

Spotlight on Markets – December 2024

MARKETS IN CRYPTO-ASSETS REGULATION. GAME ON.

MICA OFFICIALLY ENTERED INTO FORCE ACROSS
THE EU ON 30 DECEMBER 2024

- Funds' names Q&As
- MiFIR review updates
- 2024 Dry Run exercise – DORA
- Consultations



In this issue

ESMA in December

ESMA releases last policy documents to get ready for MiCA	4
ESMA Statement on MiCA Transitional Measures	7
ESMA puts forward Q&As on the application of the Guidelines on funds' names	9
ESMA delivers final report on equity transparency under MiFID II	10
ESMA publishes its Final Report on bond transparency and reasonable commercial basis under MiFIR Review	12
Credit ratings vs private credit ratings – what's the difference?	14
The ESAs' Dry Run exercise shows the goal of reporting of registers of information under Digital Operational Resilience Act in 2025 within reach	17

In this issue

ESAs are recruiting Heads of Unit for their DORA Joint Oversight Team	19
ESMA consults on proposals to digitalise sustainability and financial disclosures	20
ESMA publishes feedback received to proposed review of securitisation disclosure templates	22
ESMA consults on Technical Advice on Listing Act implications	23
ESMA consults on open-ended loan originating alternative investment funds	25

Look ahead

Consultations, hearings and webinars	26
Open vacancies	27
Contact info	28

ESMA releases last policy documents to get ready for MiCA

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published the last package of final reports containing regulatory technical standards and guidelines ahead of the full entry into application of the Markets in Crypto Assets Regulation (MiCA).

ESMA has delivered extensive regulatory work over the past 18 months, comprising more than 30 Technical Standards and Guidelines, many of them developed in cooperation with the European Banking Authority (EBA).

“The entry into force of the MiCA regime from 30 December 2024 marks a significant step towards having a regulatory framework for the crypto market in place. Nevertheless, it is crucial to recognise that the new regime would not suffice to eliminate the inherent uncertainty and volatility in the crypto-assets market, and investors should fully understand the risks before engaging in this space.

Looking ahead, as the transitional period progresses, we will continue to provide guidance and work with all NCAs to ensure the smooth implementation of MiCA and to support a level playing field through supervisory convergence actions.”

Verena Ross, Chair



The package contains:

- **Regulatory Technical Standards on market abuse** that specify systems and procedures to prevent and detect market abuse in crypto-assets, the template for reporting suspected market abuse in crypto-assets as well as coordination procedures between competent authorities for the detection and sanctioning of cross-border market abuse situations. These rules will enable supervisors to address suspicions of market abuse and follow up with enforcement actions where necessary.
- **Guidelines on reverse solicitation** that confirm ESMA's previous message that the reverse solicitation exemption should be understood as very narrowly framed and should be regarded as the exception and not be used to circumvent MiCA requirements. This exemption only applies to cases where the client is the exclusive initiator of the service. Guidance is provided on the limited circumstances where this may be the case.
- **Guidelines on suitability** that specify how crypto-asset service providers (CASPs) providing advice on crypto-assets or portfolio management of crypto-assets have to give suitable recommendations to their clients or make suitable investment decisions on their behalf. These rules are aligned with the MiFID II requirements so that CASPs providing advice both under MiFID II and MiCA would be subject to similar requirements.
- **Guidelines on crypto-asset transfer services** that aim at ensuring investor protection for clients transferring crypto-assets, by specifying the policies and procedures that CASPs should have in place.
- **Guidelines on qualification of crypto-assets as financial instruments** who provide conditions and criteria for the qualification of crypto-assets as financial instruments. The guidelines aim to provide more clarity about the delineation between the respective scopes of application of MiCA and other sectoral regulatory frameworks (notably MiFID II).

- **Guidelines on the maintenance of systems and security access protocols** that apply to offerors and persons seeking admission to trading who are not subject to the same operational resilience standards under MiCA and DORA as their CASP and issuer counterparts. Therefore, the guidelines provide for a streamlined set of principles for entities in scope to manage their ICT risks.

