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Consultations

7 May 2024 - ESMA opens consultation on eligible assets for UCITS funds

On 7 May 2024, the European Securities and Markets Authority (ESMA) [published](#) a [call for advice](#) on the revision of the [Delegated Directive clarifying certain definitions of eligible assets \(EAD\)](#) of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

This consultation follows the European Commission's formal request to ESMA for technical advice on a possible amendment to the delegated directive.

The aim of ESMA's consultation is therefore to gather the views of stakeholders on the potential risks and benefits of aligning the Delegated Directive with the reality of today's financial markets. In particular, the issue of UCITS exposure to certain new asset types needs to be clarified as part of this review.

In its call for evidence, ESMA notes that uncertainties and questions of interpretation currently exist regarding certain types of assets eligible for UCITS funds, such as structured/leveraged loans, catastrophe bonds, commodities, crypto assets and carbon emission allowances.

Stakeholders are therefore invited to send the Authority their views on certain concepts and definitions, and the need to amend or clarify them. Stakeholders are also invited to submit their views on the benefits or risks of authorizing direct or indirect exposure of UCITS to certain types of assets, such as Asset-backed securities ("ABS"), including mortgage-backed securities ("MBS").

Next steps:

Responses to the [consultation](#) are due by 7 August 2024. ESMA is instructed by the European Commission to present its technical opinion by 31 October 2024.

Banking regulation

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CRR/CRD

30 May 2024 – EU Council formally adopts the banking package

On 30 May 2024, the EU Council formally adopted the EU banking package reviewing the Capital Requirements Regulation and Directive ([CRR](#) and [CRD](#)).

The amended texts will now have to be published in the EU's Official Journal to formally enter into force, 20 days after their publication.

With regard to CRR/CRD Implementation :

- The CRR will apply from 1 January 2025.
- Member States will have 18 months to transpose the CRD into national legislation.
- EBA is currently working on the mandates attributed to the Authority, and has published a roadmap detailing the implementation timing.

Banking supervision

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28 May 2024 - The European Banking Authority confirms that two-thirds of national bank deposit guarantee schemes (DGS) have reached their target level for dealing with bank failures.

On 28 May 2024, the European Banking Authority [presented](#) the data collected on national bank deposit guarantee schemes.

The EBA estimates that 21 of the 36 national bank deposit guarantee schemes (DGS) in the European Economic Area (EEA) had reached their target level for protecting savings in the event of bank failure, while six other schemes were close to achieving it.

Again according to data published by the European Banking Authority, the amount of bank deposits covered rose by 1.7% last year, at a slower pace than in the previous three years. Similarly, the funds available to protect individual savings up to 100,000 euros per person rose by 14.9% in 2023, to 73 billion euros.

Next steps:

DGS schemes have until July 2024 to reach the required target level of 0.8% of bank deposits covered.

27 May 2024 - Securitization: European Banking Authority presents final guidelines for harmonized implementation of STS criteria for on-balance sheet securitizations

On 27 May 2024, the European Banking Authority [presented](#) its guidelines on additional specific criteria for on-balance sheet securitizations (so-called “STS criteria”).

The guidelines on the STS criteria for on-balance sheet securitizations provide a harmonized interpretation of the STS criteria, and clarify those criteria that are open to interpretation. EBA's objective is to ensure a common and consistent understanding of the criteria by originators, original lenders, securitization entities, investors, competent authorities and third-party auditors.

The guidelines published by EBA also include targeted amendments to the [guidelines for non-ABCP securitizations](#) and [ABCP securitizations](#) to ensure that the interpretation provided is identical and consistent across all three sets of guidelines.

Among the changes adopted relating to the 2018 ABCP securitization guidelines is that obligors or guarantors of credit-risk exposures should not be considered to have a “*credit assessment or credit score indicating that the risk of non-payment of contractually agreed payments is significantly higher than for comparable exposures of other credit-risk obligors or guarantors held by the originator that are not securitized*” when both of the following conditions are met:

- a) the most relevant factors determining the expected performance of the underlying and comparable exposures are similar;
- b) when, on the basis of indications such as past performance or applicable models over the term of the transaction or over a maximum period of four years and when the term of the transaction exceeds four years, the performance of the underlying exposures is not significantly worse than that of the comparable exposures

Next steps:

The guidelines will be translated into the official EU languages and published on the EBA website.

6 May 2024 - The Banking Authority presents its activity report for 2023

On 6 May 2024, the European Banking Authority (EBA) [published](#) a report reviewing the Authority's main achievements for the year 2023. The Authority is pleased to have achieved 95% of the mandates and objectives entrusted to it for 2023.

With regard to the implementation of the CRD/CRR banking package, EBA strongly supports the ambitious roadmap put in place. With over 140 mandates assigned to the Authority, the transposition of the Basel III agreement into EU law is seen as the main priority for 2024.

