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Brexit: EPC approves UK's participation in SEPA in no-deal scenario

The European Payments Council (EPC) has published a [decision paper](#) approving the application made by UK Finance for the continued participation of UK payment service providers (PSPs) in the Single Euro Payments Area (SEPA) after 29 March 2019 in the event of a no-deal Brexit.

The decision paper sets out a summary of the current situation and the potential transition period, as well as post-Brexit scenarios regarding UK PSPs' participation in the SEPA schemes, namely:

- continued participation if the UK remains in the EEA;
- continued participation if a free trade agreement is put in place and the UK implements requirements equivalent to the criteria for SEPA participation; and
- continued participation in a no-deal scenario provided the EPC's eligibility criteria are met.

Should the UK leave the EU without a deal on 29 March 2019, the EPC intends to regularly revisit its decision to ensure the UK's continued compliance under its scheme participation criteria.

Brexit: ESMA publishes statement on MiFID2/MiFIR and Benchmark Regulation provisions in no-deal scenario

The European Securities and Markets Authority (ESMA) has published a [statement](#) setting out its approach to the application of some key MiFID2/MiFIR and Benchmark Regulation (BMR) provisions should the UK leave the EU in a no-deal scenario.

The statement covers:

- MiFID2 C(6) carve-out;
- trading obligation for derivatives;
- ESMA opinions on post-trade transparency and position limits;
- post-trade transparency for OTC transactions between EU investment firms and UK counterparties; and
- ESMA register of administrators and third-country benchmarks.

Brexit: EBA publishes opinion on deposit protection issues in no deal scenario

The European Banking Authority (EBA) has published an [opinion](#), addressed to the Deposit Guarantee Schemes Designated Authorities (DGSDAs), setting out potential issues and recommendations relating to the protection of deposits in the EU branches of UK credit institutions in the event of a no deal Brexit. If the UK leaves the EU without a withdrawal agreement, these branches will cease to be protected by the EU deposit guarantee schemes (DGSs) and, depending on decisions made by the UK authorities, may be excluded from the scope of the UK DGS. Subsequently the EBA's opinion:

- recommends that UK credit institutions established in the EU should be required to join a DGS operating within the EU;
- sets out when, how and by whom depositors should be informed about any potential changes to the protection of their deposits in light of Brexit;
- reminds the DGSDAs of the applicable provisions regarding the transfer of some DGS funds between the UK and EU DGSs; and
- highlights issues associated with depositors in branches of EU credit institutions operating in the UK potentially being covered by both the UK and EU DGSs.

PRIIPs Regulation: ESAs propose amendments to Delegated Regulation on KIDs

The Joint Committee of the European Supervisory Authorities (ESAs) has submitted [draft regulatory technical standards](#) (RTS) to the EU Commission amending the Delegated Regulation on the key information document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

The amendment is intended to clarify the application of the KID to investment funds where these are offered as underlying investment options to a PRIIP, so-called multi-option products. The amendment follows a decision by the European co-legislators to defer the application of the KID to these investment funds by two years until the beginning of 2022. The proposed draft RTS aims to provide legal certainty to market participants before the expiry of the current provision in the PRIIPs Delegated Regulation at the end of 2019.

The draft RTS have been [submitted](#) to the EU Commission for endorsement and will then pass to the EU Council and Parliament for scrutiny.

MiFID2: ESMA publishes annual transparency calculations for equity and equity-like instruments

ESMA has published the [results](#) of the annual transparency calculations for equity and equity-like instruments.

The calculations include:

- the liquidity assessment;
- the most relevant market (MRM) in terms of liquidity;
- the average daily turnover (ADT) for determining pre- and post-trade large in scale (LIS) thresholds;
- the average value of the transactions (AVT) and the related standard market size (SMS); and
- the average daily number of transactions on the MRM relevant for the determination of tick-size.

The transparency requirements based on the annual calculations will apply from 1 April 2019 to 31 March 2020.

ESMA notes that it will ensure the public are notified in advance if adjustments are to be made to the MRM in terms of liquidity, as detailed in its [public statement](#) published on 5 February on the use of UK data in the event of a no-deal Brexit.

