

INTERNATIONAL REGULATORY UPDATE 10 – 14 JULY 2023

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Foreign Subsidies Regulation: EU Commission adopts implementing rules

The EU Commission has [adopted](#) an Implementing Regulation on procedural aspects of the implementation of the Foreign Subsidies Regulation (FSR). This follows the one-month public consultation period that took place between 6 February and 6 March 2023.

The FSR started to apply on 12 July 2023. As of 12 October 2023, companies will have to notify concentrations and participation in public procurement procedures involving foreign financial contributions and meeting the relevant notification thresholds.

The Implementing Regulation provides detailed rules on:

- the procedure for notifications to the Commission of concentrations and of participation in public procurement involving foreign financial contributions, including the notification forms for each procedure, the person entitled to submit a notification and the effective date of notification;
- the Commission's investigation process, including procedures to be followed by companies for submitting commitments to address possible concerns of the Commission;
- the procedural rights of the parties regarding the protection of confidential information, access to files and submission of observations;
- the calculation and suspension of time limits for the provision of information and submission of commitments; and
- the transmission and signature of documents by notifying parties to the Commission through digital means, where relevant.

Securitisation Regulation: EU Commission adopts RTS on risk retention requirements for originators, sponsors, original lenders and servicers

The EU Commission has adopted a [Delegated Regulation](#) containing regulatory technical standards (RTS) specifying the requirements for originators, sponsors, original lenders and servicers related to risk retention under Article 6(7) of the Securitisation Regulation as amended by the Capital Markets Recovery Package (CMRP).

The RTS specify in greater detail the risk retention requirements, including:

- requirements on the modalities of retaining risk;
- the measurement of the level of retention;
- the prohibition of hedging or selling the retained interest;
- the conditions for retention on a consolidated basis;
- the conditions for exempting transactions based on a clear, transparent and accessible index;
- the modalities of retaining risk in case of traditional securitisations of non-performing exposures; and
- the impact of fees paid to the retainer on the effective material net economic interest.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

MiCA: ESMA consults on first batch of technical standards

The European Securities and Markets Authority (ESMA) has launched a [consultation](#) on the first package of technical standards under the Markets in Cryptoassets Regulation (MiCA).

In this first of three consultation packages, ESMA is seeking input on proposed rules for cryptoasset service providers (CASPs), relating to their authorisation, identification and management of conflicts of interests, and also how CASPs should address complaints.

In particular, the first consultation package includes regulatory and implementing technical standards (RTS and ITS) for the following mandates:

- Article 60(13): RTS on content of notification from selected entities to NCAs
- Article 60(14): ITS on forms and templates for notification from entities to NCAs
- Article 62(5): RTS on the content of the application for authorisation for CASPs
- Article 62(6): ITS on forms and templates for CASP authorisation application
- Article 71(5): RTS on complaint handling procedure
- Article 72(5): RTS on management and prevention, disclosure of conflict of interest

- Article 84(4): RTS on intended acquisition information requirements

In addition, ESMA intends to gather more insight on respondents' current and planned activities, as a fact-finding exercise to better understand the EU cryptoasset markets and their future development. These questions relate to elements such as respondents' expected turnover, the number of white papers they plan to publish and the use of on-chain vs off-chain trading. ESMA has indicated that the input to this part of the consultation will remain confidential and will serve to calibrate certain proposals to be inserted in the second and third consultation package.

Comments are due by 20 September 2023. ESMA expects to publish its final report and submit the draft technical standards to the EU Commission for endorsement by 30 June 2024 at the latest.

ESMA's second MiCA consultation package is scheduled for October 2023.

MiCA: EBA consults on draft technical standards on EU market access of issuers of asset-referenced tokens and complaints handling procedures, and calls for timely preparation

The European Banking Authority (EBA) has launched a consultation on two sets of draft RTS and one set of ITS relating to the [authorisation as issuer of asset-referenced tokens \(ARTs\)](#) and the [assessment of acquisitions of qualifying holdings in issuers of ARTs](#) under MiCA.

The draft RTS on information for authorisation lay down the information requirements to be included when applying for such an authorisation. The information requirements cover the business model, internal governance, including ICT risk management, liquidity, reserve of assets, sufficiently good repute of the members of the management body and of shareholders with qualifying holdings. The draft ITS set out the standard application letter, the application template and clarify the process relating to the assessment of completeness of the application by the competent authority. As credit institutions are only required to receive approval to publish a white paper, the draft RTS and ITS do not apply to credit institutions.

Consistent with the general regime applicable in the financial sector, MiCA envisages a prudential assessment by competent authorities for the acquisition of qualifying holdings in issuers of ARTs that are not credit institutions. The draft RTS on the detailed content of the information to be included in the notification of a proposed acquisition clarify the information requirements that are necessary for such an assessment.

