



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 continues to caution 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). In the absence of a full deletion of MBI provisions ICMA advocates for a number of improvements 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).
- **Legislative stage:** The Council of EU Member States ([Council](#)) and the European Parliament ([EP](#)) have both finalised their respective positions on the European Commission's (EC) CSDR review [proposal](#) and are about to enter into trilogue discussions to agree on a final compromise text. Trilogues are expected to be finalised by the end of the Swedish Presidency of the Council in June 2023.
- **UK related developments:** In 2020, 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. ICMA is a member of the UK Accelerated Settlement Taskforce.

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. 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 already been removed from the scope of UK MiFIR reporting.
- **Legislative stage:**
 - EU: The Council and the EP have both finalised their respective positions ([MiFIR/MiFID](#) and [MiFIR/ MiFID](#)) on the EC's MiFIR review [proposal](#) of November 2021 and are about to enter into trilogue discussions to agree on a final compromise text. Trilogues are expected to be finalised by the end of the Swedish Presidency of the Council in June 2023.
 - 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. Reportedly, the FCA is planning to publish consultations on a consolidated tape in June 2023 and on fixed income and derivatives transparency requirements in October 2023.



- **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: [Andy Hill](#) and [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 this Quarterly Report.

EU Alternative Investment Fund Managers Directive

- **Regulatory initiative:** [Review](#) of EU Alternative Investment Fund Managers Directive (AIFMD).
- **Key issues:** Liquidity management tools, delegation, loan originating funds and reporting.
- **Key messages:** 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 loan originating AIFs and newly introduced provisions on undue costs and fees as well as on fund labels.
- **Legislative stage:** The Council and the EP have both finalised their respective positions ([the Council](#) and [the EP](#)) on the EC's AIFMD review [proposal](#) of November 2021 and have now entered into trilogue negotiations with a view to reaching an agreement on a final compromise text in the first half 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.



EU Green Bond Standard

- **Regulatory initiative:** The EU Regulation on European Green Bonds (EU GBS).
- **Key issues:** The voluntary nature of the EU GBS and of wider sustainable bonds disclosures, up to 15% flexibility pocket for certain activities (eg activities not yet covered by the EU Taxonomy technical screening criteria (TSC)), grandfathering, and registration and supervision of external reviewers for EU GBS.
- **Key messages:** ICMA welcomes the voluntary nature of the EU GBS and of wider disclosures templates for sustainable 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).
- **Legislative stage:** On 28 February 2023, the EU institutions reached a [provisional agreement](#) on the EU GBS Regulation (see the EC's initial [proposal](#) of July 2021, as well as [the Council's](#) and [the EP's](#) negotiating positions). The final text of the Regulation is expected to be published within the next few months.
- **ICMA engagement and materials:** On 1 March 2023, ICMA [published](#) a statement on the EU GBS provisional agreement (see previous ICMA's [position papers](#)). ICMA will continue to engage with EU institutions and national competent authorities, who will now focus on drafting implementing legislation.

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 (part of the wider [CMU clearing, insolvency and listing package](#)), including proposed changes to the EU Prospectus Regulation as well as to other legislation.
 - UK: Prospectus regime replacement (part of the UK's [Edinburgh Reforms](#)).
- **Key issue:** Appropriately calibrating the EU and UK prospectus regimes to allow smooth and efficient cross-border bond issuance in Europe.
- **Key messages:** The reasonably efficient functioning of wholesale bond markets in Europe under the current EU and UK Prospectus Regulations must be preserved.
 - EU: Such preservation seems to be the case under the EC's proposals. 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 and (v) there should not be restrictions (such as page limits and mandatory formats) on an issuers’ ability to include material information in a prospectus.

- UK: Whilst such preservation also seems to be the substantive intention of the UK authorities, many aspects will require clarification given the significant change in format being pursued.

Generally, in relation to retail bond markets and SME 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.

- **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. The EC proposals are now subject to review by the Council and the EP.

- 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 submitted:

- EU: on 13 March, [comments](#) on the EC’s proposals;

- UK: on 14 February, [comments](#) on the above Draft Statutory Instrument (including in terms of expectations concerning underlying FCA rules).

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:** 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.
- **Legislative stage:** As part of the [Edinburgh Reforms](#), the UK Government [consulted](#) on repealing the UK PRIIPs legislation and leaving the FCA to regulate on retail disclosure. In parallel, the FCA issued a [discussion paper](#) 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 materials:** Various ICMA position papers and other materials can be found on ICMA's [PRIIPs KIDs webpage](#) (including ICMA's [response](#) to the UK Government consultation and ICMA's [response](#) to the FCA's discussion paper) 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 (part of the wider [CMU clearing, insolvency and listing 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 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.

- **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. The EC proposals are now subject to review by the Council and the EP.
- **ICMA materials:** Various ICMA position responses and other papers can be found on ICMA's [Market Abuse Regulation \(MAR\) - Primary Market Aspects webpage](#), including ICMA's 13 March [comments](#) on the EC's proposals.

Contact: [Ruari Ewing](#).

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

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

EU Capital Requirements 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 Council and the EP have both finalised their respective positions ([the Council](#) and [the EP](#)) on the EC's CRR3 [proposal](#) of October 2021 and have entered into trilogue discussions to agree on a final compromise text, over the coming months.
- **ICMA engagement and materials:** 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 Council (ERCC) Committee.

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



Wholesale Central Bank Digital Currency (wCBDC)

- **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 as a source of funding for the real economy.
- **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 expected 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 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: [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.