

### Summary of content

<b>SUMMARY OF CONTENT .....</b>	<b>1</b>
<b>CONSULTATIONS .....</b>	<b>3</b>
13 February 2023 – EBA consults credit institutions on their offers and practices regarding green loans and mortgages .....	3
8 February 2023 - EBA consults on its draft implementing technical standards for supervisory reporting....	3
<b>BANKING REGULATION .....</b>	<b>3</b>
CRR / CRD .....	3
13 February 2023 – CRR/ CRD : the ECON committee adopts its report .....	3
<b>BANKING SUPERVISION.....</b>	<b>4</b>
EUROPEAN BANKING AUTHORITY.....	4
27 February 2023 - EBA publishes its opinion on the early application of the provisions on limits between the banking book and the trading book .....	4
21 February 2023 – EBA issues revised guidelines on credit institutions' contributions to deposit guarantee scheme.....	4
14 February 2023 - STS securitization: the EBA publishes its draft technical standards on the conditions for assessing the homogeneity of the underlying exposures .....	5
14 February 2023 - EBA publishes clarifications on the implementation of regulatory technical standards on own funds and eligible commitments .....	5
13 February 2023 - EBA publishes guidelines on information to be disclosed in anticipation of the use of the bail-in tool .....	6
<b>SUSTAINABLE FINANCE .....</b>	<b>6</b>
17 February 2023 - EBF publishes its proposals for a European framework for transition financing .....	6
10 February 2023 - European Commission publishes study on the challenges of sustainability reporting for companies .....	7
<b>SUSTAINABILITY REPORTING .....</b>	<b>7</b>
CSDD DIRECTIVE .....	8
9 February 2023 - the Committee on the Environment adopts its report for opinion on CSDD .....	8
<b>FIGHT AGAINST MONEY LAUNDERING AND FINANCIAL CRIMES .....</b>	<b>8</b>
1 February 2023 - MEPs want to "de-politicize" the list of high-risk third countries for money laundering ..	8
AMLR .....	9
3 February 2023 - Revision of the AML/CFT regulation: Eero HEINÄLUOMA wants to focus on transparency .....	9

<b>TAXATION INCL. VAT .....</b>	<b>10</b>
<i>28 February 2023 - ESMA issues two letters to the IASB and EFRAG regarding amendments to IAS 12 on deferred taxes.....</i>	<i>10</i>
<b>DATA AND ARTIFICIAL INTELLIGENCE RELATED REGULATION.....</b>	<b>10</b>
ARTIFICIAL INTELLIGENCE ACT .....	10
<i>23 February 2023 – IA Act : industry representatives recall the importance of a risk-based approach .....</i>	<i>10</i>
<i>15 February 2023 – IA Act : no concrete progress at the last meeting between co-rapporteurs and shadow rapporteurs.....</i>	<i>11</i>
<b>DIGITAL FINANCE .....</b>	<b>11</b>
<i>17 February 2023 – DMFSD : Council agrees adopts its position on the text .....</i>	<i>11</i>
<i>7 February 2023 - Commissioner McGuinness presents her future initiatives in the field of financial innovation and "Open Finance" .....</i>	<i>12</i>
<i>6 February 2023 - ESAs organize a conference presenting the Level 2 acts on the implementation of the DORA Regulation.....</i>	<i>12</i>
<i>6 February 2023 - Exchange of views between MEPs on the directive on distance contracts for financial services (DMFSD).....</i>	<i>13</i>
<b>OTHER TOPICS OF INTEREST .....</b>	<b>13</b>
<i>10 February 2023 - ECON committee orders a study to analyze the main points of regulatory divergence following BREXIT.....</i>	<i>13</i>

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## Consultations

[Back to summary of content](#) – Previous editions of the MMR

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### 13 February 2023 – EBA consults credit institutions on their offers and practices regarding green loans and mortgages

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On 13 February 2023, the European Banking Authority (EBA) [opened](#) an industry consultation seeking credit institutions' views on green loans and mortgages and market practices related to these loans.

Data collected will be used by EBA to draft its response to the European Commission's request for technical advice.