The EBA has also launched a consultation on [draft RTS on complaints handling procedures](#) for issuers of ARTs under MiCA, which are intended to ensure prompt, fair and consistent handling of complaints by holders of ARTs and other interested parties.

Comments on these consultations are due by 12 October 2023.

Alongside the consultations, the EBA has published a [statement](#) for the attention of financial institutions and other undertakings that intend to commence, or have commenced, ART or electronic money token (EMT) activities prior to 30 June 2024 (the application date for the relevant provisions of MiCA) and for competent authorities. The statement is intended to encourage timely actions to prepare for MiCA's application, with the objective

of reducing the risks of potentially disruptive and sharp business model adjustments at a later stage, fostering supervisory convergence, and facilitating the protection of consumers. The statement includes guiding principles to which financial institutions (and other undertakings) carrying out ART/EMT activities are encouraged to have regard until the application date.

ESMA issues public statement on sustainability disclosures in prospectuses

ESMA has issued a [public statement](#) on the sustainability disclosure expected to be included in prospectuses.

The statement sets out ESMA's expectations on how the specific disclosure requirements of the Prospectus Regulation in relation to sustainability-related matters in equity and non-equity prospectuses should be satisfied considering the environmental, social and governance (ESG) transition. This is intended to:

- ensure that national competent authorities (NCAs) take a coordinated approach to the scrutiny of sustainability-related disclosure in prospectuses;
- provide issuers and their advisors with an understanding of the disclosure that NCAs will expect them to include in their prospectuses; and
- support investors' ability to make an informed investment decision considering the importance of disclosure relating to sustainability-related matters.

The statement emphasises the importance of an issuer's non-financial reporting under the Non-Financial Reporting Directive and the future sustainability reporting under the Corporate Sustainability Reporting Directive, especially because such disclosure may be material under the Prospectus Regulation and included in an issuer's prospectus.

In addition, regarding non-equity securities advertised as taking into account a specific ESG component or pursuing ESG objectives, the statement clarifies the disclosure required in relation to 'use of proceeds' bonds and 'sustainability-linked' bonds.

The statement also notes that sustainability-related disclosure is sometimes included in advertisements but not in prospectuses themselves and highlights that this disclosure should be included in prospectuses if it is material under the Prospectus Regulation.

MiFID2: ESMA publishes revised passporting rules for investment funds

ESMA has published its [final report](#) on amendments to the RTS and ITS on passporting under Article 34 of MiFID2.

The amendments add new information requirements to the list of details investment firms must provide at the passporting stage. They also introduce a new investment services and activities passport notification which is intended to provide NCAs with additional information on a firm's planned or existing cross-border activities.

ESMA believes that the amendments foster competition and increase the investment options available to retail investors.

The technical standards have been submitted to the EU Commission for adoption.

MiFID2: ESMA updates guidance on definition of advice

ESMA has published a [supervisory briefing](#) setting out its supervisory expectations on understanding the definition of advice under MiFID2.

The briefing sets out the expectation of both ESMA and NCAs and covers, among other things:

- the provision of personal recommendations and whether other forms of information could constitute investment advice;
- guidance on when recommendations will be viewed as based on a view of a person's circumstances;
- perimeter issues around the definition of personal recommendation; and
- issues around the form of communication, including use of social media posts.

According to ESMA, the updates reflect the evolution of business models and technology, such as the increased use of social media and mobile apps by firms, since ESMA's predecessor, CESR, published its Q&A document on the definition of advice in 2010.

MiFIR: ESMA publishes manual on post-trade transparency

ESMA has published a [manual](#) on post-trade transparency to provide guidance for market participants and national competent authorities on how to apply the relevant MiFIR obligations in a consistent manner.

The manual is intended to provide clarity amongst the large scope of instruments covered under MiFIR and the complexity of the system and covers:

- which instruments and transactions are subject to post-trade transparency;
- who has to report and publish post-trade transparency information;
- when post-trade information has to be made public;
- which post-trade information has to be made public; and
- the common aspects as well as the differences between the post-trade transparency regime and the transparency calculations in relation to the scope of instruments and transactions.

Alongside the manual, ESMA has also published:

- its [final report](#) on the public consultation on the additional Level 3 guidance on RTS 1 and 2 integrated into the manual;
- an [updated version](#) of the classification of financial instruments (CFI) code for MiFIR identifier mapping; and
- a new [excel file](#) clarifying the classification of bonds issued by certain public bodies.

