

Bank of England PRA

Appendix 15: Draft amendments to statement of policy – Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU

Statement of policy

April 2024

Draft for consultation



Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU

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1: Introduction

1.1 This joint Bank of England (Bank) and Prudential Regulation Authority (PRA) Statement of policy (SoP) sets out the Bank's and PRA's approach to EU Guidelines and Recommendations in light of the UK's withdrawal from the European Union (EU) and the end of the transition period.

1.2 This SoP is relevant to all PRA-regulated firms, investment firms in scope of the UK resolution regime and all Bank-regulated financial market infrastructure firms (FMIs) operating, or intending to operate, in the UK. Firms and FMIs that become authorised or recognised to provide services in the UK on or after the end of the transition period (including firms and FMIs in the temporary permission or recognition regimes that previously provided services in the UK via EU rights, such as passporting) will be subject to these expectations.

1.3 The UK's membership of the EU came to an end on Friday 31 January 2020. The UK entered into a transition period lasting until 11pm on Thursday 31 December 2020 (which is defined in UK law as 'IP completion day'), during which EU law continued to apply to the UK.

1.4 HM Treasury has used its powers under the European Union (Withdrawal) Act 2018 (the 'Act') to ensure that the UK would continue to have a functioning financial services regulatory regime after the end of the transition period. To do this, it has ensured that EU-derived laws and rules that were in place in the UK before IP completion day continue to apply in the UK to the extent that they remain operable. Changes have only been made to those laws or rules that would otherwise not operate appropriately. This provides continuity and certainty for firms and FMIs after the end of the transition period.

1.5 The European Supervisory Authorities (ESAs) have powers to issue Guidelines and Recommendations. European regulators, PRA-regulated firms, and FMIs are currently under an obligation to 'make every effort to comply' with them. National authorities have the option of not complying, but must inform the relevant ESA of this, stating their reasons. There is currently no exhaustive list of Guidelines and Recommendations maintained by the ESAs but they are generally available on the relevant authority's website.

1.6 In addition, the ESAs produce other non-legislative material. This includes publishing Q&As to facilitate common understanding of EU regulatory provisions. ESA Q&As have no binding force. The Bank and PRA considers that ESA Q&As may continue to be relevant, and that the Bank and PRA may have regard to these as appropriate.

1.7 The Bank and/or PRA may issue further statements in relation to this topic, including in relation to any EU materials issued after the end of the transition period.

2: Bank and PRA expectations for firms and FMIs

2.1 Guidelines and Recommendations are not in scope of the Act, and from the end of the transition period HM Treasury has deleted the obligation to make every effort to comply with them.¹ However, the Bank and PRA expect firms and FMIs to continue to make every effort to comply existing EU Guidelines and Recommendations that are applicable as at the end of the transition period, to the extent that these remain relevant. The Bank and PRA do not expect firms and FMIs to comply with changes to existing Guidelines and Recommendations, and new Guidelines and Recommendations issued by EU authorities after the end of the transition period. The Bank and PRA will, however, consider their approach to such developments and other non-legislative EU material, and may issue further statements in relation to them.

2.2 Appendices 1 to 3 contain lists of Guidelines and Recommendations that were complied with in the UK before the end of the transition period. The Bank and PRA expect firms and FMIs to continue to comply with these Guidelines and Recommendations as they are at the end of the transition period, to the extent that they are addressed directly to firms and FMIs, and remain relevant.

2.3 The lists in Appendices 1 to 3 are not exhaustive. For example, Guidelines and Recommendations that were made by the predecessor committees² to the ESAs are not included on this list but firms and FMIs should continue, where relevant, to comply with them, unless they have been revoked or superseded by later Guidelines and Recommendations, or by other legislation.

2.4 The UK authorities have previously communicated that they have submitted explanations relating to non-compliance or partial non-compliance with the Guidelines set out in Appendix 4. The Bank and the PRA do not expect firms and FMIs to comply with these Guidelines in line with the UK authorities' explanation. Where the UK authorities have explained partial non-compliance, the Bank and PRA expect firms and FMIs to continue to comply with these Guidelines in line with the UK authorities' explanation, and to the extent they remain relevant after the end of the transition period.

