas likely to be more exposed to greenwashing risks.

This consultation is part of the ESAs' [mandate](#), awarded by the European Commission in May 2022, to produce an analysis of greenwashing risks and to evaluate the supervision of sustainable finance policies.

#### Next steps

The call for evidence is open until January 10<sup>th</sup> 2023.

### July 29<sup>th</sup> 2022- The European Banking Authority is consulting on the methodology for calculating contributions to deposit guarantee schemes

On July 29<sup>th</sup> 2022, the European Banking Authority [published](#) a consultation on its [revised guidelines on contributions to deposit guarantee schemes \(DGS\)](#).

The revised guidelines on contributions to deposit guarantee schemes aim to reinforce proportionality between a credit institution's risk and its contributions to deposit guarantee schemes and to streamline the original guidelines. The revised guidelines also include provisions to ensure that the methodology by which deposit guarantee schemes collect contributions from credit institutions is harmonized according to their risk level.

In its 2021-2022 review of the guidelines, the EBA found that credit institutions that had been subject to DGS's intervention since 2015 were mostly classified as the riskiest members of their current scheme. Therefore, the EBA concluded that the methodology set forth in the guidelines remained appropriate while identifying several areas for substantial improvement and made the following proposals:

- Setting minimum thresholds for the majority of the core risk indicators and adjusting their minimum weights to better reflect the performance of the indicators in measuring risk for DGS;
- Introducing an improved formula for determining the risk adjustment factor for each member institution that ensures a consistent relationship between the risk level of institutions and their contributions to DGS;
- Introducing clarifications on how to account for deposits whose coverage by the deposit guarantee scheme is subject to uncertainty, including with respect to customer funds, thereby ensuring closer alignment between the amount of a credit institution's covered deposits and its contributions.

**Next steps :**

The public [consultation](#) is open until October 2022.

A [public hearing](#) will take place on September 27<sup>th</sup> 2022 to discuss revised guidelines.

**July 28<sup>th</sup> 2022 - The European Banking Authority is consulting on the validation of internal rating systems**

On July 28<sup>th</sup> 2022, the European Banking Authority [published](#) a supervisory manual on the validation of internal rating systems. The purpose of the manual is to clarify the role of the validation function within the framework of corporate governance, in particular with regard to the scope of the function's work and the interaction with the credit risk control unit.

More specifically, the manual provides general guidance on the expectations for the validation function as already defined in Article 185 of the CRR. It draws, based on the Regulatory Technical Standards (RTS) and the EBA's IRB repair roadmap, a detailed description of the areas that the validation function is expected to assess.

In practice, the manual does not present a methodology to be used by the validation function but rather specifies the elements of the rating systems that are to be assessed by the validation function. From this perspective, it covers both tasks related to the assessment of pure model performance, reflecting CRR's distinction between risk differentiation and risk quantification, and tasks related to the modeling environment, such as assessing data quality and model implementation.

Finally, the manual provides a set of expectations and best practices on the work of the validation function depending on its position in the model cycle (first validation or subsequent validation), as well as additional guidance for validating rating systems when using external data or in a data shortage situation.

**Next Steps:**

A [consultation](#) is open until October 28<sup>th</sup> 2022 on the content of the manual presented by the EBA.

A [public hearing](#) to present the manual and discuss the consultation will be held on October 4<sup>th</sup> 2022.

#### **July 6<sup>th</sup> 2022 - The European Commission is consulting on tax evasion**

On July 6<sup>th</sup> 2022, the European Commission published a [public consultation](#) with the objective of gathering stakeholders' views on the role of facilitators of tax fraud and aggressive tax planning.

A future initiative would aim to prevent facilitators from marketing and setting up complex tax avoidance structures, often located in third countries, whose purpose would be the erosion of the tax base of Member States.

The consultation aims to gather stakeholders' views on the role of facilitators in order to better understand the scale of the problem, the need for EU action and possible policy responses.

##### **Next Steps:**

A [consultation](#) is open until October 12th 2022 on the content of the manual presented by the EBA.

An impact assessment assessing the need for a new legislative initiative is underway. The European Commission expects to present a potential initiative in the first quarter of 2023.

