SLAUGHTER AND MAY/

FINANCIAL REGULATORY DIVERGENCE BETWEEN THE UK AND THE EU

September 2023

Summary table

Modest divergence to date: The level of existing and future areas of divergence is modest and relatively uncontroversial as it currently stands. Although a number of the Edinburgh Reforms would not be possible if the UK was still a member of the EU, many of the initiatives are long-standing policies.

Moving to a comprehensive FSMA model of regulation (largely by subsuming retained EU law, in many cases in amended form, into PRA/FCA rules) will take several years: Among its measures, the Financial Services and Markets Act 2023 provides for the revocation of retained EU law relating to financial services and gives powers to the financial regulators to make rules in these areas. This process will take a number of years, and requires regulatory capacity as well as a large-scale programme of secondary legislation to give effect to the changes.

No compelling case for significant divergence at this time: Operational challenges as a result of changes to the rules should not be underestimated. International inter-operability should be a very significant factor in the consideration of any reform.

The door is open for strategic dialogue: The UK-EU memorandum of understanding does not restore market access rights, nor does it constrain the UK or EU's unilateral equivalence or regulatory processes. Instead, it acts as a mechanism for dialogue and is expected to become the framework for discussions on how to move forward with any future equivalence determinations and cooperation initiatives. It is unlikely to change the course of regulatory divergence significantly.

Where have we got to?

Financial services has been lauded by the UK government as an area where regulatory divergence between the UK and EU will yield a Brexit dividend. The appropriate extent, and associated benefits, of divergence are, however, widely contested and context-specific.

Much has been made of the package of 'Edinburgh Reforms' for financial services outlined in November 2022 by HM Treasury (the **Treasury**),[1] as updated by the Mansion House reforms of July 2023,[2] which heralded an ambition to build a 'smarter' financial services framework for the UK and deliver economic growth through regulatory reform. The announcements are, however, unlikely to lead to much immediate change. To a large degree, the Edinburgh Reforms restate or build on reviews or plans which are already in progress (harking back to the October 2020 Financial Services Future Regulatory Framework Review – Phase II Consultation and the follow-up Future Regulatory Framework Review in November 2021),[3] and which will take some time to realise. Many of the reforms trailed do not, in any event, concern divergence from EU legacy rules. For example, the proposed reforms responding to the recent review on bank ring-fencing,[4] or to adjust the Senior Managers and Certification Regime (**SM&CR**), are domestic initiatives.

The Treasury is working to deliver its vision for UK financial services regulation through the Financial Services and Markets Act 2023 (**FSMA 2023**),[5] which sets up the legislative architecture to allow for a smooth transition to a comprehensive Financial Services and Markets Act 2000 (**FSMA**) model of regulation tailored to the UK. When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018, and became known as 'retained EU law'. This was a quick fix to ensure that UK legislation worked in the immediate period after Brexit, but was not meant to be a long-term solution, particularly because the PRA and FCA are unable to make changes to rules set out in retained EU law under this structure.

FSMA 2023, which received Royal Assent in June 2023, makes provision for the revocation of retained EU law relating to financial services and transfers responsibility for these areas of regulation to the financial services regulators. It sets out the laws to be revoked in Schedule 1, which will remain in force until the regulators have drafted and consulted on replacement rules in order to facilitate a smooth transition. The revocation programme commenced on 11 July 2023.[6] At the end of this revocation process, industry should generally expect firm-facing provisions to be set through regulator rulebooks, and a more accessible and

[1] HM Treasury, Financial Services: The Edinburgh Reforms (9 December 2022). Available at https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms.

[2] HM Treasury, Mansion House 2023 (10 July 2023). Available at https://www.gov.uk/government/collections/mansion-house-2023.

[3] HM Treasury, Future Regulatory Framework (FRF) Review: Consultation (19 October 2020). Available at https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-consultation.
HM Treasury, Future Regulatory Framework (FRF) Review: Proposals for Reform (9 November 2021). Available at https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-proposals-for-reform.

[4] HM Treasury, Independent Panel on Ring-fencing and Proprietary Trading – Final Report (15 March 2022). Available at https://www.gov.uk/government/publications/independent-panel-on-ring-fencing-and-proprietary-trading-final-report.

[5] The Financial Services and Markets Act 2023. Available at https://www.legislation.gov.uk/ukpga/2023/29/contents/enacted.

[6] The Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 (SI 2023/779, C.40). Available at https://www.legislation.gov.uk/uksi/2023/779/pdfs/uksi_20230779_en.pdf.

streamlined legal framework overall.[7] In its journey towards a FSMA model of regulation, the Treasury will make use both of the existing regulated activities framework under the FSMA Regulated Activities Order (RAO) 2001, as well as the new Designated Activities Regime (DAR). The DAR was established under FSMA 2023 and is, in short, designed to enable the regulation of activities where it is not proportionate to require those carrying out the activities to become authorised persons.

The government has identified 43 'core files' of retained EU law ripe for repeal.[8] In practical terms, the government's programme of revocation will be delivered by splitting this retained EU law into tranches. The first tranche aims to deliver the outcomes arising from the Wholesale Markets Review,[9] Lord Hill's Listing Review,[10] the Securitisation Review,[11] and the review into the Solvency II Directive.[12] The second tranche is focused on those areas with the biggest potential to deliver improvements to UK economic growth, and the government expects to make significant progress on these two tranches by the end of 2023. Beyond the high-priority retained EU law identified in tranches 1 and 2, there are significant pieces of retained EU law remaining for future tranches where the government or the regulators may identify beneficial policy changes, or where policy reviews will be appropriate, including large EU files such as the European Market Infrastructure Regulation.

Complementing this process, some EU files will be considered for a 'lift and shift' approach—that is, the relevant provisions will be brought into line with the FSMA model, but no policy change will be made—where policy change is not appropriate and the status quo should, at least initially, be maintained. The government will announce which pieces of retained EU law will be initially considered for this 'lift and shift' process when setting out future tranches.[13] More generally, the Regulatory Initiatives Grid will be used to update stakeholders on the progress of regulatory requirements that will be brought in following legislative repeal.[14]

Hovering over this process of transition to the FSMA model of regulation is the new secondary objective of the FCA and PRA, introduced by FSMA 2023, which is to facilitate the international competitiveness and growth of the UK economy. How this 'step-change in the regulators' approach' will shape the UK's regulatory project is yet to be seen.[15]

Divergence and market access

Talk of divergence must be further contextualised by the imminent expiry of two important decisions relating to market access for UK and EU financial services. The UK 'Temporary Permissions Regime' (**TPR**) — allowing EEA-based financial services firms to maintain their 'passporting' rights and enjoy access to the UK market—expires on 31 December 2023. An EU 'equivalence' decision,

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[7] HM Treasury, Building a Smarter Financial Services Regulatory Framework for the UK: HM Treasury's Plan for Delivery (July 2023). Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168648/Building_a_Smarter_Financial_Services_Regulatory_Framework_for_the_UK_Plan_for_delivery.pdf.

[8] Ibid, p. 22.

[9] HM Treasury, UK Wholesale Markets Review consultation response (1 March 2022). Available at https://www.gov.uk/government/consultations/uk-wholesale-markets-review-a-consultation.

[10] HM Treasury, UK Listing Review (3 March 2021). Available at https://www.gov.uk/government/publications/uk-listings-review.

[11] HM Treasury, Securitisation Regulation: Report and call for evidence response (13 December 2021). Available at https://www.gov.uk/government/consultations/securitisation-regulation-call-for-evidence.

[12] HM Treasury, Review of Solvency II: Call for Evidence – Response (1 July 2021). Available at https://www.gov.uk/government/publications/solvency-ii-review-call-for-evidence#:~:text=Solvency%20II%20is%20the%20regime,and%20internationally%20competitive%20insurance%20sector.

[13] HM Treasury, Building a Smarter Financial Services Regulatory Framework for the UK: HM Treasury's Plan for Delivery (July 2023), pp.20-21.

[14] Ibid.

[15] HM Treasury, Explanatory Notes: Financial Services and Markets Act 2023 (29 August 2023), p.49. Available at https://www.legislation.gov.uk/ukpga/2023/29/pdfs/ukpgaen_20230029_en.pdf.

permitting UK-based clearing houses to service EU companies, expires on 30 June 2025. In December 2022, the EU published proposals designed to make EU companies clear a greater share of their derivatives trades in the EU (known as the active account requirement or **AAR**) because it sees a 'strategic vulnerability' in relying on a clearing market over which it has no regulatory oversight.[16] This appeared to suggest that the equivalence decision for UK-based clearing houses is unlikely to be extended after 2025, despite the threats to market efficiency and financial stability that this may entail.[17]

This position may have changed, however, in light of a statement on the AAR published by a number of trade associations in September 2023, including the Alternative Investment Management Association (**AIMA**), the Futures Industry Association (**FIA**) and the International Swaps and Derivatives Association (**ISDA**). Here, the associations called on the European Commission (**EC**) to delete the proposed AAR, highlighting the 'detrimental implications [it] would have on EU capital markets by introducing fragmentation, loss of netting benefits and making the EU less resilient to market stresses with no benefit to EU financial stability', and it was further asserted that 'this requirement will create a competitive disadvantage for EU firms compared to third-country firms, which will remain able to transact in global markets without restrictions'.[18]

It is up to the UK and EU respectively to decide what level of access they want to grant each other after this point. The more the UK continues to distance itself from EU regulation through its ongoing reform programme, the less likely it is that the EU will grant decisions on the equivalence of UK regulation.