ESMA intends to publish an updated Q&A on MiFID2 and MiFIR transparency topics which reflects the integration of certain Q&As into the manual in

October 2023. In the meantime, ESMA notes that the guidance in the manual prevails over those Q&As that will be integrated into the manual.

MiFID2: ESMA highlights risks of securities lending to retail investors

ESMA has issued a [public statement](#) on securities lending to retail clients setting out the applicable requirements under MiFID2.

The statement highlights investor protection concerns related to securities lending and outlines the obligations of firms engaging in this practice. It also outlines ESMA's expectations for firms' compliance with the relevant MiFID2 requirements, in particular that:

- revenues from securities lending should directly accrue to the retail client, net of a normal compensation for the firm's services; and
- the express prior consent of retail clients should not be sought by way of the firm's general terms and conditions.

CRR/BRRD: EBA consults on amending ITS on MREL and TLAC disclosure and reporting

The EBA has launched a [consultation](#) on draft ITS amending Commission Implementing Regulation (EU) 2021/763 under the Capital Requirements Regulation (CRR) and Bank Recovery and Resolution Directive (BRRD).

Commission Implementing Regulation (EU) 2021/763 contains ITS on supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (MREL) and the total loss absorbency capacity (TLAC) requirement.

According to the EBA, the amendments are limited and reflect changes made to the CRR and clarify the information to be reported in the insolvency ranking templates. Among other things, the draft ITS make amendments to:

- information on the requirement to deduct investments in eligible liabilities instruments of entities belonging to the same resolution group, known as the daisy chain framework;
- information on the prior permission regime for buying back eligible liabilities instruments issued by the reporting entities and groups; and
- the breakdown by insolvency ranking.

The EBA intends to develop a technical package, consisting of the data point model (DPM), validation rules and XBRL taxonomy which will reflect the amendments introduced through the draft ITS and will become part of release v3.4 of the EBA reporting framework.

Comments on the consultation are due by 18 August 2023.

FSB Chair outlines work on recent banking turmoil and cryptoassets

The Chair of the Financial Stability Board (FSB), Klaas Knot, has written a [letter](#) to G20 finance ministers and central bank governors ahead of the upcoming G20 meeting on 17-18 July.

The letter sets out the FSB's plans to reprioritise its work to focus on lessons learned from recent banking sector turmoil, including:

- the effective implementation of the international resolution framework;
- the interaction between interest rate and liquidity risk; and
- the role of technology and social media.

The letter also sets out the FSB's work on cryptoassets, which includes:

- issuing its final recommendations for the regulation, supervision and oversight of cryptoassets and markets and of global stablecoin arrangements on 17 July, after which it will focus on their full and effective implementation globally to avoid a fragmented regulatory system;
- publishing a shared workplan developed with standard setting bodies (SSBs) as part of the reports delivered to the G20 at the upcoming meeting; and
- delivering a joint paper with the International Monetary Fund (IMF) to the G20 in September, to provide a coordinated and comprehensive policy approach and synthesise the IMF's policy findings on macroeconomic and monetary issues and the FSB's work on supervisory and regulatory issues.

The letter also provides updates on the FSB's work relating to the resilience of the non-bank financial intermediation (NBFi) sector, third-party risk management and the roadmap to address climate-related financial risks.

FSB publishes progress report on roadmap for addressing climate-related financial risks

The FSB has published its [annual progress report](#) on the FSB Roadmap for addressing climate-related financial risks ahead of the G20 Finance Ministers and Central Bank Governors meeting on 17-18 July. The report takes stock of progress by the FSB, standard-setting bodies and other international organisations on the actions coordinated through the roadmap, outlines areas for further attention, and provides updates to the detailed roadmap actions. Progress has been made across the four blocks of the roadmap including:

- the publication by the International Sustainability Standards Board (ISSB) of its final standards, IFRS S1 on general sustainability-related disclosures and IFRS S2 on climate-related disclosures, which will serve as a global framework for sustainability disclosures and enable disclosures by different companies around the world to be made on a common basis;
- a focus on improving the availability, quality and cross-border comparability of climate data, with an aim to develop global repositories that provide open access to data and would facilitate the use of metrics that reflect climate-related risks consistently and reliably across sectors and jurisdictions;
- the development of conceptual frameworks and metrics for monitoring climate-related vulnerabilities; and
- initiatives on embedding climate-related risk into risk management and prudential frameworks.

Mansion House speech: Chancellor sets out package of reforms

The Chancellor of the Exchequer, Jeremy Hunt, has delivered his [Mansion House speech](#), in which he presented a series of 'Mansion House reforms'

and set out the Government's progress in delivering the new model of UK financial services regulation under the Financial Services and Markets Act (FSMA) 2023.

