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MiCA: ITS on cooperation and exchange of information published in Official Journal

Commission Implementing Regulation (EU) 2024/2545 laying down implementing technical standards (ITS) with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities under the Markets in Cryptoassets Regulation (MICA) has been published in the Official Journal.

Implementing Regulation (EU) 2024/2545 will enter into force on 16 December 2024.

MiCA: ITS on reporting asset-referenced tokens published in Official Journal

Commission Implementing Regulation (EU) 2024/2902 laying down ITS with regard to reporting related to asset-referenced tokens and to e-money tokens denominated in a currency that is not an official currency of an EU Member State under MICA has been published in the Official Journal.

Implementing Regulation (EU) 2024/2902 will enter into force on 18 December 2024 and apply from 1 January 2025.

MiCA: EU Commission adopts RTS on presentation of transparency data by CASPs

The EU Commission has adopted regulatory technical standards (RTS) specifying the manner in which cryptoasset service providers (CASPs) operating a cryptoasset trading platform are to present transparency data under MICA.

The RTS cover:

- the general principles of presentation regarding the information on operating rules for trading platforms;
- pre-trade transparency obligations for cryptoasset trading platforms;
- post-trade transparency obligations for cryptoasset trading platforms;
- the requirement for cryptoasset trading platforms to publish transaction details as close to real-time as possible; and
- the requirements regarding data disaggregation of pre- and post-trade data.

IOSCO reports on implementation of commodity derivatives principles

The International Organization of Securities Commissions (IOSCO) has published a report on its targeted implementation review of its revised principles for the regulation and supervision of commodity derivatives markets.

The review focused on the implementation of Principles 9, 12, 14, 15 and 16 which aim to address excessive commodity market volatility, over-the-counter (OTC) derivatives transparency and the orderly functioning of the commodity derivatives markets.

Among other things, the report found that:

- under Principle 9 on OTC transparency, most regulators have access to the reporting of OTC commodity derivatives to trade repositories, but the information reported on exchanges to monitor their markets is not available;
- under Principle 12 on authority to obtain information: (i) several exchanges do not have the authority to obtain OTC position data; (ii) the data that exchanges do have access to comes with limitations which inhibit their ability to identify and act on risks; and (iii) where OTC position data is available, it is different from the separate data set reported to the trade repositories and typically obtained on an *ad hoc* basis or post-event when concerns arise or specific triggers are breached;
- under Principle 14 on large positions, for the majority of exchanges, identification and aggregation of positions across different exchanges extends only to exchange-traded positions and only few regulators receive large position reports directly; and
- under Principle 15 on intervention powers in the market and Principle 16 on unexpected disruptions in the market, it is not clear whether regulators power to intervene in market operations in exceptional circumstances include OTC markets and some exchanges have raised issues around intervening in OTC markets.

IOSCO has set out recommendations for improving specific elements of the selected principles and proposals for further work in the OTC markets area.

IOSCO publishes final report on post trade risk reduction services

IOSCO has published its final report on post trade risk reduction services (PTRRS).

PTRRS are provided by third party service providers to market participants in order to assist them in reducing the potential operational and counterparty credit risks associated with outstanding over-the-counter (OTC) derivatives trades. IOSCO notes that the use of PTRRS has increased and evolved over the recent years but that there are only a limited number of firms that offer them, as their efficiency relies on scale and existing networks which new entrants are often unable to provide. Key benefits offered by PTRRS, as identified by IOSCO, include:

- providing an opportunity for OTC derivatives counterparties to reinvest released capital while they reduce the gross outstanding value of contracts;
- reducing counterparty risk without changing market exposure risk;
- reducing operational risk by lessening transaction count (as there are fewer trades to maintain, process and settle); and
- potentially reducing systemic risk and enhancing overall financial market stability through the reduction of operational risk for individual market participants.

However, IOSCO also notes that PTRRS may pose various risks, and that these risks may be exacerbated by the substantial increase in use, as well as the concentration of service offerings in a small number of firms. The final

report, therefore, presents a series of sound practices intended as guidance to IOSCO members and regulated users of PTRRS. The sound practices cover:

- transparency, governance, comprehensibility and fairness of the algorithm;
- operational risk;
- data integrity and security and regulatory data;
- legal certainty;
- considerations of potential counterparty risk by IOSCO members and PTRRS users;
- market concentration and competition; and
- standardisation and predictability of runs and file formats.

