



Key Regulatory Topics: Weekly Update

8 February 2019 – 14 February 2019

BREXIT

Please see the product sections for updates on draft SIs published in anticipation of a hard Brexit.

Please see our [podcast](#) on Antitrust and a hard Brexit – parallel regimes, increased uncertainty.

Please see our Brexit [webpage](#) for a table that summarises the domestic measures Governments in EU27 member states are publishing in order to prepare for the UK's withdrawal from the EU.

Please also see the Other Developments section for the Council of the EU's invitation to agree on the general approach for ESFS reforms.

Updated draft Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 published

On 12 February, HMT published an updated draft of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019. The purpose of the Regulations is to make minor and technical amendments to UK primary and secondary legislation and to retained EU legislation relating to financial services in preparation for a no-deal Brexit. They also revoke certain statutory instruments and EU legislation, particularly legislation relating to the single supervisory mechanism and the single resolution mechanism. In addition, they introduce transitional provisions relating to, among other things, insurance business transfers and disclosures concerning credit agreements. The Regulations will enter into force on exit day, with the exception of amendments to statutory instruments made under European Union (Withdrawal) Act 2018, which will come into force before exit day. HMT has published a draft version of the Regulations ahead of formally laying them before Parliament.

[Read more](#)

Correction slip to draft Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 published

On 12 February, a correction slip to the draft Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 was published. The correction slip sets out minor amendments to the draft Regulations, which were published on 21 January. The Regulations amend primary and secondary UK legislation, notably the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, to ensure that, after exit day, the UK continues to have robust protections covering the way the UK financial services regulators disclose confidential information to UK, EEA and third-country regulatory and supervisory authorities.

[Read more](#)

HMT letter on importance of having power to designate third countries as equivalent in event of no-deal Brexit

On 12 February, the House of Commons Treasury Committee published a letter from Nicky Morgan, Committee Chair, to John Glen, Economic Secretary to the Treasury that, among other things, asks why HMT requires the power to designate third countries as equivalent given the regulators already have a temporary permissions regime to enable them to carry out their objectives in the event of a no-deal Brexit.

The question follows the publication of a draft version of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (the Equivalence Regulations). In Mr Glen's response, he explains that the temporary permissions regime and the process for authorising individual passporting firms are separate. Equivalence does not provide a replacement for passporting, which only operates within the EEA. The EU equivalence framework allows the EC to determine whether a third country has a regulatory and supervisory regime that is equivalent to the corresponding EU regime in a specific area of financial services. Mr Glen notes that the ability to grant equivalence will form a key part of the UK's financial services regime after exit day. The Equivalence Regulations complete the UK's equivalence framework and fill the gap that arises on exit day when the EU and the UK will become third countries to each other. In particular, they: (i) fix deficiencies in existing EC decisions that will become retained EU law; (ii) revoke regulations that grant powers to the ESAs (that is, the EBA, EIOPA and ESMA) and create functions for the BoE, the PRA and the FCA to provide technical advice to HMT; and (iii) contain a time-limited power for Treasury ministers to make directions that EEA states are equivalent for the regimes listed in the Equivalence Regulations, for up to 12 months after exit day. After this power expires, and also for any third country outside of the EEA from exit day, HMT must make equivalent decisions by regulations.

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CAPITAL MARKETS

Credit Rating Agencies (Amendments etc) (EU Exit) Regulations 2019 made

On 14 February, the Credit Rating Agencies (Amendments etc) (EU Exit) Regulations 2019 were published together with an explanatory memorandum. The Regulations aim to amend the Credit Rating Agencies Regulation to make it work in a UK context in a no-deal scenario. The Regulations also set out details of the FCA's powers and functions in respect of UK CRAs and establish conversion and temporary registration regimes for UK credit rating agencies (CRAs). A draft version of the Regulations was laid before Parliament in December 2018. Parts 1 (General provision) and 8 (transitional provisions, including the conversion and temporary registration regimes) of the Regulations come into force on 14 February. The other Parts come into force on exit day.

