INTERNATIONAL LAW ASSOCIATION

VIENNA CONFERENCE (2026)

COMMITTEE ON INTERNATIONAL MONETARY LAW

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I. GENERAL INTRODUCTION

1. Since the last International Law Association (ILA) conference in Athens in 2024, the Committee on International Monetary Law (MOCOMILA) has convened three meetings: in Luxembourg (8–9 November 2024), Brasília, Brazil (24–25 April 2025), and Toronto, Canada (26–27 September 2025). These **meetings took place against the backdrop of immense challenges for international economic cooperation and independent central banking—both central pillars of the post-war monetary order—as well as those of digitalization**.

2. MOCOMILA meetings addressed these challenges by examining a **diverse array of pressing issues in international monetary and financial law**, ranging from digitalization and tokenization to sustainable finance, international sanctions, and the systemic risks associated with non-bank financial intermediation. Each meeting was organized to leverage the local expertise of its hosts and to facilitate exchanges among members, academic experts, private-sector practitioners, and public-sector officials, thereby promoting cross-fertilization of ideas. The Committee also placed particular emphasis on enhancing its membership framework and fostering diversity among its members.

3. The **Luxembourg meeting**, held on 8–9 November 2024 and organized by Jim Freis, featured a keynote address by Governor Gaston Reinesch of the Banque centrale du Luxembourg on Luxembourg's role in global finance and innovation. Individual sessions focused on digitalization, tokenization, and sustainable finance. Participants also discussed various aspects of international financial sanctions, including the pressing and controversial issue of the use of the freezing and use of the assets of the Central Bank of Russia. Private-sector actors, including law firms specializing in sanctions, contributed critical practical perspectives on the application of international law.

4. The **Brasília meeting**, held on 24–25 April 2025, was hosted by the Banco Central do Brasil and organized by Cristiano Cozer. Coinciding with the central bank's 60th anniversary, the event celebrated its longstanding contributions to financial stability and innovation. Sessions compared payments systems in the European Union and Brazil, examined central bank digital currencies (CBDCs), and assessed supervisory frameworks. A dedicated segment reflected on the future of international economic cooperation, identifying key challenges and exploring potential ways forward.

5. The **Toronto meeting**, held on 26–27 September 2025, was hosted by the Bank of Canada and the University of Toronto and organized by Jonathan Fried, Mark Jewett, and Ross Leckow. Bringing together renowned experts from North America and beyond, the event continued the Brasília discussion on international monetary, financial, and economic

cooperation and its forthcoming challenges. It examined regulatory responses to emerging technologies, explored central bank mandates and independence, assessed sovereign debt questions, and analyzed financial systems in the age of disruption—paying particular attention to digital transformation, associated risks, and the role of law and supervision. The conference also addressed the use of artificial intelligence in monetary and financial regulation.

6. **All three meetings reaffirmed MOCOMILA's dedication to advancing international monetary law and engaging with a broad spectrum of perspectives across three key dimensions**. First, the meetings spanned diverse jurisdictions, taking place in Luxembourg, Brasilia, and Lima, demonstrating MOCOMILA's global reach. Second, the events were designed to heavily involve local actors, ensuring an inclusive and collaborative approach towards hosting institutionals, and their local, counterparts. Efforts were made to balance the composition of each panel, with an equal number of MOCOMILA members and local experts participating. These local experts brought valuable insights from a wide range of perspectives, including those of central banks, regulatory bodies, universities, and the private sector. Lastly, diversity in gender representation was carefully considered when planning the speakers.

7. The subjects discussed by the Committee are reflected in the following Sections of this Report, which presents the views of individual members and does not necessarily represent the positions of their affiliated institutions. A concluding Section contains reflections on the next activities of MOCOMILA. The Report has been endorsed by the entire Committee and takes into account developments up to 10 March 2026.

II. NON-BANK FINANCIAL INTERMEDIATION AND REGULATORY OVERSIGHT[1]

A. Introduction

8. Official and private commentators are increasingly concerned that non-bank financial intermediation (NBFI) is presenting potential **systemic risks and inadequate investor protection**. Although in the past these risks have been generally assessed by some eminent regulatory institutions as low, consideration of this topic has led MOCOMILA, for the reasons summarised below, to encourage further intensive assessment of the macro-prudential and micro-prudential risks arising from NBFI and the available legal safeguards, to preserve global financial stability and ensure effective implementation of monetary policy.

B. NBFI and its importance

9. **NBFI is financing from outside the traditional banking system** by diverse institutions of vastly differing sizes, using different structures, and subject to differing regulatory frameworks within and across jurisdictions. NBF institutions provide loans, advances and other credit facilities, as well as private equity and various quasi-equity products.

[1] Section prepared by John Taylor, Yan Liu, Dessi Cheytanova, Elsie Awadzi, Tom Baxter, Bo Li, and Seraina Grünenwald.

10. **NBF institutions are not banks because they raise their funding from non-depositary sources**. NBF institutions include insurers, pension funds, hedge funds, sovereign wealth funds, other investment funds, business development companies, technology platforms, and, increasingly, decentralised fintech networks, as well as high-net-worth and retail investors and lenders. In the words of the Financial Stability Board:

> The non-bank financial intermediation (NBFI) ecosystem comprises a diverse set of financial activities, entities and infrastructures. Non-bank financial institutions … have different business models, balance sheets and governance structures, and are subject to distinct regulatory frameworks within and across jurisdictions. These institutions play an increasingly important role in financing the real economy and in managing the savings of households and corporates. They are a valuable alternative to bank financing and help to support real economic activity.[2]

11. **NBFI has experienced startling growth since the GFC** and is playing an increasingly central role in today's global credit and equity financial markets. It is reported to have multiplied at least four times since 2013, especially in the US, and is now growing in Europe and Asia. Today, "half of all financial services worldwide are now offered by companies that are not classified and regulated as banks"[3] and NBFI now exceeds bank finance to corporate borrowers. Current investment demands, and technological advances, indicate that NBFI will continue to grow at pace.[4] A significant amount of this growth is supported by financing of NBFI by banks, highlighting the interconnectedness of the financial system.

C. Key benefits of NBFI

12. Among other benefits, NBFI:

- offers increasingly broadening alternative credit sources for businesses that are faster and more flexible than those offered by banks;

[2] FSB, Non-Bank Financial Intermediation, 4 February 2026.

[3] Jay Surti, Explainer: Five Megatrends Shaping the Rise of Nonbank Finance, IMF Blog, 29 September 2025. A FSB press release dated 15 December 2025 states: "In 2024, the NBFI sector grew 9.4%, double the pace of the banking sector (4.7%), increasing its share of total global financial assets to 51% ($256.8 trillion), similar to pre-pandemic levels…. [NBFI] credit intermediation activities that may pose bank-like financial stability risks – increased 12% to $76.3 trillion." The rapid growth and uses of private equity and private debt financing outside the regulated banking system, estimated to total $16 trillion globally, is summarised in paras 2, 3 and 39-45 of "Private Markets: Unknown unknowns", House of Lords Financial Services Regulation Committee, 3rd Report of Session 2024-26 (HL Paper235) (the HoL Report 2026), 9 January 2026.

[4] For example, nonbank fintech lending in 7 jurisdictions now exceeds US$42 billion: Financial Stability Board, Global Monitoring Report on Non-Bank Financial Intermediation, 16 December 2024, pp. 2, 17-18. Moreover, NBFI is actively involved in the markets for government debt (e.g., Jay Surti, Explainer: Five Megatrends Shaping the Rise of Nonbank Finance, IMF Blog, 29 September 2025, and provides large amounts of the financing required for IT and crypto ("Silicon Valley") innovations including the immense electrical generation and infrastructure investment needs of AI (estimated to cost US$200 billion per year globally and requiring "creative new forms" and sources of financing). Very large infrastructure investors (including BlackRock, Brookfield and Apollo) are also courting leading oil and gas companies (see Infrastructure investors push for deals with big oil and gas groups, Financial Times, 30 November 2025.

- provides increasing amounts of private equity, including to growing segments of the public equity markets;
- prompts accelerated use of innovative financing techniques; and
- provides demonstrable economic benefits for recipients in the real economy in need of investment funding (including governments, innovative companies, and ambitious SMEs).

D. Some key risks of NBFI

13. NBFI presents potential risks and hazards (akin to those familiar to banking and capital markets regulators, supervisors and industry experts) that—given the large and growing size of NBFI in the financial markets—could undermine global financial stability and jeopardise investor protection. Knowledgeable sources identify numerous key risks that could undermine global financial stability and investor protection,[5] that may be grouped under the following headings:

(i). **Poor transparency and an absence of reliable data**, making it very difficult for regulators, supervisors and even investors to assess the activities of nonbank financiers, or the extent of their interconnectedness with banking and capital markets, and therefore to appropriately assess the financial stability risks or regulate and monitor those risks;[6]

(ii). **Macro-prudential risks** arising from excessive **leverage**,[7] **liquidity** availability and constraints (especially in times of financial crisis), and the perceived increasing **interconnectedness and contagion risks** of NBFI with the banking and capital markets sectors, including across borders. These risks suggest, for example, that NBFI sector difficulties could quickly spill over to banks undermining their financial position.[8] Moreover, the burgeoning size, interconnectedness and complexity of some

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[5] In addition to the reports by international standard-setters cited throughout this section, national and regional reports include: most recently the HoL Report 2026 (fn 2); also European Systemic Risk Board, EU Non-bank Financial Intermediation Risk Monitor 2025, No 10/September 2025,; European Systemic Risk Board, EU Non-bank Financial Intermediation Risk Monitor 2024, No 9/June 2024; Reserve Bank of Australia, Financial Stability Review, October 2025, pp. 44-47; Elba Gomez Navas Acevedo and Thomas Thorn, Non-bank financial intermediation: Canada's submission to the 2024 global monitoring report, Staff Analytical Note 2025-19, July 2025; Office of Financial Research, 2025 Annual Report to Congress, pp. 19-24. Recent examples of the financial risks that arise in a poorly regulated NBF sector that exhibits conflicts of interest, information asymmetries, and opaque interconnectedness is well described in Douglas W Arner et al., The financialisation of Crypto: Designing an international regulatory consensus, 53 Computer Law & Security Review 2024https://www.sciencedirect.com/science/article/abs/pii/S0267364924000372.

[6] European Systemic Risk Board/European Central Bank, Financial stability risks from linkages between banks and the non-bank financial intermediation sector, February 2026, especially pp.63-68; Basel Committee on Banking Supervision, Banks' interconnections with non-bank financial intermediaries, July 2025, pp. 15-17; Financial Stability Board, FSB Workplan to Address Nonbank Data Challenges, 9 July 2025; HoL Report 2026 (fn 2), see concerns at para 68.

[7] Financial Stability Board, Leverage in Nonbank Financial Intermediation, Final report, 9 July 2025; Bank of England, Financial Stability Report, July 2025, pp. 73, 75-78.