IOSCO has called on regulators, service providers and service users to consider these practices as appropriate based on the scope of PTRRS-related activities.

IOSCO reports on evolution of exchange business models and market structures

IOSCO has published its final report on the evolution in the operation, governance and business models of exchanges.

The report examines significant changes in exchange business models and market structures and outlines the impact of increased competition, technological advancements and cross-border activity on exchanges. It focuses on equity exchanges but may be relevant to other types of trading venues in other classes of financial instruments.

The report sets out good practices for regulators relating to:

- the organisation of exchanges and exchange groups;
- the supervision of exchanges and trading venues within exchange groups; and
- the supervision of multinational exchange groups.

The recommendations are complemented by a non-exhaustive list of regulatory and supervisory tools currently used in IOSCO jurisdictions to serve as examples that can be implemented in other jurisdictions.

BCBS publishes final and proposed technical amendments

The Basel Committee on Banking Supervision (BCBS) has published various final technical amendments under the Basel Framework.

The technical amendments are intended to help promote consistent interpretation of the Basel Framework. The amendments:

- alter the definition of specialised lending under the standardised approach to credit risk; and
- alter the formula for aggregated curvature risk position within a bucket for Group 2a cryptoasset exposures.

The amendments have been published as originally consulted on in July 2024. BCBS members have agreed to implement the technical amendments as soon

as practical and within three years at the latest. The technical amendment on cryptoasset exposures will be implemented from 1 January 2026, as part of the final cryptoasset exposures standard.

The Committee has also published a set of proposed technical amendments relating to the circumstance where a bank has a derivative exposure and uses a guarantee or credit default swap (CDS) to hedge the counterparty credit risk (CCR) arising from the derivative counterparty. The amendments aim to better align the treatment of guarantees and credit derivative protection with the treatment of eligible collateral in the CCR framework.

Comments are due by 31 January 2025.

Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 made

The Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 (SI 2024/1215) have been made. The SI supports the operationalisation of the Government's first equivalence decision under the Overseas Funds Regime (OFR).

On 30 January 2024, HM Treasury announced its intention to find the EEA States, including EU Member States, equivalent under the OFR for Undertakings for Collective Investment in Transferable Securities (UCITS), except Money Market Funds (MMFs). The Financial Services and Markets Act 2000 (Overseas Funds Regime) (Equivalence) (European Economic Area) Regulations 2024 (SI 2024/635) were laid to enact this decision and came into force on 16 July 2024.

The new SI supports the Government's equivalence decision regarding EEA States by amending the Temporary Marketing Permissions Regime (TMPR) to extend it for a further year, allowing funds in scope to transition to the permanent marketing arrangements provided by the OFR and avoid cliff-edge risks. It also makes technical amendments to ensure sub-funds can transition smoothly to the OFR or apply for recognition under section 272 of FSMA 2000.

The SI also amends the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 to ensure that overseas central counterparties (CCPs) do not automatically lose their temporary recognised status if their EU recognition is withdrawn, maintaining their market access to the UK.

The SI came into force on 26 November 2024.

FCA consults on transferring firm-facing requirements of MiFID Org Reg into Handbook

The Financial Conduct Authority (FCA) has published a consultation paper (CP24/24) on its proposals to transfer the firm-facing requirements of Commission Delegated Regulation (EU) 2017/565 on organisational requirements and operating conditions for investment firms (MiFID Org Reg) into the FCA Handbook without policy changes.

The Prudential Regulation Authority (PRA) has issued a statement indicating that it intends to publish its equivalent consultation paper on restating relevant firm-facing provisions in the MiFID Org Reg into PRA rules in Q1 2025.

The Treasury will publish a draft statutory instrument (SI) detailing how the Government will handle the non-firm facing elements of the assimilated MiFID Org Reg. Once the FCA and PRA consultations have concluded, and following the Government's laying of its SI, the regulators intend to issue their final policy on the same day in H2 2025.

CP24/24 also contains a discussion chapter about further reform, either now or in the future, to make the rules better suited to the range of UK authorised firms and clients they provide services to. This includes in circumstances where the Consumer Duty does not apply and considers how the FCA could rationalise or improve MiFID2 derived conduct and organisational rules, including for Article 3 firms. The discussion chapter also considers whether and how the client categorisation rules could work more effectively.