The annual calculation of the LIS and size specific to the instruments (SSTI) thresholds for bonds, originally planned to be published alongside the transparency calculations for equity and equity-like instruments, has been [delayed](#) to later in March to give the IT systems time to complete the calculations.

EBA consults on draft guidelines on funding plans reporting of credit institutions

The EBA has launched a [consultation](#) on updated draft guidelines on harmonised definitions and templates for the reporting of funding plans.

The guidelines have been updated due to the experience gained through the EBA's assessment of banks' funding plans in 2017 and 2018, as well as the questions raised via the EBA Single Rulebook Q&A tool.

Most of the proposed changes are intended to align the definitions and breakdowns used in the guidelines with those used in FINREP to facilitate the implementation and reduce reporting burdens. This alignment is also expected to increase the comparability and facilitate more automatic validations of the data provided. As a result, it is hoped the data production process for credit institutions will be made easier and will deliver better data quality.

Other changes are intended to improve the assessment of banks' funding plans and the relevance of the data provided for such assessments. This is the case for the additional breakdown of total long-term unsecured debt securities and the new template on forecast of the statement of profit or loss.

Comments are due by 5 June 2019.

Capital Markets Union: EU Council and Parliament reach political agreement on ESG disclosure rules

The EU Council Presidency and the EU Parliament have [reached a preliminary agreement](#) on a proposed regulation setting out how institutional investors and asset managers must integrate environmental, social and governance (ESG) factors in their risk processes.

In particular, financial market participants and asset managers will be required to disclose:

- the procedures to integrate ESG risk factors into their investment and advisory processes;
- the extent to which those risks might have an impact on the profitability of the investment; and
- information on how the green investment strategy is implemented as well as the sustainability impact of their products and portfolios.

The text will be submitted to the Permanent Representatives Committee (Coreper) for endorsement and then undergo a legal linguistic revision. The EU Council and the EU Parliament will be called on to adopt the proposed regulation at first reading.

AML/CFT: EU Council rejects Commission's draft list of high-risk third countries

The EU Council has unanimously [decided](#) to reject a draft list submitted by the EU Commission which identifies high-risk third countries for the purposes of the fifth Anti-Money Laundering Directive (AMLD 5). AMLD 5 requires the identification of third countries that have strategic deficiencies in their anti-money laundering (AML) and counter terrorist financing (CFT) regimes that pose significant threats to the EU financial system.

The EU Council took the view that the proposed list had not been established through a transparent and resilient process and did not actively incentivise affected countries to take action. The EU Commission will now have to propose a new draft list that addresses the concerns raised by the EU Council.

EU Council adopts cross-border payments and currency conversion charges regulation

The EU Council has [adopted](#) the proposed regulation on cross-border payments and currency conversion charges.

The proposed regulation amends the current cross-border payments regulation in order to:

- align charges for cross-border payments in euros for services such as credit transfers, card payments or cash withdrawals with charges for corresponding national payments of the same value in the national currency of the Member State where the payment service provider of the payment service user is located; and,
- increase transparency requirements relating to the charge for currency conversion services.

The regulation will enter into force on the twentieth day following its publication in the Official Journal, with the majority of its provisions applying from 15 December 2019.

BRRD: Delegated Regulation on simplified obligations published in Official Journal

[Commission Delegated Regulation \(EU\) 2019/348](#) with regard to regulatory technical standards (RTS) setting out the quantitative and qualitative criteria for granting simplified obligations under the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal.

The Delegated Regulation seeks to create a common framework for assessing institutions' eligibility for simplified obligations, and to facilitate cooperation among competent and resolution authorities in conducting assessments.

Once in force, the RTS will replace the EBA's guidelines on the application of simplified obligations (EBA/GL/2015/16).

The Regulation will enter into force on 24 March 2019.

ECB and Bank of England activate currency swap line

The European Central Bank (ECB) and Bank of England (BoE) have [activated](#) a bilateral swap line enabling the BoE to lend euros to eligible UK institutions.

