



# Key ICMA regulatory policy messages



by **Julia Rodkiewicz**

ICMA is engaged with a wide range of policy makers and regulators in cooperation with our members. Our key messages and information for the regulatory and policy initiatives on which we are most actively engaged are summarised below. Information on other regulatory and policy initiatives on which ICMA is focusing can be found elsewhere in this Quarterly Report.

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## EU Central Securities Depositories Regulation (mandatory buy-in regime)

- **Regulatory initiative:** [Review](#) of the EU Central Securities Depositories Regulation (CSDR).
- **Key issues:** Settlement discipline (SD), including revised mandatory buy-in (MBI) proposal.
- **Key messages:** ICMA cautions against imposing an MBI regime, particularly for bond markets. Penalties should first be allowed time to run and possibly be recalibrated. In parallel, other measures to improve settlement efficiency should be exhausted in the first instance (either market-based or regulatory, eg auto partialling, auto borrowing and lending facilities). If MBIs are implemented, this should be through market regulation, not post-trade regulation. The Level 1 CSDR text should exempt Securities Financing Transactions (SFTs) from the buy-in process.
- **Legislative stage:** The European Commission's (EC) CSDR review [proposal](#) of March 2022 is now being debated by the European Parliament (EP) (draft [report](#) and [amendments](#)) and the Council of EU Member States (the Council's [position](#)) with a view to agreeing on a final text, in the first half of 2023 at the earliest. In July 2022, the ECB published its [opinion](#) on the EC's CSDR review proposals, favourably suggesting among other things to discard the application of the MBI provisions altogether.
- **UK related developments:** In 2020, UK HM Treasury (HMT) elected not to implement the EU's settlement discipline regime, including MBIs. As part of the Edinburgh Reforms, [announced](#) on 9 December 2022, the UK Government launched the [Accelerated Settlement Taskforce](#) to, *inter alia*, evaluate current settlement discipline and examine potential reforms in the UK.
- **ICMA engagement and materials:** Meetings with the EC, EP and Council representatives. ICMA published its [feedback](#) on the EC proposal in May 2022 and a briefing [note](#) in September 2022.



**Contacts:** [Andy Hill](#) and [Alexander Westphal](#).

**Working Group/Lead Committee:** CSDR-SD Working Group/Secondary Market Practices Committee (SMPC).

**More information:** The Secondary Markets section of this Quarterly Report and ICMA's dedicated [webpage](#).

### EU MiFIR and UK Wholesale Markets Review

- **Regulatory initiatives:**
  - [EU Review](#) of the Markets in Financial Instruments Regulation (MiFIR) and certain elements of Markets in Financial Instruments Directive (MiFID).
  - UK Wholesale Markets [Review](#) (WMR).
- **Key issues:** Pre- and post-trade transparency and consolidated tape for bond markets, SFT reporting.
- **Key messages:** ICMA members would like to see the introduction of an effective, appropriately calibrated and dynamic post-trade transparency regime for all bonds, including corporate and sovereign bonds. In particular, large and extra-large illiquid trades should benefit from delayed publication of both price and size to prevent undue risk to counterparties involved. Once deferrals have expired, all bond trades should be published in a centralised place (a single-source bond consolidated tape) on a trade-by-trade-basis. Regarding pre-trade transparency, the current obligations are ineffective and potentially counterproductive and should be removed. Separately, ICMA is advocating for all SFTs to be exempted from EU MiFIR transaction reporting because the MiFIR regime does not cater for the specific nature of SFTs and is inconsistent with SFT Regulation (SFTR). In the UK, SFTs with the Bank of England have been removed from the scope of UK MiFIR reporting.
- **Legislative stage:**
  - EU: The EC's MiFIR review [proposal](#) of November 2021 is now being debated by the EP (draft report on [MiFIR](#) and [MiFID](#), with additional draft amendments to MiFIR [part 1](#) and [part 2](#) and [MiFID](#)) and the Council ([MiFIR](#) and [MiFID](#) positions) with a view to agreeing a final text in 2023. On 1 June 2022, the [ECB issued an opinion](#) on the MiFIR transparency proposals, which argues for the SFT reporting requirement to be revoked among other things.
  - UK: The [Financial Services and Markets Bill](#) (FSMB), published in July 2022, will introduce powers for HM Treasury to repeal the current UK MiFIR (as well as other retained EU financial services regulation) and introduce a new regime in line with the March 2022 [outcome](#) of HM Treasury's July 2021 WMR [consultation](#). In some areas, including UK MiFIR, the FSMB amends the current legislative framework, for example to simplify the fixed income transparency regime. As part of the [Edinburgh Reforms](#), HM Treasury is also committing, alongside the UK Financial Conduct Authority (FCA), to having a regulatory regime in place by 2024 to support a consolidated tape for market data.
- **ICMA engagement and materials:** Meetings with representatives of the EU institutions and relevant UK policy makers. ICMA published a position [paper](#) on post-trade transparency for corporate bonds in December 2021, [feedback](#) to the EC's proposal in March 2022 and its [response](#) to the WMR consultation in September 2021.

