



## I. ACTIVE PRIORITIES

Brexit			
CMCE priorities	Status / latest developments	Next steps	CMCE action
<b>Transitional arrangements</b>  <b>Ancillary activity test</b>	<p>According to intelligence secured by HB, and contrary to what had earlier been said, the Commission is unlikely to propose draft 'contingency' legislation for financial services in the event of a hard Brexit. The Commission is afraid that legislation would not be finalised before March 2019, even if it takes the shape of Level 2 measures. Moreover, France will be unveiling its own set of unilateral measures soon. The Commission does not wish to propose something different than France for fear of creating more confusion.</p> <p>Instead, the Commission is expected to issue a 'Brexit contingency roadmap' to national finance ministries and regulators (prudential and conduct), recommending a set of measures to be enacted, combined with some supervisory guidance. Informally it is understood that regulators would also be allowed to temporarily apply some 'leniency' and 'regulatory forbearance' to mitigate the impact. We understand however that the Commission would not want any emergency measures or temporary recognition regime to extend too far into the future for fear of undermining future equivalence assessments.</p> <p>We understand that ESMA staff have said that they do not expect a temporary recognition regime similar to that put in place by the UK, given that this possibility is not foreseen by EU law and would require changes to Level 1 legislation.</p>	<p><b>November</b> – Deadline for finding a compromise on the Withdrawal Agreement</p> <p><b>6 November</b> – French senate to discuss and adopt draft report on no-deal Brexit contingency measures</p> <p><b>7 December</b> – Close of FCA consultation on changes to handbook and technical standards</p>	<p>Members of the Brexit WG have been asked to provide input as to what topics they would like to see in a CMCE issues paper on Brexit by Tuesday 30 October. A call of the Brexit WG will take place on 4 November at 11:00 AM GMT/12:00 CET.</p>

	<p>On 23 October, the French Senate's Special Committee for the Law enabling the Government to take measures in preparation of Brexit held a hearing with Nathalie Loiseau, French Minister for European Affairs. She stated that the likelihood of a no-deal scenario is increasing. The Government believes that, even if a deal is reached, there is a potential risk that the UK House of Commons will not ratify the deal. She also stated that the French Government does not want to engage any bilateral or parallel negotiations with the UK and that they are awaiting the UK solution proposal to the Irish border issue.</p> <p>Other member states are taking similar measures; Germany is preparing a series of six draft laws.</p> <p>To protect French interests, the Government wants to authorise French businesses to use framework conventions in financial services and guarantee contract continuity. The Government stresses that UK entities will lose passporting rights but urges the extension of contracts to help address that.</p> <p>On 22 October, the UK published a <a href="#">draft SI</a> on OTC derivatives, CCPs and trade repositories to amend parts of the onshored EMIR and related UK legislation. This will help the UK ensure that the UK continues to have an effective regulatory framework for OTC derivatives, CCPs and TRs in a no-deal scenario.</p>		
<b>MiFID II</b>			
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>CMCE action</b>	
<b>AA exemption</b> <b>Position limits</b> <b>Reporting</b> <b>Physical forwards</b>	<p>During an International Regulatory Strategy Group (IRSG) conference in London on 18 October, Kay Swinburne MEP and IRSG Chairman Mark Hoban warned industry representatives that they can expect MiFID II to be revisited in a form of "MiFID 2.5" and that the policymakers dealing with it in the European Parliament and Commission will not be experienced with MiFID II/MiFIR.</p> <p>On 9 October, the French government adopted legal provisions requiring third country investment firms which provide investment services and activities to eligible counterparties and <i>per se</i> professional clients to <b>set up a branch in its territory</b>.</p>	<p>On the work around the classification of physical forwards the advisory team is to circulate suggested standardised language for a short paragraph that Members can choose to include in the circle-out notification emails linked to the OSN contract.</p>	

	<p>According to the MiFIR third country regime, in the absence of an equivalence decision from the Commission, Member States may allow third country firms to provide investment services and activities to eligible counterparties and <i>per se</i> professional clients in their territories in accordance with the applicable national regime.</p> <p>This provision was introduced in article 23(16°) of the <u>PACTE bill</u>, also called Action Plan for Business Growth and Transformation, which was adopted by the National Assembly (the lower chamber) on 9 October which is currently being examined by the Senate.</p> <p>Moreover, during a public hearing on 16 October the consequences of Brexit on financial services hosted by the Senate, AMF Chair Robert Ophèle indicated that under the existing MiFIR third country regime, third country firms would receive a more favourable treatment and called on the French Parliament to reach a swift agreement on the PACTE bill in order to implement the provision mentioned above as soon as possible.</p> <p>The FCA updated some of their position limits on 22 October following some changes at ICE which led to a revision of the Venue Product codes.</p> <p>The FCA also responded to CMCE about a discrepancy that was flagged by a CMCE member between the recent <u>ESMA opinion</u> on UK natural gas contracts published on 28 September, and the position limits spreadsheet on the FCA website.</p> <p>In the ESMA opinion, the spot limit quoted for UK Natural Gas on page 4 is 60,350 lots (23% of deliverable supply), which differs from the limit included on the spreadsheet on the FCA website of 63,000 lots (25% of deliverable supply). The FCA clarified that the number which was submitted as the Spot Month by the FCA has been identified as a typing error in the preparation of the table published on the FCA website. The FCA will update its website as soon as possible in line with that.</p>		
EMIR REFIT			
CMCE priorities	Status / latest developments	Next steps	CMCE action
Reporting	There were no significant developments in the last 2 weeks.		

