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Regulatory update

Banking, finance and insurance

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and non-bank financial institutions

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

I. European regulation

✓ *MICAR:* ESMA OPINION ON FIRMS USING THEIR NON-EU EXECUTION VENUES

On 31 July 2024, ESMA published an Opinion to address the risks presented of regulatory arbitrage by so-called Multifunction Crypto-Asset Intermediaries (MCIs) ([1]), which require authorization - pursuant to the Regulation (EU) 2023/1114 on the Crypto-Asset Markets (MICAR) - for a part of their activities (typically the activity of brokerage) and providing for the provision of a substantial part of the activities by other group companies (in particular, the place of execution) outside the European Union, in order to avoid the application of the European regulations themselves.

Although MiCA does not prohibit crypto-asset service providers from routing, executing, or hedging orders on execution venues that are not resident or established in the European Union, national competent authorities are responsible for assessing whether this constitutes solicitation of EU-resident clients for the purpose of providing services in the Union by entities residing in third countries without authorization, in violation of Article 59 of MiCA.

In the opinion, ESMA highlights the risks associated with granting authorizations to such facilities, both in terms of reduced consumer protection and unequal treatment with respect to execution venues authorized to operate in the European Union.

In view of the aforementioned risks, ESMA recommends that National Competent Authorities should carefully examine applications for authorization submitted by MCIs, belonging to groups of companies residing outside the European Union, taking into account not only the activities for which authorization is sought in the territory of the European Union, but also the activities that are carried out by the other group companies residing outside the European Union. In particular, ESMA invites the relevant national authorities to examine the group's current and prospective marketing structure and policy as well as to assess how the applicant's overall activities fit into the group's strategy and interact with the activities of the other group companies, carefully analyzing which are the main activities carried out at the group level and ensuring that such activities are not actually carried out and services are not provided in the Union without the relevant authorization.

In this opinion, ESMA requires national competent authorities to pay special attention to the following profiles:

- the identification, prevention and management of conflicts of interest by MCIs and in particular by those that offer, at the group level, the aforementioned combination of services (brokerage activities and trading platform);

([1]) The Financial Stability Board, in "*The Financial Stability Implications of Multifunction Crypto-asset Intermediaries*" dated Nov. 28, 2023, defined "*Multifunction Crypto-Asset Intermediaries*" as "*individual firms, or groups of related firms, that combine a wide range of crypto-asset services, products, and functions typically centered on operating a trading platform. Many MCIs have proprietary trading and investment functions, while some are also involved in the issuance, promotion, and distribution of crypto-assets or related products, including so-called stablecoins*".

- the adoption of the necessary measures to ensure, during the execution of orders, the best possible result for clients, pursuant to Article 78 MiCA (best execution);
- the level of consumer protection offered by non-EU trading platforms (especially if they are unregulated), if the EU cryptocurrency service provider intends to execute client orders on such platforms, so that the obligation to act in an honest, fair and professional manner, as required by Article 66 MiCA, is met;
- compliance with the prohibition of assigning custody services and to the administration of crypto-assets on behalf of clients to entities not authorized as crypto-asset service providers in the EU.

✓ *SEPA:* EBA CONSULTS ON DRAFT ITS FOR UNIFORM REPORTING

On 31 July 2024, EBA opened a consultation on draft implementing technical standards (ITS) on uniform reporting templates referred to in Article 15(3) of Regulation (EU) 260/2012 (SEPA Regulation) in relation to: (a) the level of charges for credit transfers, instant credit transfers and payment accounts, and (b) the share of rejections (distinguishing between domestic payment transactions and cross-border payment transactions, which can be attributed to the application of targeted financial restrictive measures). In particular, Article 15(3) of the SEPA Regulation provides that such reporting must be submitted by payment service providers (PSPs) on an annual basis to the respective national competent authorities (starting on 9 April 2025, with reference to the period commencing on 26 October 2022 and ending at the end of the preceding calendar year)

More specifically consultation paper proposes that payment service providers (PSPs) report the level of charges for regular credit transfers and instant credit transfers with breakdowns by type of transfer (domestic or cross-border), type of payment service users, type of payment initiation channels, and the party subject to the charge. The consultation paper also proposes that PSPs report charges for payment accounts, as well as the share of instant transfers, both domestic and cross-border, that were rejected due to the application of EU-wide restrictive measures.

In preparing the ITS drafts, the EBA tried to strike the right balance between, on the one hand, the need to obtain the necessary data for a sound analysis of the impact of Regulation (EU) 2024/886 on instant euro credit transfers on account and transfer pricing and the share of rejected transactions and, on the other hand, the need to avoid an excessive reporting burden on industry.

The deadline for the submission of comments is 31 October 2024.

✓ *BRRD:* EBA CONSULTS ON DRAFT ITS ON RESOLUTION PLANNING REPORTING

On 31 July 2024, EBA opened a consultation on draft implementing technical standards (ITS) repealing and replacing Regulation (EU) 2018/1624 on the provision of information for the purposes of resolution plans in the context of Directive 2014/59/EU (BRRD).