The Chancellor announced a series of measures intended to improve outcomes for savers and increase funding liquidity for high-growth companies through reforms to the UK's pension market. This includes the industry led '[Mansion House Compact](#)' committing many of the UK's largest defined contribution pension providers to the objective of allocating at least 5% of their default funds to unlisted equities by 2030.

He went on to outline what the Government is doing to incentivise companies to grow and list in the UK, including:

- its response to Rachel Kent's independent Investment Research Review;
- publishing draft secondary legislation that will replace the retained EU Prospectus Regulation to deliver on the recommendations from Lord Hill's UK Listing Review;
- publishing draft secondary legislation to put in place a regime for a consolidated tape; and
- announcing the establishment of a new intermittent trading venue before the end of 2024 that is intended to improve private companies' access to capital markets before they publicly list, acting as a bridge between private and public markets.

Finally, Hunt discussed the Government's plans for a new 'Smarter Regulatory Framework' (SRF) following the enactment of FSMA 2023, which repeals retained EU law (REUL) for financial services. Amongst other things, he indicated that the Treasury is:

- working with the Bank of England to reflect on lessons from recent events to ensure that the UK has the best possible arrangements in place to improve continuity of access to deposits when a bank fails even if it is not a systemically important one;
- launching an independent review into the future of payments led by Joe Garner;
- laying new legislation to give regulators powers to reform rules on innovative payments and fintech services; and
- together with the Bank of England, exploring potential designs for the digital pound should the Government decide to introduce it.

HM Treasury sets out plans to deliver Smarter Regulatory Framework for financial services

Following the Chancellor's Mansion House speech, HM Treasury has [published](#) a suite of policy papers and statutory instruments (SIs) setting out how it intends to take forward the implementation of the new 'Smarter Regulatory Framework'.

In particular, HM Treasury has published:

- its [SRF delivery plan](#) setting out how it intends to put into practice the policy approach originally set out in its [December policy statement](#) on building a smarter financial services framework for the UK;

- the [draft Public Offers and Admissions to Trading Regulations 2023](#) and accompanying [policy note](#);
- the [draft Securitisation Regulations 2023](#) and accompanying [policy note](#);
- the [draft Data Reporting Services Regulations 2023](#) and accompanying [policy note](#). This SI replaces REUL related to data reporting service providers to facilitate the emergence of a UK consolidated tape;
- the Government's [response](#) to its December 2022 [consultation](#) on PRIIPs and UK retail disclosure, confirming its intention entirely to remove from legislation all firm-facing retail disclosure requirements currently in the PRIIPs Regulation and setting out its vision for the new retail disclosure framework and further details on next steps to deliver this reform;
- the Government's [response](#) to its December 2022 [consultation](#) on information requirements in the Payment Accounts Regulations 2015, confirming its intention to revoke Part 2 and Schedules 1 and 2 of the Payment Accounts Regulations and hand over responsibility for detailed firm-facing requirements on customer information requirements to the FCA;
- the Government's [response](#) to its December 2022 [consultation](#) on reforming the Consumer Credit Act 1974;
- a [summary of responses](#) to its December 2022 [call for evidence](#) on the Short Selling Regulation (SSR); and
- a [consultation](#) on the Government's proposal to delete aspects of the SSR related to sovereign debt and credit default swaps – comments are due by 7 August 2023.

HM Treasury's SRF delivery plan includes a table showing its phased approach to the repeal of REUL in financial services following the passage of FSMA 2023. Going forward, the Government intends to use the Regulatory Initiatives Grid to provide stakeholders with an overview of the pipeline for regulatory updates on the SRF programme. It is expected that, as the programme progresses, further areas of REUL, once publicly announced, will be sequenced into the Grid.

Investment Research Review report published

Rachel Kent has published the [outcome](#) of her independent Investment Research Review, which was first announced as part of the Government's December 2022 Edinburgh Reforms, making a series of recommendations to the Government, Financial Conduct Authority (FCA) and industry.

In particular, the Review's key recommendations are to:

- introduce a Research Platform to help generate research;
- allow additional optionality for paying for investment research;
- allow greater access to investment research for retail investors;
- involve academic institutions in supporting investment research initiatives;
- support issuer-sponsored research by implementing a code of conduct;
- clarify aspects of the UK regulatory regime for investment research and consider introducing a bespoke regime; and
- review the rules relating to investment research in the context of IPOs.

The Chancellor has welcomed the report and accepted all recommendations made to Government. The FCA has also published a [statement](#) welcoming the report.

HM Treasury consults on Digital Securities Sandbox

HM Treasury has launched a [consultation](#) on the Digital Securities Sandbox (DSS), which is intended to enable digital securities to be tested and ultimately adopted across financial markets.