Comments on CP24/24 are due 28 February 2025.

Comments on the discussion chapter are due by 28 March 2025.

FCA publishes cryptoasset regulation roadmap and other materials

The FCA has published a collection of introductory materials on its approach to regulating cryptoassets.

The materials include:

- a roadmap for planned FCA discussion and consultation papers covering various areas of the future regime, such as trading platforms, intermediation, lending, staking, stablecoins, custody, prudential requirements, conduct and firm standards, admissions and disclosures, and market abuse, as well as an intention to publish all final rules in 2026;
- a new webpage on the FCA's expectations in relation to current rules on cryptoasset financial promotions and fiat-to-crypto on/off ramp services;
- a blog post summarising roundtable discussions on the future crypto regime covering admissions and disclosures, market abuse regulation, and trading platforms and intermediaries; and
- analysis of cryptoassets consumer research conducted in 2024 by YouGov on behalf of the FCA.

FCA launches second enforcement transparency consultation

The FCA has launched a second consultation on increasing the transparency of its enforcement investigations into regulated firms (CP24/2, Part 2).

The first consultation published in February 2024 (CP24/2) proposed publishing more information about investigations using a flexible public interest framework to decide on a case-by-case basis whether and what to announce.

The second consultation seeks views on the following changes to the initial proposals:

- adding the impact of an announcement on the relevant firm as a factor in the public interest test, and making that factor central to the consideration of whether to announce an investigation and name the firm;
- adding the potential for an announcement to seriously disrupt public confidence in the financial system or market as a public interest test factor;
- providing firms with 10 business days' notice of an announcement, with a further two days if the FCA decides to announce, to give firms more time to make representations; and
- not making proactive announcements of on-going investigations when the changes come into effect, subject to reactively confirming on-going investigations in the public domain where confirmation is in the public interest.

Comments are due by 17 February 2025. The FCA intends to make a final decision on the proposals in Q1 2025.

FCA consults on regulated fees and levies for 2025/26

The FCA has published a consultation paper (CP24/25) containing policy proposals for its regulatory fees and levies for 2025/26.

CP24/25 sets out the FCA's proposed policy changes on how it will recover the costs of carrying out work set out in its business plan. It also outlines some adjustments to the rules affecting the Financial Ombudsman Service and Financial Services Compensation Scheme levies.

Comments are due by 24 January 2026.

PRA and FCA consult on bankers' remuneration

The PRA and FCA have published a consultation paper on the senior banker remuneration regime.

The authorities hope to simplify the guidelines around bankers' bonuses and reduce the restrictions on bonuses in order to reverse a trend whereby banks increase fixed pay over bonuses, which leaves them less reactive to financial shocks. The proposals also encourage firms to tie bonuses more closely to successes and risk-management failures and to better align the rules with the senior managers regime so that firms consider performance against PRA supervisory priorities.

Among other things, the proposals:

- reduce the bonus deferral period for the most senior bankers to five years and to four years for less senior bankers;
- allow part-payment of bonuses from year one, rather than year three as at present for some bankers;
- remove EU-originated guidelines that prohibit paying dividends or interest on deferred bonuses awarded in shares or other instruments and require senior bankers to wait up to a year before being able to sell deferred bonuses in shares or other instruments;
- reduce the number of individuals subject to rules on their pay, simplifying the approach for identifying those who should be subject to them, and

giving firms more discretion to determine which employees will be subject to the rules; and

- ensure bankers are held accountable for the outcomes of risk-taking decisions by introducing clarifications to existing policies ensuring that firms consider adjusting pay in the event of risk-management failures.

Comments are due by 13 March 2025.

BaFin publishes supervisory notice on proportionality in risk management requirements for small institutions

The German Federal Financial Supervisory Authority (BaFin) has published a supervisory notice on proportionality in risk management requirements for small and very small credit institutions, in which it introduces certain regulatory relief but also indicates flexibility that these institutions already have, but do not always use, in their risk management.

Regulatory relief is provided e.g. in the area of stress tests and reporting. The respective new rules will apply as of the date of publication of the supervisory notice. BaFin also indicates existing flexibility e.g. in the case of outsourcing management and the management of service providers.