**Next steps : the EBA consultation is open until 7 April 2023.**

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### 8 February 2023 - EBA consults on its draft implementing technical standards for supervisory reporting

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On 8 February 2023, the European Banking Authority (EBA) [published](#) a consultation on its [draft technical implementation standards \(ITS\) for supervisory reporting](#).

The draft amendments to the ITS aim to specify the format, structure, content and annual publication date of the supervisory information that competent authorities must transmit. EBA's amendments to the ITS are intended to reflect changes to the EU legal framework under the Capital Requirements Regulation (CRR 2) and the Capital Requirements Directive (CRD 5), in particular those related to prudential reporting for investment firms.

In addition, by modifying the existing supervisory reporting framework, the ITS project aims to improve the quality and comparability of data reported by supervisors and enhance transparency by providing more information to market participants.

**Next steps: the consultation is open until March 9, 2023. EBA will [hold](#) a public hearing to present the consultation paper on 28 February 2023.**

## Banking regulation

[Back to summary of content](#) – Previous editions of the MMR

### CRR / CRD

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#### 13 February 2023 – CRR/ CRD : the ECON committee adopts its report

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On 13 February 2023, the Economic and Monetary Affairs Committee of the European Parliament published its final report regarding [CRR](#) and [CRD](#). On 15 February, the Parliament's position was confirmed in plenary session.

The main takeaways are :

- Regarding the definition of default: MEPs agreed that EBA shall update its guidelines on default before 30 June 2024. As the recital from the Council position, the provision ask to focus on restructuring but does not restrict the scope of the review. Thus, it would create a new opportunity to amend the NDOD guidelines. Moreover, a new recital 36b is introduced with the same objective.
- Regarding the prudential treatment of factoring: regarding article 151, MEPS did not propose to extend the EBA mandate to develop draft regulatory technical standards (RTS) on the prudential treatment of purchased receivables to the Standardised approach. Regarding article 157, the EBA shall develop draft RTS for the calculation of risk-weighted exposure amount for dilution risk of purchased receivables by the end of 2025 (vs. 2026).
- Regarding credit-insurance : the EBA shall produce a report on the eligibility and use of policy insurance as credit risk mitigation (CRM) technique in close cooperation with EIOPA, as suggested by the EUF, by the end of 2024. If appropriate, the Commission will present a legislative proposal on the matter.
- Regarding fraud by the obligor : As suggested by EUF, the related provisions at article 183 and article 213 are deleted.
- Regarding the definition of “ancillary services undertaking”: Factoring is still included in the activities listed in this definition.

**Next steps : co-legislators will now enter into-interinstitutional negotiations. The first trilogue is planned on 9 March 2023.**

## Banking supervision

[Back to summary of content](#) – Previous editions of the MMR

### European Banking Authority

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#### **27 February 2023 - EBA publishes its opinion on the early application of the provisions on limits between the banking book and the trading book**

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On 27 February, 2023, the European Banking Authority (EBA) [issued](#) a "no action" notice stating that competent authorities should not prioritize supervisory or enforcement actions in connection with the new provisions relating to existing limits between the banking book and the trading book.

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#### **21 February 2023 – EBA issues revised guidelines on credit institutions' contributions to deposit guarantee scheme**

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On 21 February 2023, the European Banking Authority (EBA) [published](#) a revised version of its guidelines on contributions to Deposit Guarantee Schemes (DGS). The purpose of the guidelines is to harmonize the methodology by which DGSs collect contributions from credit institutions based on their risk level.

The most significant changes to the existing guidelines are:

- the establishment of minimum thresholds for the majority of core risk indicators, consistent with applicable minimum regulatory requirements, and the adjustment of their minimum weights to better reflect the performance of the indicators in measuring risk to the DGS;
- the introduction of a technical modifications to the formula for determining each member institution's risk adjustment factor that ensures a consistent relationship between the risk level of institutions and their contributions to DGS;
- adding clarification as to how to account for deposits where DGS coverage is uncertain (for example, where a deposit is subject to an estate settlement or where customer funds are placed with a bank by another financial institution). The objective is to ensure better alignment between the amount of a credit institution's covered deposits and its contributions;
- the introduction of the ability for DGSs to use an inventory-based approach to raise contributions, which provides an incentive for banks to reduce their risk even after the DGS fund has reached its target contribution level;
- clarification of how to raise contributions after DGS funds have been used.

