



MiFID II/MiFIR

On 3 September, the Council Working Group on the Capital Markets Recovery Package (CMRP) met to discuss the MiFID II 'quick fix' proposal. The German Presidency circulated a discussion note in advance of the meeting identifying aspects of the package that required further consideration by the Member States. Notably, the amendments to commodity markets rules were not included in the German note, indicating that they are uncontroversial and widely accepted as proposed by the Commission. Nonetheless, in providing written comments to the Presidency, a number of Member States expressed concerns over the prospect of an ill-defined qualitative ancillary activity test and the threshold and technicalities for defining contracts as critical or significant.

On 1 September, ESMA published a [Call for Evidence](#) relating to the MiFID II/MiFIR transparency regime for equity and non-equity instruments as laid out in [RTS 1](#) and [RTS 2](#). The purpose of the exercise is to gather feedback from market participants on practical issues and policy gaps that have been encountered while implementing the transparency requirements. Market participants are invited to provide suggestions as to how any practical issues identified could be resolved. The deadline to submit input is 31 October 2020.

BMR

On 4 September, the Council Working Party on BMR held a preliminary discussion of the Commission proposal to amend the BMR. Following feedback from Member States, the German Presidency prepared a compromise text circulated in advance of the meeting. The German compromise recognises the need to extend the scope of the Commission's powers to replace benchmarks that will be discontinued. Rather than limiting the Commission's powers to critical benchmarks it should cover the widest scope possible. The amendments to the BMR appear to be uncontroversial among the Member States, such that the Presidency does not envisage the need for an additional Council Working Party to discuss the proposal. Following further written comments from Member States the file could be forwarded to COREPER for a non-objection procedure by the end of September.

CSDR

On 28 August, ESMA published [draft Regulatory Technical Standards](#) (RTS) postponing the date of entry into force of the CSDR's settlement discipline regime until 1 February 2020. The draft RTS must now be endorsed by the European Commission and subject to a non-objection procedure by the European Parliament and the Council.

I. ACTIVE PRIORITIES

Brexit	
<i>CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</i>	
Latest developments & CMCE action	Next steps
<p>On 9 September, the UK Government published a UK Internal Market Bill incompatible with the commitments and obligations stemming from the EU-UK Withdrawal Agreement - the Protocol on Ireland/Northern Ireland in particular – arousing major concerns about the prospects for a successful outcome in ongoing trade negotiations.</p> <p>Provisions of the UKIM Bill would enable the UK to violate commitments on state aid and customs procedures applicable to Northern Ireland under the Withdrawal Agreement. The draft legislation has provoked a strong response both within the UK and from Brussels.</p> <p>The latter has expressed grave concern that the UK's action exhibits bad faith and risks severely undermining trust in the UK as a credible international partner. Reactions to the publication of the Bill unfolded during the 8th round of formal negotiations on the EU-UK future agreement.</p> <p>At the conclusion of the talks on 10 September, Michel Barnier reiterated the EU's desire for a mutually acceptable trade deal. Without commenting on the UKIM Bill or its consequences for the talks, Mr Barnier highlighted that the EU was attempting to respect the UK's red lines but – in return – the EU would require guarantees of fair competition in order to grant the UK access to the Single Market. The EU also remains concerned over equivocal UK commitments to non-regression on social and environmental standards.</p> <p>Also, on 10 September, the EU-UK Joint Committee, responsible for the implementation of the Withdrawal Agreement, convened an extraordinary meeting at the request of Maros Sefcovic, Vice-President of the European Commission. Mr Sefcovic underlined that the Withdrawal Agreement contained explicit legal obligations that the UK was bound to respect under international law and convention. He hinted that the EU may take legal action in order to dissuade the UK from pursuing the UKIM Bill.</p> <p>CMCE action</p> <p>On 26 August, the Brexit WG held a call in order to discuss HM Treasury and the FCA's proposals regarding how the UK may deviate from EU financial regulation in future. In particular, the discussion focussed on the UK regime for prudential requirements for</p>	<p><u>31 December 2020</u> – Expiry of transition period</p>

<p>MiFID investment firms that is currently subject to a FCA Discussion Paper (DP20/2).</p> <p>A CMCE Member has identified several areas in the FCA DP worth raising with the FCA. Members are being consulted on whether they would support a CMCE response to the DP on the points highlighted.</p>	
<h2>MiFID II</h2>	
<p><i>CMCE priorities: AA exemption, position limits, reporting, physical forwards</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
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<h2>EMIR</h2>	
<p><i>CMCE priorities: reporting, risk mitigation for uncleared trades, calculation of NFC’s positions</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
<p>EMIR Refit</p> <p>ESMA is understood to be consulting NCAs informally in relation to a redefinition of the</p>	<p>1 September 2021 – Initial Margin requirements to apply to counterparties with an AANA of uncleared derivatives above EUR 50</p>