BaFin expects that around 950 institutions, i.e. three quarters of German credit institutions, will benefit from the relief and clarifications. The background to this is that BaFin will in future base its definition of small institutions within the meaning of the Minimum Requirements for Risk Management (MaRisk) on the Capital Requirements Regulation (CRR), with only few exceptions. Small institutions within the meaning of MaRisk will therefore be banks and savings banks qualifying as small and non-complex institutions (SNCIs) according to Article 4 para 1 no 145 CRR.

BaFin is thus seeking to standardise terms and thresholds in national and EU regulatory areas, in order to make it easier for institutions to comply with the various regulations.

BaFin consults on new draft version of circular on minimum requirements for practicability of transfers in resolution

BaFin has launched a consultation (10/2024) on a draft circular on minimum requirements for the practicability of transfers in resolution (MaStrukturelle Abwicklungsinstrumente) which is intended to improve the resolvability of institutions that use structural resolution tools.

The draft circular is addressed to all institutions and group entities for which BaFin is the competent resolution authority. It does not apply if the resolution plan provides for insolvency.

The draft circular expands the previous version of the MaStrukturelle Abwicklungsinstrumente (Circular 03/2024 (A)) which contains requirements on how resolution tools providing for a transfer are to be operationalised. The expansion relates primarily to requirements for a standardised data model that institutions must provide upon request.

Comments are due by 9 January 2025.

BaFin consults on draft Cryptomarkets Notification Ordinance

BaFin has launched a consultation (09/2024) on a draft Cryptomarkets Notification Ordinance (Kryptomärktemitteilungs-Verordnung – KMMV).

The KMMV is intended to specify reporting obligations for the disclosure of inside information pursuant to section 36 of the draft Crypto Markets Supervision Act (Kryptomärkteaufsichtsgesetz – KMAG-E), which is currently going through the legislative process. The KMAG-E is a national supplementary act to MiCA.

The draft KMMV is based on the authorisation in section 36 para 2 of the draft KMAG-E and serves its further implementation, as well as that of MiCA and the implementing technical standards (ITS) issued pursuant to Article 88 para 4 MiCA. The KMMV specifies the submission of publicly disclosed inside information to BaFin (section 36 para 2 no 1 KMAG-E) and the notification to BaFin of the delay of the disclosure of inside information (section 36 para 2 no 2 KMAG-E).

The KMMV is relevant to issuers, offerors or persons seeking admission to trading who are obliged to publicly disclose inside information pursuant to Article 88 para 1 MiCA and for whom Germany is the home Member State pursuant to Article 3 para 1 no 33 MiCA.

The consultation is subject to legislative adoption of the Financial Market Digitalisation Act (Finanzmarktdigitalisierungsgesetz), which contains the KMAG-E, and sub-delegation of the authorisation to issue the ordinance by the Federal Ministry of Finance to BaFin.

Comments are due by 13 December 2024.

Luxembourg bill implementing Instant Payments Regulation published

A new bill No. 8460 amending the Luxembourg law of 10 November 2009 on payment services (Payment Services Law) in order to implement Regulation (EU) 2024/886 amending Regulation (EU) No 260/2012 (the SEPA Regulation), Regulation (EU) 2021/1230, Directive 98/26/EC (SFD) and Directive (EU) 2015/2366 (PSD2) as regards instant credit transfers in euro (the Instant Payments Regulation) has been lodged with the Luxembourg Parliament.

The purpose of the Bill is to introduce targeted amendments into the Payment Services Law. First, certain directly applicable amendments made by the Instant Payments Regulation to the SEPA Regulation are being made operational. Payment service providers (PSPs) carrying out ordinary credit transfers in euros will now also be obliged to provide services for sending and receiving instant payments in euros. To guarantee the security of instant transfers, the Instant Payments Regulation requires PSPs to offer a service consisting of matching the beneficiary's name and its account identifier (IBAN), and to follow a harmonised procedure for monitoring financial restrictive measures.

The Bill further proposes to introduce a regime of penalties applicable in the event of failure by PSPs to meet these legal requirements with regard to instant payments.

Second, the Bill implements targeted amendments to PSD2 and SFD. These amendments concern the access by PSPs and electronic money institutions to payment systems designated at national level, as well as access by such entities to accounts with central banks for the safeguarding of customer funds.

The deadline for Member States to transpose the Instant Payments Regulation is 9 April 2025. The publication of the Bill constitutes the start of the legislative procedure.