Next steps

The priority for ESMA will be to continue the collaboration with national competent authorities during the transitional period and to ensure that MiCA's provisions are fully implemented and evolve in line with the changing landscape of the crypto-asset market.

The guidelines will be translated into the official EU languages and published on the ESMA website. They will apply from three months after the publication of the translations. The final reports with the draft RTS have been submitted to the European Commission for adoption.



ESMA Statement on MiCA Transitional Measures

The Markets in Crypto Assets Regulation (MiCA) includes a transitional regime for crypto asset service providers (CASPs) that offered their services prior to 30 December 2024. This regime grants them additional time to transition from compliance with the current regulatory framework to compliance with MiCA.

Article 143(3) of the Markets in Crypto Assets Regulation (MiCA) states that “Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorisation pursuant to Article 63, whichever is sooner.” The article gives individual Member States complete discretion not to apply this transitional regime or to reduce its duration in view of fostering financial stability and investor protection. This inherently non-unified approach to transitional periods has resulted in Member States reducing the transitional period in their jurisdiction to different lengths. As a result, CASPs will face different transitional periods depending on the Member State or Member States in which they are active. ESMA has collected an overview of the length of transitional regimes per member state which can be found here: [List of grandfathering periods decided by Member States under MiCA](#).

The different transitional periods should be taken into account by CASPs providing services in more than one Member State when they transition to MiCA. For example, a CASP seeking a MiCA authorisation in Member State A, with a 12-month transitional period, while also serving clients in Member State B, with a 6-month transitional period, should take action to ensure compliance with the applicable law of Member State B. Particularly, a situation where the MiCA authorisation in Member State A (and passporting rights in the European Union) is obtained after the 6-month transitional period in Member State B ends would create an interim period (of up to 6 months) in which the CASP would not have the required authorisation to provide crypto-asset services to clients in Member

State B. Given the potentially disruptive nature of such a situation, CASPs are expected to make all possible effort to be compliant and undertake all possible steps to avoid detriment to their clients, market participants, and the integrity of the market, while also adhering to applicable AML/CFT requirements.

The possible challenges raised by MiCA's transitional regime were identified at an early stage and shared in a communication published in October 2023. ESMA called for market participants to apply for a MiCA authorisation as soon as possible, reminding them that without a MiCA authorisation they would not benefit from passporting rights within the EU during the transitional period. ESMA also called on CASPs to make adequate preparations that will reduce the risk of disruption, including to engage, at an early stage, with the national competent authorities (NCAs) of the jurisdictions in which they operate to inform them of their authorisation plans.

When processing authorisations of CASPs, NCAs should ensure they are fully aware of the activities of CASPs outside the Home Member State and possible implications on the crossborder provision of services in Host Member States. The Home NCA should engage in early and continuous dialogue with relevant Host Member States to mitigate disruptions – to the extent possible – in services that could cause harm to CASPs' clients.



ESMA puts forward Q&As on the application of the Guidelines on funds' names

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published Q&As with further details on specific aspects of the practical application of the Guidelines on funds' names using ESG or sustainability-related terms.

The Q&As are related to green bonds [UCITS, AIF], the convergence on "meaningfully investing in sustainable investments" [UCITS, AIF] and the definition of controversial weapons [UCITS, AIF]. The objective is to ensure a smooth application of the Guidelines through common understanding of key concepts.

- The Q&A on **green bonds** explains that investment restrictions related to the exclusion of companies do not apply to investments in European Green Bonds. For other green bonds, fund managers may use a look-through approach to assess whether the activities financed are relevant for the exclusions;
- The Q&A on "**meaningfully investing in sustainable investments**" presents a common understanding among national competent authorities that funds may not be "meaningfully investing in sustainable investments" if they contain less than 50% of sustainable investments; and
- The Q&A on **controversial weapons** specifies that the reference for the exclusion related to controversial weapons should be the one referred to in SFDR principal adverse impact indicator 14.

ESMA has decided to clarify the treatment of Green Bonds because of the imminent application of the European Green Bonds Regulation and the reference in the mandates in the AIFMD and UCITS Directive noting that sectoral legislation takes precedence.