[8] While some of the financial stability risks may appear small in the current inadequate data environment, the fast growing European bank credit and commodity derivatives exposure to NBF institutions "presents a significant concern": European Systemic Risk Board/European Central Bank, Financial stability risks from linkages between

global nonbank institutions raises questions whether they are "too big to fail" and should therefore be designated and regulated as Systemically Important Financial Institutions (SIFIs).[9] Finally, the growth of NBFI creates increased uncertainty about the smooth transmission of monetary policy.[10]

(iii). **Micro-prudential risks** arising from NBFI **excessive leverage** and **liquidity** mismatches (e.g. to enhance returns, especially if involving floating rate financing); **mispricing** of risks and lowering of **credit and due diligence standards,** especially under competitive conditions; **poor asset valuation** processes; use of **untested financial products** allegedly offering "high quality assets"; and **poor governance** of non-bank credit and equity providers, including conflicts of interest and bad conduct/fraud/illegal practices;[11]

(iv). Inadequate or differing NBFI **regulatory and supervisory practices** across jurisdictions;[12] and

(v). Unclear availability of **timely liquidity or other assistance** for the NBFI sector from public or private sources in times of financial stress.[13]

E. How to address these risks

14. **Traditional measures to minimise the financial risks** include sound legal regulation, and the monitoring and enforcement of legal and prudential standards and safeguards, in an increasingly globally coordinated fashion. However, for various reasons, across and within jurisdictions, NBFI providers are subject to vastly differing regulation and monitoring.

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banks and the non-bank financial intermediation sector, February 2026, p.62; See also Tobias Adrian, Growth of Nonbanks is Revealing New Financial Stability Risks, IMF Blog, 14 October 2025; International Monetary Fund, Global Financial Stability Report: Shifting Ground beneath the Calm, October 2025, pp. 23-25; Basel Committee on Banking Supervision, Banks' interconnections with non-bank financial intermediaries, July 2025, pp. 11-16 (building on several case studies to discuss stylised scenarios of NBFI failure). Instructive on the interconnections between private credit funds and banks: How banks fuel the private credit boom, Financial Times, 1 December 2025.

[9] As long ago as 2015, the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) published a consultative framework for identifying nonbank, non-insurer global SIFIs. See also US Financial Stability Oversight Council (FSOC) Analytic Framework for Financial Stability Risk Identification, Assessment, and Response, November 2023 (at: https://home.treasury.gov/news/press-releases/jy1876), which may undergo change as a result of recent proposed legislative amendments to Section 113 of the Dodd-Frank Act (November 4, 2025).

[10] See, e.g., Ryan Banerjee et al., The rise of non-bank financial institutions: implications for monetary policy, BIS Bulletin, 1 December 2025; Dominic Cucic & Denis Gorea, Non-bank lending and the transmission of monetary policy, BIS Working Papers Non 1211, September 2024; Margherita Giuzio et al., Macroprudential policy, monetary policy and non-bank financial intermediation, ECB Working Paper Series No 3130, 2 October 2025; Loriana Pelizzon et al., Growth of non-bank financial intermediaries, financial stability, and monetary policy, Forum on Central Banking, 25 September 2025.

[11] These micro-prudential risks in particular are referred to in many official and non-official publications, including those mentioned in previous footnotes that discuss financial stability risks.

[12] E.g., Financial Stability Board, Leverage in Nonbank Financial Intermediation, Final report, 9 July 2025, pp. 8-9. Efforts to address the continuing lack of consistent application by various jurisdictions of AML/CTF rules/recommendations and sanctions (UN, US, UK, EU) could also improve regulatory outcomes.

[13] See Antonio Garcia Pascual et al., Addressing Market Dysfunction and Liquidity Stresses in Nonbank Financial Intermediaries, Global Financial Stability Notes, NOTE/2025/004, September 2025.

15. Some NBF Institutions are subject to specialised and intensive international and domestic regulatory frameworks (e.g. insurance companies and pension funds) while many NBF institutions, including various types of large and small investment funds and increasingly electronic intermediary platforms (some of which are marketing to retail customers), are **subject to lighter regulation** than banks. The difference in regulation and supervision of NBF institutions, where it exists, results in largely fragmented regulatory environments and investor protection regimes. Although some of these regulatory differences may have been intended, where NBF institutions fulfil functions that resemble those of traditional banks, differences in the stringency of regulation may go against the regulatory principle of "same activities, same risks, same rules".[14] A shift of regulatory and supervisory focus from a primarily entities-based, to an increasingly activities-based, approach may support a regulatory level playing field and more effectively help reduce risks arising from these institutions.

16. Analysis of the current situation has led to recommendations from eminent official and non-official sources (including particularly from the IMF, the FSB, the BIS, IOSCO, US SEC and other regulatory agencies, the ECB, the ESRB, the UK FCA, Asian and European Central Banks and regulatory agencies, and independent advisers). Collectively, especially in recent years, official sources[15] have expressed concern that NBFI activities raise financial stability issues, that through their interconnectivity, could adversely affect banking and capital markets. They have therefore recommended **more intensive scrutiny** through some or all of the following specific measures:

(i) **Increased transparency and data reporting** to enable more accurate assessment and management of risks and a better understanding of leverage, valuations, interconnectedness and contagion risks, and the buildup of NBFI concentration, including through scenario analysis[16] and similar exploratory assessments;

(ii) **Strengthened** cross-sectoral and cross-border regulatory **cooperation and coordination** to improve asset risk assessment and systemic risk reduction;

(iii) **Closer monitoring** of liquidity, product design and governance/conduct risks, including implementing relevant FSB and IOSCO[17] recommendations; and

(iv) **Clarify assistance in any crisis resolution** in this sector to ensure global financial stability, including defining the responsibilities of, and the circumstances under which, the private sector or, as a last resort, the public sector should possibly bear any losses in NBFI crisis situations that threaten financial stability. This work could draw

[14] The FSB therefore applies a "narrow measure" of NBFI; see Financial Stability Board, Global Monitoring Report on Non-Bank Financial Intermediation, 16 December 2024, pp. 25-40. With a critical view to applying the "same activity, same risks, same rules" principle to fintech, however, see Iris Chiu, An institutional account of responsiveness in financial regulation – Examining the fallacy and limits of "same activity, same risks, same rules" as the answer to financial innovation and regulatory arbitrage, 51 Computer Law & Security Review 2023.
[15] Including those mentioned in footnotes 4-13 above.
[16] See, e.g., the recent announcement of a System Wide Exploratory Scenario exercise focused on private markets by the Bank of England. This effort has recently been strongly supported in the HoL Report, paras 160-162 and Recommendations 21 and 26. The ESRB/ECB suggests that "System-wide stress test models may be suitable for analysing the complex dynamic interconnections between banks, different NBFI sectors and asset markets": European Systemic Risk Board/European Central Bank, Financial stability risks from linkages between banks and the non-bank financial intermediation sector, February 2026, p.38.
[17] In its 2025 Work Program, dated 12 March 2025, the International Organization of Securities Commissions (IOSCO) states that it will prioritise issues related to NBFI to strengthen financial resilience.

especially on the various resolution and market-based burden-sharing recommendations/frameworks of the FSB, IOSCO, EU and US.

F. Recommended ILA Resolution

17. In its consideration of the issues related to NBFI, **MOCOMILA convened a Working Group of seven experienced members**, acting in their personal capacities,[18] to draft this Section of the MOCOMILA Report which summarises the key elements of the NBFI topic as discussed at meetings of MOCOMILA in 2024 and 2025.

18. **The Working Group commended the combined individual and cooperative efforts of the international and national regulatory agencies, Central Banks and standard setters on this complex multi-faceted task to address the risks of NBFI as described above**. The Working Group considered that the success of these efforts is very important for the maintenance of global financial stability and investor protection in a balanced regulatory manner that is both supportive and protective of the global financial system including NBFI.

19. Doubts were expressed by a few MOCOMILA members that a topic as complex as the concerns related to NBFI were amenable to a short Resolution and would be better addressed by a careful study by MOCOMILA of particular NBFI problems. **The Working Group concluded that the efforts of the regulatory agencies and standard setters should be brought to the attention of all members of ILA and beyond, through the Draft Resolution that MOCOMILA now recommends for aoption by the ILA**. The Draft Resolution not only supports these global efforts, but, more importantly, encourages that increased attention be devoted to the development of these critical regulatory and legal measures.

III. CENTRAL BANK INDEPENDENCE – A SUCCESS STORY AND A CAUTIONARY TALE[19]

20. **Political assaults on central bank independence were a major headline in 2025**, for essentially one reason: the election of Donald J. Trump to his second non-consecutive term as President of the United States. The focus on the United States is apt for two reasons: first, the Federal Reserve supports the US Dollar, the international reserve currency on which the majority of the global economy is run, far greater than any other currency.[20] Second, President Trump's attacks on the Fed are emblematic of larger trends in populist politicians' efforts to undermine public confidence in technocratic legitimacy. For these reasons, we focus on the important relationship between President Trump and the US Federal Reserve.

21. Beginning almost immediately after his inauguration, Trump initiated a historically unprecedented series of assaults on the US central bank, the Federal Reserve, and its principals,

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[18] Consisting of Yan Liu, Dessislava Guetcheva-Cheytanova, Elsie Addo Awadzi, Seraina Grünewald, Bo Li, Thomas C. Baxter and John Taylor. Valuable suggestions were also made to this Report and the Resolution by other MOCOMILA Members, including Rosa Maria Lastra, Chiara Zilioli, Sir William Blair, Andreas Guericke, Mark Jewett, Michael Ioannidis, Richard Ostrander and René Smits.
[19] Section prepared by Peter Conti-Brown.
[20] FEDS Notes, [The International Role of the US Dollar – 2025 Edition](), July 18, 2025.

especially Fed Chair Jerome Powell and Fed Governor Lisa Cook.[21] These attacks included not only Trump's well-documented preferences for strident and direct ad-hominem attacks, but also legal attacks that threatened to upend the delicate balance between technocracy and accountability that has defined the US experience of central banking for most of its history.

22. **Elsewhere in the world, however, central banks have discovered greater, not lesser, independence.** Turkey, one of the recent poster children for the inflationary perils of politically-dominated central banks, has (partially) retreated from its political domination and begun imposing more traditional monetary tightening measures to lower rampant inflation.[22] Brazil received in 2021 increased formal independence after almost three decades of de facto independence.[23] And the European Union, in a time of grave uncertainty, continues in its institutional independence enshrined in treaty and protected by norms across the Union.[24]

23. **Trump had made no secret of his low tolerance for independent central banks in his first term**. In 2018, only months after appointing Jerome Powell as Fed Chair, Trump initiated his assault on Powell's independence, accusing Powell of "going too fast"[25] and "going crazy,"[26] eventually accusing Powell of being a greater threat to US economic security than Xi Jinping.[27] (Trump was at the time engaged in a public trade war with China.)

24. **Two factors made Trump's norm-busting behavior in the late 2010s unusual but essentially non-threatening.** First, Trump mostly relied on social media and some traditional media interviews to convey his displeasure. Trump was also a notorious norm violator in other domains, making his attacks on the Fed closer to a pattern of behavior similar to attacks on other institutions of technical expertise. While he openly toyed with either removing Powell or demoting him, he eventually walked it back and determined that the Fed would "get it right."[28] Second, the first Trump Administration's intolerance for Fed independence gave way to the global crisis of the Covid-19 pandemic, during which the Fed and Treasury worked closely together to provide necessary fiscal and monetary support for the US economy.

25. **The Second Trump Administration has been different.** Almost immediately, Trump launched his same historical attacks against Powell, calling him "too late" in lowering interest rates and a "numbskull."[29] Using proxies, especially Federal Housing Finance Agency Director Bill Pulte, he also launched legal proceedings against members of the Fed's Board of Governors, especially Lisa Cook and Fed Chair Jerome Powell.

