



FINANCIAL REGULATION
Investment services, asset management
and market infrastructures

February & March 2021

INTRODUCTION

Thank you for your interest in Uría Menéndez's *Financial Regulation Newsletter*.

As a result of a continuously evolving regulatory landscape, it is essential that institutions identify, assimilate and implement changes in a timely and correct manner. The *Financial Regulation Newsletter* helps financial institutions by periodically compiling the international, European and national regulatory developments in connection with **investment services, asset management and market infrastructures**. It also includes a section on other **matters of general interest**.

In this edition, which pertains to February and March, we highlight the publication of Directive 2021/338 of 16 February amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic. ESMA has also published a new Q&A on Regulation (EU) 2020/1503 on European crowdfunding service providers for business (ECSPR) and has updated its Q&As on the AIFMD and UCITS Directives, as well as on specific market-structure topics under MiFID II and MiFIR.

The CNMV also issued a statement on the forthcoming application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial-services sector. In its statement, it provides a summary of the transparency obligations that will enter into force on 10 March or 1 January 2022, as applicable, and which will impact the information included on corporate websites and in pre-trading materials and the annual periodic reports. The CNMV also announced a simplified procedure to update the prospectus for investment funds and adapt them to the requirements under Articles 6 and 7 of Regulation 2019/2088.

We hope you find this edition of interest and that it helps you stay abreast of the financial regulatory framework applicable in each of the abovementioned areas.

INVESTMENT SERVICES

Europe

ESMA

ESMA launches a common supervisory action with NCAs on MiFID II product governance rules

ESMA is launching a common supervisory action (CSA) with national competent authorities (NCAs) on the application of MiFID II product governance rules across the EU. The CSA will be conducted during 2021.

This action will allow ESMA and the NCAs assess how much progress manufacturers and distributors of financial products have made in applying these requirements. The CSA will assist in analysing: (i) how manufacturers ensure that financial products' costs and charges are compatible with the needs, objectives and characteristics of their target market and do not undermine expectations in connection with the returns of the financial instrument; (ii) how manufacturers and distributors identify and periodically review the target market and distribution strategy of financial products; and (iii) what information and how often manufacturers and distributors exchange information.

ESMA highlights risks to retail investors of social media-driven share trading

ESMA has released a statement to warn retail investors about the risks connected with trading decisions based exclusively on exchanges of views, informal recommendations and sharing of trading intentions through social networks and unregulated online platforms. The statement is issued as part of ESMA's investor-protection objective to safeguard retail investors, whose participation is key to developing the Capital Markets Union.

The statement has been issued in the wake of several recent episodes that have resulted in specific US stocks experiencing extreme price volatility based on information shared on social media. Although market rules and structures differ in the EU, the possibility of similar events occurring in the EU is not farfetched.

The statement highlights that investors need reliable information to make investment decisions, the increased risk of investor loss due to price volatility and the risk of market abuses being committed.

ESMA publishes the results of the annual transparency calculations for equity and equity-like instruments

ESMA has published the results of the annual transparency calculations for equity and equity-like instruments, which will apply as from 1 April 2021.

Currently, 1,432 liquid shares, as well as 982 liquid equity-like instruments other than shares, are subject to MiFID II/MiFIR transparency requirements. Market participants are invited to monitor the release of the transparency calculations for equity and equity-like instruments on a daily basis to obtain the estimated calculations for newly traded instruments and the four-week calculations applicable to newly traded instruments after the first six weeks of trading.

ESMA's annual transparency calculations are based on the data provided to the Financial Instruments Transparency System (FITRS) by trading venues and approved publication arrangements in relation to calendar year 2020.

ESMA issues latest double-volume-cap data

ESMA has updated its public registry with the latest set of double-volume-cap (DVC) data under MiFID II.

The updates of 5 March 2021 include DVC data and calculations for the periods from 1 December 2019 to 30 November 2020, 1 January 2020 to 31 December 2020, and 1 February 2020 to 31 January 2021, as well as updates to already published DVC periods.

