

Spotlight on Markets – July 2024

WHAT'S NEXT FOR MICA AND DORA?

ADDRESSING RISKS PRESENTED BY GLOBAL
CRYPTO FIRMS AND STRENGTHENING
THE EU DIGITAL OPERATIONAL RESILIENCE

- Our vision on Sustainable Finance
- CCP Stress Test
- Frauds & Scams
- ESEF Reporting Manual

In this issue

ESMA in July

Opinion on global crypto firms using their non-EU execution venues	4
ESAs second batch of policy products under DORA	5
ESAs Final report on the draft technical standards on subcontracting under DORA	7
What is the EU systemic cyber incident coordination framework?	8
ESMA's long-term vision on the functioning of the Sustainable Finance Framework	10
ESMA's stress test of Central Counterparties finds clearing system resilient	12
Beware of frauds and scams	14

In this issue

2023 data on cross-border investment activity of firms	19
CSDR Refit: consultations on rules to recalibrate and further clarify framework	21
MiFIR review: new consultations	23
Out now - 2024 ESEF Reporting Manual	25

Look ahead

Consultations, hearings and webinars	27
Open vacancies	28
Contact info	29

Opinion on global crypto firms using their non-EU execution venues

The European Securities and Markets Authority (ESMA) issued an Opinion to address the risks presented by global crypto firms seeking authorisation under the Markets in Crypto Assets (MiCA) Regulation for part of their activities (crypto brokerage) while keeping a substantial part of their group activities (intra-group execution venues) outside the EU regulatory scope.

ESMA recognises risks associated with global crypto firms' complex structures where execution venues fall outside of the scope of MiCA. Such structures may include the involvement of an EU-authorized broker effectively routing orders to an intra-group execution venue based outside the EU, potentially leading to diminished consumer protection and to an unlevel playing field with EU-authorized execution venues.

Considering these risks ESMA recommends National Competent Authorities (NCAs) to be vigilant during the authorisation process and to assess business structures of global firms to ensure that they do not bypass obligations established in MiCA, to protect consumers and ensure transparent and orderly functioning of crypto markets.

The Opinion calls for a case-by-case assessment, outlining the specific requirements that should be met regarding best execution, conflicts of interest, the obligation to act honestly, fairly and professionally in the best interests of clients and the obligation relating to the custody and administration of crypto-assets on behalf of clients.

Crypto-asset execution venues play an important role in the functioning of the crypto-asset ecosystem and MiCA sets out comprehensive rules regarding the functioning of trading platforms for crypto-assets. This Opinion is part of broader efforts by ESMA and NCAs to ensure effective application of MiCA and convergent supervisory practices throughout the EU.

ESAs second batch of policy products under DORA

The three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published the second batch of policy products under the Digital Operational Resilience Act (DORA). This batch consists of four final draft regulatory technical standards (RTS), one set of Implementing Technical Standards (ITS) and 2 guidelines, all of which aim at enhancing the digital operational resilience of the EU's financial sector.

The package focuses on the reporting framework for ICT-related incidents (reporting clarity, templates) and threat-led penetration testing while also introducing some requirements on the design of the oversight framework, which enhance the digital operational resilience of the EU financial sector, thus also ensuring continuous and uninterrupted provision of financial services to customers and safety of their data.

The ESAs are publishing the following final draft technical standards:

- RTS and ITS on the content, format, templates and timelines for reporting major ICT-related incidents and significant cyber threats;
- RTS on the harmonisation of conditions enabling the conduct of the oversight activities;
- RTS specifying the criteria for determining the composition of the joint examination team (JET); and
- RTS on threat-led penetration testing (TLPT).

The set of guidelines include:

- Guidelines on the estimation of aggregated costs/losses caused by major ICT-related incidents; and
- Guidelines on oversight cooperation.

Next steps

The guidelines have already been adopted by the Boards of Supervisors of the three ESAs. The final draft technical standards have been submitted to the European Commission, which will now start working on their review with the objective to adopt these policy products in the coming months. The remaining RTS on Subcontracting will be published in due course.

