

## 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

- ✓ **CSRD:** ESMA published its final report on the penalty mechanism for central securities depositories regulation
- ✓ **EMIR:** ESMA published a consultation paper on the conditions of the active account requirement
- ✓ **Fit and Proper Information System:** ESAs published Joint Guidelines on the system for the exchange of information relevant to fit and proper assessments

### II. Italian regulation

- ✓ **Capital Law:** Consob launched a public consultation

Insurance Companies

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### III. European regulation

- ✓ **Solvency II:** Commission Implementing Regulation (EU) 2024/2883 published in EU Official Journal



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

### **I. European regulation**

- ✓ CSDR: ESMA PUBLISHED ITS FINAL REPORT ON THE PENALTY MECHANISM FOR CENTRAL SECURITIES DEPOSITORIES REGULATION

On 19 November 2024, ESMA published its [Final Report](#) on the Technical Advice for the European Commission on the penalty mechanism under Regulation (EU) 909/2014 (CSDR) for central securities depositories.

ESMA recognised that since its application as of February 2022, the penalty mechanism under the CSDR has improved settlement efficiency in the European Union by ensuring that participants failing to deliver securities or cash by the intended settlement date incur a penalty.

In this light, the Final Report identifies 3 key aspects to improve the application of the CSDR penalty mechanism:

- alternative parameters to calculate the penalties due to lack of cash, when the official interest rate for overnight credit charged by the central bank issuing the settlement currency is not available;
- the treatment of historical reference prices for the calculation of late matching fail penalties;
- the design and level of the penalty rates for each asset class.

Regarding the last point, ESMA proposes to maintain the design of the current penalty mechanism, for example not introducing fundamental changes to the methods for calculating penalties, and to introduce an overall moderate increase of the penalty rates, in full alignment with the current types of settlement fails and targeting most asset classes.

- ✓ EMIR: ESMA PUBLISHED A CONSULTATION PAPER ON THE CONDITIONS OF THE ACTIVE ACCOUNT REQUIREMENT

On 20 November 2024, ESMA published a [consultation paper](#) on the conditions of the active account requirement (AAR) following the review of the Regulation (EU) 648/2012 (EMIR).

The amending to EMIR introduced a new requirement for European Union counterparties active in certain derivatives to hold an operational and representative active account at a Central Counterparty (CCP) authorised to offer services and activities in the European Union.

With the consultation paper ESMA is seeking stakeholder input on several key aspects of the AAR, including the:

- three operational conditions to ensure that the clearing account is effectively active and functional, including stress-testing;
- representativeness obligation for the most active counterparties; and
- reporting requirements to assess their compliance with the AAR.

The deadline for submitting observations and comments is 27 January 2025.



✓ *FIT AND PROPER INFORMATION SYSTEM: ESAs PUBLISHED JOINT GUIDELINES ON THE SYSTEM FOR THE EXCHANGE OF INFORMATION RELEVANT TO FIT AND PROPER ASSESSMENTS*

On 20 November 2024, the ESAs published its [Final Report](#) on Joint Guidelines on the system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities.

To enhance the information exchange between supervisory authorities within the European Union, also across different parts of the financial sector, in accordance with Article 31(a) of Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010 (collectively referred to as the “Founding Regulations”), the ESAs have developed an ESAs Fit and Proper Information System. The Joint Guidelines clarify its use and how data can be exchanged.

In particular, the Joint Guidelines aim to ensure consistent and effective supervisory practices within the European System of Financial Supervision (“ESFS”) and facilitate information exchange between supervisors, apply to competent authorities within the ESFS and focus on two main areas:

- use of the Fit and Proper Information System; and
- information exchange and cooperation between the competent authorities when conducting fitness and propriety assessments.



## II. Italian regulation

### ✓ CAPITAL LAW: CONSOB LAUNCHED A PUBLIC CONSULTATION

On 20 November 2024, Consob launched a [preliminary consultation](#) with the financial market regarding the content of the implementing provisions to be adopted by the Authority with reference to the list of outgoing Boards of Directors (BoD), in accordance with the delegation of authority provided for in Law No. 21 of 5 March 2024 (Capital Law).

In fact, Article 12 of the Capital Law introduced into Legislative Decree No. 58/98 (CLF) the new Article 147-ter.1, which grants Italian companies with shares listed on a regulated market, the right to provide in their bylaws for the submission of a list by the outgoing BoD, laying down specific rules applicable in such a case (including a series of conditions applicable to the election mechanism). These new provisions will come into force with the renewal of the BoDs that will be submitted to the shareholders' meetings convened after 1st January 2025.

The consultation will last 15 days, with a deadline for comments set for 5 December 2024. Subsequently, a second consultation will be launched on the text of the draft implementing regulation, with the aim of completing the regulatory process in time for the procedures for the renewal of corporate bodies scheduled for 2025.



## Insurance Companies

### I. European regulation

- ✓ [SOLVENCY II: COMMISSION IMPLEMENTING REGULATION \(EU\) 2024/2883 PUBLISHED IN EU OFFICIAL JOURNAL](#)

On 19 November 2024, [Regulation \(EU\) 2024/2883](#) on technical information for the calculation of technical provisions and basic own funds for reports with reference dates from 30 September 2024 to 30 December 2024 pursuant to [Directive 2009/138/EC](#) (Solvency II), was published in the Official Journal of the European Union.

The Regulation enters into force on 20 November 2024, it will apply as of 30 September 2024.