There are 111 new breaches: 100 equities for the 8% cap, applicable to all trading venues, and 11 equities for the 4% cap, which applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 10 March 2021 to 9 September 2021. The instruments for which caps already existed from previous periods will remain suspended. At 5 March 2021, a total 185 instruments are suspended.

ESMA will not renew its decision on reporting of net short positions of 0.1% or higher

ESMA has decided to not renew its decision to require holders of net short positions in shares traded on an EU regulated market to notify the NCA if the position reaches, exceeds or falls below 0.1% of the issued share capital. The measure, which has applied since 16 March 2020, will expire on 19 March 2021.

ESMA's view is that, given the GDP forecasts showing moderate optimism for recovery, decreasing volatility and the main EU stock indices close to pre-pandemic levels, the current situation in financial markets no longer resembles the emergency scenario required by the Short Selling Regulation to maintain the measure.

The overall level of net short positions is decreasing throughout the EU, reducing the risk that selling pressures could initiate or exacerbate potential negative developments connected with the evolution of the pandemic.

ESMA clarifies application of position limits pending MiFID II amendment

ESMA has issued a public statement on its supervisory approach to position limits for commodity derivatives. The statement seeks to clarify the application of position limits and coordinate the supervisory actions of NCAs until the MiFID II Recovery Package introduces the legislative change for commodity derivatives. The amendment will start to apply in early 2022.

Position limits, under the amended legal provisions, will only continue to apply to agricultural commodity derivatives and critical or significant commodity derivatives. In addition, positions that are objectively measurable as resulting from transactions entered into in order to fulfil obligations to provide liquidity on a trading venue will be exempt from position limits.

However, considering the upcoming legislative changes and other potential impacts on existing position limits, ESMA expects NCAs to not prioritise supervisory actions towards (i) entities holding positions in commodity derivatives (other than agricultural commodity derivatives) with a net open interest below 300,000 lots; and (ii) positions

that are objectively measurable as resulting from transactions entered into in order to fulfil obligations to provide liquidity on a trading venue in accordance with MiFID II.

ESMA promotes coordinated action on the suspension of best-execution reports

ESMA has issued a public statement to promote coordinated action by NCAs under MiFID II. The statement relates to the temporary suspension of the obligation on execution venues to make data available to the public on the quality of the execution of transactions on their venues (RTS 27 Reports).

The Directive amending MiFID II, under the Capital Markets Recovery Package, states that these reports are rarely read and do not enable investors and other users to make any meaningful comparisons based on the information they provide. Following the adoption of the Directive on 16 February 2021, ESMA and NCAs have observed a lack of clarity among market participants on the application date of the suspension of the obligation to publish RTS 27 Reports. ESMA has therefore published the statement to clarify when the suspension will apply.

Moreover, in light of the rationale of the suspension, ESMA expects NCAs to not prioritise supervisory actions towards execution venues relating to the obligation to publish the RTS 27 Reports until the date on which the domestic transposition measures apply.

ESMA updates Q&A on inducements

ESMA has updated its Q&A on the implementation of investor protection topics under the Market in Financial Instruments Directive and Regulation (MiFID II/MiFIR).

The Q&As on MiFID II and MiFIR investor protection and intermediaries' topics include a new Q&A concerning one of the conditions specifying when an inducement can be considered designed to enhance the quality of the corresponding service to the client. The purpose of these investor-protection Q&As is to promote common supervisory approaches and practices in applying MiFID II and MiFIR.

In particular, the new Q&A provides guidance on the application of three important elements contained in Article 11(2)(a) of the MiFID II Delegated Directive, notably the condition that the inducement be justified by the provision of (i) an additional or higher-level service (ii) to the relevant client that is (iii) proportional to the level of inducements received.

EUROPEAN SUPERVISORY AUTHORITIES

ESAs publish final report and draft RTS on disclosures under SFDR

The European Supervisory Authorities (ESAs) —EBA, EIOPA and ESMA— delivered today to the European Commission a final report, including the draft Regulatory Technical Standards (RTS), on the content, methodologies and presentation of disclosures under the EU Regulation on sustainability-related disclosures in the financial-services sector (SFDR).