Background

The public consultation on all the above-mentioned technical standards and guidelines took place from 8 December 2023 to 4 March 2024. The ESAs received more than 364 responses from market participants (265 for the technical standards and 99 for the two guidelines), including a joint response from ESAs' stakeholder groups. The RTS on JET has been consulted on separately from 18 April to 18 May and brought forward 9 responses from stakeholders. All these public consultations led to specific changes to the technical standards, ensuring simplification and streamlining of the requirements, greater proportionality and addressing sector-specific concerns. ESAs have consulted with the European Central Bank (ECB) and European Union Agency for Cybersecurity (ENISA) for the technical standards relating to incident reporting.

ESAs Final report on the draft technical standards on subcontracting under DORA

The three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published their joint Final report on the draft Regulatory Technical Standards (RTS) specifying how to determine and assess the conditions for subcontracting information and communication technology (ICT) services that support critical or important functions under the Digital Operational Resilience Act (DORA). These RTS aim at enhancing the digital operational resilience of the EU financial sector by strengthening the financial entities' ICT risk management over the use of subcontracting.

These RTS focus on ICT services provided by ICT subcontractors that support critical or important functions, or material parts of them. In addition, they specify the requirements throughout the lifecycle of contractual arrangements between financial entities and ICT third-party service providers. In particular, they require financial entities to assess the risks associated with subcontracting during the precontractual phase, including the due diligence process.

Requirements for the implementation and management of contractual arrangements on subcontracting conditions are defined with these RTS, to ensure that financial entities monitor the subcontractors effectively underpinning the ICT services that support critical or important functions and remain in control of their risks.

Today's RTS finalise the publication of the ESAs' second batch of regulatory products under DORA.

What is the EU systemic cyber incident coordination framework?

The three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) will establish the EU systemic cyber incident coordination framework (EU-SCICF), in the context of the Digital Operational Resilience Act (DORA), that will facilitate an effective financial sector response to a cyber incident that poses a risk to financial stability, by strengthening the coordination among financial authorities and other relevant bodies in the European Union, as well as with key actors at international level.

Over the coming months, the ESAs will kickstart the implementation of the framework by setting up:

- the EU-SCICF Secretariat, supporting the functioning of the framework;
- the EU-SCICF Forum, working on testing and maturing the functioning;
- the EU-SCICF Crisis Coordination, facilitating during a crisis the coordination of actions by the participating authorities.

The ESAs will identify legal and other operational hurdles encountered during the initial set up and report these to the European Commission. The further development of the framework will be subject to the availability of resources and other measures taken by the European Commission.

Background

After identifying a shortfall in crisis management frameworks that could lead to a lack of financial sector coordination in the event of a significant cross-border information and communication technologies (ICT) incident, the European Systemic Risk Board (ESRB) recommended the ESAs to build on the role foreseen in the Digital Operational Resilience Act (DORA), and to gradually develop a pan-European systemic cyber incident coordination framework (EU-SCICF).

The Systemic Cyber Incident Coordination Framework: EU-SCICF



#RESILIENCE #COORDINATION #FINANCE #SYSTEMIC

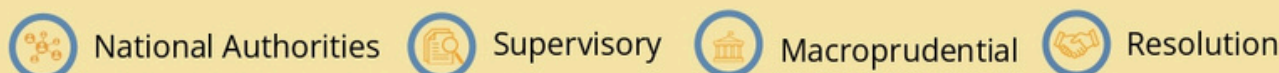
What is EU-SCICF?

The Systemic Cyber Incident Coordination Framework, also known as EU-SCICF, is set up to facilitate communication and coordination among EU authorities and to liaise with other key stakeholders at international level, in case of cyber incidents posing a risk to financial stability.

What kind of incidents are covered by the EU-SCICF?

Major cross-border information and communication technologies (ICT) related incidents or related cyber threats potentially having a systemic impact on the Union's financial sector.

What is the envisioned composition?



How does the EU-SCICF work?

The participating members will be alerted and will share information on potential systemic cyber incidents or threats. When a systemic risk materialises, the EU-SCICF will serve as forum for relevant authorities to communicate and coordinate on any needed action and on the use of tools to counter the crisis from a macroprudential perspective.

Set-up



- Relevant documents: [Systemic cyber risk](#), [Mitigating systemic cyber risk](#), [Advancing macroprudential tools for cyber resilience](#), [Recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities](#).
- The set-up is subject to the outcome of the Report to be drafted by the European Commission based on the Recommendation.

