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EU FINANCIAL SERVICES LEGISLATION STOCKTAKE

SEPTEMBER 2019

EU FINANCIAL SERVICES LEGISLATION STOCKTAKE

The start of the new European Commission’s term on 1 November is a good time to take stock of upcoming implementation challenges for firms under EU financial services legislation, as well as to review possible future legislative initiatives.

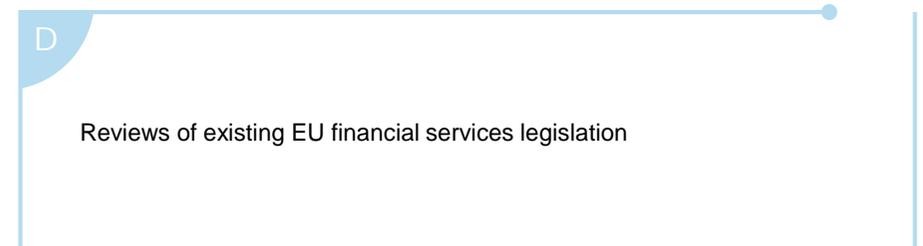
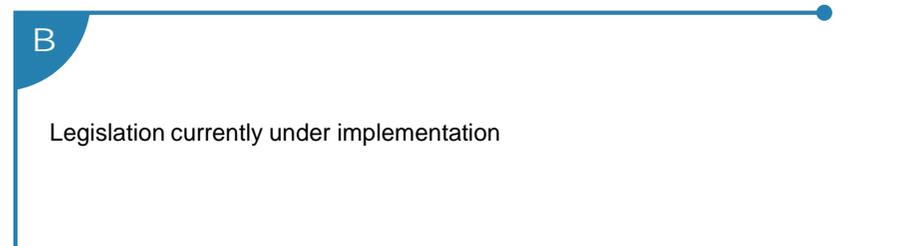
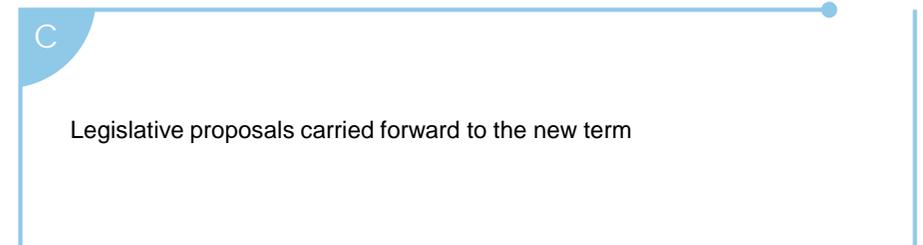
During the last sessions of the previous European Parliament before the June elections, the European Parliament and the Council of the EU reached agreement on more than 20 new EU directives and regulations directly affecting the financial services sector. Some of these texts received a lot of attention from firms during the negotiation stage, whereas others may have flown under firms’ radar.

Section A of this document provides a stocktake of these measures, including expected timing for publication in the Official Journal, entry into force and application of new requirements.

Section B identifies key EU financial services legislation in the implementation phase – i.e., legislation that is already in force but where requirements that have not yet taken effect.

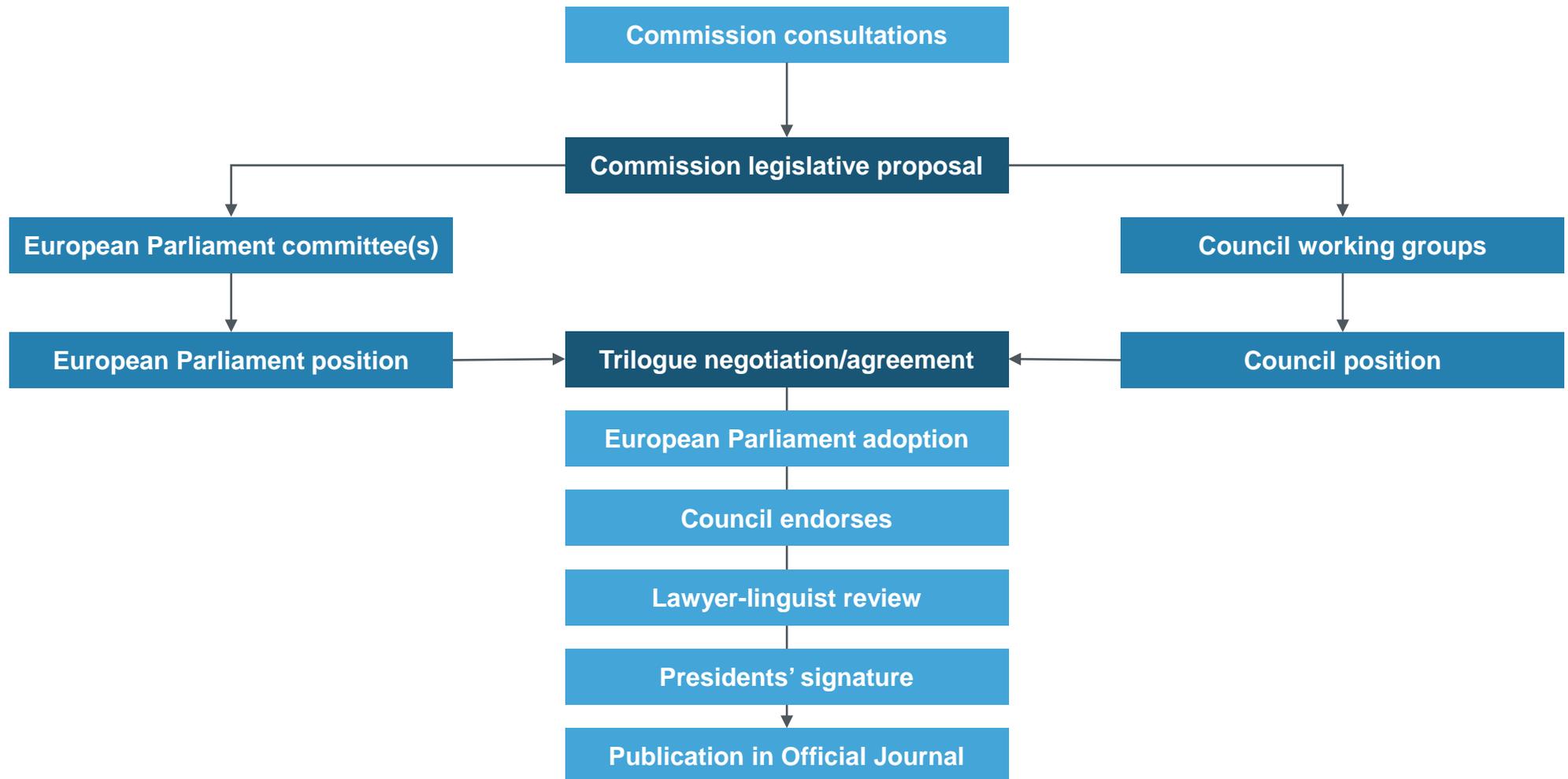
Section C of this document then lists the main proposals for financial services legislation where the Parliament and the Council had not yet reached agreement and on which work may resume under the new Parliament and Commission later in the year (unless the Commission chooses to withdraw the proposal in accordance with the principle of “political discontinuity”).