The proposed RTS aim to strengthen protections for end-investors by improving Environmental, Social and Governance (ESG) disclosures to end-investors on the main adverse effects of investment decisions and on the sustainability features of a wide range of financial products. This will help to accommodate investors' demands for sustainable products and mitigate the risk of greenwashing.

The main proposals by the ESAs address entity-level principal adverse-impact disclosures and product-level disclosures (pre-contractual information, information on the entity's website, information in periodic reports and information in relation to the "do-not-significantly-harm" principle). The RTS take a harmonised approach to all financial products; identical disclosures are required for a highly broad range of products attached as annexes to existing sectoral disclosure documents that have distinct levels of granularity and length.

EUROPEAN SYSTEMIC RISK BOARD

Paper on cross-border derivatives linkages

This paper is an initial attempt to include credit derivatives in international macro-financial analyses. Gross credit derivatives holdings have been documented as mapping to bilateral portfolio investment linkages. On a net basis, the results suggest an asymmetry between sectors and between net buyers and net sellers of CDSs.

When a banking system is a net buyer of protection, the protection purchased is proportional to the debt securities held. Conversely, when a banking system is a net seller, the protection sold is proportional to the securities held. For investment funds, no aggregate relation between net CDSs and the debt securities held was found to exist.

LEGISLATION

Corrigendum to Regulation 2019/876

The Corrigendum to Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019, amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012, was published on 25 February 2021.

Directive 2021/338 amending information requirements, product governance and position limits

Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis has been published.

Directive 2014/65/EU has been amended since it did not fully achieve its objective of adopting measures that take into account the particularities of each category of investors, with the aim of strengthening capital markets in the aftermath of the COVID-19 pandemic in order to support issuers and, in particular, issuing SMEs.

Delegated Regulation 2021/527 amending thresholds for weekly position reporting

Commission Delegated Regulation (EU) 2021/527 of 15 December 2020 amending Commission Delegated Regulation (EU) 2017/565 as regards the thresholds for weekly position reporting has been published.

Trading venues must publish position reports weekly if the total combined open interest in spot contracts and other months' contracts for a specific commodity derivative is at least 10,000 lots.

ASSET MANAGEMENT

Europe

ESMA

ESMA finalises rules on standardised information to facilitate cross-border distribution of funds

ESMA has published a final report on implementing technical standards (ITS) under the Regulation on cross-border distribution of funds.

The final report and draft ITS largely reflect the original consultation proposals, focused on the information to be published on websites of NCAs regarding national rules governing marketing requirements for funds, and the regulatory fees and charges levied by NCAs in relation to fund managers' cross-border activities. Provisions on how NCAs communicate information to ESMA to create and maintain a central database listing UCITS and AIFs marketed as cross-border on ESMA's website are also included.

ESMA provides the Commission input on improvements for ELTIF

ESMA sent a letter to the European Commission in connection with the consultation on the review of the European Long Term Investment Funds (ELTIF) Regulation. ESMA highlighted the key topics of the review of the ELTIF Regulation that it considers should be amended.

In order to increase the use of the ELTIF framework, ESMA proposes changes aimed at making ELTIFs more aligned with the needs of investors (both retail and professional). These changes would make ELTIFs a more attractive investment vehicle for professional investors, as well as a potential alternative savings placement for retail investors, further improving the access to funding for SMEs and permitting the ELTIF framework to achieve its purpose of assisting in the recovery of the European economy and in the deepening of the Capital Markets Union.

In its letter, ESMA proposes amendments to: (i) eligible assets and investments; (ii) the authorisation process; (iii) portfolio composition and diversification; (iv) redemptions; and (v) prospectuses and cost disclosure. The creation of this legal framework was aimed at increasing long-term European investments in the real economy, such as infrastructure projects, real estate and listed and unlisted SMEs.