[Statutory instrument](#)

[Explanatory memorandum](#)

Financial Conglomerates and Other Financial Groups (Amendment etc) (EU Exit) Regulations 2019 published

On 14 February, the Financial Conglomerates and Other Financial Groups (Amendment et.) (EU Exit) Regulations 2019 were published together with an explanatory memorandum. The Regulations aim to correct deficiencies in legislation implementing the Financial Conglomerates Directive. They make extensive amendments to the Financial Conglomerates and Other Financial Groups Regulations 2004, as well as consequential amendments to the Capital Requirements Regulations 2013 and the retained version of the Capital Requirements Regulation. A draft version of the Regulations was laid before Parliament in January. The Regulations will come into force on exit day.

[Statutory instrument](#)

[Explanatory memorandum](#)

CONSUMER/RETAIL

ESAs' final report on amendments to Delegated Regulation on PRIIPs KID

On 8 February, the Joint Committee of ESAs published a final report on proposed amendments to Commission Delegated Regulation (EU) 2017/653 on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs). The ESAs consulted on the proposals in November 2018. They state in the final report that since feedback on the consultation indicated that overall stakeholders did not support the proposed amendments, and taking into account the implications of a possible decision by the European Co-legislators to defer application of the KID by UCITS and certain non-UCITS funds until 31 December 2021, they have decided not to propose substantive amendments to the PRIIPs Delegated Regulation at this time. Instead, they have begun work to provide input to a review of the Delegated Regulation during 2019. The final report sets out how the ESAs plan to conduct this work and discusses the next steps that the ESAs intend to take. This includes finalising their work, including proposing new regulatory technical standards (RTS) by the end of 2019, and launching a further public consultation on any specific legislative changes during 2019. The final report also summarises the feedback the ESAs received on their November 2018 consultation. However, the ESAs believe that an immediate supervisory response is necessary to issues raised in their consultation relating to performance scenarios since the ESAs believe

there is a risk that retail investors are given inappropriate expectations about possible returns. They have therefore published a joint supervisory statement, which includes a recommendation that PRIIP manufacturers provide a warning in the KID to ensure that retail investors are fully aware of the limitations of the figures provided in the performance scenarios.

[Read more](#)

FINANCIAL CRIME

Please refer to the Other Developments section for an update regarding the FOS letter to the Treasury Committee which comments on quality assurance, case progression and economic crime.

Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019 published

On 14 February, the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019 were published. The Regulations aim to amend retained EU law related to AML to ensure that it continues to operate effectively in a UK context once the UK leaves the EU. In particular, the Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation (EU) 2015/847 on information accompanying transfers of funds (revised Wire Transfer Regulation). A draft of the Regulations was published on 29 November 2018, which version was laid before Parliament. The Regulations will come into force on exit day.

[Read more](#)

EC adopts new Delegated Regulation identifying high-risk third countries under MLD4

On 13 February, the EC adopted a Delegated Regulation, which supplements MLD4 by identifying 23 high-risk third countries with strategic deficiencies. The countries are listed in an annex to the Delegated Regulation. Article 9(2) of MLD4 gives the EC the power to adopt delegated acts identifying high-risk third countries. The list is, for the first time, based on new methodology that reflects the stricter criteria of MLD5, which amends MLD4 and came into force in July 2018. The Delegated Regulation will repeal Delegated Regulation (EU) 2016/1675, which currently lists 16 countries as high-risk. The aim of the list is to protect the EU financial system by better preventing money laundering and terrorist financing risks. Under Article 18 of MLD4, firms are required to apply enhanced due diligence (EDD) measures when dealing with financial operations involving customers and financial institutions from the high-risk third countries identified by the EC. The list has been established on the basis of an analysis of 54 priority jurisdictions, which was prepared by the EC in consultation with member states. It will be updated as and when necessary, with the aim of further identifying third countries as being of high-risk and reflecting progress made by listed countries. The Delegated Regulation will be submitted to the Council of the EU and the EP to consider for approval within one month. If neither objects, it will be published in the OJ. It will enter into force 20 days after its publication in the OJ and will apply from that date.

[Read more](#)

Crime (Overseas Production Orders) Act 2019 was passed

On 12 February, the Crime (Overseas Production Orders) Act 2019 was passed. Following agreement by both Houses on the text of the Bill, it received Royal Assent and is now an Act of Parliament. The Act allows law enforcement agencies to apply for a UK court order to get stored electronic data directly from a company or person based outside the UK.

