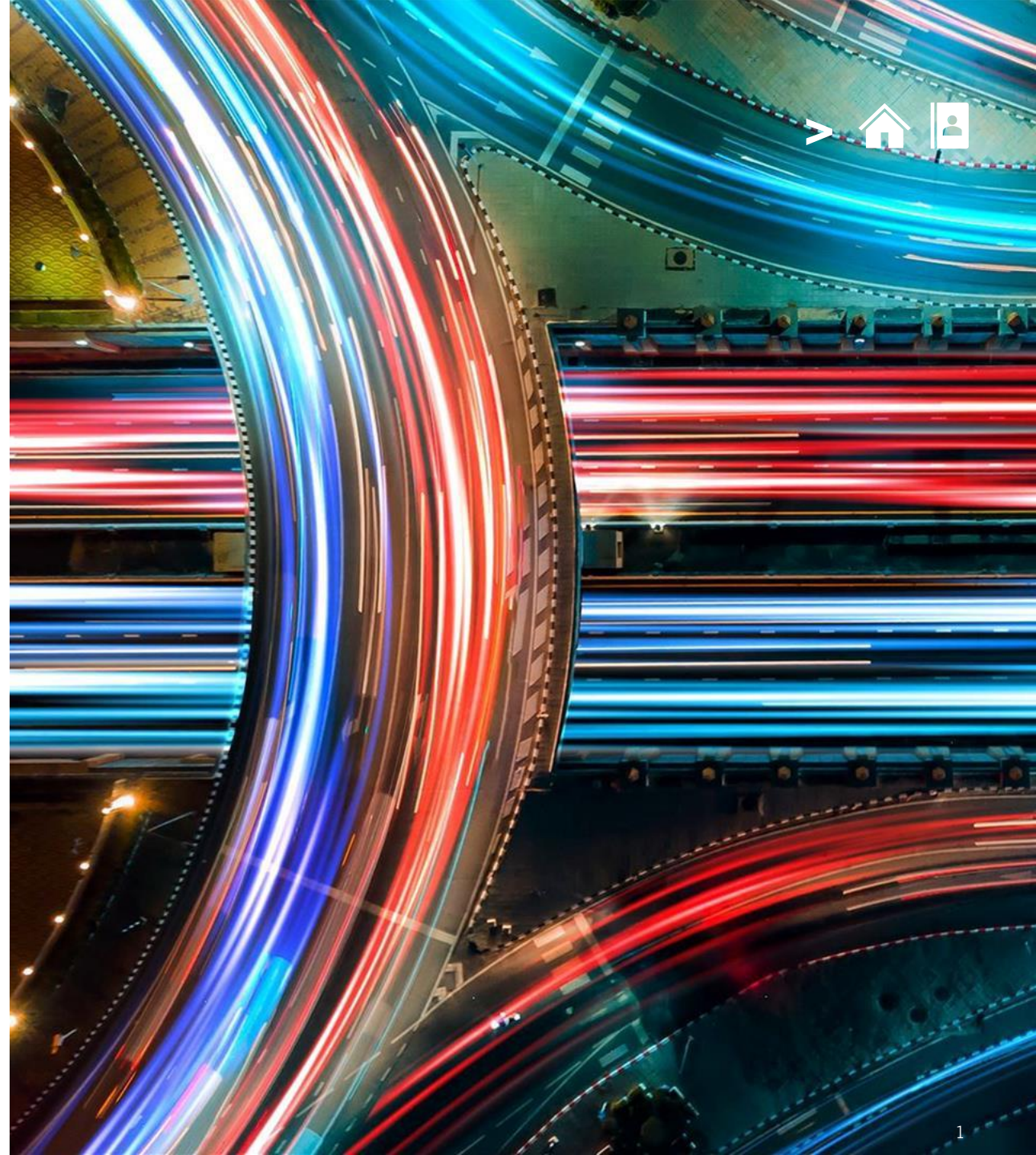


Financial Regulation Legal Outlook 2025

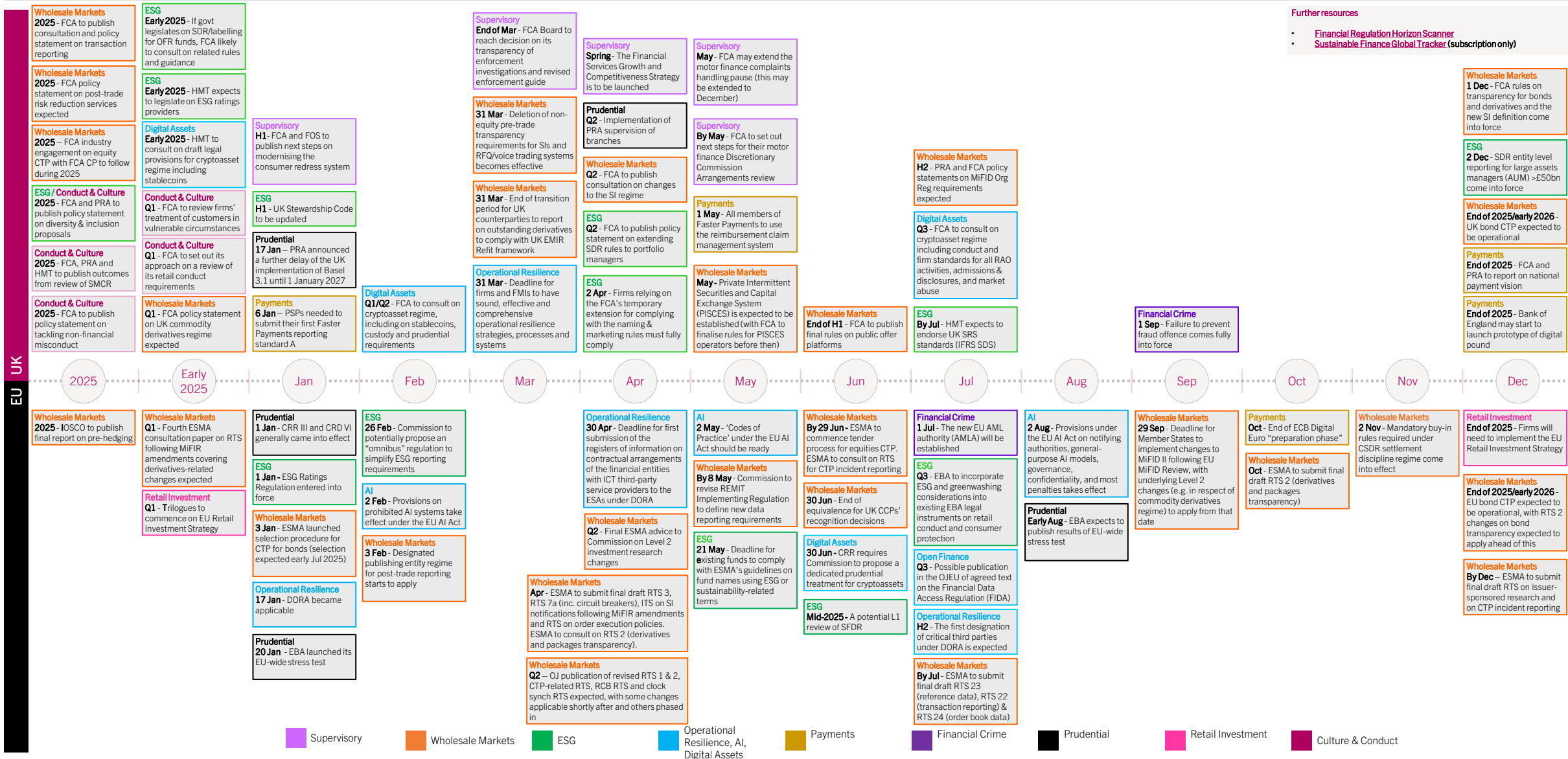
Banking



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01 Financial regulation for banking: key upcoming events



Cross-cutting topics (for all asset classes)

Post-trade reporting waterfalls

In the EU, post-trade reporting waterfalls will be decoupled from counterparties' SI status from 3 February 2025 when the designated publishing entity regime starts to apply (a similar change has been in force in the UK since April 2024).

Transaction reporting

Both the EU and UK are reviewing transaction reporting (and related reference data) requirements, with changes due to be finalised in 2025. Some changes are welcome (such as the removal of the short sale indicator), others less so (such as proposals on how to identify and link transactions). This being an area of supervisory and enforcement focus, firms will be focused on changes to their reporting systems, accounting for divergences between the EU and UK regimes (including as to scope of transaction reporting).

Market data

ESMA submitted final draft RTS that seek to enhance the EU "reasonable commercial basis" requirements in December 2024. These will apply 9 months after publication in the Official Journal, though their impact on the cost of market data is unclear. No similar enhancements are proposed in the UK.

Order execution policies

ESMA's proposed new RTS on order execution policies were due to be finalised in December 2024 but have been delayed until April 2025. If finalised as proposed, these RTS would require firms to review their order execution policies on an asset class basis against granular criteria and processes (including pre-selection of execution venues).

UK MiFID landscape

The FCA is consulting on a re-write of the UK MiFID Organisational Regulation into the FCA Handbook. This includes a discussion paper which explores potential wider reforms, such as rationalising UK conflicts of interest requirements and disclosure requirements, and potentially recalibrating UK client categorisation requirements.

Clock synchronisation

ESMA submitted final draft RTS on clock synchronisation requirements in December 2024, and these will apply 20 days after publication in the Official Journal. The RTS set clock synchronisation specifications for venues and their members, participants and users. In addition, the requirements will apply (for the first time) to SIs, designated publishing entities (DPEs), approved publication arrangements (APAs) and CTPs. Different accuracy levels will apply to different firms and these may be challenging for some firms to implement.

Equities topics

Pre-trade transparency

Final draft RTS related to changes to the quoting obligations for EU systematic internalisers in equity instruments have been submitted to the Commission in December 2024 and are set to apply 20 days after publication in the Official Journal. Firms will then only be able to give a better price than their quoted price above 2 x SMS (as opposed to above 1 x SMS currently). Changes to UK SI quoting obligations are not planned, although the FCA will consider feedback on this point as part of the current review of the UK SI regime. For trading venues, the change from the EU double volume cap (which restricts the availability of certain pre-trade transparency waivers) to a single volume cap is set to apply from 29 September 2025.

Post-trade transparency

Changes to equity post-trade reporting fields and flags in RTS 1 have been submitted to the Commission in December 2024 and are set to apply from 1 June 2026. In addition, venues will need to use prescribed names for post-trade reporting fields in RTS 1 from the same date. Other RTS 1 changes are phased in, with some applicable from 20 days after publication in the Official Journal.

Consolidated tape providers

A package of RTS to support the creation of EU CTPs was submitted to the Commission in December 2024. The tender process for the EU equities CTP is to commence in June 2025. Before Christmas, the FCA provided an update on the UK equities CTP, indicating that further work and industry engagement is required before deciding whether and (if so) how to include pre-trade data in the UK equity CTP. An FCA CP will follow later in 2025.

Learn more

- > [UK & EU Wholesale Markets Timeline](#) (updated to 20 January 2025 which links to detailed summaries of key developments in addition to those below)
- > [Summary of EU RTS 2 amendments, "reasonable commercial basis" RTS and RTS on clock synchronisation](#)
- > [Summary of EU RTS 1 amendments](#)
- > [FCA update on the UK equities CTP](#)
- > [AFME & Linklaters EU & UK MiFIR / MiFID II implementation guide](#) (published in October 2024; will be updated periodically)

Bonds, derivatives and commodities topics

Systematic internalisers: EU and UK quantitative tests within the “systematic internaliser” definition have been changed to a qualitative assessment. In the UK, these changes will apply from 1 December 2025. Before then, the FCA is undertaking a review of SI obligations which may (amongst other changes) see a removal of specific requirements for SIs in non-equity instruments. SI non-equity pre-trade transparency obligations are deleted (from March 2024 in the EU and from March 2025 in the UK).

Bond transparency: The new EU and UK deferrals for post-trade transparency in bonds have been a major concern for liquidity providers. In the UK, the FCA’s final non-equity transparency rules, which will apply from 1 December 2025, have reflected market feedback by providing for more nuanced categorisation of bonds and longer (though not indefinite) deferrals for the largest trades. In the EU, final ESMA draft RTS published in December 2024 also include significant changes in response to feedback. They are likely to apply before the EU bond CTP commences operation (which is expected to be in late 2025/early 2026).

Derivatives transparency: In both the EU and UK, there have been significant (and divergent) changes to the instrument scope of derivatives transparency obligations (which have applied since March 2024 in the EU and will apply from 1 December 2025 in the UK). The FCA has finalised the new UK derivatives transparency regime (including post-trade deferrals), which will apply from 1 December 2025. In the EU, ESMA is due to provide draft proposals for relevant RTS 2 amendments in April, with final draft RTS due in October 2025. Liquidity providers will be particularly focused on the calibration of post-trade deferrals, including divergences between the EU and UK regimes.

Commodity derivatives regime: We expect an FCA policy statement on the UK commodity derivatives regime in Q1 2025. The FCA’s December 2023 proposals would see a reduced scope of the regime. If implemented as proposed, position limits, position limit exemption decisions, position management controls and related reporting requirements would be set by UK venues. EU changes to position reporting apply from 29 September 2025, with related RTS amendments submitted to the Commission in December 2024.

Consolidated tape providers: A package of RTS to support the creation of EU CTPs was submitted to the Commission in December 2024. The first EU and UK

bond CTP providers will be selected to start operation around the end of 2025 / early 2026. Firms wishing to use CTP data feeds will need to make arrangements to connect.

Investment research

UK payment option: Since 1 August 2024, UK buy-side firms have had the option of making joint payments for investment research and execution services. The option is subject to numerous, relatively prescriptive guardrails, including fair allocation of research costs across clients, a structure to allocate research payments to different providers; periodic (at least annual) assessment of the value, quality and use of research; and *ex ante* and *ex post* research cost disclosures.

EU payment option: In the EU, the Listing Act reform package will put in place a similar joint payment option for EU buy-side firms. The changes need to be implemented in Member States by, and will apply from, 5 June 2026. As in the UK, the new EU payment option is subject to conditions, although these are less prescriptive than the UK guardrails. For example, the EU rules do not expressly require a structure to allocate research payments, and the cost disclosure rules are less onerous, as research costs only need to be disclosed on request and to the extent they are known. ESMA’s recent CP on required Level 2 changes includes some enhancements (such as requiring comparison with alternative research providers in the annual quality assessment). Overall, the EU rules remain less prescriptive than the UK ones, but firms will need to watch out for additional detail in future guidance or local implementation.

