CMC EUROPE

CMCE Bi-weekly Update (1 February 2019)

1. ACTIVE PRIORITIES

Brexit			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Transitional arrangements **Ancillary activity test**	UK developments On 29 January, a draft version of the Financial Regulators' Powers and MiFID Amendment Regulations 2019 was published and laid before Parliament with an explanatory note. The SI amends the powers of the FCA and other authorities to remove deficiencies in those additional BTS which have entered into force since the 2018 draft SIs were published which stem from the BMR, MAR and CRR as well as the ELTIF and BRRD. It also transfers powers to the UK financial regulators and HM Treasury under the 2018 draft SI onshoring MiFID. It will come into force on the day after the day on which they are made. A draft SI on the SFTR was also published and laid before Parliament, and it is explained in the SFTR section of this report. EU developments Today, on 1 February, ESMA and the FCA announced that they had agreed on a memorandum of understanding (MoU) on the supervision of Credit Rating Agencies (CRAs) and Trade Repositories (TRs) in the event of no-deal [ESMA announcement and FCA announcement]. They also have concluded an MoU between the FCA and EU and EEA NCAs in the fields of market surveillance, investment services and asset management activities which will allow certain activities, i.e. fund manager	**13 February** – UK Prime Minister to present the House of Commons with the results of her re-negotiating efforts	The CMCE Brexit WG has been consulted on a note which analyses changes to the UK SIs for EMIR, MiFID II and MAR. Members have been asked to provide feedback on whether they see a need for CMCE to engage with the FCA/Treasury on any of the issues highlighted in the note.

	outsourcing and delegation, to continue to be carried out by UK based entities on behalf of counterparties based in the EEA. Political developments On 29 January, the UK House of Commons voted on several amendments related to the Brexit process and negotiations. A majority of the House gave the Prime Minister a mandate to renegotiate the Irish 'backstop' with the EU27 to find some alternative arrangements. A majority also supported a non-legally binding amendment to ensure a no-deal scenario between the UK and EU27 does not occur, while an amendment to ask for an extension of the Article 50 period beyond the 29 March was rejected. Following the vote, European Council President Donald Tusk stated on behalf of the EU27 Heads of State that the Withdrawal Agreement was not going to be renegotiated as it was the best possible deal bearing in mind the UK's current red lines. Alternatives would be possible if the UK changed its red lines, such as seeking a customs union and/or membership of the EU single market. The UK Prime Minister will return to Brussels to seek to renegotiate, as she has to present the results of any renegotiations to the House of Commons by the 13th of February at the latest. The expectation is that aside of a few non-binding concessions on the Political Declaration accompanying the Withdrawal Agreement, she will not receive from the EU27 the binding changes to the backstop required for her to get an agreement approved.		

MiFID II

CMCE priorities	Status / latest developments	CMCE action
AA exemption **Position limits** **Reporting** **Physical forwards**	Position limits On 23 January, ESMA published opinions on position limits on ICE Low Sulphur Gasoil contracts, Panamax freight contracts, ICE Endex TTF gas contracts, Dutch Power Physical Peak contracts, Dutch Power Physical Base contracts, Powernext Dutch Gas TTF contracts which comply with RTS 21. TTC for electricity derivatives On 21 January, ESMA announced an update to the MiFID II/MiFIR transitional transparency calculations (TTC) for commodity derivatives, a	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.

	change which will only impact electricity derivatives. This comes after ESMA was informed about the inconsistent reporting of one specific field which is relevant for electricity derivatives. After ESMA update the reporting instructions, some trading venues resubmitted data and calculations were re-done. As a result, under the new version of this TTC file, some electricity derivative sub-classes have changed liquidity status from illiquid to liquid, and vice versa. For sub-classes that used to be liquid and are now illiquid, the updated results can be applied from the date of publication. For sub-classes that used to be illiquid and are now liquid, trading venues are invited to contact their national competent authority to agree on a reasonable application date as the change in liquidity status may require adjusting their trading systems.		
EMIR REFIT			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Reporting **Risk mitigation for uncleared trades** **Calculation of NFCs positions**	Negotiations on EMIR Refit The Romanian Presidency has finally convened a final trilogue, for 5 February to validate the political deal struck before Christmas between the Austrian Presidency and the European Parliament. Backloading requirement under EMIR Refit On 31 January, ESMA published a statement on the backloading requirement and reporting obligation for small FCs and reporting counterparties under EMIR Refit. ESMA had previously recommended that the requirements be delayed and enter into force on 12 February 2019 as they had expected the EMIR Refit negotiations to have concluded and for the requirements to be enforceable. However, as this is not the case, they state that they do not expect NCAs to prioritise the enforcement of counterparties reporting of backloaded transactions. They encourage NCAs to practice the proportionate enforcement of EMIR in their day-to-day supervision.	**5 February** – EMIR Trilogue	
Benchmarks			