[Read more](#)

FINTECH

FSB: Report: FinTech and market structure in financial services

On 14 February, the FSB published a report on FinTech and market structure in financial services. The publication is part of the FSB's ongoing work to monitor FinTech market developments and their potential implications for financial stability. The FSB defines FinTech as technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services.

[Read more](#)

INSURANCE

Implementing Regulation on technical information for calculation of technical provisions and basic own funds for Q1 2019 reporting under Solvency II published in OJ

On 8 February, Commission Implementing Regulation (EU) 2019/228 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2018 until 30 March under the Solvency II Directive was published in the OJ. To ensure uniform conditions for insurers and reinsurers calculating technical provisions and basic own funds, the Solvency II Directive requires that technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments must be laid down for every reference date. In each case, the technical information is based on market data related to the end of the last month preceding the first reporting reference date to which the relevant Implementing Regulation applies. The Recitals to the Implementing Regulation explain that, on 9 January, EIOPA provided the EC with the technical information related to end of December 2018 market data. That information was published in accordance with Article 77e(1) of the Solvency II Directive. The EC adopted the Implementing Regulation on 7 February. It enters into force on 9 February and applies from 31 December 2018.

[Read more](#)

MARKETS AND MARKETS INFRASTRUCTURE

BoE supervision of FMIs annual report 2019

On 14 February, the BoE published its annual report on the supervision of financial market infrastructures (FMIs). The report sets out how the BoE has exercised its responsibilities for FMI supervision during the period 21 February 2018 to 14 February. It outlines the BoE's role in supervising FMIs, sets out how it has worked to meet its financial stability objective through FMI supervision and reviews progress against the priorities discussed in the previous annual report. The report also outlines the BoE's priorities for FMIs in 2019. Generally, the BoE will continue to identify and mitigate risks to the FMIs it supervises and the economic activities they support. This will include actively monitoring developments that could present new or increased risks through regular horizon-scanning exercises. The BoE will also continue to contribute to domestic and international policy discussions concerning FMIs, and examine how changes in the FMI landscape could affect the effectiveness of the FMI regulatory framework and financial stability more generally. Among other things, in 2019, the BoE will: (i) carry out a range of targeted core assurance reviews, both on individual FMIs and on a thematic, cross-FMI basis. These will assess how FMIs are mitigating risks across the broad range of their operations, in areas such as operational and financial resilience; (ii) seek to ensure that any technological changes carried out by FMIs are designed and implemented in ways that promote the resilience of individual FMIs and the broader system; (iii) continue its work to further develop its supervisory approach and policy framework for operational resilience, in close collaboration with the PRA and FCA. It also plans to launch a pilot of its approach to stress testing the financial service sector's resilience to cyber incidents, which will focus on payments. This will include relevant FMIs within scope; and (iv) continue its work to ensure that FMIs, and the BoE in its capacity as FMI supervisor, are well-prepared for Brexit, irrespective of the form it takes. This will include further work on FMIs' contingency plans, and policy work to ensure both the continuity of the regulatory framework for FMIs and implementation of relevant changes in the BoE's responsibilities.

[Read more](#)

FCA and BoE complete 2018 review of MoU on market infrastructure

On 14 February, the FCA published a press release on the operation of its MoU with the BoE for market infrastructure. The FCA explains that it and the BoE held a consultation, in 2018, with financial market infrastructures (FMIs) as part of a review of their co-operation arrangements regarding market infrastructure. The authorities concluded that the MoU arrangements for co-operation remain effective, with appropriate co-ordination and no material duplication. Industry representatives acknowledged the efforts made on co-operation. The press release states that the authorities will update the MoU to ensure it continues to appropriately reflect their respective roles and responsibilities once the UK has left the EU. The FCA and BoE are required to annually review the MoU, including by seeking feedback from supervised businesses.