Brokers may wish to put in place arrangements (similar to CSAs used prior to MiFID II) to help facilitate buy-side clients using the new payment optionality across global business models.

Other developments: In the UK, 2025 should bring clarity on whether and how other recommendations from the 2023 UK Investment Research Review (such as the creation of a research platform, a bespoke regime for investment research and proposals to increase retail access to investment research) may be taken forward. In the EU, new rules to support the creation of issuer-sponsored research have been introduced by the Listing Act reform package. ESMA is consulting on the code of conduct for issuer-sponsored research, which will apply from June 2026.

Learn more

- > [UK & EU Wholesale Markets Timeline](#) (updated to 20 January 2025 which links to detailed summaries of key developments in addition to those below)
- > [Summary of EU RTS 2 amendments, “reasonable commercial basis” RTS and RTS on clock synchronisation](#)
- > [The new UK non-equity transparency regime and the review of the UK SI regime](#)
- > [FCA proposals for a new UK commodity derivatives regime](#)
- > [The new UK payment option for investment research](#)
- > [ESMA’s consultation on EU investment research changes](#)
- > [AFME & Linklaters EU & UK MiFIR / MiFID II implementation guide](#) (published in October 2024; will be updated periodically)

02 Wholesale markets reform: UK Wholesale Markets Review and EU MiFIR/MiFID II Timeline



UK										
1 Mar – HM Treasury published consultation response to the Wholesale Markets Review. Read more.	1 Mar – HMT laid SI to reduce requirements for ancillary activities exemption from licensing. Read more.	10 Jul – Mansion House reforms announced, including changes to unbundling rules following UK Investment Research Review . Read more.	4 Dec – FCA CP on UK commodity derivatives regime (closed 16 Feb 2024). Read more.	29 Feb – FCA published final report in Wholesale Data Market Study . Read more.	26 Jul – FCA CP on UK DTO and post-trade risk reduction services (closed 30 Sep 2024). Read more.	14 Nov – Mansion House reforms (including in wholesale financial markets) announced. Read more.	16 Dec – FCA update on the UK equity CTP . Read more.	During 2025 – FCA CP and PS on transaction reporting.	31 Mar – Deletion of non-equity pre-trade transparency requirements for SIs and RFQ/voice trading systems becomes effective.	End 2025/early 2026 – UK bond CTP expected to be operational.
	3 May – FCA published policy statement on UK equity transparency requirements and post-trade designated reporting regime . Read more.	27 Jul – FCA announced flexibility on transaction reporting , allowing firms to replicate UK RTS 1 changes from May 2023 policy statement.	8 Dec – HM Treasury and FCA discussion paper on Advice Guidance Boundary Review (closed 28 Feb 2024).	2 Apr – FCA confirmed that UK CTP providers will not need to contribute to data providers' connectivity costs.	14 Nov – HMT feedback statement & draft legislation for PISCES Sandbox published. Read more.	14 Nov – FCA DP on transaction reporting (closing 14 Feb 2025). Read more.	17 Dec – FCA CP on rules for PISCES operators (closing 17 Feb 2025). Read more.	During 2025 – FCA PS on post trade risk reduction service .	May – PISCES Sandbox expected to commence. FCA to finalise rules applicable to PISCES operators before that date.	Ca. Q3 2026 – FCA post-implementation review of new non-equity transparency regime .
	Jun – Financial Services and Markets Act 2023 received Royal assent (and was published on 7 Jul). Read more and read more.	29 Aug – Certain FSMA 2023 provisions (inc deletion of UK STO and DVC) enter into force, with other provisions applicable once HMT issues commencement regulations.	20 Dec – FCA PS on UK bond CTP , with CP on payments to data providers (closed 9 Feb 2024). Read more.	29 Apr 2024 – UK designated reporter regime started to apply for post-trade reporting in all asset classes. Remaining changes to UK equity transparency requirements applied.	1 Aug – New option to make joint payments for investment research and execution started to apply. Read more.	15 Nov – FCA DP on transaction reporting (closing 14 Feb 2025). Read more.		Q1 – Tender process for UK bond CTP to commence.	Q2 – FCA CP on UK SI regime expected.	
	5 Jul – FCA final guidance on the UK trading venue perimeter . Read more.			5 Nov – FCA PS on new UK transparency regime for bonds and derivatives and SI definition . Discussion paper on UK SI regime (closed 10 Jan 2025). Read more.	27 Nov – FCA CP and DP on MiFID Org Reg requirements (closing on 28 Feb and 28 Mar 2025). Read more.		Q1 – FCA PS on UK commodity derivatives regime expected.	H2 – FCA/PRA PSs on MiFID Org Reg requirements expected.	1 Dec – New UK transparency regime for bonds and derivatives , changes to SI definition and (likely) to SI obligations start to apply.	
					29 NOV – FCA direction on UK DTO published.		Q1 – PRA CP on MiFID Org Reg requirements expected.			
2022		2023			2024			2025		2026
EU										
Aug – ESG enhancements to suitability assessments , risk management, organisational rules and conflicts of interest rules started to apply.	2 Feb – ESMA published final opinion on the trading venue perimeter . Read more.	24 May – ESMA final opinion with guidance on market outages .	11 Jul – ESMA published supervisory briefing on MiFID II definition of advice .	1 Feb 2024 – EU legislators agreed Listing Act package including optional rebundling of research and execution fees . Read more.	21 May – First ESMA CP on RTS following MiFIR amendments , covering RTS 2, RTS 23 and reasonable commercial basis requirements. Read more.	Jun – Commission proposal to modify ISIN as OTC derivatives identifier for transparency purposes. Read more.	28 Oct – ESMA CP on Level 2 investment research changes related to joint payment option (closing 30 Jan 2025). Read more.	3 Jan – ESMA commenced tender process for bond CTP for selection in early Jul 2025.	Q2 – ESMA to submit final draft RTS 22 (transaction reporting) & RTS 24 (order book data).	End of 2025/early 2026 – EU bond CTP expected to be operational, with RTS 2 changes on bond transparency expected to apply ahead of this.
23 Sep – ESMA published final MiFID II suitability guidelines reflecting ESG enhancements. Read more.	27 Mar – ESMA published final MiFID II product governance guidelines reflecting ESG enhancements. Read more.	10 Jul – ESMA published final Level 3 guidance manual on MiFIR post-trade transparency . The manual will be updated when needed (e.g. an update occurred in Jan 2024), with substantial updates expected in due course to reflect Level 1 changes following the EU MiFID II/ MiFIR Review and related changes to RTS 1 & 2.	3 Oct – Revised ESMA product governance and suitability guidelines started to apply (although they were already relevant to compliance with ESG enhancements before that date).	20 Mar 2024 – European Parliament agreed negotiating positions on Retail Investment Strategy. Read more.	23 May – Second ESMA CP on RTS following MiFIR amendments , covering CTP-related RTS, clock synchronisation requirements for SIs, DRSPs, venues and their members, other requirements for DRSPs, and reflections on the CTP tender process. Read more.	10 Jul – Third ESMA CP on RTS following MiFIR amendments , covering RTS 1, RTS 3, RTS related to the equities CTP, SI notifications, RTS 7a (inc circuit breakers) and RTS 2 (closed on 30 Sep and 15 Oct 2024). Read more.	14 Nov – Listing Act package published in OJ.	3 Feb – Designated publishing entity regime starts to apply.	Q1 – OJ publication of revised RTS 1 & 2, CTP-related RTS, RCB RTS and clock synchronisation RTS expected (see Dec 2024 publications), with some changes applicable shortly after and others phased in.	2025/2026 – Level 1 changes in EU Retail Investment Strategy expected to be finalised, to be followed by numerous delegated acts , Level 2 and 3 measures over the next 12-18 months. Implementation timings are still subject to debate in the legislative process.
22 Nov – ESG enhancements to product governance requirements started to apply.	16 May – Amendments to MiFIR RTS 1 and 2 published in the OJ (with changes applicable from Jun 2023 or Jan 2024). Read more on RTS 1. Read more on RTS 2.			Mar 2024 – EU MiFID Review changes to MiFID II/MiFIR published in the OJ on 8 Mar. Read more.	23 May – ESMA CP on amendments to commodity derivatives requirements following MiFID II amendments. Read more.	16 Jul – ESMA CP on MiFID II RTS on order execution policies (closed on 16 Oct 2024). Read more.	Dec – ESMA submitted final draft RTS 1 (read more), RTS 2 and RTS on RCB (read more), CTP-related RTS and RTS on clock synchronisation (read more) and commodity derivatives related changes (read more) following MiFIR/ MiFID II amendments .	Q1 – Fourth ESMA CP on RTS following MiFIR amendments expected, covering derivatives-related changes to RTS 2, RTS 23, CTP-related RTS.	Jun – ESMA to commence tender process for equities CTP .	
	24 May – Commission published EU Retail Investment Strategy proposals, with impact well beyond retail. Read more.			Changes entered into force on 28 Mar. MiFIR amendments directly applicable from 28 Mar, subject to transitional provisions. European Commission and ESMA published clarifications on the application timeline for certain MiFIR amendments on 27 Mar, read more . 18 months implementation period for changes to MiFID II, although ESMA issued forbearance statement allowing firms to disapply RTS 28 best execution reporting requirements right away.	22 Jul – ESMA announced asset class taxonomy and process for designated publishing entity regime . Read more.	22 Jul – ESMA announced asset class taxonomy and process for designated publishing entity regime . Read more.	Dec – ESMA CP on RTS on issuer-sponsored research . Read more.	Q1 – Trilogues to commence on EU Retail Investment Strategy .	By 29 Sep – ESMA to submit final draft RTS 2, RTS 23, CTP-related RTS (all reflecting derivatives-related changes) following MiFIR amendments .	5 June – Listing Act reforms (inc joint payment option for investment research) to be implemented and apply. RTS on issuer-sponsored research to apply.
					23 May – ESMA CP on amendments to commodity derivatives requirements following MiFID II amendments. Read more.	16 Jul – ESMA CP on MiFID II RTS on order execution policies (closed on 16 Oct 2024). Read more.	Dec – ESMA CP on RTS on issuer-sponsored research . Read more.	By 29 Mar – ESMA to submit final draft RTS 3, RTS 7a (inc circuit breakers), ITS on SI notifications following MiFIR amendments . Possible submission of final draft RTS on order execution policies and revised RTS 23 (delayed from Dec 2024).	29 Sep – Deadline for Member States to implement changes to MiFID II following EU MiFID Review . Underlying level 2 changes (e.g. on commodity derivatives regime) to apply.	
					Jun – Council finalised its compromise positions on EU Retail Investment Strategy . Read more.	22 Jul – ESMA announced asset class taxonomy and process for designated publishing entity regime . Read more.	Dec – ESMA CP on RTS on issuer-sponsored research . Read more.	Q2 – Final ESMA advice to Commission on Level 2 investment research changes .	Dec – ESMA to submit final draft RTS on issuer-sponsored research .	
						3 Oct – ESMA CP on transaction reporting (RTS 22) and order book data (RTS 24) (closing 3 Jan 2025). Read more.				

02 Wholesale markets reform: EMIR



EMIR 3

There was considerable focus during 2024 on the legislative progress of EMIR 3 in the EU. Political agreement on the text was reached ahead of the Parliamentary elections; the final text was approved in Q4 and published in the Official Journal on 4 December. It entered into force on 24 December 2024. The EMIR 3 package also includes a Directive making consequential changes to legislation other than EMIR, which is to be transposed into national law by 25 June 2026.

The Commission has indicated that, except for those few provisions with explicit transitional arrangements, market participants are expected to comply with EMIR 3 from the date of entry into force, in the absence in many cases of mandated Level 2 technical standards setting out detailed requirements. This remains a source of considerable concern in the industry.

Key changes

Introduction of an “active account requirement”. To promote clearing by EU CCPs, EMIR 3 introduced a requirement for certain in scope EU entities to maintain an active clearing account with at least one EU CCP. The account, meeting certain operational criteria, must be opened within six months of entry into force, i.e. 25 June 2025, and notification made to ESMA and the relevant NCA. In scope EU entities with €6bn or more in clearing activity in systemically important products will also need to demonstrate that a “representative” amount of their cleared trades in those products are cleared through an EU CCP. The requirement also includes significant new reporting obligations, including reporting volumes of clearing activity on EU CCPs and Tier 2 third country CCPs. It is expected that the temporary recognition of UK Tier 2 CCPs, due to expire on 30 June 2025, will be extended by three years to 30 June 2028.

While the Level 2 technical standards will not necessarily be in force by the end of the six month phase-in period, ESMA has published a consultation paper on certain aspects of these requirements. It is understood that market participants are expected to have regard to ESMA’s proposals in their preparations for compliance with certain of these requirements.

Changes to clearing thresholds and calculation methodology. The calculation methodology for the purposes of the clearing thresholds will be amended both for NFCs and FCs. By 25 December 2025 ESMA will draft new technical standards specifying the clearing threshold for different classes of derivatives (taking account of the new calculation methodology) and the criteria for the scope of the hedging exemption for NFCs. Changes to the calculation methodology for NFCs

and FCs will not apply until the new clearing thresholds are in force.

EMIR 3 introduced new requirements in relation to clearing services, further initial margin model validation rules, and changes to the intragroup exemption from clearing and margining removing the requirement for an equivalence decision. The EBA published a no-action letter providing some comfort on some aspects of the margin model requirements pending the relevant technical standards and guidelines. Whilst there has been no formal comfort, it appears that counterparties relying on the existing temporary intragroup exemption should use the time ahead of its expiry in June 2025 to complete any formalities necessary to transition to the full exemption.

EMIR 3 also provided for new exemptions from clearing for transactions with third country pension schemes exempted from clearing in that country, and for post-trade risk-reduction exercises. A permanent exemption from margining for single stock equity options and equity index options, subject to regular review by ESMA, is also welcome, as is the new phase-in period for NFCs that become subject to the margin obligations for the first time.

UK EMIR

In 2025, we expect to see the first steps in the “lift and shift” of UK EMIR, as part of Tranche 3 of the Government’s Smarter Regulatory Framework, with the Bank of England planning to consult on those aspects of UK EMIR relevant to CCPs.

Early in January, HM Treasury confirmed its intention to maintain the temporary exemption from clearing for pension schemes for the longer term. The government is expected to bring forward secondary legislation to ensure that the temporary exemption does not expire on 18 June 2025, and remove any further time limit on the exemption.