***Next Steps: revision of the DGS contribution guidelines is scheduled every 5 years. The last review had taken place in 2017***

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**14 February 2023 - STS securitization: the EBA publishes its draft technical standards on the conditions for assessing the homogeneity of the underlying exposures**

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On 14 February 2023, the European Banking Authority (EBA) [published](#) its [draft regulatory technical standards \(RTS\)](#) defining the conditions for assessing the homogeneity of the underlying exposures in a pool of a simple, transparent and standardized balance sheet securitization (STS).

EBA reiterates that homogeneity is one of the simplicity requirements that allow investors to properly assess the underlying risks while facilitating investor due diligence.

The technical standards are an update of the existing RTS in this area. They specify that, even for on-balance sheet securitizations, homogeneous exposures must be underwritten according to similar underwriting standards and managed according to similar procedures. In addition, they must be in the same asset class as specified therein and be valued according to at least one of the homogeneity factors, such as type of obligor, seniority of collateral, jurisdiction, or type of property.

Finally, in order to ensure the continuation of existing securitization transactions, transitional provisions have been introduced for securitizations that have been notified as STS and whose securities were issued before its application date. This ensures that existing transactions will continue to be STS compliant.

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**14 February 2023 - EBA publishes clarifications on the implementation of regulatory technical standards on own funds and eligible commitments**

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On 14 February 2023, the European Banking Authority (EBA) [published](#) an update to its Questions and Answers on Capital and Eligible Liabilities (MREL) document to ensure consistency with the revised [final draft regulatory technical standards \(RTS\) on capital and eligible liabilities](#) submitted to the European Commission in May 2021.

In particular, the European Banking Authority (EBA) wishes to provide clarification on the concept of "sufficient certainty" which relates to when an institution must deduct from its capital the amounts for which it has received prior approval from the competent authority. EBA provides that when a call option contained in the terms and conditions of an instrument is exercised, sufficient certainty is deemed to exist only at the time of the announcement of the call to the holders of the instrument, and the corresponding deduction will only take place at that time.

In addition, the EBA Q&A document extends the scope of the treatment originally reserved for capital instruments to eligible liabilities.

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### **13 February 2023 - EBA publishes guidelines on information to be disclosed in anticipation of the use of the bail-in tool**

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On 13 February 2023, the European Banking Authority (EBA) [published](#) the final version of its guidelines on the published information on the mechanism for exchanging write-down and conversions in the context of bail-in.

The EBA recalls that bail-in is the main tool available to authorities to avoid using taxpayers' money in the event of a large bank failure. In order to ensure that the authorities' approach is credible and that institutions have the necessary information to prepare, EBA is asking those authorities that have not yet done so to start publishing, from January 2024, a document setting out the main aspects of the approach they have chosen to adopt. In particular, authorities are asked to clarify whether they intend to use interim instruments and to set out a timetable for the bail-in process.

Depending on the outcome of the consultation, the document to be issued by the authorities will also include:

- (i) a clear description of the potential interim instrument ;
- (ii) details of the timetable;
- (iii) where appropriate, indicative models or key features of the legal instruments to be used to implement the bail-in.

***Next steps : A consultation is underway on resolvability testing and further publications are expected to follow with the same objective of increasing resolvability transparency.***

## **Sustainable finance**

[Back to summary of content](#) – Previous editions of the MMR

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### **17 February 2023 - EBF publishes its proposals for a European framework for transition financing**

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On 17 February 2023, the European Banking Federation [published](#) a position paper proposing measures for the development of a European framework for transition financing.

The EBF stresses the importance of providing a common transition framework, with intermediate performance thresholds, and establishing clear guidelines that not only support and underpin voluntary commitments made internationally but also provide a harmonized understanding of what transition finance is. Such a framework

would facilitate engagement with financial institutions' clients and reduce the risk of greenwashing through clear definitions and standards.

The EBF recommends to the European commission :

At the "Business" level :

- To define the transition pathways to be used for each economic activity by industrial sector with, if necessary, national specificities. These reference transition pathways should be science-based and aligned with the EU's climate objectives and the Paris Agreement's goal of limiting global temperature increase to 1.5°C. The sectoral transition pathways should be complemented by sectoral transition roadmaps.