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GFXC provides update on work

On 14 February, the Global Foreign Exchange Committee (GFXC) published a press release providing an update on its work. It has: (i) published a report on the role of disclosure and transparency in the global FX market. The report describes eight characteristics to help market participants develop and review FX disclosures. It also outlines work on understanding the challenges related to disclosures in the context of anonymous platform trading; (ii) published a report on the role of "cover and deal" arrangements in the global

FX market. Generally, these are arrangements where a market participant looks to facilitate their client's trade without taking on any market risk. They typically involve the use of an electronic trading practice known as "last look". The report describes various aspects of cover and deal arrangements, highlighting specific, relevant principles within the FX global code that relate to these trading practices. Firms operating cover and deal models are encouraged to review the nature of their current disclosures, and maintain an ongoing dialogue with their clients that provides sufficient transparency around their practices; and (iii) released results from its second annual survey on the code. The survey aims to measure the awareness, adoption, implementation and effects of the code for market participants. Among other things, 95% of respondents had read part or all of the code, and over two-thirds were aware of updates made to the code since its launch in 2017. Adoption of the code among respondents has significantly increased, from 11% in 2017 to 55% in 2018. 80 to 90% of respondents thought the code had had a positive effect on their firm and the wider FX markets. The results of the survey will inform the GFXC's future work. The GFXC was established in May 2017 as a forum to bring together central banks and private sector participants, with the aim of promoting a robust, liquid, open and transparent FX market. The code, which was originally published in May 2017, comprises a set of global principles of good practice in the FX market.

[Read more](#)

FCA speech on improving compliance with market abuse regime

On 13 February, the FCA published a speech given by Julia Hoggett, FCA Director of Market Oversight, on improving compliance with the market abuse regime. Points of interest in the speech include the following: (i) compliance with the market abuse regime requires a series of situational judgements to be made. The decisions firms are required to make and the questions they are required to answer are often not easy, but are critical to the integrity and health of the financial markets. A number of these judgments are extremely time sensitive and it is likely that this time pressure will increase; (ii) a regulatory system reliant on controls that work by detecting when an event has happened will never be as effective as a system that also helps ensure that misconduct does not happen in the first place. It is critical to consider how to protect the market from misconduct occurring; (iii) the FCA's "5 conduct questions" approach is a conduct risk mitigation framework. It is increasingly used across FCA wholesale supervision to help firms enhance the way in which they conduct business. The first three questions focus on identifying conduct risk, ensuring that staff within firms feel and are responsible for managing the conduct of their business, and the nature of the support (including systems and controls) that firms put in place to improve the conduct of their business. The approach is sufficiently broad and principles-based that it can apply to almost every manifestation of conduct risk within a wholesale business. Some risks appear blindingly obvious once they are manifest, but do not occur to people beforehand. This is why developing effective "conduct risk identification muscles" is critical to protecting a firm's business and ensuring markets remain clean; (iv) the FCA is concerned that some market abuse risks have not been appropriately considered. These include inside information leaking outside of firms, staff not conducting business appropriately, and access controls and surveillance capabilities in place across investment banking and advisory platforms not being as evolved as they should be; and (v) as certain forms of market abuse are a financial crime, firms need to consider the necessary interplay between their financial crime and market abuse systems and controls. Some, but not all, firms already have financial crime policies and procedures in place that cover insider dealing and market manipulation.

[Read more](#)

EC adopts Delegated Regulation amending MiFID II tick size regime

On 13 February, the EC adopted a Delegated Regulation amending Delegated Regulation (EU) 2017/588 (RTS 11) as regards the possibility to adjust the average daily number of transactions for a share where the trading venue with the highest turnover of that share is located outside the EU. Article 49 of MiFID II requires trading venues to adopt tick size rules for a number of financial instruments, including shares. Tick sizes should be determined for each individual financial instrument and calibrated to reflect the instrument's liquidity in the markets where it is traded. Article 49(3) of MiFID II requires ESMA to develop draft regulatory technical standards (RTS) to further specify the tick sizes or tick size regimes. ESMA submitted draft RTS to the EC in December 2018 that proposed amendments to RTS 11. The draft RTS further specified provisions relating to the calculation of the tick size for financial instruments traded or admitted to trading on an EU trading venue and a third-country trading venue in cases where the most liquid trading venue by turnover is the trading venue located outside the EU. The Delegated Regulation will enter into force on the twentieth day after its publication in the OJ. The next step is for the Delegated Regulation to be considered by the EP and Council of the EU.