The Authority points out that several consultations have been launched with regard to reporting requirements and market risk.

It should be noted that the draft guidelines aimed at specifying the activities considered as ancillary to banking activities have been postponed to phase 2 of the banking package, and work in progress has been suspended.

As far as investment companies are concerned, EBA reports that its work in 2023 focused primarily on the application of the Investment Company Regulation and Directive (IFR/FRD).

The Authority highlights that it is currently working in mapping all the reporting obligations to which credit institutions are subject, and will propose solutions to simplify the administrative burden and reduce compliance costs. In addition, on the basis of discussions held in 2023, the European Central Bank, EBA and national banking supervisory authorities should establish a Joint Committee on Banking Reporting to merge the different regulatory reporting frameworks and build a common data dictionary.

Finally, the Authority highlights the progress made on the risk of greenwashing for the banking sector, and does not rule out including recommendations to amend the legislative framework in this area.

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30 May 2024 – EU Council formally adopts the AML/CFT package

On 30 May 2024, the EU Council formally adopted the AML/CFT package.

As a reminder the Anti-money laundering (AML/CFT) package contains several files :

- [Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism \(AMLA\)](#)
- [Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing \(AMLR\)](#)
- [Directive on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#)
- [Directive as regards access to centralised bank account registries](#)

Following the Council's adoption, the texts will now have to be published in the EU's Official Journal in the coming weeks:

- The AML regulation will apply three years after the entry into force;
- Some parts of the AML directive should be transposed within 2 years and within 3 years for others.
- The AMLA will be based in Frankfurt and should start its operations in mid-2025.

2 May 2024 - AML/CFT: European Banking Authority begins collecting information on individuals for its EuReCA database

On 2 May 2024, the European Banking Authority (EBA) [published](#) a communication announcing the start of the collection of information, from May 2024, on natural persons for EuReCA, the centralized database destined to become the European data reference for the fight against money laundering and the financing of terrorism.

The EuReCA database contains information on serious AML/CFT breaches in individual financial institutions that have been identified by national supervisory authorities. It also contains information on the measures taken by the supervisory authorities to remedy the shortcomings identified.

Supervisors are invited to submit information to EuReCA if it relates to:

- a serious failure or measure relating to a natural person, e.g. a customer or a beneficial owner;
- a member of the management body or a holder of a key function within a financial institution, as a lack of honesty or integrity may cause or lead to serious problems in the governance arrangements, business model or activities of a financial institution, and thus weaken the institution's AML/CFT defences.

Since 31 January 2022, 41 authorities have made over 1,400 reports to EuReCA.

Taxation incl. VAT and Legal Affairs

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Late Payment Regulation

3 May 2024 - LPR: the Belgian Presidency circulates initial compromise proposal

On 3 May 2024, the Belgian Presidency of the Council circulated an initial compromise proposal for a draft regulation on late payment (LPR). It is important to underline that this compromise proposal serves as a basis for discussion among Member States, with a view to reaching a common position on the text. This proposal is expected to strongly evolve following Member States' negotiations.

The recitals have not yet been modified or aligned with the amendments made by the Presidency.

1. Choice of legal instrument

The Belgian Presidency has taken account of the relatively unanimous comments of the Member States on the choice of legal instrument, since it is under the form of a directive that the Presidency has presented its compromise proposal.

2. Payment terms

The Belgian Presidency wishes to set payment terms for commercial transactions at 30 days. However, more flexibility has been introduced in relation to the European Commission's proposal, since in B2B commercial transactions, payment periods may be set at 60 days -if this is expressly provided for in the contract. Similarly, for B2G transactions, payment terms may be set at 60 days if provided for in the contract and if "objectively justified". Lastly, Member States will be able to extend payment terms to 60 days for public undertakings subject to certain transparency obligations under Directive 2006/11/EC, and for public entities in the healthcare sector.

The Belgian Presidency proposes to set the start of the payment period at "the day following the date on which the last of the following events occurred":

- a. receipt by the debtor of the invoice or an equivalent request for payment ;
- b. receipt by the debtor of the goods or services;
- c. where applicable, the end of the acceptance or verification procedure.

3. Verification procedure

The Belgian Presidency proposes to amend the acceptance or verification procedure so as to leave it up to the Member States to define these procedures and set their details and duration.

4. Null and void clauses

With regard to article 9 and the clauses and practices considered null and void, the Presidency proposes to reintroduce the concept of contractual practices consisting of "manifest abuse" and to leave it up to Member States to determine in detail which practices or clauses could be prohibited as a consequence. In order to

determine the conditions under which clauses would be deemed manifestly abusive, the Presidency would like Member States to take into account the following aspects:

- (a) any flagrant deviation from good commercial practice in a specific sector ;
- (b) any imbalance of bargaining power;
- (c) the nature of the good or service; and
- (d) whether the debtor has an objective reason to deviate from the provisions of this Directive.