26. In Cook's case, Trump—through Pulte—accused Cook of mortgage fraud, although they supplied thin evidence later called into question.[30] Despite the flimsiness of these accusations, Trump used them as a reason to "remove" Cook from her position as Governor. This effort at

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[21] Christine Zhang, How Trump's Attacks on the Fed Chair Have Intensified, *New York Times*, July 24, 2025.
[22] Ragip Soylu, Turkey: How Mehmet Simsek convinced Erdogan to drop his low interest rate policy, Middle East Eye, June 13, 2023.
[23] Bolzani et al, Central Bank Independence Comes to Brazil, Project Syndicate, May 6, 2021.
[24] Art. 130 TFEU and art 14.2 Statute of the ESCB and ECB.
[25] Chris Condon, Key Trump Quotes on Powell as Fed Remains in the Firing Line, Fortune, August 22, 2019.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Bryan Mena, Trump sends handwritten letter to Powell demanding ultra-low interest rates, CNN, June 30, 2025.
[30] Chris Prentice & Marisa Taylor, Exclusive: Fed Governor Cook declared her Atlanta property as "vacation home," documents show, Reuters, September 13, 2025.

removal comes at a critical time for the nature of independent agencies in general, of which the Fed is a special case. In other parts of the administrative state, Trump summarily fired members of independent commissions appointed by Joe Biden, Trump's predecessor, simply because he did not wish to see their service continued. Under Supreme Court precedent dating to 1935, such removals are illegal. The US Supreme Court, however, has permitted these removals to proceed, heavily signaling that independent agencies will be independent of presidential control no more.

27. Trump's removal of Cook, however, proceeded differently. First, the Supreme Court scheduled an oral argument to assess whether removal protections applied to the Fed and if they were met. **The oral argument, which occurred in January 2026, seemed strongly against presidential control over the Fed**. During the pendency of the Court's decision assessing that legal question, it has permitted Cook to remain in office.

28. Trump's second frontier in his attack on Fed independence focuses on its Chair, Jay Powell. In addition to the attacks on Powell's competence and character, Trump's Department of Justice has launched a criminal investigation into Powell, insinuating that Powell may have lied to Congress in testimony regarding the Fed's over-budget and over-schedule renovations to its headquarters.

29. The news of this criminal investigation ricocheted across the American political landscape, provoking bipartisan defense of the institution. That defense may even prevent Trump's candidate for Powell's successor, Kevin Warsh, from taking his seat, since Republican Thom Tillis refuses to vote to advance Warsh's nomination until the criminal investigation is resolved in Powell's favor.

30. **The experience of Trump's legal and political assault on Fed independence carries a few important lessons.** First, central banks require broad political support to sustain their independence. The bipartisan support the Fed—and Powell, and Cook—enjoy is a major protection against presidential interference. Second, the law is an insufficient bulwark to protect central bank independence. The difference between de facto and de jure independence is a well-established fact in the academic literature on central banking, but nowhere has that difference proven starker than in the 2025 political drama instituted by Trump.

31. **Central bank** independence **thus appears to have (mostly) survived in the world's largest economy. But that survival only points to the precarity of central bank independence as a major part of the liberal order.**

IV. DIGITALIZATION IN PAYMENTS' SYSTEMS[31]

A. Introduction

32. Since the last biennial meeting of the International Law Association, MOCOMILA has focused an important part of its deliberations on the **rapidly evolving legal and regulatory frameworks governing global payment systems.** As the financial landscape undergoes a profound digital transformation, the Committee examined the intersection of technological innovation, institutional governance, and monetary stability in all three meetings since 2024,

[31] Section prepared by Mark Jewett, Ross Leckow, and Cristiano Cozer.

in Luxembourg, Brasília, and Toronto. These meetings reflected a continuous effort to reconcile the "plumbing" of new payment infrastructures with first-order legal principles and public policy objectives. MOCOMILA discussions provided a comparative perspective on evolving payment infrastructures and examined emerging legal and regulatory challenges associated with digital money. MOCOMILA reflected on a global financial system in flux. While the emergence of the Genius Act[32] in the US represents a shift away from central bank primacy in digital assets, for MOCOMILA, the priority remains harmonizing domestic frameworks to ensure the global architecture remains stable, inclusive, and technologically resilient. Developments in instant payment infrastructures demonstrate the continuing importance of robust public governance in ensuring neutrality, efficiency, and broad access, while the rapid expansion of digital financial services is reshaping the institutional landscape in which these infrastructures operate.

B. Comparative insights

33. **MOCOMILA approached the topic through a comparative lens**. The Committee examined **developments in payment infrastructures through the experiences of Brazil (Pix) and the Eurosystem (TIPS).**[33] This comparative discussion highlighted the increasing role of central banks in the governance of critical payment infrastructures and the importance of institutional frameworks capable of promoting both innovation and financial stability. The EU and Brazilian experiences illustrated different approaches to public payment infrastructure. While national systems may emphasize open participation and competition among a broad range of financial institutions, regional infrastructures tend to prioritize interoperability and coordinated governance across jurisdictions. Despite these institutional differences, both models reflect the growing importance of neutrality, standardization, and broad access in modern payment systems. The discussion also highlighted broader policy considerations associated with instant payment systems, including consumer protection, compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) requirements, and the need to reconcile rapid innovation with operational resilience.

34. **In the United States, despite the successful adoption of FedNow,[34] the current political climate has led to** an end to work on retail Central Bank Digital Currencies (CBDC). However, work on wholesale CBDC is continuing through platforms such as the New York Innovation Center at the New York Fed, rebranded as “tokenized central bank money.”[35]

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[32] *Guiding and Establishing National Innovation for U.S. Stablecoins Act*, Pub. L. No. 119-27, 139 Stat. 142 (2025).

[33] On Brazil’s Pix instant payment system, see Angelo Duarte, Jon Frost, Leonardo Gambacorta, Priscilla Koo Wilkens, and Hyun Song Shin, *Central Banks, the Monetary System and Public Payment Infrastructures: Lessons from Brazil’s Pix*, BIS Bulletin No. 52 (2022); Juliana Bolzani, *Leading the Way in Payments: How Central Banks Are Using Innovation to Promote Financial Inclusion and Reshape Competition*, Journal of Law and Commerce Vol. 41, No. 1 (2022). On the Eurosystem’s Target Instant Payment Settlement (TIPS), see Massimiliano Renzetti, Serena Bernardini, Giuseppe Marino, Luca Mibelli, Laura Ricciardi, and Giovanni Maria Sabelli, *TIPS - TARGET Instant Payment Settlement: The Pan-European Infrastructure for the Settlement of Instant Payments*, Bank of Italy Markets, Infrastructures, Payment Systems Working Paper No. 1 (2021).

[34] Board of Governors of the Federal Reserve System, *Federal Reserve announces that its new system for instant payments, the FedNow Service, is now live,* Press Release (July 20, 2023).

[35] See, for example, *Facilitating Wholesale Digital Asset Settlement*.

35. A significant development was the "Genius Act", characterized as a deliberate effort to minimize the Federal Reserve's footprint in the regulation of payment stablecoins. By design, the Act shifts primary oversight to other bodies, excluding the Fed from master-account access for these issuers. This creates a complex tension: while the Act provides regulatory clarity, it also risks leaving the Fed responsible for crises while remaining "in the dark" regarding potential contagion from under-regulated entities.[36]

36. **In Canada, the path can be summarized as moving from "inertia" to legislative momentum.** At the time of the MOCOMILA Toronto meeting, it was noted that Canada was "falling behind," citing the delayed launch of the Real-Time Rail (RTR) system and resistance from large incumbents. However, the landscape shifted significantly in the months following the conference. Partially addressing the lack of progress identified in Toronto, the Canadian government has now adopted national stablecoin legislation, moving toward a dedicated regulatory regime.[37]

37. **The discussions also** highlighted **how the transformation of payment systems and the emergence of digital forms of money are increasingly interconnected policy domains.** As mentioned above, MOCOMILA examined legal and institutional questions surrounding central bank digital currencies (CBDCs) and digital assets, focusing on recent initiatives in Brazil and the Eurosystem while also addressing broader international regulatory developments. These discussions highlighted **differing strategic approaches to CBDC design.** Some initiatives place particular emphasis on enabling new forms of programmable financial infrastructure and tokenized settlement mechanisms,[38] while others focus more directly on reinforcing the monetary anchor of sovereign currencies and preserving the role of public money in an increasingly digital payments environment.[39] Across jurisdictions, these initiatives raise **common legal and policy questions**, including the appropriate balance between privacy, transparency, and regulatory oversight; the technological maturity of proposed solutions; and the implications for financial stability and the banking system. The discussions also underscored the importance of clarifying the legal nature of CBDCs and developing workable frameworks for cross-border interoperability.[40]

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[36] See, e.g. Bank Policy Institute et al., *Joint Trades Letter to U.S. Treasury on Implementation of the GENIUS Act*, November 4, 2025; Arthur E. Wilmarth Jr., 'The Looming Risks of Uninsured Nonbank Stablecoins' (2025) 50(3) *Delaware Journal of Corporate Law* 130–135; and *The Unacceptable Risks of Uninsured Nonbank Stablecoins*, Written Testimony Presented to the UK House of Lords' Financial Services Regulation Committee, March 10, 2026; Brookings Institution, *Next Steps for GENIUS Payment Stablecoins*, March 3, 2026.

[37] *Stablecoin Act*, SC 2026, c. 3.

[38] This approach focuses on wholesale CBDC (wCBDC) and "unified ledgers" to modernize the plumbing of the financial system. Examples include (1) Project Agorá (BIS & 7 Central Banks): BIS Innovation Hub, *Project Agorá: Exploring Tokenisation of Cross-Border Payments,* (updated October 2025); (2) *Project Guardian: Enabling New Forms of Programmable Financial Infrastructure,* [November 2024/2025 Progress Report, Monetary Authority of Singapore (MAS)]; (3) Bank of Korea, *The BoK CBDC Pilot: Testing Tokenized Deposits and Programmable Payments,* (May 2025).

[39] This approach focuses on retail CBDC (rCBDC) to ensure that the public always has access to risk-free, central bank-backed money, preserving the "anchor" of the currency. Examples include (1) European Central Bank, *A Digital Euro: Protecting the Monetary Anchor of our Financial System,* (January 2026 Progress Report); (2) Bank of England, *"The Digital Pound: A New Form of Money for Households and Businesses? – 2025 Update* (September 2025); (3) Bank of Canada, *Staff Discussion Paper: The Public Money Narrative and the Future of Sovereign Currencies* (December 2025).

[40] On the legal, institutional and policy dimensions of central bank digital currencies (CBDCs), see, e.g., Emilios Avgouleas and William Blair, 'A Critical Evaluation of Central Bank Digital Currencies: Payments' Final

38. **MOCOMILA also addressed recent regulatory developments concerning crypto-assets and stablecoins. Also here, different jurisdictions are pursuing distinct approaches.** The EU has adopted a comprehensive framework through the *Markets in Crypto-Assets Regulation* (MiCA),[41] while in the US debate on the treatment of stablecoins has largely been decided by the enactment of the GENIUS Act, and the Clarity Act[42] will lay out a comprehensive regulatory framework for cryptocurrencies more generally.

