

FINANCIAL REGULATION WEEKLY BULLETIN

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

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Slaughter and May
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Newsletter. If you
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GENERAL //

1 TREASURY SELECT COMMITTEE

- 1.1 **Sexism in the City inquiry - Transcript of evidence published - 23 January 2024** - The Treasury Select Committee has published the transcript of an oral evidence session held on 17 January 2024 as part of its inquiry (launched in July 2023) into sexism in the City. Witnesses at the session included Nikhil Rathi, FCA Chief Executive; Sarah Pritchard, FCA Executive Director, Markets and International; Sam Woods, PRA Chief Executive; and Vicky Saporta, PRA Executive Director, Prudential Policy.

Among other things, the transcript outlines areas of detailed feedback to the FCA's consultation paper on diversity and inclusion in the financial sector (CP23/20). These include how the FCA expectations as to a compliant strategy should be interpreted in respect of global organisations that operate cross-border businesses. There has also been feedback on how the FCA's proposals on non-financial misconduct interact with existing employment, equalities and criminal laws. The regulators are working through responses to the consultation and are considering the feedback received.

[Oral evidence given by Nikhil Rathi and Sam Woods \(17 January 2024\)](#)

2 FINANCIAL CONDUCT AUTHORITY

- 2.1 **How to regulate consumer technology - FCA publishes speech - 23 January 2024** - The FCA has published a speech given by Nikhil Rathi, FCA Chief Executive, on the regulation of consumer technology. Among other things, Mr Rathi argues that we are at a "*global inflection point*" in the rise of technology in financial services; he notes that he wants the FCA to be at the forefront of enabling technological innovation, while also using and adapting its existing regulatory tools to protect consumers and markets. He observes that "*technology neutrality has historically meant that regulators do not dictate the way to go*" and calls for a wider debate between policymakers, the industry and consumers on what we are willing to risk in search of innovation and better products and services.

[FCA speech: Leaning in on making consumer tech a force for good](#)

3 NETWORK FOR GREENING THE FINANCIAL SYSTEM

- 3.1 **Use of climate scenarios - NGFS publishes technical document - 23 January 2024** - The Network for Greening the Financial System (NGFS) has published a technical document on its climate scenarios, explaining their purpose, providing use cases and advising on the circumstances in which adaptations might be required.

The NGFS explains that it has continued to strengthen its scenarios but that they reflect only a small selection of potential future pathways. Scenario users should therefore tailor their analyses to suit their needs and determine what additional risk assessment tools and scenario calibration may be required. The technical document identifies the main areas where users may need to

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adapt the intensity of the scenarios, including tipping points, societal impacts and technology assumptions.

[NGFS scenarios: Purpose, use cases and guidance on where institutional adaptations are required: An explanatory note](#)

[Press release](#)

BANKING AND FINANCE //

4 EUROPEAN COMMISSION

- 4.1 **Review of EU macroprudential framework for banks - Commission publishes report - 24 January** - The European Commission has published a report (COM(2024) 21 final) on its review of the EU macroprudential framework for banks set out in the Capital Requirements Regulation (575/2013) (CRR) and the CRD IV Directive (2013/36/EU).

The European Commission intends to continue to work on macroprudential policies, while ensuring compliance with the Basel III framework and taking into account that the overall level of capital and minimum requirement for own funds and eligible liabilities requirements is deemed adequate. It will also collect further evidence on non-bank financial intermediation, considering potential gaps in existing tools to meet macroprudential objectives.

[European Commission report: macroprudential review under Article 513 of CRR and EMIR \(COM\(2024\)21\)](#)

[Webpage](#)

5 EUROPEAN BANKING AUTHORITY

- 5.1 **Interest rate risk in the banking book - EBA publishes heatmap outlining areas of scrutiny - 24 January 2024** - The European Banking Authority (EBA) has published a heatmap following its scrutiny of the implementation of the interest rate risk in the banking book (IRRBB) standards in the EU. The heatmap describes the work the EBA has carried out in this area to date and identifies the main areas that will be subject to further EBA scrutiny, as well as corresponding actions in the short, medium and long term.

[Heatmap following the EBA scrutiny on the IRRBB standards implementation in the EU \(EBA/REP/2024/02\)](#)

[Press release](#)

6 EUROPEAN CENTRAL BANK

- 6.1 **Alignment of banking sector with EU climate objectives - ECB publishes report - 23 January 2024** - The European Central Bank (ECB) has published the results of an assessment of the

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alignment of the EU banking sector with EU climate objectives, together with a related blog post by Frank Elderson, ECB Executive Board Member and Supervisory Board Vice-Chair.