The Presidency does not mention in the context of Article 9 the prohibition of clauses banning the assignment of claims to a third party.

5. Enforcement authorities

Following opposition from a significant number of Member States, the Presidency has opted to delete the articles providing for the creation of Enforcement Authorities. Instead, the text advocates facilitating the use of out-of-court dispute settlement mechanisms.

It should be noted that **the proposal does not mention factoring in the context of Article 17.**

6. Transposition deadline

Finally, it is proposed that Member States have two years to transpose the proposed directive.

Next steps :

As this is an initial working document, Member States have yet to agree on a common position. Agreement on the text could be reached under the Hungarian presidency.

Sustainable Finance

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24 May 2024 – CSDD directive : the Council formally adopts the text

On 24 May 2024, the Council [voted](#) to give final approval to the [directive](#) on Corporate Sustainability Due Diligence (CSDD), following several months of inter-institutional negotiations and lengthy exchanges between member states on the content and scope of this key text of the mandate.

Of the 27 Member States, 9 abstained: Belgium, Bulgaria, the Czech Republic, Germany, Estonia, Lithuania, Hungary, Malta and Austria.

After signature by the Presidents of the European Parliament and the Council, the directive will be published in the Official Journal of the European Union and will enter into force on the twentieth day following its publication.

Member States will have two years to implement the regulations and administrative procedures necessary to comply with the directive.

The CSDDD's provisions will be applied in:

- 2027 by companies with more than 5000 employees
- 2028 by companies with more than 3000 employees
- 2029 by companies with more than 1000 employees

Next steps

This last step and the publication in the EU Official Journal will end the legislative procedure on the text.

24 May 2024 - Global Reporting Initiative (GRI) and ISSB announce continued partnership to facilitate the implementation of sustainability reporting standards.

On 24 May 2024, the sustainability standards body Global Reporting Initiative (GRI) and the International Accounting Standards Board (ISSB), part of the IFRS Foundation, announced that they would be strengthening their collaboration to ensure full interoperability of their standards with regard to corporate sustainability reporting.

The first objective of this collaboration, which aims to provide a global and comprehensive mechanism for companies to meet the information needs of investors and stakeholders, will be to optimize the way in which this set of standards can be used to facilitate sustainability reporting with regard to an organization's impacts, risks and opportunities.

The next stage will focus on biodiversity reporting standards, with the aim of moving towards fully aligned standards, as emphasized by Eelco van der ENDEN, GRI CEO.

In May, the Global Reporting Initiative (GRI) [published](#) a guide, in collaboration with MEP Pascal DURAND (S&D; FR), rapporteur on the CSRD directive, to help companies implement sustainability reporting, whether European or non-European. In particular, the guide details all the ESG criteria and standards that must be included in CSRD reporting, as well as the methods for assessing materiality.

At the presentation conference on 15 May Quang TRAN VAN, Director of Financial Affairs at the Association of French Private Undertakings (AFEP), referred to the results of a recent survey: 60% of respondents were still wondering what they should report. He also pointed out that there are only six months left for implementation, which will be “a big challenge”, and felt that companies needed more time and a simplified framework. “*Large companies are concerned for the small and medium-sized enterprises (SMEs) that are part of the value chain*”, he stressed, while calling Member States not to introduce additional requirements.

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May 2024 - FIDA Regulation: Spain and Sweden call on the Council to adopt a progressive implementation of data sharing based on market needs

On May 2024, Spain and Sweden have [published](#) a non-paper on the occasion of the ongoing Council negotiations on the FIDA regulation, calling for a gradual implementation of financial data sharing based on market needs.

This “non-paper” is addressed to the Belgian presidency of the EU Council, and calls for a phased approach to implementation, to give the industry more time to adapt the sharing framework to market developments and actual consumer demand for specific data points.

In particular, the position paper puts forward the following suggestions:

- Reduce the investment needed in data sharing agreements and standardization in areas where demand is low or non-existent.
- Allow a gradual implementation of the FIDA regulation, in line with the evolution of market demand. This would ensure that the market has sufficient time to analyze different use cases and introduce additional data points as demand evolves.
- Depending on market developments, there is a risk that some relevant data points will not be included in the Financial Data Sharing Systems (FDSS).

The Belgian Presidency of the EU Council is asking member states to comment on a number of issues:

- Q.1. Do member states agree with the proposal for the gradual implementation of FDSS by the market, in two stages: definition and implementation?
- Q.2. Do Member States believe that the phrase “a sufficient share of data users who require the sharing of any data point” should be included in the Level 1 regulation? If so, what percentage of data users could be taken into account ?
- Q.3. Do Member States believe that a certain period of time should be allowed for data holders to share the data points required by a “sufficient number of data users” from the FDSS in the Level 1 regulation? If so, what timeframe should be considered ?

