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Sustainable finance: EU Council adopts European Green Bond Regulation

The EU Council has adopted the [regulation](#) on European green bonds (EuGB).

The European Green Bond Regulation establishes uniform requirements for issuers of bonds that wish to use the designation EuGB for their environmentally sustainable bonds that are aligned with the EU taxonomy. The disclosure requirements, which are set out in template formats, can also be used by companies issuing bonds which are not yet able to adhere to all the standards of the EuGB, but still wish to signal their green aspirations.

The regulation also establishes a registration system and supervisory framework for external reviewers of EuGBs. Until the taxonomy framework is fully up and running, issuers of an EuGB would need to ensure that at least 85% of the funds raised by the bond are allocated to economic activities that align with the EU's Taxonomy Regulation. The other 15% can be allocated to other economic activities provided the issuer complies with the requirements to clearly explain where this investment will go.

The regulation will enter into force on the twentieth day following its publication in the Official Journal, and will start applying 12 months after its entry into force.

EU Council adopts directive on financial services contracts concluded at a distance

The EU Council has [adopted](#) the directive concerning financial services contracts concluded at a distance.

The directive was agreed between the EU Parliament and Council in June 2023. It repeals the Distance Marketing Directive (2002/65/EC) and transfers the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU). The new rules include:

- additional safeguards to allow consumers to withdraw from any distance contract via a withdrawal function, which is prominently displayed, easily accessible and continuously available during the entire 14-day withdrawal window;
- clear requirements for what information the trader needs to provide to the consumer before concluding a distance contract, providing consumers with sufficient time to read and understand pre-contractual information, compare offers and make an informed decision;
- the commercial purpose of the call needs to be disclosed at the start when traders contact consumers by phone;
- consumers will have a right to receive adequate explanations from traders before signing and to request human intervention when using fully automated online interfaces; and
- financial services providers will be prohibited from deceiving or 'nudging' consumers into making choices that may be against their interest via their website designs.

Once signed by the President of the EU Parliament and the President of the Council, the directive will be published in the Official Journal and enter into force 20 days later. Member States will then have two years to transpose the Directive through national measures, which will be followed by another period of six months before those national measures apply.

Capital Markets Union: ECON Committee adopts reports on Listing Act proposals

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has adopted its reports on the EU Commission's proposals to amend the Prospectus Regulation, Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR) and Directive (MiFID2).

In December 2022, the EU Commission proposed a legislative package on clearing, insolvency and listing, intended further to develop the EU's CMU. The Listing Act proposals are intended to make capital markets in the EU more attractive by alleviating the administration burden for companies of all sizes, in particular SMEs, so that they can better access public funding by listing on stock exchanges.

The ECON Committee has adopted its reports on two of the EU Commission's proposals in this area, namely:

- the [amending Regulation](#) amending the Prospectus Regulation, MAR and the MiFIR; and
- the [amending Directive](#) amending MiFID2 and repealing the Listing Directive.

Benchmarks Regulation: Delegated Regulation extending transitional period for third country benchmarks published in OJ

[Commission Delegated Regulation \(EU\) 2023/2222](#), which extends the original transition period of the Benchmarks Regulation (BMR) by two years, has been published in the Official Journal.

Following a consultation held in March 2023, the EU Commission deemed it necessary to extend the transition period as it believed an insufficient number of third countries would be able to meet the requirements of the BMR by the original expiry date of 31 December 2023. Under the rules, non-EU benchmarks can be used in the EU only if they comply with rules comparable to the BMR. The new Delegated Regulation extends the period within which they must meet these requirements to 31 December 2025.

The Delegated Regulation entered into force on 26 October 2023.

CRR: EU Commission adopts RTS on calculation of stress scenario risk measure

The EU Commission has adopted a [Delegated Regulation](#) setting out regulatory technical standards (RTS) under the Capital Requirements Regulation (CRR) on the calculation of the stress scenario risk measure.

Among other things, the Delegated Regulation sets out:

- how institutions are to develop extreme scenarios of future shock applicable to non-modellable risk factors, using the direct method and the stepwise method;
- that the regulatory extreme scenario of future shock is the one that leads to the maximum possible loss due to a movement in the non-modellable risk factor;
- that institutions may calculate a single stress scenario risk measure for more than one non-modellable risk factor, when those risk factors belong to the same standardised bucket and institutions used that standardised bucket when assessing the modellability of those risk factors under Article 325be of the CRR; and
- the requirement for institutions to aggregate the stress scenario risk measures in accordance with the aggregation formula provided in the international standards.