The role of regulatory cooperation

The framework for the UK's trading relationship with the EU was set by the EU-UK Withdrawal Agreement (which entered into force on 1 February 2020) and the Trade and Cooperation Agreement (**TCA**) (which entered into force on 1 May 2021). The TCA provides for tariff-free trade for goods, but provides little in the way of regulatory alignment and contains limited arrangements for trade in services.

Of greater bearing, on 27 June 2023 it was announced that the UK and the EU have signed a memorandum of understanding (**MoU**) on regulatory cooperation (following the two sides agreeing to the Windsor Framework in March 2023, in order to improve trade between Great Britain and Northern Ireland).[19] The text of the MoU indicates that future cooperation in this area is reminiscent of the existing Joint Financial Regulatory Forum between the EU and the US, taking the form of a regularly scheduled forum for discussion.[20] The arrangements do not compel the parties to agree on shared rules or market access, but only to the exchange of views and transparency over common issues and equivalence decisions.

The direction of travel

It is our expectation that, in general, nascent areas of regulation, such as regulation relating to artificial intelligence (**AI**), cryptoassets and ESG, will present more immediate areas of

[16] Fleming S., Stafford, P. 'Brussels demands share of London derivatives clearing' *Financial Times* (23 November 2022). Available at https://www.ft.com/content/da41d878-2e60-42ca-9b34-945efbef8af4.
European Commission, 'Capital Markets Union: new proposals on clearing, corporate insolvency and company listing to make EU capital markets more attractive' *European Commission Press Release* (7 December 2022). Available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7348.

[17] See Annex 1 for further details.

[18] ISDA, 'Trade Associations Call for Deletion of Active Account Proposal (7 September 2023). Available at https://www.isda.org/2023/09/07/trade-associations-call-for-deletion-of-active-account-proposal/.

[19] Prime Minister's Office, 10 Downing Street, The Rt Hon Rishi Sunak MP, The Windsor Framework (March 2023). Available at https://www.gov.uk/government/publications/the-windsor-framework#full-publication-update-history.

[20] HM Treasury, UK-EU Memorandum of Understanding on Financial Services Cooperation (19 May 2023). Available at https://www.gov.uk/government/publications/uk-eu-memorandum-of-understanding-on-financial-services-cooperation.

divergence.[21] Where the UK and EU regulatory regimes have grown together for many years, any appetite for divergence will be more susceptible to countervailing arguments regarding the cost of divergence (including on legacy systems) and the benefits of equivalence. This suggests that, overall, an incremental approach to regulatory divergence will be preferred over a bonfire of regulation.

This conclusion is borne out by statements made by the UK government and regulators. While the government has championed FSMA 2023 (in its previous life as the Financial Services and Markets Bill) as delivering on its 'ambitious vision' for the financial services sector to 'promote and enhance the UK's position as a global leader',[22] it has also noted that in many instances it would 'expect the regulators to initially replace the repealed provisions with rules that are similar to those which are currently in place',[23] calling into question the appetite for divergence. Although the Treasury has declared that, in addition to its tranched programme referred to above, it is 'repealing almost 100 unnecessary pieces of [retained EU law] which implemented various EU obligations across a wide range of financial services policy areas', this is not as portentous as it appears at first glance, as the effect of the amendments made by these statutory instruments is preserved by FSMA 2023.[24]

FCA officials have previously displayed support for 'the government's determination to ensure our regulatory framework is tailored to allow UK financial markets and their users, from around the globe, to thrive', but notes that this 'doesn't mean change for the sake of change'.[25] The PRA has similarly expressed enthusiasm about removing 'unnecessary rules we inherited from our time in the EU',[26] while noting that 'we should [reform] with care and avoid suddenly all rushing to one side of the boat'.[27]

The most important areas of divergence to date

Most anticipated divergence is so far just that - anticipated, largely arising from ongoing EU legislative initiatives and FSMA 2023 in the UK. These two features of divergence differ widely in their purpose, however. In the EU, legislative reform is responding to market and political developments, whereas in the UK, reform is geared towards establishing the UK's post-Brexit regulatory regime. Important examples of anticipated divergence include:

- The UK's fundamentally different approach of housing detailed technical rules in the regulators' rulebooks rather than in relatively inflexible legislation. Once in PRA/FCA rulebooks, many requirements will, at least in principle, be capable of waiver or modification by the regulators, including potential forbearance.
- Investment services (MiFID) reform, including removal of the share trading obligation in the UK from 29 August 2023.
- Reform of the prudential regime for insurers (UK Solvency II), which is being introduced at the same time as a major review of the directive is being carried out by the EU.
- Consumer credit, where the UK has confirmed that it will simplify and modernise this regulatory regime.

[21] This is borne out in the table below.

[22] See the government's response to the House of Lords' European Affairs Committee's Report on the UK-EU Relationship in Financial Services. Available at https://committees.parliament.uk/publications/30259/documents/175078/default/.

[23] HM Treasury, 'Financial services Future Regulatory Framework review: Proposals for reform', November 2021, CP 548, p 7.

[24] HM Treasury, Building a Smarter Financial Services Regulatory Framework for the UK: HM Treasury's Plan for Delivery (July 2023), p.14.

[25] Edwin Schooling Latter, FCA, 'A forward look at regulation of the UK's wholesale financial markets' (Speech, 16 March 2021). Available at https://www.fca.org.uk/news/speeches/forward-look-regulation-uks-wholesale-financial-markets.

[26] Victoria Saporta, Bank of England, 'The regulatory foundations of international competitiveness and growth' (Speech, 27 February 2023). Available at https://www.bankofengland.co.uk/speech/2023/february/victoria-saporta-speech-on-financial-regulation-and-competitiveness-and-growth.

[27] Sam Woods, PRA, 'Growth and competitiveness' (Speech, 27 October 2022). Available at https://www.bankofengland.co.uk/speech/2022/october/sam-woods-speech-at-mansion-house.

- Potentially significant differences between prospectus and listing regimes.
- A much more principles-based and guidance-led approach to the regulation of some emerging technologies in the UK, including AI.
- Some emerging but important differences in prudential regulation, for example the EU approach to the 'output floor'.
- A potentially more flexible approach to ESG regulation in the UK, largely linked to the fundamental differences in rule-making styles between the UK and the EU referred to above.

Some important practical issues to consider

Divergence is giving rise to significant practical issues for in-house legal and compliance functions, including:

- How to design systems and policies to secure compliance in both the UK and the EU as the two regimes diverge.
- Coping with the UK as a 'third country' facing 27 EU member states with varying third country regimes, and the consequent need for local advice in those member states. Relationships with local counsel in relevant member states have become more important.
- Keeping in touch with reform proposals and developments. Trade associations have arguably never been more important, and should be supported where they do good work.
- Finding relevant law, regulation and guidance, now a particular challenge in the UK despite a proliferation of platforms that purport to consolidate searchable legislation and rules. It is worth using some of these platforms, but developing and maintaining internal know-how is more important than ever.
- Recruiting and retaining suitably qualified EU lawyers and compliance professionals.
- Communicating proposals for positive reform to the regulators.

How to use this document

The table in Annex 1 of this note presents a selection of existing and future areas of divergence between the UK and EU in financial services regulation. This does not capture every point of divergence.

This document is for general information only and is not intended to provide legal advice. For further information, please speak to your usual Slaughter and May contact.

ANNEX 1

Selection of existing and future examples of divergence

	TOPIC	UK	EU	COMMENT
1.	**Prospectus regime**	In response to Lord Hill's UK Listing Review, the government has published legislation detailing how it will replace the Prospectus Regulation with a new framework for offers of securities to the public and admissions of securities to trading on UK markets. The new framework will be established under the DAR. The new framework is intended to facilitate wider participation in the ownership of public companies and improve the quality of information that investors receive. The UK Prospectus Regulation will be revoked and replaced with: (i) a prohibition in domestic legislation on offering securities to the public in the UK, subject to certain exemptions; and (ii) FCA rules on when a prospectus or other form of offering document is required where securities are admitted to trading on a UK regulated market or multilateral trading facility (**MTF**), what information must be included, when the document needs to be reviewed and approved	The EU Prospectus Regulation has been amended several times since it came into force. A number of amendments came into effect after 'Implementation Period' (**IP**) completion day and corresponding changes were not made to the UK Prospectus Regulation, which means that the EU and the UK regimes had already diverged in some respects. On 7 December 2022, the EC published three legislative proposals in connection with a commitment to simplify EU listing rules made in the 2020 Capital Markets Union (**CMU**) Action Plan. The package includes a proposal to amend the EU Prospectus Regulation (as well as EU MAR and EU MiFIR).[28] The proposed amendments include, among other things, changes to: (i) extend exemptions for secondary issuances of securities admitted to trading on a regulated market or on an SME growth market; (ii) harmonise thresholds for exempting small offers of securities to the public from the prospectus requirement; and (iii) standardise and streamline prospectuses for primary issuances of securities offered to	Both the EU and UK are considering changes to their prospectus regimes. The impact of divergence will depend in large part on how broadly the exemptions from the regimes are structured. There is currently no indication that the 'public offer' exemptions will be narrowed in either the EU or UK. The proposals outlined by the EC regarding capital markets (e.g., relaxing the prospectus and other listing requirements for smaller companies) are generally considered to be low impact (particularly since some exchanges in the EU already allowed many of the measures).

