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## **Sustainable finance: ECON and ENVI Committees adopt final compromise text on proposed framework to facilitate sustainable investment**

The EU Parliament Committees on Economic and Monetary Affairs (ECON) and on the Environment, Public Health and Food Safety (ENVI) have adopted the final compromise text of the EU Commission's [proposed regulation](#) on the establishment of a framework to facilitate sustainable investment, which was agreed in December 2019 following trilogue negotiations.

The proposed regulation is intended to develop an EU taxonomy for climate change, environmentally and socially sustainable activities to provide investors with clarity on which activities are considered sustainable, allowing them to take more informed decisions.

## **EU Commission publishes 2020 work programme**

The EU Commission has published its [work programme](#) setting out its key initiatives for 2020.

Legislative proposals and areas of work relating to financial services, as part of its workstreams on a European Green Deal and an economy that works for people include:

- the InvestEU programme;
- the European Green Deal Investment Plan;
- the Non-Financial Reporting Directive;
- sovereign bond-backed securities;
- recovery and resolution of central counterparties (CCPs);
- the Capital Markets Union (CMU);
- a review of the regulatory framework for investment firms and market operators (MiFID2 and MiFIR); and
- a review of capital requirements legislation.

The Commission will now begin discussions with the Council and the Parliament to establish a list of joint priorities the co-legislators agree to take action on first.

## **Brexit: ESMA issues statement clarifying governance and reporting obligations for UK entities**

The European Securities and Markets Authority (ESMA) has issued a [statement](#) clarifying issues relating to its governance and the reporting obligations for UK entities from 1 February 2020 following the UK's withdrawal from the EU.

Under the terms of the Withdrawal Agreement (WA), UK representatives are no longer permitted to participate in EU institutions, agencies, or other bodies, and their governance structures, except where exceptionally justified. Therefore, from 1 February 2020, the UK Financial Conduct Authority (FCA) is

no longer a member of ESMA's Board of Supervisors and will not participate in any other ESMA governance bodies.

Under the WA, EU law continues to apply to the UK as if it were a Member State during the transition period until 31 December 2020. Amongst other things, this means that:

- rights and obligations for UK entities under EU law will also continue to apply - such as reporting and notification obligations under EU legislation such as MiFID2/MiFIR; and
- ESMA will continue to directly supervise registered credit rating agencies, trade repositories and securitisation repositories established in the UK during the transition period.

ESMA will continue monitoring the application of EU law to and in the UK and track developments in preparation for the end of the transition period.

### **MiFID2/MiFIR: ESMA consults on revised regime for third-country firms**

ESMA has published a [consultation](#) on [draft technical standards](#) on the provision of investment services and activities by third-country firms under MiFID2 and MiFIR.

The consultation concerns changes to the regime introduced by the Investment Firms Regulation (EU) No 2019/2033 (IFR) and the Investment Firms Directive (EU) 2019/2034 (IFD), including:

- draft regulatory technical standards (RTS) under Article 46(7) of MiFIR specifying the information third-country firms must provide to ESMA in registration applications and on an annual basis;
- draft implementing technical standards (ITS) under Article 46(8) of MiFIR specifying the format in which that information should be submitted; and
- draft ITS under Article 41(5) of MiFID2 specifying the format in which branches of third-country firms must provide information to competent authorities on an annual basis.

The consultation closes on 31 March 2020.

### **UCITS: ESMA launches common supervisory action on liquidity risk management**

ESMA has [launched](#) a common supervisory action (CSA) with national competent authorities (NCAs) on the supervision of liquidity risk management across the EU by managers of Undertakings for Collective Investment in Transferable Securities (UCITS) funds.

The liquidity risk management provisions under the UCITS regulatory framework aim to ensure that investors are able to redeem their investments on request. Based on a common methodology developed together with ESMA, NCAs have agreed to assess simultaneously whether market participants in their jurisdictions adhere to the rules in their day-to-day business.

