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**OGGETTO: EUF Monthly Monitoring Report - Giugno 2023**

Si trasmette agli Associati il rapporto mensile predisposto da Euralia per l'EU Federation for the Factoring and Commercial Finance Industry (EUF). Il Monthly Monitoring Report (MMR) descrive lo stato di avanzamento dei principali processi legislativi in corso presso gli organismi dell'Unione Europea con particolare attenzione alle tematiche di interesse per il settore del factoring.

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## Consultations

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### 30 June 2023 - Digital Euro : the EU Commission publishes a consultation

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On June 30, 2023, the European Commission [published](#) a consultation on the digital euro.

The consultation follows the European Commission's [publication](#) of the Digital Euro legislative proposal on June 28, 2023.

As part of this consultation, the European Commission is seeking the views of stakeholders on the publication of the legislative proposal for the digital euro

**Next steps:**

***The deadline for responding to the consultation is August 30, 2023.***

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### 22 June 2023 - The European Central Bank consults the industry on a revision of its guide to internal models

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On 22 June 2023, the European Central Bank [launched](#) a consultation to gather comments and observations from banks and interested stakeholders on the revision of its [guide to internal models](#).

The revision envisaged by the ECB reflects updates to the regulatory framework and draws on the experience acquired by the supervisor over the years in supervising internal models.

In the revised version submitted for consultation, the guide clarifies how banks should include significant climate and environmental risks in their models. It also provides clarification for banks wishing to revert to the standardised approach for calculating their risk-weighted assets.

With regard to credit risk in particular, **the guide helps banks to adopt a common definition of default** and consistent treatment of bulk sales. The updated chapter on market risk explains how to measure default risk in trading book positions. The guide also clarifies counterparty credit risk.

**Next steps:**

***The deadline for responding to the [consultation](#) is 15 September 2023.***

***The ECB states that it will take the comments received from banks into account when updating its guide.***

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### 2 June 2023 - The ECB consults the banking sector on the management of its credit risk

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On 2 June 2023, the European Central Bank (ECB) launched a consultation seeking the views of interested stakeholders (banks and banking practitioners) on the governance and management of counterparty credit risk.

The consultation is based on the [report](#) published by the ECB entitled "*Sound practices in the counterparty credit risk governance and management*". It summarises the results of the targeted review carried out in the second half of 2022 on the way banks govern and manage counterparty credit risk. The report highlights the good practices observed in the market and points out the areas where improvements are needed.

Counterparty credit risk was identified as a priority in the ECB's banking supervision for 2022-2024, as banks increasingly provided services to riskier, more leveraged, and less transparent counterparties, particularly non-bank financial institutions, encouraged by the search for returns in a low interest rate environment. In addition, volatile energy and commodity prices linked to the conflict in Ukraine prompted banks to take a closer look at their exposure to energy utilities and commodity traders.

The ECB's review found that, although some progress has been made in the way banks measure and manage counterparty credit risk, there is still room for improvement in the areas of customer due diligence, risk appetite definition, default management processes and stress testing frameworks. Supervisors' expectations include banks' ability to obtain information from their non-bank counterparties, to regularly test their exposure to counterparty credit risk and to assess their counterparties' vulnerability under default risk scenarios.

The report also stresses that banks' approaches to counterparty credit risk should be more proportionate to the scale and complexity of the activities and products they offer and should take clearer account of the nature of the counterparties.

**Next step:**

The [consultation](#) is open until 14 July 2023.

## Banking regulation

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### 27 June 2023 – CRR/CRD: legislators reach an agreement on the text

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On 27 June 2023, the legislators reached a provisional agreement on the main "political" points of the texts to be revised. Negotiations on the technical points of the texts are continuing.

**On the application of the minimum capital threshold, the approach advocated by the Council has been adopted.**

The legislative proposal introduces this capital floor in phases for European banks using an internal model to calculate their capital requirements. The result obtained by the internal model may not be less than 72.5% of the capital requirement calculation obtained using the standardised approach. A deadline has been granted for gradually moving from 50% to 72.5% between 2025 and 2030.

While the Parliament wanted to apply the minimum threshold at the consolidated level of a group, **the threshold will finally be set at the level of each entity of a banking group, as provided in the [Council's position](#)**. A Member State will nevertheless retain the option of applying an output floor at the consolidated level of all the entities of the same group established on its territory, in particular for cooperative groups.

In return, the MEPs agreed that the European Commission, in conjunction with the European Banking Authority (EBA) and the European Central Bank (ECB), should carry out an assessment of the state of the European banking sector by the end of 2028, to analyse the appropriateness of presenting a legislative proposal on the calculation of the *output floor* at the consolidated level of a credit institution. In a declaration attached to the final trilogue agreement, the Commission undertakes to assess the functioning of the internal banking market and the conditions for its further integration.

The MEPs also succeeded in setting a deadline of 2032 for the transitional measures. However, the European Commission will be able to propose an extension of 4 more years depending on the transitional and specific national provisions.