The future of the temporary exemption from uncleared margin requirements for certain equity options and equity index options, due to expire in January 2026, remains under consideration by UK regulators.

The approach to intragroup exemptions from clearing and margining under UK EMIR is expected to be considered as part of the Smarter Regulatory Framework. The existing temporary exemptions apply until end-2026.

HM Treasury and UK regulators may also have regard to relevant aspects of EMIR 3 in addressing some of these issues and shaping UK EMIR going forward. For example, a consultation on an exemption from clearing for post-trade risk reduction exercises is expected.

Learn more

- > [EMIR 3 published and in force from 24 December 2024](#)
- > [Redline version of EMIR](#)

02 Wholesale markets reform: EU REMIT



Reforms to address recent changes to the energy market

In light of past experience, market developments and volatility in energy markets following the Russian invasion of Ukraine, EU authorities decided on further action to strengthen the regulation of wholesale energy markets. A number of the reforms are significant and will impact all participants in the EU wholesale energy markets.

REMIT II, which amends the original text of the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT), was published in the Official Journal of the EU on 17 April 2024 and entered into force on 7 May 2024.

However, the EU authorities have decided to adopt a phased implementation. Certain provisions entered into force last year (such as the requirement on third country market participants to designate an EU representative), whilst others (that are dependent on new delegated and implementing acts being adopted by the Commission) will come into force in 2025. See our implementation timeline for details.

In the dark: revised guidance provided but awaiting RTS

The Agency for the Cooperation of Energy Regulators (ACER) [revised](#) its existing guidance on the application of REMIT and published an [updated](#) Transaction Reporting User Manual in December 2024.

ACER has a new mandate (under Article 16a REMIT II) to publish further guidelines and recommendations to market participants and/or national regulatory authorities (NRAs) on many of the REMIT requirements.

To advance this, ACER launched a consultation in June (which closed in September 2024) on revising the Annex of the REMIT Implementing Regulation (including implementing new data requirements).

On 29 November 2024, ACER published the key findings from the consultation setting out the next steps:

- > The outcomes of ACER consultation and roundtable meetings will contribute to the ongoing discussion with the European Commission on the revision of the REMIT Implementing Regulation.
- > The Commission will then amend the Implementing Regulation to define the new data reporting requirements by 8 May 2025.

Therefore, until the new delegated and implementing acts are adopted, market participants are left somewhat in the dark in terms of practical compliance expectations.

Alignment of market abuse regimes under MAR and REMIT

One of the key policy objectives of REMIT II is to harmonise the market abuse frameworks under REMIT and MAR. This has led to the same conduct being capable of being subject to investigation and sanction by different regulators under separate regimes.

The following revisions have been introduced:

- > **Insider trading:** the definition will now include the use of inside information in cancelling or amending an order or any other trading action concerning a wholesale energy product to which the inside information relates.
- > **Inside information:** the definition will now include information conveyed to a service provider trading on a market participant's behalf and relating to pending orders of a market participant. Also, where inside information concerns a process which occurs in stages, each intermediate stage of the process as well as the overall process could amount to inside information.
- > **Market manipulation:** the definition will now include entering into any transaction, or issuing, modifying or withdrawing any order to trade, as well as any other behaviour relating to wholesale energy products which (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or more wholesale energy products at an artificial level; or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.
- > **Interaction between REMIT and MAR:** the provision in REMIT that excluded wholesale energy contracts that are financial instruments from articles 3 and 5 of REMIT (insider trading and market manipulation) is repealed, leading to the potential for the same conduct to be investigated and sanctioned, by different competent authorities, under either or both sets of legislation.

Learn more

- > [REMIT II: A sea change in EU wholesale energy markets regulation](#) (including implementation timeline)
- > [Webinar: REMIT II to reform regulation of energy markets](#)

Increased focus on pre-hedging practices

In recent years, there have been discussions about the benefits and potential concerns around pre-hedging practices. Regulators (including ESMA in the EU, and ASIC in Australia) have issued publications or guidance on the topic. Case law has considered the line between pre-hedging and front-running and the adequacy of firms' processes for managing conflicts of interest. Several industry codes and standards address pre-hedging practices (such as the FX Global Code, the Global Precious Metals Code and the Financial Markets Standards Board (FMSB) Standard for the execution of Large Trades in FICC markets, as well as the FMSB's recently published Spotlight Review on pre-hedging).

In a related development on the enforcement side, we are still waiting for the Upper Tribunal's decision in the case of three [Mizuho traders](#) accused of spoofing, in particular its analysis of the distinction between "intending" to trade (which is acceptable) and merely "being prepared" to trade.

FMSB spotlight

The FMSB paper highlights the benefits of pre-hedging while acknowledging the risks. As well as offering a definition of pre-hedging, it uses several case studies to explore different considerations for market participants operating in FICC markets.

For each case study the FMSB discusses the rationale and impact of pre-hedging. The FMSB draws out the key factual nuances of each scenario (such as the liquidity of the instrument, the size of the transaction, and whether or not an RFQ is competitive) before suggesting the key considerations for liquidity providers and clients. As the FMSB notes, the distinction between pre-hedging and front-running may turn on the intention or purpose of the liquidity provider at the point of trade.

The case studies demonstrate that there is no one-size-fits-all approach in this area.

IOSCO consultation report

IOSCO's consultation report sets out a definition of pre-hedging, proposes recommendations on when pre-hedging practices may be acceptable, and how related conduct risks could be managed. Importantly, the recommendations are intended to guide pre-hedging practices across all asset classes and trading protocols.

The proposed recommendations are high-level. However, they are supplemented with further "analysis" which touches on some of the nuances at play. Many of IOSCO's consultation questions seek feedback on these nuances (such as whether there should be upper limits for pre-hedging amounts, or whether certain client disclosures should be prescribed).

In responding to the consultation, firms should draw out any concerns or potential adverse impacts prescriptive requirements could have on liquidity provision or pricing, either generally or in respect of particular types of transaction, asset classes or circumstances.

The consultation closes on 21 February 2025, with a final report expected later in 2025.

Learn more

- > [ESMA's feedback on the call for evidence on pre-hedging](#)
- > [FMSB's spotlight on pre-hedging](#)
- > [IOSCO's consultation report on pre-hedging](#)

02 Wholesale markets reform: reforms to primary and secondary trading



PISCES

HM Treasury has confirmed that the Private Intermittent Securities and Capital Exchange System (PISCES) will be trialled in a 5-year sandbox to be set up by May 2025.

A secondary market for unlisted share trading

PISCES will be a secondary market for trading existing shares in unlisted (UK and overseas) companies. Trading will take place on an intermittent basis during “trading windows”. Professional investors and certain retail investors (such as employees of the participant company and certain employees in its corporate group) will be able to buy and sell shares on PISCES.

PISCES operators will need to have permissions for arranging deals in investments, or for operating an OTF / MTF, or must be a RIE.

FCA rules for PISCES Sandbox

In a December 2024 CP, the FCA has proposed rules for PISCES operators. Under the proposals, MAR would not apply to PISCES. Instead, there would be certain mandatory disclosures of “core information” (including a business and management overview of the PISCES company, financial information and key risk factors, along with financial forecasts). In addition, PISCES operators would prescribe additional information that should be disclosed. Disclosures will need to be made to participants in particular trading events (rather than to the general public). PISCES operators will need to enforce rule breaches. The rules also allow PISCES companies to restrict participation in trading events (e.g. to stop competitors from participating) and to set other parameters (such as floor and ceiling prices). The CP closes on 17 February 2025 and final FCA rules are due by May 2025, when the PISCES Sandbox is due to commence.

Public Offer Platforms

In 2023, HM Treasury introduced a new “public offer regime” under which companies seeking to raise capital in the public markets without seeking admission to trading on a regulated market or primary MTF would need to use a “public offer platform” (POP) if the total offer consideration in a 12-month period is more than £5m (unless an exemption applies).

POPs will be a new type of trading venue, operators of which will require specific FCA permission to operate a POP. The FCA has consulted on the requirements that would apply to POPs, including due diligence and disclosure requirements and related liability and redress, with final rules due at the end of H1 2025.

These reforms form part of a wider overhaul of the UK prospectus regime through the Public Offers and Admission to Trading Regulations.

Learn more

- > [New markets for private company shares: the PISCES Sandbox](#)
- > [Proposed FCA rules for PISCES operators](#)
- > [Replacing the UK Prospectus Regulation: FCA consults on new prospectus rules](#)

The masterplan

Little by little, HM Treasury and the regulators are building a smarter regulatory framework for the UK. The goal is to shift firm-facing regulatory obligations from the statute books into the regulators' rulebooks. To make this happen, HMT is using powers under the Financial Services and Markets Act 2023 to chip away at EU-derived financial services law.

Look back with candour

Some might say the SRF programme has had relatively low impact so far. HMT has already repealed over 40% of the law it inherited from Brexit. This includes, however, dozens of EU exit regulations and other amending laws which were relatively easy to slide away.

That said, a growing body of substantive law has had the SRF treatment:

- > The Data Reporting Services Regulations 2024 took effect in April 2024.
- > The Securitisation Regulations 2024 now set the regulatory perimeter for securitisations and the firm-facing regulatory obligations can be found in the FCA and PRA rulebooks. The FCA plans to consult on further changes in 2025, including making the reporting regime more proportionate.
- > Solvency UK replaced Solvency II on 31 December 2024.

Time flies...

As we enter 2025, HMT is handing the baton over to the FCA on several SRF workstreams. The following regulations are made but the switchover to the new regime will only start once the FCA has finalised its rules:

- > The Public Offers and Admissions to Trading Regulations 2024.
- > The Consumer Composite Investments (Designated Activities) Regulations 2024.
- > The Short Selling Regulations 2025.

Several of these UK-tailored frameworks create new "designated activities". FSMA 23 introduced the designated activities regime to allow certain financial activities to be regulated without triggering an authorisation requirement. HMT will specify the relevant activities as it moves through the SRF programme but has already set the FCA's supervision and enforcement powers under the DAR.

(What's the story?) Statutory change to come

Not wanting to overload the industry with too much simultaneous change, HMT has divided the SRF into tranches.

- > Tranche 1, which included the Listing Review and Solvency II Review, was already underway when the SRF was put in place.
- > The previous government committed to making significant progress on Tranche 2 in 2023. This included implementing the outcomes of the Wholesale Market Review.
- > Now HMT is working on Tranche 3, for which no timeline has been set. This may indicate a more measured pace for the SRF under the new Labour government, or simply the reality of working through more complex areas of regulation in parallel.

Areas of focus for Tranche 3 include the Money Market Funds Regulation, the AIFM and UCITS Directives, and the E-Money and Payment Services Directives. The MiFID Org Regulation will be restated in the FCA Handbook definitely; maybe HMT will also start work on reforming the aspects of EMIR that relate to central counterparties.

Roll with it

The government will use the SRF programme to reform financial regulation in line with its wider growth agenda. Rachel Reeves used her first Mansion House speech as Chancellor to push for growth and competitiveness in financial services. HMT released a compilation of policy reforms alongside the speech which include new growth-focused remit letters for the UK regulators.

In the spring the government will release a Financial Services Growth and Competitiveness Strategy. The greatest hits from this strategy will revolve around five priority growth opportunities: fintech, sustainable finance, asset management and wholesale services, insurance and reinsurance, and capital markets.

As for many policymakers all around the world, one of the key pillars of this strategy is the regulatory environment. The government argues that it is possible to maintain high standards while minimising the compliance burden for firms.

Learn more

- > [Growth mindset: Mansion House package backs regulatory reform for economic growth](#)
- > [UK short selling regime is back on track](#)
- > [UK Solvency II reform: PRA puts its finishing touches](#)
- > [UK MiFID: FCA moves MiFID Org requirements into Handbook and seeks feedback on future changes](#)

Roadmap to UK licensing regime

There were high expectations that 2024 would be a landmark year for the regulation of cryptoassets in the UK. In the end, this did not materialise. The government has promised legislation “as early as possible” in 2025.

Currently UK cryptoasset exchange and custodian wallet providers must register with the FCA for AML supervision purposes. The financial promotion regime restricts who can market cryptoasset activities to UK consumers and how, including additional rules for direct offers of cryptoassets. The next step is to regulate cryptoasset activities within the licensing regime.

Having planned to prioritise stablecoin regulation, HMT now says that it will set new regulated activities for stablecoins at the same time as other cryptoassets. It also no longer plans to apply UK payments regulation to stablecoin activities.

Once HMT sets the regulatory framework, regulators will make the rules. The FCA has started on its crypto policy roadmap. A discussion paper on admission to trading and market abuse rules will be followed by draft rules on, for example, the backing and redemption of stablecoins and custody requirements.

Managing MiCAR

The UK is playing catch-up with (or, depending on your point of view, benefitting from second mover advantage over) the EU’s comprehensive Markets in Cryptoassets Regulation. MiCAR applies in full from 30 December 2024, subject to transitional measures. Those transitional measures include allowing existing cryptoasset service providers an extra 12-18 months to adhere to the regime, depending on where in the EU they are based.

In the meantime, ESMA and the EBA continue to work on extensive MiCAR technical standards and guidance. Notably, the Commission’s rejection of proposals on the information to be included in CASP authorisation applications caused ESMA to call on the Commission to beef up the MiCAR legislation in relation to cybersecurity standards and senior managers.

Prudential treatment of crypto exposures

Exposures to cryptoassets will require more capital under plans driven by the Basel Committee on Banking Supervision. The conservative capital treatment under the BCBS standard makes it extremely costly for banks to take on exposures to cryptoassets like bitcoin and ether, including indirect or synthetic

exposures. BCBS member states have agreed to implement the standard by 1 January 2026. The Bank of England has requested data on crypto exposures by 24 March 2025.

In the EU, the latest iteration of the Capital Requirements Regulation requires the Commission to propose a dedicated prudential treatment for cryptoassets by 30 June 2025. It also outlines how banks should treat cryptoassets in the interim e.g. for risk-weighting purposes. Banks will need to assess whether their existing models and procedures accord with CRR III in this interim period, as well as responding to any changes proposed by the Commission.

The rise of tokenisation

Having talked about the “transformative potential” of distributed ledger technology, the UK government plans to pilot issuing a digital gilt, or DIGIT. This is part of a wider trend towards tokenised financial instruments. Tokenisation promises efficiencies and costs savings, more transparency and atomic (i.e. simultaneous) settlement.