ESMA proposes rules for alignment on taxonomy of non-financial undertakings and asset managers

ESMA published its final report on advice under Article 8 of the Taxonomy Regulation, which covers the information non-financial undertakings and asset managers need to provide to comply with their disclosure obligations under the Non-Financial Reporting Directive (NFRD).

The recommendations define the Key Performance Indicators (KPIs) disclosing how, and to what extent, the activities of businesses that fall within the scope of the NFRD qualify as "environmentally sustainable" under the Taxonomy Regulation. The key recommendations relate to the definitions non-financial undertakings need to use to calculate the turnover KPI, the CapEx KPI and OpEx KPI, and the KPI that asset managers must disclose.

 **ESMA assesses compliance with UCITS liquidity rules and highlights areas to be monitored**

ESMA published the results of the 2020 Common Supervisory Action (CSA) on UCITS liquidity risk management (LRM). The CSA revealed that overall compliance with applicable rules is satisfactory in most cases, although the liquidity management for some of the UCITS analysed could have been better. The exercise also highlighted areas in which ESMA will work to further promote convergence across NCAs.

The exercise was launched on 30 January 2020 with the purpose of all NCAs conducting coordinated supervisory activities to assess whether the managers of UCITS were complying with their LRM obligations. The CSA also offered an opportunity to strengthen the ongoing exchange of supervisory knowledge and experience among NCAs.

 **ESMA updates AIFMD Q&As**


ESMA updated its Q&A on the application of the Alternative Investment Fund Managers Directive (AIFMD).

ESMA has added two new Q&As on ESMA's guidelines on performance fees in UCITS and specific types of AIFs (the "Guidelines"). The Q&As clarify the crystallisation of performance fees, the timeline of the application of the performance reference period and the scope of the guidelines in connection with European Long Term Investment Funds.

 **ESMA updates UCITS Q&As**

ESMA updated its Q&A on the application of the Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive).

ESMA has added two new Q&As on ESMA's guidelines on performance fees in UCITS and specific types of AIFs. The Q&As clarify on the crystallisation of the performance fees and the timeline of the application of the performance reference period.

 **ESMA consults on the framework for EU money market funds**

ESMA launched a consultation on potential reforms of the EU Money Market Funds Regulation (MMFR). ESMA aims to review the stress experienced by money market funds (MMFs) during the March 2020 crisis and assess the roles markets, investors and regulations played; it also proposes potential reforms.

ESMA sets out four types of potential reforms for MMFs: (i) reforms targeting the liability side of MMFs, such as decoupling regulatory thresholds for suspensions; (ii) reforms targeting the asset side of MMFs, by, for example, reviewing requirements in connection with liquidity buffers and their use; (iii) reforms targeting both the liability and asset sides of MMFs by reviewing the status of specific types of MMFs; and (iv) reforms that are exogenous to MMFs by assessing whether the sponsor's role should be modified.

CNMV

 **Statement on the application of Regulation 2019/2088**

The CNMV issued a statement on the forthcoming application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial-services sector.

Regulation 2019/2088 establishes harmonised rules on the integration of sustainability risks, transparency issues on adverse sustainability impacts and sustainability information concerning financial products. These transparency obligations affect the information available on corporate websites, pre-trading information (or the prospectus in the case of collective-investment schemes and venture-capital institutions) and annual periodic reports.

The statement provides a summary of the transparency obligations that will enter into force on 10 March 2021 or on 1 January 2022, as applicable. The CNMV also announced a simplified procedure to update the prospectus of investment funds and adapt them to the requirements under Articles 6 and 7 of Regulation 2019/2088.

MARKET INFRASTRUCTURES

Europe

ESMA

ESMA publishes report on proposed fees for benchmark administrators

ESMA published the final report on its technical advice regarding supervisory fees for benchmarks administrators under the Benchmark Regulation (BMR). The final report informs the European Commission on fees that benchmark administrators, who ESMA will supervise as from January 2022, need to pay.