Other topics

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24 May 2024 - Cutting red tape by 25%: the Belgian Presidency of the Council of the EU presents the progress of the measures proposed by the Commission

At the Competitiveness Council on 24 May 2024, the Member States reviewed the progress made on the measures presented by the EU Commission to achieve the 25% reduction in red tape at EU level.

The summary [document](#) drawn up by the Belgian Presidency of the Council of the EU sets out all the initiatives presented by the Commission in this direction, since von der Leyen's statements in October 2023.

The EU Commission's work program for 2024 foresaw 26 measures to reduce/simplify standards and administrative rules, 13 of which were legislative initiatives amending existing regulations. The proposed measures concern all sectors of the economy: industry, the financial sector, agriculture and fisheries, transport, etc.

- 8 of the 13 legislative proposals have already been published in the Official Journal or agreed in trialogue (including the proposal to postpone the adoption of ESRs sectoral standards by two years).
- The remaining proposals are still being examined by the co-legislators and will be adopted in the next legislative term.

22 May 2024 - Conference on macroprudential policies for non-bank financial intermediation (NBFi)

On 22 May 2024, the European Commission's DG FISMA [held](#) a conference on macroprudential policies for non-bank financial intermediaries (NBFIs). The aim of the conference was to gather views on the supervision and risks associated with NBFIs.

During the various panels, speakers emphasized the growing interest in NBFIs. They also highlighted the importance of identifying the risks associated with these entities to ensure the resilience of the financial sector:

- Lack of data: it is difficult to regulate the sector properly without adequate or sufficient information;
- The importance of not simply transposing banking rules to NBFIs:
 - The business model between NBFIs and the banking sector differs, and although the basic logic of the prudential framework remains the same, standards will need to be adapted to suit each NBFI, due to the heterogeneity of the NBFI sector.
- Problems linked to the interconnection of players in the sector.
- The link between NBFIs and the UMC: one aspect of the Capital Markets Union (CMU) is to facilitate investment.
 - The more stable the NBFIs, the greater the participation, which will help to achieve the UMC's objectives.

On this occasion, Commission representatives announced the publication of a six-month open [consultation](#) aimed at better understanding the markets and business models of NBFIs, as well as the interconnections between them and with banks.

Stakeholders focused mainly on investment funds, with a representative of asset managers also among the panelists. No particular distinction was made between the different types of NBFIs, although the consultation refers to investment funds, asset management, open-ended funds and pension funds.

The Commissioner for Financial Services, Financial Stability and Capital Markets Union, Mairead McGuinness, said that although the subject was not urgent, it was crucial to remain vigilant and informed, underlining the importance of the consultation. She mentioned the need to better understand the vulnerabilities of NBFIs and their impact on the sector's resilience. She also added the importance of strong political leadership to drive UMC indicating that NBFIs represent crucial entities.

Next steps:

The [consultation](#) is open until 22 November 2024.

14 May 2024 - Capital Markets Union: Member States should present their proposals in November

On 14 May 2024, European finance ministers met at the Eurogroup and ECOFIN Council to exchange views on national proposals for deepening the Capital Markets Union (CMU). Member states will be invited to report in November 2024 on their respective national initiatives to deepen capital markets.

In February 2025, the European Commission will present its proposals for the next legislative cycle.

Regular meetings to exchange views between member states are scheduled until March 2025. An exchange is also planned during the summer to take stock of the proposals of the LETTA report on the future of the single market and the DRAGHI report on European competitiveness.

4 May 2024 - Eurogroup publishes roadmap for Capital Markets Union strategy

On 4 May 2024, the Eurogroup in inclusive format [published](#) its roadmap for the coming year with regard to strengthening the Capital Markets Union.

The roadmap adopted by the Member States as part of the Eurogroup provides for a series of milestones with a view to publishing several reports relating to the Capital Markets Union:

- **May 2024:** exchange between Member States to present the various national initiatives on capital markets, in particular the Noyer report.
- **June/July 2024:** presentation and discussion of the main points raised by the various reports published on the Capital Markets Union.
- **3rd/4th quarter 2024:** review of measures adopted or proposed by Member States to facilitate SME access to capital markets in the various Member States.
- **November 2024:** presentation by each Member State of the national initiatives put in place to strengthen their respective capital markets.
- **February 2025:** presentation by the European Commission of capital markets union initiatives for the next mandate.
- **March 2025:** publication of two reports, the first a technical report on national initiatives and best practices to strengthen capital markets, the second a report to European leaders on the performance of European capital markets.

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