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

Economic Crime and Corporate Transparency Act 2023 receives Royal Assent

The [Economic Crime and Corporate Transparency Act 2023](#), which is intended to prevent the abuse of UK corporate structures and tackle economic crime, has received Royal Assent. The Act follows the Economic Crime (Transparency and Enforcement) Act 2022, which introduced a register of overseas entities and their beneficial owners and received Royal Assent on 15 March 2022.

Among other things, the Economic Crime and Corporate Transparency Act introduces:

- reforms to Companies House, including giving the registrar of companies new powers to reject and query information provided in filings or already on the register;
- a new regime for identity verification (including via authorised corporate service providers);
- reforms to prevent the abuse of limited partnerships, by, among other things, strengthening transparency requirements and enabling them to be deregistered;
- additional powers to seize and recover suspected criminal cryptoassets;
- new exemptions from the principal money laundering offences to reduce unnecessary reporting by businesses and new powers for law enforcement to obtain information to tackle money laundering and terrorist financing; and
- an additional regulatory objective to the Legal Services Act 2007 to affirm the duties of regulators and the regulated communities to uphold the economic crime agenda.

Many of the provisions of the Act will come into force on a day to be appointed by statutory instrument. The provisions made by Parts 1 to 5 of the Act which confer powers to make regulations, or which relate to the exercise of those

powers, and paragraph 1 of Schedule 9, which amends the Proceeds of Crime Act 2002, came into force on 26 October 2023.

Chancellor provides update on delivery of Edinburgh Reforms

The House of Commons Treasury Committee has published a [letter](#) received from the Chancellor of the Exchequer, Jeremy Hunt, providing an update on the delivery of the Edinburgh Reforms.

The Chair of the Treasury Committee had asked the Chancellor to provide a complete list of policies considered to be a strand of the Edinburgh Reforms, what progress has been made on each, and a timescale of when each reform will have been implemented.

The Chancellor's response includes a table setting out a list of policy commitments and the estimated dates by which regulations will be made. It also highlights a number of reforms that have already been taken forward by the Government, including:

- publishing near final legislation to reform the UK's prospectus regime on 11 July 2023, following the recommendations made in Lord Hill's UK Listing Review;
- accepting all of the recommendations made to the Government by the Independent Investment Research Review, chaired by Rachel Kent;
- publishing a draft Statutory Instrument to deliver a regulatory framework for a UK consolidated tape by the end of 2023;
- bringing forward legislation in December 2022 and March 2023 to implement reforms recommended in the Wholesale Markets Review;
- launching a consultation on a UK retail central bank digital currency alongside the Bank of England (BoE) on 7 February 2023; and
- launching the updated Green Finance Strategy on 30 March 2023.

BoE, PRA and FCA publish feedback statement on adoption of AI in financial services

The BoE, Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a [feedback statement](#) summarising the responses they received to their joint discussion paper on how artificial intelligence (AI) may affect their objectives for the prudential and conduct supervision of financial firms.

In their discussion paper, the regulators sought feedback in particular on the potential risks and benefits related to the use of AI in financial services and how the current regulatory framework could be altered to address it.

In their feedback statement, they highlight the following key points made by respondents:

- an alternative, principles or risk-based approach to defining AI would be more helpful than a strict regulatory definition;
- regulators should consider designing and maintaining 'live' regulatory guidance to reflect the constant evolution of AI capabilities;

- ongoing industry engagement, such as the AI Public-Private Forum, is important and valuable;
- it would be helpful to have more coordination and alignment between regulators, domestic and international, on AI regulation, with the regulatory treatment of issues around data being particularly fragmented;
- consumer outcomes, especially with respect to ensuring fairness and other ethical considerations, should be a key focus of regulation and supervision;
- there is a need for more regulatory guidance around the use of third-party models and data;
- AI systems can involve many areas of a firm and a joined-up approach across business units and functions could be helpful to mitigate potential risks;
- the principles set out in the PRA's supervisory statement 'Model risk management principles for banks' (SS1/23) are sufficient to cover AI model risk but certain areas could be strengthened or clarified to address specific AI issues; and
- existing firm governance structures, and the relevant regulatory frameworks (such as the Senior Managers and Certification Regime) are sufficient to address AI risks.