CMCE priorities	Status / latest developments	Next steps	CMCE action
Commodity benchmarks **Critical benchmarks** **Third country equivalence**	BMR Implementation On 30 January, ESMA published an updated Q&A on the benchmarks regulation to add a question on the scope of the delegated acts of the BMR. It specifies that the scope of the delegated regulations is the same as title III of the BMR. For commodity benchmarks, it helpfully specifies that Annex II shall apply instead of the requirements of Title II to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities. Moreover, for critical commodity benchmarks whose underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II. Accordingly, the Delegated Regulations related to the requirements of Title II shall apply only to commodity benchmarks subject to the corresponding requirements in Title II. Low-carbon benchmarks The first trilogue took place on 16 January when delegations discussed the different categorisation of sustainable benchmarks by the Council and Parliament, the extension of the authorisation period for critical benchmarks, the review clauses and the implementation period for existing benchmarks. The Council Presidency had not gathered further feedback from member states and remained largely silent, while the Parliament's negotiating team was able to use the meeting to provide further information to the Commission and Council on details of its position. On the European Parliament's suggested requirement to have a look at whether all BM providers would have to market at least one climate transition benchmark by 2022, the Commission had some doubts but they did not close it off completely. The EP is suggesting that benchmark administrators would have to disclose whether the benchmark is pursuing ESG factors as that is seen as something which they industry could comply with easily but still be a step in the right direction in terms of a "naming and shaming" approach. On critical benchmarks, the rapporteur is keen to have the extension be capped at 36 months for a transition and not 5 years as the Council would suggest. The rapporteur was not convinced by their reasoning. As a follow up action, the Commission prepared a	**12 February –** ECOFIN Council **June 2019** – Commission Expert Group on Sustainable Finance to publish report on carbon benchmarks	A meeting with HM Treasury on the letter on Miscellaneous BM persons is scheduled for 6 February.

	technical note for discussion during the second trilogue on 31 January in which the Commission indicates that the denomination 'Paris-aligned benchmarks' could be misleading. With respect to these benchmarks, the European Parliament negotiating team is in favour of excluding certain sectors of production from eligibility for inclusion these benchmarks. As the Council was not in favour of excluding certain sectors of the economy from either benchmark, according to the Commission, it could be envisaged to limit the sector exclusion to such companies that deploy more than 80% of their operational capacity into the below-mentioned activities involving fossil fuels. Notes on the outcome of the second trilogue will be circulated. <u>ESAs review</u> During the ECOFIN Council on 22 January, Member States agreed to split the ESAs review discussions so as to proceed to trilogues only on the AML-part of the package and to continue negotiating in the Council on the rest of the package based on the individual compromise texts reached under the Austrian Presidency on the non-AML provisions of the ESAs review, on MiFID II and Solvency II and on the ESRB regulation. Whether the Parliamentary negotiating team decides to go in the same direction is not certain as MEPs from the Greens and S&D are not in favour of splitting the file, whereas members of the EPP would be willing to adopt the Council approach. Yesterday, a Council Working Party met to attempt to make progress on the rest of the package, which the Presidency is eager to achieve. This week has seen active engagement from the Romanian presidency towards member states, trying to garner support for the individual compromise texts. The issue will then be on the agenda of the next ECOFIN Council on the 12th of February. Following the Council Working Party on the ESAs review which took place on 31 January, the Romanian Presidency launched a silence procedure on the modified texts which will be concluded on 4 February.		