The ECB finds that banks' credit portfolios are substantially misaligned with the goals of the Paris Agreement. Transition risks stem largely from financing companies in the energy sector that are either too slow to phase out high-carbon production processes or too slow to build out their renewable energy production capacity. According to the report, many banks also face elevated reputational and litigation risks as they are publicly committed to the Paris Agreement but their credit portfolios are still measurably misaligned with it.

[ECB report: Risks from misalignment of banks' financing with the EU climate objectives: Assessment of the alignment of the European banking sector](#)

[ECB blog post: "Failing to plan is planning to fail" - why transition planning is essential for banks](#)

7 HM TREASURY

- 7.1 Bank of England Levy (Amount of Levy Payable) Regulations 2024 - Draft laid before Parliament - 22 January 2024** - A draft version of the Bank of England Levy (Amount of Levy Payable) Regulations 2024 (the Regulations) has been published on legislation.gov.uk, together with a draft explanatory memorandum. The Regulations set out the details of the new Bank of England levy on authorised deposit-takers, which will replace the existing cash ratio deposit scheme. The levy will apply to eligible institutions with eligible liabilities (as defined in the Regulations) greater than £600 million. The Bank of England and HM Treasury have also separately published the outcome of their consultations on the new levy.

The Regulations are intended to come into force on 1 March 2024.

[Draft SI: The Bank of England Levy \(Amount of Levy Payable\) Regulations 2024](#)

[Explanatory memorandum](#)

[Webpage](#)

8 BANK OF ENGLAND

- 8.1 Real-Time Gross Settlement - Bank of England publishes speech - 25 January 2024** - The Bank of England (the Bank) has published a speech given by Victoria Cleland, Executive Director for Banking, Payments and Innovation, on the Real-Time Gross Settlement service (RTGS).

Ms Cleland notes that the Bank of England has identified areas of potential enhancements to the RTGS service on which it would welcome industry input. She confirms that a discussion paper seeking input on these points will be published in February 2024. Ms Cleland also notes that the Bank is reviewing the operating hours for settling interbank obligations under the RTGS service.

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[Bank of England speech: The Real Time Gross Settlement service: an open platform to drive innovation - speech by Victoria Cleland](#)

9 BANK OF ENGLAND AND HM TREASURY

- 9.1 **The case for a digital pound - Bank of England and HM Treasury publish response to consultation - 25 January 2024** - The Bank of England (the Bank) and HM Treasury have published a response to their Consultation Paper and Technology Working Paper on a potential UK retail central bank digital currency (or ‘digital pound’), published in February 2023.

No final decision has yet been made to pursue a digital pound. Further to feedback received, the Bank and HM Treasury confirm that primary legislation to guarantee users' privacy and control is an important aspect of the proposals. They also commit to maintaining access to cash for those who prefer it, should a digital pound be introduced. Other key design principles include that a digital pound is reliable and secure, supports innovation, is interoperable, adaptable and scalable, is inclusive and attractive, and is energy efficient.

Phase 2 will involve the development of a detailed design for the digital pound. This will encompass, among others, experimentation and proofs on concept as well as a blueprint setting out a comprehensive description of the digital pound architecture. A decision on whether to build a digital pound (phase 3) will be made after the design phase (2025 at the earliest). If it proceeds, a timetable will be set for further consultation before the introduction of primary legislation and a potential launch.

[Response to the Bank of England and HM Treasury Consultation Paper: The digital pound: A new form of money for households and businesses?](#)

[Response to the digital pound Technology Working Paper](#)

[Webpage](#)

[Press release](#)

10 PRUDENTIAL REGULATION AUTHORITY

- 10.1 **Review of ring-fencing rules - Report published by PRA - 25 January 2024** - The PRA has published a report (dated December 2023) setting out the conclusions of its review of its rules on ring-fencing, which has been conducted throughout 2023. Although most of the ring-fencing regime is contained in legislation, there are also some requirements set by the PRA in its Rulebook, supported by supervisory statements, which are the subject of the report.

The PRA notes that the regime as a whole has been subject to a separate statutory review, with final recommendations set out in the Independent Review of Ring-fencing and Proprietary Trading (known as the “Skeoch Review”) of March 2022. HMT and the PRA consulted in September 2023 on giving effect to these recommendations.