[Read more](#)

New Prospectus Regulation: ESMA list of thresholds below which prospectus not required

On 8 February, ESMA published a list of the thresholds below which an offer of securities to the public does not need a prospectus in the various member states of the EU. The document, which ESMA states contains information provided by NCAs, sets out, for each member state: (i) a short description of the national thresholds below which no prospectus is required; (ii) a summary of any national rules which apply to offers below that threshold; and (iii) hyperlinks to the relevant national legislation and rules. ESMA plans to update and republish the document when it receives notifications from member states that the information has changed.

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PAYMENT SERVICES AND PAYMENT SYSTEMS

EPC issues call for change request on SEPA proxy lookup scheme rulebook

On 14 February, the EPC published a press release announcing the launch of a call for change request on the Single Euro Payments Area (SEPA) proxy lookup (SPL) scheme rulebook. It has also published a webpage on the call for change request and a template for proposing changes. The EPC is seeking feedback from stakeholders on possible changes to the SPL scheme rulebook. The deadline for submitting change requests is 31 March. The EPC intends to organise a three-month public consultation on the requests that it receives around the end of May 2019, with the aim of publishing a new scheme rulebook by April 2020. The SPL scheme covers the exchange of the data necessary to initiate payments between proxy-based payment solutions on a pan-European level. The SPL scheme rulebook, which was first published by the EPC in December 2018, sets out the rules and obligations relating the SPL and is intended to provide authoritative information to scheme participants and other relevant parties on the functioning of the scheme.

[Read more](#)

EP adopts proposed Regulation amending Regulation on cross-border payments

On 14 February, EP has published a press release announcing that it has adopted in plenary at first reading the proposed Regulation amending the Regulation on cross-border payments as regards certain charges on cross-border payments in the EU and currency conversion charges. The next step is for the proposed Regulation to be adopted by the Council of the EU. Provided that it is adopted by the Council, it will enter into force on the 20th day following that of its publication in the OJ and the majority of its provisions will apply from 15 December. On December 2018, the Council and the EP reached political agreement on the proposed Regulation.

[Read more](#)

PSR consults on working paper on proposed pass-through analysis as part of card-acquiring market review

On 8 February, the PSR published a working paper setting out, for consultation, the proposed pass-through analysis methodology that it intends to use in its ongoing card-acquiring market review. On 24 January, the PSR published the final terms of reference for its market review into the supply of card-acquiring services in the UK. The market review will examine whether the supply of card-acquiring services (services to accept and process card payments on behalf of a merchant resulting in a transfer of funds to the merchant) is working well for merchants, and ultimately consumers. As part of this review, the PSR will look at how the level of the fees merchants pay for card-acquiring services (the merchant service charge (MSC)) have responded to changes in the fees acquirers pay to card system operators (scheme fees) and card issuers (interchange fees). The working paper explains how the PSR is proposing to carry out that analysis. The PSR's proposed approach is to analyse the pass-through by looking at how much the MSC changed for a given change to the other fees. The proposed analysis will, in the first instance, be concerned with pass-through from large acquirers to merchants, but the PSR may also look at pass-through from acquirers to payment facilitators, and pass-through from payment facilitators to merchants. The PSR intends to look, in particular, at what the long-term pass through is, the speed of the pass-through and whether different broad categories of merchant have seen different degrees of long-term pass-through or different speeds of pass-through. The working paper explains the PSR's current thinking on the econometric methodology that it proposes to follow in conducting this analysis, including its assumptions, the data it intends to use and its proposed approaches to estimating pass-through. The results of the pass-through analysis will be one piece of evidence that the PSR will consider when taking a view on whether the supply of card-acquiring services is working well. The deadline for feedback on the proposed analysis is 1 March.

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PENSIONS

Council of EU agrees position on proposed PEPP Regulation

On 13 February, the Council of the EU published a press release announcing that COREPER has agreed its position relating to the proposed Regulation on a pan-European personal pension product (PEPP) (PEPP Regulation). Trialogue negotiations resulted in provisional agreement between the EC, the EP and the Council on 13 December 2018. Also on the 13 February, the EP updated its procedure file on the proposed Regulation on the PEPP Regulation. The procedure file indicates that the EP will consider the proposed Regulation during its plenary session to be held from 3 to 4 April.

