



FS Club



An Update On EU Financial Services Legislation & Associated Initiatives

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An Update On EU Financial Services Legislation & Associated Initiatives



David Doyle
EU Policy Advisor

EU Romanian Presidency (January - June 2019)

Legislative items to be ratified before EP elections (May 2019)

- ✓ **European deposit insurance scheme (DGS)** – unlikely but ESM lending to Single Resolution Funds, in ‘emergency’, subject to more NPL risk reduction
- ✓ **Bank prudential regime (CRDV/CRR2):** NSFR, liquidity, trading book rules + proportionality
- ✓ **Completing the capital markets union (CMU)** – securitisation, prospectuses + crowdfunding
- ✓ **Introduction of new CCP supervisory regime** and third country rules
- ✓ **Strengthening ESAs powers** to embrace non-banks, esp. asset managers
- ✓ **Investment firms prudential regime**– capital, liquidity, reporting and 3rd country rules
- ✓ **Brexit** – EC temporary equivalence decision for cleared derivatives for UK CCPs clearing on behalf of 27EU clients

Ongoing regulatory work-in-progress

- **Removing obstacles to cross-border funds** – UCITs, AIFs,
- **Fintech** – ESA’s focus on promoting common approach to innovation hubs, regulatory sandboxes, removing barriers to Fintech firms’ expansion across the EU
- **EU Equivalence reforms for 3rd countries:** challenges from Brexit, US derivatives clearing etc
- **Completing MiFID ii/MiFIR** – transaction reporting requirements
- **Clearing houses (CCPs):** recovery and resolution regime and tools
- **Securities Financing Transactions Regulation** – data and reporting requirements covering repos and securities lending
- **Stress testing of Money Market Funds (MMFs)**
- **Non-performing loans** – reduction measures

Stuff coming down the legislative pipeline...

- ▶ **Product intervention vis-à-vis retail investors:** New products, synthetic ETFs, binary contracts, crypto-currencies, alternative investment products
- ▶ **Climate change/ESG risks:** Integrate sustainability factors into investment decisions, lending decisions, retail investor protection (MiFID, PRIIPS, IDD)
- ▶ **Anti-money laundering (AML):** new EBA powers to monitor firms’ rules and conformity, strengthened AML rules (5AML)



EC issues “temporary equivalence”

EC legal communication (14 November 2018) in the event of a no deal

- ❑ *“Time limited and strictly conditional commission equivalence decision and temporary recognition by ESMA: under existing framework; can be implemented at short notice by end of March 2019”*
- ❑ *“ESMA to start discussions with UK CCPs”*
- ▶ ESMA proposes for un-cleared derivatives (8 November 2018): a 12 month transition period to allow UK counterparties to be replaced without triggering clearing requirement under EMIR II, as a limited exemption arrangement



EC statement on insurance contracts

- ▶ Actions already taken, i.e., transferring contracts, setting up branches and subsidiaries or merging with EU27 firms thus *“in a position to continue providing services to their clients”*
- ▶ EIOPA working with national authorities to address residual risks for certain EU27 policyholders

EC statement on non-cleared (OTC) derivative contracts

- ▶ EU and UK counterparts’ contracts remain valid and executable until maturity. Thus no *“generalised problem of contract performance in the case of a no deal scenario”*
- ▶ Certain lifecycle events, i.e. contract amendments, rollovers and novations, may *“imply the need for an authorisation or an exemption, given that the counterparty is no longer an EU firm”*

The route to the Single Market for third countries

Political Declaration on future EU/UK relations (Nov, 2018)

- ▶ Freezes current arrangements, i.e. passporting until end 2020 transition
- ▶ Equivalence: EU/UK to conduct assessments of each other's rulebooks after UK withdrawal, to conclude before the end of June 2020
- ▶ Outcome to include *"adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives"*

EP Resolution on equivalence (Sep, 2018)

- ▶ EP to have scrutiny role in approving equivalence decisions (delegated acts)
- ▶ ESAs to be more involved in preparing equivalence decisions and monitoring/reviewing regulatory and supervisory developments in third countries
- ▶ Equivalence decisions conditional on third country compliance with AML and EOI on tax affairs

EC expectations on revised equivalence regime:

- ▶ Post-monitoring of enforcement and compliance
- ▶ On-site assessments
- ▶ Dual coverage: financial stability and market integrity risks, regulatory and supervisory equivalence
- ▶ Size of the relevant third country market
- ▶ Interconnectedness between the markets and actors in the third country
- ▶ Risks of circumvention of EU rules
- ▶ Tax and anti money laundering considerations as part of the assessment



Evolving Towards A Common Fintech Regulatory Model

Lots of plans, but no regulatory action beyond Crowdfunding...

- ▶ The EC Fintech action plan
- ▶ The EBA Fintech action plan
- ▶ EU Parliament resolution on distributed ledger technologies and blockchain
- ▶ FSB analysis on crypto-asset markets

Regulatory Action points 2019

- ▶ Proposed regulation on crowdfunding platforms (loans and investment-based) with an EU passport/licence, with rules on information disclosures, governance and risk management
- ▶ Guidelines for sandboxes and hubs
- ▶ Fitness of regulation for new technology – common standards and interoperable solutions
- ▶ The EU blockchain initiative

EU Regulators concerns:

- ▶ Clash of national legal frameworks
- ▶ Fragmented maturity of understanding on FinTech
- ▶ Risk of “first entry advantage” in preventing the emergence of a common standard
- ▶ EC allows data-sharing between banks and FinTechs, but with clear opt-in and opt-out provisions to protect consumers (Payments Services Directive II)

EBA roadmap in FinTech (March 2018) to assess:

- ▶ Current authorisation and licencing approaches to FinTech firms
- ▶ Impact of firms’ business models on prudential risks and opportunities linked to FinTech use
- ▶ Adequacy of NCA practices on assessing cybersecurity and cyber threat testing framework
- ▶ Disclosure to consumers, current oversight of virtual currencies and money laundering risks



Sustainability Disclosures For The Financial Services Sector

EC package of measures (May 2018)

- ❑ Establishing a unified EU classification system of sustainable economic activities ('taxonomy')
- ❑ Improving disclosure requirements on how institutional investors integrate environmental, social and governance (ESG) factors in their risk processes
- ❑ Creating a new category of benchmarks which will help investors compare the carbon footprint of their investments.

	Potential benefits of climate-related disclosures (TEGSF: January 2019)
Listed companies	<ul style="list-style-type: none"> • Better understanding of the exposure of a company's operations to physical and transition risks related to climate change • Inclusion in actively managed investment portfolios and in sustainability-focused indices, used for passive investment strategies • Climate-related disclosures used to improve credit ratings for bond issuance and credit worthiness assessment for bank loans • Reduced friction in investor engagement and shareholder action and voting Banks
Banks	<ul style="list-style-type: none"> • Better understanding of loan portfolios' exposure to climate-related risks • Better risk evaluation for the calculation of capital charges • More informed investment and lending decisions (including asset management) □ Improved attractiveness to climate-aware clients • Evidence of expertise in climate-related transactions, leading further to climate-related business opportunities • Evidence of risk control for financial regulators (stress testing) Insurance
Insurance	<ul style="list-style-type: none"> • Better understanding and management of climate-exposure of underwriting portfolio • Better understanding and management of climate-related risks and opportunities of the investment portfolio • Evidence of risk control for prudential regulators (stress testing) and control over amount of technical provisions that could be affected by climate-related risk

Dr. David P. Doyle

EU Policy Adviser, Financial Services
Regulation

Email: dpdoyle@orange.fr

Tel: +33 628 69 40 40





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Thank You!