Supervisory fees will be collected from administrators of critical benchmarks and those of third-country benchmarks that are subject to the EU recognition regime. ESMA's final report specifies the type of fees, the services for which they are due, their amount and how often they have to be paid.

The four main fee categories are: (i) one-off recognition fees that third-country administrators applying for recognition have to pay; (ii) one-off authorisation fees that critical benchmark administrators applying for authorisation have to pay; (iii) annual supervisory fees that third-country administrators have to pay; and (iv) annual supervisory fees that critical benchmark administrators have to pay.

ESMA updates Q&As on MiFID II and MiFIR market-structure matters

ESMA updated its Q&A on matters pertaining to market structures under MiFID II and MiFIR.


The Q&As clarify the classification of Direct Electronic Access (DEA) trades and Matched Principal Trading by investment firms.

ESMA publishes guidelines to harmonise CCP supervisory reviews and evaluation under EMIR

ESMA published the final report on guidelines aimed at assisting the corresponding authorities in applying EMIR provisions that deal with the review and evaluation of central counterparties (CCPs).

The guidelines address common procedures and methodologies for reviewing arrangements, strategies, processes and mechanisms implemented by CCPs. This includes assessing risks, which cover requirements for CCPs to address financial, organisational, operational and prudential risks under EMIR.


The guidelines aim to ensure consistency in format, frequency and depth of CCP supervisory reviews and evaluation processes. In particular, the guidelines cover the review and evaluation of capital requirements, organisational requirements, business continuity, business conduct, prudential requirements and interoperability arrangements.

 **ESMA publishes second annual report on waivers and deferrals for non-equity instruments**

ESMA published its second annual report on waivers and deferrals for non-equity instruments under MiFIR.

The report analyses waivers for non-equity instruments for which ESMA issued an opinion to NCAs between 1 January and 31 December 2019. It also includes an overview of the deferral regime for non-equity instruments applied across the different EU Member States.

The main findings are the following: (i) 80% of the requests concern illiquid waivers, LIS waivers, OMF waivers and SSTI waivers; (ii) the assessed non-equity waivers pertained to a variety of non-equity instruments, although primarily bonds, IR derivatives and equity derivatives; (iii) for post-trade transparency, deferrals for LIS transactions are commonly used across trading venues for an array of non-equity instruments; and (iv) for pre-trade transparency waivers, the Netherlands submitted the largest number of waiver notifications in 2019, reflecting the establishment of subsidiaries of trading venues operating in the United Kingdom in the context of Brexit.

 **ESMA launches consultation on methodology to calculate a benchmark in exceptional circumstances**

ESMA launched a consultation on draft guidelines detailing the obligations applicable to administrators who use a methodology to calculate a benchmark in exceptional circumstances under the Benchmarks Regulation (BMR).

During exceptional circumstances such as the COVID-19 crisis, administrators are entitled to use an alternative methodology to calculate a benchmark, although the methodology must be made publicly available.

The consultation ESMA published seeks input on clarifications and specifications regarding the adjustments of benchmarks in exceptional circumstances in relation to three areas: transparency of methodology, the oversight function and record-keeping requirements.

The draft guidelines also ensure that administrators of benchmarks have in place a transparent framework when consulting on material changes to the methodology in a short time period.

 **ESMA updates Brexit statement on provisions of the Benchmark Regulation**

ESMA updated its statement on the application of key provisions of the Benchmark Regulation (BMR).

The update concerns ESMA's previous statements issued in March and October 2019 as well as in October 2020. The latest update specifies the EU's regulatory approach towards UK-based third-country benchmarks as well as UK-endorsed and recognised benchmarks.

The October 2020 statement needed to be revised as the EU BMR transitional provision had been updated in the context of the recent BMR reform.

 **ESMA proposes amendments to MiFIR transactions and reference data-reporting frameworks**

ESMA published the final report on the review of transaction and reference-data reporting obligations under MiFIR.