[Press release](#)

[Procedure file](#)

HMT letters on progress of proposed PEPP Regulation

On 12 February, the Department for Exiting the European Union (DExEU) published a letter from John Glen, Economic Secretary to the Treasury, to Sir William Cash, Chair of the House of Commons European Scrutiny Committee. It has also published a letter from Mr Glen to Lord Boswell of Aynho, Chair of the House of Lords EU Committee, that contains broadly identical material. The letters set out details of the current progress within the Council of the EU of the EC's legislative proposal for the proposed Regulation on a PEPP (PEPP Regulation). Mr Glen refers to the elements of the proposed Regulation that were debated at trilogue and provides a summary of the issues raised. These relate to matters including the respective roles of national authorities and EIOPA for authorising PEPPs, the introduction of a charge cap on the basic PEPP product and a mandatory advice requirement on PEPPs. Mr Glen states that the proposed Regulation is due to progress to COREPER on 13 February, and is expected to proceed as an "A Point" to a Council meeting afterwards. He requests clearance from the Committee to release the proposed Regulation from scrutiny so that the UK may vote in favour of its adoption. In the letters, Mr Glen comments that given the highly-developed pension market in the UK, the government does not anticipate great demand for the PEPP from UK consumers. With regard to Brexit, he goes on to explain that the PEPP Regulation is likely to enter into force during any implementation period agreed following the UK's exit from the EU. He also notes that the PEPP Regulation does not allow third country firms to offer PEPPs and so it is unlikely that UK consumers would be eligible for PEPPs once the implementation period has ended.

[Read more](#)

CMA consults on draft Investment Consultancy and Fiduciary Management Market Investigation Order 2019

On 11 February, the CMA published for consultation a draft of the Investment Consultancy and Fiduciary Management Market Investigation Order 2019. This will implement the remedies to address the adverse effects on competition identified in the final report on the market investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK. The measures included in the draft Order include mandatory competitive tendering of fiduciary management services and a requirement for integrated firms to clearly separate marketing materials from advice. There are also various measures that are intended to provide pension scheme trustees with more information on fees and performance of fiduciary managers and investment consultants. The CMA invites comments on the draft Order and a draft explanatory note that accompanies it by 5pm on 13 March.

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STRUCTURAL REFORM

ESFS reform: Council of EU confirms general approach ahead of negotiations with EP

On 12 February, the Council of the EU published a press release announcing it has confirmed its general approach on the proposed legislative reforms to the ESFS. The general approach is set out in compromise proposals agreed by delegations in December 2018 and February. On the basis of this general approach, and as requested by the Council Presidency, the Council has now invited the Presidency to begin trilogue negotiations with the EP on the ESFS legislative reform package. ECON adopted its position on the ESFS legislative reform package in January. The press release explains that, following the Council's confirmation of its general approach, both co-legislators are now in a position to start trilogue negotiations on the basis of the complete ESFS mandate, with a view to reaching an agreement at first reading. The first trilogue is scheduled for 14 February. The EC has published a press release setting out the remarks made by its Vice-President, Valdis Dombrovskis, at the press conference following the ECOFIN meeting. Among other things, Mr Dombrovskis comments on the Council's confirmation of its general approach on the ESFS reforms. He describes it as "positive", although he acknowledges that the compromise reached "does not have the same high level of ambition" as the EC's original proposals. However, he adds that the compromise reached is "as

good as it can get" given the number of diverging views. The EC urges the Council and EP to work with a view to reaching a political agreement before the European elections in May.

[Read more](#)

House of Commons European Scrutiny Committee retains scrutiny over proposed ESFS reforms

On 12 February, the House of Commons European Scrutiny Committee published its fifty-fourth report of the 2017-19 session. Among other things, the report refers to the proposed legislative reforms to the ESFS. In January, John Glen, Economic Secretary to HMT, provided an update to the Committee on the progress of negotiations at EU level. Having considered this update, the Committee decided to grant the requested scrutiny waiver to the UK government for the ECOFIN meeting on 12 February, to enable the government to vote in support of the Council of the EU's general agreement on the proposed ESFS legislative reforms. However, the Committee did not clear the file from scrutiny, including because: (i) the committee remains concerned about the implications for the UK of the ESFS reforms, despite the UK's scheduled withdrawal from the EU on 29 March; (ii) the powers of the ESAs are also highly relevant for the UK even after leaving the single market; and (iii) the ESFS reforms are directly relevant to the UK financial services industry both before and after the UK leaves the single market. Given the potential implications of the proposals for the UK, the Committee welcomes Mr Glen's indications that member states want to significantly alter some of the more far-reaching elements of the original EC proposal. The Committee requests that Mr Glen keep it informed of further developments in the legislative process.

