SLAUGHTER AND MAY/

13 FEBRUARY 2025

ISSUE 1289

# FINANCIAL REGULATION WEEKLY BULLETIN

Major UK and European regulatory developments of interest to banks insurers and reinsurers, asset managers and other market participants

QUICK LINKS



If you have any comments or questions, please contact: Selmin Hakki.

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact: Beth Dobson.

## SELECTED HEADLINES //

## Enforcement

# GENERAL //

## 1 EUROPEAN COMMISSION

1.1 **EU AI Act - European Commission publishes guidelines on the definition of an AI system and prohibited AI practices** – *6 February 2025* – The European Commission (the Commission) has published two separate guidelines further to the Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence (EU AI Act), on:

- the definition of an artificial intelligence (AI) system, which will assist providers and other relevant persons in determining whether a system constitutes an AI system within the meaning of the EU AI Act; and
- prohibited AI practices, offering insight into the Commission's non-binding interpretation of the prohibitions under the EU AI Act, where authoritative interpretations are reserved for the Court of Justice of the European Union.

Both guidelines have been released as an approved draft. The first rules under the EU AI Act started to apply from 2 February 2025, including the AI system definition, AI literacy and a limited number of prohibited AI use cases that pose unacceptable risks in the EU.

**Guidelines on the definition of AI system**

**Guidelines on prohibited AI practices**

1.2 **2025 work programme - European Commission publishes communication** – *11 February 2025* – The European Commission (the Commission) has published a communication setting out its work programme for 2025, which is framed around the Commission's ambition to "*boost competitiveness, enhance security, and bolster economic resilience in the EU*", and focuses strongly on simplification. The programme includes a series of omnibus packages that aim to simplify various pieces of legislation, with the first proposals scheduled for 2025 focusing on sustainability and investment simplification.

Separately, the Commission has published a speech delivered by Maroš Šefčovič, Commissioner for Trade and Economic Security, highlighting some of the initiatives in the programme. Šefčovič notes that under the programme, the Commission "*will propose unprecedented simplification to unleash opportunities, innovation and growth*".

**European Commission 2025 work programme**

**Webpage**

**Speech**

## 2 UK GOVERNMENT

2.1 **The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025** – *12 February 2025* – The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025 (the Order) has been published, alongside an explanatory memorandum. The Order amends the legislation which gives effect to the UK Emissions Trading Scheme (the UK ETS) in which eligible operators are given free allocation of allowances to mitigate the risk of carbon leakage in two allocation periods (2021-2025 and 2026-2030).

In the explanatory memorandum, the government explains that the Order moves the start date of the second allocation period from 2026 to 2027, making 2026 a standalone year, and provides for the calculation of free allocation in 2026. The Order also makes three changes to the UK ETS which will require the publication of full details of transactions between accounts in the scheme's registry after a three year delay; add limited exceptions to the prohibition on disclosure of the UK ETS data; and extend qualification criteria so that installations with low emission levels that started operations between 2 January 2021 and 1 January 2024 can apply to be classed as ultra-small emitters during the 2026-2030 period.

The Order will come into force on 31 March 2025.

**Statutory instrument**

**Explanatory memorandum**

## 3 HM TREASURY

3.1 **Joint EU-UK Financial Regulatory Forum - HM Treasury publishes joint statement on third meeting** – *13 February 2025* – HM Treasury has published a joint statement between HM Treasury and the European Commission on the third meeting of the Joint EU-UK Financial Regulatory Forum (the Forum), which took place on 12 February 2025. The Forum agenda focused around five themes, namely the policy outlook, and the macroeconomic and financial stability outlook; banking regulation; digital and technology; markets reform; and sustainable finance. Within these themes the participants discussed, among other things, the implementation of Basel III, artificial intelligence developments, bank bail-in operationalisation, cooperation on T+1 and the development of EU and UK consolidated tapes.

The EU and the UK agreed to follow-up between now and the next Forum on the topics discussed.

**Joint statement**

## 4 HM TREASURY AND BANK OF ENGLAND

4.1 **Financial relationship - HM Treasury and Bank of England publish updated MoU** – *13 February 2025* – HM Treasury and the Bank of England (the Bank) have published an updated memorandum of understanding (MoU) on their financial relationship - which maintains the capital and income framework for the Bank - following a 5-yearly review.