Finally, section D identifies various upcoming or ongoing reviews of existing legislation. In addition, the new Commission will develop its own legislative agenda on financial services, which may lead to new legislative proposals on, among other things, the implementation of Basel III (final), banking union, capital markets union, sustainable finance, fintech or cyber-security.



EU ORDINARY LEGISLATIVE PROCESS IN PRACTICE

AN OVERVIEW



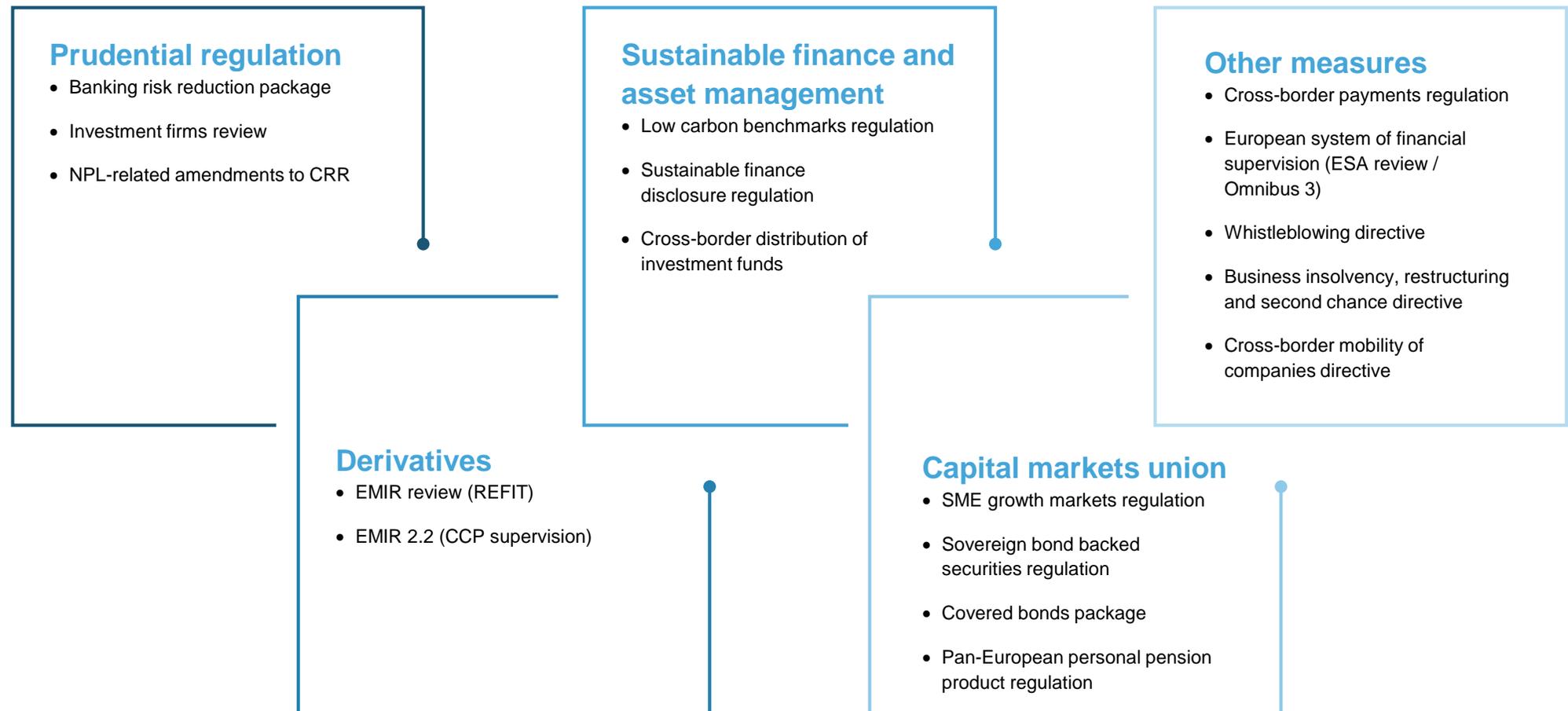
Assumes that the Parliament and the Council reach agreement in first reading, so that the Council endorses the text adopted by the Parliament.



A. LEGISLATION AGREED BY THE PARLIAMENT AND COUNCIL



OVERVIEW OF LEGISLATION AGREED BY THE EUROPEAN PARLIAMENT AND THE COUNCIL



These measures were all agreed in trilogue and adopted by the European Parliament before the June elections and are now in the process of being endorsed by the Council and published in the Official Journal.

PRUDENTIAL REGULATION

Banking risk reduction package

Wide-ranging amendments to capital requirements directive and regulation, including introduction of TLAC standards for GSIBs, EU Intermediate Parent Undertaking (IPU) requirements, parent holding company licensing requirements and revisions to capital requirements to align with Basel III standards. Amendments to the recovery and resolution regime for banks and other in-scope firms, including alignment of MLEL with international TLAC standards, amendments to Article 55 and new provisions on resolution stays.

Status / expected timing

Published in OJ 7 June 2019 and entered into force 20 days later.

Some CRR amendments applied from entry into force with most other provisions applying from 18 months or 2 years later.

Links

- [CRR2](#)
- [CRD5](#)
- [BRRD2](#)
- [SRM2](#)

Implementation impact

High

Investment firms review

Introduces a new prudential regime for investment firms. The largest investment firms (Class 1, systemic firms) would be treated as (or as if they were) credit institutions and remain subject to the prudential regime under CRD/CRR. Non-systemic firms would be subject to a new 2-tier prudential regime, with small, non-interconnected firms (Class 3) subject to a lighter, less complex regime. For other (Class 2) firms, the new regime introduces a new “K-factor” approach for measuring their risks as the basis for setting capital requirements. Also introduces remuneration requirements on a consolidated basis and changes to the regimes for systematic internalisers and third-country firms under MiFID2 and MIFIR.