[28] The Listing Act package published by the EC includes three legislative proposals, one of which is a proposal for a regulation to amend the EU Prospectus Regulation (EU) 2017/1129 (**EU Prospectus Regulation**), the EU Market Abuse Regulation (EU) 596/2014 (**EU MAR**) and Regulation (EU) 600/2014 (**EU MiFIR**).

	TOPIC	UK	EU	COMMENT
		prior to publication, and other matters currently covered by the Prospectus Rules. In May 2023, the FCA published a series of engagement papers relating to this new regime, feedback on which will be published in Q4 2023. It will consult on its proposed rules during 2024. A second draft of the SI to show how the government will make its proposed changes to the existing prospectus and public offers regime using the powers set out in FSMA 2023 was published in July 2023.	the public or admitted to trading on a regulated market.	
2.	**MiFID unbundling/ investment research**	In 2022 the UK revised the MiFID unbundling rules to exempt from the inducement rules research on small and medium capitalisation listed or unlisted companies. This means that research on firms below this threshold could be provided by brokers to asset managers on a bundled basis. The Treasury published a report containing the outcomes of the UK Investment Research Review on 10 July 2023. The Investment Research Review sought to gather information and evaluate options to improve the UK market for investment research, with the aim of making the UK a more attractive location for companies looking to list and access capital, both in private and public markets.	Targeted changes have already been made to relax some of the research rules by the MiFID II Quick Fix Directive (EU) 2021/338. As part of its proposals to simplify EU listing rules, the EC published a legislative proposal in December 2022 that seeks to facilitate the development and provision of investment research on companies, especially small and medium capitalisation companies, with a view to bringing them greater visibility and more prospects of attracting potential investors.[29] It has effectively proposed that unbundling should only apply to listed companies with a market capitalisation above €10bn. That proposal is out for consultation and would not come into force until after the EU legislative	Respondents to the Investment Research Review were in almost unanimous agreement that the 2022 UK revisions to the MiFID II unbundling rules would not help facilitate research on smaller companies and that adopting a market capitalisation threshold at any level was unhelpful and introduced unworkable complexity (both regarding assessing which companies are above or below the threshold and

[29] Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC (COM(2022) 760 final)

TOPIC	UK	EU	COMMENT
	The FCA has announced that it will start engaging immediately with market participants on the IRR and that it is considering ‘swift actions’. It intends to consult on an accelerated timetable on potential regulatory changes that could introduce more options on how to pay for investment research. Subject to feedback, it is aiming to make relevant rules in the first half of 2024.	process is complete, which could take several years. The EC also proposes that research material paid fully or partially by issuers should be labelled ‘issuer-sponsored research’.	administering different payment processes). Several respondents noted that divergence between UK and EU rules is unhelpful and gives rise to further significant complexity. Further, it is likely that the more restrictive rules would be applied in all jurisdictions by entities with UK and EU operations. Any further divergence would be disadvantageous, particularly if the EU reverts to bundling and/or raises the small cap MiFID II exemption to €10 billion. Note that the Investment Research Review referred to the contrast between UK and US investment research rules as particularly significant. (The US continues to follow a bundled model for the purchase of investment research. The withdrawal (in July 2023) of concessions granted by the US Securities and Exchange Commission

	TOPIC	UK	EU	COMMENT
				(SEC) to allow asset managers who are subject to the MiFID II standards to purchase research on an unbundled basis may result in UK asset managers no longer being able to access US research in the absence of further regulatory action.)
3.	**Short selling regime**	The government has published (July 2023) a response to its December 2022 Call for Evidence on its proposed reform of the UK Short Selling Regulation (**SSR**), confirming that the SSR will be repealed and replaced with a UK-tailored regime. More specifically, the government intends to: (i) replace the current public disclosure regime based on individual net short positions with an aggregated net short position disclosure regime; and (ii) increase the current disclosure threshold for net short position reporting to the FCA from 0.1% to 0.2%. To this end, a draft statutory instrument will be published before the end of 2023. In addition, the government published (July 2023) a further consultation paper on the proposed deletion of aspects of the UK SSR	In April 2022, the European Securities and Markets Authority (**ESMA**) published a final report on its review of certain aspects of the EU SSR. The parameters of that review were fairly limited and the proposals in the report are of a different flavour to those in the UK. For example, amendments are proposed to existing rules on uncovered short sales in light of the possibility of so-called 'meme stocks' developing in EU markets, as in the US. The recommendations have been submitted to the EC, and ESMA expects to provide technical support to the EC in relation to a potential review of the EU SSR.	The UK approach reflects the government's view of short selling as an essential tool to facilitate effective market functioning that supports liquidity, risk management and effective price discovery.

	TOPIC	UK	EU	COMMENT
		relating to sovereign debt and credit default swaps, which closed on 7 August 2023. An FCA Consultation Paper is expected in 2024.		
4.	**MiFID/MiFIR (Commodity derivatives and position limits)**	The MiFID II Quick Fix Directive applied after the end of the Brexit transition period and so did not apply to the UK. FSMA 2023 made amendments to the retained EU law version of the Markets in Financial Instruments Regulation (600/2014) (UK MiFIR) that reflect the outcome of the Treasury's Wholesale Markets Review (WMR). One of these amendments relates to simplification of the position limits regime. FSMA 2023 makes some targeted transitional amendments to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) (MiFI Regulations) in respect of the position limit regime for commodity derivatives. The requirement for the FCA to apply position limits to all commodity derivative contracts that are traded on a trading venue and economically equivalent OTC contracts is revoked by FSMA 2023. Principal responsibility for the setting of position limits (and exemptions from those position limits) will shift from the FCA to trading venue operators. FSMA 2023 empowers the FCA to develop a framework to support and constrain operators in both setting and applying	Changes made by the MiFID II Quick Fix Directive to assist the EU's economic recovery from the COVID-19 pandemic included restricting the requirements on position limits to agricultural commodity derivatives and critical or significant commodity derivatives that are traded on trading venues, and in economically equivalent over-the-counter (**OTC**) (**EEOTC**) contracts. Recital 12 to the Quick Fix Directive suggests that the position limit regime originally introduced under MiFID II was unfavourable for the development of new commodity markets.	The UK's intended approach, according to explanatory notes to FSMA 2023, "*is similar to the regime that was in place prior to the introduction of strict position limits in MiFID II. These changes will ensure a return to a model under which position limits are set more flexibly, as venues will have full visibility of all market positions and can respond accordingly. This is intended to enable liquidity to develop in these contracts, as well as making it easier for non-financial firms to find counterparties to accept the other side of hedging trades and therefore manage commercial risk. The changes will also ensure that protections which are necessary to protect market integrity can be kept in place, and*

	TOPIC	UK	EU	COMMENT
		position limits, and notably the FCA will retain an exceptional power to impose position limits, or restrict positions, itself. The FCA will be able to require venues to set and apply position management controls as appropriate. An FCA Consultation Paper is expected in Q4 2023.		*that there will be a consistent approach to position limits governance across trading venues."*
5.	**MiFID/MiFIR (Waivers for equity instruments)**	FSMA 2023 revokes the existing system of waivers from pre-trade transparency requirements and gives the FCA new rule-making powers to determine the circumstances under which waivers are available and any conditions that are to be attached to their use. The intention is to enable the FCA to make evidence-based decisions about the circumstances in which waivers should apply.	The legislative proposal to amend the markets in financial instruments regulation (**MiFIR II**)[30] would make some targeted changes to the pre-trade transparency regime for equities, including, among others, restricting trading venues from executing trades under the reference price waiver where the size of the trade is less than twice SMS (Standard Market Size), but allowing execution under the waiver at the consolidated tape midpoint.	
6.	**MiFID/MiFIR (Double volume cap (DVC))**	FSMA 2023 removed the UK's DVC, a mechanism introduced under MiFIR to limit the amount of trading that happens under the reference price and negotiated trade waivers.	Under MiFIR II, there are plans to replace the current DVC mechanism (under which the volume of anonymous trading in an equity instrument must not exceed 4% of the total trading in that instrument or 8% of total trading within the EU) with a single volume cap set at 7% of trades that are executed under the reference price waiver or the negotiated trade waiver.	

[30] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (COM/2021/727 final) (2021/0385 (COD)).