#### **Other highlights of the political trilogue agreement:**

- **Shadow banking:** as requested by MEPs, the revision of the CRR includes a *definition of shadow banking entities* and introduces transparency requirements on the exposure of the traditional banking sector to shadow banking activities.
  - The definition in the Parliament's mandate was as follows: "*entity of the shadow banking system: an entity which offers banking services or carries out banking activities and which is not subject to prudential requirements similar to those imposed by this Regulation*". However, agreement was apparently reached on a different wording (to be confirmed once the text has stabilised).
  - The European Commission will have to produce a specific proposal to this effect.
- **The fit-and-proper assessment** of a person wishing to accede to the management of a major bank:
  - It is envisaged that a notification and information exchange process will be in place so that a bank provides the national supervisor with information at least 30 days before a person is appointed.
  - The national competent authority will be able to request more information and will have to engage in a serious dialogue with the bank concerned to resolve any doubts.
  - It should be noted that a minimum waiting period has been introduced before members of a national authority (three months for individuals, 6 to 12 months for senior managers) are authorised to take up senior positions in a financial institution supervised by the same authority.
- **Supervision of branches of banks from third countries:** the co-legislators have maintained the provisions governing the supervision of banks from third countries proposed by the Commission. A bank from a third country will have to set up a branch in the EU.
  - At the Council's request, however, exemptions have been introduced, notably in the case of inter-bank relations or where the customer goes directly to the bank from a third country.
  - Above a certain threshold of assets - 10 billion for a single entity and 40 billion at European level - a national competent authority will be able to require a large third-country bank to transform its branch into a subsidiary, if the branch is of systemic importance. The EBA is due to be consulted on this point.
- **Prudential treatment of ESG risk exposure:**
  - EBA has been given a mandate to assess, by the end of 2025, the appropriateness of imposing capital requirements for all ESG risks.
  - The provisions adopted do not introduce capital requirements for banking exposures to fossil fuel industries, although greater transparency in this area will be required in the future.

- Other provisions have been adopted concerning the valuation of collateral used to guarantee a bank's exposure, specifying regarding the valuation of an asset that the risk linked to climate change must now be taken into account. On the other hand, the weighting of risk linked to exposure to the ETS for trading CO2 emission quotas will be reduced.

## Banking supervision

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### 15 June 2023 - EBA publishes a report on the monitoring of the implementation of the liquidity coverage ratio (LCR)

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On 15 June 2023, the European Banking Authority (EBA) [published](#) its third report on the monitoring of the implementation of the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) in the EU.

**The purpose of this report is to assess the potential impact on the levels of the LCR and the NSFR of forthcoming central bank funding reimbursements (mainly reimbursements of targeted longer-term refinancing operations - TLTROs) as well as a potential scenario of higher liquidity risk, particularly affecting government bonds, derivatives, and pension markets, in the context of a higher interest rate environment and risks of inflation and recession.**

**The report provides guidance to banks and supervisors on how they should monitor, on an ongoing basis, the actual market capacity, and economic conditions for potential funding sources, particularly in a context of prolonged market volatility.** EBA also stresses the importance for banks' funding plans to include realistic ways of seeking alternative funding to replace maturing central bank funding where appropriate.

Finally, recent events and market turbulence have increased the need for EBA to collect additional information to analyse in more detail the liquidity situation of EU institutions. In this context, EBA wishes to assess the need to modify and/or supplement existing regulatory reports.

In view of the current context and the "lack of appetite" shown by the supervisory community on this subject, EBA states that it does not intend to continue its work on a methodology facilitating the application of a reduced disbursement rate of 3% for stable retail deposits.

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### 5 June 2023 - The European Banking Authority amends several reporting standards as part of its annual internal models benchmarking exercise

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On 5 June 2023, the European Banking Authority (EBA) [published](#) its amended draft Implementation Technical Standards (ITS) for benchmarking internal models for data collected under credit risk, market risk and IFRS9 models for the next annual supervisory exercise.

EBA's benchmarking exercise aims to ensure consistent monitoring of the variability of capital requirements resulting from the application of internal models, as well as the impact of several prudential and regulatory measures that influence capital requirements and solvency ratios.

The most significant change, compared with the 2023 financial year, is the roll-out of benchmarking for accounting parameters (IFRS9) for high default risk (HDP) portfolios. For market risk, new models are added for the collection of additional information, in particular the default risk charge (DRC) and the addition of residual risk (RRAO).

For credit risk, a limited number of HDP portfolios have been added to ensure that credit risk and IFRS9 models relate to common portfolios for which the parameters specified in the different models will have to be communicated.

## Taxation incl. VAT and Legal Affairs

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### ViDA package

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#### 20 June 2023 – ViDA package: the Parliament presents its amendments to the draft report

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On June 20, 2023, the European Parliament's Committee on Economic and Monetary Affairs (ECON) published its [amendments](#) to the [draft report](#) on the [proposal](#) for a directive on VAT rules in the digital age.

The main amendments proposed include:

- **Data protection:** the Greens/EFA group has proposed strengthening data protection rules to ensure that data can only be used to combat tax fraud.
- **SMEs:** Lidia PEREIRA (EPP, PT) insists on taking the needs of SMEs into account, in particular to ensure that the costs to which they will be subject remain limited. Mikuláš PEKSA (Greens/EFA, CZ) proposes introducing provisions to make it easier for SMEs to adapt to electronic invoice transmission.
- **"Prior authorization" of electronic invoices:** Andżelika Anna MOŹDŹANOWSKA (ECR, PL) wishes to authorize "prior authorization" of invoices by tax authorities.
- **Electronic invoicing:** the Identity and Democracy (ID) group opposes the introduction of mandatory, generalized electronic invoicing. Ondrej KOVARIK (Renew, CZ) proposes that the use of electronic invoices should initially be limited to cross-border invoices, and not apply to domestic transactions. The Conservatives and Reformists Group (ECR) would like to see member states continue to apply the European standard for electronic invoicing on a voluntary basis.
- **Real-time reporting of electronic invoices:** Lidia PEREIRA (EPP, PT), the ECR group, the Left group and the ID group would like to extend the reporting period for electronic invoices from 5 to 12 days, depending on the group.
- **Recapitulative invoices:** the Socialist and Democrat (S&D) and Greens propose to maintain the possibility of using recapitulative electronic invoices.
- **Transposition of the directive:** the EPP, ECR and ID groups propose extending the transposition deadline for the directive's various provisions.

**Next steps:**



***Under the special legislative procedure, the Council is the sole co-legislator, while the Parliament issues a non-binding opinion. The Committee on Economic and Monetary Affairs (ECON) still has to adopt its opinion before it can be adopted in plenary session and forwarded to the Council.***

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#### **16 June 2023 - Member States discuss about ViDA package during ECOFIN meeting**

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During last Economic and Financial Affairs (ECOFIN) Council meeting, Member States' representatives discussed, amongst other things, the "VAT in the digital age" (ViDA) legislative package.