[Read more](#)

TAXES/LEVIES

PRA policy statement on changes to periodic and transaction fees for insurers and designated investment firms

On 13 February, the PRA published a policy statement (PS3/19) to its consultation paper, PRA fees and levies: Changes to periodic and transaction fees (CP28/18). PS3/19 sets out the PRA's final policy on matters including the following: (i) a revised approach to periodic fees for designated investment firms (DIFs) and life insurers; (ii) updates to Part VII regulatory transaction fees and internal model application fees for insurers; (iii) updates to internal model application and model maintenance fees for DIFs; and (iv) updates to the PRA's supervisory statement, Fees: PRA approach and application (SS3/16). Changes to rules are set out in the PRA Rulebook: PRA Fees Amendment Instrument 2019 and the PRA has published an updated version of SS3/16. The new rules and updated SS3/16 come into force on 1 March. The PRA received four responses to CP28/18, which it published in November 2018. Generally, respondents were supportive of the PRA's proposals.

[Read more](#)

OTHER DEVELOPMENTS

CMA publishes its Annual Plan for 2019/20

On 14 February, the CMA published its Annual Plan for 2019/20. Given the uncertainty over Brexit, the CMA sets out its priorities at a high level, intending to refine and explain its plans as clarity emerges. The priority themes that will carry particular strategic importance in the coming year are protecting vulnerable consumers; improving trust in markets; promoting better competition in online markets; and supporting economic growth and productivity. The Annual Plan also includes a chapter on the CMA's Brexit planning. The CMA enters 2019/20 with a substantial volume of ongoing work and currently has 23 competition enforcement cases; six consumer enforcement cases; 12 merger investigations, and two market studies under way. It notes that, if the UK were to leave the EU without a deal, the CMA would take on a great deal of new, complex work from March. It would be obliged by statute to investigate all qualifying mergers and state aid cases. Discretion to carry out other work, such as market studies and further enforcement, would narrow considerably, and the CMA states it will "need to take tough decisions on our domestic casework priorities, at pace, to be flexible to our new circumstances".

[Read more](#)

FOS letter to Treasury Committee comments on quality assurance, case progression and economic crime

On 13 February, the House of Commons Treasury Committee published a letter from Caroline Wayman, Financial Ombudsman Service (FOS) Chief Ombudsman and Chief Executive, to Nicky Morgan, Committee Chair. Ms Wayman's letter responds to a letter from Ms Morgan. Points of interest include: (i) quality assurance (QA). A core question under the FOS' QA framework asks whether the FOS "got to grips with the

issues" in a case. Between January to December 2018, in completing this assessment, the QA reviewer did not agree that the FOS had got to grips with the issues in around 8% of cases. This does not mean an outcome was necessarily wrong, but rather the QA reviewer had some doubt about how well the FOS had done. The figure may also include examples where the FOS reached a fair outcome, but may not have handled the case as well as it could have done; (ii) case progression. The FOS may decide to deal with a group of similar complaints by issuing a sample of "lead" decisions, which are representative of the wider group. All the cases are effectively progressing behind the lead cases, but are not allocated to an individual investigator or ombudsman. Recently, the FOS has taken this approach with fraud complaints and short-term lending complaints; and (iii) economic crime. The FOS considers that a joined-up response to the issue of fraud and scams, reflecting the overlapping roles and responsibilities of policymakers, enforcement agencies and those who provide consumer information is important. It also notes the difficulty of deciding who should bear the risk in circumstances where neither the financial business nor the consumer has acted wrongly or negligently, but a fraud has been carried out. In relation to authorised push payment fraud, the FOS does not expect the contingent reimbursement model (CRM) code to result in significantly more investigative work. The CRM code may reduce instances of fraud and the number of cases coming to the FOS. The impact on recipient firm cases or the difficulty of investigating those cases is currently unknown as the FOS has not previously had jurisdiction and much will depend on the final CRM code requirements, which the steering group is still considering.

