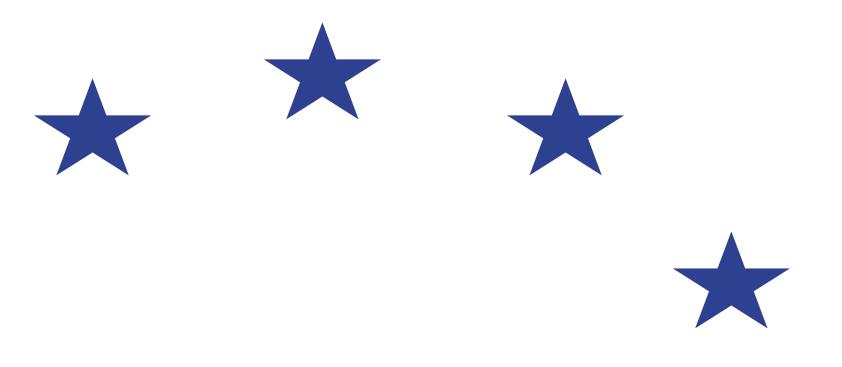
ESMA REGULAR USE



EC Digital Finance Package 22 October 2020 Claudia Guagliano



Introduction Digital Finance Package covers range of measures to 2024

Includes:

- Digital Finance Strategy
- Legislative proposals on markets in Crypto-Assets (MiCA) to address risks from unregulated CAs. Plus DLT Pilot Regime to clarify treatment of CAs that are in scope of existing rules
- Legislative proposals on Digital Operational Resilience (**DORA**), to strengthen and harmonise ICT security across financial sector



1. Overall package DFP ex. MiCA/DORA – Digital Finance Strategy

The Digital Finance Strategy sets out four main priorities:

- Tackle fragmentation in Digital Single Market
 - Strengthen the European Forum for Innovation Facilitators (EFIF)
 - Guidelines on digital onboarding
- Adapt regulatory framework to facilitate digital innovation
 - Guidance on the use of AI applications in finance
 - CA legislative proposal
- Promote innovation via common financial data space
 - Strategy on supervisory data
- Address risks from digital transformation
 - DORA

MiCA and pilot regime – overview

	Issue	Scope	Key components
Markets in Crypto-Assets ('MiCA')	Risks to consumer protection and market integrity Specific risks to financial stability and monetary policy from (large) stablecoins	Unregulated CAs	 Conduct and governance rules for issuers, who must publish a whitepaper Stringent rules for stablecoin issuers EBA to supervise significant stablecoins MiFID-like requirements on providers Rules to prevent market abuse
Pilot regime for market infrastructures based on DLT ('pilot regime')	Challenges in applying the existing rules, where CAs qualify as MiFID financial instruments	CAs that qualify as MiFID financial instruments	 DLT market infrastructures, namely DLT MTFs and DLT SSSs, may be exempted from specified EU rules, under certain conditions Limitations on type and volume of securities that DLT market infrastructures may process



DORA – overview

	Issue	Scope	Key components
New legislative requirements in DORA	Increased impact of ICT and information security risk on financial services Fragmentation of ICT risk management and reporting requirements	Entities across the financial sector ICT third party providers Crypto-asset providers	 ICT risk management (including information security and cybersecurity) Incident management and reporting Advanced testing requirements Management of ICT third party risk

DORA – extended overview of legislative requirements

ICT risk management requirements. Financial entities must:

- Have frameworks on governance, control, business continuity
- Monitor of digital resilience strategy implementation
- Maintain updated ICT systems
- Follow new principles for third party ICT services (on proportionality, contracting, exist strategies, information security, records and audit)

Incident management and reporting

- ESAs to develop ICT incident classification scheme
- Financial entities then report major incidents to CA within deadlines, using harmonised reporting templates
- ESAs to assess feasibility of a centralised EU hub for incidents



DORA – extended overview of new mandates for ESAs

Oversight of Critical Third Party Service Providers (CTPPs)

- <u>Governance</u>: Joint Committee (JC) to establish Oversight Forum (OF) to coordinate CTPP oversight, risk analysis, best practices, benchmarking
- <u>Major role for ESAs</u>: JC/OF to designate CTPPs. JC/OF to designate an ESA as Lead Overseer of each CTPP
- <u>Powers</u>: Lead Overseer can investigate CTPPs (e.g. on-site inspections) with unrestricted information access. Can issue recommendations. Can impose periodic penalty payments, but full sanctioning powers remain with CAs

Resilience testing

– CAs to validate the testing documentation and issue an attestation



Ambitious proposals with broad scope and impact

- The Digital Finance Strategy sets the scene for the next 4 years
 - More clarity needed on the different actions but the priorities are clear
- Legislative proposals on CAs
 - MiCA: need of more clarity on the scope
 - Careful consideration of regulatory arbitrage risks and interaction of existing regulation
- Legislative proposals on digital operational resilience
 - Broad and complex proposal including the very important attempt of harmonising ICT requirements across financial markets and introducing cyber incident reporting
 - Challenges posed by the oversight framework of CTPPs



ESMA REGULAR USE



EC Digital Finance Package 22 October 2020 Claudia Guagliano