	TOPIC	UK	EU	COMMENT
7.	**MiFID/MiFIR (market data - consolidated tape)**	HMT noted in the Wholesale Markets Review consultation paper (July 2021): "market data is fundamental in helping [market] participants identify investment opportunities, evaluate positions and is essential for price formation and best execution." The government has since committed to making the necessary legislative changes to facilitate the emergence of a UK consolidated tape by 2024, and to this end, a draft statutory instrument was published in July 2023 (this is expected to be laid before the end of 2023). In parallel, the FCA is currently consulting on its proposed framework for a consolidated tape for bonds, its criteria for how a consolidated tape provider (CTP) would operate, and the tender process for appointing a CTP. The FCA was granted powers in relation to data reporting service providers, which include CTPs, by FSMA 2023.	The Commission notes in recital 2 to the MiFIR Amending Regulation that the framework for a consolidated tape provider for both equity and non-equity instruments is already provided for in MiFIR. MiFIR II, provisional political agreement on which was reached by the Council of the European Union and the European Parliament in June 2023, would make extensive changes to MiFIR to facilitate the development of a consolidated tape.	
8.	**MiFID/MiFIR (Systematic Internalisers (SI))**	The scope of the systematic internaliser regime was originally determined on a qualitative basis. Its objective was to ensure that OTC trading in the form of systematic internalisation of order flows by investment firms could contribute to price formation. In 2018 the definition was amended, and a number of quantitative thresholds were	Firms are required to assess whether they are SIs in a specific instrument or for a sub-class of instruments on a quarterly basis based on data from the previous 6 months. Although the EC has also set out changes to the SI regime, there are no comparable proposals to those in the UK, as it stands.	The FCA's power to specify how the new definition should be interpreted in intended to "ensure that the regime is flexible, better able to account for market

	TOPIC	UK	EU	COMMENT
		introduced. The intention behind moving to a quantitative based regime was to ensure consistency across all EU member states. FSMA 2023 reverts to a qualitative definition so the determination will therefore be made according to a firm's market activity for a particular asset class. It gives the FCA the power to specify how the new definition should be interpreted.		evolutions, and that it achieves its aim of increasing transparency and price formation, while removing unnecessary burdens on firms" (FSMA 2023 explanatory notes). Many firms had opted into the SI regime for all assets to avoid the burden of undertaking calculations calibrated at different levels for each asset class.
9.	**MiFID/MiFIR (Tick size regime)**[31]	On 23 March 2020, the FCA expressed support for ESMA's statement on its approach to the tick-size regime for SIs under MiFIR. Article 17a of UK MiFIR is amended by FSMA 2023 so that SIs can trade in equities with their clients at the midpoint in all circumstances, rather than only for orders that are large in scale (**LIS**). The Wholesale Markets Review proposed that trading venues should be allowed to follow the tick size applicable to a share's primary market (even if overseas). Tick sizes are currently calculated based on trading volumes on the most relevant market (in terms of the	A harmonized tick size regime was introduced under the MiFID II framework. Trading venues are required to adopt tick size regimes in shares, depositary receipts, exchange-traded funds (**ETFs**), certificates and other similar financial instruments and in any other financial instrument for which RTS are developed. The tick size regimes must be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread (Article 49, MiFID II Directive). Legislative proposals to amend MiFIR and the MiFID II Directive, primarily to improve access	

[31] The tick size regime sets minimum increments by which prices for equity and equity-like instruments can change and limits the ability of trading venues and SIs to cross at the midpoint. The regime was introduced by MiFID II to prevent tick sizes from being used as a competition tool between venues because it was detrimental to the price formation process.

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		share's liquidity) in the UK and EU. The FCA sought views on its proposals to implement this change as part of its consultation on Improving Equity Secondary Markets.	to market data and trade transparency, would clarify that the application of the tick sizes under Article 49 will not prevent SIs from matching LIS orders at mid-point within the current bid and offer prices. They are allowed to match orders at mid-point within the current bid and offer prices below LIS, but above twice the standard market size, provided those tick sizes are complied with.	
10.	**MiFID/MiFIR (Share trading obligation (STO))**	The STO set out in Article 23 of UK MiFIR is deleted by FSMA 2023. Requirements relating to firms operating internal matching systems will remain. This will allow UK investment firms to trade in-scope shares on any UK or non-UK trading venue (subject to separate MiFID-derived requirements to achieve the best execution). This is intended to ensure that investors can get the best price for their trade.	Whereas the UK has revoked its STO, the EU is proposing to define the perimeter of the EU STO to include shares with an EEA international securities identification number (**ISIN**) (Article 10(11) of the MiFIR Amending Regulation which amends Article 23(1) of MiFIR). ESMA must publish and maintain a list on its website containing the shares with an EEA ISIN that are subject to the STO. An exception from the STO is made for shares traded on a third-country trading venue in the national currency, while other exceptions (for example, for trades in shares that are ad hoc, irregular and infrequent) are deleted.	
11.	**MiFID/MiFIR (Derivatives trading obligation (DTO))**	FSMA 2023 realigns the counterparties in scope of the DTO with those that are in scope of the clearing obligation under UK European Market Infrastructure Regulation (**EMIR**). To future-proof the position, the application of the DTO will expressly link to the application of the clearing obligation (**CO**).[32] This	The EU is considering a similar alignment of its DTO with the scope of the EU clearing obligation under MiFIR II.	The scope of the counterparties which are subject to the CO and DTO were intended to be aligned. In 2019 EMIR was amended to alter the counterparties in scope of

[32] FSMA 2023 amends the scope of the type of counterparties that are subject to the DTO in Article 28 of UK MiFIR to specify that the financial and non-financial counterparties in scope of the DTO are those subject to the CO in UK EMIR. To ensure consistency with the CO, paragraph 16 also provides that intragroup transactions and transactions that are covered by temporary

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		modification came into effect on 29 August 2023.		the CO, but the DTO was not updated to reflect that change. The FCA's view is that mutual equivalence between the UK and the EU is the best way to avoid disruption for market participants and avoid fragmentation of liquidity in DTO products, reducing costs for investors. Without mutual equivalence, some firms, in particular the branches of EU firms in London, will be caught by a conflict of law between the EU and UK DTOs. In the absence of a coordinated solution, the FCA is using the Temporary Transitional Power to modify the application of UK DTO.
12.	**Cryptoassets**	In February 2023 the UK government announced its intention to regulate, via a phased approach, a broad swathe of cryptoasset activities by folding them into the regulatory framework established by FSMA.	By contrast, the EU will regulate cryptoassets—to the extent that they are not already covered by existing legislation—via a standalone piece of cryptoasset legislation, the Regulation on Markets in Cryptoassets	The UK government's ambition to become a leading global centre for cryptoassets, declared by HM Treasury in 2022, is

exemptions from the CO (which apply to transactions that reduce investment risks directly relating to the financial solvency of pension scheme arrangements) are out of scope of the DTO. FSMA 2023 also introduces a new Article 28a into UK MiFIR giving the FCA power to suspend or modify the DTO if it considers it necessary to prevent or mitigate disruption to financial markets and advances one or more of the FCA's operational objectives.

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	This approach builds on the government's existing commitment to regulate activities that issue or facilitate the use of stablecoins used as a means of payment. While the February 2023 proposals are at a nascent stage, early signals suggest that points of departure from the EU regime include: (i) the definition of cryptoasset, which is broader under the proposed UK regime and not tethered to distributed ledger technology (**DLT**); (ii) the potential regulation of non-fungible tokens (**NFTs**) under the UK regime, and; (iii) proposals to regulate the activity of operating a cryptoasset lending platform under the UK regime. FSMA 2023 subsequently granted HM Treasury the necessary powers to regulate a range of cryptoasset activities, particularly those relating to the trading and investment of cryptoasset tokens, and in due course HM Treasury will consult on an approach ahead of using these powers. In tandem, FSMA 2023 further brings activities facilitating the use of certain stablecoins, where used as a means of payment, into the UK regulatory perimeter primarily by amending the existing electronic money and payment system regulatory frameworks. Separately, on 8 October 2023 the financial promotions restriction set out in section 21 Financial Services and Markets Act 2000 will	(MiCA). MiCA was formally adopted by the Council of the EU in May 2023, and will start to take effect from 30 June 2024. Further technical standards produced by the European Supervisory Authorities (**ESAs**) will, in time, render points of divergence with the UK cryptoasset regime clearer. ESMA has announced its intention to manage over 30 mandates for developing Level 2 and 3 measures under MiCA in three sequential consultation packages from July 2023 to early 2024 (the first set of which was published in mid-July). The EBA also published consultation papers on its first set of technical standards under MiCA in mid-July, and EBA consultation on remaining technical standards and guidelines under MiCA will be made available before the end of 2023. Meanwhile the European Systemic Risk Board has already started to explore how MiCA might be extended (**MiCA 2**), taking into account lessons learnt from the recent so-called 'crypto winter'.	likely to have been tempered by the recent crypto winter and collapse of crypto titans like FTX. Suggestions of this can be found in political pressure exerted by the House of Commons Treasury Committee, which in May 2023 called for retail trading and investment activity in unbacked cryptoassets (such as Bitcoin and Ether) to be regulated as gambling rather than as a financial service on the basis that unbacked cryptoassets 'have no intrinsic value, and their price volatility exposes consumers to the potential for substantial gains or losses, while serving no useful social purpose'. This proposal has not been accepted by the Treasury.