ESMA delivers final report on equity transparency under MiFID II

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published the Final Report with proposals for amendments related to equity transparency under the Markets in Financial Instruments Directive (MiFID II). Through its proposals ESMA aims to contribute to a more informative pre-trade and post-trade transparency regime.

The report includes proposals for the amendment of the regulatory technical standards (RTS) as well as technical advice (TA) on the provisions on equity transparency, covering:

- Changes to the definition of a liquid market for equity instrument;
- Specification of information to be disclosed for pre-trade transparency purposes, which is also of relevance for the equity consolidated tape;
- Review of the pre-trade transparency requirements for Systematic Internalisers (SIs), including the calibration of two quoting sizes; and
- Post-trade transparency reports, including flags for equity instruments.

In addition, the RTS and TA include changes related to the discontinuation of reporting of data for the purpose of transparency calculations. Going forward, ESMA will perform these calculations using transaction data reported under Article 26 of MiFIR. By



removing this reporting obligation and the reuse of the other already reported data, ESMA aims at reducing the reporting burden for market participants.

Similar amendments will be proposed in early 2025 for the volume cap mechanism.

Next steps

The final report with the draft RTS has been submitted to the European Commission for adoption.



ESMA publishes its Final Report on bond transparency and reasonable commercial basis under MiFIR Review

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published the Final Report covering mandates under the MiFIR Review on bond trade transparency and reasonable commercial basis (RCB).

The report includes the amendments to regulatory technical standards (RTS) on the mandates for bonds, structured finance products (SFPs) and emission allowances (EUA). Regarding the bond deferral regime, ESMA has performed a new data analysis, focusing on metrics such as the average daily volumes, to improve the deferral regime initially proposed in the public consultation.

The proposed pre- and post-trade transparency requirements for non-equity instruments are designed to ensure a high level of transparency whilst ensuring that liquidity providers are protected from undue risk. The RTS also ensures that the new deferral regime is in place ahead of the go live of the bond consolidated tape.

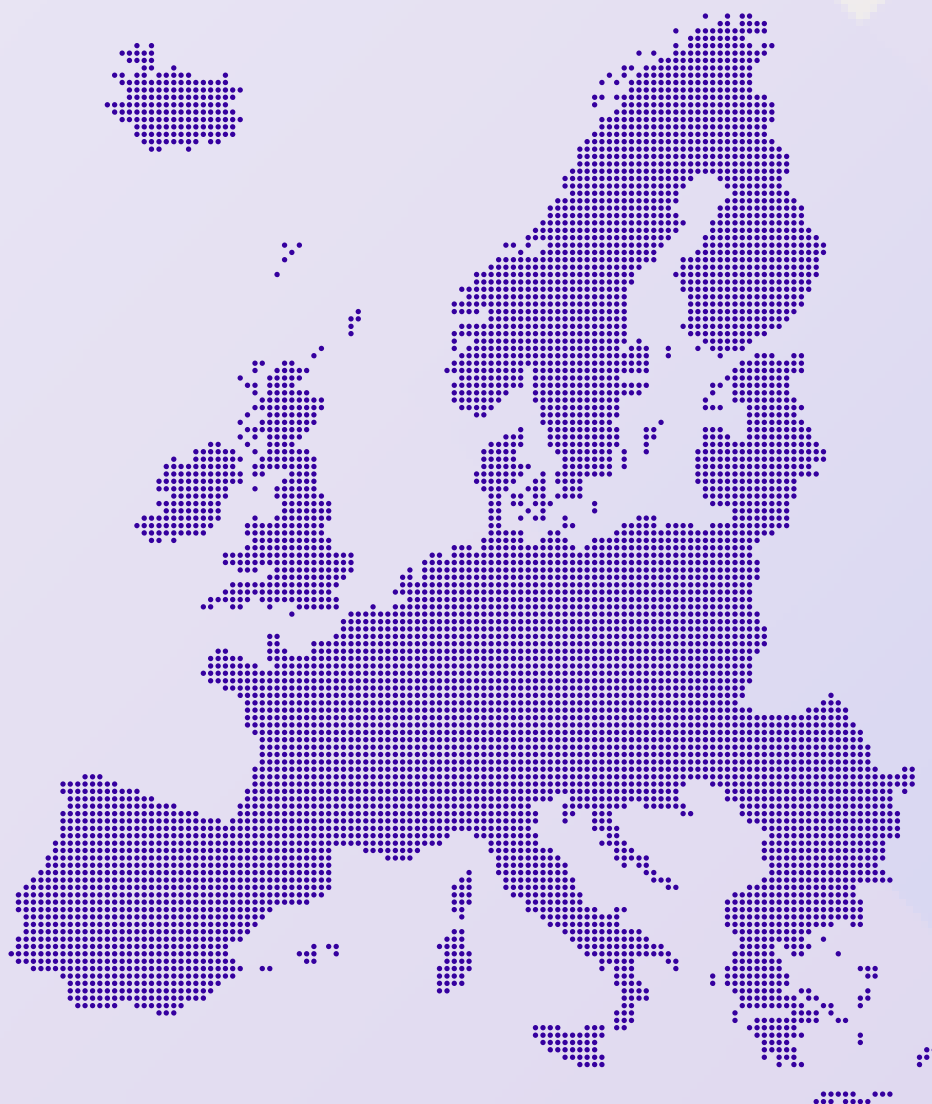
Regarding the new mandate on RCB, the report covers the obligation to make pre- and post-trade data available on an RCB. The fees of market data will need to be based on the cost of producing and disseminating the market data and a reasonable margin.