Following Commissioner Paolo GENTILONI presentation of the proposal, Member States' representatives detailed their position and their main key propositions regarding the ViDA package. To be reminded, under the special legislative procedure, the Council is the only co-legislator on the text, the Parliament is only entitled to provide a non-binding opinion on the text.

Several Member States voiced their support to additional harmonization of e-invoicing standards:

- **Germany:** the German representative supported the introduction by the proposal of a single e-invoicing format to ensure harmonization across Member States.
- **Netherlands:** the Dutch representative underlined the necessity to have a uniform e-invoicing standard that could be accepted everywhere. However, he did not reject the idea of providing additional flexibility for domestic transactions and allowing Members States to maintain their own e-invoicing standards on the condition that the European standard is accepted.
- **France:** the French representative called in favor of establishing a common European framework regarding e-invoicing and bringing additional security to transactions. For that purpose, **he defended the exclusion of direct transmission of e-invoices between market participants and supported the transmission through intermediaries such as service providers.**

While other Member States were keen on maintaining existing national frameworks:

- **Italy:** the Italian representative advocated for maintaining existing national e-invoicing standards and infrastructures and did not supported the introduction of additional burden for taxpayers or companies.
- **Czech Republic:** the Czech representative declared that he wanted to avoid Member States to change their (currently) well-working e-invoicing infrastructures.
- **Poland:** the Polish representative voiced his support to the existing systems. While digital reporting should be harmonized and based on electronic invoices format, he underlined that Member States should not be required to adapt current their system. He would rather suggest that Member States assess how their system work. He also stated that **Poland deemed it necessary to implement a prior validation process made by the public administration regarding e-invoicing.**
- **Denmark:** the Danish Member State representative called for domestic transactions to be excluded from the e-invoicing requirements.

The **Spanish** Member State representative remained unprecise on Spain's position on the file but asked for the proposal to be take into account the previous experience gathered by Member States who implemented a e-invoicing process.

#### ***Next steps:***

***Under the special legislative procedure Member States will have to reach an agreement on the proposal after the Parliament adopts its non-binding opinion on the text.***

## Late Payment Directive

### 22 June 2023 - SMEunited calls in favor of introducing 60 days payment caps

On June 22, 2023, at the conference organized by Business Europe on the future revision of the Late Payment Directive (LPD), SMEunited representative Luc HENDRICKX [presented](#) the association's views on the directive.

The SMEunited representative called for the revision of the Late Payment Directive to introduce a 30-day payment obligation for B2B transactions, and to allow parties to negotiate a payment term of up to 60 days.

The association believes that SMEs do not always have the means to refuse clauses imposing payments beyond 60 days. He also pointed out that if payments were systematically made within 30 days, cash flow would increase by 66%, and by 10% if payment terms were set at 60 days.

He conceded, however, that for certain specific sectors, longer payment terms could be proposed in agreement with the SMEs in the sector.

Finally, SMEunited considers that the code of conduct proposed by certain stakeholders would have no concrete effect on the level of late payment. SMEunited suggests encouraging the use of electronic invoicing and setting up an authority to monitor late payments and ensure compliance.

## Insolvency

### 26 June 2023 – ECON committee organizes a public hearing regarding the review of the Insolvency directive

On June 26, 2023, the European Parliament Legal Affairs Committee (JURI) organized a conference regarding the current revision of the Insolvency Proceedings Directive.

Several stakeholders were invited to share their views and recommendations on the revision of the text:

- **Bjorn LAUKEMANN, Professor at the University of Tübingen**, warned against the risks that the simplified insolvency procedure would pose for SMEs. In his view, the use of an insolvency practitioner ensures the preservation of the company's assets and value, especially as SMEs and their directors generally lack the requisite knowledge of insolvency law or of how to conduct insolvency proceedings. He therefore recommends that the use of an insolvency practitioner should remain the norm, and that the use of the simplified procedure should be supervised by an independent third party.
- **Fien van SOLINGE, researcher at the Dutch Bureau for Economic Research**, pointed to the positive effects that improved insolvency rules could have on the capital structure of companies. Indeed, consistent insolvency regulations can ultimately reduce the cost of capital for companies, making them more resilient to rising interest rates.
- **Frédéric ABITBOL, President of the French insolvency practitioner Council (*Conseil national des administrateurs et mandataires judiciaires*)**, regretted that the European Commission's proposal did not go far enough and did not, for example, propose an EU harmonized definitions of: an insolvency, the conditions for opening insolvency proceedings and the revocatory actions.
  - He also noted the lack of precision as to the intrinsic goal to be set by insolvency proceedings: safeguarding the company's viability or protecting creditors' rights.
  - Finally, he warned against applying simplified insolvency procedures to SMEs. In his view, this could hamper the orderly liquidation of companies and the guarantee of employee rights.

- **Sophie JACMAIN, an insolvency lawyer**, emphasized the usefulness of private procedures such as pre-pack.

Pascal ARIMONT (EPP, BE) reaffirmed his opposition to the generalization of simplified insolvency procedures for SMEs, believing that recourse to an insolvency practitioner is key to ensure that the rights of all counterparties are respected.

## Digital Finance

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### 28 June 2023 – Digital euro: EU Commission publishes its legislative proposal

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On June 28, 2023, the European Commission [published](#) a proposal for a regulation establishing a legal framework for the development of a digital euro.

- **The digital euro is given legal tender status**

The proposed regulation establishes a basic obligation for retail businesses to accept the digital euro.

However, the draft regulation provides for a number of exemptions to this acceptance obligation, notably for micro-enterprises.

The proposed regulation also specifies that the digital euro will not constitute a store of value. With this in mind, the European Central Bank is expected to develop instruments, including a threshold on holdings of digital euros. Similarly, digital euro accounts will not be able to bear interest.