II. WATCHING BRIEF

IFR		
CMCE priorities	**Status / latest developments**	**Next steps**
Commodity dealer IF regime **Scope of Class 1** **Changes to MiFID II/MiFIR 3rd country regime**	During the first trilogue on the IFR which took place on 23 January, equivalence amongst other topics was discussed. Markus Ferber, the EP rapporteur mentioned that while these provisions will impact the UK and is about Brexit but also other third countries. He explained the exclusion of dealing on own account and underwriting from the equivalence provisions but linked this to Class 1 and Class 1 minus. The Commission quietly admitted that his position is perhaps "not still a good approach". When pressed by the Council, he justified the EP text on the basis of the ECB letter which suggested these exclusions in order to "guarantee bank-like activities that are systemically relevant are under strict EU supervision". The Council explained that their position has maintained MiFIR but with more safeguards in certain instances and that the Council is aiming for a level playing field. The Presidency agreed that a prudent approach was necessary but doesn't want it to result in the fragmentation of the single market. The Commission explained that there are risks in having a reduced scope of equivalence which may disrupt capital markets and reduce liquidity. They pointed out that an impact assessment of the economic impact of the EP text has not taken place. The Commission always has the option to grant partial equivalence. The Commission was tasked with producing a compromise text based on Council version but with extra safeguards. No objection was raised to this. As an outcome of the first IFR trilogue, the Romanian Presidency circulated a note to member states to gather feedback on a number of issues in order to prepare for the second trilogue. On the **scope of class 1**, regarding the threshold for conversion of Class 1 firms into credit institutions (art.60 of the IFR), the Romanian Presidency suggests extending the perimeter of the assets for third-country groups present in the EU so as to include the assets of third-country branches. Regarding the 'class 1 minus' category, the paper suggests showing some flexibility	**12 February –** Trilogue **26 February –** Trilogue

	towards the EP's stance, which raised concerns as regards the Council's provision of a mandatory EUR 15 billion threshold set out in art.1(5) of the Council General Approach. On the **equivalence provisions**, the Romanian Presidency asks Member States whether they would agree to enhance the assessment of a third-country legal framework with additional criteria applicable to bank-like services, in order to convince the EP to align on the Council position on the scope of equivalence. The results of this feedback will be provided.	
MAR		
CMCE priorities	**Status / latest developments**	**Next steps**
Insider dealing **MM indicators**	There were no significant developments in the last two weeks.	
SFTR		
CMCE priorities	**Status / latest developments**	**Next steps**
Reporting Obligations	On 29 January, a draft version of the draft UK Statutory Instrument (SI) on the SFTR Amendment Regulations 2019 was published together with an explanatory memorandum. As with other draft SIs which onshore EU regulation for the purposes of safeguarding the regulatory regime, the draft SI makes changes to the EU version of the SFTR so as to establishes supervisory requirements for trade repositories. The draft SI includes changes to the treatment of EEA branches of financial services firms in the UK so that those EEA branches operating in the UK after Brexit must report their transactions to a UK TR. It also amends the list of entities that have the right to access SFT data reported to TRs by removing EU bodies from that list. Furthermore, it also transfers powers under the SFTR from EU institutions are transferred to the equivalent entities in the UK. This will come into force on exit day.	**13 February** – Expected end of EP and Council scrutiny period for SFTR level 2 measures (tentative)

Other relevant developments		
International role of the euro	The Commission published several consultations following the Communication last year on how to boost the international role of the euro: - On 30 January, the Commission announced a consultation on the role of the euro in non-energy non-agricultural raw materials (metals and minerals); - On 28 January, a consultation on the international role of the euro and liquidity in FX markets was published; - A consultation on the international role of the euro in the agricultural and food commodities was published on 24 January.	**14 February –** Commission workshop on international role of the euro in the field of energy **22 March –** Close of consultations on international role of the euro in agriculture and food commodities and on non-agricultural raw materials (metals and minerals) **End of March –** Close of consultation on role of euro and liquidity in FX markets
Commission vs UK on VAT treatment	On 24 January, the Commission announced its decision to refer the UK to the Court of Justice of the EU for extending the scope of VAT derogations from the provisions for certain commodity markets at least 8 times without notifying the amendments to the Commission. This, according to the Commission is not in line with article 394 of the VAT directive.	