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		be expanded to capture a broader range of cryptoassets, including Bitcoin.		
13.	**AI regulation**	The UK approach to AI eschews comprehensive definitions in favour of principles to guide the decision-making of sectoral regulators, which are granted significant autonomy. The UK financial regulators are currently considering whether they need to intervene further to manage and mitigate the potential risks and harms that AI may have on consumers, firms, and the stability and integrity of the UK financial systems and markets. Recently, there have been suggestions in Parliament that there should be a bespoke SM&CR-type regime for the most senior individuals managing AI systems. These are individuals who may not typically have performed roles subject to regulatory scrutiny, but who will now be increasingly central to firms' decision-making and the safety of markets.	The EU's proposed standalone framework for AI regulation, the Artificial Intelligence Act, lays out specific obligations for a defined set of technologies. The EU priority is safeguarding against the threats of AI (e.g., lack of transparency in decision-making). The AI Act is currently being discussed by the co-legislators, the European Parliament and the Council.	In contrast to the EU, the UK has deliberately opted for an agile and iterative approach and shied away from rigid legislative requirements. See the UK White Paper: 'Pro-innovative approach to AI regulation' (March 2023).
14.	**Clearing, derivatives etc**	Alongside the new rule-making powers for the FCA and PRA under FSMA 2023, the Bank of England will take on new powers in relation to central counterparties (**CCPs**) and central securities depositories (**CSDs**) so that it can take on primary responsibility for setting regulatory requirements for these entities. FSMA 2023 also establishes a legislative framework for 'systemic third country CCPs'.	In December 2022 the EC published a set of proposals requiring EU-based financial services to clear a certain amount of their derivatives trades through EU-based clearing houses. Under these proposals, EU-based banks managing high numbers of contracts (referred to as 'systemic') would have to clear a minimum amount of them (to be defined by a new EU regulator one year after	The EU's proposed reform to clearing markets prioritises regulatory control over market openness by seeking to ensure that a greater degree of clearing by EU-based firms is done inside the EU, rather than in foreign markets over

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		These are third country CCPs that the Bank of England has determined are systemically important, or are likely to become systemically important, to the financial stability of the UK. Where the Bank has determined a firm to be a systemic third country CCP, FSMA 2023 then provides the Bank with the power to apply its domestic rulebook, in part or entirely, to these firms. The Bank of England has a 'tiering' approach to clearing services provided by overseas CCPs to UK businesses.[33] FIA and ISDA have raised concerns that incoming CCPs will be assessed against a set of margin and default funds thresholds that appear lower than the thresholds applied in the EU, noting that the requirements in the EU and UK versions of EMIR 2.2 are not fully aligned. For example, the EU version of EMIR 2.2 refers to different metrics such as the maximum notional amount outstanding.	the regulation comes into force) through accounts located in EU-based clearing houses. For the time being, EU-based banks can use UK-based clearing houses due to a temporary 'equivalence' agreement with the UK that has been extended to June 2025. However, the EC does not want to maintain that situation longer-term. As observed in the introductory comments, this is not an approach that has been welcomed by the trade associations.	which the EU has no regulatory control. Any new requirements for a minimum level of derivatives trades to be cleared within the EU will likely reduce UK access to EU derivatives clearing markets in future.
15.	**Green Taxonomy**	The UK taxonomy "draws on the EU approach which the UK helped design as a former member state" (October 2021, Greening Finance: A Roadmap to Sustainable Investing p.22). As it stands, the UK Green Taxonomy will adopt the EU's six environmental objectives: climate change mitigation; climate change adaptation; sustainable use and protection of	The EU is some years ahead of the UK in Taxonomy development. The Commission is working on extending the Taxonomy. The draft Taxonomy Environmental Delegated Act sets out additional criteria for adding economic activities that make a substantial contribution to the Taxonomy's environmental objectives of sustainable use and protection of water	The International Regulatory Strategy Group (**IRSG**), among others, has called for the alignment of taxonomies. The risk of divergence is considered to be a particular concern for those UK businesses who fall within the

[33] See Bank of England Policy Statement, 'The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25' (June 2022). Available at https://www.bankofengland.co.uk/-/media/boe/files/paper/2022/boes-approach-to-tiering-incoming-central-counterparties-under-emir-article-25-ps-jun-22.pdf.

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		water and marine resources; transition to a circular economy; pollution prevention and control; and protection and restoration of biodiversity and ecosystems. Some divergence from the EU Taxonomy is to be expected. The Green Technical Advisory Group (**GTAG**) has emphasised the need for international inter-operability of the UK Taxonomy but has suggested streamlining or simplifying some of the EU requirements (for example, the 'do no significant harm' criteria). In its August 2023 advice on scope, coverage and reporting, it suggested changes to the EU's key performance indicators (KPIs), noting that the UK had "an opportunity to design a more effective reporting framework informed by the EU's experiences with usability issues". For investor reporting, GTAG has recommended reporting at the fund level and disclosing taxonomy components for each fund rather than using the Green Investment Ratio at the entity level. GTAG has also suggested keeping the UK Taxonomy focused on clearly defining green economic activities rather than extending to cover transition or harmful activities.	and marine resources, transition to a circular economy, pollution prevention and control or protection and restoration of biodiversity and ecosystems). Earlier this year, the Commission published a package of reports aimed at demonstrating why it did not need to expand its EU taxonomy to cover transition-related activities.	portfolios of EU investors or asset managers. GTAG considers that there is limited benefit from major divergence from the EU baseline based on emissions. The sectoral coverage of the EU Taxonomy is "a good fit" for the UK's emissions profile and supports the climate change mitigation objective for the UK Green Taxonomy. It notes some potential gaps in existing EU Taxonomy sectors, including within energy, buildings, transport and manufacturing but also some notable sectors are not covered at all, e.g., agriculture.
16.	**Sustainability disclosure requirements**	The FCA outlined its proposals for 'Sustainability Disclosure Requirements' and 'investment labels' in October 2022. The core elements of the proposed regime (labelling and classification, disclosure, and naming and marketing rules) will apply to asset managers	The EU Sustainable Finance Disclosure Regulation (**SFDR**) requires firms to integrate sustainability risks into their decision-making processes and to disclose how their products meet sustainable investment objectives. This	Both the UK and EU frameworks share a common goal of promoting sustainability and transparency in the financial sector.

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	and their UK-based fund products and portfolio management services initially. The proposed 'investment labels' apply to products being offered for investment and are designed to increase investors' confidence in their sustainability. These labels are not mandatory, but companies offering products for investment must prove that they meet certain criteria in order to obtain a label. Three types of label will be available: (i) 'Sustainable Focus' signifies assets that are sustainable; (ii) 'Sustainable Improvers' signifies assets which may not be sustainable now but are aiming to improve over time. (iii) 'Sustainable Impact' signifies investment in solutions to problems affecting people or the planet. Underpinning these two features is an 'anti-greenwashing' rule that applies to all FCA-regulated firms, making more explicit existing requirements that 'sustainability-related claims must be clear, fair and not misleading'. How widely SDR will apply and how far taxonomy reporting obligations will extend will be subject to consultation in due course.	includes monitoring and reporting on these objectives. The SFDR emphasises the Do No Significant Harm (**DNSH**) principle and requires consideration of the principal adverse impacts of investment decisions on sustainability factors. These are EU-specific definitions which are not replicated in the UK's regime and could lead to some differences in what investments are considered sustainable. This could in turn have an impact on the types of investment made in the UK and EU respectively. The EU SFDR categorises products on three levels: (i) Article 6 (without a sustainability scope); (ii) Article 8 (promote environmental or social characteristics but not core to investment objective); or (iii) Article 9 (sustainable investment as their core objective). It is not a labelling regime per se. A consultation on assessing the SFDR launched in autumn 2023 which will focus, among other things, on improving legal certainty.	However, the UK SDR has stricter criteria for labelling investments as sustainable, which could lead to a product being classified as sustainable under the EU SFDR but not under the UK SDR. The EU SFDR outlines sustainability disclosure requirements for a broader range of financial participants than the UK, including investment firms and insurance companies. It applies to entities within the EU and to those marketing products in the EU. The UK SDR does not include a DNSH test or reference to the reporting of Principal Adverse Impact indicators, also known as 'environmental, social and governance (ESG) risks'. The UK SDR labels are designed to reflect different consumer preferences whereas the

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				EU SFDR classifies products hierarchically.
17.	**ESG ratings**	HM Treasury published its consultation on the future regulatory regime for ESG ratings providers on 30 March 2023. The consultation proposes to bring ESG ratings into the regulatory perimeter, the core proposal being that the direct provision of an assessment of environmental, social, or governance factors to a user in the UK, where the assessment is used in relation to a regulated financial product, will be brought into scope of regulation. Territorial scope extends to the direct provision of ESG ratings to users (institutional and retail) in the UK, by both UK firms and overseas firms. This would not capture the provision of ESG ratings by any UK firm to users outside the UK. Data on ESG matters where no assessment is present is excluded. This means raw, unprocessed data is not included. The FCA has indicated that it will use the main elements of IOSCO's recommendations as a starting point for its rules.	The EC's proposal for a regulation on ESG rating activities emerged not long after the launch of HM Treasury's consultation. The proposal aims to enhance the integrity, transparency, governance and independence of ESG ratings provided in the EU. It is broadly aligned to the existing Benchmarks Regime (**BMR**), reflecting the close relationship between ESG ratings and benchmarks used in the EU. Entities which are located outside of the EU but provide ratings in the EU would be regulated (as well as EU legal entities which fall into scope). This could be achieved by the EC adopting an equivalence decision for an overseas regime, such as the proposed UK regime. Alternatively overseas entities providing ESG ratings could seek endorsement for their ratings from an EU-authorised ESG ratings provider. A final option for a third country provider would be to gain `recognition' from ESMA.	Regulators in several jurisdictions are in the process of developing or introducing rules for ESG ratings providers, with slight deviations in definitions and scope. Both the UK and the EU are looking to improve transparency for the users of ESG ratings. The UK and the EU appear to be consistent in some respects in their approach, for example, by initially only targeting ESG ratings instead of the broader scope of ESG data.
18.	**Asset management**	In February 2023, the FCA published Discussion Paper DP23/2: Updating and improving the UK regime for asset management. While no detailed recommendations are made at this stage, the	AIFMD II is a legislative proposal for a Directive containing amendments to the AIFMD and the UCITS Directive relating to delegation arrangements, liquidity risk management, supervisory reporting, provision	The UK is seeking to enhance the UK's attractiveness as a location for asset management and fund

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	paper serves to facilitate an open discussion with stakeholders as the FCA considers what changes to make and prioritise when reviewing the regime. The paper is wide-ranging in scope and considers four broad topics – with more detailed discussions of possible reforms to a number of areas within each topic: (i) The structure of the asset management regulatory regime as a whole. (ii) Improving the way the regime works (covering more granular conduct and product rules). (iii) Technology and innovation (covering the role of technology in various aspects of asset management and fund operations). (iv) Improving investor engagement through technology. While the FCA is not recommending any particular course of action at this stage, some proposed options discussed include:	of depositary and custody services and loan origination by AIFs.[34] AIFMD II was adopted by the EC in November 2021, and in July 2023 the European Council announced that it has reached a provisional agreement with the European Parliament on the amendments. The EC expects member states to transpose the Directive into national law and regulation within 24 months from the date of its entry into force (currently, this would be 2025).	domicile, reflected both in DP23/2 and reforms stemming from the UK funds regime review (a formal response to which was published in February 2022). Initiatives stemming from the UK funds regime review include the launch of the Long-Term Asset Fund (**LTAF**) and, most recently, proposals for the introduction of a new unauthorised contractual scheme called the Reserved Investor Fund (Contractual Scheme). Industry appetite for any major reform and resulting divergence may be dampened by costs involved and the fact that the industry is already grappling with various other existing proposals for regulatory change, including ESG-related proposals to reform sustainability disclosure requirements and

[34] Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (COM(2021) 721 final) (2021/0376(COD)).

