

1 Foreword

The Fintech Supervision Function is responsible for supervising entities under the [Virtual Financial Assets Act and, since 1 March 2023 also](#) financial institutions licensed under the [Financial Institutions Act](#). As part of our supervisory duties, we also ensure that our licence holders are adhering to the regulatory changes pertaining to their business.

With many changes coming up in these two sectors, the Policy and Legal Team within Fintech Supervision will be issuing a Regulatory Newsletter on a quarterly basis to provide information on regulatory compliance updates both at national level and EU level. We hope that this serves as a tool for Compliance functions and for the Board of Directors to prioritise certain regulatory areas as part of their overall business strategy.

2 MFSA Regulatory Updates in Q4 2023

Circular on Changes to Chapter 3 of the VFA Rulebook

On 7 December 2023, the Authority issued an [updated version](#) of Chapter 3 of the VFA Rulebook which seeks to align the requirements applicable to VFA Service Providers to those found in the Markets in Crypto-Assets (MiCA) Regulation. As per the [Circular](#) issued by the Authority, the new rules will become applicable in two stages, with the first set of amendments having become applicable on 1 January 2024.

Consultation on Changes to Chapter 2 of the VFA Rulebook

In its continued efforts to align the VFA Framework to the MiCA Regulation, the Authority issued a [consultation](#) on changes to Chapter 2 of the VFA Rulebook applicable to Issuers of VFAs. The proposed changes seek to: (i) reflect the proposed removal of the role of the VFA Agent, which is expected to take effect upon publication of legal amendments to the VFA Act sometime during Q1 2024; and (ii) partially align the framework for issuance of VFAs to the framework envisaged under MiCA.

3 Upcoming Legislation & Rules

Crypto-Assets

- *Markes in Crypto-Assets ('MiCA') Regulation Progress Update*

Following its publication in the official journal of the EU on 31 May 2023, the [MiCA Regulation](#) is set to enter into application in two stages in 2024 – the requirements applicable to issuers of e-money tokens (EMTs) or asset-referenced tokens (ARTs) will become applicable on 30 June 2024, while the provisions regulating crypto-asset services and un-backed crypto-assets will apply from 30 December 2024. In preparation for the applicability of MiCA, statements

have been issued by both the [European Securities and Markets Authority](#) (ESMA) and the [European Banking Authority](#) (EBA) encouraging preparation and timely implementation of MiCA by both national competent authorities and industry players. Licence Holders are invited to refer to the first two consultations issued by the ESMA which may be accessed [here](#), while consultations issued by the EBA are available [here](#).

The MFSA is currently in the process of drafting the legal instrument which will effectively implement MiCA in Malta. This legal instrument will co-exist for a time alongside the VFA Act, with the latter being phased out later in 2025 once all VFASPs licenced under the VFA framework have successfully transitioned to MiCA.

- ***Preparing for MiCA – What’s next for VFA Service Providers?***

Following the alignment of the VFA Framework as outlined in Section 2 of this Newsletter, the Authority is now focusing its attention on operational readiness, including the alignment of its internal procedures with the procedures set forth by the regulatory and implementing technical standards which shall be published alongside the MiCA Regulation in due time. Part of this workstream shall include:

1. the establishment of processes and procedures for the carrying out of the ‘simplified application procedure’ which will be applied to VFA Service Providers authorised in terms of the VFA framework once the MiCA Regulation enters into application;
2. outreach with VFA services licence holders in order to assess their MiCA readiness in preparation for the transition process which will commence following entry into application of the relevant MiCA provisions on 30 December 2024.

Payments & E-Money

- ***PSD3/ PSR Proposal***

On 28 June 2023, the European Commission put forward [proposals](#) to bring payments and the wider financial sector into the digital age. The proposals included:

- a revision of the [Payment Services Directive](#) (PSD3), incorporating the electronic money directive;
- the introduction of a [Payment Services Regulation](#); and
- a [Proposal for a Regulation on a framework for financial data access](#).