The final report contains recommendations and potential legislative amendments to MiFID II/MiFIR with a view toward simplifying the current reporting frameworks while also ensuring the quality and usability of the reported data. ESMA's recommendations

are particularly relevant for trading venues, systematic internalisers, investment firms, data-reporting services providers and asset-management companies.

ESMA updates EMIR Q&As

ESMA updated its Q&A on practical questions regarding reporting issues under the European Markets Infrastructure Regulation (EMIR).

The Q&A aims to ensure that the supervisory activities of the corresponding authorities under EMIR converge along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on EMIR requirements.

The updated document further clarifies two aspects related to the intragroup transactions (IGT) reporting exemption: (i) reporting of the details of derivatives when the IGT reporting exemption ceases to be valid; and (ii) location of parent undertaking for the IGT reporting exemption.

ESMA updates CSDR Q&As

ESMA updated its Q&A on the Central Securities Depositories Regulation (CSDR).

The CSDR harmonises specific aspects of both the settlement cycle and the general settlement discipline and provides a set of common requirements for CSDs operating securities settlement systems throughout the EU.

The latest Q&As on the CSDR contain answers provided by the European Commission relating to the provision of CSD services in other Member States and the exemption from the application of cash penalties and the buy-in requirements for settlement fails relating to transactions involving CCPs.

EUROPEAN SUPERVISORY AUTHORITIES

ESAs publish joint Q&As on bilateral margining

The European Supervisory Authorities (ESAs) —EBA, EIOPA and ESMA—published three joint Q&As on RTS 2016/2251 on bilateral margin requirements under the European Markets Infrastructure Regulation (EMIR).

The Joint Q&As on Bilateral Margining clarify various aspects regarding the bilateral margin regime under EMIR: (i) the relief covered by a partial intragroup exemption from bilateral margin requirements; (ii) the procedure to grant intragroup exemptions from bilateral margin requirements between a financial counterparty and a non-financial counterparty that are based in different Member States; and (iii) the exemption regime from bilateral margin requirements for derivatives entered into in relation to covered bonds.

LEGISLATION

Delegated Regulation 2021/237, amending the date at which the clearing obligation takes effect for certain types of contracts

The Commission Delegated Regulation (EU) 2021/237 of 21 December 2020 amending regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts has been published.

The Regulation was drafted as a result of the classification of the United Kingdom as a third-country non-member of the European Union on 1 February 2020 and the fact that European Union law ceased to apply to and in the United Kingdom from 31 December 2020 onwards, as well as the fact that Regulation 648/2012 and its corresponding Delegated Regulation do not take into account this circumstance in their regulation of clearing obligations for certain types of contracts.

Targeted consultation on the review of the Directive on settlement finality in payment and securities settlement systems

The European Commission has launched a targeted consultation on the Directive on settlement finality in payment and securities settlement systems (SFD).

The Commission is interested in obtaining the views of a wide range of stakeholders, particularly those participating directly or indirectly in SFD designated systems (e.g. credit institutions, investment firms, public authorities, CCPs, system operators), those participating in third-country systems, system operators of non-SFD designated systems, organisations representing the interests of stakeholders participating in SFD designated systems, payment institutions, e-money institutions, organisations representing the interest of consumers (and their protection), Member States' authorities, EU institutions and authorities as well as academics.

The responses in connection with the consultation will feed into a Commission report to the European Parliament and Council. The current review covers an array of issues that have arisen since the last review of the SFD, which took place in 2008/2009. The consultation considers the impact of new developments in changing business, technological and regulatory environments.

OTHERS

Europe

ESMA

ESMA publishes first Q&As on crowdfunding

ESMA published a Q&A on the understanding of matters pertaining to special purpose vehicles (SPV) under the Regulation on European crowdfunding service providers for business.

The Q&A promotes a convergent application of the provisions of Regulation (EU) 2020/1503 on European crowdfunding service providers for business (ECSPR) and seeks responses to potential questions from the public, market participants and authorities.