Status / expected timing

Publication in OJ expected in coming months.

18 month transposition / application period for most requirements.

Links

- [Investment firms directive](#)
- [Investment firms regulation](#)

Implementation impact

High

NPL-related amendments to CRR

Amends CRR to introduce higher minimum capital charges / coverage for banks holding non-performing exposures on their balance sheets.

Status / expected timing

Published in OJ 25 April 2019.

Applies in respect of non-performing exposures originated on or after 26 April 2019.

Links

- [Regulation on minimum loss-coverage for NPLs](#)

Implementation impact

Medium

DERIVATIVES

EMIR review (REFIT)

EMIR Refit makes targeted amendments to EMIR, including amendments to the definition of financial counterparty (FC), introducing a clearing threshold for smaller FCs, introducing asset class by asset class clearing requirements for non-financial counterparties (NFCs), placing new duties on firms offering clearing services to do so on a fair, reasonable, non-discriminatory and transparent basis, removing frontloading, requiring FCs to report on behalf of smaller NFCs and giving the Commission powers to temporarily suspend the clearing obligation.

Status / expected timing

Published in OJ 28 May 2019 and entered into force 20 days later.

Some amendments applied from entry into force with others applying 6, 12 or 24 months later.

Links

- [EMIR Refit](#)

Implementation impact

High

EMIR 2.2 (CCP supervision)

EMIR 2.2 revises the supervisory framework for CCPs under EMIR, including power to impose a location requirement for non-EU CCPs that are of such systemic importance that direct supervision is deemed insufficient to mitigate the potential risks, imposing new requirements on other systemically important non-EU CCPs and giving ESMA and EU central banks direct powers over EU CCPs.

Status / expected timing

Publication in OJ expected in coming months.

Amendments apply immediately from entry into force; ESMA due to submit Level 2 standards to the Commission 12 months later.

Links

- [EMIR 2.2](#)

Implementation impact

Low

SUSTAINABLE FINANCE AND ASSET MANAGEMENT

Sustainable finance disclosure regulation

Part of the Sustainable Finance Action Plan package. The Regulation imposes new duties and disclosure obligations on investment advisers, asset managers and other financial market participants in relation to environmental, social and governance (ESG) factors.

Status / expected timing

Publication in OJ expected in coming months.

It will apply from 15 months after publication in the OJ.

Links

- [Regulation on sustainable finance disclosures](#)

Implementation impact

High

Low carbon benchmarks regulation

Part of the Sustainable Finance Action Plan package. The Regulation defines and introduces requirements in relation to two new categories of benchmarks, “EU Climate Transition Benchmarks” and “EU Paris-aligned Benchmarks”. It also extends the transitional period under the Benchmarks Regulation for administrators of critical and third country benchmarks.

Status / expected timing

Publication in OJ expected in coming months.

Amendments to the BMR will apply immediately. Most other requirements will apply from 30 April 2020.

Links

- [Low Carbon Benchmarks Regulation](#)

Implementation impact

Medium

Cross-border distribution of investment funds

Aims to align national marketing requirements and regulatory fees, as well as the process for verification of marketing material by national competent authorities. Also seeks to harmonize rules on what constitutes ‘marketing’ v ‘pre-marketing’ and sets out when managers may stop marketing a fund in a particular Member State.

Status / expected timing

Published in OJ 12 July 2019 and entered into force 20 days later.

Some changes applied from entry into force but most substantive new requirements apply 2 years later.

Links

- [Regulation](#)
- [Directive](#)

Implementation impact

Medium

CAPITAL MARKETS UNION

SME growth markets regulation

The Regulation amends MAR and the Prospectus Regulation with the aim of making more proportionate rules to support SME listing while safeguarding investor protection and market integrity. NB this sits alongside a delegated regulation making technical adjustments to MiFID2 – not yet published in OJ.

Status / expected timing

Publication in OJ expected in coming months.

Applies from entry into force, or 12 months later in the case of amendments to MAR.

Links

- [SME Growth Markets Regulation](#)

Implementation impact

Low

Sovereign bond-backed securities regulation

The regulation on sovereign bond-backed securities (SBBS) sets out an enabling framework for the development of a market for SBBS. SBBS are a new class of low-risk securities backed by a diversified pool of national government bonds. The SBBS Regulation sets out common criteria that SBBS must meet in order to be labelled as SBBS. It also aims to remove regulatory impediments to the development of SBBS (e.g. in relation to capital requirements) and create a regulatory level playing field between SBBS and underlying bonds.

Status / expected timing

Publication in OJ expected in coming months.

Staggered application.

Links

- [SBBS Regulation](#)

Implementation impact

Low

CAPITAL MARKETS UNION (CONTINUED)

Covered bonds package

The Directive sets out a harmonized definition of covered bonds for prudential regulation purposes, imposes supervisory requirements for covered bonds and sets out rules for use of the “European Covered Bonds” label. The Regulation amends CRR conditions for granting preferential capital treatment for covered bonds.

Status / expected timing

Publication in OJ expected in coming months.

The Directive has an 18 month transposition deadline, with application from a further 12 months later.

Links

- [Covered bonds regulation](#)
- [Covered bonds directive](#)

Implementation impact

Low

Pan-European personal pension product regulation

Regulation on a pan-European personal pension product (PEPP) setting out core features of and requirements for PEPPs, including transparency, investment rules, switching and portability. The Commission has stated that it expects that the first providers will start to offer PEPPs approximately 2 years after the Regulation enters into force.

Status / expected timing

Published in OJ 25 July 2019 and entered into force 20 days later.

Will apply 12 months after related delegated acts are published in the OJ.

Links

- [Personal Pension Regulation](#)

Implementation impact

Low

OTHER MEASURES

Cross-border payments regulation

Enhances the 'price equality rule' for cross-border payments (so that fees for cross-border transactions in euro are the same as for domestic national currency transactions) and introduces rules on transparency of currency conversion services.

Status / expected timing

Published in the OJ 29 March 2019 and entered into force 20 days later.

Enhanced price equality rule applies December 2019.
Other requirements apply 19 April 2020/21.