As take-up increases, so too will regulatory concerns. The Financial Stability Board has encouraged national regulators to monitor tokenisation adoption, the vulnerabilities associated with it and how these can be managed within their regulatory frameworks.

Central bank digital currencies

The Governor of the Bank of England has issued a call to action for banks to develop tokenised deposits. In his opinion, central banks should not be “the only game in town” when it comes to innovating money. In 2025 the Bank and HMT will continue to investigate their options for a retail digital pound.

Momentum is building behind the digital euro, which is now in a preparation phase. The European Central Bank is driven, in part, by the EU’s strategic autonomy agenda and ensuring it is not reliant on foreign players for payments.

Enforcement

2023-2024 saw a record 21 financial crime prosecutions including against an unregistered crypto businesses, an insider dealing [conviction](#), and nine “influencers” [charged](#) with offences in connection with the promotion of an unauthorised forex trading scheme. We also saw supervisory action restricting [promotions](#) in response to efforts to circumvent Google’s advertising policy.

Learn more

- > [UK revises crypto regulation approach and timetable](#)
- > [FCA takes first step on its crypto roadmap](#)
- > [EU seeks to clarify boundaries of cryptoasset regulation](#)
- > [Bank of England and Treasury respond to digital pound consultation](#)
- > [10 key takeaways from the Bank of England’s latest paper on digital cash](#)

Goldilocks AI regulation

In response to the breakthrough of artificial intelligence, policymakers face the “Goldilocks problem” of balancing innovation and risk. The challenge is getting this balance right when AI’s capabilities are still emerging and future market developments are uncertain.

EU’s been regulating my AI?

The EU has set out its stall for regulating AI. Its flagship AI Act will be phased in over the next few years. One of the near-term actions for EU firms is to meet the high-level AI literacy requirement. This involves training staff on AI and how the firm uses it. The Commission will share guidelines on this in Q4 2025.

More consequential obligations are still to come. Which rules apply under the Act depend on the role being played (e.g. deployer, provider, distributor) and the risk of the AI system. In 2025 financial services firms will continue working through the high-risk AI use cases as part of their impact analysis for the Act, as well as considering how other aspects of the Act could apply to them directly or indirectly.

Scope is a key part of this exercise. The Act defines the AI system broadly but the Commission is due to release guidance on this definition which may help to narrow its impact. The Act also has extraterritorial effect, applying to uses of AI that have an impact in the EU.

This AI regulation is just right

In the UK, the Labour government says it will impose some requirements on developers of the most powerful AI models but, for now, this is unlikely to translate into a regulatory regime à la the EU AI Act.

In the meantime, the FCA and Bank of England believe their existing rulebooks are sufficient to regulate AI risks. For example, firms should consider their obligations under the Consumer Duty when rolling out AI-enabled customer support. The regulators have hinted that guidance is forthcoming on what reasonable steps Senior Managers should take with respect to AI systems. The Bank of England is also keeping under review the financial stability implications of AI. Firms should also bring their AI systems within their operational resilience frameworks. Some AI service providers may be designated as “critical”.

The journey towards operational resilience

Big bad DORA

The Digital Operational Resilience Act now applies to practically all EU financial services firms and market infrastructure. In-scope firms continue to update their arrangements with ICT third party service providers. Rules relating to subcontracting and threat-led penetration testing will be finalised later in 2025. Banks should note that DORA replaces the PSD2 incident reporting regime.

Firms should be ready to share their DORA registers with their regulators by the start of April. The European Supervisory Authorities will use the data in these registers to assess which ICT third party service providers should be designated as “critical” to the EU financial system. The first designations are expected in the second half of 2025.

Little-read UK regimes

After recent DORA distractions, many firms are revisiting their implementation of the UK’s operational resilience regime. Firms are reassessing whether they have identified the right important business services, set appropriate impact tolerance levels and the sophistication of their mapping and testing has evolved. In-scope firms must be ready to remain within impact tolerances from the end of March, which is when the regime will start to have “teeth”.

The UK regulators are consulting on operational incident and third party reporting. The rules will be finalised later in 2025 and apply in 2026. They impose DORA-style obligations on UK firms, including a requirement to maintain a register of third party arrangements.

The UK’s critical third party (CTP) regime applies as of 1 January 2025. The designation process will take around six months. Financial services firms are considering what impact the regime, including the shared responsibility model, will have on their contractual arrangements with designated CTPs.

The next chapter

After DORA implementation, EU firms will switch their attention to assess the impact of the Cyber Resilience Act and the ECB Guide to cloud outsourcing. Quantum computing is also moving up the agenda as people question whether future developments could put current encryption methods at risk.

Learn more

- > [EU – The AI Act reaches the finish line: 10 key points](#)
- > [The Brussels effect? Impact of the EU’s AI Act – in the EU and beyond](#)
- > [AI in financial services survey results shine light on third party risks and AI governance](#)
- > [AI in financial services: How you can future-proof AI compliance](#)
- > [Explore Operational Resilience at Linklaters](#)
- > [DORA webinar: What lawyers need to know about the DORA register](#)
- > [DORA webinar: Getting your contracts DORA-ready](#)
- > [EU explores new territory with operational resilience rules](#)
- > [EU shares key guidance on DORA](#)

06 Open Banking and Open Finance



Open Banking in the UK

The government's late-2024 National Payments Vision sets the policy priorities for retail payments in the UK, which includes “unlocking” Open Banking. This means changing how Open Banking is governed and improving its functionality.

Governance

The Competition and Markets Authority (CMA) first imposed Open Banking standards on the largest nine UK retail banks. As the CMA reached the end of its Open Banking roadmap, attention has turned to expanding the benefits of Open Banking beyond its original scope. In recent years, this has been the responsibility of the Joint Regulatory Oversight Committee, but progress has been slow. HMT now plans to wind down JROC and make the FCA the sole regulator responsible for Open Banking.

The government will use powers under the Data (Use and Access) Bill to make Open Banking a “smart data” scheme. Finding a sustainable funding model will be key. Premium activities will likely be subject to commercial arrangements which incentivise investment while also protecting smaller firms who rely on free access to customer data. The Open Banking smart data scheme will also include consumer protections and a dispute resolution process.

Functionality

As the new Open Banking regulator, the FCA will complete phase 1 of the development of variable recurring payments in Open Banking. Pitched as an alternative to direct debits, phase 1 was limited in scope to bill payments in specific sectors. The next step will be building on this to allow for commercial variable recurring payments. The government wants to go further and deliver “seamless” account-to-account payments through Open Banking. The aim is to enable customers to use Open Banking to pay for goods and services online (technologically doable) and in person (technologically trickier) without using a card. It has tasked the FCA with exploring a commercial model for expanding e-commerce use cases.

The road to open finance

Looking ahead, once Open Banking is on a sustainable regulatory footing under the Data (Use and Access) Bill, it will be used as a platform for data-sharing in relation to a wider range of products, including mortgages, pensions, investments and savings.

Open finance in the EU

The EU wants to create a harmonised framework for access to financial data. The draft regulation on financial data access, known as FIDA, requires EU financial institutions to join data sharing schemes. These schemes will then develop common standards for sharing access to different types of customer data between regulated firms.

Trilogue talks to begin

The Commission drafted FIDA in 2023. By the end of 2024, the Parliament and Council had agreed their respective positions on the proposal. This opens the door to trilogue negotiations to begin in 2025.

The regulation takes the principle of open banking under PSD2. Unlike that regime, FIDA applies to a much wider range of data. Customer data in this context is likely to include savings accounts, loans, mortgages, investments, some insurance products and cryptoassets, although each of the co-legislators has a slightly different scope in mind.

Financial institutions, as holders of customer data, will need to provide their customers with an online permissions dashboard. This dashboard should allow the customer to grant and withdraw the rights of access they give to third parties.

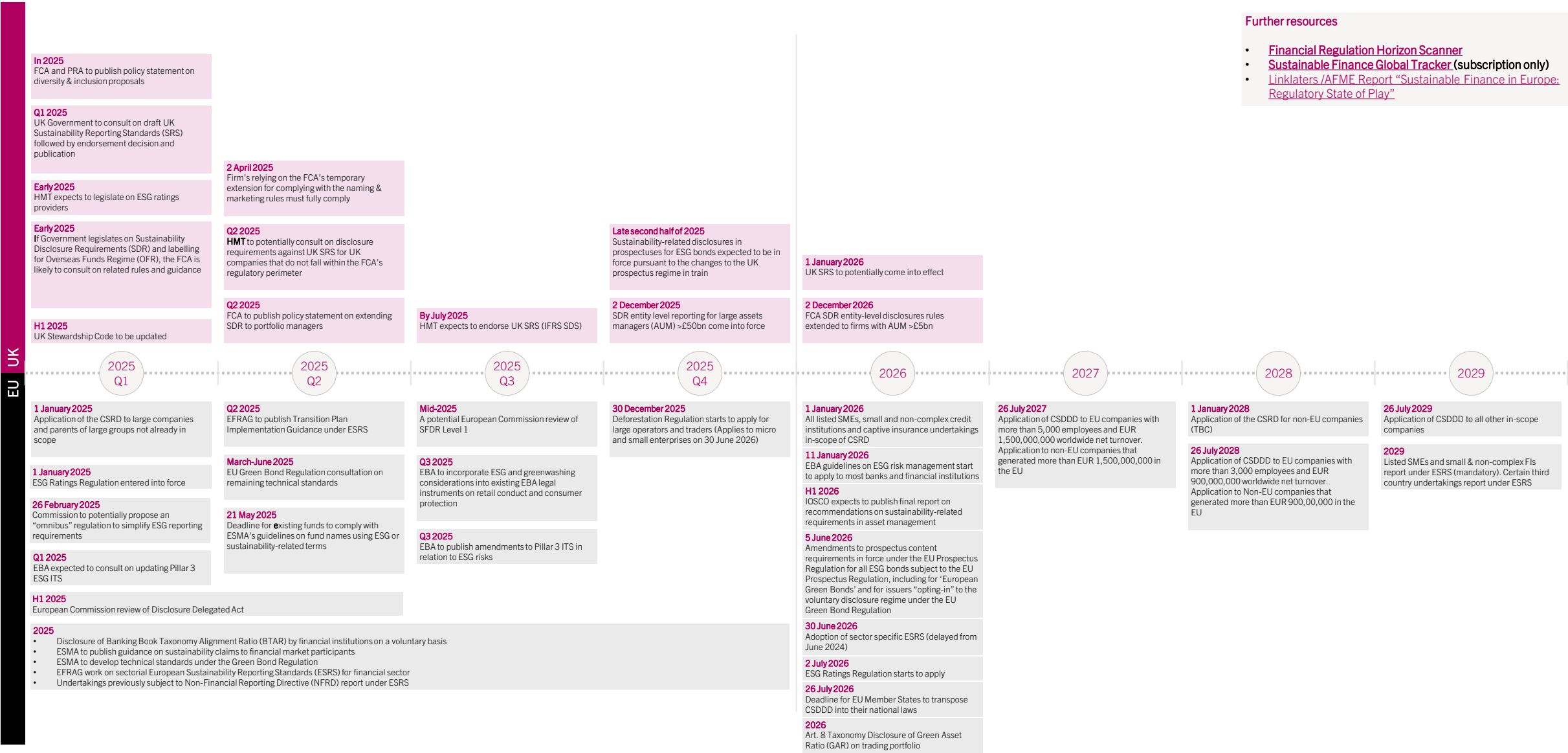
The Commission suggested that firms would need to have joined data sharing schemes within 18 months of the regulation coming into force. Both the Parliament and Council have suggested giving the industry more time to prepare. The Council has also suggested phasing in FIDA at different times for different types of customer data.

Improving open banking

According to the Commission, open banking in the EU has had “mixed success”. Its proposals for a new Payment Services Regulation aim to redress some of the issues with the existing framework. For example, PSR1 will remove the requirement for banks and other account servicing payment service providers to offer a fallback interface in addition to a dedicated interface for open banking data access. Also, consistent with FIDA, banks will be required to offer customers a “dashboard” to manage their data access for other payment service providers.

Learn more

- > [Eye on the horizon: UK sets National Payments Vision](#)
- > [Design of EU open finance rules set to move to next stage](#)
- > [FIDA: EU sets out ambitious plans for open finance](#)



EU Corporate Sustainability Reporting Directive

The first cohort of companies subject to the EU's CSRD - large undertakings previously subject to NFRD - will make their first sustainability reports in FY2025 and have already done significant data gathering for that milestone.

Adoption of the directive itself in 2023 was only the first part in establishing the legal and compliance obligation. The directive needs to be supplemented by **ESRS** – European Sustainability Reporting Standards – which detail the sustainability information that companies will need to report on in accordance with the CSRD and it needs to be transposed into Member State law.

CSRD ESRS

The first set of ESRS – being the sector agnostic reporting standards - have applied since the beginning of 2024. CSRD also requires the adoption, by 30 June 2024, of sector-specific ESRS, with information specific to the sectors in which a company operates; and ESRS for certain non-EU companies with business in the EU meeting certain thresholds.

These two ESRS have been delayed by two years (adoption by 20 June 2026). The delay is said not to change the reporting timelines. Later adoption of sector-specific standards for EU companies just affects the extent of reporting, as the sector-specific part about companies' impact will not be required before 2026. Since general reporting obligations for non-EU companies will only start to apply in 2028, the EU institutions consider that adoption of the ESRS in 2026 will still provide those companies sufficient time to prepare.

CSRD Transposition

As a directive, the CSRD must be transposed into Member State law. The transposition deadline passed on 6 July 2024, with 17 Member States penalised for having missed the deadline. Transposition is important as the directive may be “gold-plated” (meaning, enhanced / added-to) in national implementations.

Companies in the first disclosure cohort where transposition has not yet been finalised are in the difficult situation of having to proceed for their first reports at least as if the directive were directly applicable. Those companies whose obligation will be triggered in one of the subsequent phases will be closely following the emerging details of the transposition and must be nimble to factor its terms into their own disclosure programmes.

Proposal for an Omnibus regulation?

The Commission has indicated that it intends to propose an “omnibus” regulation to reduce bureaucratic burdens and streamline reporting to avoid redundancies and overlaps. In a speech, Von der Leyen stated the Commission plans to include the EU Taxonomy Regulation, CSRD and the Corporate Sustainability Due Diligence Directive in this possible future Omnibus Regulation. She also stressed that the Commission does not wish to amend the content of those laws but merely simplify reporting requirements. This is one to watch in 2025; with the next announcement due on 26 February.