To get an overview of the existing supervisory risks the first phase of the CSA will involve NCAs requesting quantitative data from a majority of the UCITS managers based in their Member States. NCAs will then focus on a sample of

UCITS managers and UCITS to carry out more in-depth supervisory analyses in the second phase.

Throughout the CSA, which will be conducted during 2020, NCAs will share knowledge and experiences through ESMA to ensure supervisory convergence across the EU in liquidity risk management and investor protection.

### **BIS Markets Committee publishes letter on effectiveness of FX Global Code**

The Bank for International Settlements (BIS) Markets Committee Chair, Jacqueline Loh, has written an [open letter](#) to Guy Debelle, Chair of the Global Foreign Exchange Committee (GFXC), on the effectiveness of the FX Global Code, a set of suggested good practices for the global foreign exchange (FX) market, launched in 2017. The letter summarises the key findings from the Markets Committee's assessment of the Code's effectiveness, as requested by the Governors of the BIS Global Economy Meeting. Amongst other things the Committee notes that:

- there has been a significant and growing number of market participants adopting the Code;
- the Code has featured prominently in industry conferences and journals and has become the 'de facto reference' for FX-related issues; and
- market feedback and surveys suggest that the Code has had a broadly positive impact on market behaviour.

The Committee has also set out recommendations for the GFXC to inform its upcoming review of the Code which will take place in 2020. These include:

- exploring additional ways to encourage adoption of the Code, particularly in the market segments where adoption is currently low, such as the large buy-side markets;
- improving the transparency and disclosure of trading practices on anonymous trading platforms and the roles of different market participants; and
- improving the scope, quality and consistency of guidance relating to disclosures on algorithmic trading or aggregation services.

### **GFXC publishes anonymous trading report and shares industry survey results**

The GFXC has published a [report](#) on anonymous trading in the foreign exchange market and released [results](#) from its third annual survey on the FX Global Code.

The report aims to describe the role played by anonymous trading in the FX market and highlight the key attributes that market participants need to understand when engaging on these platforms. It also discusses the relevance of the Code's principles to anonymous trading. When reviewing the Code in 2020, the GFXC intends to consider additional guidance around aspects of anonymous trading such as the use of 'tags' and the role of prime brokers.

The 2019 survey was designed to measure the awareness, adoption, implementation and effects of the FX Global Code for market participants and

included two new focus areas: electronic trading and disclosures. According to the GFXC, results suggest that while the Code remains fit-for-purpose and has contributed to better market functioning, there are still areas for improvement. The feedback provided from the survey will inform the Committee's work in 2020.

The next meeting of the GFXC takes place in Zurich in June 2020.

## **IOSCO publishes 2020 work programme**

The International Organization of Securities Commissions (IOSCO) has published its 2020 [work programme](#). The programme aims to further IOSCO's work to protect investors, maintain fair, efficient and transparent markets and address systemic risks.

IOSCO will continue to focus on five priority issues identified by its board in 2019:

- crypto-assets;
- AI and machine learning;
- market fragmentation;
- passive investing and index providers; and
- retail distribution and digitalisation.

The programme sets out the work begun in 2019 in each area and the next steps IOSCO plans to undertake in 2020.

In addition, IOSCO will continue its focus on systemic risk in capital markets across its different workstreams and, in the area of asset management, continue its work related to liquidity risk management, data collection related to global leverage in investment funds and its analysis of the ETF market on market-facing and investor-related issues.

## **Brexit: UK-EEA EFTA Separation Agreement signed and update on UK intention to accede to Lugano Convention**

The UK, Norway, Iceland and Liechtenstein have [signed](#) the EEA EFTA Separation Agreement.

The EEA EFTA Separation Agreement sets out arrangements in relation to the protection of rights of the nationals of Iceland, Liechtenstein, Norway (EEA EFTA states) and the UK, and other separation issues (such as goods placed on the market and judicial procedures) following the UK's withdrawal from the EU, the EEA Agreement and other agreements applicable between the UK and the EEA EFTA States by virtue of the UK's EU membership.

The Agreement will be implemented into UK law by the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020 (WAA), and a majority of the provisions come into force at the end of the transition period.