- **Developing a distribution framework for digital euros**

According to the proposed regulation, the digital euro should be available for both online and offline payments. It is also envisaged that this means of payment will be interoperable with the European Digital Identity Wallet.

The draft proposal provides for the distribution of the digital euro to be carried out by payment service providers, under a contractual relationship with users. Users will be able to have one or more accounts with the same or different providers. There would therefore be no direct contractual relationship between users and the ECB.

The proposal provides for digital euro users to be able to transfer their digital euro payment accounts to another payment service provider. It is specified that the ECB should ensure as far as possible that the digital euro is compatible with private digital payment solutions.

Finally, access to and use of the digital euro in a Member State outside the euro zone or in a third country would be possible, but subject to conditions.

- **Use of the digital euro as a means of payment at no extra cost**

Users should be able to access the basic functionalities of the digital euro free of charge. However, some additional functionalities may have to be paid for.

The proposed regulation provides for merchant service charges or charges between payment service providers to be regulated in order to offer fair compensation and a "reasonable" profit margin to payment service providers, without excessive charges to merchants. The ECB should establish a maximum threshold for such fees and charges.

With regard to accessibility, the European Commission wants the digital euro to be designed and distributed in such a way as to facilitate its use by as many people as possible, including the financially excluded. With this in mind, the proposed regulation stipulates that users of the digital euro are not required to have a non-digital euro payment account. However, certain digital euro functionalities will require access to a non-digital euro payment account.

- **Anti-money laundering for digital euro payment transactions**

The document proposes that neither the European Central Bank nor payment service providers should have access to personal data relating to transactions: they would only have access to funding and withdrawal data relating in particular to user identity and amounts.

Payment service providers will be obliged to transmit data relating to the user's identity at the request of the competent authorities, in the event of suspicion of money laundering or terrorist financing.

The Commission would be empowered to set, by implementing act, holding and transaction limits for the digital euro, with the aim of limiting such risks.

Finally, it is important to stress that the decision on whether or not to launch the digital euro will remain the prerogative of the Governing Council of the European Central Bank (ECB).

**Next steps:**

***Under the ordinary legislative procedure, the co-legislators must now adopt their respective positions on the text.***

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**28 June 2023 - Revision of the Payment Services Directive: the Commission wants to strengthen fraud prevention and develop Open Banking**

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On 28 June 2023, the European Commission [presented](#) its proposal for a revision of the Payment Services Directive (PSD2), adopted in 2015. The revision, which aims to adapt to the latest technological developments in payment services and address new fraud risks, is based on two proposals:

- [A proposal for a regulation \(PSR\) - annex](#)
- [A proposal for a directive \(PSD3\) - annexes](#)

[The impact assessment](#) carried out by the European Commission revealed that, although significant improvements have been observed in the payments sector since the adoption of PSD2 in 2015, the objectives of PSD2 have only been partially achieved. In particular, the impact assessment highlights the following gaps and needs for regulatory intervention:

- Consumers remain exposed to the risk of fraud (particularly social engineering/manipulation fraud) and lack confidence in payment methods, despite the success of strong customer authentication (SCA), introduced by PSD2, in trying to eliminate fraud in payments.
- The Open Banking market operates imperfectly. Open Banking is the process by which third-party providers deliver value-added services to users by accessing, with the user's consent, their payment account data. This market has developed since PSD2, but there have been numerous complaints about inadequate interfaces for data exchange, which are said to be hampering the market's development.
- The powers and obligations of supervisory authorities are not uniform, and the application and implementation of PSD2 varies from one Member State to another.
- Competition between banks and non-bank payment service providers (PSPs) is not on a level playing field, particularly as regards access to payment systems. Non-bank PSPs find it difficult to open an account with commercial banks (which is essential to obtain a licence) and cannot participate directly in some large EU payment systems because of the Settlement Act.

In response to the shortcomings identified in the impact study, the Commission has set itself the following objectives:

**1. Strengthening consumer rights and protection against fraud:**

The proposed provisions will enable payment service providers to share information on fraud with each other. They will also help to strengthen customer authentication rules, by extending refund rights to consumers who have been victims of fraud and by making it compulsory for all transfers to have a system for checking that the beneficiaries' IBAN numbers match the titles of their accounts. Consumer rights will also be strengthened through several improvements to the current provisions: greater transparency of account statements and more transparent information on ATM charges.

Given the persistence of "social engineering" fraud, **the Commission is proposing additional anti-fraud measures covering both fraud prevention and redress:**

- **The extension to all credit transfers of services for checking that the name matches the IBAN number.** This has been proposed by the Commission for instant payments in euros. All consumers should benefit, for both regular and instant transfers.
- **A legal basis enabling payment service providers to share fraud-related information with each other,** in full compliance with the General Data Protection Regulation (GDPR) via dedicated IT interfaces.
- **Tighter controls on transactions.**
- The obligation for payment service providers to carry out educational measures to make their customers and staff aware of payment fraud.
- **The extension of consumers' rights to reimbursement in certain fraud situations clearly defined by the Payment Services Regulation:** for consumers who have suffered damage caused by the inability of the name and IBAN verification service to detect a mismatch between the name and IBAN of the beneficiary and for consumers who are victims of "spoofing" fraud, where the fraudster contacts the consumer posing as an employee of the consumer's bank. Victims of spoofing fraud may be entitled to claim damages from their payment service provider for the full amount of the fraudulent transaction, subject to conditions such as filing a police report and notifying their provider as soon as possible. Reimbursement would not be allowed in cases of "gross negligence" on the part of the victim, particularly if they are the victim of the same type of fraud more than once, and the impersonation would have to be convincing, for example by reproducing the bank's exact e-mail address or telephone number.