Links

- [CBPR2](#)

Implementation impact

Medium

European system of financial supervision (ESA review / Omnibus 3)

This wide-ranging package of measures will introduce changes to European Supervisory Authorities' (ESAs) governance and funding structures and supervisory powers. It will grant ESMA new powers to supervise data reporting service providers and administrators of critical benchmarks and non-EU benchmarks and will grant the ESAs enhanced anti-money laundering powers and responsibilities. It will also introduce powers for ESAs to issue opinions calling for the Commission to take urgent action, for example to amend or delay application of new rules, in certain circumstances.

Status / expected timing

Publication in OJ expected in coming months.

Staggered application with some changes applying immediately and others between 3 and 24 months after entry into force.

Links

- [Regulation](#)
- [Directive](#)
- [Regulation](#) amending ESRB regulation

Implementation impact

Low

Whistleblowing directive

Introduces a harmonised EU framework for protection of whistleblowers.

Status / expected timing

Publication in OJ expected in coming months.

2 year national implemented period and an application deadline a further 2 years afterwards.

Links

- [Whistleblowing Directive](#)

Implementation impact

Low

OTHER MEASURES (CONTINUED)

Business insolvency, restructuring and second chance directive

The Directive creates minimum standards for preventive restructuring frameworks aimed at non-financial corporate entities, creates a “second chance” (the introduction of a maximum discharge period of 3 years for the debts of individual entrepreneurs) and introduces measures to increase the efficiency of restructuring, insolvency and discharge procedures. It also includes new moratorium powers for authorities, relevant to netting and enforcement of collateral.

Status / expected timing

Published in OJ 26 June 2019 and entered into force 20 days later.

There is a 2 year national implementation period for most provisions (5 or 7 years for other provisions).

Links

- [Business Insolvency Directive](#)

Implementation impact

Low

Cross-border mobility of companies directive

Amends the existing directive on cross-border mergers of limited liability companies to provide a framework for cross-border conversions, mergers and divisions that allows companies to change their country of incorporation from one EU member State to another.

Status / expected timing

Publication in OJ expected in coming months.

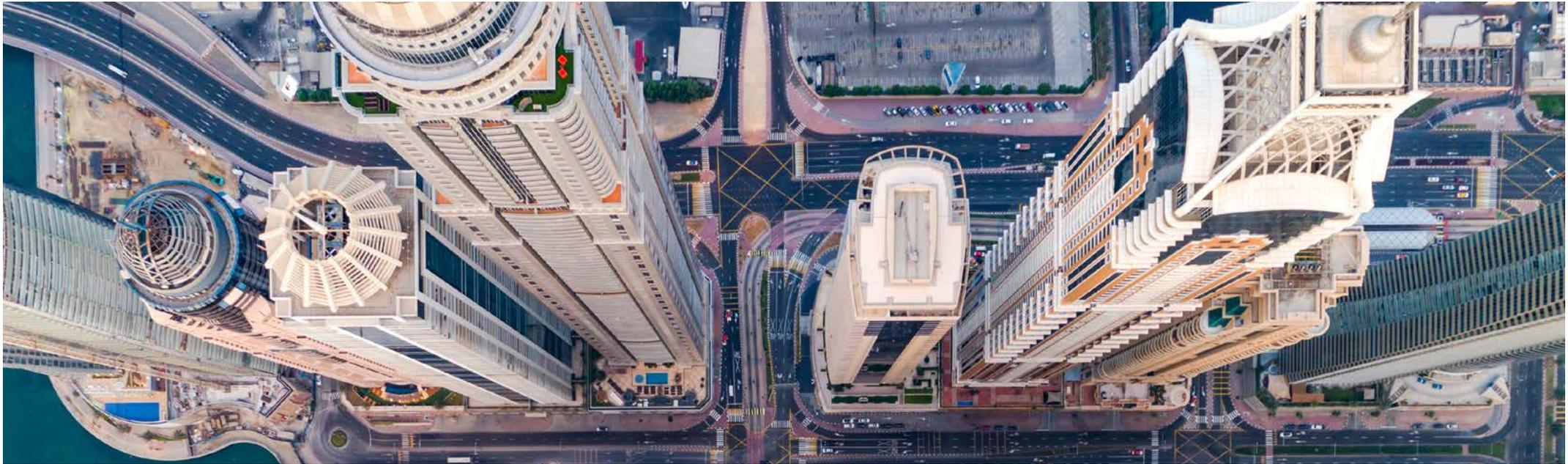
There is a 36 month national implementation period.

Links

- [Cross-Border Mobility of Companies Directive](#)

Implementation impact

Low



B. LEGISLATION CURRENTLY UNDER IMPLEMENTATION



EU LEGISLATION UNDER IMPLEMENTATION
EU LEGISLATION CURRENTLY IN THE IMPLEMENTATION
PHASE INCLUDES:

1 Benchmark regulation /
IBOR transition

2 EMIR initial margin
phases 4 and 5

3 Securities financing transactions
regulation (reporting)

4 Shareholder rights directive 2

5 CSDR (settlement discipline)

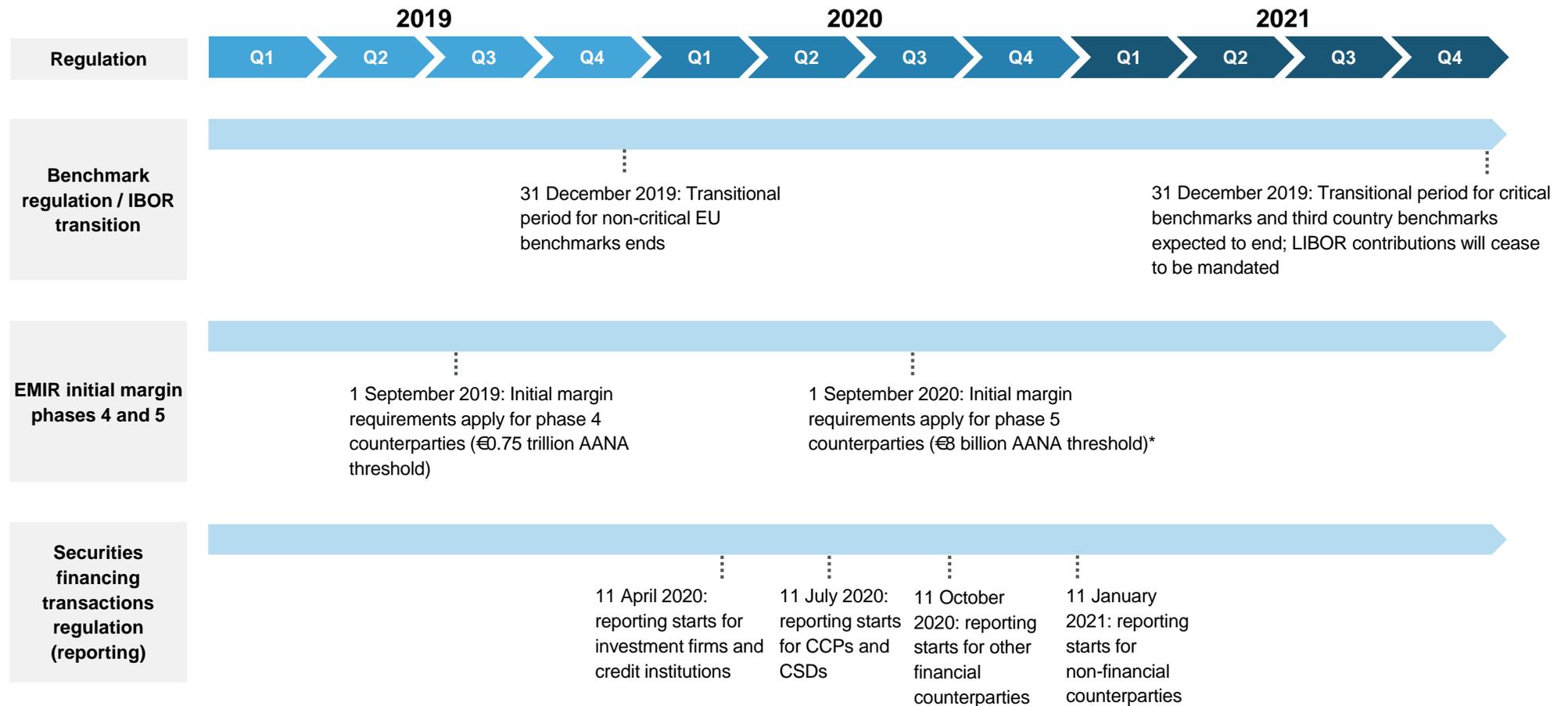
6 AIFMD and UCITS depositary
safekeeping rules

