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## Banking regulation

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### 13 September 2023 - The rapporteur presents his draft report on Banking Union

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On 13 September 2023, Ivar IJABS (Renew, Latvia) [presented](#) his draft annual report on the Banking Union. The draft resolution tabled by the rapporteur for the Committee on Economic and Monetary Affairs (ECON) takes stock of the main achievements concerning the Banking Union, and sets out proposals for future milestones to complete it.

In particular, he proposes in his draft resolution to finally set up an European deposit guarantee scheme (EDIS) and finalize the crisis management and deposit guarantee framework (CMDI). On this point in particular, the rapporteur warns that the CMDI initiative should not be seen as a replacement for the introduction of a deposit guarantee scheme.

He also calls on the European Commission to make the completion of the Banking Union and the Capital Markets Union a priority of its next mandate, in order to facilitate access to financing for SMEs and individuals.

The rapporteur welcomes the banking prudential framework adopted by the co-legislators in that it should not increase prudential requirements for banks.

The MEP is concerned about the decline in banks' profitability, which could compromise their ability to engage in long-term strategic investments. He also warns of the risks to financial stability posed by the non-bank financial intermediary sector, and calls for a coherent regulatory framework to be put in place.

As a reminder, this draft resolution is non-prescriptive and is intended solely to inform the European Commission and Council of Parliament's position on the subject.

**Next steps:**

***MPs must now adopt the draft report in the Economic Affairs Committee (ECON) before validating it in plenary. The adoption date in the ECON committee is scheduled for November 28, 2023.***

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### 11 September 2023 - The rapporteur presents his draft report on the revision of BRRD with regard to the adjustment of MREL.

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On 11 September 2023, Jonas FERNANDEZ ALVAREZ (S&D, ES), rapporteur for the European Parliament's Committee on Economic and Monetary Affairs (ECON) on the legislative [proposal](#) revising the Bank Recovery and Resolution [Directive](#) (BRRD) as regards certain aspects of the Minimum Capital Requirement and Eligible Liabilities (MREL) published his draft [report](#) on the text.

As a reminder, the proposed changes are designed to improve the operation and proportionality of the deduction mechanism, enhance bank resolution and ensure that the mechanism does not distort competition between different banking group structures.

As announced by Jonas FERNANDEZ ALVAREZ during the exchange of views in the ECON Committee, the proposed amendments are limited. In particular, the rapporteur focuses on excluding from the scope of the deduction mechanism exposures issued by liquidation entities.

In addition, without departing from the proposal drawn up by the European Commission, the rapporteur wishes to strengthen the safeguards for the preservation of financial stability. Indeed, he wishes to ensure that, despite the provisions proposed by the European Commission to make proportionate adjustments to the prudential framework for resolution, the Resolution Authorities will have the necessary tools to apply calibrated capital requirements.

**Next steps:**

***The co-legislators will now adopt their respective positions on the text. As a reminder, the MREL rules will come into force from 1 January 2024, so the text must be adopted before the end of the year.***

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**6 September 2023 - EU Commission publishes draft delegated act on shadow banking entities**

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On 6 September 2023, the European Commission [adopted](#) the delegated regulation dealing with the rules for identifying shadow banking entities, as provided for in Article 394(4) of the Capital Requirements Regulation (CRR) adopted in 2013. The provisions of this delegated act specify:

- the criteria for identifying parallel and non-parallel banking entities;
- the definition of banking activities and services;
- the criteria for excluding entities established in third countries from the category of shadow banking entities.

See the [Delegated Regulation](#) and its [Annex](#).

**1. Presentation of shadow banking entities**

The recitals of the Delegated Regulation stipulate that banking institutions must not consider as shadow banking entities financial institutions which are treated as institutions for the calculation of risk-weighted assets under the Standardised Approach defined in Article 119(5) of the CRR, as these financial institutions are authorised and supervised by the competent authorities and subject to prudential requirements comparable, in terms of robustness, to those applied to institutions..

In addition, the credit intermediation activities of entities forming part of a non-financial group, carried out on behalf of other entities within that non-financial group, are limited in scope. For this reason, the delegated act considers that these activities do not present a significant risk to financial stability and should therefore not be identified as shadow banking entities.