With regard to customers' personal data, the proposal introduces **clarifications to ensure consistency with PSD3 and the General Data Protection Regulation (GDPR), in particular by:**

- Specifying that, for payment service providers, the authorisation to access and process their customers' personal data is limited to the data necessary for the provision of the specific payment services that have been contracted with the customers.
- Strengthening the protection of payment service users' data by limiting the data to which third-party providers can access to the minimum necessary to provide the payment initiation or account information services required by the user and by requiring banks to provide a "dashboard" enabling users to view and manage all the authorisations they grant to third-party providers for access to their payment account data (*cf. proposal for an "Open Finance" regulation also presented by the European Commission on 28 June 2023*).

**2. Improve the competitiveness of Open Banking services: guarantee direct or indirect access to payment systems and bank accounts for non-bank payment service providers**

Open banking services would be improved by removing technical barriers to the provision of banking services and by giving customers greater control over their payment data. **The proposed provisions should give non-bank payment service providers (PSPs) access to all EU payment systems, subject to appropriate safeguards, and give them the right to have a bank account.**

While the aim is to stimulate competition by allowing new "innovative" players to enter the payment services market, the Commission believes it is necessary to establish and adopt safeguards **to ensure equal conditions of competition between traditional players, in particular banks, and non-banks.**

**The proposed directive includes payment institutions as possible participants in payment systems. The rules for admitting payment institutions as participants in payment systems will be strengthened and payment system operators will be required to carry out appropriate risk assessments. Member States will have six months to transpose the directive into national law.**

**3. Improving the application in the Member States of pre-existing provisions on payment services and strengthening the strong customer authentication mechanism**

The European Commission would like several of the provisions contained in the Payment Services Directive adopted in 2015 to be revised via a regulation and thus become directly applicable without any room for manoeuvre on the part of the Member States.

Most of the payment rules applicable to payment service providers will thus be contained in a directly applicable regulation. Clarifications are being introduced as part of the revision: these include definitions of the terms "funds", "payment account" and "payment instrument", as well as detailed rules on how the competent authorities are to enforce the rules, including a list of breaches for which specific penalties are to be introduced. Specific provisions for enforcing the rules on *open banking* are included, given the importance of national supervision for the smooth operation of the payment services market.

Regarding the **strong customer authentication mechanism (SCA)**, the draft regulation proposes to:

- **Clarify the circumstances in which certain types of transactions, such as merchant-initiated transactions or transactions where payment orders are placed by the payer in ways other than using electronic platforms or devices, may be exempt from the obligation to apply the SCA, while introducing safeguards to ensure that payers nevertheless remain protected against fraud.**
- Specify that, for remote payments, the specific amount and beneficiary must be explicitly linked to the transaction, which must be authenticated by the payer.

- **Simplify the application of the SCA to payment account information services.** Banks holding payment accounts will only apply the Data Protection Act to the first access to payment account data by open bank account information service providers unless there are reasonable grounds to suspect fraud. Account information service providers will then be responsible to the SCA for subsequent access to the data.
- Increase the use of digital wallets (where a virtual payment card is stored in the wallet) for payments, by requiring the SCA to be carried out when a payment instrument is registered in the wallet, under the responsibility of the payment service providers issuing the instrument.
- **Require payment service providers to ensure that all users can benefit from SCA execution methods tailored to their needs and circumstances and, in particular, that these methods are not dependent on a single technology, device or mechanism.**

Still with a view to preventing fraud, the European Commission is also proposing to increase transparency for transfers and remittances from the EU to third countries and to make payment account statements more legible (the proposal specifies, for example, that payment service providers will have to include in payment account statements the information needed to unambiguously identify the beneficiary, such as a reference to the beneficiary's business name).

Finally, the proposed revision will also contribute to administrative simplification by bringing together the regimes applicable to the two types of non-bank payment service providers, payment institutions and electronic money institutions, which until now have been governed by different legislative texts.

A [summary of the impact assessment](#) and the [European Commission's report](#) reviewing the implementation of the PSD2 directive and the operation of payment services in the internal market are also published.

**Next steps:**

*The European Commission has launched a [consultation](#) on the proposal for a regulation and a [consultation](#) on the proposal for a directive to gather the views of stakeholders on the proposed measures until 25 August 2023.*

*Proposals for directives and regulations are examined and a position adopted by the co-legislators in accordance with the ordinary legislative procedure.*

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## 28 June 2023 - Open Finance: the EU Commission publishes its legislative proposal

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On June 28, 2023, the European Commission will [publish](#) a proposal for a regulation to establish a framework for data access and sharing in the financial services sector.

This proposal enables the sharing of a broader set of financial services data and sets out the rules under which financial services data sharing will be carried out, as well as the rules applicable to market players who will engage in this process.

### 1. Financial institutions concerned

The financial institutions falling within the scope of the Regulation are payment and credit institutions, investment firms, crypto asset service providers, alternative investment fund managers, management companies, undertakings for collective investment in transferable securities (UCITS) and insurance and reinsurance undertakings and intermediaries. Institutions for occupational retirement provision, credit rating agencies and providers of participative financing services are also concerned.



The categories of consumer data concerned by the application of the regulation are also listed in Article 2 of the proposed regulation. In particular, data relating to

- the balance, conditions and operations of a savings, credit or mortgage account.
- savings, investments in financial instruments, insurance-based investment products, crypto assets, real estate and other related financial assets, as well as the economic benefits derived from these assets.
- to input data collected for the purposes of assessing suitability and appropriateness for retail investment products.
- to input data that form part of an application to assess a company's creditworthiness.

## **2. Data sharing and protection**

Data holders will be obliged to make customer data available on request. In a move to align this regulation with the provisions of the General Data Protection Regulation (GDPR), financial service providers (re)using data will be obliged to use data only for the purposes and under the conditions agreed with the customer.

The regulation is also intended to provide guidance to businesses on how they should ensure that there will be no discrimination or restriction in access to services. Article 7 places particular emphasis on ensuring that customers who refuse to share their data are not denied access to financial products solely on the grounds of their opposition to sharing.