PRA publishes policy statement on updated UK technical standards on G-SIIs

The PRA has published a [policy statement](#) (PS13/23) containing its final policy on updating the UK technical standards (UKTS) on the identification of global systemically important institutions (G-SIIs), and providing feedback to the response it received to its consultation (CP16/23).

In CP16/23, the PRA sought feedback on proposals to update the UK methodology for identifying and setting capital buffers for G-SIIs so that it was aligned with changes that had been made to the Basel Committee for Banking Supervision's framework. The proposed updates included:

- adding 'trading volume' as a new indicator under the substitutability/financial institution infrastructure category;
- updating indicator weights for the substitutability/financial institution infrastructure category; and
- adding insurance subsidiaries to data consolidation for several indicators.

The PRA received one response to its consultation which was supportive of the proposals. It is therefore introducing the updates as consulted upon. The amended UKTS entered into force on 31 October 2023.

PRA and FCA publish policy statement on ratio between fixed and variable components of total remuneration

The PRA and the FCA have published a [policy statement](#) (PS9/23) providing feedback to the responses to their joint consultation paper (PRA CP15/22 / FCA CP22/28) on proposals to remove the current limits on the ratio between fixed and variable components of total remuneration (the bonus cap). PS9/23 also sets out the regulators' final policy as follows:

- changes to the Remuneration Part and the Disclosure (CRR) Part of the PRA Rulebook;
- changes to the Senior Management Arrangements, Systems and Controls (SYSC) 19D: Dual-regulated firms Remuneration Code that is part of the FCA's Handbook; and
- updates to the PRA's supervisory statement (SS) 2/17 – Remuneration.

The implementation date of the requirements is 31 October 2023. The changes will apply to a firm's performance year which is ongoing on that date, and to future performance years.

FCA highlights common issues with crypto marketing

The FCA has [published](#) a warning on issues with crypto marketing.

On 8 October 2023, cryptoasset promotions were brought under the FCA's remit following a change in legislation. The financial promotion regime applies to all firms marketing cryptoassets to UK consumers, regardless of whether the firm is based overseas or what technology is used to make the promotion.

The FCA has identified three common issues with cryptoasset financial promotions, including:

- promotions making claims about the safety, security or ease of using cryptoasset services without highlighting the risk involved;
- risk warnings not being visible enough due to small fonts, hard-to-read colouring or non-prominent positioning; and
- firms failing to provide customers with adequate information on the risks associated with specific products being promoted.

The FCA expects authorised firms approving the financial promotions of cryptoasset firms to take their regulatory obligations seriously.

The FCA intends to continue identifying and acting against firms that are illegally promoting cryptoassets to UK consumers.

BaFin consults on circulars relating to improvement of resolvability

The German Federal Financial Supervisory Authority (BaFin) has [launched](#) consultations on three draft circulars relating to the improvement of institutions' resolvability.

The draft circulars are addressed to all institutions for which BaFin is the competent resolution authority and for which no insolvency scenario has been defined as resolution strategy.

Two of the three draft circulars are elaborations of existing circulars – on the minimum requirements of resolvability for resolution planning (MaAbwicklungsfähigkeit) and on the minimum requirements for the feasibility of bail-in (MaBail-in) – whilst the third draft contains new minimum requirements for the feasibility of transfer tools in the resolution (MaStrukturelle Abwicklungsinstrumente). The latter draft circular also implements the European Banking Authority (EBA)'s transferability guidelines (EBA/GL/2022/11) into BaFin's administrative practice.

Comments are due by 1 December 2023.

Steering Committee of the National Working Group on Benchmark Reform issues bulletin on revision of deadlines for reform of benchmarks

The Steering Committee of the National Working Group on Benchmark Reform has issued a [bulletin](#) on changes to the deadlines for the reform of benchmarks.

In September 2022, the Steering Committee approved a roadmap for the replacement of WIBOR and WIBID benchmarks by a new benchmark.

The Steering Committee has decided to extend the deadlines for the implementation of the roadmap, which assumes that the financial sector will move away from the use of WIBOR for newly concluded contracts and financial instruments using a fixed interest rate or new RFR benchmarks.