The current ITS comprehensive review aims on the one hand to further promote harmonisation and proportionality in resolution planning reporting by avoiding parallel data collections. On the other hand, it aims at improving the usability of the data collected by to reflecting the latest developments in resolution planning, crisis preparedness and policies, and to deliver efficient and harmonised practices. Proportionality is a key principle for European legislators and the

EBA has taken into account this objective and the burden on institutions. Proportionality is embedded in the BRRD under the simplified obligations.

More specifically, proportionality should be driven by these new ITS via:

- relieving entities from parallel data collections coming from different authorities;
- the implementation of a modular core plus supplement approach to reporting that reduces the scope of reporting obligations for certain categories of reporting entities based on their side and complexity and that would be only subject to some core reporting requirements while the additional (supplement) reporting requirements would only be applicable to the larger or more complex entities;
- the removal of duplications and overlapping data points with MREL/TLAC, CoRep and FinRep, where the reporting entity has already submitted this data.

The deadline for the submission of comments is 30 October 2024.

II. Italian regulation

✓ ***BORSA ITALIANA:*** AMENDMENTS TO THE RULES OF THE EURONEXT GROWTH MILAN MARKET

On 1st August 2024, with Notice n. 32723, Borsa Italiana published amendments to the Rules of the Euronext Growth Milan market, in order to update the admission requirements for Euronext Growth Advisors and introduce a new application form for admission to the Euronext Growth Milan market of instruments such as convertible bonds and/or warrant (apart from some fine tuning adjustments).

The amendments described in the present Notice will enter into force on the 19 August 2024.

✓ ***AML:*** BANK OF ITALY CONSULTS ON NEW AMENDMENTS TO PROVISIONS ON INTERNAL CONTROLS

On 31 July 2024, the Bank of Italy opened a consultation on the amendments to its Provisions on Organisation, Procedures and Internal Controls to Prevent the Use of Intermediaries for the Purposes of Money Laundering and Terrorist Financing of 26 March 2019 and on the new Manual for Periodic Anti-Money Laundering Reporting.

In particular:

- the Provisions have been updated to introduce the obligation for banking and financial intermediaries to transmit periodic AML reports to the Bank of Italy; and
- the Manual for Periodic Anti-Money Laundering Reporting will identify the reports and set out the rules for their compilation.

The deadline for submitting comments is 13 September 2024.

✓ ***SUSTAINABLE FINANCE:*** CONSOB ISSUES A WARNING NOTICE TO INTERMEDIARIES

On 29 July 2024, Consob issued a Warning Notice to financial intermediaries to ensure that, on the one hand, information on sustainable finance related to ESG matters (Environmental, Social and Governance) becomes increasingly clear, concise and comprehensible even for less sophisticated clients and, on the other hand, that financial intermediaries duly consider clients' preferences and needs related to ESG matters when assessing the suitability of investments and in product governance.

To achieve this aim, Consob has identified in its Warning Notice a number of key elements worthy of attention, as well as a list of positive and negative operating practices that have emerged to date, in order to guide intermediaries in a consistent implementation of the voluminous regulatory production of EU matrix that has rapidly stratified over the last few years.

Insurance companies

III. European regulation

✓ <u>*SOLVENCY II:* EIOPA CONSULTS ON THE IMPLEMENTATION OF THE NEW PROPORTIONALITY REGIME</u>

On 2 August 2024, EIOPA published a consultation on technical advice on the implementation of the new proportionality framework under Directive 2009/138/EC (Solvency II).

The advice is drafted to provide further clarity on two aspects:

- on the one hand, the process to classify undertakings and groups as small and non-complex, as outlined in Article 29b of the Solvency II Directive, is already designed to provide clarity and transparency for insurance undertakings seeking such designation in order to benefit from certain reduced requirements by introducing more automatism through qualitative and quantitative criteria and defining the process for classification. The current advice should evaluate whether the new methodology, to be defined in the review of Solvency II Directive, requires further specification;
- on the other hand, the criteria for classifying undertakings (and groups) as small and non-complex are designed as a benchmark that is expected to work as a rule, but as no assessment of individual risk profiles takes place, the approach is not necessarily able to ensure that each and every undertaking or group that is actually small and non-complex will be identified as such. For this reason, there may be certain undertakings (and groups) that do not comply with all the criteria for SNCU, but the nature, scale and complexity of whose risks still is compatible with the use of one or more proportionality measures, subject to a formal prior approval by the supervisor. To ensure a level playing field and enhance convergence of practices in the supervisory community, the conditions for granting or withdrawing supervisory approval on the use of proportionality measures by undertakings (and groups) that are not classified as small and non-complex would require further specification.

The deadline for the submission of comments is 25 October 2024.

✓ <u>*SOLVENCY II:* EIOPA CONSULTS ON STANDARD FORMULA CAPITAL REQUIREMENTS FOR DIRECT EXPOSURES TO QUALIFYING CENTRAL COUNTERPARTIES</u>

On 31 July 2024, EIOPA published a consultation on technical advice on standard formula capital requirements for direct exposures to qualifying central counterparties under Directive 2009/138/EC (Solvency II).

The deadline for the submission of comments is 24 October 2024.