## **3. Creation of customer dashboards and compulsory membership of a data-sharing system by financial institutions**

Article 8 provides for the implementation of financial data access authorization dashboards, to ensure that customers can control their authorizations by having access to an overview of their authorizations. They will also be able to use this dashboard to grant new authorizations, modify them or delete them as they see fit.

In addition, the regulation stipulates that data falling within the scope of the text will be made available only to members of a financial data-sharing system, making the existence of such systems and membership of them mandatory. These data-sharing systems would bring together data holders, data users and consumer organizations. Standards will be drawn up for data protection and interfaces, and coordination mechanisms for the operation of financial data access authorization dashboards will be put in place.

## **4. Supervision of data-sharing systems**

The Commission also envisages that data-sharing systems should be notified to the competent authorities and, for transparency purposes, "*passported for operations throughout the Union*". A register of financial information service providers and data-sharing systems would be set up and maintained by the European Banking Authority.

Member States will be required to designate competent national authorities under the regulation. The competent authorities will have the power to conclude settlement agreements and accelerated enforcement procedures, and to impose administrative and financial penalties in the event of non-compliance by financial institutions with the provisions of the Regulation.

## **5. Drawing up guidelines**

EIOPA and EBA will work with the European Data Protection Board to draw up guidelines on the definition and implementation of the scope of use of personal data.

The guidelines should be based on existing recommendations on the use of consumer data in the field of consumer credit and mortgage credit, on the European Banking Authority's guidelines on granting and



monitoring loans, and on the guidelines adopted by the European Data Protection Council on the processing of personal data.

According to article 7 paragraph 2 of the proposed regulation, which deals with the scope of data use, the guidelines will have to deal with the supervision of personal data for:

- products and services linked to the assessment of a consumer's creditworthiness and credit score.
- products and services related to risk assessment and consumer underwriting in the case of life and health insurance.

#### **Next steps**

**The European Commission has [opened](#) a consultation to gather the views of stakeholders on the proposed measures until August 25, 2023.**

**The proposed regulation will be examined and a position adopted by the co-legislators under the ordinary legislative procedure.**

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### **June 2023 – Digital euro: EU policymakers and stakeholders publish their position regarding the legislative proposal**

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Following the European Commission's adoption on June 28, 2023 of the proposed [regulation](#) on the digital euro, several stakeholders have commented on the legislative proposal:

- **Commissioner Mairead McGuinness** [welcomed](#) the adoption of a proposal that should provide consumers with a dematerialized payment solution that is accessible and free of charge. She also stressed that the digital euro should offer the same level of anonymity protection as cash.
- **MEP Markus Ferber (EPP, DE)** was [cautious](#) about the initiative, denouncing the risk of duplicating the existing payment infrastructure without any added value for the Union. He also suggested further developing the use of the digital euro for businesses.
- **MEPs Stéphanie Yon-Courtin (Renew, FR) and Gilles Boyer (Renew, FR)** [welcomed](#) the European Commission's proposal and the benefits that the digital euro could bring to individuals. However, they stressed the need to mitigate the negative impact on banks' deposits and lending capacity.
- **The European Banking Federation (EBF)** [highlighted](#) its concerns about the costs involved in setting up the infrastructure for the digital euro. In addition, banks fear that retail customers will not use digital euro accounts as deposit accounts, and that retail bank deposit levels will fall as a result.
- **The European Federation of Savers and Users of Financial Services (Better Finance)** has [welcomed](#) the Commission's initiative, which it believes will provide retail customers with an alternative to bank deposit accounts. The federation also called on co-legislators to strengthen respect for the privacy and data of digital euro users.

## **Sustainable Finance**

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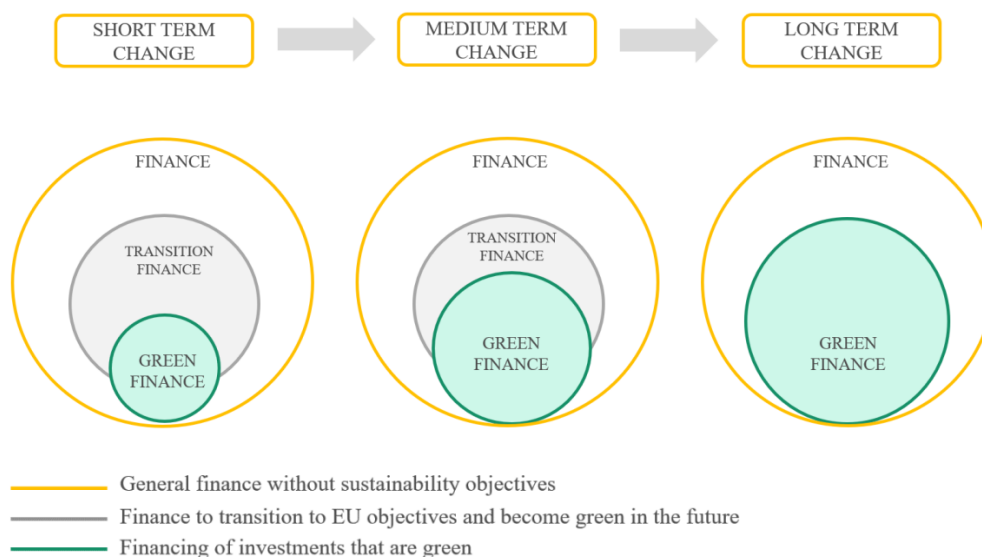
### **13 June 2023 – EU Commission adopts its recommendations regarding transition finance**

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On June 13, 2023, as part of its [legislative package](#) on sustainable finance, the European Commission published a [recommendation](#) on ways to facilitate the financing of the transition to a sustainable economy, together with its annexes.