The UK has also received statements from Norway, Iceland and Switzerland in support of its intention to accede to the Convention on jurisdiction and the recognition of judgments in civil and commercial matters (Lugano Convention) at the end of the transition period. The UK's continued participation beyond the transition period is subject to negotiation with the EU, Denmark, Iceland, Norway and Switzerland.

## **Brexit: Financial Services (Consequential Amendments) Regulations 2020 made**

[The Financial Services \(Consequential Amendments\) Regulations 2020 \(SI 2020/0056\)](#) have been made under the WAA and laid before Parliament.

SI 2020/0056 delays the application of financial services temporary permissions and transitional regimes established by the following EU Exit instruments made under the European Union (Withdrawal) Act 2018 to the end of the transition/implementation period (31 December 2020) rather than exit day (31 January 2020):

- Electronic Money Regulations 2011;
- Alternative Investment Fund Managers Regulations 2013;
- Payment Services Regulations 2017;
- Data Reporting Services Regulations 2017;
- EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018;
- Central Counterparties (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018;
- Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018;
- Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018;
- Central Securities Depositories (Amendment) (EU Regulations) 2018;
- Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019;
- Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019; and
- Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

All other characteristics of the regimes, such as their scope and duration, remain unchanged.

SI 2020/0056 entered into force immediately before exit day. Although this breaches the 21 day rule for SIs subject to the negative procedure, the [explanatory memorandum](#) to the SI notes that it was necessary for the amendments to come into force before exit day so that the UK financial services regulatory regime continues to work clearly and effectively during the transition period.

## **Brexit: FCA publishes implementation instruments and other updates**

The FCA has published instruments and updates to its non-Handbook guidance in connection with the transition period following the UK's withdrawal from the EU.

The following Exiting the EU instruments were made on 30 January 2020:

- [Implementation Period \(Guidance\) Instrument 2020 \(FCA 2020/7\)](#), which among other things seeks to confirm and explain that, during the transition



period, the Handbook and other FCA documents should be read in light of sections 1A and 1B of the European Union (Withdrawal) Act 2018 (continued effect of the European Communities Act 1972 and EU-derived domestic legislation), and clarifies that firms should comply with the current versions of forms until the end of the transition period; and

- [Deferral of Commencement and Miscellaneous Fees Instrument 2020 \(FCA 2020/6\)](#), which defers the commencement of the Handbook guidance until the end of the transition period.

The FCA has also amended the following non-Handbook guidance to clarify that firms should not refer to it during the transition period:

- [Our approach to EU non-legislative materials](#); and
- [Our approach to non-handbook guidance](#) where it relates to EU-law or EU-derived law.

## **FCA writes Dear CEO letter to benchmark administrators**

The FCA has published a [Dear CEO letter](#) it has sent to firms identified as having benchmark administrator activities.

The letter sets out the FCA's view of the potential for harm and the underlying drivers that benchmark administrators could pose to their customers and the markets in which they operate. The letter also states the FCA's areas of supervisory focus for benchmark administrators over the next two years, including:

- the quality of governance and controls, benchmark statements, recalculation and cessation policies, outsourcing arrangements, and resilience to operational disruption;
- excessive fees and charges;
- the extension of the Senior Managers and Certification Regime (SM&CR) to benchmark administrators; and
- the expected cessation of LIBOR.

## **UK government consults on AMLD5 and Trust Registration Service**

HM Revenue and Customs (HMRC) and HM Treasury have launched a [technical consultation](#) on draft regulations and proposals to expand the Trust Registration Service to comply with the Fifth Money Laundering Directive (AMLD5).

This follows a [consultation](#) held in April 2019 on transposing the AMLD5 into national law. HM Treasury has published a [summary of the responses](#) received to that consultation and the government's response and intended approach.

The technical consultation proposes draft regulations that will amend the Money Laundering and Terrorist Financing (Information on the Payer) Regulations 2017, which relate to the central register of the beneficial ownership of trusts. Feedback is requested on how certain processes may work for the expanded Trust Registration Service and on whether the draft legislation transposes AMLD5 in a proportionate way, particularly with the types of trust that will be out of scope of registration.