<p>eligibility requirements for the exemption from reporting requirements for intragroup transactions. ESMA is said to be intent on limiting access to the exemption to groups that have their headquarters or parent undertaking in Europe, thereby excluding groups with their parent undertaking in a non-EU jurisdiction.</p> <p>CMCE action</p> <p>A letter highlighting the concerns of CMCE was sent to both ESMA and the European Commission on 4 September.</p>	<p>billion.</p> <p>1 September 2022 – Final implementation phase covering entities with an AANA of uncleared derivatives greater than EUR 8 billion.</p>
<p>Benchmarks</p>	
<p><i>CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
<p>On 4 September, the Council Working Party on BMR held a preliminary discussion of the Commission proposal to amend the BMR. Following feedback from Member States, the German Presidency prepared a compromise text circulated in advance of the meeting. The German compromise recognises the need to extend the scope of the Commission’s powers to replace benchmarks that will be discontinued. Rather than limiting the Commission’s powers to critical benchmarks it should cover the widest scope possible.</p> <p>The amendments to the BMR appear to be uncontroversial among the Member States, such that the Presidency does not envisage the need for an additional Council Working Party to discuss the proposal. Following further written comments from Member States the file could be forwarded to COREPER for a non-objection procedure by the end of September.</p>	<p>September 2020 – The Council should formulate its common approach to the BMR Review proposal by the end of September</p> <p>1 October 2020 – Deadline for the Commission to adopt the draft RTS on governance arrangements, methodology, oversight functions and the power of competent authorities in the context of benchmark transition or cessation.</p> <p>7 December 2020 – Application of the SM&CR regime to benchmark administrators.</p>

II. WATCHING BRIEF

IFR

CMCE priorities: commodity dealer IF regime, scope of class I, changes to MiFID II/MiFIR third-country regime

Latest developments & CMCE action

The EBA opened a [consultation](#) on draft Regulatory Technical Standards (RTS) related to the implementation of a new prudential regime for investment firms with respect to the reclassification of investment firms as credit institutions under Article 8a(6) of the CRD, the prudential requirements for investment firms under Articles 7(5), 9(4), 13(4), point (a) to (c) of Article 15(5) and Article 23(3) of the IFR, and prudential requirements for investment firms under Article 5(6) of the IFD. The consultation will close on 4 September 2020. Following the conclusion of the consultation process, the EBA will submit the draft RTS to the European Commission for endorsement. Following their endorsement by the European Commission the RTS will be transmitted to the Council and the European Parliament for a scrutiny period. The technical standards will apply as of June 2021.

The [IFR/IFD](#) texts were published on 5 December 2019 in the EU Official Journal. IFR will apply from 26 June 2021, except points (2) and (3) of Article 63 on tick sizes and systematic internalisers, which will apply from 26 March 2020, and point 30 of Article 62 on which will apply from 25 December 2019. Concerning IFD, Member States shall adopt the national transposition measures by 26 June 2021.

Separately in the UK, on 26 June, the FCA published a Discussion Paper ([DP20/02](#)) on the prudential regime applicable to investment firms in the UK. The Discussion Paper remains open for comment until 25 September 2020.

Next steps

26 June 2021 – Application of IFR

MAR

CMCE priorities: Insider dealing, MM indicators

Latest developments & CMCE action

There were no significant developments in the past 2 weeks.

CMCE action

Next steps

Spring 2020 – ESMA to submit the final report providing technical advice to the European Commission

<p>CMCE submitted its response to the ESMA consultation on MAR review on 28 November 2019. ESMA published on 13 December 2019 the responses received to this consultation.</p>		
<p>SFTR</p>		
<p><i>CMCE priorities: reporting obligations</i></p>		
<p>Latest developments & CMCE action</p>		<p>Next steps</p>
<p>On 9 July, ESMA opened a consultation on draft Guidelines on the calculation of SFT positions by trade repositories (TRs) under the SFTR. ESMA intends to issue final Guidelines upon the receipt of feedback to the consultation in the interest of ensuring consistency in how positions are calculated by TRs under the SFTR. ESMA underlines the importance of high-quality data on SFT positions to enable a proper assessment of systemic risks. The deadline for the submission of responses is the 15 September 2020.</p>		<p>15 September 2020 – Deadline for ESMA consultation on draft Guidelines for SFT position calculation methodologies</p> <p>1 January 2021 – Reporting obligation for non-financial counterparties</p>
<p>European Green Deal</p>		
<p><i>CMCE priorities: monitoring developments</i></p>		
<p>Latest developments & CMCE action</p>		<p>Next steps</p>
<p>In July, the UK Government published draft legislation on the UK's Emissions Trading Scheme (ETS) which should be operational by 1 January 2021. The UK ETS is intended to encourage cost-effective emission reductions that will contribute to the attainment of the UK's emission reduction targets. Another key aim of the draft legislation is to ensure continuity with the EU ETS and facilitate the linking of the two schemes in future.</p>		<p>Q4 2020 – Expected publication of the new EU Sustainable Finance Strategy</p> <p>Q2 2021 – Commission proposals to revise the EU ETS Directive, e.g. to include maritime shipping in scope; and to establish an EU carbon border adjustment mechanism</p>
<p>Other relevant developments</p>		
<p>International role of the euro</p>	<p>There were no significant development in the past 2 weeks.</p>	

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