UK corporate sustainability disclosure

In-scope firms – including listed companies and asset managers/asset owners – have been subject to the TCFD reporting obligations in the FCA's ESG Sourcebook from 2021. Some entities have been subject to obligations contained in Companies Act 2006 / LLP Act since April 2022.

The next step to impact corporate sustainability disclosure requirements is development of the UK's approach to the International Sustainability Standards Board's (ISSB) standards. The government will consult on mandating reporting by the UK's largest companies against UK ISSB standards in Q1 2025. This will be followed by an FCA “Sustainability Disclosure Standards” consultation on what this means in terms of the specific obligation on firms.

With much of the UK SDR and labelling regime already applicable, firms will focus on the obligation to publish an annual entity level sustainability report. All in-scope regulated asset managers (regardless of whether using sustainability labels or not) will be obliged to report on how they manage sustainability risks and opportunities within their governance, strategy, risk management, and metrics and targets. The first reports are due by 2 December 2025 for larger asset managers (above £50bn in assets under management (AUM)) and 2 December 2026 for smaller asset managers (above £5bn in AUM). Smaller firms are encouraged to produce voluntary reports.

The Financial Reporting Council's (FRC) Annual Review of Corporate Reporting 2023/24 includes findings on sustainability reporting issues and recommendations for a focus on clarity and materiality. The FRC plans a thematic review in the winter of 2024/25 to assist compliance with the Companies Act 2006 climate-related financial disclosure requirements.

Learn more

General resources:

- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters /AFME Report “Sustainable Finance in Europe: Regulatory State of Play”](#)

- > [Sustainable Finance Survival Guide](#)

EU resources:

- > [CSRD Demystified podcast series](#)
- > [CSRD Transposition tracker](#)
- > [CSRD ESRS delays](#)
- > [CSRD: status of reporting standards for non-EU companies](#)
- > [Sustainable Futures blog: CSRD posts](#)

UK resources:

- > [Autumn 2024: UK Governance and Risk Guide](#)
- > [Initial UK guidance on SDS](#)

EU Sustainable Finance Disclosure Regulation

SFDR Level 1 review

Since its consultation on a comprehensive review of the SFDR Level 1 framework in December 2023, there has been no further word from the Commission on next steps. With detailed questions on potential changes to the disclosure requirements for financial market participants and the potential establishment of a labelling system for financial products, there is a lot to think about – and legislators will no doubt be watching closely to learn from the experiences of others (such as the FCA as it implements its SDR and labelling regime). In the meantime, in June 2024, the ESAs gave their own opinions on the topic, the highlights of which included proposals for the introduction of “simple and clear categories” and/or sustainability indicators for financial products, clarity to the key definition of “sustainable investment” and the disclosure of further information around key adverse impact indicators. It will be for the Commission to decide how to take forward these proposals. With no explicit commitment from the Commission on whether there will in fact be an SFDR review and if so, the timing or its content, this is one to watch in 2025.

Changes to SFDR RTS

Whilst the future shape of the Level 1 SFDR is under discussion, further communications on the proposals to make significant changes to the Level 2 RTS are awaited. The Commission had been due to make a decision on endorsement in Q1 2024 on the ESAs proposals to amend the SFDR RTS in areas such as PAI disclosures, the SFDR DNSH test and product level disclosures. We will have to wait to see whether this will be forthcoming in 2025. If endorsed, the proposals will have significant implications for financial market participants, who will need to revisit their SFDR product and website disclosures (given the changes proposed to the templates and data points) and their entity-level PAI and DNSH methodology and disclosures (given the various changes to PAI indicators).

UK SDR and Labelling Regime

With the final policy statement on the FCA’s SDR and labelling regime having been published in November 2023, the rules have been implemented on a staggered basis. The new rules include a fund labelling regime, a disclosure regime, naming and marketing rules, and a general “anti-greenwashing” rule. Although the bulk of the rules are of direct impact to the buy-side, the anti-greenwashing rule applies to all regulated firms and reiterates existing rules to clarify that sustainability-related claims must be clear, fair and not misleading. The anti-greenwashing rule has been in effect since 31 May 2024.

Refer to [the ESG section of our Asset Management report](#) for more detail on the product disclosure regimes, including the current state of play in terms of the extension of the regime to OFR funds and portfolio managers.

Learn more

General resources:

- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters /AFME Report “Sustainable Finance in Europe: Regulatory State of Play”](#)
- > [Sustainable Finance Survival Guide](#)

EU Resources:

- > [EU SFDR Level 2 state of play](#)
- > [Commentary on the Commission’s consultation on SFDR Level 1](#)
- > [ESAs’ recommendations on SFDR Level 1 Review](#)

UK Resources:

- > [FCA guidance on the UK SDR and labelling regime](#)
- > [UK: FCA consultation on proposals for “minor amendments” to AGR and SDR](#)

Heading towards a global transition plan framework?

The International Sustainability Standards Board (ISSB) announced in June 2024 that the IFRS Foundation (which is responsible for the ISSB) has assumed responsibility for the materials developed by the UK Transition Plan Taskforce (TPT) to help streamline global transition planning. In the near term, the IFRS Foundation expects to use the relevant TPT materials to develop educational materials for users and preparers of transition plans across the globe. Over time, the IFRS Foundation may make further use of these materials when considering the need to enhance the formal application guidance within IFRS S2 (the ISSB climate disclosure standard). The IFRS will host the TPT materials on its Sustainability Knowledge Hub.

EU transition plan developments

Transition plan obligation in CSRD

CSRD requires all in scope-entities to disclose transition plans if they have one, or if not, explain why they do not, and when they plan to build one.

EFRA, the technical advisor to the Commission responsible for the CSRD's European Sustainability Reporting Standards, has published draft implementation guidance for transition plans for climate change mitigation. The draft guidance is intended to clarify climate transition plan disclosure requirements under ESRS E1 (the climate change reporting standard). Final guidance is expected in early 2025.

Transition plan obligation in CS3D

For the first time an obligation to have a transition plan, as well as specific requirements around its content, disclosure and updates, is being imposed through the EU's CS3D.

The required transition plan must include time-bound targets set for 2030 and in five-year steps up to 2050 including, where appropriate, absolute emission reduction targets for Scope 1, 2 and 3 (for each significant category), an explanation and quantification of the investments and funding supporting the implementation of the plan and a description of the role of board / management body in achieving the targets. It must be updated every 12 months, contain a description of the progress made towards targets and be reported publicly.

Guidance on CS3D transition plans, engagement with stakeholders and information sharing is expected to be published by July 2027 with the first CS3D transition plans due to be published in 2029.

Overlap and interaction of CSRD and CS3D obligations

Many firms will be subject to both CSRD and CS3D, and many third-country ultimate parent undertakings will be caught by CSRD before being caught by CS3D. The good news is that if an undertaking reports a transition plan under CSRD, it will be deemed to have met its CS3D transition plan obligations. However, if an undertaking's CSRD transition plan is partial/qualified (e.g. if it excludes scope 3 emissions), it is uncertain whether the undertaking will have done enough to be deemed to have met its CS3D obligations.

CRD VI: prudential transition plans

CRD VI, which has been in force since July 2024 and is currently undergoing Member State transposition, also contains transition plan requirements (Art 76(2)): credit institutions are required to deliver risk-based transition plans. These differ from non-prudential plans arising under CSRD or CS3D in that they are focussed on prudential risks and can be used to assess and manage exposures arising through the transition. The EBA's draft guidelines on the management of ESG risk provide guidance on how these should be prepared. There has been no indication as to when the guidelines will be finalised. Although the industry has lobbied against multiple types of transition plan, it appears unlikely that the differing concepts of prudential and non-prudential plans will be amalgamated.

UK transition plan requirements

At present in the UK, TCFD reporting, mandated through the Listing Rules and ESG sourcebook supports disclosure of key information from a transition plan if an entity has one. As successive governments have moved towards making transition plans and their disclosure mandatory, the UK's Transition Plan Taskforce was appointed to develop (at first) a voluntary framework for transition plan contents. We now await a consultation from the government on mandating transition plan disclosure. This is expected in H1 2025 and will be followed by an FCA consultation that starts with transition plan disclosure considerations for listed issuers.

Learn more

General resources:

- > [Explore climate transition planning & finance](#)
- > [Latest developments on transition plans](#)
- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters/AFME report on climate transition plans for the European financial services sector](#)
- > [COP 29: what was decided and what does it mean?](#)
- > [COP16: key takeaways from the global biodiversity summit](#)

EU resources:

- > [EU CSRD: EFRA publishes draft Transition Plan Implementation Guidance](#)
- > [Podcast EU CS3D explained: CS3D and transition plans](#)
- > [CS3D podcast series](#)

UK resources:

- > [Outcomes of the Transition Finance Market Review](#)
- > [UK TPT publishes final recommendations](#)

EU Corporate Sustainability Due Diligence Directive (CS3D)

Following a roller-coaster legislative process that began in February 2022, the new CS3D was published in the Official Journal of the EU on 5 July 2024. EU Member States need to adopt implementation acts by 26 July 2026 that will start to apply from mid-2027 to mid-2029 for in-scope companies depending on their size.

An active obligation to make a positive change

CS3D represents an evolution from disclosure and reporting type regimes to regimes including active obligations to make a positive change. Under the new rules, in-scope companies will be subject to far-reaching obligations to establish and implement processes to identify and take action in relation to the adverse human rights and environmental impacts of their operations, as well as those in parts of their value chains. The regime can apply outside the EU, both in terms of the companies it brings into scope, the diligence that needs to be undertaken worldwide, and the indirect effects the new rules will have as they are cascaded up and down value chains.

Transition plan obligation

In addition, for the first time, in-scope companies must adopt and implement climate transition plans and set climate targets in line with the Paris Agreement in a bid to set the course for a move to a lower carbon economy.

Partial carve-out from due diligence obligation for financial services

The chain of activities in scope of the due diligence obligation excludes the downstream business partners of regulated firms that are receiving their services and products. This position should be monitored: this partial carve-out is subject to review no later than two years after that CS3D's entry into force (so by July 2026). In any event, the carve-out may make little difference to the information burden – one person's downstream will be another's upstream.

How does the CS3D relate to other due diligence regimes?

The CS3D is the “default” EU due diligence regime and it expressly provides that its obligations are without prejudice to other, more specific EU regimes (e.g. the Conflicts Minerals Regulation, the Deforestation Regulation, the Batteries Regulation and the Forced Labour Ban Regulation), meaning that if a provision of the CS3D conflicts with another EU regime providing for more extensive or

specific obligations, the latter prevails.

It will be critical to follow the terms of Member States' transpositions given their capacity for gold-plating – especially jurisdictions which already have a similar framework. It remains to be seen whether, and how, the two key existing national regimes in the EU – the French *Loi relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre* (focused on private enforcement) and the German *Lieferkettensorgfaltspflichten gesetz* – will be adapted.

EU Deforestation Regulation (EUDR)

The EUDR prohibits operators and traders from placing or making available on the EU market, or exporting from the EU, certain commodities and derived products, unless they are “deforestation-free”, have been produced in accordance with the relevant legislation of the country of production, and are covered by a due diligence statement.

Its application has been delayed until 30 December 2025 for large in-scope companies and 30 June 2026 for small and micro enterprises.

Financial services need to consider their scope, paying special attention to any commodities-related business. Furthermore, the Commission must reassess the need to include financial institutions in the scope of the EUDR by 30 June 2025 (oddly, before the EUDR will apply – watch this space on this!)

UK human rights due diligence equivalent?

The UK's Modern Slavery Act 2015 (MSA) has been overtaken in its ambition by regimes like the EU's CS3D.

In October 2024, the House of Lords Select Committee on the MSA published its report, “The Modern Slavery Act 2015: becoming world-leading again”, with recommendations for how the UK can reform its existing legislation to bring it in line with international best practice.

The recommendations relate to areas like supply chain due diligence, import bans, mandatory reporting requirements and enforcement.

The influence of this report on the new Government's legislative agenda remains uncertain, particularly as human rights and supply chains did not feature at the Labour conference in September nor in Labour's election manifesto.

Learn more

General resources:

- > [Business and Human Rights resources](#)
- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters /AFME Report “Sustainable Finance in Europe: Regulatory State of Play”](#)
- > [Sustainable Finance Survival Guide](#)

EU resources:

- > [EU Tracker: status of ESG proposals](#)
- > [CS3D Summary of scope and application](#)
- > [FAQs on the CS3D](#)
- > [CS3D podcast series](#)
- > [Webinar on CS3D for the financial services](#)
- > [French Duty of Vigilance Law](#)
- > [German Supply Chain Diligence Act](#)

UK resources:

- > [UK proposals to reform of Modern Slavery Act](#)

07 ESG: regulatory capital treatment of climate and environmental risk



EU amendments to the Capital Requirements Directive (CRR III and CRD VI)

The ESG reforms in the EU's Banking Reform Package empower supervisors to consider ESG risks and require institutions to address and prioritise ESG risks, including through the Supervisory Review and Evaluation Process (SREP), scenario analysis and stress testing as well as providing for the potential to introduce a systemic risk buffer to address potential ESG risks. The provisions include giving power to competent authorities to reduce the risks arising from misalignment with relevant EU ESG policy objectives, the drafting of guidelines to integrate ESG risks into stress testing and extending Pillar 3 ESG disclosure requirements in article 449(a) of the Capital Requirements Regulation beyond large institutions whose securities are admitted to trading on a regulated market.

CRR III and CRD VI have been in force since July 2024 and most of the new rules apply from January 2025, phasing in over several years.

EU - EBA ESG proposals in relation to Pillar 1

In October 2023, the EBA submitted a report - The Role of Environmental and Social Risks in the Prudential Framework - to the European Parliament, Council and Commission on its findings on whether a dedicated prudential treatment for exposure of assets or activities substantially associated with environmental and social objectives would be justified. The report recommended risk-based enhancements to the risk categories of the Pillar 1 framework in the short term with potential additional revisions to reflect the growing importance of ESG risks in the medium to long term. It also developed considerations on the potential use of macroprudential tools. The report explained why the EBA does not support the introduction of a green supporting factor or a brown penalising factors at this stage. However, the report also stresses that the EBA will continue to reassess the challenges of environmental risks for the safety and resilience of institutions. The EBA's position stance on this has not changed since that report was published.