#### **May 16<sup>th</sup> – Non-performing loans: EBA is opening a consultation on its draft ITS on transaction data templates**

On May 16<sup>th</sup>, the European Banking Authority (EBA) [launched](#) a public consultation on the [draft Implementing Technical Standards \(ITS\)](#) specifying the requirements for the information that sellers of non-performing loans (NPL) shall provide to prospective buyers, seeking to improve the functioning of NPL secondary markets.

The objective of the draft ITS is to provide a common standard for the NPL transactions across the EU enabling cross-country comparison and reducing information asymmetries between sellers and buyers of NPL.

Draft ITS are built around the templates to be used for the provision of loan-by-loan information regarding counterparties related to NPL, contractual characteristics of the loan itself, any collateral and guarantee provided with the associated enforcement procedures and the historical collection and repayment schedule of the loan.

The draft ITS also take into account the proportionality principle by setting different information requirements depending on the size of NPL, specifying the mandatory and non-mandatory data fields, and considering a different scope of application of the data fields in relation to the nature of the borrower (private individual or corporate), and that of the loan (secured or not).

##### **Next steps:**

The [consultation](#) is open until August 31<sup>st</sup>.

A [public hearing](#) on the draft RTS will take place on June 15<sup>th</sup>.

Following the reception of contributions to the consultation, the EBA's draft ITS will be finalized and submitted to the European Commission by the end of 2022.

#### **May 10<sup>th</sup>- The European Commission launched a consultation on payment services directive (PSD 2) review**

On May 10<sup>th</sup> 2022, the European Commission [launched](#) a public consultation on the [payment services directive \(PSD 2\)](#) review. The consultation process follows the retail investment strategy published by the Commission



in September 2020 and should be assessing if the current directive meets the purpose of enabling an open finance framework.

At this stage the Commission considers three different options:

- Maintaining the current framework through its horizontal legislation ([General Data Protection Regulation -GDPR-](#), [Data Market Act -DMA-](#), [Data Act](#)).
- Increasing the access rights to data in a determined number of areas.
- Allowing the access to client data of the whole financial sector.

**Next steps:**

**The consultation deadline is set to August 2<sup>nd</sup>.**

**Once all the feedback are gathered the Commission will assess the need to make a legislative proposal (expected date: Q4 2022).**

#### **May 10<sup>th</sup> - The European Commission is opening a consultation on the Open Finance Framework**

On May 10<sup>th</sup> 2022, the European Commission [launched](#) a public consultation on a framework for "open finance" in parallel of the ongoing [consultation](#) on PSD2 review.

"Open finance" is understood as the promotion of access by third-party service providers to customer data with their consent. It consists of making possible for third parties to share and access data in the financial sector, based on the model of the Payment Services Directive (PSD2), which provides a regulatory framework for the sharing of and access to payment account data.

For the European Commission, the aim of an "open finance" framework would be to facilitate access to data, increase customer confidence, take into account the risks associated with re-use and promote the construction of fair business models and competition. Building a EU framework for open finance is included in the Commission's [Digital Finance Strategy](#), published in September 2020.

**Next steps:**

**The [consultation](#) on "Open finance" is open until August 2<sup>nd</sup> 2022.**

#### **May 3<sup>rd</sup> - Retail investment : the European Commission launched a consultation on new measures to increase consumer participation in capital markets**

On May 3<sup>rd</sup> 2022, the European Commission [launched](#) a consultation on the roadmap on its future strategy for retail investment. The strategy will aim to improve investor engagement in the capital markets by changing regulatory provisions relating to the sales process, information given to consumers, and developments in the digital environment.

The roadmap states in the first place the problem to be solved: retail investors find it difficult to make the right investment decisions, have difficulty understanding and comparing products, and the investment advice provided is "unreliable and of poor quality".