The newly proposed PSD3 shall introduce amended requirements in relation to, inter alia:

- the licensing of payment institutions;
- ongoing requirements for payment institutions, including the use of agents and/or distributors;
- exemptions and notifications;
- the registration of AISPs and ATM deployers not servicing payment accounts.

The proposal is currently being discussed by the EU institutions, with an indicative plenary sitting date scheduled for March.

- *Instant Payments*

In addition to the PSD3/ PSR proposals, various other EU legislative proposals are currently ongoing including the legislative [proposal on instant payments](#), which seeks to amend the SEPA Regulation with a view to:

- making euro instant payments universally available and accessible at no extra cost
- increasing trust in euro instant payments; and
- making sanctions screening of euro instant payments more efficient.

The proposal will inter alia require any PSP which currently provides credit transfers **to also provide instant credit transfers**. The proposal currently sets out an 18 month transition period and PSPs will therefore be required to become compliant by 2026.

As of 29 November 2023, the EU institutions had reached agreement on a draft overall compromise package following informal negotiations. The legislative process is set to continue in February 2024.

- *The Open Finance Proposal*

On 28 June 2023, the European Commission also put forward a proposal for a [Regulation on a framework for Financial Data Access](#) ('FDAR') which aims to build on PSD2's open banking framework and improve economic outcomes by promoting the quick adoption of data-driven business models and overall digital transformation across the European financial sector.

In terms of the regulation's impact, financial entities¹ will be subject to inter alia the following requirements:

- to make data available to customers in a standardised way;
- to communicate data securely, respecting confidentiality and IP rights;
- to make a data permission management dashboard available to all customers;
- to prevent the transfer of non-personal data when unlawful;
- to become members of a financial data sharing scheme as set out in Article 10 of the FDAR.

The legislative proposal is currently underway and relevant updates will be included in future newsletters.

¹ These include credit institutions, payment and electronic money institutions, crypto-asset service providers, issuers of asset-referenced tokens, managers of alternative investment funds, insurance and re-insurance undertakings, insurance intermediaries, IORPs, credit rating agencies, crowdfunding service providers, PEPP providers and financial information service providers.

- *The Digital Euro Package*

In June 2023, the European Commission also put forward [two proposals](#) surrounding the launch of a 'Digital Euro', specifically a legislative proposal establishing a legal framework for the Digital Euro accompanied by another proposal which concurrently aims to safeguard the role of cash and ensure that this too remains accepted as a means of payment and is easily accessible in the euro area.

- *Financial Institution Rules*

In view of the various regulatory developments currently taking place in the payments space, the Authority recognises the importance of a clear regulatory framework in fostering a strong compliance culture within the Financial Institutions sector. The Authority is therefore planning to update the Financial Institutions Rules throughout 2024 in order to ensure that these address in a more comprehensive manner the prudential risks posed by the payments sector.

In view of the above, the Authority aims to issue a new set of rules for consultation which shall apply to payment and electronic money institutions, which will replace Financial Institutions Rule 3 (FIR03) later on this year. The MFSA intends to publish further consultations relating to the other existing Financial Institutions Rules throughout the year. Licence Holders are therefore advised to give such consultations their due attention so as to ensure a fruitful and effective consultative process.

4 Other Regulatory Publications

- In October 2023, the MFSA published the second edition of the [Nature & Art of Financial Supervision: Virtual Financial Assets](#).
- On 28 November 2023, the Financial Stability Board published a report titled '[The Financial Stability Implications of Multifunction Crypto-asset Intermediaries](#)'.
- In December 2023, the European Parliamentary Research Services published a briefing titled '[Understanding crypto assets: An overview of blockchain technology's uses and challenges](#)'.

Any information provided in this newsletter and any other guidance provided from time to time by Fintech Supervision is not to be construed as legal advice. Licence holders should refer to their MFSA-approved Compliance Officer and/or any legal advisors for any technical guidance in relation to their regulatory compliance obligations.