ESMA long-term vision on the functioning of the Sustainable Finance Framework

The European Securities and Markets Authority (ESMA) published an Opinion on the Sustainable Finance Regulatory Framework, setting out possible long-term improvements.

ESMA acknowledges that the EU Sustainable Finance Framework is already well developed and includes safeguards against greenwashing. At the same time, ESMA considers that, in the longer-term, the Framework could further evolve to facilitate investors' access to sustainable investments and support the effective functioning of the Sustainable Investment Value Chain.

Main recommendations for the European Commission's consideration:

- The EU Taxonomy should become the sole, common reference point for the assessment of sustainability and should be embedded in all Sustainable Finance legislation;
- The EU Taxonomy should be completed for all activities that can substantially contribute to environmental sustainability and a social taxonomy developed;
- A definition of transition investments should be incorporated into the Framework to provide legal clarity and support the creation of transition-related products;

- All financial products should disclose some minimum basic sustainability information, covering environmental and social characteristics;
- A product categorisation system should be introduced catering to sustainability and transition, based on a set of clear eligibility criteria and binding transparency obligations;
- ESG data products should be brought into the regulatory perimeter, the consistency of ESG metrics continue to be improved, reliability of estimates ensured; and
- Consumer and industry testing should be carried out before implementing policy solutions to ensure their feasibility and appropriateness for retail investors.

This Opinion builds on the findings of the ESMA Progress Report on Greenwashing and the Joint ESAs Opinion on the review of the SFDR. The Opinion also represents the last component of ESMA's reply to the EC Request for input related to greenwashing, next to the Final Report on Greenwashing.



ESMA's stress test of Central Counterparties finds clearing system resilient

The European Securities and Markets Authority (ESMA) published the results of its fifth stress test exercise for Central Counterparties (CCPs). The results confirm the overall resilience of European Union (EU) CCPs, as well as third-country Tier 2 CCPs, to core credit and liquidity financial risks under the tested scenarios.

New in this year's exercise is the exploratory analysis of climate risk. The exercise also included additional market stress scenarios, enhanced model risk assessments for concentration, and extended reverse stress tests for credit and liquidity.

“ESMA’s fifth stress test confirmed the overall resilience of the European clearing landscape to severe credit and liquidity stress scenarios. However, we still have identified areas in which certain CCPs may need to strengthen their risk management frameworks, or where further supervisory work should be prioritised, including on modelling of concentration.”

“The stability of the EU financial system relies on resilient CCPs, and the ESMA stress test is a key supervisory tool to identify and mitigate potential risks to financial stability.”

Klaus Löber, Chair of the CCP Supervisory Committee



ESMA finds:

- CCPs have robust lines of defence to withstand significant market shocks in combination with the default of the two clearing member groups with the largest exposures;
- CCPs are also resilient to substantial liquidity stress events, while CCPs' clearing, and investment activities play a key role in the results;
- Some gaps persist in the coverage of concentration risk across CCPs and across asset classes, notably for commodity derivative positions;
- For climate risk, CCPs' exposures depend on whether the markets they clear are directly exposed to transition risk, such as commodities and energy. The majority of sampled CCPs have started to integrate climate risk into their stress testing framework;
- The ecosystem analysis provided insights into the CCPs' and clearing members' resources and showed that the total amount of required margin increased by 56% compared to the last exercise.

CCP stress test scenarios and outcomes

A total of 16 CCPs were covered by the exercise, including two UK CCPs qualifying as Tier 2 CCPs and all authorised EU CCPs. It assessed credit and concentration risk, liquidity risk, and included a new climate risk component. The exercise was complemented by an enhanced clearing ecosystem analysis.

Next steps

In line with the EMIR mandate, where the assessments exposed shortcomings in the resilience of one or more CCPs, ESMA will issue the necessary recommendations.

Beware of frauds and scams

Scammers are not only in the movies. ESMA's name and logo are falsely used to promote frauds and scams in emails, complaint forms and other documents. Fraudsters are asking personal information to allow money transfers, others claim to work for ESMA etc.

Find out what frauds and scams can look like, how you can protect yourself and what you should do if you have become victim of investment fraud. [More here.](#)



How can I recognise a **scam**?

Fraudsters often use ESMA's name and logo to promote scams.