Comments are due 21 February 2020.

## **PSR seeks views on competition and innovation in proposed interbank payments clearing and settlement system**

The Payment Systems Regulator (PSR) has published a [call for input](#) on competition issues that could arise in the UK's New Payments Architecture (NPA). The NPA is the UK payments industry's proposed new way of organising clearing and settlement for payments between banks, known as interbank payments.

The call for input contains the PSR's view on some of the competition issues which might arise during the procurement of infrastructure for the NPA. Feedback is invited on a number of topics, including the likelihood of competition issues materialising in the NPA and how harmful or significant they could prove to be.

Comments are due by 24 March 2020. The PSR expects to publish a final policy statement on the NPA by the end of 2020.

## **BaFin publishes updated minimum requirements for complaints-handling**

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has updated its [circular 06/2018](#) on minimum requirements for complaints-handling.

The update became necessary because the Joint Committee of the European Supervisory Authorities revised its guidelines for complaints-handling for the securities and banking sectors, on which the circular is based.

These guidelines now also have to be applied by payment initiation service providers and account information service providers within the meaning of the second Payment Services Directive (PSD2) as well as non-credit institutions within the meaning of the Mortgage Credit Directive (MCD).

As the circular is addressed to payment institutions within the meaning of the Payment Services Supervision Act (Zahlungsdienstenaufsichtsgesetz, ZAG) and this term also includes payment initiation service providers and account information service providers, the wording of the circular did not have to be amended in this context.

However, the circular has been amended to include non-credit institutions that conclude credit agreements for consumers relating to immovable property. Non-credit institutions are, in particular, insurance companies, burial funds, Pensionskassen (life insurance undertakings that provide cover against loss of income) and Pensionsfonds (pension schemes with legal personality that offer occupational retirement provision in the form of a funded pension scheme).

## **CSSF issues communication regarding ESMA Q&As on benchmark disclosures for UCITS KIID**

The Luxembourg Supervisory Authority of the Financial Sector (CSSF) has published a [communication](#) reminding Luxembourg UCITS management companies and self-managed UCITS to include, in the annual update of their key investor information document (KIID), the necessary disclosures on benchmark(s) and related past performance, as required by ESMA in the



revised version of its [Q&As](#) on the application of the UCITS Directive published on 29 March 2019.

In particular, the CSSF has indicated that it is the responsibility of UCITS management companies and self-managed UCITS to verify and ensure that:

- UCITS KIIDs are updated by 19 February 2020 at the latest with the required benchmark and past performance disclosures and transmitted electronically to the CSSF via the usual transmission channels. The CSSF has emphasised that the updated KIID should include certain elements as further specified in ESMA's Q&As; and
- UCITS prospectuses are updated as necessary and filed with the CSSF at the earlier of the next revision of the prospectus or the end of 2020 to ensure that the benchmark related information as disclosed in the UCITS KIID and in the objectives and investment policy of the UCITS prospectus are aligned, as specified by ESMA's Q&As.

### **HKMA revises SPMs relating to leveraged foreign exchange trading and supervisory review process**

The Hong Kong Monetary Authority (HKMA) has issued its revised supervisory policy manuals (SPMs) '[Leveraged Foreign Exchange Trading](#)' (SB-2) and '[Supervisory Review Process](#)' (CA-G-5).

The SPM module SB-2 has been revised to incorporate the general principles on expected business conduct in respect of leveraged foreign exchange trading activities. There is no change to the regulatory standards or the HKMA's approach to supervising the business conduct of authorised institutions in respect of the making of unsolicited calls in connection with leveraged foreign exchange trading.

The SPM module CA-G-5 has been revised to incorporate updates primarily relating to the local implementation of the latest standards issued by the Basel Committee on Banking Supervision on interest rate risk in the banking book, liquidity risk and large exposures.

### **MAS revises Notices 610 and 1003 on submission of statistics and returns by banks and merchant banks**

The Monetary Authority of Singapore (MAS) has revised [Notice 610](#) and [Notice 1003](#), which provide for the submission of statistics and returns by banks and merchant banks respectively.

