



Key ICMA regulatory policy messages



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EU and UK prospectus regimes: reviews

ICMA's key message is that the reasonably efficient functioning of wholesale bond markets in Europe under the current EU and UK Prospectus Regulations must be preserved. (See ICMA's [Prospectuses webpage](#).)

EU: The European Commission's (EC) [proposals](#) appear broadly consistent with ICMA's key [message](#). However: (i) the *status quo* should remain for fungible issuance exemptions; (ii) it should be clear that future financial statements can indeed be incorporated by reference into base prospectuses; (iii) incorporation by reference should not be mandatory; (iv) "tripartite" prospectuses should benefit from the same alleviations as other prospectuses; (v) there should not be restrictions (such as page limits and mandatory formats) on an issuer's ability to include material information in a prospectus; and (vi) it is important to avoid pre-empting at Level 1 the consideration of ESG disclosure requirements that have been adopted and are still coming into force at EU or other regional or national levels). The Council of EU Member States (Council) ([position](#) with [Annex](#)) and the European Parliament (EP) ([position](#)) are now discussing a final text, aiming at Q1 2024 to finalise it.

UK: The substantive intention of the UK [authorities](#) also appears broadly consistent with ICMA's key [messages](#) in wholesale bond markets. But many aspects will require clarification given the significant change in format being pursued. Generally, in relation to retail bond markets and small and medium sized (SME) enterprise bond markets, the prospectus regime is only one factor among various other regulatory, commercial and market drivers (internationally as well as domestically). Constructing an appropriate regulatory regime in this respect requires holistic consideration of various regulatory tools and incentives. The UK Government's Statutory Instrument for the Public Offer and Admissions to Trading Regulation (POATR) was laid as [draft](#) affirmative in Parliament on 27 November 2023. The POATR delegates authority to the UK Financial Conduct Authority (FCA) to make detailed rules about the new prospectus regime. The FCA embarked on an [engagement](#) process with market participants on the new rules in Q2 and Q3 2023. On 12 December, the FCA published a summary of the feedback received during its engagement process, ahead of an expected formal consultation on the new rules in 2024.



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EU Market Abuse Regulation (MAR): market sounding

ICMA is [advocating](#) for 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.

The incidence of market sounding is substantially reduced since the introduction of the MAR sounding regime in 2016, as the provisions were considered to be too onerous. The EC's [proposal](#) to confirm the regime as just providing a safe harbour for sharing inside information within its defined limits is welcome and should be adopted. The legislative process and references are the same as for the EU Prospectus Regulation review.



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EU and UK PRIIPs regimes

EU: The product scope of the regime should clearly exclude mainstream bonds. In this respect, the limited clarification proposal is incrementally welcome even though it seems unlikely to materially impact bond market practices and promote retail bond supply ([proposed draft Regulation](#)). The [EP](#) and Council are working on their positions on the draft and the discussions are expected to continue in 2024 (a vote in the EP's relevant committee is currently scheduled for 20 March 2024).

UK: The [proposed repeal](#) of the UK PRIIPs regime and seemingly intended exclusion of mainstream bonds from the [FCA's](#) replacement disclosure regime are both welcome. (This is because there seem to be significant limitations to disclosure as a retail investor protection tool and the PRIIPs regime has been a significant disincentive to retail bond availability.) The exclusion however needs to be clear and could track the existing exclusions from the UK's new Consumer Duty in this respect. As noted above regarding the EU and UK prospectus regimes, the PRIIPs Regulation is also only one factor requiring holistic consideration in relation to retail bond markets (see ICMA's [PRIIPs KIDs](#) and [Retail Access to Bond Markets](#) webpages for both the UK and EU materials). The UK Government's relevant draft Statutory Instrument as well as the FCA's feedback response are being reviewed and a further consultation is awaited.