The Steering Committee has deferred the deadline by which banks are to transfer the portfolio of contracts and instruments (credit facilities, bonds) based on WIBOR to the new WIRON reference rate from 2025 until 2027.

SFC issues circular on distributors providing additional returns and other services or arrangements when marketing SFC-authorized funds

The Securities and Futures Commission (SFC) has published a [circular](#) to summarise its recent observations of licensed corporations' practices in offering and promoting SFC-authorized funds. According to the SFC, intermediaries who distribute SFC-authorized funds (distributors) have been offering additional returns or other incentives that may divert the client's focus from properly considering the risks and features of the underlying funds. The circular also highlights the legal and regulatory requirements to be met by distributors.

The SFC has noted that in some cases, distributors promoted SFC-authorized funds (often via online platforms) and offered or imposed additional or distinct features or restrictions beyond the product features set out in the funds' offering documents. In other cases, distributors asked clients to provide a mandate or standing instruction to invest in one or more SFC-authorized funds under specific circumstances. According to the SFC, such SFC-authorized funds and services were often promoted by the distributors to the public through aggressive and high-profile marketing campaigns.

Accordingly, the SFC has provided guidance with respect to guaranteed returns, lock-up period and dealing frequency as well as other marketing issues. The SFC will monitor market practices concerning the promotion of SFC-authorized funds closely and may take regulatory action and issue further guidance where appropriate.

SFC issues circular on disclosure and use of annualised returns for money market funds

The SFC has issued a [circular](#) to set out its requirements for the presentation of annualised returns based on periods of less than one year for money market funds authorised by the SFC under Chapter 8.2 of the Code on Unit Trusts and Mutual Funds (MMFs).

Paragraph 16 of the Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes provides that

annualised returns are only acceptable for presentation of performance figures for periods of more than one year. Having considered industry enquiries and MMFs' more stable and predictable performance as compared to other types of funds, the SFC is issuing guidance for fund managers and intermediaries on the presentation of annualised returns by MMFs for periods of less than one year in factsheets, marketing materials or other documents.

The SFC notes that the following general principles apply:

- all requirements in the Advertising Guidelines shall apply to the presentation of annualised returns where applicable;
- issuers of relevant materials showing annualised returns should be responsible for ensuring compliance with the circular, relevant requirements in the Advertising Guidelines and all other applicable requirements; and
- to ensure the consistency of information provided to investors, where an intermediary intends to present annualised returns in the relevant materials, the intermediary should reach an agreement with the fund manager on the computation basis to ensure the annualised returns are calculated on a consistent basis and in compliance with the relevant requirements before such figures are published.

The detailed requirements and illustrative examples are set out in the circular and appendix respectively.

MAS consults on streamlined regulatory framework for fund managers

The Monetary Authority of Singapore (MAS) has launched a [public consultation](#) on proposals to streamline the regulatory framework for fund managers.

The proposals are intended to repeal the existing registered fund management companies (RFMC) regime and provide a transition arrangement for existing RFMCs to be approved as licensed fund management companies (LFMCs) that serve only accredited or institutional investors (A/I LFMCs) upon application. Exempt representatives of RFMCs will also be transitioned to appointed representatives of A/I LFMCs.

Amongst other things, the MAS has proposed the following:

- RFMCs that transition to A/I LFMCs will continue to have their managed assets restricted via licence conditions to SGD 250 million. There will be no cap on the number of investors or funds managed;
- transitioned A/I LFMCs will have to comply with reporting requirements applicable to typical A/I LFMCs, including seeking approval for director appointments;
- written directions or specific conditions which have been issued or imposed on certain RFMCs will continue to apply even after these RFMCs become A/I LFMCs;
- the MAS will repeal the RFMC regime after it has considered industry feedback to the consultation paper and finalised the legislative amendments;

- the MAS will stop accepting new RFMC applications from 1 January 2024. From 1 January 2024, applicants seeking to conduct fund management will have to apply for a CMS licence for fund management, after ensuring that they are able to meet all admission and ongoing requirements; and
- RFMCs that do not submit applications by the stipulated deadlines will be considered to have opted to cease fund management activities upon the repeal of the RFMC regime.

Comments on the consultation are due by 31 December 2023.

C L I F F O R D C H A N C E

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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