In an accompanying joint statement, the Bank and HM Treasury explain that the review concluded that: (i) the capital framework (set out in Section 2B of the MoU) has been effective in delivering its intended objectives; (ii) the existing parameters of the framework remain adequate to support the Bank's balance sheet; and (iii) the existing financial arrangements between the Bank and HM Treasury are sufficient to support the Bank's planned transition to a demand-driven operating framework fully backed by repo.

Updated Memorandum of Understanding

Joint statement

## 5 FINANCIAL CONDUCT AUTHORITY

5.1 **AI research series - FCA publishes research note on pricing differences by demographic characteristics in UK mortgage market** – *13 February 2025* – The FCA has published a research note on its empirical analysis of differential pricing outcomes by demographic characteristics in the UK mortgage market, as part of its artificial intelligence (AI) research series that looks into the area of AI bias. In short, the FCA did not find any evidence of differences in mortgage pricing across different demographic groups. Instead, it found that groups appear to have different types of mortgage products, although it was unable to conclude whether the difference was driven by consumer choice.

Research note

Webpage

## 6 FINANCIAL OMBUDSMAN SERVICE

6.1 **Charging CMCs - FOS publishes policy statement setting out new fees rules** – *7 February 2025* – The Financial Ombudsman Service (FOS) has published a policy statement setting out its new rules on fees regarding complaints that are referred to it by claims management companies and other professional representatives acting on behalf of complainants (CMCs).

Under the new rules, the FOS will charge CMCs a fee of £250 to refer a case to its service (which remains free for consumers). In each financial year, CMCs will be able to bring ten cases for free to the FOS, and CMCs will receive £175 back if the case outcome is in favour of the consumer. In addition, if a complaint is not upheld or is withdrawn, the financial business against whom the complaint was made will pay a reduced case fee of £475 (currently set at £650).

The new rules will enter into force and apply to complaints referred to the FOS on or after 1 April 2025.

FOS policy statement: Charging CMCs and other professional representatives

Press release

# BANKING AND FINANCE //

## 7 BANK FOR INTERNATIONAL SETTLEMENTS

7.1 **Foundations of trustworthy AI in the financial sector - BIS publishes speech** – *11 February 2025* – The Bank for International Settlements (BIS) has published a speech (delivered on 4 February 2025) by Denis Beau, First Deputy Governor of the Bank of France, on the opportunities and risks of artificial intelligence (AI) and the conditions necessary for effective regulation of AI in the financial sector.

Beau observes that while AI is being used to improve 'user experience', to streamline processes and control risks, AI may be put to improper use, amplify cyber risk and negatively impact the environment. Beau notes that the Regulation (EU) 2024/1689 laying down harmonised rules on AI (EU AI Act) will not "*lead to any major upheaval in the way risks are managed in the financial sector*", given that the sector is well placed to meet the challenge of complying with new regulations and financial institutions have a "*sound risk management culture*". While the objectives of the EU AI Act (the protection of rights) differ from those of sectoral regulation (financial stability and the ability to meet commitments to consumers), Beau observes that "*clearly, we are not in uncharted waters*". However, Beau emphasises that the challenges posed by AI should not be underestimated, some of which are novel, such as explainability and fairness.

Webpage

## 8 EUROPEAN COMMISSION

8.1 **CRR - European Commission publishes call for evidence on amendments to the prudential treatment of securities financing transactions under the Net Stable Funding Ratio** – *10 February 2025* – The European Commission (the Commission) has published a call for evidence on amendments to the Capital Requirements Regulation (EU) 575/2013 (CRR) to adjust the prudential treatment of securities financing transactions (SFTs) under the Net Stable Funding Ratio (NSFR). Under the CRR, until 28 June 2025 EU banks can apply lower required stable funding (RSF) factors for SFTs and unsecured transactions than set out under the Basel standards. From that date, the higher RSF factors would apply.

In light of the concerns made by market participants that an increase in the RSF factors will make these instruments more costly in the EU, the Commission proposes to make permanent the current prudential treatment for SFTs and unsecured transactions with a residual maturity of less than six months, with financial customers, for the purpose of the NSFR.

The call for evidence explains that this initiative would avoid unduly increasing the funding costs of banks, further support the development of a liquid and attractive sovereign debt market and contribute to a deep and diversified SFT market for EU debt instruments, as well as contributing to maintaining an international level playing field with third countries. Stakeholders are invited to provide their input by 10 March 2025.

Webpage

## 9 EUROPEAN CENTRAL BANK

9.1 **Climate and nature - ECB publishes speech on monetary policy and bank supervision** – *13 February 2025* – The European Central Bank (ECB) has published a speech (delivered on 12 February 2025) by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on the steps the ECB has taken to account for climate and nature in its monetary policy and banking supervision, on the basis that central banks and supervisors are not climate and nature policy makers, but "*policy takers*".