However, further EBA reports are expected which may modify this position: according to CRR III (art 501c), the EBA is required to publish two more reports on various issues relating to the functioning of the prudential treatment of exposures to environmental and/or social factors by the end of 2024 and the end of 2025. The first report looks likely to be delayed, as the Basel Committee has pushed back its (related) publication to H1 2025.

The EBA, with the other ESAs, the ECB and the European Systemic Risk Board, launched the one-off Fit-for-55 climate risk scenario analysis exercise in July 2023. It aimed to assess the resilience of the financial sector in line with the Fit-for-55 package, and to gain insights into the capacity of the financial system to support the transition to a lower carbon economy under conditions of stress. The results were published in November 2024. For the banking sector, the results reflect that while the sector is expected to be resilient enough to withstand the selected adverse shocks one-by-one, the magnitude of the results in total highlights the need for banks to integrate climate risks into their risk management frameworks "as promptly and extensively as possible".

EU - EBA ESG proposals in relation to Pillar 3

CRR III contains a requirement for large institutions which have issued securities that are admitted to trading on a regulated market of a Member State to disclose information on ESG risks. Disclosure requirements have been applicable since 28 June 2022 on an annual basis for the first year and biannually thereafter. The EBA was expected to consult on updating Pillar 3 ESG ITS in Q4 2024 with revised ITS due in 2025, although due to delays at the Basel Committee, this consultation is now expected in Q1 2025.

UK capital requirements and climate/environmental risk

At present, changes to UK CRR are not anticipated for the treatment of climate and environmental risk as a separate risk type, although this is described as "complex" by the Bank of England and may change over time. This approach was confirmed by the Bank in its March 2023 report on climate related risks and the regulatory capital framework and has not changed over the course of 2024.

The Bank's and the PRA's expectations on managing the financial risks associated with climate change were first described in Supervisory Statement 3/19. As noted in its 2024 Priorities Letter to firms, the PRA expects firms to make further progress on the objectives set out in SS3/19, demonstrate how they are responding to the PRA's expectations and set out the steps they are taking to address barriers to progress. The PRA is said to have commenced work to update SS3/19 and will publish thematic findings on banks' processes to quantify the impact of climate risks on expected credit losses in the course of 2025.

Learn more

General resources:

- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters /AFME Report "Sustainable Finance in Europe: Regulatory State of Play"](#)
- > [Sustainable Finance Survival Guide](#)

EU resources:

- > [Outcomes of the Fit-for-55 Stress test](#)
- > [2024/2025 SF workplan for European regulators](#)
- > [EBA draft Guidelines on the management of ESG risk](#)

UK resources:

- > [Bank of England approach to ESG risk management](#)
- > [PRA feedback on accounting for ESG risk](#)

07 ESG: ESG ratings regulation



EU ESG Ratings Regulation

The ESG Ratings Regulation (ERR) entered into force on 1 January 2025. It will apply 18 months following its entry into force - from 2 July 2026.

Authorisation requirement

ESG ratings providers will need to be authorised and supervised by the European Securities and Markets Authority (ESMA) and comply with certain transparency and organisation requirements. Whilst other already-regulated financial services firms benefit from certain exemptions from authorisation, they must still comply with new transparency requirements when producing ESG ratings in the context of existing products. This is imposed partly through the ERR (and forthcoming regulatory technical standards) and partly through amendments to the Sustainable Finance Disclosure Regulation (SFDR).

Exemptions – ambiguity for financial services firms

The ERR does include numerous exemptions from its scope. However, a key question is how it applies to financial products of financial services firms that happen to include ESG ratings. This could include sustainable investment products that disclose ESG ratings on investments, or investment research that includes an ESG rating. The ERR includes several exemptions relevant to this although how they interact is not entirely clear. Impacted firms will therefore need to consider these exemptions in detail – see our note in the “Learn more” sidebar.

Practical implications

Firms which intend to become authorised as ESG ratings providers should assess the compliance obligations in the ERR and prepare for authorisation.

Firms relying on exemptions to avoid authorisation (e.g. banks issuing investment research or buy-side firms offering products with ESG ratings) should firstly assess their products and services to determine if they constitute ESG ratings. Following this, the applicability of exemptions will need to be considered in detail, as well as compliance with the disclosure obligations that accompany certain exemptions.

UK proposal to regulate ESG ratings providers

HM Treasury has responded to its 2023 consultation on regulating ESG ratings providers and has released draft legislation which applies to both UK and overseas based ESG ratings providers. The draft legislation was open for technical feedback until 14 January 2025. The overall process of designing, developing and commencing the ESG ratings regulatory regime is expected to take approximately four years, with the government aiming to lay the legislation before Parliament in early 2025.

Proportionality, but be careful with the exclusions

The draft rules have been prepared with proportionality in mind, with a clarified scope (with the activity of providing ESG ratings drafted more narrowly than in the original consultation), and a range of exclusions including an exclusion for ratings produced as part of another regulated service. Firms will need to consider these carefully – whilst many firms not seeking to be regulated ESG ratings providers may benefit from this regulated services exclusion there does appear to be a gap for certain firms operating cross border into the UK (for example where operating in reliance on the OPE). The government is still considering its approach to firms that access the UK via other market access arrangements – namely with respect to credit ratings, benchmarks and overseas funds. Whilst it appears appropriate for an exclusion to extend to firms providing such products and services – and the government has drafted this in – it is still deciding how best to set the parameters of the exclusion here.

Territorial scope

The key focus of the proposed regulation is the protection of users in the UK market. To avoid overseas ESG ratings providers seeking to avoid regulation by producing an ESG rating that they then make available to a user in the UK via a separate distributor outside the UK, the rules explicitly seek to close this loophole. This approach to territorial scope is quite similar to the approach taken in the EU ERR, and both the UK and EU seem keen to ensure overseas ESG ratings providers are captured.

Voluntary industry Code of Conduct

Just a reminder: the UK’s voluntary Code of Conduct for ESG Ratings and Data Product Providers was launched by IRSG and ICMA in December 2023 and sits alongside applicable legislative frameworks.

Learn more

General resources:

- > [Sustainable Futures blog](#)
- > [ESG monthly newsletter and sign-up](#)
- > [Linklaters /AFME Report “Sustainable Finance in Europe: Regulatory State of Play”](#)
- > [Sustainable Finance Survival Guide](#)

EU resources:

- > [EU: ESG Ratings Regulation moves one step forward](#)
- > [EU ESG Ratings regulation: the obligation, scope and timing](#)
- > [EU proposal to integrate ESG factors into credit ratings](#)

UK resources:

- > [Highlights from UK Treasury consultation response and draft legislation](#)
- > [UK Code of Conduct for ESG Ratings and Data Products Providers](#)

A steady stream of decisions

The FCA continued to enforce against a small number of individuals for breaches of the individual and senior manager conduct rules. It fined [Kristo Käärmann](#) £350,000 for failing to notify it of his failure to declare a capital gains tax liability to HMRC, in breach of Senior Manager Conduct Rule 4. As a senior manager, the FCA considered that Käärmann should have self-reported any matter that may be significant to his fitness and propriety, including those that may have an adverse impact on his reputation and/or that of his firm.

A degree more clarity on what 'reasonable steps' means for senior managers came from the PRA's decisions to fine [Iain Hunter](#) £119,000 in relation to breaches of his firm Wyelands Bank's Large Exposures regime and record-keeping issues. The PRA accepted a voluntary undertaking from Hunter, equivalent to a prohibition, given his ex-UK residency and his settlement with the PRA. Key messages for other senior managers include:

- > Senior managers should ensure that their firm's controls are proportionate to the regulatory risks presented by their firm's business model.
- > Allocate clear responsibilities for regulatory compliance, with routine roles for all three lines of defence.
- > Exercise caution when taking on multiple SMF roles. Hunter was both SMF1 and SMF4 which may have affected the Risk function's capacity to independently monitor and manage the firm's regulatory risk.
- > Ensure that any external verification of regulatory returns is based on accurate information that is validated (ideally by the firm).
- > Verify and qualify statements to the regulators - especially when there is room for interpretation or limited information.
- > Document reasonable steps taken, including where you proactively challenge functions and address concerns raised internally/by the regulator.

Continued focus on non-financial misconduct

2024 began with the Treasury Committee – as part of its "Sexism in the City" inquiry – expressing [concern](#) that the industry was falling short on non-financial misconduct (NFM) by not acting against known offenders. FCA Executive Director for Markets and International Sarah Pritchard subsequently confirmed that the FCA had started a supervisory work program into how firms deal with NFM cases. The results of that survey, [published](#) in October, consisted largely of statistics and contained no formal recommendations. The FCA maintained that the data was being published to allow executive management and boards of relevant firms to benchmark their firm's performance against their peers and is looking to trade associations to coordinate industry action here. We increasingly see the FCA reminding stakeholders that, as per the Tribunal decision in [Frensham](#), it can only act in this context in furtherance of one of its statutory objectives. This was confirmed towards the end of the year when the FCA issued a warning notice [statement](#) setting out its intention to act against Crispin Odey for integrity breaches following the obstruction of an internal fact-finding investigations into allegations of his 'inappropriate behaviour'.

...whilst D&I proposals remain in stasis

The Treasury Committee's Sexism in the City inquiry [recommended](#) in March that the regulators drop their [proposals](#) for data reporting and target setting. The FCA later confirmed in May that it will be hitting pause on these proposals but pressing ahead with other aspects of the same consultation aimed at clarifying the treatment of non-financial misconduct under the SMCR. The FCA intends to publish a Policy Statement on 'Tackling Non-Financial Misconduct in the Financial Sector' around year-end 2024, followed by FCA and PRA Policy Statements on the remaining D&I proposals at some point in 2025.

Reform ahead?

We are still waiting for the outcome of HMT's [Call for Evidence](#) on the SMCR (published in conjunction with a [joint discussion paper](#) by the FCA and PRA in March 2023). Despite comments by incoming Chancellor Rachel Reeves that the government is considering removing the Certification Regime, any proposed changes are expected to be minimal.

Learn more

- > [Feeling the pressure: the FCA is asking firms about non-financial misconduct and NDAs](#)
- > [New SMCR fine: right-sizing controls to your business risk](#)
- > [FCA hits pause on D&I](#)

2024 UK Corporate Governance Code

The new version of the UK Corporate Governance Code requires directors to give an annual declaration on the effectiveness of their company’s material controls. While aiming to increase transparency, the new declaration also increases risks for directors of financial services firms.

Declaring effectiveness of material controls

The 2024 Code expands Provision 29 to say that the annual report should contain the following statements:

- > A description of how the board has monitored and reviewed the effectiveness of the company’s risk management and internal control framework.
- > A declaration of the effectiveness of the material controls at the balance sheet date.
- > A description of any material controls which have not operated effectively as at the balance sheet date, the action taken, or proposed, to improve them and any action taken to address previously reported issues.

The first bullet point above is broadly the same as the existing Provision 29, with additional description required of the board’s monitoring activities. The second and third bullet points above are new.

Timing

Unlike other updates in the 2024 Code which apply in respect of financial years starting on or after 1 January 2025, firms do not have to meet the new Provision 29 until accounting periods beginning on or after 1 January 2026. Given the timetable, many companies are planning to do a “dummy run” in 2025-26 to prepare processes for making their first declarations under Provision 29 the following year.

Application

The Code must be applied by UK listed companies. It is also adopted as a benchmark for good corporate governance practices by many non-listed companies and other organisations.

Impact on banks and other financial services firms

The good news...

Regulated firms are already subject to extensive FCA/PRA requirements on effective risk management which are more prescriptive than 2024 Code. The new requirements aim to increase the accountability of the board, both for its processes for monitoring and reviewing controls and when issues needing remediation are reported to or found by the board. Firms will already have well-established governance processes for this monitoring exercise.

...and the bad

Regulated firms’ extensive risk management frameworks mean that they have more material controls and, at any given point in time, some of these may be subject to ongoing remediation. In contrast to other sectors, financial services firms are more likely to have disclosable items at the balance sheet date.

Interaction with the SMCR

Directors should take care in making these disclosures. Under the FCA/PRA Senior Managers and Certification Regime and Conduct Rules, they have duties to take reasonable steps and act with due skill, care and diligence. They will not want to open themselves to personal liability for making a misleading statement, for example one which is overly optimistic about the effectiveness of the firm’s controls. Directors are likely to need additional comfort that they can make a statement about material controls operating effectively.

Using 2025 to prepare

In its guidance to accompany the Code, the Financial Reporting Council does not set out how companies should design, implement and operate their risk management and internal control frameworks or assurance. The FRC explains that risk and control frameworks should be tailored to the company.

Boards should use 2025 to agree their approach to ensuring compliance with the Code. A good place to start is the existing risk management framework the firm’s escalation processes. Careful consideration of the scope of the declaration should cover key concepts such as “material” and “effectiveness” as well as potential exemptions, e.g. for confidential information.

Learn more

- > [Boards to be more accountable for internal controls under new UK Corporate Governance Code](#)
- > [The New UK Corporate Governance Code: living in a material controls world](#)
- > [UK corporate reporting 2024/25 - Recent developments and guidance for listed companies](#)

Basel 3.1 Reforms – UK and EU

Basel 3.1 refers to the standards of the Basel Committee on Banking Supervision (BCBS), “Basel III: Finalising post-crisis reforms”, and the BCBS standards on the fundamental review of the trading book (the “FRTB”) which were finalised in 2019. This is an overhaul of the regulatory capital regime which will affect both firms on the standardised approaches (in respect of the entirety of Pillar 1: credit risk, market risk and operational risk) and larger firms using internal models (since one of the main aims of Basel 3.1 is to reduce over-reliance on models).

In the UK, Basel 3.1 is being implemented by the PRA through the adoption of new rules which will be reflected in the PRA Rulebook. The near-final rules are set out in two separate publications, PS17/23 published in 2023 and PS9/24 published in September 2024.

Where PS17/23 includes the implementation of the FRTB and new rules on credit valuation adjustment risk and operational risk, PS9/24 addresses credit risk, credit risk mitigation, the output floor and Pillar 2 as well as disclosure and reporting requirements.

PS9/24 delayed the effective date of Basel 3.1 to 1 January 2026 and dilutes the original proposals in CP16/22, especially across the credit risk and credit risk mitigation frameworks. On 17 January 2025, the PRA announced a [further delay](#), pushing back implementation by another year to 1 January 2027. This is to allow “more time for greater clarity to emerge about plans for its implementation in the United States”.

The regulatory capital impact of these changes is considerable. See our [summary](#) of the near-final rules in PS9/24 and the areas in which the original proposals were watered down.