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		(i) streamlining the regulatory rulebook into common framework/single rulebook for asset managers; (ii) reforming the categories of retail funds (UCITS and NURS); (iii) reviewing the thresholds and criteria to determine application of AIFM rules; (iv) reforming rules relating to liquidity management and eligible assets; and (v) exploring 'fund tokenisation' and solutions to facilitate dealings, and considering technological and other means to improve investor engagement.		proposed changes to the Appointed Representatives Regime, alongside comfort and familiarity with existing regulatory regimes for funds (particularly the UCITS regime which enjoys strong brand recognition among international investors). For further context, see the row above on sustainability disclosure requirements.
19.	**Market abuse**	The position in the UK will not be affected by changes to EU MAR cited in the next column, although a review of the application of UK MAR is expected, in due course, in line with consideration of all EU-derived legislation and the FCA's ongoing reform agenda. The FCA and the Treasury have already completed (March 2023) a review of the criminal market abuse regime, which sets out the UK's criminal sanctions for insider dealing and market manipulation. The review has identified a number of areas where the government believes it would be appropriate to update the criminal regime (although these	In December 2022, the EC published a series of proposed amendments to EU MAR as part of a broader set of proposals known as the 'Listing Act package' (further to its commitment to simplify EU listing rules). These targeted revisions of MAR seek to reduce legal uncertainty around the interpretation of requirements on the disclosure of inside information. They include a proposal to amend Article 11 MAR to clarify that the market sounding regime and requirements are only an option for disclosing market participants (**DMPs**) to benefit from the protection against the allegation of	

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		areas have not yet been described). The government will consider changes to the criminal regime alongside any reforms to UK MAR in due course.	unlawful disclosure of inside information ('safe harbour'). In the case of non-compliance, there is no presumption that DMPs have unlawfully disclosed inside information. They also include a proposal to amend Article 18 MAR, stipulating that an issuer's insider list would no longer be event-based and would only need to include those persons that have regular access to inside information (so called 'permanent insiders'). ESMA voiced its concerns about this particular amendment in a letter dated 10 March 2023. It could take several years for these proposals to become law.	
20.	**Operational resilience**	The UK's operational resilience regime took effect on 31 March 2022 (subject to a three-year transitional period that lasts until 31 March 2025), introducing requirements for firms and FMIs to ensure that the UK financial sector is operationally resilient. For UK purposes, the FCA and PRA describe operational resilience as the ability of firms and the financial sector as a whole to prevent, adapt, respond to, recover and learn from operational disruptions and, accordingly, look beyond the technological aspect. Regulated firms to which the rules apply are (among other things) required to identify important business services and set 'impact	The EU's Digital Operational Resilience Act (**DORA**) legislation, which will apply from 17 January 2025, establishes an EU framework for digital operational resilience. The genesis of DORA can be found in recommendations of the ESAs to the EC April 2019, where it was noted that while operational risk requirements were generally in place across sectoral legislation, there was typically a lack of explicit references to ICT and cybersecurity risk. Digital operational resilience, as defined in DORA, is a financial entity's ability to build, assure and review its operational integrity and reliability by ensuring, either directly or indirectly through the use of services	

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		tolerances' for the maximum tolerable disruption to these services. The regulatory framework around operational resilience has recently expanded, as FSMA 2023 grants the supervisory authorities new powers over third party providers of critical services (**CTPs**) to the UK financial sector. While providers of cloud and other ICT services are an obvious target of this regime, third party providers of non-ICT services (such as claims management services to insurers) could also be within scope. Consultation by the Bank of England, PRA and FCA on the regulatory rules fleshing out this CTP regime is expected later in 2023.	provided by an ICT third-party service provider, it has the full range of ICT-related capabilities necessary. DORA's approach to impact tolerances is currently less prescriptive, although it remains to be seen whether further details will be set out in Level 2 legislation.	
21.	**Basel 3.1 (general application)**	The PRA's proposals on the UK implementation of Basel 3.1 standards are detailed in PRA consultation paper CP16/22, published in November 2022. The PRA's 'strong and simple' regime sits alongside Basel 3.1 and builds on many of the same themes. As is the case in the EU, the UK currently applies Basel-derived requirements to all deposit-takers (other than credit unions) even	The scope of EU CRR and CRD includes all banks operating in the EU, regardless of size.	Although the PRA broadly aligns to Basel 3.1, there are a few UK-specific departures from the standards and the EU's proposed application across various components of the reforms.[35] The PRA's 'strong and simple' framework is

[35] Innovate Finance's comments on the UK's implementation of Basel 3.1 points to some "areas of 'super equivalence' or 'gold plating', both in relation to the Basel rules and the EU's implementation of Basel 3.1. These go against the PRA's secondary objective and could make UK firms who use the [Standardised Approach] SA uncompetitive relative to UK banks that use the Internal Ratings Based approach (IRB) or firms that branch in from the EU with less onerous capital requirements." Later it notes: "The option available to [Standardised Approach] SA banks of continuing to follow CRR until the strong and simple regime is finalised is welcome for challenger banks, but we are concerned that it could end up continuing for several years. This would then become another source of misalignment with EU-based competitors. To avoid this potential problem, sunset provisions should be specified in the [Transitional Capital Regime] TCR."

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	though the Basel standards are aimed at internationally active banks. These requirements are set out primarily in the retained EU law version of the Capital Requirements Regulation (575/2013) (**UK CRR**). They will apply to all PRA-regulated firms, although there is an opt out for simpler regime firms (banks and building societies smaller than £20bn total assets) to remain temporarily on current capital standards, while the PRA determines an appropriate capital regime. The Basel 3.1 reforms will come into effect in the UK on 1 January 2025, consistent with the EU.		intended to be consistent with the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision, but simpler than the Basel standards that apply to large and internationally active banks. Its view is that it would not be deviating from the Basel standards by applying a simpler regime to firms that are domestically focused, as the Basel standards are designed for internationally active banks. Basel 3.1 compliance is due by 1 January 2025, however, the strong and simple regime will have a staggered implementation with the first phase due in the second half of 2024. As the second phase is likely to fall after Basel 3.1, firms that meet the strong and simple regime criteria on 1 January 2024 can stay on the current Capital Requirements Regulation through a Transitional Capital

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				Regime (TCR), and adopt the strong and simple regime once it is finalised, or adopt Basel 3.1 and then switch to the strong and simple regime.
22.	**Prudential rules for banks (Output floor)**	The 'output floor' requires that capital can fall to no lower than 72.5% of standardised (i.e., non-modelled) risk weighted assets (**RWAs**) across all risk types. For UK-headquartered groups, the PRA's proposals call for the application of the output floor to the UK consolidated and Ring-Fenced Body (**RFB**) consolidated levels. However, for non-UK headquartered groups, the output floor will not apply to any UK entities.[36]	The EU proposes to set its output floor at 72.5% and phase this in fully from 1 January 2030 onwards (same as the UK, which is two years later than the Basel Committee's target). The EU proposes applying the output floor at the consolidated EU level to all groups, together with a cascade of the impacts to the country level. The details of this are still being finalised. This introduces a level of asymmetry, since UK groups operating in the EU will be subject to a local (EU level) floor, whereas the reverse will not apply to EU groups operating in the UK.	The PRA is implementing the output floor broadly in line with Basel 3.1. It applies to the top company of a UK headquartered group, standalone UK firms, and ringfenced banks (either the specific sub-groups or ringfenced entity). The PRA has drawn attention to the legislative proposal in the EU: "if adopted, these deviations would likely make the EU an international outlier, particularly in its approach to the implementation of the output floor" (CP16/22).
23.	**Prudential rules for**	For sovereign exposures, the UK goes further than the Basel standards (and the EU		

[36] UK Finance commented: "Some of our members believe that UK domiciled banking groups will be at a competitive disadvantage compared to overseas banks operating in the UK, directly because of the proposal not to apply a UK output floor to such firms. In upholding the principle of applying the floor at the highest level of consolidation in the UK, some of our members believe it is important that the UK subsidiaries and branches of third country banking groups only benefit from the concession in the UK where the third country banking groups are subject to an equivalent output floor." (https://www.ukfinance.org.uk/system/files/2023-03/Chapter%209%20-%20%20Output%20Floor.pdf).