The consultation sets out the Treasury's proposed approach to delivering the DSS, which will be the first financial market infrastructure sandbox delivered under the powers granted as part of the FSMA 2023. The DSS will facilitate the testing and adoption of digital securities across financial markets. Through the DSS, industry will be able to set up financial market infrastructures that utilise digital asset technology, which can perform a number of activities in relation to digital securities under a temporarily modified legislative and regulatory framework.

The consultation invites feedback from industry on the approach to the DSS and seeks feedback on some further policy and legal issues. It also invites respondents formally to express their interest in using the DSS, on the basis that conversations with potential applicants should begin as early as possible.

Comments are due by 22 August 2023.

Digitisation Taskforce publishes interim report

The Digitisation Taskforce, which was established in July 2022 to support the modernisation of the UK's shareholding framework and is chaired by Sir Douglas Flint, has published an [interim report](#) setting out a number of potential recommendations and questions for industry to consider.

In particular, the interim report recommends that:

- legislation should be brought forward, and company articles of association changed, as soon as practicable to stop the issuance of new paper share certificates;
- the Government should bring forward legislation to require dematerialisation of all share certificates at a future date, to be determined as soon as possible;
- the Government should consult with issuer and investor representatives on the preferred approach to 'residual' paper share interests and whether a time limit should be imposed for the identification of untraced ultimate beneficial owners (UBOs);
- intermediaries should have an obligation, as a condition of participation in the clearing and settlement system, to put in place common technology that enables them to respond to UBO requests from issuers within a very short timeframe;
- intermediaries offering shareholder services should be fully transparent about whether and the extent to which clients can access their rights as shareholders, as well as any charges imposed for that service;
- where intermediaries offer access to shareholder rights, the baseline service should facilitate the ability to vote, with confirmation that the vote has been recorded, and provide an efficient and reliable two-way

communication and messaging channel, through intermediaries, between the issuer and the UBOs; and

- following digitisation of certificate shareholdings the industry should move, with legislative support, to discontinue cheque payments and mandate direct payment to the UBO's nominated bank account.

Sir Douglas will be conducting a period of open engagement over the next six months, ahead of delivering the final report to the Government. Feedback on the interim report is due by 25 September 2023.

Future of Payments Review 2023 launched

The independent [Future of Payments Review](#), which is being chaired by Joe Garner, has been launched to report on how payments are likely to be made in the future and the steps needed to successfully deliver world leading retail payments.

In particular, the Review has been asked to consider how the UK's retail payment systems and networks need to evolve to:

- catalyse innovation in payment services;
- serve the future retail payments needs of businesses and consumers – the Review is focused on retail payments and is not considering Real Time Gross Settlement (RTGS) and CHAPS systems used for wholesale payments;
- support interoperability with new forms of digital money, including insofar as the role of banks is concerned – the Review is not considering stablecoins or central bank digital currency policy;
- support interoperability with global payment systems;
- ensure accessible and inclusive digital payments; and
- ensure resilient and secure payments.

The Review's [terms of reference](#) and a [call for input](#) to inform the Review have been published. The call for input closes on 1 September 2023.

Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 made

The [Financial Services and Markets Act 2023 \(Commencement No. 1\) Regulations 2023](#) (SI 2023/779) have been made. These are the first commencement regulations made under FSMA 2023.

In particular, SI 2023/779:

- with effect from 11 July 2023, brings into force a number of [provisions](#) of FSMA 2023 including the repeal of various articles of the EU Sustainable Finance Framework Regulation and the repeal of the Money Market Funds Regulations 2018;
- with effect from 29 August 2023, brings into force: (i) the [provisions](#) of FSMA 2023 repealing the statutory instruments listed in the Schedule to the commencement regulations; and (ii) the [provisions](#) of FSMA 2023 making some of the transitional amendments implementing the Wholesale Markets Review (some of the amendments to MiFIR, EMIR and the Securitisation Regulation and relating to critical third parties) plus a range

of other provisions (including the provisions on regulators' objectives, designated activities, FMI technologies, digital payment assets, etc.); and

- with effect from 1 January 2024, brings into force [provisions](#) of FSMA 2023 repealing: (i) Article 92b of the onshored Capital Requirements Regulation (TLAC); (ii) the onshored European Long-Term Investment Funds (ELTIF) Regulation, the European Long-term Investment Funds Regulations 2015 and Commission Delegated Regulation (EU) 2018/480; (iii) Part 2 of, and Schedules 1 and 2 to, the Payment Accounts Regulations 2015 ([Comparability of fees connected with payment accounts](#)); (iv) [Regulation 3\(3\)](#) of the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (which restrict the ability of the regulators to make rules on CRAs that modify, amend or revoke any retained direct EU legislation); and (v) the following provisions of FSMA 2000: (i) section 137A(6) and (7); (ii) section 137G(6) and (7); (iii) section 144H(2) (in Part 9D); (iv) section 192XA(3) and (4); (v) section 300H(4); (vi) paragraph 10(5) of Schedule 17A.

Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 laid before Parliament

The [Electronic Money, Payment Card Interchange Fee and Payment Services \(Amendment\) Regulations 2023](#) (SI 2023/790) have been made and laid before Parliament.

SI 2023/790 is intended to ensure that the FCA has sufficient rulemaking powers, and that the Payment Systems Regulator (PSR) has sufficient powers of direction, in relation to their respective areas of retained EU payments legislation so that they are able to replace retained EU law in line with their respective responsibilities.

In particular, SI 2023/790 amends:

- the Electronic Money Regulations 2011 and the Payment Services Regulations 2017 to ensure that the FCA has sufficient rulemaking powers in relation to its retained EU payments law; and
- the Payment Card Interchange Fee Regulations 2015 and the Payment Services Regulations 2017 to ensure that the PSR has sufficient powers of direction in relation to its retained EU payments law.

Pensions: UK Government consults on options for defined benefit schemes and on trustee skills, capability and culture

The Department for Work and Pensions (DWP) has launched two calls for evidence on pensions following announcements made by the Chancellor of the Exchequer in his Mansion House speech.

The [first call for evidence](#) invites views from the pensions industry on whether more can be done with the assets of defined benefit schemes, to explore the prospect of more investment that provides equity capital and finance for businesses in the UK, including start-ups, infrastructure and private equity, as well as longer-term investments, typically in illiquid assets.

The [second call for evidence](#), launched jointly with HM Treasury, is intended to deepen the evidence base around trustee capability and other barriers to

trustees doing their job in a way which is effective and results in the best outcomes for savers. It is focused on three areas:

- trustee skills and capability;
- the role of advice; and
- barriers to trustee effectiveness.

Responses to both calls for evidence are due by 5 September 2023.

FCA, DWP and Pensions Regulator publish consultation response on Value for Money framework

The DWP, the Pensions Regulator and the FCA have published their [joint consultation response](#) on the proposed Value For Money framework, clarifying that investment decisions should be made on the basis of long-term returns and not simply cost.

The consultation, which ran from January to March 2023, covered key metrics, standards and data disclosures for defined contribution pension schemes under the VFM framework. The VFM framework was developed to support a consistent and more objective process for assessing VFM across defined contribution schemes.

The regulators have indicated that they will implement the VFM framework in phases and will continue to work with industry to ensure that schemes, providers, and employers are as prepared as possible. The VFM framework will require primary legislation and the regulators intend to consult on draft regulations and FCA rules for the detailed requirements.

State of the sector: annual review of UK financial services 2023 report published

HM Treasury and the City of London Corporation have published their [second annual review report](#) on the state of the UK financial services sector. The report sets out key performance indicators on the UK's competitiveness, summarises the Government's work to further boost the UK's standing as a global financial centre and highlights potential further reforms identified by industry.

BoE issues policy statement on FPC's approach to setting countercyclical capital buffer

The Bank of England (BoE) has published a [policy statement](#) on the Financial Policy Committee (FPC)'s approach to setting the countercyclical capital buffer (CCyB).

The policy statement:

- describes the CCyB, including to whom and to which exposures the UK CCyB rate applies, what CCyB rates will apply to UK banks' foreign exposures, how the CCyB fits in with other elements of the capital framework, implementing the CCyB, and reciprocity arrangements;
- sets out the FPC's strategy for setting the UK CCyB rate;
- describes how the CCyB helps the FPC's primary and secondary objectives;

- describes how the FPC chooses the CCyB rate, including how it assesses developments in financial vulnerabilities and the resilience of banks' balance sheets to potential shocks. It also includes some stylised examples to further demonstrate how the FPC's decision-making framework might respond to different shocks; and
- describes how the FPC communicates its CCyB policy actions.

FCA publishes feedback statement on potential competition impacts of big tech entry and expansion in retail financial services

The FCA has published a feedback statement ([FS23/4](#)) summarising the responses to its October 2022 discussion paper (DP 22/5) on the potential competition impacts of big tech entry and expansion in retail financial services – in particular, payments, deposits, consumer credit and insurance – and setting out the FCA's next steps.

The purpose of DP22/5 was to stimulate a discussion about areas where big tech entry is likely to create the biggest competition benefits for consumers and areas where there is the greatest risk of significant harm if competition does not develop effectively.