It also lists options being considered for the oncoming retail investment strategy:

- Improve current consumer information regimes and strengthen national efforts for financial literacy and education;
- Resolve potential conflicts of interest and improve professional standards for advisors;
- Reduce administrative burden lying on retail investors with sufficient experience and knowledge;
- Reorient current suitability assessment regimes to a client-centered approach;

- Adapting rules to accommodate the evolving digital environment;

This new consultation is part of a broad consultation strategy by the European Commission: a [first roadmap](#) was published in April 2021, followed by a [public consultation](#) in May 2021. Earlier this year, in February 2022, a [targeted consultation](#) was launched on suitability and appropriateness assessments of products in relation to investor profiles.

**Next steps:**

The [feedback period](#) on the roadmap is open until May 31<sup>st</sup> 2022.

The retail investment strategy is expected to be published on 4<sup>th</sup> quarter of 2022.

**May 2<sup>nd</sup> - The EBA is opening a consultation on the role of environmental risks in the prudential framework**

On May 2<sup>nd</sup>, the European Banking Authority [published](#) a discussion paper on the role of environmental risks in the prudential framework for credit institutions and investment firms.

The [related-consultation](#) aims to open a discussion on whether and how environmental risks are to be incorporated into the Pillar 1 prudential framework.

The [consultation paper](#) provides an analysis of the extent to which environmental risks are already reflected in the Pillar 1 own funds requirements via internal and external ratings, valuation of financial instruments and collateral, or scenario analysis.

Moreover, the consultation paper adopts a risk-based approach to ensure that the prudential framework reflects underlying risks and supports resilience of financial institutions. It suggests that the introduction of specific risk-weighted adjustment factors should be considered as an alternative to the consideration of environmental risks in the structure of the prudential framework.

Finally, although the discussion paper focuses on Pillar 1 capital requirements, it highlights the need for a comprehensive regulatory approach. The EBA also emphasizes that the publication of this consultation is part of a more comprehensive work it is undertaking in the area of ESG risks, which includes transparency, risk management, Pillar 2 supervision, and macroprudential fund buffers.

**Next steps:**

The [consultation](#) is open until August 2<sup>nd</sup> 2022.

A [public hearing](#) on the consultation will take place on June 17<sup>th</sup> 2022.

The EBA is planning to release a final report on the matter in 2023, after analyzing stakeholders contributions to the consultation.

**March 28<sup>th</sup> - Corporate sustainability due diligence: feedback consultation opened by the European Commission**

On March 28<sup>th</sup>, the European Commission [published](#) a consultation with the aim of gathering stakeholders' views on the [directive proposal](#) on corporate sustainability due diligence (CSDD) which has been released on February 23<sup>rd</sup>.

As a reminder, the objective of this directive is to encourage companies to better manage sustainability issues in their operations and value chains with regard to social rights, the environment and climate change. It aims at improving consideration of ESG issues in corporate governance practices and strategies.

**Next steps:**

The [consultation](#) is open until May 23, 2022.

**January 20<sup>th</sup> - VAT: the European Commission launches a consultation to adapt rules to the digital context**

On January 20<sup>th</sup>, 2022, the European Commission launched a [consultation](#) on adapting VAT rules to the digital context. The consultation deals with the use of new technologies to facilitate tax procedures, and the ways VAT is applied in the digital context. The process is carried out in the framework of the European Commission's [action plan](#) for Fair and Simple Taxation.

According to the roadmap, the initiative would cover

- VAT reporting obligations and electronic invoicing;
- The VAT regime applicable to the platform economy;
- Single VAT registration in the European Union.

The European Commission is soliciting stakeholders to firstly comment on the roadmap, and secondly to provide any other input to the project.

***Potential changes to the invoicing framework***

According to the roadmap, the Commission is considering at this stage the introduction of partial (limited to cross-border transaction) or fully harmonized (covering both domestic and cross-border transactions) digital reporting requirements, which include e-invoicing. Another option mentioned is the introduction of data storage obligations that would require taxpayers to record transaction data in a predetermined format and to provide information to authorities when needed.

Other potential measures for VAT include clarification of Vat rules for platforms, and generalization of the "one stop shop" approach (which may be extended to business to customer transaction, removing the 150 euros threshold).

**Next steps:**

The consultation is available until April 15<sup>th</sup>, 2022, via this [link](#).

The legislative proposal is expected in the 3<sup>rd</sup> quarter of 2022.

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