Similarly, a third country institution that has been authorised and is supervised by a supervisory authority that applies those Basel Core Principles should therefore not pose a significant risk to financial stability and should not be identified as a shadow banking entity.

**2. Criteria for identifying shadow banking entities**

Article 1 of the delegated act lays down criteria for identifying shadow banking entities.

Institutions identified as shadow banking entities are

- a) any entity which offers banking services or carries out banking activities as defined by Article 2 of the Delegated Act and which is not authorized and supervised in accordance with one of the Union acts listed in the [Annex](#) to this Regulation ;
- b) any undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of [Directive 2009/65/EC](#), where such undertakings are authorized as money market funds (MMFs) as referred to in Article 4 of [Regulation 2017/1131](#) ;
- c) any alternative investment fund as defined in Article 4(1)(a) of [Directive 2011/61/EU](#), where one of the following conditions applies:
  - the alternative investment fund is authorized as a money market fund as referred to in [Regulation 2017/1131](#) ;
  - the alternative investment fund makes substantial use of leverage as defined in Article 111(1) of Regulation 2017/1131;
  - as set out in Article 111(1) of [Delegated Regulation 231/20139](#) the alternative investment fund is not prohibited from granting loans in the normal course of its business or from purchasing loan exposures from third parties for its own account.

Article 2 defines banking activities and services as :

- the taking deposits and other repayable funds; lending including, inter alia: consumer credit, credit agreements relating to immovable property, **factoring, with or without recourse, financing of commercial transactions (including forfeiting)** ;
- Any other service or activity involving maturity transformation, liquidity transformation, leverage or credit risk transfer.

In line with the objectives of the Capital Requirements Regulation (CRR), the aim of the delegated regulation will be to strengthen the prudential framework and improve the transparency of the material links between the traditional banking sector and the shadow banking sector.

With this in mind, Mairead McGuinness, EU Commissioner for Financial Services, Financial Stability and Capital Markets Union, said: *"Non-bank financial institutions have grown in recent years. Some of them have accumulated considerable leverage and liquidity asymmetries and, as recent losses in the banking sector involving these entities have shown, their activity could pose a risk to the financial system. The rules adopted today provide banks operating in the EU with additional clarity on which entities fall within the shadow banking system, ensuring consistency in the information reported by banks and improving the ability of supervisors to detect the accumulation of significant exposures to non-bank financial institutions and to manage risks effectively."*

## Banking supervision

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### 26 September 2023 - The European Banking Authority publishes its second Basel III implementation monitoring report

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On 26 September 2023, the European Banking Authority (EBA) [published](#) its second monitoring report ([annex](#) on the analysis of specific adjustments) of the measures implemented in the EU under the Basel III Accords.

The Basel III follow-up report assesses the impact on EU banks of the final revisions to the credit risk, operational risk and leverage ratio frameworks. The introduction of the global output floor is taken into account. The report also quantifies the impact of the new standards on market risk and credit value adjustments (CVA).

Overview of EBA's conclusions:

- According to EBA's assessment, based on a sample of 157 banks, the impact on minimum Tier 1 capital has decreased considerably compared with the assessment carried out in 2021. As regards to the estimated capital shortfall, EBA states that the impact of the reform has been almost entirely absorbed. Indeed, with 0.6 billion euros of additional Tier 1 capital required for the entire EU banking sector, the estimated capital shortfall to comply with the Basel III reform has been virtually eliminated.
- Overall, the results of the mandatory Basel III capital monitoring exercise show that the minimum Tier 1 capital requirement for European banks would increase by 9% at the full implementation date in 2028. The main contributing factors are the output floor and credit risk.
- The overall minimum Tier 1 capital requirement for large and internationally active banks (Group 1) would increase by 10%.
- The requirements for globally systemically important institutions (G-SII, a subset of Group 1) and for Group 2 banks would increase by 16.0% and 3.6% respectively.

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**18 September 2023 - The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority publish a report on the risks to the financial sector arising from the current economic situation.**

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On 18 September 2023, the European Supervisory Authorities shared their joint [report](#) highlighting possible risks facing the European financial system.