At the "Entity" level:

- To standardize corporate transition plans at the entity level (including investment plans for financial institutions);
- To propose a common definition of transition pathways, transition roadmaps and transition plans is important as it could be used by financial institutions to measure their clients' commitment.

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### **10 February 2023 - European Commission publishes study on the challenges of sustainability reporting for companies**

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On 10 February 2023, the European Commission [published](#) a report on corporate sustainability measurement and reporting. The report also provides a comparison of practices developed by innovative European companies in this area.

First, the report finds that while important steps have been taken toward transparency in reporting practices, there is still significant flexibility in the international sustainability frameworks, the key performance indicators (KPIs) to be included, and even in the specific and sectoral criteria used. Second, the report points out that there is a wide range of sustainability measures that are based on different methodologies and practices. Both of these aspects tend to make it difficult to compare companies and understand their progress toward greater sustainability.

The report suggests developing clear recommendations and establishing standards consistent with those already existing at the international level to make it easier for stakeholders to find this information by improving access and comparability of sustainability data.

The report highlights the fact that references to materiality are still very limited. Companies need to further integrate and clarify the dual materiality of their activities, (i.e. their corporate sustainability reporting and measurement should identify not only the impacts that social and environmental issues may have on their financial aspects, but also the impact of the company on overall sustainability).

Finally, with regard to the analysis of the sustainability metrics of the most innovative companies in the EU, the results of the study reveal that the rating agencies analyzed differ in the way they assess sustainability, which explains why the companies are not ranked in the same order.

[Back to summary of content](#) – Previous editions of the MMR

## CSDD directive

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### 9 February 2023 - the Committee on the Environment adopts its report for opinion on CSDD

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On 9 February 2023, the Committee on the Environment, Public Health and Food Safety (ENVI) [adopted](#) its report for opinion on the [proposal](#) for a directive on corporate sustainability responsibility (CSDD).

The parliamentarians want the future directive to include more obligations related to compliance with the objectives of the Paris Climate Agreement. In particular, they have adopted amendments inserting an obligation for companies to put in place "a precise plan" for transition, aligned with the objectives of keeping global warming below 1.5°C.

The ENVI Committee proposes to include in the transition plan elements such as the analysis of climate-related risks and opportunities produced by the company, or the actions it has taken to decarbonize its activities.

The report also suggests linking the variable remuneration of company directors with more than 100 employees to the implementation of this transition plan.

As a reminder, the Committee on Economic and Monetary Affairs (ECON) also [adopted](#) a report for opinion on January 24. The ECON report for opinion proposes a broader scope of application, compared to the initial proposal of the European Commission, which would include all companies with more than 250 employees and a worldwide turnover of more than 40 million. As for the scope of the duty of care, the ECON Committee asks that it be applied to the entire value chain, and not only to "established commercial relationships".

Another significant proposal of the ECON Committee is the inclusion of the "financial services" sector in the category of high-risk sectors, for which the minimum threshold of employees and turnover required to be included in the scope of the future directive are even lower.

**Next steps:**

***The Legal Affairs Committee (JURI), which is responsible for the substance, will adopt its report on 13 March 2023.***

## Fight against money laundering and financial crimes

[Back to summary of content](#) – Previous editions of the MMR

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### 1 February 2023 - MEPs want to "de-politicize" the list of high-risk third countries for money laundering

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On 1 February, at a plenary session of the European Parliament, MEPs warned of the politicization of the European Union's list of high-risk third countries in the fight against money laundering and terrorist financing. They called on the EU Council to quickly approve the European Commission's proposed update of the list.



In December 2022, the European Commission [updated](#) the EU's list of high-risk AML/CFT third-country jurisdictions by adding the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania, and the United Arab Emirates and removing Nicaragua, Pakistan, and Zimbabwe. The Commission's list follows the assessments of the Financial Action Task Force (FATF), a global money laundering watchdog.

More generally, some MEPs would like to see the process of updating the list reviewed to avoid any lobbying by third countries that do not wish to appear on it.