In terms of impact assessment, the PRA estimates that the Tier 1 capital requirements for major UK banks in aggregate are likely to increase by less than 1% by 1 January 2030, which is materially lower than the estimated 3.2% increase under initial proposals. This increase in capital requirements is lower than the EBA’s estimated impact on EU banks as a result of the EU’s Capital Requirements Regulation III (CRR III) implementation.

PS9/24 is published against global uncertainty around the implementation of Basel 3.1 – its further delay is evidence of this. In the EU, the CRR III implements the bulk of Basel 3.1 with effect from January 2025, although the effective date of the FRTB has been delayed until 1 January 2026, whilst the output floor is subject to material reliefs granted to firms on top of the transitional phase-in proposed by the BCBS. In the US, an initial set of proposals that included largely abolishing modelling permissions for credit risk received such significant pushback from the banking industry that regulators have agreed heavily to revise their proposals with a second round of consultations expected to begin shortly.

More importantly, apart from timing differences, there is material divergence between the proposed EU and UK substantive rules; this is likely to be burdensome for global groups including both EU and UK institutions.

EU Capital Requirements Directive VI and cross-border business

As part of the EU’s Banking Reform Package, CRD VI entered into force on 9 July 2024. The addition of Article 21c imposes tighter restrictions on banks providing cross-border services into the EU. EU Member States have 18 months to transpose its provisions into national law. This will be followed by a further 12-month transitional relief specifically for Article 21c compliance. This means that firms have until 11 January 2027 to prepare to comply.

The effect of Article 21c is that a non-EU entity must establish a branch to provide certain banking services and activities in an EU Member State except where an exemption applies.

The introduction of this restriction effectively leaves firms providing these in-scope banking services into the EU with four options for compliance: (i) continue to provide services into the EU by relying on the exemptions in CRD VI; (ii) move in-scope banking services (other than deposit taking) to a non-EU lending vehicle; (iii) move in-scope banking services to a new or existing subsidiary in the EU; or (iv) establish a branch in each jurisdiction in which the in-scope banking services can be provided.

Learn more

EU resources:

- > [Linklaters redline version of the CRR](#)
- > [Linklaters redline version of the CRD](#)

UK resources:

- > [PRA implementation of Basel 3.1](#)
- > [Reminder of PRA Basel 3.1 implementation proposals](#)
- > [Four options for firms to consider when approaching the EU’s CRD VI](#)

UK Ring-fencing reforms

In 2023, HMT published its consultation on how the government intended to take forward the Skeoch review proposals to reform the current ring-fencing regime, together with a draft statutory instrument housing the amendments.

In November 2024, HMT published its response to that consultation – “A smarter ring-fencing regime”. This response includes an increase in the core ring-fencing threshold amount, the introduction of a new secondary threshold to exempt predominantly retail-focussed banks from the regime, allowing ring fenced banks (RFBs) to incur permitted exposures to SMEs and global systemically important insurers and to have aggregate exposures to relevant financial institutions of up to £100,000, allowing RFBs to hold certain investments in UK SMEs, removing the geographical prohibition on RFBs establishing a branch or holding a participating interest in entities outside the UK or EEA and introducing a four year transition period for compliance where a ring-fenced bank acquires a non-ring-fenced bank.

These final revisions were included in the revised statutory instrument which was laid before Parliament on the same date and which, subject to Parliamentary approval, will implement the smarter ring-fencing regime.

The Small Domestic Deposit Takers (SDDT) regime

Firms which meet specific criteria to be considered SDDT (e.g. total assets on average over the past three years of no more than £20 billion, most of their activity is domestic etc) can apply to the PRA for a permission to comply with a new UK prudential regulatory regime which involves modifications and simplifications of the applicable capital and liquidity rules with a layered approach so that regulatory compliance is scaled up as the firm becomes larger and more complex. Firms that meet the SDDT criteria, and consolidation entities that meet the SDDT consolidation criteria, may (via Modification by Consent) choose to enter the Interim Capital Regime (ICR) rather than applying the Basel 3.1 rules from 1 January 2026 until the SDDT capital regime is implemented (the current proposed implementation date for the SDDT regime is 1 January 2027).

Under the ICR, firms (and consolidation entities) will continue to be subject to requirements substantively the same as the existing Pillar 1 capital requirements, and the PRA will continue to apply the existing Pillar 2A framework to them.

The PRA intends to set a window of at least 6 weeks for firms to consent to the ICR Modification by Consent and if a firm has not consented (or at least contacted the PRA to indicate that it wishes to do so) the PRA will assume the firm has chosen to be subject to the Basel 3.1 rules.

On 29 November 2024, the PRA published its Statement of Policy. This sets out the PRA's approach for operating the eligibility criteria for the regime.

Bank of England's consultation on its approach to setting a minimum requirement for own funds and eligible liabilities

The Bank of England (the Bank), as resolution authority, has published a consultation paper (15 October 2024) on amending its approach to setting a minimum requirement for own funds and eligible liabilities (MREL). The deadline for responses is 15 January 2025. The Bank anticipates finalising its response during the first half of 2025 with implementation to begin from 1 January 2026. HMT has published a statement welcoming the proposals. It states that it will engage with industry on changes to secondary legislation envisaged by the Bank.

The consultation brings together proposals relating to the Bank's statement of policy on its approach to setting a minimum requirement for own funds and eligible liabilities.

The proposals are grouped around three themes: (i) restating, with modifications, certain UK Capital Requirements Regulation total loss-absorbing capacity provisions in the MREL statement of policy and other related changes; (ii) updates to the Bank's indicative thresholds for setting a stabilisation power preferred resolution strategy; and (iii) revisions to reflect findings from the Resolvability Assessment Framework and lessons from policy implementation.

Enforcement

The PRA issued its second largest [fine](#) (£57.4 million), in February for breaches arising from HSBC's improper implementation of requirements in the Depositor Protection Rules regarding Financial Services Compensation Scheme (FSCS) protection – also its first fine for a breach of FR 8 (preparing for orderly resolution). The PRA found that HSBC had not accurately identified deposits that were eligible for the FSCS. The decision highlights the importance of effective governance and escalation procedures to support firms identify and manage potential breaches.

Learn more

- > [Consolidation and Clarity: a closer look at the Bank of England's revised MREL approach](#)
- > [PRA issues second largest fine for historic failings: what can we learn from this week's action?](#)

Ready for trilogues?

With the three EU legislators reaching their positions on the Retail Investment Strategy package in mid-2024, trilogues will begin in 2025. A “direction of travel” has emerged on some topics (e.g. costs and charges disclosures will not be re-introduced for eligible counterparties and professional clients that do not currently receive them) but differences remain on other key topics as follows.

Value for money (VFM)

The Commission proposes that manufacturers and distributors assess their products and pricing against ESMA-produced cost and performance benchmarks as part of their VFM assessments. The Parliament and Council instead advocate for internal “peer grouping” analysis, giving firms greater flexibility. Both legislators also envisage EU “supervisory” benchmarks which would allow local regulators to identify “outlier” products. The Council (unlike Parliament) suggests that these supervisory benchmarks could be used by manufacturers or distributors for their own internal VFM processes (as an alternative to firms setting out their own internal peer-grouping analysis).

Inducements

The Commission, but not the Council or Parliament, proposes an inducement ban between “execution only” service providers and product manufacturers. The Parliament instead proposes an option for Member States to have their own inducement bans, and significant enhancements to the requirements for firms to meet before accepting or paying third-party inducements.

Suitability and appropriateness

The Commission’s proposal to enhance suitability assessments by requiring firms to consider the client’s need for portfolio diversification would be revised under the Parliament and Council positions, including acknowledging that it may not always be possible for firms to get information on clients’ existing portfolios. There is also divergence on other aspects, such as whether appropriateness assessments should consider a client’s capacity to bear losses.

Best interest of the client

The Commission proposal for investment advisers to act in the “best interest of the [retail] client” would require firms to advise on an “appropriate range” of products, recommend the most cost-efficient suitable product and recommend

at least one product without “additional features” which are not “necessary”. The Parliament and Council both suggest changes to this test (such as deleting the requirement to offer products without additional features), but major differences between the positions exist (as, for example, the Council would see aspects of the test moved into the suitability assessment).

Professional client opt-up criteria

All three legislators propose changes intended to make it easier for individuals and companies to opt up to professional client status. However, the devil is in the detail as diverging views have emerged on how best to achieve this.

PRIIPs KID

The three legislators’ positions on changes to the PRIIPs Regulation and KID requirements include different views on the page limit and new sections in the KID (e.g. the contents of the new sustainability section), personalisation and layering of KID information, how performance could be presented in KIDs and the level of prescription in respect of multi option products (with the Council proposing a comparison tool for the different investment options).

Other changes

The Retail Investment Strategy covers numerous other impactful amendments to current rules. These include enhanced requirements on marketing communications (including when using influencers), risk warnings and competency requirements for financial advisers. There are also enhancements to reporting requirements and regulatory powers in the context of the cross-border provision of services.

Implementation timings

The Commission proposal would see Member States implementing changes to MiFID II (and other sectoral directives) within 12 months, with the revised requirements applicable 6 months later. Both the Council and Parliament would significantly extend the implementation timeline.

Learn more

> [EU Retail Investment Strategy reaches milestone, ready for trilogues...](#)

10 Retail investor focus: UK Consumer Duty



2024 saw the Duty become fully operational: Firms also submitted their first annual board reports – an integral part of a suite of Consumer Duty governance mechanisms firms have introduced. Meanwhile the FCA is maintaining its Consumer Duty focus though its activity has tapered off following its headline [webinar](#) (conducted jointly with the FOS) on 31 July.

As well as feedback on progress to date, the FCA used the webinar to launch its [Call for Input](#) reviewing FCA requirements following the introduction of the Consumer Duty, responding to which occupied much of the Autumn; FCA feedback is expected in Q1 2025. The CFI asked stakeholders to input on areas of current regulation that could be removed/revised in favour of greater reliance on consumer duty ‘outcomes’. Arguably somewhat premature (given the novelty of the Duty), the CFI proceeds on the (untested) assumption that outcomes automatically simplify regulation. In fact, there is considerable ambiguity surrounding many aspects of the Consumer Duty, which the FCA has sought to manage by publishing a proliferation of guidance and feedback. This does not simplify anything and significantly increases compliance cost as firms assess the implications of this ongoing flow of information. The FCA remains under pressure to ensure that the Duty – its flagship consumer protection regime – does not prevent firms from generating growth.

Areas for development: There is still plenty for firms to work in here. The FCA [reported](#) in February on good practice and areas for improvement, including:

- > **Culture governance and monitoring:** particularly ownership of the Duty across the business and the importance of data and monitoring (the data point was expanded on in later feedback e.g. [here](#)).
- > **Vulnerability:** some firms (particularly in wealth) are still failing to identify and support vulnerable customers. All firms that deal directly with retail customers should work towards a ‘single customer view’. The FCA will publish a review of firms’ treatment of vulnerable customers and customer support in Q1 2025. A [speech](#) in October provided an outline framework for approaching this sensitive topic.
- > **Products:** some firms remain unaware that they are within scope of the Consumer Duty. Inter-firm information sharing remains a challenge. The FCA wants to see more effective sharing within distribution chains.
- > **Value:** the FCA pressed firms to take a ‘holistic’ approach and better evidence assertions that products offer ‘fair value’. In September the FCA

[published](#) a review of firms’ assessments of value over the first year of the Duty’s operation, summarising the results of studies into GAP insurance, cash savings and interest held by platforms. The GAP insurance study was particularly impactful: the FCA required over half of the firms offering this product to stop doing so until they improved their fair value assessments.

- > **Understanding:** firms were challenged on aligning products to customer risk appetite and charges disclosures. Financial promotions remains a concern, with some approvers apparently making little reference to the Duty (particularly in the crypto-asset space).
- > **Support:** The FCA wants to see more staff training for complex conversations, with a commitment to finding tailored solutions for customers in distress. The 2024 [HSBC](#), [VW](#) and [TSB](#) final notices provide a useful benchmark for firms here (despite being decided under Principle 6 not 12). Firms should be designing customer journeys that support good outcomes.

The FCA imposed an OIREQ on [London Stone](#) for failings including a breach of cross-cutting rule one, the obligation to act in good faith. London Stone’s custodian had threatened to terminate its agreement with the firm unless it improved its charging practices, suggesting it had carried out its own assessment the London Stone’s treatment of its customers.

Redress takes centre-stage: Activity this Autumn in the motor finance space and the issue of the joint FCA/FOS [Call for Input](#) on modernising the redress framework could have significant future impact on firms in scope of the Duty. It is interesting to consider how the Court of Appeal might have analysed the position in [Wrench, Hopcraft and Johnson](#) had the Duty been in force. The CFI considers the issue of conflicting interpretations of FCA rules being taken by the FOS, a concern for many firms as the Duty, with its inherent ambiguity, becomes part of BAU compliance.

Closing the advice gap: The FCA is making progress on its “Advice/Guidance Boundary review”. The FCA’s December 2024 consultation on proposals for a “targeted support” regime for the pensions sector closes in February 2025. We can expect broader proposals for the retail investment context, and proposals for “simplified advice” to follow in H1 2025, including a consultation on draft FCA rules that will apply across retail investments and pensions. Firms wishing to provide guidance or education to investors will want to see the proposed rules give greater comfort as to how they can avoid straying into providing regulated investment advice.

Learn more

- > [Our insights webpage on the Consumer Duty](#)
- > [Key considerations when compiling your board report](#)
- > [FCA fine HSBC for unfair treatment of customers in financial difficulty](#)
- > [The FCA permits the return of GAP insurance](#)
- > [Welcome FCA guidance on monitoring under the consumer duty](#)
- > [Re-dressing redress](#)
- > [The FCA’s latest consumer duty value messaging](#)
- > [Significant Court of Appeal judgment on FCA’s redress powers](#)
- > [FCA Consumer duty webinar \(frogs and all\)](#)
- > [The FCA’s November 2024 feedback statement on its Advice Guidance Boundary Review](#)
- > [Advice Guidance Boundary Review: the FCA’s consultation on a proposed new regime of targeted support for pensions](#)

UK policy and rules

Under the new UK Government, our base case is some consolidation of AML supervisory bodies; MLRs requirements not materially weakened; [renewed focus](#) on digital identity verification; and the comprehensive regulation of cryptoassets [by mid-2026](#).