FINMA issues circular on rules of conduct under FinSA

The Swiss Financial Market Supervisory Authority (FINMA) has issued a circular on the Financial Services Act (FinSA).

The circular provides information on FINMA's supervisory practice on information to be provided to clients so that they can make informed investment decisions. For example, clients should be informed about the type of financial service, the associated risks and the compensation received from third parties. The handling of conflicts of interest when using the bank's own financial instruments is also discussed.

The circular will enter into force on 1 January 2025.

SFC issues guidance on due diligence for third-party ESG ratings and data products providers

The Securities and Futures Commission (SFC) has issued a circular to provide guidance to asset managers regarding the due diligence expectations for third-party environmental, social, and governance (ESG) ratings and data products providers (ESG service providers).

In an earlier fact-finding exercise, the results of which were published in October 2023, the SFC observed that asset managers generally engage ESG service providers' products to facilitate investment decision-making and risk management processes. Pursuant to General Principles 2 and 3 of the Code of Conduct for Persons Licensed by or Registered with the SFC, asset managers are generally expected to exercise due skill, care and diligence when engaging third-party service providers and ensure that such resources are adequate and effective for the proper performance of their business activities. As such, asset managers are expected to conduct reasonable due diligence and ongoing assessments on third-party ESG service providers.

The SFC notes that its fact-finding exercise also highlighted common concerns raised by asset managers regarding ESG service providers' data quality, transparency and conflicts of interest management. In this regard, it has emphasised that the due diligence and ongoing assessments should allow asset managers to reasonably understand the ESG products provided by the third-party ESG service providers. Asset managers are expected to be able to demonstrate how they have adequately fulfilled the relevant expectations regarding reasonable due diligence and ongoing assessments of third-party ESG service providers and their products.

The SFC has advised asset managers that they may take into account the principles and recommended actions of the Hong Kong Code of Conduct for ESG Ratings and Data Products Providers during their due diligence and ongoing assessment process. Asset managers may also refer to other similar or higher standards for their due diligence and ongoing assessments if deemed necessary and appropriate.

The SFC expectations are applicable to asset managers who carry out Type 9 regulated activities, including those that are wholly incidental to their other regulated activities, and who have discretion over the investment management process of the fund or discretionary account under their management, regardless of whether the fund being managed is authorised by the SFC. Asset managers should adopt a proportionate approach to fulfil the regulatory expectations.

Australian Treasury consults on cryptoasset reporting framework implementation and amendments to common reporting standard

The Australian Treasury has launched a consultation seeking stakeholder views on options for the Government's approach to implementing the Organisation for Economic Co-operation and Development (OECD)-developed rules for the cryptoasset reporting framework (CARF) and associated amendments to the common reporting standard (CRS).

The OECD CARF is a new tax transparency framework which provides for the automatic exchange between tax authorities of tax information on transactions in cryptoassets. In the Australian context, the implementation of the CARF would create the legal framework to oblige cryptoasset intermediaries to collect and report user and transaction data to the Australian Taxation Office (ATO). It would also allow the ATO to access standardised data to identify tax non-compliance and ensure taxpayers are meeting their tax obligations for cryptoasset income and assets. The CARF requires information to be reported in a standardised manner.

In particular, the consultation paper is intended to inform the Government's policy considerations on the CARF, exploring the following key issues:

- the policy merits of transposing the OECD model into Australia's domestic tax law, compared to a bespoke policy approach;
- potential implementation considerations;
- the timeline for the implementation of CARF reporting requirements;
- applicability of CARF due diligence rules to Australian residents as well as foreign residents; and
- compliance costs to be incurred by business, over and above those costs already incurred by existing reporting requirements.

Subject to a final decision of the Government, it is envisaged that CARF reporting requirements would commence from 2026, to ensure the first exchanges between the ATO and other tax authorities could take place by 2027. This timeframe would be subject to future legislative priorities, and is intended to provide adequate lead time for reporting cryptoasset service providers and intermediaries to update their systems.

With a view to reflect the genesis of the CARF and the evolving financial landscape, the consultation also seeks views on legislative amendments to the CRS to ensure that it remains up to date.

The Treasury has indicated that the ATO would also undertake public consultation on the CARF reporting format, such as the XML schema.

Comments on the consultation are due by 24 January 2025.