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banks (Credit risk)	proposals) in planning to remove all internal ratings based (**IRB**) options. In the treatment of exposures to unrated corporates, the PRA proposes a more risk-sensitive approach. Exposures that can be assessed as Investment Grade (**IG**) would be risk-weighted at 65% and non-IG would be risk-weighted at 135%. This compares to the Basel standards (and EU proposals) that require a uniform 100% risk weighting. PRA permission must be obtained for the risk sensitive approach. There are deviations in the proposed UK treatment of exposures to SMEs. The PRA proposes to remove the SME support factor, which is being retained by the EU.[37] To mitigate the impacts on unrated corporate SMEs, the UK will introduce a new lower risk weight of 85% for this class of exposure. For exposures to residential real estate (i.e., mortgage lending),38 under the IRB approach, the PRA proposes introducing a minimum level		

[37] Innovate Finance noted in its response to CP16/22 that: "The PRA proposes to remove the SME SF, but does not provide any empirical evidence to justify the decision. Based on our members' assessments, its removal will markedly increase capital requirements for exposures to SMEs which in turn may inhibit lending…The SME SF was introduced in 2014 in the CRR (Article 501) to maintain the flow of credit to SMEs during the initial Basel 3 reforms following the global financial crisis of 2007/8… The PRA cites the European Banking Authority's (EBA) 2016 report on SMEs and the SF as justification for removing the SME SF. However, the report was inconclusive as to whether the SF stimulated lending to SMEs, and said that it was too early to tell. …Understandably, the EU has decided to maintain the SME SF in its implementation of Basel 3.1". https://www.innovatefinance.com/consultation/pra-consultation-paper-cp-16-22-implementation-of-the-basel-3-1-standards-innovate-finance-response/

[38] Innovate Finance notes: "The new PRA rules will require banks to use a 'whole loan' approach for BTL exposures, which means that small changes in LTV may lead to step changes in risk weights. This contrasts with the current approach which uses 'loan splitting' to smooth changes in risk weight as LTV changes. The PRA proposal differs from the EU approach for Basel 3.1 which maintains loan splitting for all lending secured on residential real estate. The UK treatment is based on the size of the portfolio and the number of properties is limited to three."

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		for probabilities of default (**PD**) of 0.1%, which is higher than the Basel floor of 0.05%. The PRA proposes to remove the infrastructure support factor (in contrast to the EU under CRR III).[39] It will instead allow an 80% lower risk weight for 'high-quality' unrated project finance exposures in the operational phase.		
24.	**General Prior Permission (GPP) deduction regime for banks**	Since September 2022, in case of GPP, deduction from own funds takes place when the actual transaction is expected to take place with 'sufficient certainty'.[40]	The EBA RTS on own funds and eligible liabilities requires deduction to occur when authorisation is granted. In addition, the EU issuers need to submit their application for regulatory approval for reducing own funds and eligible liabilities 4 months before the actual reduction or redemption.[41]	
25.	**Fundamental Review of the Trading Book (FRTB)**	For the Internal Models Approach, the PRA's consultation CP16/22 diverges from Basel and the EU in several areas, including the ability of banks to include the impact of Non-Modellable Risk Factors (**NMRFs**) when performing desk level backtesting, a detailed specification on NMRF stress period selection, and a new capital charge for non-data-related		The PRA's proposals for the FRTB are largely consistent with the BCBS proposals, however the PRA has retained its 'risk not in model' framework.'

[39] UK Finance has commented: "Sustainable infrastructure and cleantech financing is a strategically important business for many banks as they support society's net zero agenda. Losing the capital benefit under ISF is more critical for IRB firms given the absence of mitigants, such as the high-quality Project Finance risk weight of 80% RW for under SA… Removal of the support factor - given EEA banks expect to retain via the EU CRR3 - would impact the competitiveness of UK banks in this area."

[40] PRA, 'Definition of Capital: Updates to PRA Rules and Supervisory Expectations' (2022) PS8/22 | CP2/22 Policy Statement | Consultation Paper https://www.bankofengland.co.uk/prudential-regulation/publication/2022/february/definition-of-capital-updates.

[41] See comments in this report requested by the European Parliament's ECON (p37): https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740067/IPOL_STU(2023)740067_EN.pdf

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		risk modelling deficiencies under the existing Risks Not in Model (**RNIVM**) framework.		
26.	Bonus cap	The ending of the cap on bankers' bonuses in the UK was trailed last year. The cap, introduced in 2014 by the EU, limits bonuses to twice a banker's basic salary, with shareholder approval.	Markus Ferber, a member of the European Parliament, has said the EU "would be well-advised to stick to its rules on the bonus cap".	
27.	Payment services	In January 2023, the government published a review and a call for evidence on the Payment Services Regulations 2017 (**PSRs 2017**), approaching the objective of these regulations afresh now that they will no longer seek to facilitate the integration of the retail payments market within the EU. Open questions include whether it's appropriate to maintain separate authorisation and regulatory regimes for payments and e-money institutions, whether customers are given sufficient information to make informed choices, and whether the framework for payment initiation service providers (**PISPs**) and account information service providers (**AISPs**) sufficiently supports the growth of this sector. The review closed in April 2023, and feedback is currently being analysed. In addition, among other things: (i) an FCA consultation paper on a new safeguarding regime for non-banks payment service providers is expected later this year, (ii) in August 2023, the Treasury confirmed that it	In late June 2023, the EC published a proposal for a Regulation on payment services in the internal market (**PSD3**), revising the incumbent Payment Services Directive (**PSD2**), alongside a legislative proposal for a framework for financial data access. PSD3 introduces amendments that represent an evolution (not a revolution) of the EU payments framework, and include measures that would: allow non-bank payment service providers access to all EU payment systems, with appropriate safeguards, and give them a right to have a bank account; merge the legal frameworks applicable to electronic money and payment services; improve the functioning of Open Banking; and improve consumer information and rights.	The UK has already pulled ahead of the EU in its unilateral approach to Open Banking (under which it prioritised the development of secure APIs). The extent of third party provider growth and diversity is notably higher in the UK than in comparable EU member states operating under the same overarching payment services framework. In its recent review on payment services, the UK government noted that further unilateral efforts, beyond existing provisions in the PSRs, will be necessary if the UK is to put Open Banking on a sustainable position for the longer term and unlock its true benefits.

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		will legislate to reform the systemic payments perimeter of the Bank of England, with details of its legislative approach to follow, and (iii) the government is expected to bring forward secondary legislation to reform the Payment Systems Regulator's payment system access framework. Finally, in July 2023 the government announced the launch of the 'Future of Payments' review, which aims to consider how payments are likely to be made in the future and make recommendations on the steps needed to successfully deliver world leading retail payments.		To this end, the development of premium APIs will (among other things) be part of the next phase of Open Banking.
28.	**Consumer credit**	Following a period of consultation launched in December 2022, the government has announced (July 2023) its intention to move forward with overhauling the Consumer Credit Act 1974 (**CCA**), seeking to ensure that it is fit for purpose and keeps pace with technological advancements and changing consumer needs. The December 2022 consultation included questions as to whether the business lending scope of the CCA should be changed, whether information requirements were overly prescriptive, and whether sanctions under the CCA are proportionate. While respondents were supportive of change, they had different views as to how reform should be achieved.	The EC adopted a legislative proposal for a directive revising and replacing the Consumer Credit Directive (2008/48/EC) (**CCD II**) in July 2021. The text of the provisional agreement of CCD II will now be put to the vote in a plenary session of the European Parliament in September 2023. Key changes under CCD II include expanding the scope of the regime to include BNPL loans, improving the creditworthiness assessment rules and providing higher protection for consumers taking out credit.	Regulation of consumer credit in the UK is already the product of a mixture of EU directives and domestic amendments, a blend that the Treasury has referred to as a fairly cumbersome and disjointed regime. With the UK's CCA review in train, further divergence is expected.

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		A second stage consultation will be published in 2024 with more detailed proposals for reform, including those pertaining to moving and recasting much of the CCA's provisions in FCA rules. The government expects that reforming the consumer credit regime will take a number of years. The government had previously decided to bring Buy-Now Pay-Later (**BNPL**) products within scope of regulation ahead of wider CCA reform, and in February 2023, the government published a consultation on draft legislation which would effect this change (this closed on 11 April 2023). Recent press reports suggest, however, that the government is considering delaying or shelving the plans. In advance of regulation, the FCA has said that it will act where it sees harm using its existing powers and its non-FSMA consumer protection power, which can apply to unauthorised firms where it sees poor practices. See also the row on the Consumer Duty, below.		
29.	**Consumer Duty, Value for Money (VfM) approach**	The Consumer Duty (the **Duty**) came into force on 31 July 2023 for new and existing products and services, and will come into force on 31 July 2024 for closed products and services. The Duty will comprise:	In May 2023 the EC adopted a Retail Investment Package that seeks to empower retail investors to make investment decisions that are aligned with their needs and preferences, while ensuring that they are treated fairly and duly protected.	The UK is taking a more holistic (and comprehensive) approach to consumer protection via the Consumer Duty than the EU.

