

# Regulatory update

## Banking, finance and insurance

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Banks, Investment Firms, Asset Managers  
and non-bank financial institutions

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### I. European regulation

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## ***Banks, Investment Firms, Asset Managers and non-bank financial institutions***

### **I. European regulation**

#### ✓ MIFIR: ESMA PUBLISHES THE THIRD PACKAGE OF PUBLIC CONSULTATIONS

On 10 July 2024, ESMA, following the revision of Regulation (EU) n. 600/2014 amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("MIFIR" Regulation), published the [third package of public consultations](#) with the objective of increasing transparency and system resilience in financial markets, reducing reporting burden and promoting convergence in the supervisory approach.

In particular, this package includes proposals on the following areas:

- Section 3 of the CP: a technical advice on the definition of "liquid market" for equity instruments pursuant to Article 2(17)(b) of MIFIR;
- Section 4 of the CP: the specification in RTS 1 (Delegated Regulation 2017/587) of information to be disclosed for pre-trade transparency purposes for trading venues and the revision of pre-trade transparency requirements for systematic internalisers (SIs) as well as other provisions of a technical nature;
- Section 5 of the CP: new implementing technical standard (ITS) for the notification of investment firms acting as Systematic Internalisers (SIs) to competent authorities;
- Section 6 of the CP: the amendment of RTS 3 (Delegated Regulation 2017/577) regulating the Cap on Volume, following the amendments to Article 5 MIFIR that provided for the change from double to single Cap on Volume;
- Section 7 of the CP: the amendments to RTS 7 (Delegated Regulation 2017/584) specifying organisational requirements for trading venues in order to integrate the new empowerment on circuit breakers and reflecting the changes stemming from Regulation (UE) 2022/2554 on digital operational resilience for the financial sector ("DORA");
- Section 8 of the CP: a new RTS on input/output data to be provided to/published by the equity Consolidated Tape Provider (CTP);
- Section 9 of the CP: the proposed amendments to RTS 2 (Delegated Regulation 2017/583) in order to include also a section on flags for post-trade transparency reporting for non-equity instruments, particularly bonds.

The deadline for submitting comments and remarks is (i) 15 September 2024 for the technical advice (Section 3), RTS 1 (Section 4), the RTS on input/output data for shares and ETFs CTP (Section 8) and the flags under RTS 2; (ii) 15 October 2024 for the SI ITS (Section 5), RTS 3 (Section 6) and RTS 7 (Section 7).

#### ✓ AIFMD/UCITS: CONSULTATION ON RTS AND GUIDELINES ON LIQUIDITY MANAGEMENT TOOLS

On 10 July 2024, ESMA published for consultation two drafts of (i) [regulatory technical standards](#) (RTS) on liquidity management tools (LMT) under Directive 2011/61/EU (AIFMD) and Directive 2009/65/EU (UCITS) and (ii) [Guidelines](#) on LMT of UCITS and open-ended AIFs.

Specifically, in the first consultation paper, concerning RTS on the characteristics of LMT, ESMA defines the constituting elements of each LMT, such as calculation methodologies and activation mechanisms.

In the second consultation paper, concerning Guidelines on LMTs of UCITS and open-ended AIFs, ESMA provides guidance on how managers should select and calibrate LMTs, in light of their investment strategy, their liquidity profile and the redemption policy of the fund.

These draft RTS and Guidelines are designed to promote convergent application of the Directives for both UCITS and open-ended AIFs and make EU fund managers better equipped to manage the liquidity of their funds, in case of market stress situations. Additionally, they intend to clarify the functioning of specific LMTs, such as the use of side pockets, a practice that currently varies significantly across the EU.

The deadline for submitting comments and remarks is 8 October 2024.

- ✓ REPORTING REQUIREMENTS AND GOVERNANCE EXPECTATIONS: TWO CONSULTATIONS ON PROPOSED GUIDANCE FOR SOME OF ESMA'S SUPERVISED ENTITIES

On 8 July 2024, ESMA launched [two consultations on proposed Guidance](#) aimed at Benchmark Administrators, Credit Rating Agencies, and three types of Market Transparency Infrastructures ((i) Securitisation Repositories under Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitization (“SECR”), (ii) Trade Repositories under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”) and Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (“SFTR”), and (iii) Data Reporting Service Providers under Regulation (EU) No 600/2014 on markets in financial instruments (“MiFiR”).

The first consultation paper sets out the information ESMA expects to receive and a timeline for supervised entities to provide the required information. The objective of the Draft Guidelines is to ensure consistency in cross-sectoral reporting. The second consultation paper sets out ESMA’s supervisory expectations in relation to good practice in governance arrangements, with a particular focus on the role, operation, and effectiveness of the management bodies of the supervised entities.

The deadline for comments and remarks is 18 October 2024.

- ✓ MICAR: CONSULTATION PAPER ON GUIDELINES

On 12 July 2024, the three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published a [consultation paper](#) on Guidelines under Regulation (EU) 2023/1114 on Markets in Crypto-assets (MiCAR), establishing templates for

explanations and legal opinions (accompanying the white paper on crypto assets) regarding the classification of crypto-assets along with a standardised test to foster a common approach to classification.

Specifically, the Guidelines identify the content and form that the explanations and legal opinions accompanying the white paper of crypto-assets should have and provide descriptions of the regulatory classification of crypto-assets in the following cases:

- Asset-referenced tokens (ARTs): the white paper for the issuance of ARTs, which contains comprehensive information about the crypto asset, must be accompanied by a legal opinion that explains the classification of the crypto asset – in particular, the fact it is not an Electronic Money Token (EMT) nor a crypto-asset that could be considered excluded from the scope of MiCAR;
- Crypto-assets that are not ARTs or EMTs under MiCAR: the white paper for the crypto-asset must be accompanied by an explanation of the classification of the crypto asset – in particular, the fact it is not an EMT, ART or crypto-asset excluded from the scope of MiCAR.

The purpose is to support market participants and supervisors in adopting a convergent approach to the classification of crypto-assets.

The deadline for comments and remarks is 12 October 2024.

✓ CRR: EBA CONSULTS ON RTS REGARDING CVA RISK OF SECURITIES FINANCING TRANSACTIONS

On 12 July 2024, EBA published a [consultation paper](#) of draft regulatory technical standards (RTS) on credit valuation adjustment (CVA) risk of securities financing transactions under Article 382(6) of Regulation (EU) No 575/2013 (CRR).

The draft RTS propose to employ a quantitative approach for the determination of the materiality of CVA risk exposures arising from fair-valued securities financing transactions. In particular, the RTS propose to perform the assessment on the basis of a ratio that quantifies the amount of CVA risk arising from fair-valued securities financing transactions relative to the CVA risk of transactions in scope of the own funds requirements for CVA risk. With regard to the frequency of the assessment, the draft RTS propose to set this on a quarterly basis, to ensure consistency with the regular calculation and reporting cycle of own funds requirements by institutions.

The deadline to answer the consultation is set on 8 October 2024.

✓ CRR: EBA PUBLISHES A FINAL REPORT OF DRAFT ITS ON SUPERVISORY REPORTING

On 12 July 2024, EBA published a [Final Report](#) of draft implementing technical standards amending Regulation (EU) 2021/451 on supervisory reporting referred to in Article 430 (7) of Regulation (EU) No 575/2013 (CRR).



The main amendments to the supervisory reporting framework involve the following topics:

- output floor;
- standardized approach for credit risk;
- internal risk based approaches for credit risk;
- immovable property losses;
- credit valuation adjustment and market risk;
- the boundary between banking and trading books;
- operational risk;
- crypto assets;
- leverage ratio.