The RTS is designed to ensure that market data is available to all market participants in an accessible, fair and non-discriminatory manner and this will be fundamental to guarantee a proper implementation of the MiFIR Review. More information on the changes due to MiFID II and MiFIR Review can be found in the ESMA dedicated webpage.

Next steps

The report has been submitted to the European Commission, that will now have three months to decide whether to endorse the proposed RTSs.

ESMA also intends to publish another consultation paper addressing the transparency mandate for derivatives under Article 11a of MiFIR in early 2025.



Credit ratings vs private credit ratings – what's the difference?

Credit ratings play a critical role in evaluating the creditworthiness of entities and financial products. In an increasingly complex financial landscape marked by rapidly evolving credit rating services, it is essential for investors and market participants to understand the difference between credit ratings and private credit ratings.

The Credit Rating Agencies Regulation (CRAR) governs the issuance and distribution of credit ratings ensuring accuracy, accountability, and transparency.

Credit ratings

Credit ratings represent opinions on creditworthiness of an entity, a debt or financial obligation or financial instrument, issued using an established and defined ranking system of rating categories. They must be issued by entities registered with or certified by ESMA.

Any activity involving the issuance and distribution of credit ratings, regardless of their intended use, falls under the scope of the CRAR.

There are exempted activities and products that fall outside the scope of the CRAR. When assessing the activities of a firm, ESMA refers to the list of exemptions (Art. 2 CRAR). Private credit ratings constitute one such exception and are, consequently, not supervised by ESMA.

Private credit ratings




The CRAR defines private credit ratings as credit ratings that are “produced pursuant to an individual order and provided exclusively to the person who placed the order, and which are not intended for public disclosure or distribution by subscription”.



To address a perceived lack of understanding about private credit ratings, ESMA revised its Guidelines on the scope of the CRA Regulation in 2022. Following an 18-month implementation period, the revised Guidelines have been applicable since 1 May 2024.

The Guidelines build on ESMA's experience and have become an integral part of its supervisory toolbox. They clarify important aspects of private credit ratings and help ESMA identify the activities of private credit rating providers that fall outside the scope of CRAR.

In particular, private ratings are:

-  **Produced pursuant to an individual order:** The private credit rating should only be produced following an explicit order, formalised through a bilateral written agreement.
-  **Provided exclusively to the person who placed the order:** The agreement should contain a provision on the exclusive issuance of the private credit rating only to the person who placed the order. Therefore, the private credit rating shall be provided only to the person who placed the order.
-  **Not intended for public disclosure or distribution by subscription:** A rating which is provided to different persons belonging to a list of subscribers does not fall within the definition of private credit rating. However, the recipient of a private credit rating is allowed to further share the rating with "a limited number of third parties" on a confidential basis. The revised Guidelines clarify that these third parties may be either natural or legal persons and that the cumulated number of persons cannot exceed 150.