At this stage the FCA is not proposing any regulatory or policy changes.

BaFin publishes sustainable finance strategy

The German Federal Financial Supervisory Authority (BaFin) has announced the publication of its [sustainable finance strategy](#) of July 2023. In a [BaFin Journal article](#), Executive Director for Strategy, Policy and Regulation Rupert Schaefer explained the key aspects and objectives of BaFin's sustainable finance strategy.

According to Rupert Schaefer, BaFin's responsibility and focus as a supervisor is on ensuring a stable and functional financial system by inspecting whether financial market participants are in control of all financial risks, including sustainability risks. This is a requirement for a satisfactory capital influx into sustainable finance investment activities and thereby enabling the transition of the real economy.

The financial supervision objectives are solvency, conduct and market supervision (bearing in mind that green loans are not as such low risk) and actual supervisory activities comprise risk orientated pragmatic rule setting, dependable data collection on climate risks and an adequate management of environmental risks.

A key focus of the sustainable finance strategy is on exhaustive and comprehensible investment information provision for investors to allow consumers to make responsible and informed investment decisions and thereby also prevent harm to the credibility of the sustainable finance investments market by counteracting greenwashing.

BaFin to apply ESMA specifications on sustainability disclosures in prospectuses

BaFin has [announced](#) that it will apply the specifications set out in ESMA's 11 July 2023 [public statement](#) on sustainability disclosures in prospectuses in its supervisory practice.

In its statement, ESMA clarified which sustainability related disclosures it expects to be included in prospectuses for equity and non-equity securities (particularly green bonds) in order to ensure the consistent application of the Prospectus Regulation throughout the EU and support market participants and national competent authorities in drawing up/reviewing such prospectuses.

BaFin will apply the specifications set out in ESMA's statement in its supervisory practice and expects issuers to do the same when drawing up prospectuses to enable BaFin's efficient review of the prospectuses. BaFin has emphasised that this is particularly important for disclosures relating to issuers' sustainability profile or finance products that are marketed as sustainable.

BaFin has also noted that ESMA's statement supports BaFin's sustainable finance strategy, the main objective of which is the prevention and counteracting of greenwashing.

BaFin supplements Q&A on SFDR and issues guidance on RTS

BaFin has [announced](#) a supplement to its [Q&A](#) on the EU Regulation 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR). In addition, BaFin has announced that it has issued detailed guidance on the related RTS.

BaFin notes that the SFDR contains certain undefined legal terms that financial market participants and financial advisors have found difficult to interpret in practice. In its Q&A, BaFin addresses questions on the practical implementation with respect to the SFDR and RTS that are not covered in the questions on the SFDR answered by the EU Commission or in the questions on the RTS that are answered by the Joint Committee of the European Supervisory Authorities. BaFin has now supplemented the existing five Q&As by clarifying issues on product related templates as per Annex II and III of the RTS. Together with the Q&A supplement, BaFin has published detailed guidance on these templates.

Until a dissenting assessment on these questions is published by either the EU Commission or the Joint Committee of the European Supervisory Authorities, BaFin will base its administrative practice on the legal interpretations set out in its updated Q&A.

Italian Fintech Decree: Consob consults on second-level rules governing issuance and digital circulation of financial instruments

The Commissione Nazionale per le Società e la Borsa (Consob) has launched a [public consultation](#) on a proposed set of second-level rules intended to implement the Fintech Decree (Decree Law no. 25 of 17 March 2023, converted, with amendments, by Law no. 52 of 10 May 2023), which introduced a new form and circulation regime for certain financial instruments, recognising the possibility of using distributed ledger technologies (DLTs) for their issuance and transfer.

Digital instruments can be issued in Italy even today, as these implementing measures are not strictly necessary to submit an application under the Fintech Decree. That said, once enacted, Consob's regulation will provide clarity on several key steps of the issuing process. Although in draft form, it constitutes

a term of reference for those who wish to go ahead with a digital issuance pending the enactment of the implementing measures.

In particular, the draft regulation establishes the register of ledger operators, describes the application process, and outlines the content of the information document on the underlying DLT infrastructure that ledger operators are required to make available to prospective investors.

Consob has indicated that it welcomes observations not only on the subject matter of this particular regulation, but also in relation to any other areas of the Fintech Decree which might become the subject of additional second-level measures at a later stage.

Comments are due by 9 August 2023.

RECENT CLIFFORD CHANCE BRIEFINGS

Keeping pace with EU payments – The PSD3 and Open Finance proposals

Since the adoption of the Payment Services Directive 2 (PSD2) in 2015, there has been a rapid evolution of the payments sector, with the emergence of new payment solutions and more sophisticated types of fraud.