39. The debates on CBDCs and digital assets **illustrated the diversity of strategic approaches currently being pursued across jurisdictions. Despite these differences, common legal and policy challenges are emerging**, particularly with regard to governance arrangements, financial stability considerations, and cross-border interoperability.[43] In this evolving environment, international cooperation and the work of global standard-setting institutions will remain essential to promoting coherent and resilient frameworks for the future architecture of digital money. Notwithstanding the emergence of new technology-driven actors, regulated financial institutions remain central to the functioning of payment systems, and policy debates concerning payment networks should be understood within a broader framework concerning the governance of payment infrastructures as elements of public or quasi-public financial architecture.

C. Managing the Digital Transformation

40. **MOCOMILA discussions highlighted a critical paradox: while the digital transformation of finance has been underway for decades, the global community has lacked a coherent, top-down plan to guide the transition.** For too long, policymakers have focused on discrete, "bottom-up" technical problems—the "plumbing"—rather than establishing first-order governance objectives.

41. A central theme was the necessity of a multi-stakeholder governance model. Because the private sector drives most technological innovation while the public sector remains the guarantor of monetary stability, neither can manage this transition in isolation. The discussion identified three core pillars to balance for a socially useful evolution:

(i) **Access**: This includes both wholesale access (determining which entities, beyond traditional banks, can connect to core networks) and retail access (ensuring universal availability of financial services).

Frontier?' (2024) 19(2) *Capital Markets Law Journal*; Raphael Auer, Giulio Cornelli, and Jon Frost, *Rise of the Central Bank Digital Currencies: Drivers, Approaches and Technologies* (BIS Working Papers No. 880, 2020); Itai Agur, Anil Ari, and Giovanni Dell'Ariccia, *Designing Central Bank Digital Currencies* (IMF Working Paper No. 19/252, 2019); Bank for International Settlements, *Multi-CBDC Arrangements and the Future of Cross-Border Payments* (2021).

[41] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJ L 150, 9.6.2023, p. 40–205 [Short Form**:** Regulation (EU) 2023/1114 (MiCA).]

[42] *Digital Asset Market Clarity Act of 2025* (H.R. 3633), currently before the Senate Banking Committee.

[43] For comparative analyses of central bank digital currency (CBDC) initiatives across jurisdictions, see, e.g., Bank for International Settlements, *CBDCs Beyond Borders: Results from a Survey of Central Banks*, (2021); International Monetary Fund, *Behind the Scenes of Central Bank Digital Currency: Emerging Trends, Insights, and Policy Lessons*, Fintech Notes (2022); and Qifeng Tang & Yain-Whar Si, *Central Bank Digital Currencies: A Survey* (2025).

(ii) **Stability**: Maintaining micro-prudential safety and macro-prudential system stability, particularly as opening access creates new vectors of risk.

(iii) **Investment**: Encouraging ongoing, socially valuable investment in system infrastructure without allowing strict stability requirements to stifle innovation.[44]

D. Legislative Trends and International Cooperation

42. **The international landscape revealed a contrast between traditional and digital systems.** Traditional cross-border payments suffer from limited competition due to layered correspondent banking, which the G20 roadmap seeks to address.[45] In contrast, the crypto and stablecoin space is seeing rapid, potentially fragmented competition. MOCOMILA discussions reflected the emergence of a complex and evolving regulatory landscape for digital assets. In this context, the work of international institutions—including the Bank for International Settlements, the Financial Stability Board, and the International Monetary Fund—was noted as playing an important role in promoting greater international coordination in areas such as cross-border CBDCs, stablecoins, and digital financial infrastructures.[46] International bodies are in the early stages of coordinating guidance for digital assets. However, this technocratic collaboration faces headwinds from populism and anti-elitism, which can sideline central bankers in public discourse. Furthermore, geopolitical shifts mean that emerging powers increasingly expect a central seat at the standard-setting table.

V. DIGITAL CURRENCIES: CBDC AND STABLECOINS[47]

43. A digital coin consists of encrypted data expressed in strings of bits. As "an entity that amounts to a string of bits," a digital coin's string has a numerical value as well as a unique identity.[48] **Like physical coins and banknotes, digital coins are not paid out of bank accounts, so their payment does not appear to require intermediation.** And yet exactly as is the case with respect to electronic funds transfers, they are paid with over the cyber space.

44. A digital currency may be issued either privately, in which case it is "virtual currency," or by a central bank, in which case it is CBDC (Central Bank Digital Currency).[49] A virtual

[44] See Dan Awrey, *Beyond Banks: Technology, Regulation, and the Future of Money* (Princeton University Press, 2024), pp. 214–228.

[45] On the challenges associated with traditional cross-border payment systems and the policy agenda to address them, see, e.g., Financial Stability Board, *G20 Roadmap for Enhancing Cross-border Payments: Consolidated Progress Report for 2025* (2025); and Committee on Payments and Market Infrastructures, *Enhancing Cross-border Payments: Building Blocks of a Global Roadmap*, Bank for International Settlements (2020).

[46] See, e.g., Bank for International Settlements, Annual Economic Report 2023 (Chapter III: *Blueprint for the Future Monetary System*); Financial Stability Board, *High-level Recommendations for the Regulation, Supervision and Oversight of Global Stablecoin Arrangements: Final report* (2023); Financial Stability Board, *High-level Recommendations for the Regulation, Supervision and Oversight of Crypto-asset Activities and Markets: Final report* (2023); and International Monetary Fund, *Cross-Border Payments with Retail Central Bank Digital Currencies: Design and Policy Considerations*, IMF Fintech Notes (2024).

[47] Section prepared by Benjamin Geva.

[48] Gideon Samid, *Tethered Money: Managing Digital Currency Transactions* (Academic Press, 2015), pp. 105–106.

[49] For the latter, see e.g. Committee on Payments and Market Infrastructures, Central Bank Digital Currencies (Bank for International Settlements 2018), online: https://www.bis.org

currency may have its own unit of account, fluctuating by reference to the value of an official unit of account. In such a case, the virtual currency is self-anchored. It is in fact unanchored to any unit of fiat currency or commodity. Alternatively, a virtual currency may be a "claim-check" or stablecoin that is denominated in, namely pegged to, or claimed at par with, either an official currency's unit of account (as well as a basket of such currencies) or in the value of a specified amount of a designated commodity.[50] A CBDC is naturally denominated in the unit of account of the official currency.

45. Being a digital format of the issuer's national currency, CBDC is by definition 'money.' For its part, virtual currency may serve as 'money' only where it is something "which passes freely from hand to hand throughout the community in final discharge of debts … being accepted equally without reference to the character or credit of the person who offers it and without the intention of the person who receives it to consume it …".[51] Or else, it ought to store value and circulate as a medium of exchange denominated in a unit of account.[52]

46. In a way, the CBDC is a stablecoin issued by the central bank. However, the embodiment by it of a "claim" on the central bank setting it aside from virtual ("real") stablecoins. Thus, its use does not give rise to predominant stablecoin risks, such as systemic risk, lack of interoperability, and issuer's insolvency, or more in general, default risk. As well there is no ambiguity as to its character as money and not a security. Not surprisingly, the introduction of CBDC was predicted to be a "game changer," even if only for "encouraging banks to reduce their reliance on deposits."[53] On the negative side, CBDC may discourage continuing innovation that is more likely to exist in a competitive environment such as that of stablecoin arrangements. In any event, at present, CBDC is disfavoured by the US executive branch.[54]

47. The Bank for International Settlements (BIS) Committee on Payments and Market Infrastructures (CPMI) and the Board of the International Organization of Securities Commissions (IOSCO) identified four **overarching considerations that an authority may take into account when it assesses the systemic importance of a stablecoin arrangement** ("SA") within its jurisdiction, with such assessment being for the purpose of applying the Principles for Financial Market Infrastructures (PFMI) addressing financial stability:[55]

/cpmi/publ/d174.pdf. An account-based central bank money provided to the public, as the digital euro is expected to be, is outside the scope of the present discussion.

[50] See e.g., Gideon Samid, Tethered Money, above note 48 at 14–16 and Financial Stability Board, Regulation, Supervision and Oversight of 'Global Stablecoin' Arrangements (Financial Stability Board, October 2020) [FSB, Regulation]. The assertion that denomination in its own unit of account appears to be an element in the definition of "virtual currency" (that is, privately issued digital currency) as in] Dong He et al, Virtual Currencies and Beyond: Initial Considerations (SDN/16/3, International Monetary Fund 2016), p. 7, is thus inaccurate.

[51] *Moss* v. *Hancock* [1899] 2QB 111, 116. To the same effect see also *Reference Re Alberta Statutes* [1938] SCR 100 at 116, as well as *Johnson v State* 52 So 652 (Ala 1910) and *State v Finnegan* 103 NW 155 (Iowa 1905).

[52] Nigel Dodd, The Sociology of Money, Economic, Reason & Contemporary Society (Continuum 1994) xv; for example, Geoffrey Ingham, *The Nature of Money* (Polity, 2004), p. 198, "money" is effectively something that "[r]egardless of its form and substance" answers the promise and description provided (and measured) by the unit of account.

[53] Cyril Monnet, Digital Euro: An assessment of the first two ECB progress reports (European Parliament 2023), p. 19.

[54] Executive Order 14178 of 23 January 2025, United States President, Strengthening American Leadership in Digital Financial Technology (Executive Order 14178), 90 Fed Reg 8647.

[55] CPMI and IOSCO, Application of the Principles for Financial Market Infrastructures to stablecoin arrangements (Bank for International Settlements and IOSCO, 2022) at para 2.1.3.

1) the size of the SA, in terms of number of users as well as number and value of transactions and value of stablecoins in circulation;

2) the nature and risk profile of the SA's activity. This takes into account type of users and transactions;

3) the interconnectedness and interdependencies of the SA with the real economy and financial system; and

4) the substitutability of the SA,[56] i.e., whether there are available alternatives to using the SA as a means of payment or settlement for time-critical services.[57]

48. For an SA of a fiat-backed stablecoin, **one plausible systemic risk scenario is a spill-over from the default of a commercial bank holding the reserve against which stablecoins are issued** so as to preclude their redemption. The other scenario is where stablecoins are used as instruments of finance. Their use as instruments of finance makes it easier for leverage to build up by the creation of collateral chains, that is, "multiple claims on the same underlying collateral."[58] The result "is not unlike fractional reserve banking, with collateral requirements replacing reserve requirements."[59] The absence of full reserve creates new money with a potential to have an impact on both monetary and financial stability. Indeed, as under a "currency board" regime, the full reserve of the reference asset is only of the "monetary base" and not of the full "monetary supply," which includes money lent.[60]

49. To meet risks the Bank of England proposed **the establishment of a regulatory regime covering issuance, transfer, and storage and value exchange**.[61] Statutory regulatory schemes have been set up on both sides of the Atlantic: the *Guiding and Establishing National Innovation for US StableCoins (GENIUS) Act*[62] in the United States and Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (MiCA).[63] Both contain provisions pertaining to licensing, supervision and user protection frameworks, product classifications, as well as to full reserve and redemption requirements . A hallmark of EU MiCA is the obligations fastened on an offeror of crypto-

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[56] IOSCO had in March 2020 published a public report on Global Stablecoin Initiatives wherein it broadly considers regulatory issues that large-scale adoption of stablecoins may trigger. See IOSCO, "Global Stablecoin Initiatives Public Report" (OR01/2020, IOSCO, March 2020). The report annexed the preliminary analysis on applying PFMI to SA.

[57] In May 2023, IOSCO also published a consultation Report on "Policy Recommendations for Crypto and Digital Asset Markets". IOSCO also raised some issues relating to stablecoin adoption for consideration. See IOSCO, Policy Recommendations for Crypto and Digital Assets Markets: Consultation Report (CR01/2023, IOSCO, May 2023).