7 AMLD5

8 Prospectus regulation

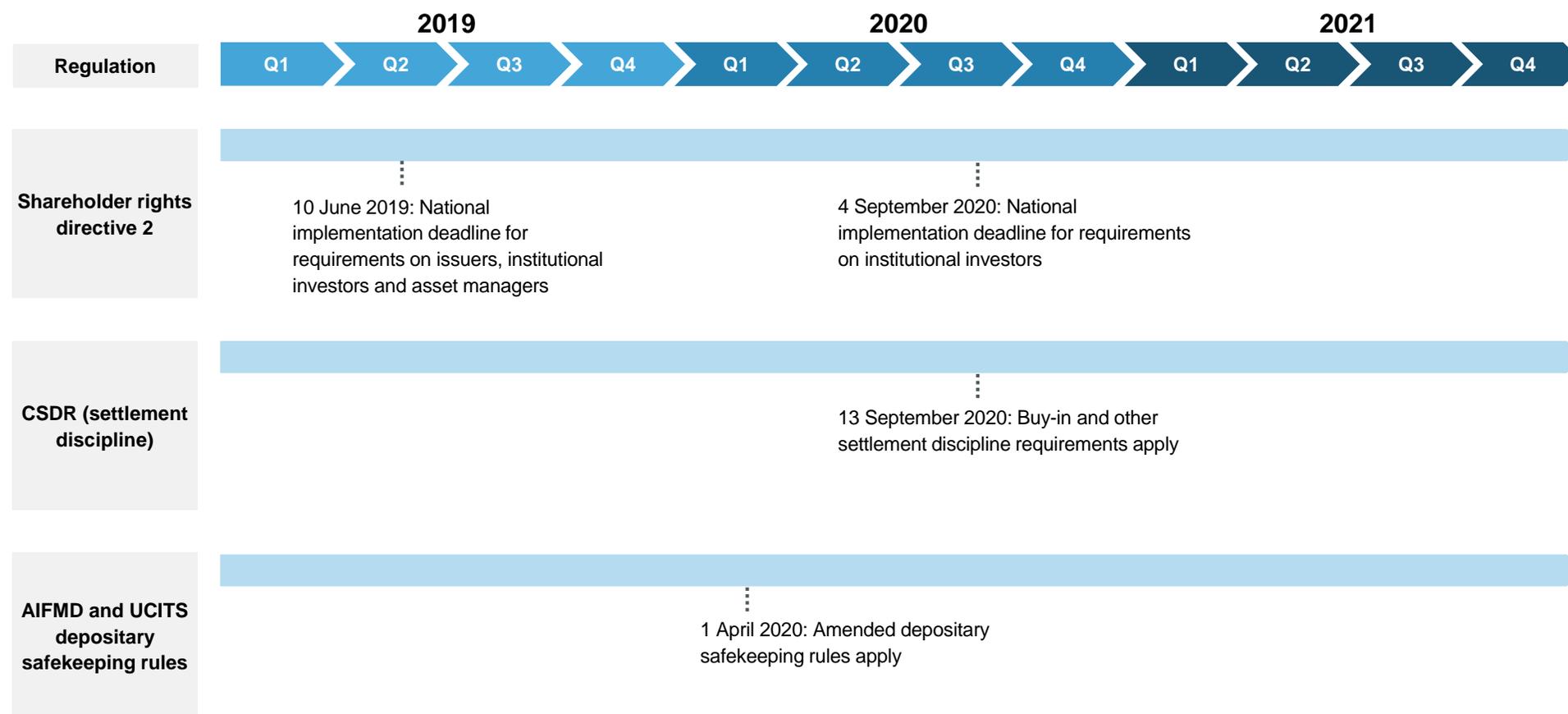
9 Securitisation regulation

EU LEGISLATION UNDER IMPLEMENTATION TIMELINES

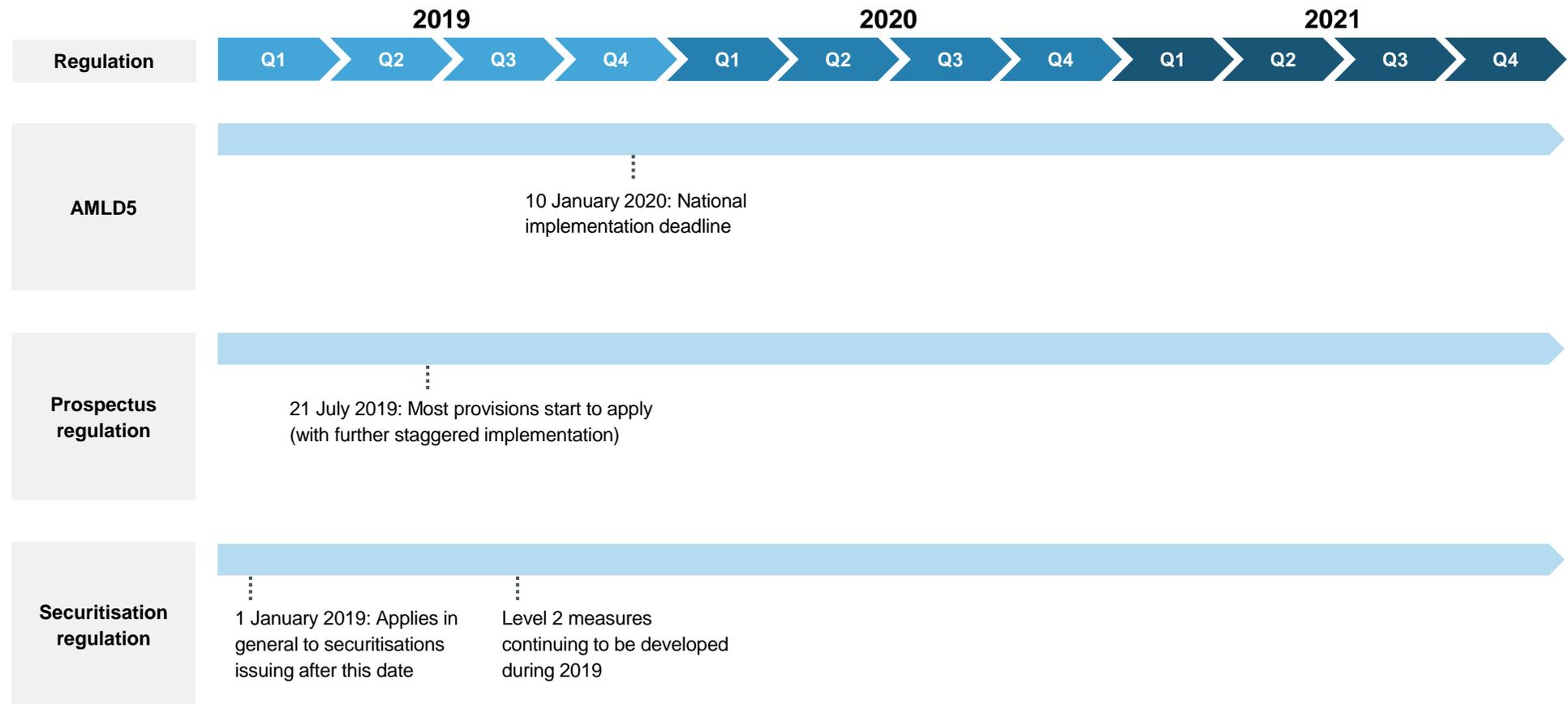


* Proposal expected to raise Phase 5 threshold to €50 billion and create a new Phase 6 with an €8 billion threshold and 1 September 2021 application date
EU FINANCIAL SERVICES LEGISLATION STOCKTAKE

EU LEGISLATION UNDER IMPLEMENTATION TIMELINES (CONTINUED)

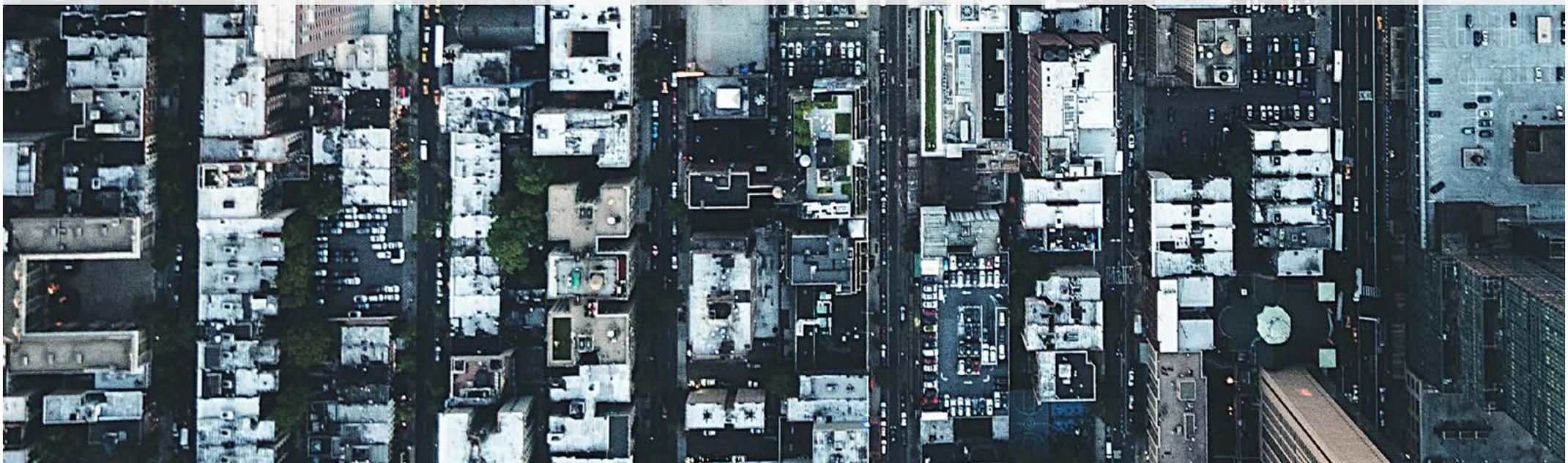


EU LEGISLATION UNDER IMPLEMENTATION TIMELINES (CONTINUED)





C. LEGISLATIVE PROPOSALS CARRIED FORWARD TO THE NEW TERM



LEGISLATIVE PROPOSALS CARRIED FORWARD TO THE NEW TERM

Financial Services

- NPLs – credit servicers directive
- Sustainable finance taxonomy
- CCP recovery and resolution
- Crowdfunding framework
- Applicable law to third party effects of assignment of claims
- EDIS / backstop to single resolution fund

Tax

- Common consolidated corporate tax base
- Financial transaction tax (FTT)
- Digital tax

“ THE PRINCIPLE OF POLITICAL DISCONTINUITY APPLIES AT THE START OF A NEW POLITICAL MANDATE. THE INCOMING AUTHORITY, IN THIS CASE THE EUROPEAN COMMISSION, REVIEWS THE PROPOSALS WHICH HAVE BEEN PUT TO THE LEGISLATORS BY ITS PREDECESSOR, BUT NOT YET ADOPTED. IT THEN DECIDES WHETHER OR NOT TO PURSUE WORK IN THESE AREAS.”