On monetary policy, Elderson highlights that the ECB has improved its ability to take climate considerations into account in macroeconomic analyses that inform policy discussions and has started tilting its corporate bond purchases toward issuers with a better climate performance. Turning to banking supervision, Elderson explains that the ECB set deadlines for banks to improve their risk management practices pursuant to their requirements under the Capital Requirements Directive (2013/36/EU) (CRD). The ECB is still following up on two earlier interim deadlines and wants to see evidence that banks' risk management practices ensure the sound management of climate and nature-related risks across all areas of its supervisory expectations.

Speech

## 10 TREASURY COMMITTEE

10.1 **IT failures - Treasury Committee publishes letters to bank and building society CEOs** – *10 February 2025* – The House of Commons Treasury Committee (the Committee) has published letters it has sent to the Chief Executive Officers (CEOs) of nine banks and building societies to request information on the scale and impact of IT failures which have affected their businesses over the last two years.

The Committee has asked the CEOs to respond to a list of questions by 26 February 2025, including: the number of instances their services have been unavailable due to IT failures over the last two years; the number of customers that have been affected by each IT outage; the amount of compensation paid to customers due to IT failures over the last two years; and a description of the reason for those IT failures.

On an associated webpage, the Chair of the Committee, Dame Meg Hillier MP, observed that "*the rapidly declining number of high street bank branches makes the impact of IT outages even more painful*".

Letters

Webpage

## 11 BANK OF ENGLAND

**11.1 FMI regulation - Bank of England publishes speech on priorities for 2025** – *10 February 2025* – The Bank of England (the Bank) has published a speech delivered by Sasha Mills, Executive Director, Financial Market Infrastructure (FMI), on the changes made to the Bank's regulatory and supervisory frameworks for FMIs and its priorities for FMI regulation in 2025. Mills explains that in the coming year, against a backdrop of "*a more shock prone world, with elevated volatility in part driven by geopolitical stress*", the Bank will seek to ensure FMI services are operationally resilient; facilitate safe and resilient innovation in payments, settlement and clearing; and ensure stability through financially resilient FMIs.

Mills highlights plans to develop more detailed guidance to formalise the Bank's expectations on cyber resilience, alongside work to embed its oversight regime for critical third parties providing services to FMIs. Mills further notes that, as part of the Bank's work with HM Treasury to repeal UK EMIR for central counterparties (CCPs) and replace it with Bank rules and relevant statutory provisions, thought is being given as to how certain processes can be simplified, such as for approving CCP margin models and authorising new products.

Speech

**11.2 Changes to financial market activity - Bank of England publishes speech** – *11 February 2025* – The Bank of England (the Bank) has published a speech delivered by Andrew Bailey, the Bank Governor, on the scale and significance of changes to financial market activity in recent years, and what this means for financial stability. Bailey's main message is that the significance of these changes - in sum, moving to a financial system in which the presence and impact of non-bank financial institutions (NBFIs) is much larger - has not been fully recognised in many assessments of the challenges facing financial stability and the tools needed to assess the resulting risks.

Speech

## 12 PRUDENTIAL REGULATION AUTHORITY

**12.1 Streamlining firm-specific capital communications - PRA publishes policy statement providing feedback to responses and outlining final rules** – *12 February 2025* – The PRA has published a policy statement (PS2/25) providing feedback to the responses it received to Chapter 3 of its September 2024 consultation paper (CP9/24) on proposals to streamline the Pillar 2A capital framework and the capital communications process. The PRA explains that it has made no substantive changes to the proposed rules following the consultation.

The policy statement further sets out the PRA's final policy and rules to streamline firm-specific capital communications - which simplify the content and process of the firm-specific capital communications used to set Pillar 2A - the systemic buffers and the additional leverage ratio buffer (ALRB), which can be found in the appendices to the policy statement. These changes have no impact on firms' capital requirements.

The new policy and rules will take effect on 31 March 2025, and the PRA notes that firms are not required to take any specific actions to implement the changes.