Facilitated as part of the existing international network of standing swap lines, the BoE will obtain euro from the ECB in exchange for sterling in order to conduct new Liquidity Facility in Euros (LiFE) operations with members of the Sterling Monetary Framework (SMF). LiFE operations will commence on a weekly basis from 13 March 2019.

The BoE has published a [market notice](#) alongside a press release providing additional details and the terms of the euro repo operations, which are intended to complement the BoE's existing weekly US dollar repo facility, as well as the move to weekly sterling operations announced on 26 February 2019.

According to the ECB press release, the Eurosystem stands ready to lend sterling to euro area banks if the need arises.

Both the ECB and BoE are monitoring market conditions and keeping operations, including their frequency, under review.

BCBS and IOSCO issue joint statement on final implementation of margin requirements for non-centrally cleared derivatives

The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) have issued a joint [statement](#) on the final implementation phases of the margin requirements for non-centrally cleared derivatives.

In the statement, they advise that:

- market participants that need to amend derivatives contracts solely for the purpose of addressing interest rate benchmark reforms are not required to apply the margin requirement for the purposes of the BCBS/IOSCO framework; and

- the remaining phases of the margin requirements framework will be implemented in 2019 and 2020 and will apply to a large number of entities for the first time, potentially imposing documentation, custodial and operational arrangements. The BCBS and IOSCO note that the framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's EUR 50 million initial margin threshold, but expect that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.

Brexit: SIs under the EU (Withdrawal) Act for 4 - 8 March 2019

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week, including the [draft Network and Information Systems \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), which were laid for sifting.

The following statutory instruments were made:

- the [Civil Jurisdiction and Judgments \(Amendment\) \(EU Exit\) Regulations 2019 \(SI 2019/479\)](#); and
- the [Data Protection, Privacy and Electronic Communications \(Amendments etc.\) \(EU Exit\) Regulations 2019 \(SI 2019/419\)](#).

For information on all draft SIs under the EU (Withdrawal) Act published last week, visit www.gov.uk and www.legislation.gov.uk.

Brexit: LSE publishes no-deal amendments to primary and secondary market rulebooks

The London Stock Exchange (LSE) has published proposed amendments to its rulebooks as part of its ongoing contingency planning for a no-deal Brexit.

Attached to the market notice on amendments to the LSE primary market rulebooks ([N04/19](#)) are mark ups of the:

- [Admission and Disclosure Standards](#);
- [AIM Rules for Companies](#);
- [AIM Rules for Nominated Advisers](#); and
- [International Securities Market Rulebook](#).

Attached to the market notice on amendments to the LSE secondary market rulebooks ([N05/19](#)) are mark ups of the:

- [Rules of the LSE](#); and
- [derivatives market rule book](#).

The amendments are intended to align with, and are consequential to, the changes proposed by the UK Government under the European Union (Withdrawal) Act 2018 and will only come into effect in the event of a no-deal Brexit.

Brexit: PSR publishes policy statement on onshoring Interchange Fee Regulation RTS

The Payment Systems Regulator (PSR) has adopted, and published a [policy statement](#) setting out, the final EU Exit instrument onshoring the regulatory technical standards (RTS) adopted under Article 7 of the Interchange Fee Regulation (IFR, also known as the MIF Regulation) on the independence requirements applicable to payment card schemes and processing entities.

The EU Exit instrument, which will take effect on 29 March 2019 (exit day) if the UK leaves the EU without a deal, makes minor amendments to the RTS to ensure that they:

- function effectively after the UK leaves the EU on exit day; and
- are consistent with amendments made to the IFR by the Interchange Fee (Amendment) (EU Exit) Regulations 2019 (SI 2019/284).

Brexit: FCA publishes Statements of Policy on MiFID transparency regime

The Financial Conduct Authority (FCA) has published [Statements of Policy](#) setting out how it will operate the MiFID transparency regime in the event the UK leaves the EU without an implementation period.

The MiFID transparency regime operates by the European Securities and Markets Authority (ESMA) validating data on trading across the EU and performing calculations to set assorted thresholds and make various determinations. If the UK leaves the EU without an implementation period agreed between the UK and the EU, the FCA will be solely responsible for operating the regime in the UK.