This first set of Q&As addresses the following topics: (i) the circumstances and conditions under which an SPV can be created for the provision of crowdfunding services; (ii) the types of instruments that can be offered to investors via an SPV; (iii) whether an SPV can give exposure to more than one underlying asset; (iv) the type of underlying asset to which an SPV can give exposure; and (v) when an asset should be deemed illiquid or indivisible within the meaning of the ECSPR.

ESMA sees high risk for investors in non-regulated crypto assets

ESMA has published its first Trends, Risks and Vulnerabilities (TRV) Report of 2021. The Report analyses the impact of COVID-19 on financial markets during the second half of 2020 and highlights the increasing credit risks linked to significant corporate and public debt overhang, as well as the risks linked to investments in non-regulated crypto assets.

ESMA consults on regulating crowdfunding

ESMA has launched a consultation on draft technical standards on crowdfunding under the European crowdfunding service providers regulation (ECSPR).

The new Regulation on crowdfunding regulates for the first time at the EU level lending-based and equity-based crowdfunding services. It introduces a single set of requirements applicable to CSPs throughout the EU, including strict rules to protect investors.

The ECSPR requires ESMA to develop 12 technical standards—8 regulatory technical standards (RTS) and 4 implementing technical standards (ITS)—on a variety of important topics. The consultation seeks input on ESMA's draft technical standards on issues such as complaint handling, conflicts of interest and business-continuity plans.

ESMA updates Q&As, templates and technical instructions for securitisation reporting

ESMA published 4 new Q&As and modified 11 others. ESMA also updated reporting instructions and an XML schema for the templates set out in the technical standards on disclosure requirements.

The new Q&As include instructions on how to report split and merged underlying exposures. The updated Q&As include revised instructions on how to report income fields for buy-to-let residential-real-estate mortgages.

The revised reporting instructions address technical issues that stakeholders have identified since August 2020. To facilitate the implementation of the updated rules, reporting entities may choose to use version 1.2.0 or version 1.3.0 of the XML schema and of the validation rules until 1 September 2021. ESMA has also published an XML schema for each of the two standard reports that a registered securitisation repository must provide in accordance with the regulatory technical standards on securitisation repository operational standards.

EUROPEAN SUPERVISORY AUTHORITIES


Request to the ESAs for technical advice on digital finance and related issues

The European Commission has requested technical advice from the European Supervisory Authorities (ESAs)—ESMA, EBA and EIOPA—based on its digital finance strategy, which sets out its roadmap for the subsequent four years on this area.

The advice of the ESAs will address more fragmented value chains, “same activity, same risk, same rules” issues, the scope of the supervisory perimeters, the prudential risks related to non-bank lending and the protection of clients’ funds in the context of the adaptation of the European Union’s prudential and conduct regulation and supervision frameworks to be future proof for the new financial ecosystem, including traditional financial undertakings, technology providers and other new entrants offering financial services.

Spain


CNMV

 **Joint statement of the CNMV and the Bank of Spain on the risks of investing in cryptocurrencies**

The Bank of Spain and the CNMV issued a statement on the extreme volatility, complexity and lack of transparency of cryptocurrencies such as Bitcoin and Ether, which, in recent months, have experienced high price volatility as well as a significant increase in advertising. The Bank of Spain and the CNMV previously warned of the risk of investing in cryptocurrencies in a 2018 statement.

The Bank of Spain and the CNMV focus on, among other issues, the underregulated environment of crypto assets, the risks of investing in them, their complexity, the lack of transparency and liquidity, their limited acceptance as a payment method, the difficulties in resolving cross-border conflicts involving these assets and other complications related to theft, fraud or loss.

LEGISLATION

 **Order ETD/110/2021 of 9 February creates and regulates the Consultative Council for Digital Transformation**

The Ministry for Economic Affairs and Digital Transformation has published Order ETD/110/2021 to create and regulate the Consultative Council for Digital Transformation. Creating this governing body is part of the *España Digital 2025* strategy to assist in implementing the strategy. The Council is conceived as an open forum in which all those involved in Spain's digital transformation process can express their opinions and interests.

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