2.5 Where aspects of Guidelines and Recommendations are addressed to competent authorities, the Bank and PRA expect firms and FMIs to continue to comply with any

¹ 'Regulations relating to the European Supervisory Authorities and the European Systemic Risk Board', October 2018: www.gov.uk/government/publications/regulations-relating-to-the-european-supervisory-authorities-and-the-european-systemic-risk-board/regulations-relating-to-the-european-supervisory-authorities-and-the-european-systemic-risk-board.

² The Committees of European Banking Supervisors (CEBS), European Insurance and Occupational Pensions Supervisors (CEIOPS), and European Securities Regulators (CESR).

associated rules or expectations produced by the Bank or PRA that implement those Guidelines and Recommendations.

2.6 The Bank and PRA expects firms and FMIs to make every effort to continue to comply with EU Guidelines and Recommendations as they are applicable as at the end of the transition period, to the extent that these remain relevant. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations issued by EU authorities after the end of the transition period will not automatically apply. The Bank and PRA, therefore, do not expect firms to comply with changes to existing Guidelines and Recommendations made by EU authorities after the end of the transition period. The Bank and PRA will consider their approach to such developments and other non-legislative EU material, and may issue further statements in relation to them.

2.7 In order to aid firms and FMIs, the Bank and the PRA have republished copies of EU Guidelines and Recommendations applicable as at the end of the transition period, which firms and FMIs are expected to comply with to the extent they remain relevant. The Bank and PRA have not made amendments to the content of individual Guidelines and Recommendations ahead of the end of the transition period. Links to relevant EU Guidelines and Recommendations in place as at the end of the transition period can be found in the appendices of this SoP. The Bank and PRA acknowledge the following European Supervisory Authorities (ESAs), as relevant, as the sources of these materials:

- (i) EIOPA - European Insurance and Occupational Pensions Authority;
- (ii) EBA - European Banking Authority;
- (iii) ESMA - European Securities and Markets Authority.

2.8 The Bank and PRA refer users to the ESAs' legal notices on the following webpages:

- (i) <https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx>
- (ii) <https://eba.europa.eu/legal-notice>
- (iii) <https://www.esma.europa.eu/legal-notice>

2.9 Some Guidelines and Recommendations may no longer be relevant for the purposes of this SoP after the end of the transition period. Examples include:

- where Guidelines and Recommendations relate to rights or obligations which are being revoked by HM Treasury, such as passporting, supervisory college processes and inter-EU authority cooperation processes;
- where Guidelines and Recommendations are based on an underlying regulatory requirement that has not formed part of retained EU law at the end of the transition period;

- where they concern an area within an EU Directive where Member State authorities are given the discretion to decide how or whether to implement a requirement, and that discretion has been exercised at UK level; and
- where, in the future, the Bank and/or PRA confirms that specific Guidelines or Recommendations no longer need to be complied with in the UK, or that they have been fully, or in part, integrated into a separate UK policy.

2.10 Where the Bank and/or PRA have confirmed through other policy statements that specific Guidelines or Recommendations are no longer relevant and no longer need to be complied with in the UK, these are shown as struck through in the relevant Appendix.

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3: Key onshoring changes relevant to the interpretation of non-binding EU materials

3.1 Where Guidelines and Recommendations, applicable as the end of the transition period, remain relevant, firms and FMIs should interpret them in light of the UK's withdrawal from the EU and the end of the transition period, and onshoring changes that are being made to ensure that the UK regulatory framework operates appropriately. Firms and FMIs should also interpret the Guidelines and Recommendations in light of the use of any relevant transitional relief.

3.2 Below is a non-exhaustive list of onshoring changes that have been made by Government under the Act, which are relevant to firms' and FMIs' interpretation of non-binding EU materials. However, transitional relief granted by the Bank or PRA may affect the time that some of these changes take effect.