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FSB 2019 work programme

On 12 February, the FSB published its 2019 work programme. The main areas of the FSB's work during 2019 will relate to the following: (i) addressing new and emerging vulnerabilities in the financial system. The FSB will continue to scan the horizon to identify and assess emerging risks through regular discussion by its members of macro-financial developments. It will also continue to assess the impact of evolving market structures and of technological innovation on global financial stability. This includes the resilience of financial markets in stress, the implications of the growth of non-bank financial intermediation and operational issues such as cyber risks; (ii) finalising and operationalising post-crisis reforms. The FSB is working with standard-setting bodies (SSBs) to complete work on a few final issues in the main reform areas. These include finalising the insurance capital standard and the common framework for the supervision of internationally active insurance groups, making derivatives markets safer and promoting resilient non-bank financial intermediation. In addition, with the policy development for addressing "too big to fail" for banks largely completed, the FSB's focus has turned to the technical and operational issues that arise in resolution as well as issues relating to systemic risk in the insurance sector and financial market infrastructures; (iii) implementation of G20 reforms. The FSB, in collaboration with SSBs, will continue work on implementation monitoring through regular progress reports and peer reviews. This includes monitoring the implementation of Basel III, the FSB's key attributes of effective resolution regimes for financial institutions, OTC derivatives market reforms and the implementation of the FSB principles and standards for sound compensation practices; and (iv) evaluating effects of the reforms. The FSB will take forward its programme to evaluate the effects of post-crisis reforms. The objective is to assess whether reforms are operating as intended in an efficient manner, and to identify and deliver adjustments where appropriate, without compromising on the agreed level of resilience. As in previous years, these issues will be discussed in the annual FSB report on the implementation and effects of reforms. The annex to the work programme provides an indicative timeline of FSB publications planned for 2019.

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FCA modification by consent for employers' liability register compliance reporting

On 11 February, the FCA published a direction relating to a modification by consent of a rule in the Supervision manual (SUP) for employers' liability register compliance reporting. The modification will enable the Employer's Liability Trading Office (ELTO) to be classed as "an auditor" for the purposes of the rule at SUP 16.23A.6(1). It is available to all firms that are members of the ELTO and will last for three years from the date it is granted. For the purposes of compliance with SUP 16.23A.6R, if a firm appoints the ELTO to prepare the report: (i) the requirements of SUP3.4.2R will be satisfied to the extent that the firm takes reasonable steps to ensure that ELTO has the required skill, resources and experience to prepare the report; (ii) the requirements of SUP3.4.4G will be satisfied to the extent that the ELTO has skills, resources and experience commensurate with the nature, scale and complexity of the firm's business and the requirements and standards required to produce the report. The firm should seek confirmation of this from the ELTO as appropriate; (iii) the requirements of SUP 3.8.5R to SUP 3.8.6R will not fail to be satisfied solely as a consequence of the relationship between the ELTO, as a qualifying tracing office, and the firm, solely by virtue of the firm being a member of the ELTO; and (iv) SUP 3.8.7G and SUP 3.5.4G, to which it refers, are

not applicable to the extent that the ELTO does not have a recognised supervisory body. If firms wish to take advantage of the direction, they should contact the FCA central waivers team. The FCA will confirm, in writing, if the modification is granted.

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Council of EU invited to agree on general approach for ESFS reforms

On 8 February, the Council of the EU published a note from its Presidency to the Council regarding the proposed reforms to the ESFS. The note states that following a meeting of the working party on financial services and a subsequent silence procedure, the latest compromise proposal for a negotiating mandate on the ESAs framework (excluding AML, which has already been agreed), MiFID II and Solvency II, and the ESRB regulation, is now supported by all delegations. On 6 February, COREPER supported the Presidency's approach and agreed to submit this general approach to the Council for agreement. The Netherlands has submitted a statement to the minutes of the COREPER and Council meetings relating to a potential conflict of interest between the ESRB and the ECB. The Council is invited to agree on a general approach for the ESFS package, and to invite the Presidency to start negotiations as soon as possible with the EP with a view to reaching an agreement at first reading. The Council is also invited to take note of the statement from the Netherlands delegation.

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