Juncker Commission Questions and Answers: the 2015 Work Programme

FINANCIAL SERVICES REGULATION

NPLs – credit servicers directive

Proposed directive that would introduce new requirements for the transfer of loans to credit purchasers, a new licensing regime for credit servicers and the introduction of a new extrajudicial enforcement mechanism. Some or all of the provisions are likely to be limited to transfers / servicing of non-performing loans only.

Status / expected timing

Council position agreed (other than in relation to the enforcement mechanism).

Awaiting Parliament position.

Links

- [Credit Servicers Directive](#)

Implementation impact

Medium

Sustainable finance taxonomy

Part of the Sustainable Finance Action Plan package. This aims to introduce an EU-wide sustainability taxonomy.

Status / expected timing

Parliament position agreed.

Awaiting Council position.

Links

- [Sustainable finance taxonomy](#)

Implementation impact

Medium

CCP recovery and resolution

Proposal to introduce an EU-wide regime for the recovery and resolution of CCPs.

Status / expected timing

Parliament position agreed.

Awaiting Council position.

Links

- [CCP R&R Regulation](#)

Implementation impact

Medium

FINANCIAL SERVICES REGULATION

Crowdfunding framework

Proposed regulation on crowdfunding, which would introduce an EU-wide authorisation and passporting regime for lending- and investment-based crowdfunding platforms. The proposal includes investor protection measures, including disclosure requirements.

Status / expected timing

Parliament position agreed.
Awaiting Council position.

Links

- [Regulation](#)
- [Directive](#) amending MiFID2

Implementation impact

Low

Applicable law to third party effects of assignment of claims

Proposal for a regulation on the law applicable to the third-party effects of assignments of claims. The proposal is based on a conflicts of law rule that looks to the law of the residence of the assignor, with limited exceptions for financial instruments and bank accounts (which look to the law of the underlying claim), and an option for securitisations to choose the law of the underlying claim as governing third-party effects of assignments.

Status / expected timing

Parliament position agreed.
Awaiting Council position.

Links

- [Assignment of Claims Regulation](#)

Implementation impact

Low

EDIS / backstop to single resolution fund

Proposal to set up a European deposit insurance scheme (EDIS) for bank deposits in the euro area. The purpose of the EDIS proposal is to provide a stronger and more uniform degree of insurance cover in the euro area, to reduce the vulnerability of national deposit guarantee schemes to large local shocks.

Status / expected timing

Timing unclear.

Links

- [EDIS proposal](#)

Implementation impact

Low

TAX

Common consolidated corporate tax base

Aims to create a harmonised corporate tax system across the EU, where taxable profits would be allocated between members states where the firm operates (including where the a firm has a “digital presence”) according to a sharing formula based on sales, assets and labour as well as use of personal data.

Status / expected timing

Consultative procedure – Council yet to agree.
Parliament has adopted its position.

Links

- [Common consolidated corporate tax base](#)

Implementation impact

Medium

Financial transaction tax (FTT)

The Commission published its proposal for an EU FTT in the EU in September 2011; having failed to achieve unanimity, it then became the subject of an enhanced cooperation procedure in February 2013. Ten Member States are continuing to discuss the proposal (France, Germany, Belgium, Austria, Slovenia, Portugal, Greece, Slovakia, Italy, and Spain) but technical difficulties and political differences have impeded progress.

Status / expected timing

There were discussions in Council in March 2019, where it seems there are still divergent views between Member States involved.

Links

- [FTT](#)

Implementation impact

High

Digital tax

Originally framed as a digital services tax, there had been an agreement to limit its scope to digital advertising – aiming in part to address concerns that this could have inadvertently captured financial services businesses.

Status / expected timing

Discussed in Council at ECOFIN on 12 March 2019, where a decision was taken to suspend further discussions at EU level until the end of 2020. In the meantime, the Council and certain Member States intend to continue work towards a solution.

Links

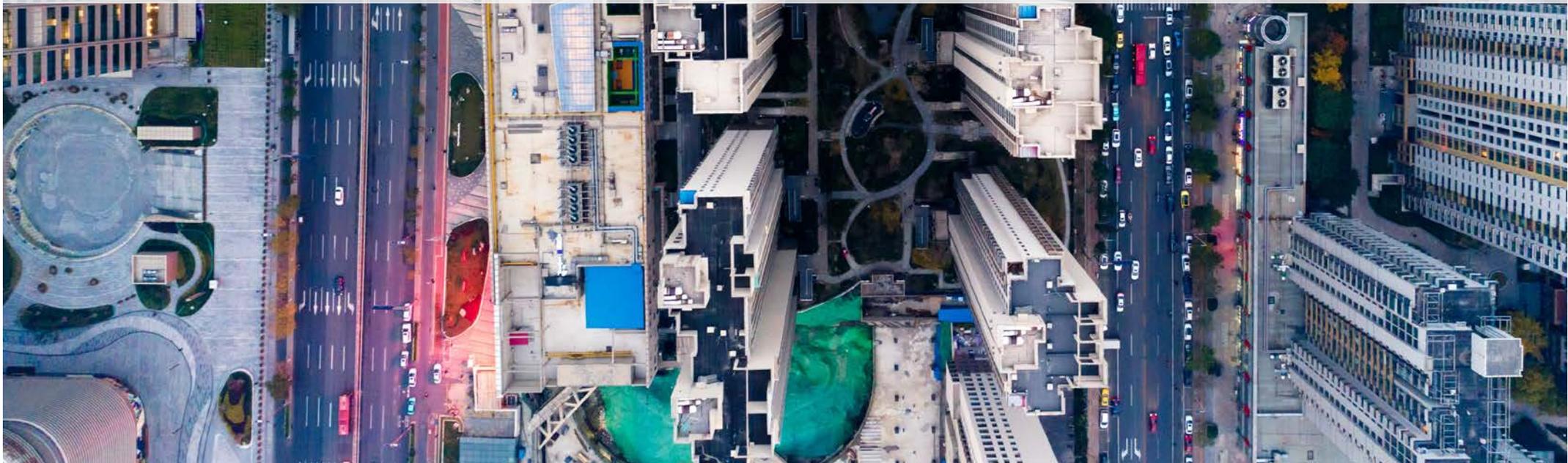
- [Digital tax](#)