Eero HEINÄLUOMA (S&D, FI), co-rapporteur for the LIBE Committee on the anti-money laundering regulation currently under discussion, said "the inclusion of third countries in this list should be based on an objective assessment and not influenced by geopolitical interests". He said that "in general, the anti-money laundering rules need to be better enforced. Last week it was reported that 2022 was a record year in terms of anti-money laundering fines, with financial institutions paying more than \$5 billion in fines for violating these rules.

## AMLR

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### 3 February 2023 - Revision of the AML/CFT regulation: Eero HEINÄLUOMA wants to focus on transparency

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On 3 February 2023, the co-rapporteur on the AML/CFT proposal, Eero HEINÄLUOMA (S&D, FI), gave an interview to Agence Europe on the progress of the discussions between co-rapporteurs and on his position regarding the revision of the provisions.

According to him, the issue of money laundering is first and foremost a security issue and the revision of the AML/CFT package should be treated as such. He would like to see particular emphasis placed on the need to reduce fragmentation between member states regarding anti-money laundering provisions. He mentions in particular "*problems of interpretation*" of the directive in certain member states.

On the question of beneficial owners, the co-rapporteur underlines that this dimension is "*the biggest gap*" in the current provisions. He maintains his proposal to amend the proposed regulation by setting a threshold of 5% of shares to qualify as a beneficial owner under the regulation.

As for the decision of the CJEU on the maintenance of public registers of beneficial ownership of companies, he believes that this decision is indeed not aligned with the objectives of the reform of the AML/CFT package (or at least with the vision he had of this reform). In this context, he states that "*transparency is one of the key factors in the fight against money laundering*" but that it is necessary to adopt proportionate measures, between transparency and protection of privacy.

Regarding the timetable for the examination of the text, the co-rapporteur hopes for a vote on the proposed regulation in the joint ECON/LIBE committee at the end of March. A vote would ideally take place on the whole AML/CFT legislative package. The objective of starting the inter-institutional negotiations under the Swedish Presidency, in April or May at the latest, remains.

Finally, he also mentions the role and missions of the future European Authority dedicated to the fight against money laundering. According to him, the AMLA regulation foresees to give it enough resources to collect information, to set up rules or to issue recommendations to partners and national intelligence units. He also

states that the future Authority will have the possibility to intervene if it sees that, in some of the Member States, the European regulatory provisions are not or poorly implemented.

***Next steps: The co-rapporteurs envisage a vote in the ECON/LIBE Committee on 28 March, provided that an agreement on compromise amendments is quickly reached with the shadow rapporteurs.***

## Taxation incl. VAT

[Back to summary of content](#) – Previous editions of the MMR

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### 28 February 2023 - ESMA issues two letters to the IASB and EFRAG regarding amendments to IAS 12 on deferred taxes

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On 28 February 2023, the European Securities and Markets Authority (ESMA) published two letters, substantially similar, addressed to the [International Accounting Standards Board \(IASB\)](#) and [the European Financial Reporting Advisory Group \(EFRAG\)](#) regarding the amendment of the IAS 12 accounting standards on income taxes in order to implement the agreement on a minimum level of taxation for the largest companies.

As a reminder, Member States [agreed](#) in December 2022 to implement the minimum tax component, known as Pillar 2, of the OECD's international tax reform at the European level. In anticipation of the effects that the agreement could have for companies, the Bureau decided to propose a transitional period exempting companies from applying the rules on accounting for "deferred taxes" under the IAS 12 accounting standards on income taxes

In its letter, ESMA confirms its support for the IASB's proposal to introduce a mandatory transitional period for the application of accounting rules for deferred taxes. However, ESMA points out that the IASB has not specified the duration of this transitional period. ESMA therefore invites the Board to monitor the implementation of the "deferred tax" accounting rules and to propose an alternative solution as soon as possible in order to avoid this long-term exemption

## Data and Artificial intelligence related regulation

[Back to summary of content](#) – Previous editions of the MMR

### Artificial Intelligence Act

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#### 23 February 2023 – IA Act : industry representatives recall the importance of a risk-based approach

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On 23 February 2023, a dozen associations representing the industry (French Alliance of Digital Industries, BusinessEurope, EuroCommerce, Insurance Europe, etc) [published](#) a joint statement recalling their position on the "Artificial Intelligence" regulation in view of a future vote in parliamentary committee.