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EU MiFID investor protection

In relation to the EC [proposals](#), ICMA is [advocating](#) for appropriately distinguishing vanilla, commoditised instruments from asset management industry products in calibrating the investor protection requirements. In particular: (i) it is important generally to avoid disrupting the institutional/wholesale bond markets; (ii) the product governance proposals are not expected to impact the current bond market ICMA1/ICMA2 approaches,



but the regime remains conceptually flawed regarding commoditised instruments such as bonds that should be excluded from the regime altogether; (iii) the underwriting & placing exemption from the proposed retail execution-only inducement ban is essential and welcome; (iv) the costs & charges proposals need correcting to clearly preserve the Capital Markets Recovery Package alleviations concerning professional investors and eligible counterparties; and (v) there is already substantive compliance with the proposed new marketing communication requirements, as the Prospectus Regulation already regulates advertisements. The [EP](#) and Council are working on their draft positions and the discussions are expected to continue in 2024 (a vote in the EP's relevant committee is currently scheduled for 20 March 2024). (See ICMA's [MiFID II/R in Primary Markets website](#)).



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EU CSDR review: mandatory buy-in regime

The adopted [revision](#) of the Central Securities Depositories Regulation (CSDR) removes the mandatory buy-in (MBI) requirement, but introduces a possibility to impose MBIs for certain financial instruments or categories of transactions by means of the EC's decision. [ICMA continues to caution](#) against imposing an MBI regime, particularly for bond markets. ICMA supports the adopted approach where 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). In the absence of a full deletion of MBI provisions, ICMA welcomes a number of improvements expected in the revised Regulation in order to make sure MBIs can only be implemented as a last resort measure after strict conditions are met and that explicit exemptions apply, eg for securities financing transactions (SFTs). The final text was [published](#) in the EU *Official Journal* on 27 December 2023 and the Regulation will enter into force on 16 January 2024. The European Securities and Markets Authority's (ESMA) consultations on implementing rules are expected to be published in 2024. In the meantime, on 15 December ESMA published a [consultation](#) paper reviewing the CSDR framework for cash penalties.



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EU MiFIR and UK wholesale markets reviews

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.

In the EU, after the [adoption](#) of the transparency and consolidated tape framework in October 2023 under the revised Markets in Financial Instruments Regulation (MiFIR), [ICMA will now encourage](#) the development of implementing legislation that supports these objectives. The most recent public version of the agreed text is



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available [here](#), final sign-offs are expected in the coming weeks (on 15 January 2024 by the [EP](#)) and official publication around March 2024. ESMA's consultations on most of the implementing rules are currently expected to be published in the first half of 2024. Furthermore, a link to the ESMA page for further timeline around the consolidated tape can be found [here](#).

In the UK, the FCA published on 20 December 2023 its [Policy Statement on a Consolidated Tape for Bonds, CP23/33](#), including a consultation, as well as the consultation ([CP23/32](#)): *Improving Transparency for Bond and Derivatives Markets*. This follows the [consultation](#) on the construct of a consolidated tape earlier in the year (see ICMA's [response](#)).



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T+1 settlement cycle

ICMA is actively involved in the discussions on a potential shortening of the settlement cycle which are under way in both the UK and the EU, triggered by the US decision to move to a T+1 settlement cycle in May 2024.

UK: ICMA is an active member of the UK's Accelerated Settlement Taskforce (AST) which was established by HMT in December 2023 to explore the case for T+1 in the UK. The aim of the AST is to produce an interim report on its initial finding by early 2024, followed by a consultation and set up of a technical group to further identify costs and benefits and work on a possible implementation process. A final report containing specific recommendations, is expected toward the end of 2024.