This sharing must be strictly confidential, and the recipient should implement appropriate controls to monitor the adherence to the 150-person limit, ensuring the private credit rating does not become public.

To increase transparency towards investors and other market participants, firms marketing private credit ratings should provide clear and prominent disclosure that these products are not credit ratings issued in accordance with CRAR and are not supervised by ESMA.

For further information, please refer to our dedicated page on the [ESMA website](#).



The ESAs' Dry Run exercise shows the goal of reporting of registers of information under Digital Operational Resilience Act in 2025 within reach

The European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published a summary report with the key findings from the 2024 Dry Run exercise on reporting the registers of information under the Digital Operational Resilience Act (DORA). The conclusions and lessons learnt as well as individual data quality feedback provided to financial entities during the exercise will aid preparations for the official reporting starting in 2025.

The quality of data observed in the registers submitted by almost 1,000 financial entities across the EU was in line with the ESAs' expectations, considering the 'best effort' nature of the exercise. Of the registers analysed, 6.5% successfully passed all data quality checks, while 50% of the remaining registers failed less than 5 out of 116 data quality checks.

The ESAs are confident that the objective of having registers of sufficient quality in 2025 that would allow for the designation of critical third-party service providers (CTPPs) is not out of reach, subject to some additional efforts from the industry.

The key findings presented in the summary report and all supporting materials provided by the ESAs should be carefully considered by all industry stakeholders, including those financial entities that did not participate in the Dry Run exercise, as they will help them to be better prepared to report the registers in 2025.

Support to the industry

To support the Dry Run exercise and wider industry preparation, the ESAs provided numerous tools such as templates for the registers, a draft data point model, a draft reporting taxonomy, examples and instructions for filling data fields, and a tool for converting submissions into the required reporting format.

Furthermore, the ESAs supported financial entities through a series of workshops, maintained and updated a 'frequently asked questions' document and responded to the individual queries through an email-based 'hotline'.

The ESAs have applied data quality checks to all the registers that have been received and have shared individual feedback on the data quality issues with the competent authorities, which were in turn shared with the participating financial entities.

In November 2024, the ESAs also published a list of validation rules that will be used when analysing the registers of information in the official reporting in 2025 as well as the visual representation of the data model. These rules will be included in the updated technical reporting package (including updated data point model, taxonomy and validation rules), which will be published in the coming weeks. All preparatory materials are collated on the [dedicated EBA webpage](#).

The ESAs are also continuing with the Dry Run workshops for the industry. The last workshop in the series will be held on 18 December, and will focus on the Dry Run summary report and the changes to the [final ITS on the Registers of information](#).

The preparatory efforts should not stop with the completion of the Dry Run exercise. The individual data quality feedback provided to the financial entities should help them continue improving the quality of their data and ensure that the registers to be submitted in 2025 meet the regulatory requirements, are complete and provide all the necessary information for the designation of critical ICT third-party providers (CTPPs) by the ESAs.

Background

Since April 2024, the ESAs have been supporting the financial entities in their preparations for setting up and reporting the registers of information in relation to all contractual arrangements on the use of ICT services provided by the ICT third-party service providers (ICT TPPs). This mainly took the form of a dedicated Dry Run exercise that allowed for the testing of the reporting processes in an environment as close as possible to the upcoming first iteration of the official reporting in 2025, when the registers will be used by the ESAs for the purposes of designation of CTPPs to be under their oversight.

ESAs are recruiting Heads of Unit for their DORA Joint Oversight Team

The European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) kicked off a joint recruitment process for Heads of Unit (ADg) in the Joint Oversight team that was set up to carry out the oversight of the Information and Communication Technology Critical Third-Party Providers (CTPPs) under the Digital Operational Resilience Act (DORA).

The Heads of Unit, who will be assigned to each ESA, will be part of the DORA Joint Oversight Team.