They might present themselves as ESMA employees, provide documents and certificates which are counterfeits or attempt to copy ESMA's website.



All these references are false and have been made without ESMA's knowledge or consent.

How can I **protect** myself from being scammed?

Never reveal personal or financial data, usernames, passwords, bank details, addresses, or insurance/pensions/investment details to someone claiming to be from ESMA.

Do not click on links or open emails from senders you do not already know.

How can I **protect** myself from being scammed?

Check if you are really communicating with ESMA.

- ▶ ESMA official website is www.esma.europa.eu.
- ▶ ESMA's e-mails only end with @esma.europa.eu.
- ▶ ESMA is only based in **Paris, France**. It has no affiliates or branch offices elsewhere.
- ▶ ESMA's telephone numbers only start with **+33** for France.



Any other website, email address, address or phone number is fake.

What can I do as a **victim**?

Use the European e-Justice Portal to find out your rights.

If you have already been in contact with the fraudsters, stop all interactions.

Consider:

- ▶ Reporting your case to local law enforcement authorities, such as the police.
- ▶ Informing your National Competent Authority.
- ▶ Reaching out to your financial services consumer organisations.
- ▶ Approaching a lawyer to consider taking legal action against the firm.

2023 data on cross-border investment activity of firms

The European Securities and Markets Authority (ESMA) together with the National Competent Authorities (NCAs), completed an analysis of the cross-border provision of investment services during 2023.

The data sets were collected from investment firms across 30 jurisdictions in the EU/EEA.

The main findings include:

- A total of around 386 firms provided services to retail clients on a cross-border basis in 2023;
- Approximately 8 million clients in the EU/EEA received investment services from firms located in other EU/EEA Member States in 2023;
- Compared to 2022, the cross-border market for investment services grew by 1.6% in terms of firm numbers, and by 5% in terms of retail clients, while the number of complaints increased by 31%;
- Cyprus is the primary location for firms providing cross-border investment services in the EU/EEA, accounting for 20% of the total firms passporting investment services. Luxembourg and Germany follow with 15% and 14% of all firms, respectively; and
- Germany, France, Spain, and Italy are the most significant destinations (in terms of number of retail clients) for investment firms providing cross-border services in other Member States.

The insights gained from the analysis will allow ESMA and the NCAs to better understand and monitor cross-border investment services provided by firms in the EU/EEA.

Next steps

ESMA will perform the next data collection in 2025.



CSDR Refit: consultations on rules to recalibrate and further clarify the framework

The European Securities and Markets Authority (ESMA) has launched new consultations on different aspects of the Central Securities Depositories Regulation (CSDR) Refit. The proposed rules relate to the information to be provided by European CSDs to their national competent authorities (NCAs) for the review and evaluation, the information to be notified to ESMA by third-country CSDs, and the scope of settlement discipline.

The draft rules are set out in three separate consultation papers, covering:

- The review and evaluation process of EU CSDs, suggesting a harmonisation of the information to be shared by CSDs on their cross-border activities and the risks to be considered by the relevant authorities for the purpose of feeding the overall assessment of the competent authorities;
- Third country CSDs, where ESMA is proposing to streamline the information to be notified, aiming for an accurate understanding of the provision of notary, central maintenance and settlement services in the Union, limiting the reporting burden; and
- The scope of settlement discipline, covering ESMA's proposals on the underlying cause of settlement fails that are considered as not attributable to the participants in the transaction, and the circumstances in which operations are not considered as trading.

The CSDR Refit aims to fine-tune and further clarify the CSDR framework. All the policy mandates under consultation today will contribute towards the effective recalibration of the CSDR regime.

Next steps

ESMA invites EU CSDs, third-country CSDs, CSD participants, as well as any stakeholders that may be impacted by the CSDR settlement discipline to respond to these three consultation papers by 9 September 2024.

Following the consultation, the responses will be assessed to finalise the respective proposals, before submission to the European Commission in Q1 2025. Other consultations about other aspects of CSRD will follow in the coming months.



MiFIR review: new consultations

The European Securities and Markets Authority (ESMA) published a new 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.