**Contacts:** [Elizabeth Callaghan](#), [Andy Hill](#) and, on MiFIR/SFTR reporting, [Alexander Westphal](#).

**Working Group/Lead Committee:** MiFID II/R Working Group (MWG) Transparency Taskforce/ Secondary Market Practices Committee (SMPC).

**More information:** The Secondary Markets section of the [Q4 2022](#) ICMA Quarterly Report, pages 37-38.



### EU Alternative Investment Fund Managers Directive

- **Regulatory initiative:** [Review](#) of EU Alternative Investment Fund Managers Directive (AIFMD).
- **Key issues:** AIFMD: Liquidity management tools, delegation, loan originating funds and reporting.
- **Key messages:** AIFMD: ICMA's Asset Management and Investors Council ([AMIC](#)) in general welcomes the EC's targeted review of the AIFMD and supports the Council's and EP's proposals for recognising the critical risk management responsibilities that should remain with Alternative Investment Fund (AIF) managers. However, there are several outstanding concerns regarding delegation, shareholder loans, leverage cap limits for loan originating AIFs and proposals for duplicating existing UCITS reporting requirements. AMIC views the draft EP proposals, published in the summer of 2022, on a delegation equivalence regime, leveraged buy-out (LBO) operations, performance fees and undue costs, securities lending and ESG references as duplicative of other existing conduct, disclosure and sustainable finance rules.
- **Legislative stage:** EC's [AIFMD](#) review proposal of November 2021 is now being debated by the EP (AIFMD draft [report](#) and draft amendments available [here](#) and [here](#)) and the Council ([AIFMD](#) position) with a view to reaching an agreement towards the end of 2023.
- **ICMA engagement and materials:** Meetings with representatives of the EC, EP and Council. ICMA AMIC's [response](#) to the EC's proposals on AIFMD was published in January 2021.

**Contacts:** [Nicolette Moser](#) and [Irene Rey](#).

**Working Group/Lead Committee:** AMIC Risk Management Working Group/AMIC Committee.

**More information:** The Asset Management section of this Quarterly Report.

### EU Green Bond Standard

- **Regulatory initiative:** EU Regulation on European Green Bonds (EU GBS) [proposal](#).
- **Key issues:** The nature of the standard (voluntary vs. mandatory), extension of scope to other sustainable bonds, additional and entity-level transparency requirements, liability risks and legal costs, taxonomy alignment and usability, grandfathering, and external reviewers.
- **Key messages:** ICMA expresses strong support for a voluntary standard and full grandfathering of Technical Screening Criteria alignment to maintain the stability of the EU GBS designation. There are concerns regarding (i) mandatory requirements for all green use of proceeds bonds and environmental sustainability-linked bonds (which duplicate entity-level requirements under other EU sustainable finance regulation and create implementation challenges), (ii) increased legal liability and costs creating significant disincentives for issuers, (iii) Taxonomy usability issues, (iv) unintended barriers to financing of Taxonomy-aligned CapEx plans.
- **Legislative stage:** The EC's EU GBS proposed [text](#) of July 2021 is now being debated by the EP ([report](#)) and the Council ([position](#)) with a view to reaching an agreement on a final text possibly in early 2023.



- **Recent ICMA engagement and materials:** Meetings with representatives of the above-mentioned EU institutions. On 13 December 2022, ICMA released a [statement](#) with [the Executive Committee of the Principles](#) to express their concerns and recommendations, in particular on the extension of the Taxonomy disclosures to all green use-of-proceeds bonds. On 12 December 2022, ICMA also co-signed a joint [statement](#) on EU GBS with European Issuers and FESE, focused on the extension of mandatory requirements to other sustainable bonds and requirement of EU Prospectus Regulation compliant prospectus for the use of EU GBS label.