To ensure cross-sectoral coordination and pool resources, the ESAs will carry out oversight activities of critical third-party providers (CTPPs) in a Joint Oversight team working as one team, headed by Marc Andries, the DORA Joint Oversight Director.

The Joint Oversight team will eventually be made up of 30 staff across the ESAs and will be complemented by experts from the Competent Authorities (CA) .

The Heads of Unit will be responsible for organising the oversight activities for the CTPPs under their Unit's remit. Each Unit will regroup several Joint Examination Teams (JETs) dealing with the main types of ICT services provided by CTPPs.

Recruitment

The Selection Board is composed of the DORA Joint Oversight Director as Chair, HR and Staff Committees from ESMA as the coordinating ESA as well as staff from the other ESAs as members. For more information, please refer to the full [vacancy notice](#). The deadline for applications is 30 January 2025.

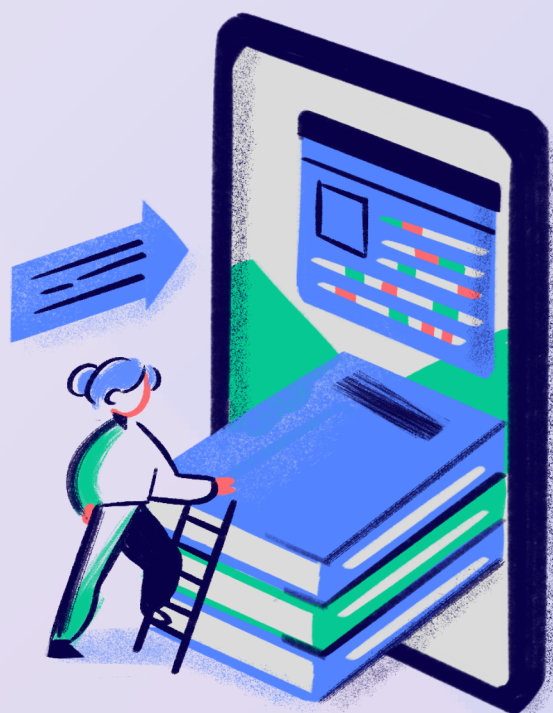
ESMA consults on proposals to digitalise sustainability and financial disclosures

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published a Consultation Paper seeking stakeholders' views on how the European Single Electronic Format (ESEF) can be applied to sustainability reporting. The proposals also aim to ease the burden associated with financial reporting.

It is a priority for ESMA that investors are able to effectively access relevant and comparable information, enabling them to enhance and accelerate their data-driven investment strategies. Digitalised sustainability and financial information from undertakings will be integrated in the future European Single Access Point (ESAP), ensuring the efficient access and use of this information by investors.

The Consultation Paper includes proposals for:

- Defining the marking up rules for sustainability reporting; with a phased implementation for ESRS sustainability statements in three steps, each lasting two years, and a full implementation for Article 8 disclosures; and
- Redefining the marking up approach for the Notes to the IFRS consolidated financial statements.



The Consultation Paper also proposes amendments to the Regulatory Technical Standards on the European Electronic Access Point.

Next steps

Interested stakeholders are invited to submit their feedback by 31 March 2025. These proposals are of particular relevance to listed and non-listed undertakings and parent undertakings of large groups, auditors, investors, data analysts and other users of financial information and other electronic reporting stakeholders at large impacted by the ESEF Regulation.

ESMA will consider the feedback it received to this consultation in Q2 2025. ESMA expects to publish a final report in Q3 2025 and to submit the draft technical standards to the European Commission for endorsement.



ESMA publishes feedback received to proposed review of securitisation disclosure templates

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published a **Feedback Statement** summarising the responses it received to its **Consultation Paper (CP)** on the securitisation disclosure templates under the Securitisation Regulation (SECR).

The Feedback Statement provides a detailed analysis of stakeholder feedback on the costs and benefits of revising the existing disclosure framework, in line with the four potential implementation options proposed in the CP.

Overall, respondents acknowledge the need for further improvements to the securitisation transparency regime but recommend postponing the template review due to concerns about its timeline in relation to a broader SECR review.