This package includes:

- Amendments to rules on the liquidity assessment for equity instruments, on equity transparency and on the volume cap.
- A draft of the new Implementing Technical Standard (ITS) on systematic internalisers (SIs).
- A section on the equity Consolidated Tape Provider (CTP) in relation to the input/output data, to ensure full alignment between the transparency requirements and the CTP specifications.
- A section on flags to be used in the post-trade transparency reports for non-equity instruments which was missing in the previous consultation.
- New rules specifying organisational requirements of trading venues, adding new provisions on circuit breakers and with targeted amendments to adapt to the DORA framework.

Once these standards are approved, they will facilitate the implementation of the Consolidated Tape Provider (CTP) in the European Union as well as contribute to a more informative pre-trade and post-trade transparency regime. The new rules also aim to foster efficiency and competitiveness in European financial markets, thanks to streamlined reporting requirements.

Next steps

ESMA will consider all comments received by:

- 30 September 2024^[1] 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. Please submit your response [here](#).
- 15 October 2024 for the SI ITS (Section 5), RTS 3 (Section 6) and RTS 7 (Section 7). Please submit your response [here](#).

ESMA will prepare a final report and intends to submit to the European Commission the technical advice and the draft technical standards for RTS 1, the whole input/output data RTS and RTS 2 (including the flags) in December 2024, and the remaining mandates in March 2025. Further information on the MiFID II /MiFIR review and the upcoming consultation process can be found on the [dedicated webpage](#).

Out now 

2024 ESEF Reporting Manual

The European Securities and Markets Authority (ESMA) published the update of its Reporting Manual on the European Single Electronic Format (ESEF) supporting a harmonised approach for the preparation of annual financial reports. ESMA has also updated the Annex II of the Regulatory Technical Standards (RTS) on ESEF.

The updated Manual provides technical improvements and guidance to facilitate the analysis and comparison of the data, such as:

- recommendations when tagging empty fields or dash symbols
- clarifying that extension elements should be anchored to core elements sharing the same data type;
- advising on practices to further improve the readability of the information extracted from a block tag; and,
- encouraging the use of unique identifiers for each tagged fact.

The Manual intends to promote a harmonised and consistent approach for the preparation of annual financial reports in the format specified in the RTS on ESEF, providing guidance on common issues that may be encountered when creating ESEF documents, and explaining how to address them.

Next steps

Issuers are expected to follow the guidance provided when preparing their 2024 annual financial reports. Software firms are also expected to follow the guidance when developing software used for the preparation of annual financial reports in Inline XBRL.

Correction

On 28 May 2024, ESMA published the [Final Report proposing amendments to the RTS on ESEF](#) to align the ESEF taxonomy with the updates to International Financial Reporting Standards (IFRS) Taxonomy and with new XBRL specifications.

The Annex II contained an error in the Table "Mandatory elements of the core taxonomy to be marked up for financial years beginning on or after 1 January 2025", where three taxonomy elements/labels related to dividends were omitted from the list of mandatory mark-ups. ESMA has updated today the table of Annex II and replaced the document on its website, as well as submitted a corrected version to the European Commission.



Consultations

Click on the consultation

Closing date

- 7 Aug** [Call for Evidence on the review of the UCITS Eligible Assets Directive](#)
- 23 Aug** [Consultation on the amendments to certain technical standards for commodity derivatives](#)
- 28 Aug** [MiFIR Review Consultation Package \(Consolidated Tape Providers and Data Reporting Service Providers\)](#)
- 28 Aug** [Consultation on MiFIR Review Package \(non-equity trade transparency, reasonable commercial basis and reference data\)](#)
- 30 Aug** [Discussion Paper on the Call for advice on the investment firms prudential framework](#)

Hearings and webinars

Click on the hearing or webinar

Date

- 17 July** [Webinar on Risk article on neo-brokers in the EU](#)
Presentation and recording available
- 10 July** [Public hearing on shortening the settlement cycle](#)
Presentation and recording available
- 23 Sept** [Hearing on the Guidelines under MiCA](#)
Register by 19 September

Open vacancies

All open vacancies can be found on [ESMA's recruitment portal](#)

Deadline

- 30 Aug** [Administrative Assistant](#)
- 31 Dec** [Seconded National Experts \(multiple profiles\)](#)
- 31 Dec** [Traineeship Notice - Support functions profile](#)
- 31 Dec** [Traineeship Notice - Data, Economics and IT profile](#)
- 31 Dec** [Traineeship Notice - Legal, Supervision and Policy](#)

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