**PRA policy statement: Streamlining firm-specific capital communications (PS2/25)**

# SECURITIES AND MARKETS //

## 13 EUROPEAN COMMISSION

13.1 **T+1 settlement - European Commission proposes to shorten settlement cycle** – *12 February 2025* – The European Commission (the Commission) has published a proposed regulation amending Article 5(2) of the Central Securities Depositories Regulation ((EU) 909/2014) (CSDR) to shorten the settlement period for EU transactions in transferable securities from two business days after trading takes place (T+2) to one business day (T+1). The proposal sets 11 October 2027 as the date for transition to T+1 settlement, which follows the recommendations made in the European Securities and Markets Authority's report published in November 2024.

**Proposal for a Regulation amending Regulation (EU) 909/2014 as regards a shorter settlement cycle in the Union ((COM(2025) 38)**

**Press release**

## 14 FINANCIAL CONDUCT AUTHORITY

14.1 **Consolidated tape for bonds - FCA updates webpage** – *7 February 2025* – The FCA has updated its webpage providing information on its establishment of a consolidated tape (CT) for bonds to collate market data. In the update, the FCA confirms that the tender documents for the process to appoint a bond CT provider (CTP) will be published by 7 March 2025. The FCA will also publish a draft contract between the CTP and the FCA.

**Updated webpage**

14.2 **UK Short Selling Regulation - FCA updates webpage detailing its intentions to consult on new rules** – *12 February 2025* – The FCA has updated its webpage on the notification and disclosure of net short positions to include a 'short selling update' in which it explains that the FCA aims to consult on the new short selling rules - further to the establishment of a new UK short selling regime under the Short Selling Regulations 2025 (SI 2025/29) (UK SSR) - in Q3 2025.

The FCA explains that certain aspects of the UK SSR will be implemented once the FCA has finalised the new rules and there has been time for the FCA to make any technical and operational changes. This includes the new requirement to publish aggregated net short positions by issuer.

In the interim, the existing UK short selling regime will continue to apply, including the current public disclosure of individual firms net short positions in issuers at the 0.5% threshold and above.

Updated webpage

# INSURANCE //

## 15 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

15.1 **AI governance and risk management - EIOPA consults on its opinion under EU AI Act** – *12 February 2025* – The European Insurance and Occupational Pensions Authority (EIOPA) has published a consultation paper on its opinion on artificial intelligence (AI) governance and risk management, along with an impact assessment. The opinion seeks to clarify further the main principles and requirements stemming from insurance sectoral legislation that should be considered in relation to the use of AI systems. The opinion applies to those insurance AI systems that are not considered as prohibited AI practices or high-risk under the Regulation (EU) 2024/1689 laying down harmonised rules on AI (EU AI Act).

Stakeholders are invited to provide comments on the consultation paper and impact assessment by 12 May 2025.

EIOPA consultation paper: On opinion on AI governance and risk management (EIOPA-BoS-25-007)

Press release

# ENFORCEMENT //

## 16 FINANCIAL CONDUCT AUTHORITY

16.1 **Financial promotions - FCA publishes quarterly and yearly data for 2024** – *7 February 2025* – The FCA has published data for 2024 covering actions it has taken against authorised firms breaching the financial promotion rules, and referrals and investigations into unregulated activity. This data shows that the FCA is increasing its interventions, with 19,766 financial promotions withdrawn or amended in 2024, representing a 97.5% increase from 2023. The FCA states that, given its ongoing concerns around the levels of compliance with the financial promotion rules, it will continue to focus on this area to prevent consumer harm. In particular, concerns about cryptoasset, debt solutions and claims management company promotions are highlighted, alongside ‘finfluencers’. The FCA states that there is “*still a lot of work to be done by all social media platforms*.”

The FCA has also published quarterly financial promotions data generated between 1 October and 31 December 2024.

Financial promotions data 2024

Financial promotions quarterly data 2024 Q4

This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London.
The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element. We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website **here**.

If you would like to find out more about our Financial Regulation Group or require advice on a financial regulation matter, please contact one of the following or your usual Slaughter and May contact:

| | |
|---|---|
| Jan Putnis | jan.putnis@slaughterandmay.com |
| Nick Bonsall | nick.bonsall@slaughterandmay.com |
| David Shone | david.shone@slaughterandmay.com |
| Kristina Locmele | kristina.locmele@slaughterandmay.com |
| Sabine Dittrich | sabine.dittrich@slaughterandmay.com |

| London | Brussels | Hong Kong | Beijing |
|---|---|---|---|
| T +44 (0)20 7600 1200 | T +32 (0)2 737 94 00 | T +852 2521 0551 | T +86 10 5965 0600 |
| F +44 (0)20 7090 5000 | F +32 (0)2 737 94 01 | F +852 2845 2125 | F +86 10 5965 0650 |