In their responses stakeholders asked ESMA to prioritise short-term solutions that address the most pressing industry challenges, such as regulatory compliance costs, and the need for a simplified template for private securitisations.

ESMA received a total of 35 responses from a diverse range of stakeholders, including buy-side and sell-side participants, securitisation repositories, credit rating agencies and other service providers. The [list of respondents](#) who agreed to make their response public can be found in the Annex.

Next steps

ESMA will work closely with the European Commission (EC) to explore whether interim adjustments to the technical standards, particularly regarding disclosures for private securitisations, can be implemented before the review of the L1 text.

ESMA consults on Technical Advice on Listing Act implications

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, launched a consultation to gather feedback following changes to the Market Abuse Regulation (MAR) and Market in Financial Instruments Directive II (MiFID II) introduced by the Listing Act.

Regarding MAR, ESMA is inviting feedback on:

- a non-exhaustive list of the protracted process and the relevant moment of disclosure of the relevant inside information (together with some principles to identify the moment of disclosure for protracted not listed processes).
- a non-exhaustive list of examples where there is a contrast between the inside information to be delayed and the latest public announcement by the issuer.
- a methodology and preliminary results for identifying trading venues with a significant cross-border dimension, for the purposes of establishing a Cross Market Order Book Mechanism.

Regarding MiFID II, ESMA's proposals cover:

- a systematic review of the relevant provisions in Commission Delegated Regulation 2017/565 to ensure that a Multilateral Trading Facility (MTF) (or a segment of it) to be registered as small and medium-sized enterprises growth market (SME GMs) complies with the relevant requirements in the revised MiFID II.
- some conditions to meet the registration requirements for a segment of an MTF, as specified in the revised MiFID II.

In line with the objectives of the Listing Act, ESMA's technical advice aims at ensuring that the EU's regulatory framework promotes better access to public capital markets for European Union companies, especially SME's, by reducing the administrative burden on listed companies or companies that seek a listing, while ensuring integrity and confidence in capital markets.

Next steps

ESMA will review the feedback received by **13 February** and will deliver its technical advice to the European Commission **before the deadline set on 30 April 2025**.



ESMA consults on open-ended loan originating alternative investment funds

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, published a consultation paper on draft regulatory technical standards on open-ended loan originating AIFs under the revised Alternative Investment Fund Managers Directive (AIFMD).

The consultation aims to receive feedback on the draft RTS that set out the requirements with which loan-originating Alternative Investment Funds (AIFs) shall comply to maintain an open-ended structure.

AIFMD review has introduced some harmonised rules on loan originating funds. The goal of these rules is to provide a common implementing framework for AIFMs and NCAs by determining the elements and factors that AIFMs need to consider when making the demonstration to their NCAs that the loan originated AIFs they manage can be open-ended.

According to the revised AIFMD, loan-originating AIFs shall be closed-ended unless their manager can demonstrate to its home national competent authority (NCA) that their liquidity risk management system is compatible with their investment strategy and redemption policy.

Next steps

ESMA will receive responses to this consultation until 12 March 2025 and intends to finalise the draft RTS by Q3/Q4 2025.

Consultations

Click on the consultation

Closing date

17 Jan	<u>MiFIR: Consultation on the Review of RTS 22 on transaction data reporting and RTS 24 on order book data</u>
27 Jan	<u>Consultation on the Conditions of the Active Account Requirement under EMIR 3</u>
28 Jan	<u>Consultation on the technical Advice to the European Commission on the amendments to the research provisions in the MiFID II Delegated Directive</u>
13 Feb	<u>Consultation on the draft technical advice concerning MAR and MiFID II SME GM</u>

Events

Click on event

Date

20 Jan	<u>Open hearing on the Consultation on the Active Account Requirement under EMIR 3</u>
23 Jan	<u>Webinar on the 2024 Market Report on Crowdfunding in the EU</u>
5 Feb	<u>ESMA's Conference: Shaping the future of EU capital markets</u>

Open vacancies

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

Deadline

30 Jan

Heads of Unit DORA Joint Oversight

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