Meanwhile firms will adjust to the AML changes within ECCTA including new POCA exemptions and strengthened corporate transparency obligations.

The FCA has amended its Financial Crime Guide to give lessons learned from recent sanctions; guidance on innovative transaction monitoring; and recognition that AML controls need also to be Consumer Duty compliant.

On domestic PEPs, the FCA will give guidance focusing on clear customer communications and customer support staff training.

UK supervision and enforcement

Regulators expect firms to manage financial crime risks holistically, with the FCA recently emphasising UX design of internal controls, integrating AML data firmwide, and inter-firm collaboration.

Growing firms should [level-up](#) controls to match their growth.

Unsecured lenders should equip staff to recognise and support customers suffering financial domestic abuse.

Prudent firms will manage supervisory interactions carefully to disrupt the regulatory “escalation” path commonly seen in recent enforcement actions, including VREQs pending remediation of weaknesses in AML systems and controls.

Actions in 2024 included an unregistered crypto ATMs [conviction](#); the first [action](#) under the EMRs; a challenger bank [fine](#) for AML/sanctions controls issues; a challenger bank [fine](#) for automated transaction monitoring issues; and continuing [cum-ex](#) actions.

EU regulatory changes

The new pan-EU AML supervisory body (AMLA) at the end of 2025 will assume most of the EBA’s AML/CTF competencies and start issuing draft RTS/guidance.

EU AML/CTF regulatory changes are occurring on a rolling basis until AMLA is fully operational in 2028.

Meanwhile, the new cryptoasset travel rule will apply from 30 December 2024; and from July 2025 much of the AMLA Regulation will apply, and Member States will have implemented the MLD6 beneficial ownership registers measures.

Virtual IBANs risks may also see [some attention](#) in 2025.

The rules changes are largely incremental; what’s new is the shift from Directive to directly-applicable Regulation, an EU-wide regulator helping national regulators to improve their AML supervision, and [strengthened](#) data sharing arrangements. This should foster regulatory convergence, easing transnational compliance efforts.

Ongoing sanctions risks

Into 2025, expect further sanction compliance resourcing demand alongside ongoing regulatory scrutiny (and at times [enforcement action](#)), including an emphasis on sanctions systems testing.

A growing focus on trade sanctions may exacerbate related financial sanctions enforcement risk e.g. in trade financing, with the UK Government in 2024 [introducing](#) new relevant powers and fully establishing a new Office for Trade Sanctions Implementation (OTSI), complementing OFSI’s pre-existing financial sanctions purview.

Learn more

- > [The FCA on financial crime areas of focus](#)
- > [Virtual IBANs in the spotlight](#)
- > [Our latest Russia/Ukraine Sanctions Update](#)
- > [The New EU AML package](#)

12 Financial crime and market abuse



Top priority

Financial crime efforts are a UK Government and [FCA](#) strategic [priority](#).

Applying a risk-based regulatory approach, the FCA will ramp up its data collection and analysis resource to improve its ability to detect manipulation and other criminal activity in the financial markets.

Into 2025 firms will need to [address](#) the FCA's [four priority areas](#) for reducing and preventing financial crime: [innovation](#); [collaboration](#) (including data sharing); consumer awareness; and MI on financial crime controls.

A possible regulatory black swan for 2025: cross-regulator co-operation on anti-tax avoidance efforts – a priority for the new UK Government.

Consumer protection and fraud

The FCA will spot and address [more](#) financial promotions issues, including investment tips on social media (ESMA has [warned](#) against these too).

It [asks firms](#) to prioritise risk assessment, prevention, customer education and victim support here.

The PSR [will](#) facilitate data sharing across payment networks, and bed in its new APP scam reimbursement scheme (with firms making monthly reports from January 2025). Firms will also have new powers to [delay](#) APPs on suspicion of fraud (watch for FCA guidance on this imminently).

Meanwhile the ECCTA failure to prevent fraud offence (with its “reasonable procedures” defence) commences in September 2025. Following published [guidance](#), prudent firms will read-across their AML risk-based approach into this new context in a proportionate way.

Market conduct

In 2025, new disclosure issues like [greenwashing](#) and [AI-washing](#) will draw increasingly assertive responses from regulators. Meanwhile, the FCA is asking firms to take [extra care](#) trading with “obfuscated overseas aggregated accounts”, that is, accounts where the identities of the ultimate beneficial owners (who determine their own investments) are unknown.

The FCA will also want to see firms [implement](#) proportionate surveillance, [guard against](#) organised crime using spread-betting and CFDs and [mitigate](#) flying and printing risks. The latter occur where a firm either communicates that it has bids or offers where this is not supported, or that trades have been executed at a specific prices and/or size, when this has not in fact taken place.

Also topical: the [risk](#) of capital markets abuse (as a money laundering predicate offence and as placement).

Cryptoassets

Addressing financial crime (a [top priority](#)) and market conduct issues, the EU's MiCAR is now in force with most supporting guidelines to be issued by mid-2025. In the UK cryptoassets will be fully FCA-regulated [by mid-2026](#); 2025 will see various consultations on the rules including re market abuse, and ongoing [work](#) on digital wallets fraud risks. The journey has begun with an FCA [discussion paper](#) on admission to trading and market abuse, contemplating a regime mirroring that for traditional markets.

Enforcement

The FCA is becoming more [prosecutorial](#) (subject to its resource constraints), with 2023-2024 seeing a record 21 financial crime prosecutions including against an unregistered crypto businesses, an insider dealing [conviction](#), and nine “influencers” [charged](#) with a range of offences in connection with the promotion of an unauthorised forex trading scheme - with 20 more individuals still to be [interviewed](#) under caution.

On market conduct controls, the FCA/PRA used the Citi [“fat finger” fines](#) and [Macquarie fines](#) for messaging on controls coverage and UI design amongst other matters. It also [fined](#) a senior individual for PDMR trading and trade disclosure issues.

On market disclosure, 2024's FCA [Barclays fine](#) was settled effectively [without admission](#); whilst acknowledging that, key messages include the need to fully brief lawyers advising on market disclosure issues, and to address heightened risk that the conduct of individuals involved in a firm's market disclosures may be attributed to the firm.

Meanwhile the FCA's [first fine](#) against an auditor reinforces its expectation that auditors of regulated firms report fraud suspicions to the FCA.

Learn more

- > [The FCA co-head of enforcement on collaborating to combat financial crime](#)
- > [Anti-fraud AI](#)
- > [UI design of internal controls](#)

13 UK supervisory interventions



Rising volume

The FCA and PRA continue to prefer interventions to enforcement, as a more efficient way to further their objectives. The FCA's co-heads of enforcement have confirmed their intention to resolve more cases through supervisory dialogue and – where necessary – formal supervisory interventions, reducing the need to refer cases to its enforcement division. We continue to see [significantly more](#) interventions, with the FCA in particular imposing wide-ranging requirements where it considers that firms have failed to meet its regulatory standards. Supporting this, its supervisory teams are [growing rapidly](#).

External forces

The FCA is facing strong political pressures which will shape its supervisory approach. The Chancellor used a speech in November to announce wide-ranging financial regulatory reform initiatives and [exhorted](#) the UK financial regulators to support the Government's competitiveness and growth ambitions. In contrast, the All-Party Parliamentary Group, in a report excoriating the FCA, [seeks](#) conflicting radical reforms including that the FCA focus solely on consumer protection.

Meanwhile, “outcomes-based” regulation is firmly in fashion, ushered in by the Consumer Duty and likely to develop further following the FCA's [Call for Input](#) to streamline retail conduct rules. When compared to a “rules-based” approach, this creates more latitude for supervisors and regulatory ambiguity for firms. It may result in firms gold-plating regulatory implementation to mitigate supervisory interventions risks.

Supportive courts

The Appeal Court has confirmed substantial latitude for the regulators exercising their interventions powers and redoubled importance of the Upper Tribunal as a venue for any challenge:

- > In BlueCrest the Court of Appeal [confirmed](#) that the FCA can require redress under FSMA s.55L, without meeting requirements in other FSMA redress provisions (e.g. proof of loss, actionable breach or causation). This cements the breadth of the OIREQ power and the low statutory threshold for its exercise. The relevant check was held to be the Upper Tribunal's “JR-plus” jurisdiction.

- > In Seiler the Court of Appeal confirmed courts' deference to the particular expertise of the Upper Tribunal on references.
- > In MCML the Court of Appeal [clarified](#) the regulators' approach to conducting dawn raids pursuant to requests for mutual legal assistance from overseas regulators.

Sweeping requirements

2024's published REQs illustrated the breadth of this FCA power. They included [business restrictions](#) pending financial crime controls [remediation](#); shutting down entire UK businesses on concerns about [sales pressure tactics](#); restraining excessive charges and non-compliant promotions [targeting](#) the vulnerable, preventing a payments firm from [charging](#) a monthly fee that had the effect of reducing client funds; and [promotions](#) restrictions in response to efforts to circumvent Google's advertising policy.

Redress

The Court of Appeal's [decision](#) on commission disclosure in the motor finance sector presents significant contagion risk. The defendants are appealing to the Supreme Court, with the FCA [pressing](#) for expedition and [extending](#) the motor finance complaint deadline to give the legal process time to complete. This decision comes against a backdrop of the Consumer Duty emphasising firms' obligations to pay redress; the FCA's focus on redress even over financial penalties; and the FCA and FOS [calling for input](#) on modernising the consumer redress system. The redress proposals include extending time for firms to process complaints and reconsidering the “fair and reasonable” test the FOS uses to determine complaints.

We saw considerable redress offered in parallel with enforcement action in 2024. This included substantial redress in [lending](#), [arrears](#) and [financial difficulty](#) cases, and from a [portfolio manager](#), plus various offers of redress (and contributions [to the FSCS](#)) from pensions transfer advisers.

Suggested strategies for 2025

- > Where an issue arises, offer redress proactively and generously. Engage early and often with supervisors, making full disclosures.
- > Ensure that you can demonstrate that you are remediating issues proactively, especially in areas of FCA thematic focus.

Learn more

- > [The Court of Appeal's commission disclosure decision and its implications](#)
- > [Re-dressing redress: the FCA and FOS joint Call for Input](#)
- > [The Court of Appeal's BlueCrest decision and its implications](#)
- > [The latest FCA interventions data](#)

A new approach

The FCA has [reset](#) its enforcement [approach](#). Now [focusing](#) on achieving “impactful deterrence”, it is triaging potential cases before it opens an investigation, and may look to “make an example” of a particular firm rather than sanction numerous firms that have committed the same breaches. It also aspires to prosecute more often (despite existing resourcing challenges here). As noted earlier it is prioritising redress over fines – which is cold comfort for firms, as the former can dwarf the latter. In response to [criticism](#) from the Upper Tribunal, it is also [adjusting](#) its approach to document disclosure to the subjects of enforcement cases.

Rationalisation and speed. Closing [numerous](#) older cases, the FCA now aims to conclude cases substantially faster (recently as quickly as [14 months](#)). The PRA, too, has rapidly shrunk its caseload but is pursuing the most important cases to high-value conclusions. Both the BoE and PRA are [preparing](#) to exercise new enforcement powers over novel firm types e.g. critical third parties.

What's old is new. We see early signs of the FCA reviving an old strategy – “outsourcing” its investigation work by being more willing to rely on firms’ internal fact-finding and Skilled Person reports (see e.g. in [TSB](#); and [note](#) that Skilled Person reports continue to [increase](#) year-on-year). We are likely to see more cases (as in 2024) of enforcement following concerns raised during thematic work, remedial steps, or an internal or Skilled Person report. Together with VREQs addressing relevant risks pending remediation. It remains important to manage all these steps carefully to “de-escalate” issues as far as possible.

Transparency. The FCA’s second consultation on controversial [proposals](#) to publicise information about ongoing investigations will close in February 2025. Its Board will decide whether to proceed with them at the end of March. To [address](#) industry concerns, the FCA has played down the number of disclosures it would make and made [important changes](#), including to take the impact on firms of announcements into account and increase from 1 to 10 days the period to make representations on proposed publication. It still proposes relying upon a wide-ranging public interest test, arrogating significant discretion to the FCA. Many firms remain uncomfortable with the proposals even as amended. They still go well beyond a proportionate adjustment to the current ‘exceptional circumstances’ policy. Arguably, a small adjustment to permit disclosures to confirm that the FCA is investigating where a matter is already public, or when questioned by Parliament, would largely address the FCA’s policy concerns.

Other key themes of the FCA’s enforcement work

- > The treatment of unsecured and secured lending customers in financial distress (e.g. [HSBC](#), [TSB](#) and [Volkswagen](#)).
- > On trading controls, [internal UI design](#), as well as end-to-end assessment of [data “journeys”](#) and the need for robust 2/3LOD oversight and remediation tracking.
- > 2024 saw the [first](#) FCA enforcement [actions](#) against auditors, setting high expectations around auditors’ obligations to notify the FCA of suspicions about the firms they audit.
- > Financial crime and sanctions, with enforcement for controls deficiencies and automated transaction monitoring issues and a [growing emphasis](#) on inter-firm and private-public collaboration and information sharing.
- > Individual accountability, including [notifying](#) the FCA of relevant potential personal misconduct, bans for serious non-financial misconduct convictions, the [nature](#) of “reasonable steps” for a senior manager, and integrity breaches following the obstruction of internal fact-finding investigations ([Odey](#), subject to RDC/Upper Tribunal process).

Priorities for the coming year

- > Identify FCA thematic focus areas (from its published statements) and prioritise them for enforcement risk mitigation. One example: the FCA’s [view](#) that some wealth management firms have insufficiently considered customer [vulnerability](#) in the Consumer Duty context.
- > Attend to signals from regulators about how they might exercise [new powers](#) (e.g. re Critical Third Parties and their clients) and implement policy changes (e.g. the PRA’s [Early Account Scheme](#)).
- > Detect the potential for regulatory “escalation” early and proactively defuse it. Where possible, try to maintain Supervisors’ trust and confidence by pro-actively managing fact-finding and remediation efforts from the outset.
- > During an enforcement investigation, be aware that the FCA apparently has a broad capability to amend its case even after an Upper Tribunal referral is made (per the Court of Appeal’s BlueCrest [decision](#)).

Learn more

- > [FCA enforcement co-head Therese Chambers on the FCA’s new enforcement approach](#)
- > [FCA enforcement co-head Steve Smart on combatting financial crime](#)
- > [Big moves in the FCA’s annual interventions and enforcement data](#)
- > [The FCA’s second consultation on its investigations transparency proposals](#)

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