Implementation impact

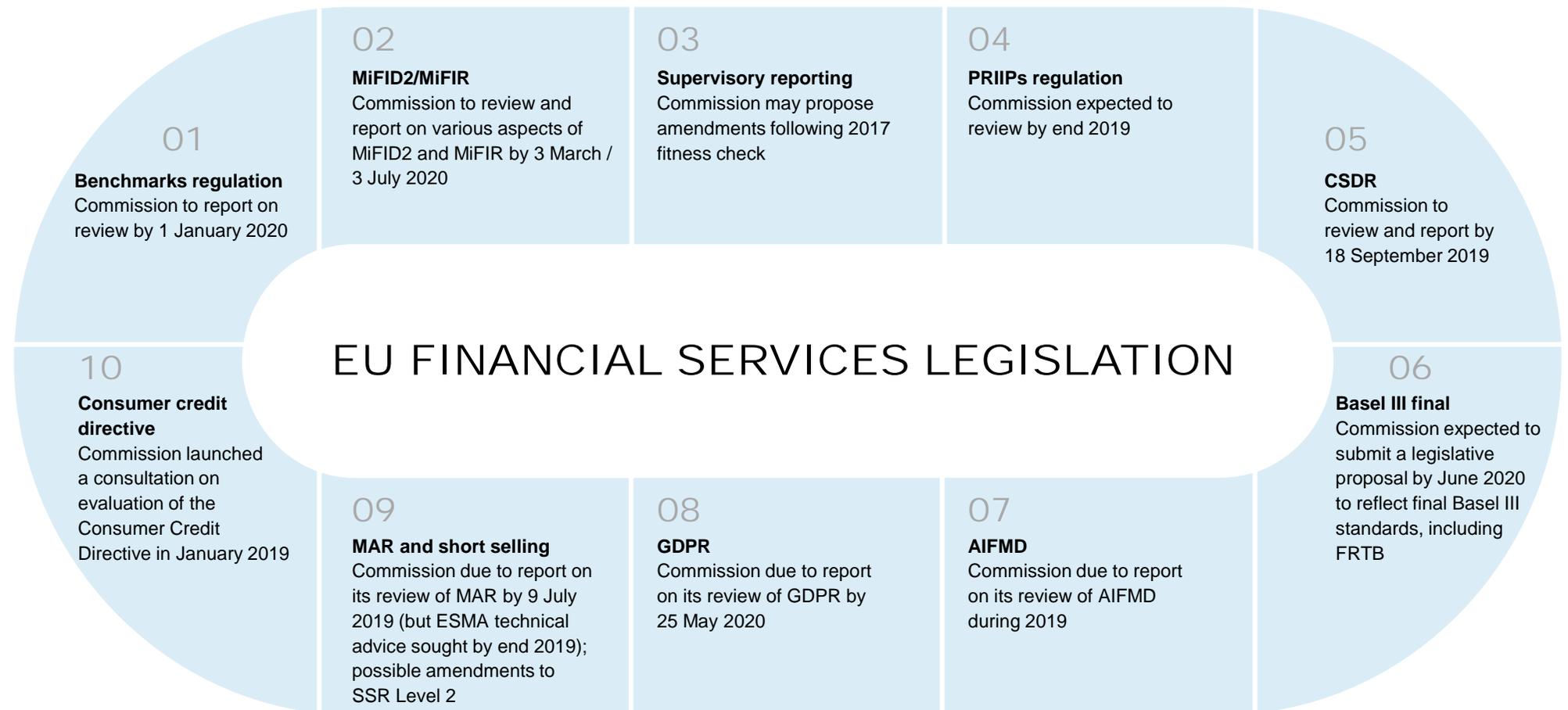
Low



D. REVIEWS OF EXISTING EU FINANCIAL SERVICES LEGISLATION



REVIEWS OF EXISTING EU FINANCIAL SERVICES LEGISLATION



FINANCIAL MARKETS TOOLKIT

The Clifford Chance Financial Markets Toolkit gives you – in one place – the cutting-edge knowledge you need for your financial markets business. It brings together, in a “one-stop shop”, a wide range of practical, user friendly resources to help you structure your deals and assess current issues in the financial markets.

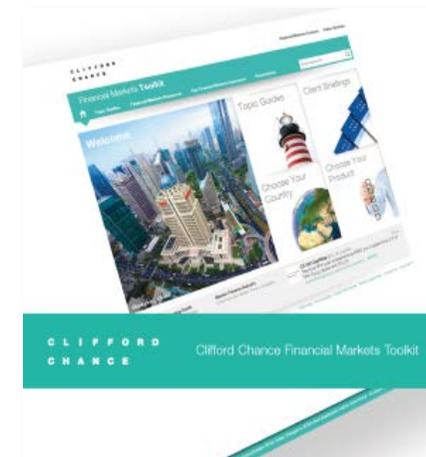
The Financial Markets Toolkit comprises a growing collection of web-based videos, transaction tools, publications, Topic Guides, the Perspectives seminar programme and further key events (<http://financialmarketstoolkit.cliffordchance.com>). Our Topic Guides contain the full range of our client resources including topic overviews and status updates on developments, as well as regular targeted briefings.

Here are some of the Topic Guides relevant to the matters discussed in this briefing:

- Alternative Investment Fund Managers Directive (AIFMD)
- Bank finance – TLAC and MREL
- Bank Recovery and Resolution Directive (BRRD)
- Banking Union
- Covered bonds
- EU Horizon Scanner
- EU legislative process explained
- European Market Infrastructure Regulation (EMIR)
- Green and sustainable finance

- IBOR transition and new risk-free rates
- Margin for uncleared derivatives
- Markets Abuse Regulation
- MiFID2 and MiFIR
- PRIIPs
- Prospectus and Transparency Directive
- Regulation of benchmarks
- Securitisation Regulation.

[Click here to view The Clifford Chance Financial Markets Toolkit](http://financialmarketstoolkit.cliffordchance.com)



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