[58] Cameron MacDonald and Laura Zhao, Stablecoins and Their Risks to Financial Stability (2022) Bank of Canada Staff Discussion Paper 2022-20, p. 2.

[59] Ibid at 19, and in great detail, at 19–26.

[60] At least in theory, resulting risks can be eliminated by precluding lending not backed by a full reserve

[61] Bank of England, Regulatory regime for systemic payment systems using stablecoins and related service providers, Discussion Paper, 06 November 2023.

[62] Bill S 919, *Guiding and Establishing National Innovation for U.S. Stablecoins* (GENIUS) Act of 23 2025, 1st Sess, 119th Congress, US, 2025 (Placed on Senate Legislative Calendar under General Orders No 33, 18 March 2025).

[63] Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L150/40 (EU MiCA). For its current status, see John Salmon, Eoin O Connor et al, The EUs markets in Crypto-Assets MiCA Regulation a Status update, 20 February 2025.

assets to the public to publish "a crypto-asset white paper" informing "prospective retail holders of crypto-assets ... of the characteristics, functions and risks of the crypto-assets that they intend to purchase."[64]

50. **While stablecoins have generally been less volatile than self-anchored cryptoassets, not one of them has been able to maintain parity with its peg at all times.** This is irrespective of a coin's size or type of backing. Moreover, there is currently no guarantee that stablecoin issuers could redeem users' stablecoins in full and on demand.[65] Neither circulating at the same value nor having the same purchasing power, stablecoins denominated in the same unit of account, either on their own or side by side with a CBDC[66] in the same currency, thus undermine the singleness of money. Several studies were carried at the Bank of Canada on the singleness of money in Canada and the US during periods in which banknotes had been issued both by private banks and a government body.[67] All concluded that regulation and supervision are required to ensure harmony and full interchangeability. Besides issuers, regulation ought to address matters such as redeemability in government currency on demand at par; par acceptance by every bank; insurance covering the issuer's default, and free-of charge to the public of a national gross-clearing facility.

VI. INTERNATIONAL FINANCIAL SANCTIONS[68]

A. Introduction: scope and relevance of financial sanctions

51. **Economic sanctions have become a major foreign policy tool,** considered less offensive to human rights than military action[69] though their impact on affected humans may be horrendous.[70] Financial sanctions are a subcategory of economic sanctions, which aim to limit the provision of certain financial services and restrict access to financial markets, funds, and economic resources, including payment systems, financial messaging infrastructures, and central bank-related monetary assets.[71]

52. **The number of countries targeted by financial sanctions increased from around twenty-five in 2010 to almost sixty in 2022**.[72] The United States and EU are among the most frequent senders of financial sanctions. The sway of financial sanctions is further increasing

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[64] Ibid, Preamble para 24. For details, see Art 6 and Annex I.
[65] Anneke Kosse, Marc Glowka, Ilaria Mattei and Tara Rice, Will the real stablecoin please stand up? BIS Papers No 141, November 2023.
[66] For policy grounds supporting co-existence, see e.g. Mark Zelmer and Jermey Kronick, Two Sides of the Same Coin: Why Stablecoins and a Central Bank Digital Currency Have a Future Together (Commentary No 613, CD Howe Institute, 2021).
[67] For a review and summary, see Benjamin Geva, *The Evolution and Future of Money in Canada: Implications for the Digital Age- Legal and Regulatory Perspective* (University of Toronto Press, 2025), pp. 295-327.
[68] Section prepared by René Smits, Regis Bismuth, and Armin Steinbach.
[69] 'A peaceful tool of diplomacy', is how the European Union External Action website promotes the instrument.
[70] Sebastian Shehadi, This is what sanctions look like': the film showing Saddam's Iraq through children's eyes, Financial Times, 31 January 2026; Ruth M Gibson and Gary L Darmstadt posit "irrefutable quantitative evidence on the adverse humanitarian impacts of sanctions on local populations" in *Sanctions and humanitarian outcomes: four decades of academic scholarship*, 13 The Lancet Global Health 2025, pp. e1328-e1329.
[71] Off. of Financial Sanctions Implementation, *UK Financial Sanctions General Guidance*, U.K. GOV. (Sept. 22, 2025).
[72] *See* IMF, *Global Financial Stability Report*: *April 2024* (Apr. 2024). A great source on sanctions here.

the shift towards unilateralism, including through anti-circumvention measures, which may extend their effects to third-country financial actors and intermediaries.[73]

53. **The Russian case remains illustrative of the wide scope of financial sanctions.** Sanctions against Russia range from limitations on transactions with Russian counterparts and in Russian financial instruments, the freezing and immobilisation of central bank reserves and the use of extraordinary revenues derived therefrom, the exclusion of numerous banks from the financial messaging system of Society for Worldwide Interbank Financial Telecommunications (SWIFT) and other restrictions targeting financial messaging systems and payment infrastructures, limitations on access to financial and capital markets, prohibiting transactions with Russia involving the IMF's Special Drawing Right,[74] as well as a plethora of asset freezes targeted at individuals, banks, companies and other entities,[75] increasingly accompanied by anti-circumvention measures extending to third-country financial intermediaries and crypto-asset service providers.

54. **More generally, financial sanctions rely on the sanctioning country's capacity to direct and** instrumentalize **financial intermediaries.** While some countries have intensified efforts to develop alternatives to the SWIFT payment system, SWIFT remains manager of the bulk of global cross-border payment value.[76] This tendency was reinforced during 2025.[77] These moves confirm that sanctions increasingly operate by leveraging structural choke points within the global payments architecture, rather than merely targeting individuals or domestic intermediaries.

55. **Reluctance by banks to do business with targeted persons or entities may lead to companies being driven out of business whilst technically the sanctions do not apply.** This reluctance by financial institutions (overcompliance) is a more effective deterrent than public-law enforcement of sanctions which is low or, in some Member States, intentionally absent. This is so despite sanctions busting having recently been labelled an EU offense and made subject to harmonised criminalisation at EU level.[78] The ever wider tentacles of financial sanctions lead to intriguing questions of private law, such as how to qualify, for purposes of the freeze, assets put into a trust[79], or whether the freeze extends to corporate governance issues

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[73] Hazar Kaan Özkonak, 'A Brief Overview of the Historical and Current Use of Unilateral Sanctions' in Ksenia Kirkham (ed), *The Routledge Handbook of the Political Economy of Sanctions* (Routledge, 2023), pp. 25–26.

[74] https://www.reuters.com/markets/europe/exclusive-eu-considering-curbing-russias-rights-imf-over-invasion-sources-2022-03-04

[75] Over 2,600 individuals and entities are included in the EU sanctions against Russia.

[76] See SWIFT Operating Metrics, CRAFT (last visited Dec. 22, 2025); see also Eugenio M. Cerutti, Melih Firat & Martina Hengge, Global Cross-Border Payments: A $1 Quadrillion Evolving Market? 2 (IMF, Working Paper No. WP/25/120, 2025).

[77] In its 16th package (February 2025), the EU expanded its crackdown on Russia's financial infrastructure by adding further primarily Russian banks to the ban on specialised financial messaging services and for the first time imposing a transaction ban on certain third-country credit or financial institutions listed in Annex XLIV of Regulation 833/2014 for using the Russian SPFS messaging system to circumvent sanctions. In July 2025, the 18th package went further by converting the earlier restricted access to messaging services into a comprehensive transaction ban for several major Russian banks. Furthermore, anti-circumvention measures now target third-country operators and crypto-asset providers deemed to be "significantly frustrating" the regime.

[78] Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ L, 2024/1226, 29.4.2024. The Commission has initiated infringement procedures against 18 Member States for not fully transposing this directive.

[79] Request for a preliminary ruling from the Lazio regional administrative court: Case C-483/23 (*T Trust*). In his Opinion of 10 July 2025, Advocate General Campos Sánchez-Bordona argues that, depending on the trust

such as voting rights and the rights of participation at meetings of depository receipt holders,[80] as well as to questions concerning beneficial ownership, control, and the treatment of complex corporate and fiduciary structures. Recent policy developments in the UK show that these implementation questions are not confined to the EU. In its 2024-25 Annual Review, the Office of Financial Sanctions Implementation (OFSI) placed renewed emphasis on proactive enforcement and compliance.[81]

B. Legality of financial sanctions

56. **The** compatibility **of financial sanctions with public international law and domestic law is highly contested.** The legality under international law of unilateral sanctions has frequently been challenged, especially in the light of the international law of State responsibility,[82] and the issue has recently come to the global spotlight in view of the particular breadth and intrusive character of financial sanctions imposed on sovereign central bank assets.[83] The freeze of Russian central bank assets has been held controversial in view of the immunity of central bank assets.[84] The sanctions in place since 2022 block 300 billion U.S. dollars in funds, which triggered a controversial debate on the permissible scope of freezing and seizing these assets.[85]

57. **With regard to EU law, sanctions have been challenged before court and frequently annulled** on grounds of due process, fundamental rights or insufficient factual evidence. This increases the burden on the Council of the European Union to adequately reason its decisions and substantiate listings with sufficiently specific, reliable and up-to-date evidence.[86] A recent case in which the General Court found the motivation for including Russian oligarchs on the

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settlement and the applicable law to the trust, the freeze may extend to funds put into that trust, "continuing to be regarded as being owned or merely held by the settlor for the purposes of Article 2(1) of Regulation No 269/2014".

[80] Case C-465/24 (*SBK Art*), a reference for a preliminary ruling from the *Hoge Raad* (Dutch supreme court). In his Opinion of 25 September 2025, Advocate General Richard De La Tour argues that freezing does have these consequences. The Court so held in its judgment of 12 March 2026; ECLI:EU:C:2026:187. According to the repsective press release No 35/26, "[r]estrictive measures in respect of Russia: the freezing of funds prevents, absolutely and unconditionally, the holder of a depositary receipt from attending a general meeting of shareholders and from voting in that meeting".

[81] In February 2026, the UK government also launched a call for evidence on the "ownership and control" test in financial sanctions regulations. This confirms the continuing practical and conceptual importance, across jurisdictions, of attribution, beneficial ownership, complex corporate structures, and the risk of unintended overcompliance (or "de-risking") by financial institutions, particularly in relation to the interpretation and application of the control test in cases involving indirect or potential forms of control.

[82] Nigel D. White, 'Countermeasures and Sanctions' in Malcolm D. Evans (ed), *International Law* (5th edn, Oxford University Press, 2024) 500–527.

[83] See, for many, Oona A. Hathaway, Maggie M. Mills, and Thomas M. Poston, 'War Reparations: The Case for Countermeasures' (2024) 76(4) *Stanford Law Review* 971, 977–978.

[84] Traditionally, central banks have been considered to enjoy immunity from attachment for sovereign assets held abroad; see Article 21(c) of the United Nations Convention on Jurisdictional Immunities of States and Their Property (not yet in force). See also the Foreign Sovereign Immunities Act of 1976 (FSIA), and the UK's State Immunity Act 1978 for statutory intentions in major financial centres. On the matter, see Ingrid Brunk, 'Economic Sanctions and Central Bank Immunity' in Chiara Zilioli, Régis Bismuth, and Luc Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives* (Brill Nijhoff, 2024) 173–189.