The onshored UK regime gives the FCA new decision-making powers and new obligations to operate the transparency regime, giving the FCA a four-year transitional period to allow it to build the systems necessary to operate the system as ESMA currently does, and to change the regime from an EU-wide trading data set to a UK-only data set if needed.

The FCA's Statements of Policy outline how the FCA may expect to use these new powers and aim to give further clarity to market participants ahead of Brexit.

FCA finalises rules on register of key individuals working in financial services

The FCA has published Policy Statement [PS19/7](#) setting out its final rules for the Directory, a public register of information on key individuals working in financial services.

The FCA intends that the directory will be a resource for firms to cross-check references and allow consumers to ensure they only deal with suitably qualified individuals.

Users will be able to search the Directory for information on:

- all directors and senior managers;
- all staff certified as fit and proper by their firm; and
- other important individuals who require a qualification to undertake business with clients.

The FCA consulted on introducing the Directory in July 2017. PS19/7 summarises feedback to the consultation and the FCA's response, as well as setting out the final rules on establishing the Directory.

Banking and insurance firms can begin submitting data on individuals from September 2019 and other firms can submit data as of 9 December 2019 following commencement of the Senior Managers and Certification Regime (SM&CR) for solo-regulated firms.

The Directory is expected to go live in March 2020.

PRA publishes policy statement on credit risk and definition of default

The Prudential Regulation Authority (PRA) has published a policy statement ([PS7/9](#)) providing feedback to responses to its consultation 'Credit risk: definition of default' (CP17/18) and setting out its final policy.

Respondents generally supported the PRA's proposals in CP17/18, but some responses outlined specific concerns and requests for clarification. As a result, the PRA has made some changes to its proposals.

PS7/9 also contains the PRA's final policy, including:

- an amendment to the Credit Risk Part of the PRA Rulebook to set thresholds for determining whether a credit obligation is material for the purpose of the Capital Requirements Regulation (CRR) definition of default; and
- an update to the PRA's expectations in supervisory statement 'Internal Ratings Based (IRB) approaches' ([SS11/13](#)) to implement the European Banking Authority's regulatory products that relate to the definition of default.

The PRA rule and updates to SS11/13 apply from 31 December 2020, unless a firm attains supervisory approval to extend this application date.

The PRA intends to launch a further consultation on its proposed implementation of:

- the guidelines on probability of default estimation, loss given default estimation and the treatment of defaulted exposures;
- the RTS that specifies the nature, severity and duration of an economic downturn; and
- the guidelines for the estimation of loss given default appropriate for an economic downturn.

Consob issues warning on cost information in provision of investment services

The Italian securities regulator (Consob) has issued a [warning](#) concerning the new MiFID2 regime on transparency of costs.

MiFID2 provides for a higher degree of disclosure than the one required under the previous framework (MiFID). In particular, the aim of the new legislation is to ensure better investor awareness of costs and burdens when evaluating investments, thus allowing them to compare both services and financial instruments.

Consob has specified that it has supervisory powers to ensure the proper compliance with these rules.

The warning states that all intermediaries shall notify Consob of the procedures they have adopted to be compliant and the outcomes of the controls implemented through the process of compliance.

Poland prepares for no-deal Brexit

The Polish Council of Ministers has adopted three draft Acts in case the United Kingdom leaves the EU without an agreement. The [first draft](#), on the rules on activities of certain financial market entities from the United Kingdom and Gibraltar, secures the interests of financial institutions registered in the United Kingdom or Gibraltar and conducting activities in Poland.

The [second draft](#) sets out the rules for recognition in Poland of professional qualifications obtained in the United Kingdom.

The [third draft](#) establishes the rules for UK citizens and members of their families to stay in Poland in case of a no-deal Brexit.

The drafts will now be sent to the Sejm.

Polish Financial Supervision Authority adopts draft assumptions for Amendment to Recommendation A

The Polish Financial Supervision Authority has [adopted](#) the draft assumptions for the amendment of Recommendation A on the management of risks associated with banks executing derivatives market transactions.

The purpose of the amendment is to identify best practices with regard to the management of risks associated with derivatives market transactions entered into by banks, and to define the principles which should be taken into account in contacts with clients who enter into or have entered into such transactions.