Amongst other things, the Notices have been revised to:

- remove the definition of 'related corporations';
- amend the applicability of the respective Notices; and
- extend the transitional period.

The amendment to the Notices are effective from 24 January 2020.

## RECENT CLIFFORD CHANCE BRIEFINGS

### **EU finalises Sustainable Finance Taxonomy - new obligations for financial market participants and large public-interest entities**

Political agreement was reached in December 2019 on the Taxonomy Regulation following intense negotiations. The Taxonomy Regulation sets out categories of economic activities that are considered environmentally sustainable and is a cornerstone of the European Commission's Sustainable Finance Action Plan.

The Taxonomy Regulation imposes three key obligations:

- on member states and at EU level to apply the Taxonomy when regulating how environmentally sustainable financial products or corporate bonds are made available;
- on 'financial market participants' (including AIFMs, UCITS managers, investment firms and credit institutions providing portfolio management, insurers which make available an insurance based investment product as well as providers of certain pension products) to make statements about alignment of investments with the Taxonomy when making available financial products, including when these products are not considered to be environmentally sustainable; and
- on large public-interest entities (including certain EU entities with listed securities, banks and insurers) to include information about how their activities align with the Taxonomy in the non-financial disclosure part of their financial statements.

Key changes in the agreed Taxonomy Regulation from the original Commission proposal include the expansion of environmentally sustainable activities to specifically include 'transitional' and 'enabling' activities, the expansion of the non-financial disclosure obligations on large public-interest entities, and changes made to the Disclosure Regulation to impose additional requirements on financial market participants.

This briefing discusses the changes in the Taxonomy Regulation, setting out the impacts for different entities, and in an Annex, providing an overview of the Taxonomy.

<https://www.cliffordchance.com/briefings/2020/01/eu-finalises-sustainable-finance-taxonomy--new-obligations-for-.html>

### **The European Parliament after Brexit**

The UK left the EU at midnight CET on 31 January 2020.

The resulting departure of British MEPs will reduce the number of seats in the European Parliament from 751 to 705, altering the power dynamics between political parties and increasing the need for cross-party cooperation to form a majority.

This briefing discusses how Brexit will affect the composition of the European Parliament.

<https://www.cliffordchance.com/briefings/2020/01/the-european-parliament-after-brexit.html>

## **The EU-UK future relationship - what happens after Brexit?**

The EU and the UK have until 31 December 2020, the end of the transition period provided for by the Withdrawal Agreement, to negotiate an agreement on their future relationship. Failing to reach such an agreement would lead to another 'cliff edge' no deal scenario.

This briefing discusses the measures taken by each side to prepare for this next round of negotiations and what to expect from the months ahead.

<https://www.cliffordchance.com/briefings/2020/01/the-eu-uk-future-relationship--what-happens-after-brexit-.html>

## **Brexit delivered - the European Union (Withdrawal Agreement) Act 2020**

Following the victory of the Conservative Party at the recent UK general election, Prime Minister Boris Johnson has used his large 80 seat majority to push the European Union (Withdrawal Agreement) Act 2020 through the new Parliament.

The Act contains significant changes from the Bill that was introduced in the last Parliament where the Government had no majority, including changes reducing Parliament's ability to scrutinise the Brexit process.

This briefing discusses the changes to the Act and their potential impact on the course of Brexit.

<https://www.cliffordchance.com/briefings/2020/01/brexit-delivered-the-european-union--withdrawal-agreement--act-2020.html>

## **Sterling LIBOR transition - 2020 roadmap**

The UK regulators, in a series of co-ordinated publications, have stepped up their warnings to market participants to move away from the use of sterling LIBOR. Although there has already been much progress in the markets, this is a clear sign that momentum is expected to increase during the course of 2020 in order for market participants to be ready for the cessation of LIBOR in 2021.

This briefing discusses these publications and their implications.

<https://www.cliffordchance.com/briefings/2020/01/sterling-libor-transition--2020-roadmap.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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