In its recommendations, the European Commission seeks to clarify the rules governing the financing of the transition, and in particular of activities or companies that do not meet the criteria established by the Green Taxonomy. As explained in the diagram below, transition finance will make it possible in the short and medium term to encompass some of the investments that support the transition to a sustainable economy, but which are not aligned with the criteria set out in the Green Taxonomy.

**Figure 1: Relationship between green and transition finance today and over time**



According to the definition given in the recommendation, the following may fall within the scope of transition finance:

- investments in activities that are aligned or plan to be aligned with the Green Taxonomy;
- investments aligned with benchmarks developed within the framework of the European climate benchmark (climate transition benchmark and Paris Agreement aligned benchmark);
- investments in businesses with credible transition plans;
- investments in businesses with science-based climate objectives.

Subject to lighter requirements, both in terms of timelines and level of alignment with the taxonomy, transition finance also allows investments in activities not currently covered by the Green Taxonomy. The European Commission's rationale for drawing up this recommendation is to address the imbalance between the significant demand for sustainable investments and the shortage of assets meeting the criteria set out in the Green Taxonomy.

The European Commission is therefore providing tools for financial institutions, member states and companies seeking investment to develop transitional finance.

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#### 9 June 2023 – EFRAG standards: the European Commission presents the delegated act under CSRD

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On 9 June 2023, the European Commission [published](#) the delegated act under the European Sustainability Reporting Standards (ESRS). This delegated act is part of the implementation of the corporate sustainability reporting Directive (CSRD).

The 12 sets of standards proposed by EFRAG are included in Annex I of the delegated act, but with a few changes designed to "lighten" the non-financial reporting required by the CSRD by making the reporting of certain data optional or by extending the deadline for companies to produce and make public certain types of data.

These changes mainly concern :

- **Materiality assessment:** all standards and disclosure requirements will have to be subject to a materiality assessment by the company, except for the disclosure requirements specified in the "General information" category. This measure should, in the Commission's view, lead to a significant reduction in the burden on companies and help to ensure that standards are applied in a proportionate manner.
- **Phasing in certain disclosure requirements:** in addition to the phase-ins proposed by EFRAG, the Commission is proposing other phasing-in measures to help all companies, and in particular smaller companies that are subject to these requirements for the first time.

As a result, companies with fewer than 750 employees will not have to publish:

- The GHG emissions data and disclosure requirements specified in the "own workforce" standard in the first year they will be required to apply these standards.
- The disclosure requirements included in the "biodiversity" section of the reporting standards and those relating to the value chain, affected communities, consumers, and end users during the first two years of application of the standards.

Likewise, all companies will not have to publish the following information during the first year of application of the ESRS standards: the anticipated financial effects linked to climate issues (pollution, water, biodiversity, and use of resources) and certain data relating to their workforce (social protection, disabled people, occupational illnesses, work-life balance).

- **The publication of certain information will be made optional: the Commission has decided to change a certain amount of mandatory data proposed by EFRAG into voluntary data.** These include, for example, biodiversity transition plans, certain indicators relating to "non-employees" within the company's workforce, and an explanation of why the company may consider that a particular sustainability theme is not significant due to its activity, which may be published on a voluntary basis.
- **Additional flexibility for certain information:** as well as making certain data reporting voluntary, the Commission has also introduced flexibility for certain mandatory reporting. For example, additional flexibility has been introduced into the reporting requirements relating to the financial effects of sustainability risks and engagement with stakeholders. The methodology to be used for the materiality assessment process has also been made more "flexible".

Lastly, the delegated act reiterates the Commission's desire to ensure a high degree of interoperability of EU standards with international standards developed by the ISSB.

**Next steps:**

***A consultation took place from 9 June to 7 July, and the delegated act must therefore be adopted imminently.***

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**1 June 2023 - The European Supervisory Authorities publish their progress report on preventing greenwashing in the financial sector**

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On 1 June 2023, each European Supervisory Authorities (EBA, EIOPA, ESMA) published their progress report on the monitoring and supervision of greenwashing in the financial sector. The ESAs wish to highlight developments in greenwashing practices and trends in their respective areas of competence: banking, insurance and pensions, and financial markets.

- [EBA report](#)
- [EIOPA report](#)
- [ESMA report](#)

These reports are published in response to a request for technical advice from the European Commission on the appropriate measures to be adopted to limit greenwashing practices by financial players.

According to the three supervisory authorities, greenwashing is *"a practice whereby sustainability-related statements, actions or communications do not clearly and fairly reflect the profile of a financial actor, product or service. Whether intentional or not, this practice is likely to mislead consumers, investors or other market participants"*. Claims about future ESG performance are considered to be the most prone to greenwashing, followed by an entity's ESG strategy and objectives, and finally ESG labels and certificates. Competent authorities and market participants also believe that greenwashing has the greatest impact on reputational and operational risks (e.g. litigation).

According to the EBA, the issue of greenwashing is currently perceived as *"low to medium for banks, and medium to high for investment firms, but is likely to increase in the future"*. In particular, the EBA highlights the methodological "challenges" in terms of data collection for the proper application of EU law (unfair commercial practices, application of the SFDR regulation, implementation of the European taxonomy).

For its part, EIOPA notes in its report that seventeen national supervisors report a lack of resources to better identify greenwashing practices. It states that three competent national authorities have detected at least one case of greenwashing in insurance and retirement savings products, and that five others are in the process of investigating potential abuses.

While most national supervisors consider the regulatory framework to be adequate, EIOPA notes *"inconsistencies and shortcomings"*, particularly with regard to the different practices for calculating the proportion of sustainable investments and the wide discretion given to financial players in taking into account indicators that allow them to deviate from the *"do no significant harm"* principle (present in the SFDR regulation and the European Taxonomy).

Lastly, ESMA stresses the importance of improving the consistency and effectiveness of the regulatory framework in the area of sustainability. According to ESMA, increasing the transparency of data methodologies on environmental, social and governance (ESG) risks, clarifying the use and calculation of estimates and improving the reliability and completeness of sustainability data are the priorities to be addressed in this area.