<p><b>Risk mitigation for uncleared trades</b></p> <p><b>Calculation of NFCs positions</b></p>			
<b>Benchmarks</b>			
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>	<b>CMCE action</b>
<p><b>Commodity benchmarks</b></p> <p><b>Critical benchmarks</b></p> <p><b>Third country equivalence</b></p>	<p>As a part of the Sustainable Finance package, there was a presentation of the <a href="#">draft report</a> of Neena Gill MEP (S&amp;D UK) on 18 October in the ECON Committee.</p> <p>During the presentation, the rapporteur expressed concern that financial Benchmarks are driving short-termism and do not properly assess sustainability risks. She also argued that the report gives the industry clarity and legal certainty about the direction that the economy and society are heading in; we need to achieve climate goals and financial services does not have an exemption from encompassing the ambition in other EU legislation, e.g. ETS rules on car emissions and buildings.</p> <p>Several MEPs regard the draft report as being unrealistically ambitious. Anne Sander (EPP, FR) expressed reservations about the rapporteur's timeline of 2022 for mandating all benchmarks to be carbon positive. She added that the number of undertakings that will meet the Paris agreement is increasing but there aren't many at the moment and that carbon positive indices won't be viable if we don't have many companies that are in line with the criteria.</p> <p>Kay Swinburne (ECR, UK) asked the rapporteur to clarify amendment 13 as she has reservations about requiring all benchmarks to be positive carbon which she called "not realistic." She also expressed reservations about amendment 18 noting that the language framing this review based on actual costs is counterintuitive as it runs against the concept of a fee.</p> <p>Lieve Wiernick (ALDE, BE) commented that the world of benchmarks is very complex and vital to market. Without benchmarks, many financial</p>	<p><b><u>European Parliament</u></b>  <b>5 November</b> – Vote in the ECON Committee on the ESAs review (tentative)</p> <p><b>19 November</b> – Consideration of amendments on low carbon benchmarks in the ECON Committee</p> <p><b>3 December</b> – Vote on low carbon benchmarks in the ECON Committee</p> <p><b><u>European Commission</u></b>  <b>November</b> - Adoption of delegated acts under the BMR by the European Commission</p>	<p>A revised version of the draft CMCE letter to HM Treasury on 'miscellaneous benchmarks persons' was circulated to the VVG following a second round of comments from members. Members have been asked to raise any final comments by 26 October.</p> <p>The CMCE letter on Neena Gill's draft report on low-carbon benchmarks was circulated to ECON MEPs on 22 October.</p>

	services would be much more expensive or non-existent, and we therefore have to be very cautious in legislating.		
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## II. WATCHING BRIEF

IFR		
CMCE priorities	Status / latest developments	Next steps
<b>Commodity dealer IF regime</b>	<p>During the meeting of the Council Working Party on the IFR which took place on 15 October, member states discussed draft compromise proposals on the IFD and IFR as well as a non-paper on the Group Capital Test and the changes to the CRR on the definition of “institution”.</p> <p>During the meeting, member states including France and Italy (and to a lesser degree Spain), expressed that they are unhappy with the compromise text of the Austrian Presidency.</p> <p>France was insisting on a change to the MiFID II and MiFIR equivalence rules, despite it not being on the agenda.</p> <p>Germany wants the compromise text to adopt the MiFIR amendment extending the tick-size regime to SIs in line with the proposal in the European Parliament report.</p> <p>France seeks to have the consolidation/group waivers for larger investment firms part of a banking group. Although remuneration was not discussed and will be discussed later in detail, there seems to support the reintroduction of a form of ‘bonus cap’.</p> <p>We expect the French proposals to amend the MiFIR third country framework to be discussed in the next meeting. There is an expectation that some concessions will need to be made to the French for the Council to reach an agreement, but it is not clear whether concessions would be made on this or some of the other issues FR is pushing for.</p> <p>The Austrian Presidency is in a hurry to finalise the Council position ahead of the December ECOFIN meeting, which means that there is little time</p>	<p><b>Council of the EU:</b>  <b>15 November 2018</b> – Council WP on IFR/IFD</p> <p><b>10 December 2018</b> – Council WP on IFR/IFD</p>

	to properly discuss any changes to the MiFIR equivalence regime. If no agreement is reached before the end of 2018, it will be difficult to close this file under this legislature.	
<b>MAR</b>		
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>
<b>Insider dealing</b> <b>MM indicators</b>	There were no significant developments in the last two weeks.	
<b>SFTR</b>		
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>
<b>Reporting Obligations</b>	There were no significant developments in the past 2 weeks.	<b>End of 2018</b> – Adoption of the SFTR Level 2 measures by the Commission