They note that risks to financial stability are heightened by economic uncertainty. The three authorities call on financial market players to be particularly vigilant in the face of risks arising from the current economic climate.

Current uncertainty, linked in part to the various crises of recent years, presents major risks to financial stability, with high inflation and persistent geopolitical risks. The European financial system also remains particularly reactive and sensitive to external shocks, such as that experienced by US banks last March.

In order to deal with this situation of instability, the three supervisory authorities invite financial players to implement the following measures:

- Close monitoring of key interest rate rises and their impact by financial institutions and supervisory authorities;
- Better anticipate possible deterioration in asset quality in the financial sector;
- Be more aware of the impact of inflation risk;
- Place greater emphasis on effective risk management.

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**11 September 2023 - Governors and heads of banking supervision endorse initiatives taken in the wake of recent banking sector turmoil**

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On 11 September 2023, the Bank for International Settlements (BIS) Group of Central Bank Governors and Heads of Banking Supervision [met](#), not only to take stock of the lessons learned from the latest banking crises, but also to assess the implementation of the Basel III standards.

The group of central bank governors endorsed the initiatives that have been taken in response to the banking crisis, in particular those relating to strengthening the effectiveness of supervision, and the continuation of additional analytical work. The banking "turmoil" of March to May was the largest in scale and scope since the 2008 financial crisis. The strains experienced by banks during this period led to a general assessment of the banking system, which subsequently helped to limit the effects of these banking strains. The press release also recalls the growing resilience of the global banking system, which has enabled us to better cope with these various shocks.

As the governors point out, in practice this resilience is based on the importance attached to risk management practices and bank governance arrangements, but also on strong and effective supervision to monitor the safety and soundness of banks, and on a solid regulatory framework to preserve financial stability.

## AML/CFT rules

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### **27 September 2023 - Member States divided on the location of the future European Anti-Money Laundering Authority**

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On 27 September 2023, the representatives of the Member States to the EU confirmed, via a letter to the European Commission, their decision to officially launch the examination of applications to host the headquarters of the future European Anti-Money Laundering Authority (AMLA), if the European Parliament also confirms this.

The [letter](#) follows on from the September 20 exchange between the Council and Parliament to agree on the next steps in the selection procedure for the AMLA's headquarters.

The letter sets out the text of the call for applications and details of the application procedure, including the selection criteria, the application template to be used by member states and the technical specifications for the AMLA headquarters.

The candidate cities currently declared are : Paris, Frankfurt, Vienna, Vilnius, Madrid, Dublin, Brussels, Rome and Luxembourg.

#### **Next steps:**

***For the first time in the process of selecting a member state to establish the headquarters of a European authority, the process will follow the following procedure***

## Taxation incl. VAT and Legal Affairs

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### Legal Affairs

#### 18 September 2023 - MEPs want to strengthen the use of national commercial registers

On 18 September 2023, members of the European Parliament's Legal Affairs Committee [published](#) their [amendments](#) to the proposal for a directive on improving the use of digital tools and processes in the area of company law.

As a reminder, the European Commission's proposal aims to improve the functioning of the internal market, and to facilitate access to and use of company data across borders.

With regard to financial services, the Green Group proposes that Member States ensure that the identity of company founders and managers can be verified electronically for the purposes of combating money laundering.

On the whole, the various groups share the European Commission's proposals and wish to facilitate access to registers and the use of communications in digital format. In particular, many MEPs are proposing to ensure that documents submitted to national trade registers in electronic format should have the same legal value as those submitted in paper format.

### Late payment

#### 12 September 2023 – European Commission presents its review of the Late Payment Regulation (LPR)

On 12 September 2023 the European Commission presented a series of initiatives to boost the competitiveness and resilience of SMEs (i.e. the SME Relief Package).

The Package includes :

- [Regulation on late payments in commercial transactions](#)
- [Directive on tax simplification for SMEs](#)
- [Communication on the SME Relief Package](#)

Regarding late payments, the European Commission, in the end, chose to repeal the 2011 Late Payment Directive (LPD) and propose instead a Regulation. The aim of the proposal is to *“tackle payment delays”*, as they are deemed as *“an unfair practice that compromises the cash flow of SMEs and hampers the competitiveness and resilience of supply chains”*. It is worth noting that the European Commission **hopes that the proposed regulation will “decrease the dependency of SMEs on external financing”**.