**Contacts:** [Nicholas Pfaff](#) and [Ozgur Altun](#).

**More information:** The Sustainable Finance section of this Quarterly Report.

### EU and UK Prospectus Regimes

- **Regulatory initiatives:**
  - [EU Listing Act package](#), which includes proposed changes to the EU Prospectus Regulation (as well as other legislation).
  - UK Prospectus Regime [review](#).
- **Key issue:** Appropriately calibrated EU and UK prospectus regimes allowing smooth and efficient cross-border bond issuance in Europe.
- **Key messages:** Wholesale bond markets in Europe function reasonably efficiently under the current EU and UK Prospectus Regulations, and this must be preserved. In relation to retail bond markets and SME bond markets, regulation is only one factor among various other commercial and market drivers. Constructing an appropriate regulatory regime would require a holistic consideration of various regulatory tools and incentives.
- **Legislative stage:**
  - EU: The EC [adopted](#) a [proposal for a Listing Act Regulation](#) on 7 December 2022 following its [consultation](#) of November 2021. It also published a [proposal](#) to repeal the EU Listing Directive and make certain other changes to rules relating to listing securities in the EU.
  - UK: The [FSMB](#) will introduce powers for HM Treasury to repeal the current UK Prospectus Regulation and introduce a new regime in line with the [outcome](#) of HM Treasury's [consultation](#) on the UK Prospectus Regulation. As part of the [Edinburgh Reforms](#), the UK Government published on 9 December 2022 a [Draft Statutory Instrument - Admissions to Trading and Public Offer Regime](#) which demonstrates how these new powers will be used.
- **ICMA engagement and materials:** In addition to bilateral engagement with relevant policy makers and regulators, ICMA, together with Allen & Overy LLP, is holding an [event](#) to discuss the forthcoming changes to the EU and UK prospectus and listings regimes and related regulatory developments on 7 February 2023. Speakers include the EC, ESMA, several EU regulators, HM Treasury and the FCA.

**Contact:** [Ruari Ewing](#).

**Working Group/Lead Committee:** Prospectus Regulation Working Group/Legal & Documentation Committee.

**More information:** The Primary Markets section of this Quarterly Report and ICMA's [Prospectuses webpage](#).



### UK PRIIPs regime

- **Regulatory initiative:** UK proposals to repeal and replace the UK's Packaged Retail Investment and Insurance Products (PRIIPs) disclosure regime.
- **Key issue:** How retail investors can make informed investment decisions.
- **Key messages:** There seem to be significant limitations to disclosure as a retail investor protection tool:
  - full (long-form) disclosure is necessary to satisfy the substantive requirement that all material information be disclosed but will not be read by typical retail investors;
  - short-form disclosure may not necessarily be read either and is often misunderstood.Consequently, long disclosure is necessary as a public transparency preliminary (and perhaps of use for a minority of retail investors) and should be complemented (for the majority of retail investors) by suitably regulated and supervised intermediation.
- **Legislative stage:** As part of the [Edinburgh Reforms](#), the UK Government is [consulting](#) on repealing the UK PRIIPs legislation and leaving the FCA to regulate on retail disclosure. In parallel, the FCA is [consulting](#) on various aspects of a future disclosure framework.
- **Related EU developments:** The EC is reportedly considering a review of the EU PRIIPs regime, as part of the expected Retail Investment Strategy, possibly to be published in the first half of 2023.
- **ICMA engagement and materials:** Various ICMA position papers and other materials can be found on ICMA's [PRIIPs KIDs webpage](#) and its [Retail Access to Bond Markets webpage](#).
- **Contact:** [Ruari Ewing](#).

**Working Group/Lead Committee:** [PRIIPs/MiFID II Product Governance Working Group](#).

**More information:** The Primary Markets section of this Quarterly Report.

### EU MAR market sounding regime

- **Regulatory initiative:** [EU Listing Act package](#), including proposed changes to the EU Market Abuse Regulation (MAR).
- **Key issue:** An appropriately calibrated market sounding regime helping borrowers to avoid undermining market confidence and resilience by launching and then cancelling bond issues due to terms that do not fit market dynamics.
- **Key messages:** The incidence of market sounding is substantially reduced since the introduction of the MAR sounding regime in 2016, as the provisions were felt to be too onerous (especially to the extent they were held out as mandatory even when sounding information that is not inside information). The regime should at least be confirmed as a just providing a safe harbour for sharing inside information within its defined limits.



- **Legislative stage:** The EC [adopted](#) a [proposed Listing Act Regulation](#), including amendments to the MAR sounding regime, on 7 December 2022 following its [consultation](#) of November 2021.
- **ICMA engagement and materials:** Various ICMA position responses and other papers can be found on ICMA's [Market Abuse Regulation \(MAR\) - Primary Market Aspects webpage](#).
- **Contact:** [Ruari Ewing](#).