In addition, in order to increase the participation of retail investors, the introduction of a reliable labelling system for sustainable financial products would be beneficial, as would efforts to fill the gaps in knowledge of ESG risks.

**Next steps:**

***The ESA publications are progress reports. The final reports will be published in May 2024 and will include recommendations on possible changes to the European regulatory framework.***

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### **31 May 2023 – EU Parliament adopts its position on CSDD directive**

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On May 31, 2023, the plenary session of the European Parliament [adopted](#) its final position on the proposed directive on corporate sustainability due diligence (CSDD). The position adopted is largely identical to the report adopted earlier in May by the Legal Affairs Committee (JURI).

Several groups of MEPs from the ECR, ID and EPP groups, as well as some members of the Renew group, had tabled amendments calling into question essential parts of the text. Only one of them was finally adopted, slightly modifying the position adopted by the Legal Affairs Committee: the amendment removes from the text article 26, which obliges the directors of the companies concerned to implement and supervise actions relating to the duty of vigilance and to inform the board of directors of their company (article 25 and recital 51 dealing with the same subject are however maintained but lightened).

Parliament's position was adopted by 366 votes to 225, with 38 abstentions.

MEPs want the duty of care rules to apply to companies established in the EU in all sectors, including financial services, with more than 250 employees and worldwide sales of over €40 million.

MEPs also want the directive to oblige companies to implement a transition plan in line with the objectives of the Paris agreements. The directive's provisions will also strengthen the right of recourse for victims of the impact of European companies' activities.

Companies that fail to comply with the new due diligence rules will be liable to pay damages and may be sanctioned by national supervisory authorities. Sanctions include measures such as public denunciation, withdrawal of a company's products from the market or fines of 5% of worldwide sales. Non-European companies that fail to comply with the rules may be excluded from European public procurement contracts.

***Next steps:***

***The [adopted](#) position constitutes the Parliament's negotiating mandate for the forthcoming inter-institutional negotiations ([see](#) 4- column table table).***

***The first "introductory" trialogue meeting took place on June 8, 2023. The next political trialogues will take place under the Spanish Presidency of the Council of the EU.***

## **Other topics of interest**

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**7 June 2023 – 13<sup>th</sup> edition of the European Financial Stability and Integration Review (EFSIR)**

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On June 7, 2023, the European Commission held its 13th conference on the state of European financial integration and stability (EFSIR).

Several European representatives had the opportunity to express their views on the state of integration of European financial markets:

- **John BERRIGAN** structured his [speech](#) in three parts:
  - **Overview of the European economic situation:** the European Commission representative stressed that, despite the war in Ukraine, the risk of financial crisis and rising interest rates, European banks had maintained an appropriate level of capital, demonstrating the sector's resilience. Nevertheless, John BERRIGAN felt it necessary to continue to ensure that European banks have sufficient capital reserves to withstand such shocks.
  - **Non-performing loans (NPLs):** John BERRIGAN welcomed the very low level of non-performing loans (NPLs) observed by the authorities. It stands at 1.8%, the lowest since 2015. However, he warned credit institutions against a rapid increase in the number of NPLs and therefore called for continued vigilance on the issue.
  - **Financial education:** John BERRIGAN expressed concern about the very low level of financial education among European citizens, who are on average less than 20% financially literate and have serious difficulties in making informed decisions about personal finance and investment. He also underlined the correlation between the level of financial education and the management of debt and savings. He therefore highlighted the initiatives taken by the European Commission - in cooperation with the Member States - to develop financial education, whether within the framework of the Retail Investment Strategy (RIS) or the Technical Support Instrument (TSI). He stresses, however, that educational issues remain the prerogative of the Member States, and that the European Commission can therefore only play a limited role in this area.

Finally, in view of the challenges posed by the green and digital transitions, John BERRIGAN called for the rapid completion of the Banking Union and the Capital Markets Union (CMU).

- **Luis de GUINDOS, Vice-President of the European Central Bank (ECB)**, [recalled](#) the resilience of the European financial sector and called for resolution rules to be strengthened to ensure that small and medium-sized credit institutions are included within the scope of bank resolution rules. According to the Vice-President, this should ensure an orderly and harmonized resolution across the Union. Accordingly, he called on the co-legislators to finalize negotiations on the legislative proposal concerning the crisis management and deposit guarantee framework (CMDI) before the end of the mandate. Finally, he acknowledged that the third pillar of the Banking Union had yet to materialize in the form of a European deposit guarantee scheme.
- **Nadia CALVINO, Vice-President of the Spanish Government and Minister for the Economy**, went on to present the Spanish Presidency's four priorities for the Economic and Financial Affairs Council (ECOFIN):
  - **Financial Regulation:** the Minister announced that Spain would make the finalization of the main financial subjects still under negotiation, such as Banking Union, Capital Markets Union and the crisis management and deposit guarantee framework, a priority of its presidency. However, she stressed that RIS was not a priority for the Spanish Presidency.
  - **Competitiveness and taxation:** Nadia CALVINO affirmed her desire to review budgetary rules at European level.
  - **Digital:** the Spanish presidency has stated that digital issues are at the heart of its objectives, and initiatives on the digital euro, "Open finance" and "Open banking" will be particularly closely monitored.
  - **Europe and the World:** the Minister indicated her desire to strengthen cooperation with South American countries.

- **Mairead McGuinness, Commissioner in charge of Financial Services, Financial Stability and Capital Markets Union (DG FISMA), [emphasized](#)** the resilience of the European banking sector, as the level of non-performing loans (NPLs) remains low. While the Commissioner welcomed the European Commission's proposal for a crisis management and deposit guarantee framework, she warned that this initiative was not a substitute for the 3rd pillar of the Banking Union, i.e. a European deposit guarantee scheme. She also called on the stakeholders involved in the Retail Investment Strategy (RIS) to move forward and stop defending the status quo.



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