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The overall conclusion of the PRA's report is that most rules are performing satisfactorily and remain an important support for the statutory regime. The report indicates a few areas where the PRA considers that changes may be beneficial. For example, it notes a possible overlap with other PRA rules relating to securing operational continuity in resolution and the operational resilience of banks; it also suggests that there may be potential to reduce the frequency with which ring-fenced banks must review their internal policies underpinning how the requirement to transact only on an arm's length basis is operationalised. There may also be scope to re-assess the level of consolidation at which some of the governance rules apply with a view to simplifying the requirements on firms.

The PRA intends to consult in due course on changes to its ring-fencing rules after a fuller exploration of the costs and benefits of the options identified.

[Report into review of ring-fencing rules](#)

[Webpage](#)

11 FINANCIAL CONDUCT AUTHORITY

11.1 Motor finance complaints - FCA publishes new information - 24 January 2024 - The FCA has published a new webpage with information for firms affected by its review into the historical use of discretionary commission arrangements (DCAs) in the motor finance industry.

The webpage refers to the FCA's use of its powers under section 166 of the Financial Services and Markets Act 2000 to review sales of historical motor finance commission arrangements across several firms. As previously reported in this bulletin, as part of this, it introduced new rules that came into force on 11 January 2024. In particular, the FCA paused, for 37 weeks, the requirement on firms to provide a final response to a complaint about motor finance agreements with DCAs within 8 weeks of receiving the complaint; it also extended the time consumers have to refer DCA complaints to the Financial Ombudsman Service (FOS) from 6 to 15 months, if the firm sent its final response to the complaint within the period specified in the rules.

The new webpage sets out information on what firms need to do in relation to DCA complaints, including dealing with them, giving customers more time to refer them to the FOS, making offers of redress and retaining records. It also notes that firms must maintain adequate financial resources at all times, including to cover any additional operational costs from increased complaints and, where applicable, to meet the costs of resolving those complaints. The FCA also confirms, in relation to the application of the consumer duty, that it expects firms to be critically assessing their customer service performance and anticipating increased customer contact.

[New webpage on motor finance complaints](#)

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12 PAYMENT SYSTEMS REGULATOR

- 12.1 Payments regulation initiatives - PSR publishes speech - 25 January 2024** - The Payment Systems Regulator (PSR) has published a speech by Chris Hemsley, PSR Managing Director, on upcoming initiatives relating to authorised push payment (APP) fraud and Open Banking.

Mr Hemsley refers to the PSR's new requirement on mandatory reimbursement for APP fraud, which will apply from 7 October 2024. The PSR is also introducing enhanced data sharing to enable the detection and prevention of APP fraud. In 2024, the PSR will look to deliver the next phase of open banking, a key part of which will be scaling up the use of variable recurring payments. Mr Hemsley also notes the government's intention to consider the role of the new payments architecture (NPA) alongside the national payments vision. The PSR is working closely with all parties to identify how best to move forward with this.

[PSR: Chris Hemsley speech at The Payments Regulation and Innovation Summit 2024](#)

SECURITIES AND MARKETS //

13 EUROPEAN COMMISSION

- 13.1 ITS on benchmarking of internal approaches under CRD IV - European Commission adopts amendments - 23 January 2024** - The European Commission has published an Implementing Regulation that it adopted on 19 January 2024 amending Commission Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions under the CRD IV Directive (2013/36/EU) (C(2024) 210 final) (Amending Regulation).

Among other things, the amendments are intended to enable competent authorities to have a better understanding of the sources of material inconsistencies in expected credit loss model outcomes. The Amending Regulation will enter into force 20 days after its publication in the Official Journal of the EU.

[Commission Implementing Regulation \(EU\) .../... of 19.1.2024 amending the ITS laid down in Commission Implementing Regulation \(EU\) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions for the reporting referred to in Article 78\(2\) of CRD IV \(C\(2024\) 210 final\)](#)

[Webpage](#)

INSURANCE //

14 COUNCIL OF THE EUROPEAN UNION

- 14.1 Solvency II and IRRD - Final compromise texts published - 25 January 2024** - The Council of the European Union (the Council) has published final compromise texts for:

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- the proposed Directive amending the Solvency II Directive (2009/138/EC) regarding proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision (2021/0295 (COD)); and
- the proposed Insurance Recovery and Resolution Directive (IRR) establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (2021/0296 (COD)).

The final compromise texts reflect the political agreement that was reached between the Council and the European Parliament in December 2023.