EU: On 15 December, ICMA responded to ESMA's call for evidence on shortening the settlement cycle. ICMA views a potential EU move to T+1 as a significant undertaking with wide-ranging implications, not only for the post-trade process, but also from a trading, market making liquidity and funding perspective. A move to T+1 would come with significant risks that need to be carefully considered, and that are exacerbated by the complexities and fragmentation of the EU market. In that sense, ICMA strongly [supports](#) ESMA's call for evidence with the aim of conducting a thorough assessment of all the expected costs and benefits of such move. It is important that the outcome of this process is, at this stage, considered open. Given the far-reaching and market-wide implications, it is critical that any decision in favour or against a further shortening of the settlement cycle is based on a solid understanding of costs and benefits.



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EU Alternative Investment Fund Managers Directive (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 European Parliament's [proposals](#) for recognising the critical risk management responsibilities that should remain with Alternative Investment Fund (AIF) managers. However, the final political agreement has several concerning new provisions on undue costs and fees as well as on fund



labels. The most recent public version of the agreed texts are available [here](#). The final sign offs are expected to be completed by early 2024 (by the EP on 5 February), which will be followed by an official publication and entry into law. ESMA's consultations on implementing rules are expected to start in the near future.



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EU Green Bond Standard (EU GBS)

ICMA [welcomes](#) the voluntary nature of [the EU GBS](#) and of wider disclosures templates for certain sustainable bonds (ie green use of proceeds bonds and environmental sustainability-linked bonds). ICMA will continue to make recommendations to ensure, among other things, that the proposed voluntary disclosure templates minimise duplication or inconsistencies across other EU sustainable finance legislation. The future uptake of the EU GBS will be closely correlated with the resolution of the considerable usability challenges of the EU Taxonomy identified in the extensive [report](#) of the EC's Platform on Sustainable Finance (PSF) as well as ICMA's earlier [report](#) (eg widespread data unavailability, heavy reliance on EU legislation and criteria (hindering the assessment of non-EU projects), and lack of assessment of proportionality for smaller projects and SMEs). (See ICMA's previous [papers](#).) The Regulation establishing EU GBS was officially [published](#) on 30 November 2023, entered into force on 21 December 2023 and will apply as of 21 December 2024. Implementing measures need to be prepared by the European Supervisory Authorities (ESAs) and the European Commission (EC) in 2024 or 2025. Various review reports are scheduled in the period between end 2024 and 2028.



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The Sustainable Finance Disclosure Regulation (SFDR)

ICMA considers that the SFDR currently fails to fulfil its primary objectives of investor protection and helping sufficiently to channel capital towards sustainability. This is for various reasons, including use of disclosures as labelling, complexity and overload of disclosure requirements, data unavailability, lack of clarity and minimum standards in key regulatory concepts. Also, while the EC and the ESAs have provided some additional guidance, there is still room to enhance the consistency between different pieces of EU sustainable finance legislation.

As for the future of SFDR disclosures, ICMA emphasises the need to shorten, streamline, clarify and make them focused on the most material issues. The disclosure requirements should also take into account data availability from international standards such as the ISSB or other taxonomies. ICMA also supports uniform disclosures that could apply to all funds regardless of sustainability claims. For example, all funds could disclose their exposure to companies with credible transition plans.

Regarding the potential establishment of a categorisation system for sustainable financial products, ICMA strongly supports an EU official categorisation system, even though there are divergent views on how to achieve this. In any case, introduction of labels based on investment objectives and intentions should, to the extent possible, leverage the existing requirements and processes that have been resource intensive to



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implement. ICMA also underlines its support for several specific fund categories (A - sustainability solutions, B - products meeting credible sustainability standards or adhering to a specific theme, and D - transition-focused) and has presented some high-level recommendations and principles to guide the process of designing labels, in particular the need to avoid international fragmentation.

ICMA submitted its [response](#) to the EC [consultation](#) on the SFDR on 13 December 2023.



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Wholesale Central Bank Digital Currency (wCBDC)

ICMA [advocates](#) for a [wholesale digital euro](#) (wCBDC) to unlock the benefits of DLT-based securities at scale, enabling next-level automation, more efficient securities settlement and post-trade processing, and increasing the attractiveness of capital markets as a source of funding for the real economy.



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