[85] See Daniel Franchini, 'When Finance Becomes a Weapon: The Challenge of Central Bank Sanctions under International Law' (2025) 24(1) *Journal of International Trade Law and Policy*.

[86] In *Kadi*, the European Court of Justice has confirmed that judicial review of sanctions derived from Chapter VII resolutions of the UN Charter against EU fundamental rights can be carried out: Cases C-402/05 P and C-415/05 P, Kadi v Council, 3 September 2008, ECLI:EU:C:2008:461, notably paragraphs 303, 316 and 326.

list of targets wanting is being appealed by Latvia; the Advocate General sided with the General Court in his Opinion and proposed that the appeal be dismissed.[87]

58. On 27 February 2026, the Central Bank of Russia (CBR) filed a lawsuit before the General Court of the EU challenging the Council decision to immobilise its assets.[88] CBR claims violation of its rights to property, the principle of sovereign immunity of central banks and "serious procedural violations", as the Council decision to freeze the assets was adopted by a Qualified Majority Vote (QMV) rather than unanimity, on the basis of Article 122 TFEU,[89] an Economic and Monetary Union provision recently used more widely, and controversially.[90] Importantly, the Regulation obviates the need for six-monthly approval for the renewal of the freeze, as with other financial sanctions, and thus marks a significant procedural and institutional departure from the ordinary CFSP sanctions framework. The Regulation based on Article 122 TFEU is part of a package of measures for EU borrowing to finance a loan to Ukraine. The package of proposals to effect the Ukraine loan[91] includes acts to be adopted under a different Treaty provision, requiring unanimity, which is the reason why the December 2025 political decision has not yet been given effect in full.[92]

C. The problems of exiting

59. **Sanctions regimes are increasingly confronted not only with the problem of escalation but also with the legal architecture of exit.** The Syria case provides a particularly instructive illustration of the complexities involved in recalibrating entrenched financial restrictions. In the United States, the Syria sanctions programme was terminated by executive action (Executive Order 14312) on 30 June 2025, effective 1 July 2025,[93] removing U.S. sanctions on Syria, while maintaining sanctions on Bashar al-Assad and certain other listed categories of persons. The position of the EU, however, has been institutionally distinct, reflecting a more incremental recalibration of sectoral and financial measures (as evidenced by the May 2025 lifting of restrictions under Regulation 2025/1098)[94] rather than a wholesale programme termination. From a comparative perspective, this episode demonstrates that contemporary sanctions law must address not only the imposition and tightening of restrictions but also the

[87] Opinion of Advocate General Biondi delivered on 30 October 2025 in Joined Cases C-440/24 P and C-441/24 P, Latvia v Petr Aven (C-440/24 P) and Mikhail Fridman (C-441/24 P), ECLI:EU:C:2025:854. The original judgments are of 10 April 2024 in cases T-301/22, ECLI:EU:T:2024:214 and T-304/22, ECLI:EU:T:2024:215.

[88] Case T-150/26, Banque de Russie v Council.

[89] Council Regulation (EU) 2025/2600 of 12 December 2025 on emergency measures addressing the serious economic difficulties caused by Russia's actions in the context of the war of aggression against Ukraine, OJ L, 2025/2600, 13.12.2025. In October 2024, the EU had provided that 99,7 % of the net profits ensuing from the unexpected and extraordinary revenues accruing to central securities depositories as a consequence of the immobilisation of Russia's central bank's assets are to be directed to support Ukraine; Regulation (EU) 2024/2773 of 24 October 2024 [Ukraine Loan Cooperation Mechanism].

[90] For instance: Council Regulation 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the reinforcement of the European Defence Industry Instrument, OJ L, 2025/1106, 28.5.2025, which the European Parliament contests in court (Case C-560/25).

[91] Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation on the establishment of the Ukraine Support Loan for 2026 and 2027, COM(2026) 20 final.

[92] The € 90 bn loan facility would be adopted under 'enhanced cooperation' which allows Member States to adopt acts without all Member States taking part (Article 20 TEU, Articles 326-334 TFEU), and would exclude Hungary, Slovakia and the Czech Republic from financing the loan to Ukraine.

[93] Executive Order 14312, Providing for the Revocation of Syria Sanctions, 30 June 2025.

[94] Council Regulation (EU) 2025/1098 of 27 May 2025 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, OJ L, 2025/1098, 28.5.2025.

design of exit, transition, and partial normalisation in relation to payment channels, financial intermediation, and central-bank-related assets.

VII. DEVELOPMENTS ON SUSTAINABILITY RULES: THE EU OMNIBUS PACKAGE[95]

A. Introduction

60. Since the last ILA conference, the work of MOCOMILA has again covered various sustainable finance issues. One important development in this field has been the so-called EU Omnibus package on sustainability (the Omnibus). In late 2024, building on Mario Draghi's report on "The Future of European Competitiveness", EU heads of state jointly called for a **"drastic" reduction in the regulatory burden** on companies.[96] Shortly afterwards, in February 2025, the European Commission presented an initial Omnibus package with legislative proposals for simplifying various sustainability-related EU laws.[97] These laws had only been passed between 2020 and 2024 and had not yet fully entered into force when the simplification proposals were tabled.[98] After an at times controversial legislative process, trilogue negotiations resulted in agreement on all aspects of the package in December 2025. The Council of the European Union gave the final formal approval to the package's core piece in February 2026.[99]

B. Affected legislation

61. The Omnibus package affects, among others, the **Corporate Social Responsibility Directive** (CSRD)[100] and the **Taxonomy Regulation.**[101] Adopted in 2022, the CSRD **significantly extended previously existing sustainability reporting obligations** of companies under the Accounting Directive.[102] For the first time, it requires companies to disclose detailed qualitative and quantitative information, such as **GHG emissions**,[103] in their management report. Moreover, companies must not only report on their own operations under CSRD but also provide information about their value chain.[104] Through a phase-in mechanism,

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[95] Section prepared by Andreas Guericke and Roman Hoeck.
[96] Budapest Declaration on the New European Competitiveness Deal, 8 November 2024.
[97] Also known as "Omnibus I". All in all, the Commission has proposed ten of such simplification packages in 2025, including e.g. the 'digital' or the 'defense' Omnibus. On the legality of omnibus packages as a legislative tool in the EU, see Alberto Alemanno, The Omnibus Road to Constitutional Drift, *Verfassungsblog*, 12 November 2025.
[98] For an overview of the initial proposals see here.
[99] European Parliament and Member States had reached political agreement on the text of a directive to amend corporate sustainability reporting and due diligence obligations on 8 December 2025. After the Parliament voted in favour of this agreed text on 16 December 2025, the Council followed on 24 February 2026. See https://www.consilium.europa.eu/de/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/ (accessed on 25 February 2026). At the time of submission of this contribution, the directive was awaiting publication in the Official Journal of the European Union.
[100] Directive (EU) 2022/2464 of 14 December 2022.
[101] Regulation (EU) 2020/852 of 18 June 2020. Other affected laws include e.g. the Corporate Social Due Diligence Directive, i.e. Directive (EU) 2024/1760 of 13 June 2024 (CSDDD).
[102] Directive 2013/34/EU of 26 June 2013.
[103] See Article 29b(2) subpara. 2(a)(i) CSRD and European Sustainability Reporting Standards E1 para. 44.
[104] See e.g. Article 19a(2) subpara. 1(f)(ii) CSRD.

CSRD would have gradually broadened the **scope of companies** subject to such reporting obligations. For instance, companies with more than 250 employees (down from previously more than 500) as well as non-EU companies with substantial business in the EU, in each case subject to further size-related requirements, would have had to report under it. Companies in jurisdictions without comparable disclosure laws will often report similar data according to **voluntary reporting standards** such as those of the ISSB. In addition, the Taxonomy Regulation of 2020 established the world's first[105] **classification system** to define which economic activities can be considered environmentally sustainable. An economic activity is 'taxonomy-aligned' if it meets the granular technical screening criteria the Commission has set for it via delegated regulations. To illustrate: The construction of new buildings is taxonomy-aligned, if – among many other criteria – "kitchen taps have a maximum water flow of 6 litres/min".[106] What is more, the Taxonomy Regulation obliges companies subject to CSRD reporting to also **publicly disclose**, above all, **to what extent their economic activities are taxonomy-aligned**. The concrete Key Performance Indicators (KPIs) to be reported are laid down in delegated regulations and differ for non-financial and financial companies, with the former reporting e.g. what part of their **revenue** is taxonomy-aligned and the latter essentially reporting the extent to which the activities of the clients and counterparties are taxonomy-aligned. The central KPI to be reported by credit institutions is the **Green Asset Ratio** (GAR), quantifying a bank's relevant taxonomy-aligned assets (numerator) as a percentage of its total covered assets (denominator).[107]

62. CSRD and Taxonomy Regulation share the objective of making available relevant, comparable and reliable corporate sustainability information, which in turn shall facilitate the **reorientation of capital flows towards sustainable investment** and the **management of sustainability-related financial risks**.[108] They thus impact investors, credit institutions, other financial market participants as well as public authorities, including central banks and prudential supervisors.[109]

C. Overview and impact of amendments

63. The Omnibus package consists of a bundle of legal acts: A directive, a regulation and a delegated regulation for substantive amendments of various laws and regulations as well as a fast-tracked directive for postponing certain requirements until adoption of the substantive changes ("stop-the-clock-Directive").[110]

64. In terms of substantive changes to the abovementioned laws, notably the number of companies subject to CSRD reporting ("in-scope companies") is reduced – i.e. 'who' is reporting. This is achieved by, among other measures, re-setting the relevant threshold for EU

[105] Other jurisdictions have followed suit (such as the ASEAN states) whereas e.g. the UK has discontinued plans for its own taxonomy.
[106] See the Do No Significant Harm-criteria in Annex II Section 3.1 of Commission Delegated Regulation (EU) 2023/2486 of 27 June 2023.
[107] Recital 5 of Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 (the so-called "Taxonomy Disclosures Delegated Act").
[108] See recital 2 of CSRD and recital 9 of the Taxonomy Regulation (the latter does however not explicitly mention risk management).
[109] For an overview of the relevance of CSRD reporting to the tasks and objectives of the ECB, see paragraph 2 of the ECB Opinion CON/2025/10 on the substantive Directive proposed with the Omnibus package.
[110] For a more comprehensive overview of the content of each of these proposed acts see here, here, and here. Further legal acts have later been added to the initiative, including notably the "quick fix" Commission Delegated Regulation (EU) 2025/1416 of 11 July 2025, aimed at postponing certain additional CSRD obligations.

companies at over 1,000 employees with a net turnover of over EUR 450 million and also lifting the turnover thresholds for non-EU companies. This **should remove more than 80% of companies from the CSRD's scope**.[111] For companies now out-of-scope, a streamlined voluntary reporting standard shall be introduced, which shall be based on the current so-called VSME standard. There were concerns that mandatory value chain reporting would lead to a trickle-down effect for these out-of-scope companies. Therefore, in-scope companies will generally not be allowed to request more than the VSME information from them. However, this **"value chain cap"** only applies to sustainability-related reporting and does, for example, not prevent banks from requiring more detailed information from smaller clients where needed for risk management purposes.[112] Crucially, the individual data items in the European Sustainability Reporting Standards **(ESRS), which govern reporting under CSRD, will also soon be simplified** by way of a delegated act – i.e. 'what' is reported under the CSRD.[113] While the provisions of the Taxonomy Regulation remain unchanged, the abovementioned **changes to the CSRD's** scope also apply to the scope of reporting under the Taxonomy Regulation. Furthermore, **changes to the delegated regulations under the Taxonomy Regulation** have been made. This includes inter alia **changes to the GAR**. For instance, most exposures to companies that were themselves not subject to CSRD reporting had previously been excluded from the GAR-*numerator*. This meant that loans to special purpose vehicles operating wind farms would (counterintuitively) reduce the GAR. The Omnibus now addresses this by also excluding these exposures from the *denominator*, rendering such exposures GAR-neutral.[114]

65. The **ECB issued an Opinion on one of the draft legal acts of the Omnibus package**, in which it supported the goal of enhancing the EU economy's competitiveness, whilst maintaining the objectives of the "European Green Deal". However, the ECB stressed that in simplifying, it is important to strike the right balance and that the **lack of sustainability information** could lead to systemic risks threatening price and financial stability.[115] **Financial market participants' reactions** to the Omnibus were mixed, with some also criticising that certain ESG data will not be available anymore.[116] At the same time, the legality of omnibus

[111] When the Omnibus was initially proposed, the Commission communicated that "the number of companies in scope will be reduced by about 80%". However, the initial proposal foresaw more in-scope companies as, among others, the turnover threshold for EU companies was set at a lower level (above EUR 50 million in the proposal vs. above EUR 450 million in the final text).