To keep pace with these developments, the European Commission has proposed making targeted amendments and updates to the existing regulatory regime for payment services and electronic money (e-money) via a new (i) Payment Services Directive (PSD3) and (ii) Payment Services Regulation (PSR). This is accompanied by a new open finance proposal in the shape of a regulation on a framework for Financial Data Access (FIDA).

This briefing paper discusses some of the key changes being proposed, the potential timeline and what impacted firms can do now to prepare.

<https://www.cliffordchance.com/briefings/2023/07/keeping-pace-with-eu-payments--the-psd3-and-open-finance-proposals.html>

EU Foreign Subsidies Regulation – Final Implementing Regulation and filing forms published

The European Commission has published the final versions of the Implementing Regulation and filing forms for the EU Foreign Subsidies Regulation in preparation for its application from 12 July 2023.

With the publication of the final forms, businesses should act quickly to put in place or finalise the relevant information gathering systems, on the basis of these final filing forms, in order to avoid delays in the filing and clearance of their M&A transactions or their participation in public tenders, when the filing regime commences on 12 October.

This briefing paper discusses the information requirements of the final M&A and public tender filing forms.

<https://www.cliffordchance.com/briefings/2023/06/eu-foreign-subsidies-regulation--final-implementing-regulation-a.html>

A multi-pronged approach to boosting investment research in the UK – the recommendations of the Investment Research Review

The Investment Research Review (IRR) launched in March 2023 has published its report. Tasked with exploring how the UK's research landscape can be improved to boost the UK's attractiveness for listing and capital-raising, the review has made seven key recommendations for the short to medium term. A key recommendation is a loosening of the EU-derived MiFID2 rules to provide more flexibility in how investment research is paid for, through the reintroduction of bundled payments. An important effect of this change will be to align the UK approach with that of the US and with current legislative reform proposals in the EU.

This RegTalk blog post takes a closer look at the seven recommendations, the likely timeframes for changes and the impact on buy-side and sell-side firms.

<https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/a-multi-pronged-approach-to-boosting-investment-research-in-the-.html>

Philipp v Barclays – UK Supreme Court overrules Court of Appeal on Quincecare in landmark return to basics of banking and agency law

In a hotly-anticipated judgment, the Supreme Court has reversed a controversial decision of the Court of Appeal, which significantly expanded the scope of the 'Quincecare duty of care'. The decision should prompt widespread relief across the banking industry, but the substance of the duty remains and questions linger around exactly what banks need to do to comply with it. As well as being a landmark banking law case, the case should be considered a key new authority in the law of agency.

This briefing paper discusses the case.

<https://www.cliffordchance.com/briefings/2023/07/philipp-v-barclays-uk-supreme-court-overrules-court-of-appeal.html>

'Going Dutch' – Restructuring of international shipping group Vroon sees Dutch 'WHOA' combined with English Scheme of Arrangement

The much-awaited decisions of the Dutch and English courts in the *Vroon* case are an example of cross-border restructuring at its best, facilitating the restructuring of the 123 companies that together form the entire Vroon group. Both the Dutch and English proceedings were far from plain sailing – each of the Scheme and WHOA plan were met with challenges, in both courts.

The main challenge stemmed from the shareholders, who were concerned that they had not fared well as a result of the restructuring and the allocation of the value in the restructured group. The courts in both jurisdictions dismissed the challenges and upheld the valuation evidence.

This briefing paper discusses the case.

<https://www.cliffordchance.com/briefings/2023/07/-going-dutch----restructuring-of-international-shipping-group-vr.html>

Spain – the CNMC confirms that it will determine the scope and duration of the prohibition to participate in public tenders in its decisions

The Spanish Markets and Competition Commission (CNMC) has published its Notice on the criteria for determining the prohibition to participate in public tenders.

This briefing paper discusses the Notice.

<https://www.cliffordchance.com/briefings/2023/07/spain--the-cnmc-confirms-that-it-will-determine-the-scope-and-du.html>

Singapore moves ahead to tighten rules for digital payment token services

Following from a consultation in October 2022, the Monetary Authority of Singapore (MAS) has announced that it will impose requirements for digital payment token (DPT) service providers (DPTSPs) in Singapore to safekeep customer assets under a statutory trust before the end of the year. DPTSPs will also be restricted from facilitating lending and staking of their retail customers' DPTs. Further measures to address market integrity risks and unfair trading practices in the DPT market are also being proposed.

This RegTalk blog post provides an overview of the key proposals that will have a major impact on the DPT (or cryptocurrency) industry in Singapore in the coming months.

<https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/singapore-moves-ahead-to-tighten-rules-for-digital-payment-token.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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