

FINANCIAL REGULATION WEEKLY BULLETIN

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

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Slaughter and May
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GENERAL //

1 EUROPEAN BANKING AUTHORITY

- 1.1 **Own funds, liquidity requirements, and recovery plans under MiCA - EBA publishes final reports on draft RTS and guidelines - 13 June 2024** - The European Banking Authority (EBA) has published final reports on own funds, liquidity requirements and recovery plans under the Regulation on Markets in Cryptoassets ((EU) 2023/1114) (MiCA).

The EBA has also published a final report on draft guidelines on recovery plans, including their format and content (EBA/GL/2024/07).

[EBA final report: Guidelines on recovery plans under Articles 46 and 55 of MiCA \(EBA/GL/2024/07\)](#)

[EBA final report: Draft RTS on adjustment of own funds requirements and stress testing of issuers of ARTs and EMTs \(EBA/RTS/2024/08\)](#)

[EBA final report: Draft RTS to specify the procedure and timeframe to adjust the own funds requirements for issuers of significant ARTs or of EMTs subject to such requirements \(EBA/RTS/2024/09\)](#)

[EBA final report: Draft RTS to further specify the liquidity requirements of the reserve of assets under Article 36\(4\) of MiCA \(EBA/RTS/2024/10\)](#)

[EBA final report: Draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38\(5\) of MiCA \(EBA/RTS/2024/11\)](#)

[EBA final report: Draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45\(7\)\(b\) of MiCA \(EBA/RTS/2024/12\)](#)

[Press release](#)

BANKING AND FINANCE //

2 FINANCIAL CONDUCT AUTHORITY

- 2.1 **Mortgage Charter - FCA publishes new webpage - 11 June 2024** - The FCA has published a webpage setting out the latest data from firms who have signed up to the Government's Mortgage Charter (the Charter). The Charter was announced in June 2023 to provide additional support measures for residential mortgage holders who are concerned about higher interest rates. The FCA also introduced new rules in the Mortgage Conduct of Business sourcebook (MCOB) enabling firms to allow a customer to make reduced capital payments for up to six months or to

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reverse a term extension within six months of it taking effect, without undergoing an affordability assessment.

The Charter has 49 signatories, representing around 90% of the mortgage market. The FCA will publish data relating to the Charter quarterly. It will also continue to monitor the mortgage market closely, including through market and consumer level data and firm engagement.

[Webpage](#)

3 RECENT CASES

3.1 *AF Kopp Limited v HSBC UK Bank PLC*, [2024] EWHC 1004 (Ch), 3 May 2024

Breach of duty - Business banking - Reasonableness test - UCTA

The High Court has dismissed an application to strike out a claim by AF Kopp Limited (the respondent) against HSBC UK Bank PLC (HSBC). The court also dismissed an application for summary judgment on whether a contractual exclusion of indirect and consequential loss “including” loss of profit also excluded losses resulting from the respondent’s liability to its third party clients for their loss of profits.

The respondent had sought damages against HSBC for breach of contract and/or breach of a duty of care after its domestic and foreign currency business accounts were suspended following a safeguarding review. The relationship was governed by HSBC’s business banking terms and conditions, including a clause excluding liability for “indirect or consequential loss (including lost business, data, profits or losses resulting from third party claims) even if it was foreseeable”. HSBC argued that the clause satisfied the reasonableness requirement under the Unfair Contract Terms Act 1977 (UCTA). The judge applied the test in *Hadley v Baxendale* on the remoteness of damages for breach of contract.

[AF Kopp Limited v HSBC UK Bank PLC](#), [2024] EWHC 1004 (Ch)

SECURITIES AND MARKETS //

4 EUROPEAN COMMISSION

4.1 **BMR and extension of power to adopt delegated acts - European Commission publishes report - 12 June 2024** - The European Commission has published a report (COM(2024) 244 final), addressed to the European Parliament and the Council of the EU, on the delegation of power to adopt delegated acts conferred on it under the Benchmarks Regulation ((EU) 2016/1011) (BMR).

The power is conferred on the Commission for a five-year period, which can be extended for further five-year periods unless the Parliament or the Council objects.

The report identifies the delegated acts that the Commission has made under the BMR in exercise of this power, to which neither the Parliament nor the Council objected. It also

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identifies powers that have not been exercised yet and explains the reasons for this. As a result of this, the Commission considers that there is a need for an extension of the delegation of power for a further five-year period.

[European Commission report: the delegation of power to adopt delegated acts conferred on the Commission pursuant to BMR on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation \(EU\) No 596/2014 \(COM\(2024\)244\)](#)

[Webpage](#)

- 4.2 MiFIR and OTC derivatives identifying reference data - European Commission launches consultation on draft Delegated Regulation - 12 June 2024** - The European Commission has published for consultation a draft Delegated Regulation supplementing the Markets in Financial Instruments Regulation (600/2014) (MiFIR) and identifying reference data to be used for the purposes of transparency requirements for OTC derivatives. A draft Annex has been published separately. Among other things, the draft Delegated Regulation includes a deferred date of application, to allow enough time for revising the ISIN template and implementing the necessary adjustments to IT systems, while taking into consideration the timeline prescribed by the MiFIR review for the launch of the OTC derivatives consolidated tape tender process.

Comments can be made on the draft Delegated Regulation until 12 July 2024.

The draft Delegated Regulation will enter into force 20 days after its publication in the Official Journal of the European Union, and will apply from 1 September 2025.

[Draft Delegated Regulation supplementing MiFIR as regards OTC derivatives identifying reference data to used for the purposes of the transparency requirements](#)

[Annex](#)

[Webpage](#)

ASSET MANAGEMENT //

5 COUNCIL OF THE EUROPEAN UNION

- 5.1 Negotiating mandate on retail investment package - agreed by Council of the EU - 12 June 2024** - The Council of the European Union has announced that it has agreed its negotiating position on the retail investment package consisting of the proposed Directive on retail investment protection (referred to as an "Omnibus Directive") and the proposed Regulation amending the PRIIPs Regulation (1286/2014).

The main changes proposed by the Council relate to inducements and value for money. In particular, the Council has decided to remove the proposed ban on inducements received for

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execution-only sales, while strengthening accompanying safeguards. It has also introduced a new concept of “value for money”. The Council agrees that ESMA and EIOPA should develop EU supervisory benchmarks to help national supervisors identify investment products that fail to offer value for money.

The legal texts (dated 7 June 2024) of the Council's negotiating mandate on the proposed Directive and the proposed Regulation have also been published. The Council's agreement paves the way for the start of inter-institutional negotiations.

[Proposal for a Regulation amending Regulation \(EU\) No 1286/2014 as regards the modernisation of the key information document \(2023/0166\(COD\)\)](#)

[Proposal for a Directive amending Directives \(EU\) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and \(EU\) 2016/97 as regards the Union retail investor protection rules \(2023/0167\(COD\)\)](#)

[Press release](#)

INSURANCE //

6 THE LABOUR PARTY

- 6.1 **Pensions review and 'wealth creation' - Labour launches manifesto - 13 June 2024** - In advance of the general election on 4 July 2024, the Labour Party has published its manifesto, 'Change,' which sets out a commitment to establish a National Wealth Fund. Labour will also act to increase investment from pension funds in UK markets and undertake a review of the pensions landscape to consider what further steps are needed to improve pension outcomes and increase investment in UK markets.

[Labour manifesto](#)

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This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London. The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element. We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website [here](#).

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