**Working Group/Lead Committee:** [Primary Market Compliance Forum](#).

**More information:** The Primary Markets section of this Quarterly Report.

### EU Capital Requirement Regulation 3

- **Regulatory initiative:** Review of the EU Capital Requirements Regulation (CRR), the so-called CRR3 proposal, which is a part of a broader [review](#) of EU prudential rules for banks.
- **Key issue:** Capital treatment of Securities Financing Transactions (SFTs).
- **Key message:** ICMA advocates for the recognition of the short-term nature of SFT transactions in risk weighted assets (RWA) calculation under the standardised approach with respect to banks' counterparty credit risk exposures to non-banks.
- **Legislative stage:** The EC's CRR3 [proposal](#) of October 2021 is now being debated by the EP (draft [report](#) and draft [amendments](#)) and the Council with a view to agreeing on a final text, possibly in 2023.
- **ICMA engagement:** Outreach to key representatives in the Council and EP. ICMA published a briefing [note](#) in July 2022.

**Contacts:** [Andy Hill](#) and [Alexander Westphal](#).

**Working Group/Lead Committee:** European Repo and Collateral Committee (ERCC).

**More information:** The Repo and Collateral Markets section of this Quarterly Report.



### Wholesale Central Bank Digital Currency (wCBDC) consultation

- **Regulatory initiative:** European Central Bank (ECB) consultation on the potential use of new technologies such as Distributed Ledger Technology (DLT) for wholesale central bank money settlement.
- **Key issue:** Whether to introduce a wholesale digital euro (CBDC) for wholesale payments, securities settlement and collateral management or use the existing TARGET platform via a so-called “trigger solution”.
- **Key message:** ICMA advocates for a wholesale digital euro (CBDC) to support next-level automation, more efficient securities settlement and post-trade processing and increase the attractiveness of capital markets.
- **Policy development stage:** Following the consultation and a stakeholder meeting in September 2022, the ECB is considering next steps. On a related note, following its [call for evidence](#) in April 2022, the EC is planning to adopt a legislative proposal on a retail digital euro for the EU in the second quarter of 2023.
- **ICMA engagement and materials:** ICMA [responded](#) to the ECB consultation in June 2022, published a one-page [viewpoint on wholesale CBDC](#) and participated in an ECB stakeholder meeting in September 2022. ICMA also published [FAQs on DLT and blockchain in bond markets](#) in September 2022. ICMA continues to engage with the ECB and relevant stakeholders on the topic of DLT and wholesale CBDC in the EU and beyond.

**Contacts:** [Georgina Jarratt](#), [Gabriel Callsen](#) and [Rowan Varrall](#).

**Working Group/Lead Committee:** [DLT Bonds Working Group](#).

### EU and UK Money Market Funds Regulations

- **Regulatory initiatives:**
  - EU: [Review](#) of the EU Money Market Funds (MMF) Regulation.
  - UK: [Review](#) of the UK Money Market Funds (MMF) Regulation.
- **Key issues:** MMF market and fund composition, measures to enhance resilience and EU MMFs’ access to third country repo clearing.
- **Key messages:**
  - ICMA highlights the unintended consequences of changes to the composition of certain MMF structures. In addition, ICMA suggests a shift of focus towards strengthening the efficiency and resilience of the underlying market, noting ICMA’s [The European Commercial Paper and Certificates of Deposit Market White Paper](#) of September 2021.
  - ICMA also raises member concerns related to a provision in the EU and UK MMF Regulations which restricts the ability of regulated MMFs to access third-country CCPs for transacting cleared repo. ICMA suggests that authorities discuss reciprocal arrangements for repo clearing access for MMFs with their relevant international counterparts.
- **Legislative stage:**
  - EU: Following the EC’s [consultation](#) of April 2022, its report is expected in 2023 at the earliest.
  - UK: A consultation may be released following the joint FCA and Bank of England [Discussion Paper on the Resilience of MMFs](#) in May 2022.



- **International context:** On 10 November 2022, the Financial Stability Board (FSB) published a progress [report](#) on its work to enhance the resilience of non-bank financial intermediation (NBFIs), presenting its main findings to date as well as a number of recommendations. The report discusses, *inter alia*, the FSB's intention to conduct a stock-taking exercise by the end of 2023 on its jurisdictions' adopted and planned measures on Money Market Funds (MMFs).
- **ICMA engagement and recent materials:** Outreach to key representatives in EC, Council and EP. ICMA [responded](#) to the EC's consultation in May 2022. ICMA responded to the FCA and Bank of England Discussion Paper in July 2022.

**Contacts:** [Katie Kelly](#), [Nicolette Moser](#) and [Irene Rey](#) and, on repo clearing, [Andy Hill](#) and [Alexander Westphal](#).

**Working Group/Lead Committee:** AMIC Risk Management Working Group/AMIC Committee.