[112] See on the VSME / the value chain cap recital 9 of the politically agreed text of the relevant directive (see fn. 100).

[113] See the „Frequently asked questions" at the website linked in fn. 99 above.

[114] See Section 1.1.2(3)(c) of Annex V to the Taxonomy Disclosures Delegated Act (as amended by Commission Delegated Regulation (EU) 2026/73 of 4 July 2025).

[115] See on all of this fn. 109. The Opinion deals with the proposed amendments to CSRD and CSDDD. See in particular paragraphs 1.1, 1.3 and 2.4.1. Also see paragraphs 3.1.7 *et seqq.* for concrete alternative proposals the ECB had made on the CSRD (such as a further category of "medium-large undertakings" subject to further simplified reporting obligations in order to broaden the scope of reporting entities).

[116] See e.g. statement of the German fund association, BVI, from 15 April 2025 ("*Asset managers need (…) ESG data from a broad range of investee companies. (…) we prefer rigorous simplification of the reporting standards over reducing the scope of application*") or German language press release of the committee of German banking-sector associations, DK, from 9 December 2025 ("*DK is critical of the EU's decision to remove the obligation to draw up transition plans in the CSDDD. (…) They enable credit institutions to reliably assess a company's efforts and measures on the path to sustainable business practices*.").

packages as a legislative tool has been questioned[117] and a procedure in front of the European Ombudsman opened for this specific omnibus package due to a possible departure from key procedural requirements in the legislative process.[118] Meanwhile, in the area of sustainable finance, the focus of the Commission's continued simplification efforts will partly shift in 2026 to overhauling the Sustainable Finance Disclosure Regulation (SFDR), which had been left out of the Omnibus.[119]

VIII. SOVEREIGN ASSETS AND SOVEREIGN DEBT[120]

A. Introduction

66. The current framework for sovereign debt governance has gaps, particularly as regards timely sovereign debt restructurings (Subsection B). Relatedly, the need for greater transparency has become a central concern for policymakers (Subsection C). Russia's invasion of Ukraine has prompted much debate about the legal, economic and geopolitical implications of the status of sovereign assets, especially in view of measures by a group of states to immobilise and potentially confiscate sovereign assets (Subsection D).

B. The Need for a Coordinated Sovereign Debt Restructuring Framework

67. **The existing legal framework for restructuring sovereign debt has struggled to deliver timely, predictable, and equitable outcomes.**[121] The current architecture is becoming increasingly stressed due to growing global debt levels and geopolitical fragmentation. As a result, increased delays are likely in future sovereign debt restructurings.

68. Sovereign debt restructurings can be protracted, in part due to disputes among creditor groups and the traditional sequential approach, in which official creditors negotiate with sovereign debtors before private lenders. Reform proposals emphasise coordinated restructurings in which all creditor classes negotiate in parallel, supported by enhanced transparency and information-sharing to ensure fair burden-sharing and reduce uncertainty.

69. **Protracted coordination between creditor groups is a central reason why the current global framework for sovereign debt governance is subject to delay and unpredictability**, particularly due to disagreements over intercreditor equity.[122] The establishment of the Debt Service Suspension Initiative (DSSI) and the Common Framework for Debt Relief beyond the DSSI in the early 2020s aims to prevent delays and avoid concerns regarding concessions to

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[117] Alberto Alemanno, The Legality of Omnibus Legislation Under EU Law: A Preliminary Analysis of Omnibus I Simplification Directive of CSRD and CSDD and its Legal Consequences on the EU Legal Order, *HEC Paris Research Paper*, No. LAW-2025-1588, 12 November 2025.
[118] See https://www.ombudsman.europa.eu/en/news-document/en/211340 (accessed on 23 March 2026).
[119] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019. It, among others, establishes product-related sustainability disclosure obligations, applicable e.g. to investments funds. Proposals for substantial amendments to the SFDR ("SFDR 2.0") have been published in November 2025.
[120] Section prepared by Michael Waibel.
[121] Sean Hagan and Brad Setser, Restructuring Sovereign Debt: The Need for a Coordinated Framework, Policy Brief 24-4 (Peterson Institute for International Economics 2024); Simon Hinrichsen et al., Designing Sovereign Debt Legislation: Learning from Comparative Experience, Journal of Financial Regulation 2026.
[122] Astrid Iversen, *Intercreditor equity in sovereign debt restructuring* (Oxford University Press 2023).

one group of creditors.[123] Their success has been mixed. Recent restructurings show how insufficient coordination can prolong crises (e.g., Zambia).

70. Under the coordinated framework, public and private creditors engage in parallel negotiations and decide at the same time. Increased transparency and information sharing regarding the terms of debt restructuring and sustainability support timely restructuring (see Section C below). While permitting differentiated treatment for various creditor types, such a coordinated framework would speed up restructurings, enhance burden-sharing, and lessen ambiguity.

C. Towards Better Debt Transparency and Sovereign Debt Disclosure

71. **Sovereign debt transparency comprises debt numbers (stock, flow, transaction details), debt words (contracts, obligations), debt frameworks (laws and regulations such as authorisation and reporting), and debt processes such as the UNCTAD Roadmap and the Common Framework**.[124] Debt transparency focuses on accessibility, intelligibility, and accountability to the citizens and taxpayers, meaning the ability to see information, understand information, and hold governments accountable. A systematic, authoritative, and accessible presentation of legal and financial terms can shed light on borrower and lender practices, help build capacity, and thereby shift market practice towards greater transparency.

72. **Current disclosure practices on sovereign debt, particularly regarding contingent liabilities, state-owned enterprises, and sub-national borrowing, remain fragmented and incomplete, and may obscure fiscal risks**. Information in the public domain can be restricted due to confidentiality clauses and inconsistent reporting practices. Strengthened legal frameworks, clear institutional mandates, and enforceable reporting obligations are key to achieving greater sovereign debt transparency and sharing all relevant information with the public. Confidentiality ought to be the exception , because the accessibility of sovereign debt documentation promotes accountability.[125]

73. **Legal frameworks to improve transparency in sovereign debt reporting should clearly identify the government office responsible for the timely disclosure of debt information and impose a penalty for non-compliance**; [126] defining borrowing authority and institutional responsibilities, and improving data collection, are among the central elements for improving public debt transparency and supporting effective fiscal oversight.[127]

D. Sovereign Assets: Protection, Immobilisation and Confiscation

74. **Proposals to use frozen Russian reserves to support Ukrainian reconstruction have brought unresolved tensions between state immunity, countermeasures, and systemic**

[123] For a summary description and the underlying text, see here.
[124] Anna Gelpern, Debt Transparency: What Is Not to Like?, 26 June 2025; Karla Vasquez et al, The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practices (International Monetary Fund 2024); Lee C Buchheit and G Mitu Gulati, Responsible Sovereign Lending and Borrowing (UNCTAD).
[125] Susan Maslen and Cigdem Aslan, *Enhancing Debt Transparency by Strengthening Public Debt Transaction Disclosure Practices*, International Bank for Reconstruction and Development / The World Bank 2022, p. 27.
[126] Susan Maslen and Cigdem Aslan, Enhancing Debt Transparency by Strengthening Public Debt Transaction Disclosure Practices.
[127] Karla Vasquez et al., The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practices, IMF Working Papers, 9 February 2024

financial stability to the **fore**.[128] Immobilising and confiscating state assets pose questions about domestic and international legality. It is controversial whether confiscation qualifies as a lawful countermeasure.[129] For countermeasures to be lawful, they must be temporary, reversible, and designed to induce compliance.

75. The legal, financial, and geopolitical pitfalls of confiscating immobilised Russian sovereign assets have been a focus of legal and policy discussions over the last two years. Russian assets abroad exceed $350 billion, held largely in EU jurisdictions, particularly through Euroclear.[130] G7 policymakers have considered using these assets in one form or another to support the reconstruction of Ukraine and explored several options for achieving this goal, such as reparation-backed loans and the use of the profits generated by immobilised sovereign assets (small relative to Ukraine's reconstruction needs).

76. **The use of immobilised Russian assets for the reconstruction of Ukraine has been presented as a way to implement Russia's state responsibility for the damage resulting from its war in Ukraine.** One prominent proposal is to frontload future earnings through loans backed by those earnings and guarantees from G7 states to provide financial assistance to Ukraine in the near term.[131] Such a "reparation loan" approach could allow Ukraine to obtain cash from frozen Russian sovereign assets without confiscating the assets. Ukraine's claim for war reparations against Russia would serve as collateral for the loan; if Russia fails to pay reparations, the lenders would set off Russian assets that they have immobilised at that stage. However, the implementation details of this and other proposals have been controversial. Open questions include the burden-sharing among lenders through guarantees or otherwise, the legality of set-off and the uncertain duration of sanctions.

77. **The outright confiscation of the assets (or immobilising assets for years) could establish a precedent that international law does not protect sovereign assets. It could also damage the credibility and attractiveness of the jurisdictions adopting these measures for sovereign assets in future**. Measures affecting sovereign assets taken in defense against aggression may invite retaliatory measures, including against companies and private parties. Innovative action may be needed in the current state affairs, provided it remains within the boundaries of international law. Yet, together, these knock-on consequences could undermine the stability of the international financial system due to broader systemic consequences.

IX. KEY DEVELOPMENTS IN THE FIELD OF BANKING REGULATION DURING 2024-2025[132]

A. International Financial Standards

[128] Szymon Zaręba (ed), Prospects for the Use of Frozen Assets of the Central Bank of Russia, Polish Institute of International Affairs, June 2025; Anna Caprile, Immobilised Russian Central Bank Assets European Parliamentary Research Service, March 2025.
[129] Miles Jackson and Federica I Paddeu, 'The Countermeasures of Others: When Can States Collaborate in the Taking of Countermeasures?' (2024) 118 American Journal of International Law, p. 231.
[130] Brad W Setser, How to Use Russia's Frozen Assets, Council on Foreign Relations, 21 November 2025.
[131] Hugo Dixon, Lee Buchheit and Daleep Singh, Ukrainian Reparation Loan: How It Would Work, 2024 SSRN Paper.
[132] Section prepared by Christos Gortsos.