Final compromise text: Directive of the European Parliament and of the Council amending the Solvency II Directive 2009/138/EC (2021/0295(COD))

Final compromise text: the Insurance Recovery and Resolution Directive (2021/02396(COD))

15 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

- 15.1 Diversification in internal models - EIOPA publishes study - 24 January 2024** - The European Insurance and Occupational Pensions Authority (EIOPA) has published the findings of a comparative study on diversification in internal models used by insurers, based on year-end 2019 data. Diversification modelling for these purposes involves offsetting the adverse outcome from one set of risks by a more positive outcome from a different set of risks. This offsetting typically has an impact on the overall level of capital required for insurers when risk capital requirements are aggregated. The report provides an overview of current modelling approaches in this context and highlights the main factors that determine diversification.

EIOPA will continue working with national competent authorities on this topic.

EIOPA: Study in Diversification in Internal Models

Webpage

Press release

- 15.2 Climate-related protection gaps - EIOPA publishes speech - 24 January 2024** - EIOPA has published a speech given by Petra Hielkema, EIOPA Chair, on climate-related protection gaps.

In her speech, Ms Hielkema warns that only one-quarter of EU climate-related catastrophe losses is currently insured. As climate-related catastrophes grow in both frequency and intensity, EIOPA expects this "protection gap" to widen if no action is taken. Ms Hielkema refers to EIOPA's work with the European Central Bank to increase the uptake and efficiency of catastrophe insurance while creating incentives to adapt to, and reduce, climate risks. She notes that reinsurance may be a "first line of defence" to cover losses from climate-related natural disasters. Ms Hielkema suggests that national or EU public-partnerships may also play a role, through pooling capital,

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enhancing the ability of member states or even the EU to respond to climate related events in an orderly way.

[EIOPA speech: Cooperation and investment: The keys to a stable, equitable and prosperous future](#)

16 PRUDENTIAL REGULATION AUTHORITY

- 16.1 Solvent exit planning for insurers - PRA launches consultation (CP2/24) - 23 January 2024 -** The PRA has published a Consultation Paper (CP2/24) on proposals for solvent exit planning for insurers. The proposals include new rules and expectations for insurers to prepare for a solvent exit as part of their business-as-usual (BA) activities and to document those preparations in a Solvent Exit Analysis (SEA). They also set out new expectations, which would apply only if solvent exit became a reasonable prospect for a firm, on how insurers should: (a) prepare a detailed Solvent Exit Execution Plan; and (b) monitor and manage a solvent exit.

Although the proposals are generally consistent with those in CP10/23 for non-systemic banks and building societies, the approach for insurers diverges where necessary to reflect the differing nature of business and regulatory landscape. In particular, it is observed that *“the policyholder liabilities of insurers are often long-term and cannot easily be transferred or replaced, with different pressures on exit and different impact on policyholders compared to depositors”*.

All PRA-regulated insurers except for firms in passive run-off and UK branches of overseas insurers are in scope of the proposals. The proposals would, if implemented, add a new Preparations for Solvent Exit Part to the PRA Rulebook and introduce a new supervisory statement applicable to those firms. Please see our separate briefing on this topic [here](#).

The consultation is open until 26 April 2024.

[PRA Consultation Paper: Solvent exit planning for insurers \(CP2/24\)](#)

[Draft instrument](#)

FINANCIAL CRIME //

17 HM TREASURY

- 17.1 The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2024 - 23 January 2024 -** The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2024 (SI 2024/69) have been made (the Regulations). These Regulations are intended to streamline updates to the list of high-risk third countries in respect of which regulated businesses must carry out enhanced due diligence. Firms are referred directly to the relevant lists published by the Financial Action Task Force (FATF) rather than a separate

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schedule in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The Regulations came into force on 23 January 2024.

[The Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) Regulations 2024 \(SI 2024/69\)](#)[Explanatory memorandum](#)[Webpage](#)

ENFORCEMENT //

18 RECENT CASES

18.1 *Seiler and Whitestone v FCA*, [2023] UKUT 00270 (TCC) - 23 January 2023

The Court of Appeal has updated its 'Case Tracker for Civil Appeals' webpage on *Seiler and Whitestone v FCA* [2023] UKUT 00270 (TCC). In the underlying proceedings, three individuals sought to challenge the FCA's decision of November 2022 to impose a prohibition order on the basis that they lacked integrity. In June 2023, the Upper Tribunal (Tax and Chancery Chamber) handed down a detailed judgment that held that the FCA had not made out its case and ultimately remitted the cases back to the FCA for reconsideration. Furthermore, in a decision handed down on 9 November 2023, the Tribunal made a rare order for costs against the FCA, including because of what the tribunal considered to be inadequate efforts on the part of the FCA to conduct the investigation reasonably.

The FCA is seeking to appeal the costs order. The webpage notes that permission to appeal the decision has now been granted.

[Updated webpage](#)

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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](#).

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