#### 1. Impact assessment

The [impact assessment made](#) by the EU Commission highlights that EU public authorities are likely the *“worst”* payors compared to the private sector even though they are already concerned by a 30-days payment delay requirement under current Late payment directive. The impact assessment alerts that in Italy sometimes public payers payment can last up to 400 days.



The impact assessment also denounces that Big companies often pay much later than SMEs which suffer from it. Study suggests that the most common reason of late payment identified by companies is that late payers face financial difficulties.

While the impact assessment does mention in several times the negative effects produce by contracts including “ban of assignment of receivables” clauses, and considers it as an “*unfair payment practice*” it does not retain it in its preferred option policy.

## 2. Scope and definition

The Regulation confirms the LPD current scope by excluding, under article 1 of this Regulation proposal “*payments for transactions with consumers, payments made as compensation for damages, payments in relation to debts that are subject to insolvency proceedings, including proceedings that are subject to debt restructuring*”.

The Regulation proposal introduces several new definitions among which are :

- Debtor : any natural or legal person or any public authority that owes a payment for a good delivered or a service provided;
- Creditor : any natural or legal person or any public authority that delivered goods to a debtor or provided services to a debtor.

## 3. New payment provisions

The European Commission proposes to delete the reference to “*the concept of grossly unfair practices and clauses*” and instead supports **limiting the payment period and the duration of the procedure of acceptance or verification to a maximum of 30 days.**

The regulation proposal would ensure that interest for late payment is automatically due, without the creditor needing to send a reminder and where article 5 conditions are fulfilled. In addition, where interest for late payments becomes payable a flat fee compensation amounting to 50 euros for recovery cost will be automatically due.

In the case of public procurements falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC, the Regulation proposal states that contractors will have to provide evidence that they have paid in time their direct subcontractors in the execution of the contract. This will be done through the means of a written declaration by the contractor.

## 4. Null and void contractual terms

The Regulation proposal introduces a series of contractual terms and practices that shall be deemed null and void :

- setting the payment period in breach of Article 3;
- excluding or limiting the right of the creditor to obtain interest for late payment provided for in Article 5 or the right to obtain compensation for recovery costs provided for in Article 8;
- extending the duration of the procedure of verification or acceptance beyond the term set in Article 3(3);
- intentionally delaying or preventing the moment of sending the invoice

**The proposal does not include the prohibition of “*ban of assignment*” clauses in contracts.**

## 5. Enforcement authorities

The Regulation proposal provides that Member States will designate one or more authorities responsible for the enforcement of this Regulation. These Authorities will have the following powers :

- initiate and conduct investigations on their own initiative or based on a complaint and carry out on-site inspections ;
- require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;
- require the debtor to pay interest for late payment as provided for in Article 5 or require the debtor to compensate the creditor as provided for in Article 8 ;
- impose fines and other penalties.

It is worth noting that the Regulation proposal introduces the requirement for Member States to ensure that credit management tools and financial literacy trainings are available and accessible to SMEs, including on the use of digital tools for timely payment.

The Regulation will apply 12 months after its publication to the European Official Journal. The European Commission proposes to publish a report on the implementation of the Regulation 4 years after its entry into force.

The Commission has included in its package several complementary documents such as :

- [Questions and Answers on SME relief package](#)
- [Factsheet on SME relief package](#)
- [Factsheet on late payments regulation](#)

### **Next steps :**

***Colegislators will now have to adopt their position on the text.***

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## **13 September 2023 - Late Payment Regulation: stakeholders publish their positions on the text**

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On 13 September 2023, following the presentation by the European Commission of its [proposal](#) for a regulation amending the Late Payment Directive (LPD) several stakeholders published their reactions to the content of the text:

- **Independent Retail Europe**, the association representing independent retailers, is [alarmed](#) by the European Commission's proposal to introduce a 30-day payment period. The association believes that this provision will have a negative impact on independent retailers, who are SMEs whose already low profitability will be significantly eroded.
- **EuroCommerce** [shared](#) its fears that the European Commission's proposal would have a negative impact on the retail sector. The association emphasizes the freedom of contract for companies. The association also points out that the 30-day payment deadline would cut off access to alternative financing, such as supply chain financing, for companies struggling to access financing from traditional banking networks.
- **BusinessEurope**, through the voice of its Managing Director Markus J. BREYNER, [indicated](#) that the association remained fundamentally committed to freedom of contract, in order to offer companies a degree of flexibility.
- **SMEUnited** has [welcomed](#) the European Commission's proposal. The association believes that the move to a 30-day payment term will benefit SMEs. SMEUnited nevertheless called for continued efforts to reduce administrative and reporting obligations.

## Sustainable Finance

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### 21 September 2023 - EFRAG opens a call for tender regarding its future cost benefits analysis on SMEs and non-complex credit institutions reporting standards

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On 21 September 2023, the European Financial Reporting Advisory Group (EFRAG) [opened](#) a call for tender in view of developing a cost benefit analysis for :

- the Draft European Sustainability Reporting Standard for Listed SMEs, small non-complex credit institutions and captive insurance/re-insurances (LSME); and
- the voluntary reporting standard for non-listed SMEs (VSME).

Both cost benefit analysis will be aimed at gathering data and evidence regarding EFRAG's conclusions and will include the views of the different stakeholders.

**Next steps :**

***The draft deliverables of the analysis is planned for April 2024 and the final deliverables for October 2024. Tenders will have until October 2023 to present their application.***

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### 14 September 2023 - The EU Commission opens a consultation on SFDR implementation

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On 14 September the European Commission opened two consultations to gather stakeholders' views on the implementation of the Sustainable Finance Disclosures Regulation (SFDR) since its entry into force in 2021.

In view of a potential revision, the Commission seeks to gather the views of stakeholders in order to examine whether SFDR has effectively met investors' needs for transparency and expectations.

- A [public consultation](#) open to all interested parties ;
- A [targeted consultation](#) aimed specifically at gathering the views of stakeholders involved and with practical experience (banking and financial players, asset managers and investors, NGOs, public authorities and national regulators).

The European Commission is currently carrying out a full assessment of the regulation, in view of simplifying the current European sustainable finance framework and to ensure that the Regulation could play a more effective part in the fighting against greenwashing. The European Commission hopes to achieve greater consistency and efficiency with other European regulations (eg. Taxonomy Regulation). Finally, the European Commission is seeking feedbacks on the **development of a possible categorization system for financial products based on their performance and sustainability objectives**.

As a reminder, the SFDR regulation defines how financial intermediaries, such as asset managers, must communicate sustainability information to investors. It is designed to bring greater transparency to the market and enable investors to make informed investment choices. The SFDR regulation is also designed to enable investors to properly assess how sustainability risks are integrated into the investment decision-making process. The Regulation has thus, been built to contribute to one of the EU's major policy objectives: attracting private funds to help Europe move to a carbon-neutral economy.

**Next steps:**

**The deadline for responses to both consultations is December 15, 2023.**

**An online round table will be organized on 10 October 2023 by DG FISMA to discuss SFDR implementation and the next steps envisaged by the European Commission**

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**4 September 2023 - The European Parliament's Committee on Economic and Monetary Affairs (ECON) discusses financial and sustainable standards.**

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On 4 September 2023, the European Parliament's Committee on Economic and Monetary Affairs (ECON) discussed financial and non-financial accounting standards with the chairmen of the international standards boards (ISSB and IASB). Sustainability standards, were at the heart of the exchange, a certain number of issues, such as the compatibility of European standards with existing international standards, and more generally the question of the usefulness of European standards in relation to international standards were discussed.

A German member of parliament from the EPP group asked ISSB Chairman Emmanuel Faber how European standards differed from current international standards. According to the ISSB Chairman, European standards are sufficiently clear for players to be able to navigate between international and European standards. Emmanuel Faber also added that demand for additional standards adapted to climate risks is growing, and can no longer be ignored by the European Union.