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	(i) The new Consumer Principle, Principle 12, which requires firms to 'act to deliver good outcomes for retail customers'. (ii) Three cross-cutting rules designed to support the new Consumer Principle. Firms must: (a) act in good faith toward retail customers; (b) avoid foreseeable harm to retail customers; and (c) enable and support retail customers to pursue their financial objectives. (iii) Four outcomes setting out more detailed expectations for a firm's conduct in four areas that represent key elements of the firm-consumer relationship: (a) the governance of products and services; (b) price and value; (c) consumer understanding; and (d) consumer support. The FCA has been clear that it sees the introduction of the Duty as a paradigm shift in the expectations of firms and that the focus on good customer outcomes will apply on an ongoing basis to all aspects of firms' operations and culture.	The package includes measures to ensure that investment products bring real 'Value for Money' to retail investors, revising existing rules across MiFID II, the Insurance Distribution Directive, the UCITS Directive, AIFMD, Solvency II and the PRIIPS Regulation. The VfM requirements would apply to both manufacturers and distributors of retail investment products. They must clearly identify all costs and charges of the product and assess them against the characteristics of the product and the expected return, to ensure that the product offers retail investors good value for money. The Retail Investment Strategy will now need to be considered and voted on by the European Parliament and the Council before it becomes law, and so will conceivably evolve beyond its present form.	The FCA defines the value component of the Duty as the relationship between the amount paid by a retail customer for the product and the benefits they can reasonably expect to get from the product. By contrast, the EU is looking to introduce an 'objective' value assessment whereby product manufacturers and distributors will have to assess value by comparing the performance and costs of their products against certain costs and performance benchmarks set by the EU authorities. A deviation from the relevant benchmark should introduce a presumption that costs and charges are too high, and that the product will not deliver Value for Money, unless the manufacturer or distributor is able to demonstrate otherwise. More of our thoughts on this topic can be found in

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				our June 2023 publication, '**Value for Money: A changing retail investment landscape in the UK and the EU**'.
30.	**Sanctions and Money Laundering**	The UK's autonomous sanctions regime is governed by the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA 2018**). SAMLA 2018 gives the UK government broad discretionary powers to impose a wide range of sanctions, providing greater flexibility to introduce measures compared with the pre-Brexit framework under which the UK implemented measures agreed at the EU level. There are certain differences in the way in which key terms used in financial sanctions are defined and applied as between the EU and UK regimes (for example, the UK definition of 'financial benefit' in the prohibition of making funds available for the benefit of a designated person includes the partial discharge of a financial obligation, whereas the full discharge of a financial obligation is included under the EU financial sanctions regime). In a money laundering context, the UK has concluded that, overall, there is insufficient evidence at the current time for a fundamental overhaul of preventative measures required under the UK's Money Laundering, Terrorist Financing and Transfer	In July 2021, the EC presented an ambitious package of legislative proposals to strengthen the EU's AML/CFT rules. These include the creation of one European supervisory for AML/CFT, the AML Authority (**AMLA**). Other initiatives include the introduction of a new regulation to create a single rulebook (including provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as crypto-assets) and a new directive replacing AMLD4 as amended by AMLD5 (AMLD6). Elsewhere, the Court of Justice of the European Union (**CJEU**) has declared that the requirement whereby Member States must ensure that the information on the beneficial ownership of corporate entities incorporated within their territory is accessible in all cases to any member of the general public is invalid (in Joined Cases C-37/20 and C-601/20). Following the ruling, several EU member states have removed public access to their beneficial ownership registers.	Both UK and EU approaches are informed by FATF recommendations. Despite the UK's autonomy under SAMLA 2018, there remains significant but not complete overlap between the two sanctions regimes.

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		of Funds (Information on the Payer) Regulations 2017 (**MLRs**). A number of measures reforming the UK's AML/CFT regime are, however, in train, including reforms to Companies House (extending the rights of Persons with Significant Control to suppress personal information from public view), reform of the AML/CFT supervisory system and amendments to the customer due diligence measures applying to domestic politically exposed persons under the MLRs. Further consultation on amendments to the MLRs are tabled for Q4 2023. A number of these recent UK initiatives in the economic crime space have not been mirrored in the EU. These include the Economic Crime (Transparency and Enforcement) Act 2022 which introduced a Register of Overseas Entities Beneficial Ownership of UK property.		
31.	**Solvency II (prudential regulation of insurers)**	The Treasury published a response document to its consultation on reforms to Solvency II in November 2022 setting out the changes to be made to the onshored regime. This has been followed by the publication of two draft statutory instruments by the Treasury and a consultation paper by the PRA, both published in June 2023. A second PRA consultation paper is expected to be published in September 2023.	The EC published legislative proposals for amendments to the Solvency II Directive in September 2021. This followed a review of the overall regime and advice from EIOPA published in December 2020. Following changes to the directive, the EC intends to propose amendments to the Level 2 Delegated Regulation. It has given some indication of what these changes will encompass in a communication accompanying the legislative proposals. As a result of the	There is little overlap between the changes proposed to the UK regime and the changes proposed by the EU, reflecting different areas of focus. Both sets of reforms involve changes to the thresholds for application of the Solvency II regime and changes to the risk

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	The key focus of reforms has been to make the regime more suitable for the UK market and to unlock insurer capital currently tied up as a result of the operation of the 'risk margin' component of the regime. Key proposed changes will include: (i) a new risk margin methodology and reduction of the cost of capital rate from 6% to 4%; (ii) relaxations of matching adjustment asset eligibility requirements, including to allow the inclusion of some assets without fixed cash-flows and to remove the cap on sub-investment grade assets; (iii) relaxations of reporting requirements; (iv) streamlining of internal model requirements; (v) removal of branch capital requirements for foreign insurers; and (vi) changes to the thresholds for application of the Solvency II regime. Changes to the risk margin will be implemented by the end of 2023. Change to the matching adjustment rules are expected to be implemented by the end of June 2024.	two-stage process, there is no complete picture of the overall reforms to the regime at the moment. A draft report on the Commission's proposals was published by the European Parliament's Committee on Economic and Monetary Affairs (**ECON**) in June 2022. There has been substantial debate within Parliament over the content of the draft ECON report and a revised report was published in June 2023 and adopted by the Parliament. Trialogue discussions will now take place on the legislative proposals. The final timetable for adoption of the reforms to the directive is not clear. Key aspects of the Commission proposals are: (i) a new formal proportionality regime involving the introduction of concepts of 'low-risk profile undertakings' and 'low-risk profile groups'; (ii) new macro-prudential requirements in the context of the ORSA and the prudent person principle; (iii) new formal requirement for firms to assess whether they have any material exposure to climate change risks as part of the ORSA; (iv) requirement for EIOPA to consider whether a dedicated prudential treatment of exposures related to	margin which are expected to reduce the amount of capital needed to be held by insurers. The other changes largely diverge.

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	The remainder of the changes will be implemented at the end of 2024.	assets or activities associated substantially with environmental and/or social objectives would be justified; (v) liquidity risk management plans; (vi) splitting of the SFCR into two parts - one addressed to policyholders and one to market participants; (vii) amendments to the rules on the extrapolation of the relevant risk-free interest rate term structure; (viii) amendments to the volatility adjustment; and (ix) a number of amendments to group supervision rules, including clarification of the definition of an insurance holding company, amendments to the rules for the identification of groups and provision of additional details of 'other methods' to be used in group supervision. Key areas where the ECON report departs from the Commission's proposals are: (i) ECON proposes including some detail on the risk margin calculation in the Directive, including a revised cost-of-capital rate set at 4.5%. As noted	

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		below, the Commission proposes dealing with this at Level 2; (ii) proposed 5-year phasing in period for any amendments to the interest rate sub-risk module; (iii) ECON proposes deleting some of the changes to the group supervision rules, in particular those which make holding companies directly responsible for supervisability of the group; and (iv) ECON proposes a new provision requiring EIOPA to assess whether the requirement on the separation of life and non-life business is still justified, and to submit a report on its findings by 28 June 2024. Some important aspects of the regime are currently predominantly dealt with in the Level 2 Delegated Regulation and will only be amended as part of the second stage of the process. The EC has indicated that it will propose amendments in the following areas at that stage: (i) simplification of conditions under which equity investments would be treated as ‘long-term’, thereby attracting preferential treatment in the standard formula;	

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			(ii) changes to the risk margin methodology to make it less sensitive to interest rates and a reduction in the cost-of-capital rate to 5%; (iii) further amendments to the volatility adjustment; (iv) changes to the matching adjustment to: (a) allow recognition of diversification benefits between the matching adjustment (MA) portfolio and the rest of the undertaking, and (b) limit the benefit which can be recognized by firms were the MA portfolio contains restructured assets which depend on the performance of underlying (ineligible) assets; (v) adjustments to the capital requirement for interest rate risk to reflect recent experience of a low interest rate environment (it remains to be seen whether this adjustment is still needed).	
32.	**Recovery and resolution of insurers**	The Treasury published a consultation on the introduction of an Insurer Recovery and Resolution Regime in January 2023 and a response document to the consultation in August 2023. Government intends to go ahead with legislating for the new regime 'when parliamentary time allows'.	The EC published a proposal for a Recovery and Resolution Directive alongside its legislative proposals for reforms to the Solvency II Directive, in September 2021. As with the UK proposals, these largely follow international standards. A key difference from the UK proposals is that there is a specified percentage of the market in each jurisdiction which should be covered by pre-	

TOPIC	UK	EU	COMMENT
	The proposals largely follow international standards, in particular the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions.	emptive recovery planning and resolution planning requirements. ECON adopted a report on the draft directive in July 2023. A Committee decision to open interinstitutional negotiations with the report adopted in committee was also made in July 2023.	

SLAUGHTER AND MAY/