Co-signatories fear that the negotiations between co-rapporteurs in the Parliament will deviate from the original proposal of the AI law and the objectives to establish a risk-based approach to AI. Thus, they call on MEPs to put forward a risk based framework that ensure legal certainty for investments and innovation.

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### **15 February 2023 – IA Act : no concrete progress at the last meeting between co-rapporteurs and shadow rapporteurs**

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On 15 February 2023 the co-rapporteurs and shadow rapporteurs met to [discuss](#) a new version of the compromise text of the IA regulation. Among the proposed amendments were :

- A rewrite of Article 2 (scope of the regulation) and Article 3 ( definition of an AI system) is proposed. Agreement on the definition of an AI system remains outstanding.
- A rewrite of Article 6 and Annex III, developed by the co-rapporteurs and submitted for approval to the shadow rapporteurs. They will be re-submitted for a meeting in the coming weeks.

As the meeting of 15 February was not fruitful both in terms of the number of provisions discussed and the number of compromise amendments validated, new technical meetings have been scheduled.

***Next steps : the vote on the text was expected by March 2023, but such a deadline seems unplausible at the moment.***

## **Digital Finance**

[Back to summary of content](#) – Previous editions of the MMR

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### **17 February 2023 – DMFSD : Council agrees adopts its position on the text**

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On 2 March 2023, Member States [reached](#) an agreement regarding the proposed revision of the Distance Selling of Financial Services Directive. Main amendments to the Commission proposal include:

- Clarification of the scope of the directive: prevalence of sectoral provisions on this "safety net" directive, which only concerns distance contracts and only financial services that are not defined as banking, credit, insurance, pension, investment or payment services.
- Recital 18, which deals with the receipt of complaints and the possibility of contacting the service provider, is more detailed.
- Recital 22a provides that it is also possible to provide pre-contractual information by electronic means.
- The right of withdrawal may be exercised within 14 days. The Council adds that this period is extended to 30 calendar days for distance contracts relating to personal pension operations (Article 16b).
- Recitals 23 and 23a provide that consumers may withdraw from a contract without reason or penalty. The Council proposal adds that the right of withdrawal should not apply to financial services whose price depends on fluctuations in the financial market. An example of this is insurance-based pension or investment products linked to financial market instruments and, as such, dependent on financial market fluctuations.
- The withdrawal button is maintained and detailed in Recital 25 and in Article 11a, which provides that the button, or a similar function, must be legibly labelled and contain the words "withdraw from the contract here" or a corresponding unambiguous wording. In addition, it must appear on the online interface in a prominent manner and be easily accessible to the consumer.

***Next steps: the Parliament has not yet adopted its final position on the proposed revision of the directive.***

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### **7 February 2023 - Commissioner McGuinness presents her future initiatives in the field of financial innovation and "Open Finance"**

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On 7 February 2023, European Commissioner for Financial Services Mairead McGuinness spoke at the Annual Financial Technology Conference about the future initiatives the European executive wants to release in 2023 in the area of digital finance and financial innovation.

First of all, a proposal for a revision of the Payment Services Directive will be proposed on 28 June 2023. This revision will focus on 4 main themes:

- fraud prevention;
- improving implementation and enforcement;
- ensuring a level playing field between banks and other providers for access to payment services;
- Open Banking.

The Commissioner said that the objective is to allow more services, based on data sharing, to be offered to European consumers while guaranteeing them control over the sharing of their data. In addition, the European Commission wants to apply the same principle that applies to digital markets and address the imbalances caused by the overrepresentation of powerful companies in the market.

The European Commission recently [published](#) a study on the impact of the revised Payment Services Directive (PSD2). The study highlights the scope for improvement with a view to a future revision of the current provisions.

***Next steps: Both initiatives (Open finance and PSD2 revision) will be presented jointly by the European Commission on 28 June 2023.***

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### **6 February 2023 - ESAs organize a conference presenting the Level 2 acts on the implementation of the DORA Regulation**

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On 6 February 2023, the three European Supervisory Authorities (EBA, ESMA and EIOPA - the ESAs) [held](#) a public event on the implementation of the Digital Operational Resilience of the Financial Sector (DORA) Regulation.