Royal Decree-Law setting out contingency measures for no-deal Brexit published

The Spanish Government has published [Royal Decree-Law 5/2019](#) that aims to prevent market disruption and negative implications for the financial markets in case of a no-deal Brexit. Royal Decree-Law 5/2019 sets out contingency measures aimed at preserving the interests of Spanish and British citizens who have exercised their right to free movement before Brexit Day and Spanish economic interests.

Key points affecting financial services include:

- contracts for the provision of banking, securities, insurance or other financial services entered into in Spain by UK regulated entities before Brexit will remain in force following a no-deal Brexit;
- UK entities must obtain a new authorisation under the relevant third-country authorisation regime to amend existing contracts or to enter into new ones;
- existing licences will remain in force for a transitional period of nine months following a no-deal Brexit to enable the termination or assignment of existing contracts or the application for a new third-country authorisation;

- contracts entered into after Brexit Day are out of scope, so UK entities will not be allowed to enter into new contracts thereafter until, and if, a new third-country authorisation is obtained; and
- transitional measures will enter into force on Brexit Day, unless a withdrawal agreement between the EU and the UK enters into force before such date.

FSC announces financial policy roadmap for 2019

The Financial Services Commission (FSC) has [announced](#) the financial policy roadmap for 2019. The financial policy roadmap is intended to promote financial innovation, ensure trust in finance and secure financial stability.

Amongst other things, the key policy tasks focus on:

- revising financing mechanisms to enable start-ups and small and medium-sized enterprises to borrow or raise funds based on their growth potential;
- managing corporate debt risks with an enhanced evaluation system for credit risks and market-driven corporate restructuring;
- establishing a regulatory and supervisory framework for systemic risks in the non-banking sector;
- ensuring fairness and transparency to protect investors and shareholders;
- introducing the imposition of fines as one of the disciplinary actions against unfair trading activities, e.g. insider trading or price manipulation;
- improving companies' disclosure rules and procedures of annual general meetings to help shareholders to be better informed to exercise their rights, and amending the disclosure rules for large shareholdings to support the exercise of the stewardship code by institutional investors;
- enacting a comprehensive bill on financial consumer protection, which requires financial companies to adopt principles in sales practices to make sure consumers are better informed when purchasing financial products and services, and provides consumers with remedies in case of unfair contracts;
- expanding financial inclusion with a tailored policy approach;
- allowing more newcomers to enter financial business to promote competition and innovation;
- amending the Credit Information Act to facilitate the use of big data in the financial sector;
- introducing an open banking system which enables fintech firms to share payment networks with banks to encourage the development of new payment services; and
- revising the regulatory framework for electronic financial business to create more flexibility in response to new types of payment services.

FSC to establish open banking system for fintech firms

The FSC has [proposed](#) to establish an open banking system to allow fintech firms access to the banks' payment network, which aims to encourage the development of new payment services and greater competition in the financial sector.

The FSC notes that the current financial payment network has a closed system accessible only by banks. Under the current system, even banks can only process their own bank account-based transactions. Although banks jointly launched an open application programming interface (API) system in August 2016, access to the API system has been limited only to small fintech firms charging relatively high fees.

Against this backdrop, the FSC plans to introduce an open banking system in three phases:

- Phase 1: banks' voluntary agreement on open banking system - banks agree to open their payment networks to all fintech payment service providers as well as other banks, enabling customers to use a single banking application to access to their accounts at different banks and make payments. Fees charged to fintech firms for using the network will be lowered to one tenth of the current level to ensure fair competition;
- Phase 2: legislation on open banking - the FSC will propose amendments to the Electronic Financial Transaction Act to provide clear legal grounds for the open banking system. The amended Act will mandate all banks to offer payment service providers with standardised APIs for money transfer and prohibit them from any discriminatory action against payment service providers using their payment system in processing money transfer and charging fees; and
- Phase 3: fintech firms' direct access to financial payment system - the FSC will consider allowing qualified fintech payment service providers to directly access to the payment system without relying on banks' services.