He also pointed out that the aim of establishing these standards is also to increase transparency by establishing a link between financial and climate risks. Emmanuel Faber concluded that it is necessary to ensure such transparency in order to build resilient economies.

## Other topics

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**13 September 2023 - Capital Markets Union: presentation of a Franco-German roadmap**

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On 13 September 2023, the French and German governments [published](#) a Franco-German roadmap for the Capital Markets Union. Both countries believe that capital markets must play a greater role in financing European businesses, particularly to enable them to embark on the ecological and digital transitions.

"*Strengthening the Capital Markets Union is a common priority for Germany and France*" and the European Union should focus on 3 axes according to them:

1. Promoting Europe's position as a global hub for financial services, and preventing European companies from having to or preferring to use non-European financial centers;
2. Reduce red tape to make investment and financing more attractive;
3. Reinforce the shareholding culture among European savers.

Germany is presenting the initiatives and measures it would like to see prioritized:

- **Reform the regulatory framework governing securitizations, beyond the provisions currently contained in the CRR/CRD revision;**

- Bring negotiations to a successful conclusion on the package aimed at reducing prospectus requirements for IPOs and compliance efforts for issuers (Listing Act). The 2 countries are also calling for further measures to help small businesses raise funds via the market;
- **Complete the taxonomy with transition activities;**
- Better prevent the risk of "greenwashing" when marketing financial products, notably by amending the SFDR regulation.

Germany and France are also keen to "explore the potential of a bottom-up approach to UMC". This approach would be based on the sharing of best practices and peer-to-peer learning. Finally, the 2 countries "call for a new UMC agenda focused on providing private investment for the EU economy".

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### **13 September 2023 - Ursula von der Leyen, President of the European Commission, delivered her State of the Union address**

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On 13 September 2023, Ursula von der Leyen [addressed](#) the European Parliament to deliver her annual State of the Union address. This speech was particularly awaited, as it was the last one before the European elections, and provided an opportunity to take stock of the European Commission's mandate and set the course for the last nine months. Ursula von der Leyen was keen to demonstrate the Commission's effectiveness in the fight against global warming, reindustrialization and the defense of European sovereignty.

The implementation of the "Green Deal" remains the Commission President's key objective : 800 billion euros have been earmarked for the Next Generation EU program to make the European economy carbon neutral. Indeed, she is convinced that decarbonization and industrial modernization must go hand in hand. The European Commission President also believes that the transition - and economic competition - must be fair and equitable, which is why she announced the launch of an investigation into Chinese state subsidies to the electric vehicle sector.

The competitiveness of European companies was a particular focus of the Commission President's speech, as she aims to support and facilitate their activities by proposing, among other things, a 25% reduction in the declarations and administrative burdens imposed on them. More broadly, the economic focus was on European competitiveness, with Mario Draghi announcing the preparation of a report on the future of European competitiveness.

In the digital arena, she also welcomed the adoption of the Digital Market Act and of the Digital Service Act, and looked to the future, highlighting the decisive challenges posed by artificial intelligence.

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### **13 September 2023 - EU Commission opens a consultation to increase SME threshold definition**

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Following the latest announcements by Ursula von der LEYEN, President of the European Commission, on the rationalization of corporate disclosures and reporting standards, a public consultation was [opened](#) on 13 September to gather the views of stakeholders on a draft delegated act aimed at raising thresholds for companies, in particular SMEs and micro-enterprises.

This consultation is a prerequisite for adjusting the size criteria and thresholds for SMEs to take account of inflation. The European Commission is proposing a 25% increase in the thresholds (balance sheet and net turnover) for SMEs and a 28.6% increase for micro-enterprises, based on an inflation rate of 24.3% in the euro zone between 2013 and 2023.

It should be noted that the draft delegated act stresses that this increase in size criteria will have the effect of :

- Reducing the scope of the audit and disclosure requirements set out in the Accounting Directive;
- Reducing the scope of application of both the Corporate Sustainability Reporting Directive (CSRD) and of the reporting requirement under Article 8 of the Taxonomy Regulation.

The consultation closed the 6 October 2023 and will now be reviewed by the EU Commission



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