Within DORA framework, the ESAs must develop Level 2 acts further specifying certain requirements by 2024 . Based on their proposals, the European Commission will then have to issue delegated acts. Experts from the three ESAs [gave](#) an overview their mandate :

- The first mandate is dedicated to the management of risks related to information and communication technologies (ICT).
- The second mandate concerns incident reporting. The ESAs must define the regulatory standards on the criteria for classifying major ICT incidents and significant cyber threats.
- The third mandate deals with the information registry with the definition of technical standards for the information registry in relation to all contractual arrangements for the use of ICT services provided by third party providers.
- Finally, the fourth mandate concerns the request for an opinion from the ESAs on the criticality criteria.

***Next steps: A series of public consultations is therefore planned for 2023. The ESAs also plan to hold a second similar conference at a later stage to discuss the remaining DORA policy mandates.***

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## 6 February 2023 - Exchange of views between MEPs on the directive on distance contracts for financial services (DMFSD)

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On 6 February 2023, Parliament's Internal Market and Consumer Protection Committee (IMCO) met to discuss proposed amendments to the proposed Directive on Distance Contracts for Financial Services (DMFSD), [based](#) on the draft report by Arba KOKOLARI (EPP, SE). The text had been [proposed](#) by the European Commission on 11 May 2022.

The rapporteur referred to a consensus on the "safety net" role of the DMFSD in the absence of applicable sectoral legislation. She stressed the importance of aligning the provisions on the right to information with those existing in the [Consumer Credit Directive](#) and with those existing in the [DSA](#).

MEPs disagree on the withdrawal button and its possible extension to the whole [Consumer Rights Directive](#). The rapporteur pointed out the lack of an impact assessment regarding this option. Maria-Manuel LEITAO MARQUES (S&D, PT) expressed her group's support for this extension as did the Greens/EFA and Renew groups.

On the subject of advertising and "financial" influencers, a consensus emerged in favour of establishing protection against certain misleading and/or harmful practices for consumers.

***Next steps: IMCO Committee's report on the proposed directive is scheduled to be voted upon in the IMCO Committee on 27 March 2023 before being presented to the European Parliament's plenary session for formal adoption.***

***The ECON Committee, which was consulted for its opinion, adopted its report on January 24, 2023. The start of the trilogues is estimated for April according to the chair of the IMCO committee***

## Other topics of interest

[Back to summary of content](#) – Previous editions of the MRR

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## 10 February 2023 - ECON committee orders a study to analyze the main points of regulatory divergence following BREXIT

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On February 10, 2023, following the request made by the Committee on Economic and Monetary Affairs (ECON), the European Parliament's Directorate General for Internal Policies of the Union [published](#) a study reviewing possible changes in the United Kingdom's financial services regulations and their effects on the European Union.

Among the key points analyzed by the study regarding regulatory divergence:

- **Basel III transposition:** the EU's proposed transposition of the Capital Requirements Regulation and Directive (CRR/CRD) diverges more significantly from Basel III than that proposed by the UK. The study points out that the European Union would ultimately benefit from reduced prudential requirements, notably through its application of the output floor.
- **Retail investors:** The UK wants to review the rules on the distribution of financial products, but such a review would have minimal impact on the EU.
- **Digital finance:** the UK is looking at a number of regulations to become a major digital finance "hub" including developing the use of stablecoins. It is on this point that the regulatory arbitrage could be the

most significant. Indeed, the United Kingdom could be inclined to adopt a light regulation facilitating the establishment and development of companies in the crypto assets sector on its territory.

- **Anti-money laundering rules:** the proposals made by the UK to revise the anti-money laundering rules are not expected to lead to lower regulatory requirements.
- **Sustainable finance:** the UK's "green taxonomy" is expected to include the six objectives developed in the EU regulation, but the detail is expected to diverge significantly from the EU regulation.

Until now the Commission, has refused to accept a memorandum of understanding with the United Kingdom aimed at permanently recognizing the access of all British financial institutions to the internal market and granting them an equivalence status. Depending on the scenario that materializes, - and the degree of regulatory divergence - the Union could consider different solutions ranging from a definitive equivalence status to no equivalence agreement at all for UK financial institutions.



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