In addition, the FSC proposes to overhaul the current regulatory framework on electronic financial business to promote innovation and competition in financial payment services. Under the new regulatory framework, licenses on electronic financial business will be granted on a business-function basis, rather than a business-sector basis, to better reflect diversification of payment services sector.

Further, the FSC has indicated that it expects banks to finalise details about their voluntary agreement on the open banking system in the first half of 2019 with a view to being in full operation within 2019. It plans to submit its proposal to amend the Electronic Financial Transaction Act in the third quarter of 2019.

HKMA issues circular on reform of interest rate benchmarks

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) calling on authorised institutions to prepare for the transition associated with the interest rate benchmark reform being pursued under the auspices of the Financial Stability Board (FSB).

The HKMA notes that, as an FSB member, Hong Kong is obliged to follow the FSB's recommendation to identify an alternative reference rate (ARR) to the Hong Kong Interbank Offered Rate. The Treasury Market Association has proposed to adopt the Hong Kong Dollar Overnight Index Average as the ARR and plans to consult industry stakeholders later in 2019.

The HKMA also notes that the ongoing interest rate benchmark reform will have significant implications for authorised institutions' businesses, risk

management and operational processes, and that the corresponding preparatory work can be substantial and complicated. It therefore advises authorised institutions to start making preparation for the transition to ARRs in case the need to fall back on such ARRs arises. The preparatory work should cover the following elements:

- regular quantification and monitoring of affected exposures;
- identification and evaluation of key risks arising from the reform under different scenarios including but not limited to a London Interbank Offered Rate discontinuation scenario;
- formulating an action plan prudently to manage the risks identified; and
- closely monitoring the developments of benchmark reform both in Hong Kong and internationally and updating the scenarios and action plan as appropriate.

The HKMA has also advised the boards of directors of locally incorporated authorised institutions and the head/regional offices of authorised institutions incorporated overseas to provide oversight of the process and be kept informed of the progress of the preparatory work.

Further, the HKMA has indicated that, as the reform develops, it may approach authorised institutions again to understand their progress and readiness for the transition.

SFC invites licensed corporations to participate in asset and wealth management activities survey 2018

The Securities and Futures Commission (SFC) has issued a [circular](#) inviting licensed corporations engaged in asset and wealth management activities to participate in its annual asset and wealth management activities survey 2018. The survey is intended to collect information on asset and wealth management activities in Hong Kong for regulatory and market facilitation purposes and develop a better understanding of the state of the asset and wealth management industry in Hong Kong.

The SFC invites licensed corporations to complete and return the questionnaire to it on or before 1 April 2019. It also clarifies that, from 2019 onwards, licensed corporations can submit their responses to the survey questionnaire through an online submission system.

In addition, the HKMA has [issued a circular](#) inviting all registered institutions to participate in the SFC survey.

ASIC consults on coverage of ePayments Code review

The Australian Securities and Investments Commission (ASIC) has launched a [public consultation](#) on the proposed coverage of its review of the [ePayments Code](#). The consultation paper is the first of two consultation papers which ASIC plans to issue in 2019 on its review of the ePayments Code.

ASIC's review of the ePayments Code is intended to assess its fitness for purpose, noting significant developments in financial technological innovation and the need to ensure the Code is simple to apply and easy to understand. In its review, ASIC proposes to focus on testing the effectiveness of the following areas of the Code:

- options for future proofing the Code;

- complaints handling provisions;
- provisions relating to unauthorised transactions;
- data reporting requirements;
- provisions relating to mistaken internet payments; and
- small business access to the Code provisions.

Comments on the consultation paper are due by 5 April 2019.

ASIC has also indicated that it plans to issue the second consultation paper on its proposals for amendments to the Code in August 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

A guide to the EU Foreign Investment Screening Regulation

The EU Regulation establishing a framework for the screening of foreign direct investments into the EU will become applicable on 10 October 2020.

The Regulation will allow the EU Commission to review (but not block) certain investments of 'Union interest' and to issue a non-binding opinion to the Member State in which the investment takes place. It also clarifies the scope of the issues that Member States may take into account when applying their national screening regimes without falling foul of EU law, sets certain common standards for those regimes and implements a system of cooperation and information exchange between Member States and the Commission.