1. Basel Committee on Banking Supervision (BCBS)

1.1 Revision of the Core Principles for Effective Banking Supervision

78. The **Core Principles for Effective Banking Supervision** of the Basel Committee on Banking Supervision **(BCBS)** were first issued in 1997 and then revised in October 2006, in September 2012 and, most recently, on 25 April 2024[133] (hereinafter '**BCP (2024)**'). To facilitate implementation and evaluation of these principles, the BCBS issued in 1999 an assessment methodology report titled "Core Principles Methodology" (last revised in 2024).[134] In the 2012 Report, the Core Principles and the assessment methodology were merged into a single document.

79. In their current form (as of April 2024), they contain a list of 29 principles that serve as a main point of reference for banking supervisory authorities and govern the banking regulation and supervision to ensure their effectiveness. They are categorised into two groups: principles 1-13 focus on the powers, responsibilities and functions of supervisory authorities and principles 14-29 on prudential regulations and requirements for banks. The newly adopted rules introduced amendments and novel elements relating to several "thematic topics" to reflect regulatory and supervisory developments in financial risks, including new risks, such as climate-related financial risks and digitalisation of finance; operational resilience;[135] systemic risk and macroprudential aspects of supervision; the NBFI system; and risk management practices. *Inter alia*, the Report also:

> *first*, sets out the 6 preconditions for effective banking supervision, namely: sound and sustainable macroeconomic policies; a well-established framework for financial stability policy formulation; a well-developed public infrastructure; a clear framework for crisis management, recovery and resolution; an appropriate level of systemic protection (or public safety net); and effective market discipline;[136] and
>
> *second*, analyses the criteria for assessing compliance with the Core Principles, including the powers, responsibilities, and functions of supervisory authorities.[137]

80. The BCP (2024) highlight the need to place greater focus on effective risk-based supervision and the need for "early intervention" and timely supervisory actions. They are included in the so-called "consolidated Basel Framework" (**CBF**).[138]

1.2 Banks exposure to crypto-assets

81. On 17 July 2024, the BCBS also published two documents in relation to banks' exposure to crypto-assets, which started being implemented on 1 January 2026:

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[133] See here. The new principles were based on a Consultative Document of July 2023, i.e., the wake of the March 2023 banking turmoil. This document was developed by a Task Force comprised of both BCBS and non-Committee member jurisdictions, as well as the IMF and World Bank.
[134] BCP (2024), pp. 11-16.
[135] On this aspect, see also the BCBS Report entitled Principles for operational resilience, 31 March 2021, which seeks to promote a principles-based approach to improving operational resilience.
[136] BCP (2024), pp. 17-19.
[137] *Ibid*., pp. 20-69.
[138] Available here.

1) The first related to targeted amendments to its standard on the "Prudential treatment of crypto-asset exposures" (of December 2022[139]).[140] These amendments aim (mainly) at further promoting a consistent understanding of the standard, particularly regarding the criteria for stablecoins to receive a preferential "Group 1b" regulatory treatment.

2) The second document concerned the establishment of a final "disclosure framework", which includes a set of standardised tables and templates covering banks' crypto-asset exposures to enhance information availability and support market discipline.[141] These require banks to disclose: *qualitative* information on their crypto-asset-related activities; and *quantitative* information on the capital and liquidity requirements for their crypto-asset exposures.

2. Revision of the Core Principles for Effective Deposit Insurance Systems of the International Association of Deposit Insurers (IADI)

82. The international financial standards governing the operation of DGSs are developed by the International Association of Deposit Insurers **(IADI)**. On 18 June 2009, this international financial forum issued, jointly with the BCBS, a Report on **Core Principles for Effective Deposit Insurance Systems**;[142] this was followed by the updated Core Principles for Effective Deposit Insurance Systems of 1 November 2014.[143] These reflected the need for effective deposit insurance in preserving financial stability in the wake of the (2007-2009) global financial crisis (**GFC**).[144]

83. In the wake of the Spring 2023 banking turmoil, on 14 December 2023, the IADI published a Report entitled "The 2023 banking turmoil and deposit insurance systems: Potential implications and emerging policy issues"[145] This Report undertook an overview of actions taken, amidst and in the wake of that turmoil, by deposit insurers across jurisdictions; as also noted in its Executive Summary, analysed, albeit in a descriptive way, the potential implications and emerging policy issues for DISs resulting from the spring 2023 financial turmoil; and identified a number of issues and challenges, in four key areas, which should be further analysed and inform the review of the IADI Core Principles.[146]

84. Heavily based on this Report, on 12 May 2025, the IADI launched a public consultation on proposed further revisions to the 2014 Core Principles, which was completed on 14 July.[147] The revised Core Principles were adopted and published in September 2025.[148] The update was guided by four objectives: (a) promoting a holistic view of the financial safety net and stressing the need for the effective interaction of all its components acknowledging different architectures across jurisdictions; (b) clarifying the interaction between deposit insurance and resolution frameworks to effectively deliver the public policy objectives of DISs; (c)

[139] Available here.
[140] Available here.
[141] Available here.
[142] Available here.
[143] Available here.
[144] IADI Core Principles (2014), p. 6.
[145] Available here.
[146] *Ibid.*, pp. 14-22, 5-6, 23-29 and 50-52, respectively.
[147] Available here. See on this Hüpkes (2023).
[148] Available here.

strengthening the Core Principles by including forward-looking and aspirational elements; and (d) future-proofing their application to deposit protection and deposit taking institutions while remaining tech-neutral.[149]

85. A novel element is the inclusion of the concept of "additional criteria" for some Principles. These are defined as "*aspirational and voluntary best practices that may be appropriate for some [DISs] that exceed current baseline expectations (i.e. Core Principles and Essential Criteria) to [DISs]*". They are expected to contribute to the robustness of deposit insurance frameworks.[150]

B. EU law

1. The 2021 'banking package' and its implementation

86. On 27 October 2021, the Commission adopted its so-called '2021 legislative banking package'.[151] This contained several legislative proposals amending the single rulebook for banking services in the EU, and namely the CRR, the CRD IV (and to a lesser extent the BRRD). It is part of the review of EU banking legislation after the establishment of the Banking Union (**BU**), which started in 2016 with the "Risk Reduction Measures Package", adopted in 2019.

87. The '2021 legislative banking package' was fully adopted on 31 May 2024, by two legislative acts of the European Parliament and the Council: **Regulation (EU) 2024/1623** "amending [the CRR] as regards requirements for credit risk, [CVA] risk, operational risk, market risk and the output floor"[152] (**CRR III**); and **Directive (EU) 2024/1619** "amending [the CRD IV] as regards supervisory powers, sanctions, third-country branches, and [ESG] risks"[153] (**CRD VI**). The key pillars are:

- the implementation into EU banking law, by amendment of the CRR and the CRD IV, of some recent international financial standards of the BCBS (namely, those contained in its Report of 7 December 2017 "Basel III: Finalising post-crisis reforms"[154] ('Complement to Basel III'), as in force), taking into consideration the specific features of the EU banking sector;
- the strengthening of banking supervision, by amendment of the CRD IV, to ensure EU credit institutions' sound management and better protect financial stability;
- the strengthening of the banking system's resilience to environmental, social and governance (**ESG**) risks as part of the Commission's new Sustainable Finance Strategy set out in its Communication of 6 July 2021; and
- the introduction in the CRD IV of a new framework on the prudential treatment of the branches in the EU of third-country banks.

88. In relation to the application of these legislative acts, the following applies:

[149] IADI Core Principles (2025), p. 5.
[150] *Ibid*., pp. 6-7.
[151] Available here.
[152] OJ L, 2024/1623, 19.6.2024.
[153] OJ L, 2024/1619, 19.6.2024.
[154] Available here.

First, the provisions of the CRR III apply from 1 January 2025, except for those which applied earlier, namely from 9 July 2024.[155] However, under Commission **Delegated Regulation (EU) 2024/2795** of 24 July 2024 "amending [the CRR] with regard to the date of application of the own funds requirements for market risk",[156] until 1 January 2026, credit institutions continued to apply Part Three, Title IV, and the market risk requirements of Articles 430, 430b, 445 and 455 CRR in the version in force on 8 July 2024. The deferral was further extended to 1 January 2027 by virtue of the homonymous Commission **Delegated Regulation (EU) 2025/1496** of 12 June 2025.[157] This is a by-product of the fact that major jurisdictions (such as the US and UK) have not (as yet) transposed into their legislation the related BCBS standards on the Fundamental Review of the Trading Book (**FRTB**). Given the highly competitive nature of international trading activities, this is a highly sensitive issue in terms of international level playing considerations.

Second, in relation to the provisions of the CRD VI (Article 1 of which contains 47 points on new provisions and amendment of existing ones), Member States were required to adopt and publish the laws, regulations and administrative provisions necessary to comply with that legislative act **by** 10 January 2026 and apply them from 11 January subject to specific exceptions.[158]

89. The proposed review of the crisis management and deposit insurance (CMDI) framework – still pending

90. On 18 April 2023, the Commission submitted a package of legislative proposals on the "review of the crisis management and deposit insurance (**CMDI**) framework. This legislative package proposed the amendment of the BBRD and the SRMR "as regards early intervention measures, conditions for resolution and funding of resolution action", as well as of the DGSD "as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency".[159] As of 10 March 2026, the new legislative acts had not been adopted by the European Parliament and the Council (which is expected to be the case during the first semester of 2026).

X. OUTLOOK

91. Over the past two years, MOCOMILA has made a sustained effort to remain closely engaged with the most challenging—and often controversial—developments in international monetary and financial law and thus honour the first part of ts mandate, namely to analyse the development of the legal framework governing the international monetary system. In this context, its work, as explained in detail above, has consistently focused on pressing

[155] Regulation (EU) 2024/1623, Article 2.
[156] OJ L, 2024/2795, 31.10.2024.
[157] OJ L, 2025/1496, 19.9.2025.
[158] Directive (EU) 2024/1619, Article 2.
[159] COM/2023/227 final, COM/2023/226 final and COM/2023/228, respectively.

contemporary challenges, including central bank independence, digitalisation, and the growing intersection between finance and sustainability.

92. MOCOMILA has not only reflected ongoing developments, but in line with the second part of its mandate, to contribute to the development of international law, has also actively contributed to shaping broader discourses and influencing emerging legal and policy concepts. MOCOMILA has put forward concrete proposals for the development of the field, including through the Resolutions it submitted in Athens and Vienna.This ambition has been further supported by the Committee's close engagement with policymakers, central bankers, and practitioners. By providing those involved in decision-making with ideas, concepts, and frameworks, MOCOMILA contributed to the progressive development of international law within its mandate. MOCOMILA's meetings also affirmed to all those participating in its meetings or having indirect access to its discussions the importance of the law in governing internationl monetary affairs. Such engagement is particularly valuable in a period marked by increasing fragmentation and uncertainty in international law and economic cooperation. MOCOMILA has consistently articulated and communicated to key stakeholders, such as legal advisers of central banks, clear and coherent messages on the importance of cooperation, mutual trust, and respect for international law in the monetary domain.

93. The Committee's forthcoming meetings—on 20–21 August 2026 in Vienna, 26–27 February 2027 in Zürich, and subsequently in Philadelphia—will continue to advance this agenda. In Vienna, MOCOMILA will contribute to ILA Plenary Panel VI on "Sustaining Global Monetary Cooperation in an Age of Geopolitical Fracture," situating its work within the broader challenges facing the international legal order.