The legal confirmation that Member States may legitimately block foreign takeovers involving critical infrastructure, technologies, raw materials and sensitive information is likely to lead to some Member States introducing new foreign investment screening regimes or broadening the scope of their existing regimes. This, combined with increased exchanges of information between Member States, will lead to transactions being scrutinised on public interest and national security grounds that are not, at present, caught.

https://www.cliffordchance.com/briefings/2019/03/a_guide_to_the_euforeigninvestmentscreenin.html

An international guide to anti-corruption legislation

Anti-corruption laws around the world continue to converge, partly as a result of international anti-corruption conventions, but there remain substantive differences in the scope of offences and the way in which they are expressed, as well as in the definition of key terms. For multinationals seeking to implement a global anti-corruption programme on the basis of fundamental principles, while at the same time ensuring compliance with local laws, it remains important to understand these differences.

By focusing on ten key questions, our guide aims to elucidate both the differences and the similarities in anti-corruption laws around the world.

https://www.cliffordchance.com/briefings/2019/03/an_internationalguidetoanti-corruptio.html

Banking syndicate successfully defends EURIBOR misrepresentation claims

The High Court, in *Marme Inversiones 2007 SL v Natwest Markets PLC & Ors* [2019] EWHC 366 (Comm), has rejected another claim involving allegations about the rigging of an IBOR benchmark. In dismissing the claim, the High Court has given detailed guidance on the application of the Court of Appeal's decision in *PAG v RBS* [2018] EWCA Civ 355 and confirmed the importance of the underlying facts in misrepresentation claims concerning sophisticated financial transactions.

This briefing paper discusses the judgment.

https://www.cliffordchance.com/briefings/2019/03/banking_syndicatesuccessfullydefendeuribo.html

Spain prepares for no-deal Brexit

On 30 March 2019 the UK will leave the EU, unless the UK withdraws its exit decision or it agrees an extension of the negotiation period with the EU.

As of today, a no-deal Brexit remains a possibility. In order to prevent market disruption and negative implications for the financial markets in case of a no-deal Brexit, the Spanish government has published a Royal Decree-Law with contingency measures aimed at preserving the interests of Spanish and British citizens who exercised their right to free movement before 30 March 2019 and Spanish economic interests.

This briefing paper discusses Spain's preparations for a no-deal Brexit.

https://www.cliffordchance.com/briefings/2019/03/spain_prepares_forno-dealbrexit.html

US Supreme Court says international organizations are not absolutely immune from suit – but avenues for dismissing US lawsuits remain

On 27 February 2019, the US Supreme Court issued an opinion in *Budha Ismail Jam v International Finance Corporation* (No. 17-1011) holding that the International Organizations Immunities Act does not provide international organizations with absolute immunity from suit in the United States. Writing for a 7-1 majority, Chief Justice John Roberts said that international organizations have the same immunity enjoyed by foreign sovereigns under the Foreign Sovereign Immunities Act—meaning restrictive immunity that is subject to several statutory exceptions, including an exception for lawsuits based on commercial activity. The decision overturned longstanding precedent in the US Court of Appeals for the District of Columbia Circuit.

This briefing paper discusses the decision and its implications.

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Navigating the Australian Banking and Financial Services regulatory landscape in the wake of the banking Royal Commission final report

The final report brings Australia's highly retail-focused Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to a close, with a series of recommendations which, in an election year, promise to reshape the regulatory compliance and enforcement landscape for the entire industry.

Picking up from where the interim report (published in September 2018) left off, the final report details a range of issues that have been identified from the matters examined by the Commission over its seven rounds of public hearings, as well as their causes, before laying out the Commission's responses and some 76 recommendations for legal and regulatory reform. Key among these are recommendations designed to address identified cultural failings pervading both the industry and its regulators, including failings by the industry to eliminate conflicts of personal interest and duty, and failings by regulators, particularly the Australian Securities and Investments Commission (ASIC), properly to take account of the public interest in its pursuit of enforcement outcomes.

This briefing paper discusses the final report.

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