- EEA firms, FMIs and funds that were able to provide services into the UK through the use of passporting will need to seek authorisation or recognition to continue to be able to do so after the end of the transition period. Therefore, any reference to passporting or processes associated with passporting is redundant. However, HM Treasury has legislated to allow EEA firms, FMIs, and funds to continue their activities in the UK for a limited period after the end of the transition period. References to third country firms and FMIs should be interpreted to include firms and FMIs that have temporary permission or recognition, as appropriate.
- Roles and responsibilities carried out by EU authorities are being reallocated to the most appropriate UK authority, to the extent that they remain relevant when the UK has left the EU. For example, HM Treasury has transferred the responsibility for central counterparty (CCP) recognition to the Bank of England, and has transferred the European Insurance and Occupational Pensions Authority (EIOPA) function of declaring an 'exceptional adverse situation' to the PRA. Some EU roles that exist to support the EU single market will be deleted. Firms and FMIs should interpret references to EU functions with reference to the new UK authority taking on that function. References to functions that are being deleted in Government onshoring legislation can be ignored.
- The specific legal obligations for UK regulators to share information and co-operate with EU regulators that existed before the end of the transition period will fall away. UK regulators will, however, be able to rely on general statutory provisions that support supervisory co-operation with third country authorities. Firms and FMIs should, therefore, interpret references to such legal obligations in this light, but note that the

Bank and PRA will continue to co-operate with international authorities and regulators, including EU authorities, in pursuit of their statutory objectives.

- The treatment of EEA firms and assets for the purposes of capital and liquidity requirements will, in most cases, be aligned with the treatment of third country firms and assets. Therefore, firms should interpret any Guidelines or Recommendations providing for preferential treatment of EEA assets in light of that approach. Transitional relief and some specific equivalence decisions may be relevant.
- Where capital or liquidity consolidation was only required at the EEA level previously, this will be required at the UK level after the end of the transition period. For insurance groups, firm-specific consolidation waivers remain available. Therefore, firms should interpret any reference to the EEA consolidated group as if it was to the UK consolidated group. Transitional relief and some specific equivalence decisions may be relevant.

3.3 The Bank and PRA expect firms and FMIs to read and interpret existing EU Guidelines and Recommendations in light of any relevant onshoring changes to the legislation to which they relate. More information on the Bank's and PRA's general approach to amending financial services legislation is available in CP25/18 – The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018.³

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³ Available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/cp2518.pdf?la=en&hash=B43B7D866F8BCC23423B276C5A0669C61396727D>.

Appendices

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Appendix 1: Non-exhaustive list of EIOPA Guidelines that are complied with in the UK

Links to EIOPA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by EIOPA after the end of the transition period are not relevant for the purposes of this SoP. The Bank and PRA acknowledge EIOPA as the source of these materials.

Solvency II

- [Guidelines on the supervision of branches of third-country insurance undertakings](#)
- [Guidelines on the Extension of the Recovery Period](#)
- [Guidelines on the exchange of information within colleges](#)
- [Guidelines on the implementation of the long-term guarantee measures](#)
- ~~[Guidelines on methods for determining the market shares for reporting](#)~~
- ~~[Guidelines on reporting and public disclosure](#)~~
- [Guidelines on the recognition and valuation of assets and liabilities other than technical provisions](#)
- [Guidelines on System of Governance](#)
- [Guidelines on Own Risk Solvency Assessment](#)
- [Guidelines on ancillary own funds](#)
- [Guidelines on application of outwards reinsurance](#)
- [Guidelines on the application of life underwriting risk module](#)
- [Guidelines on basis risk](#)
- [Guidelines on classification of own funds](#)
- [Guidelines on contract boundaries](#)
- [Guidelines on group solvency](#)

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- [Guidelines on health catastrophe risk sub-module](#)
 - [Guidelines on look-through approach](#)
 - [Guidelines on operational functioning of colleges](#)
 - [Guidelines on ring-fenced funds](#)
 - [Guidelines on supervisory review process](#)
 - [Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes](#)
 - [Guidelines on the methodology for equivalence assessments by national supervisory authorities under Solvency II](#)
 - [Guidelines on the treatment of market and counterparty risk exposures in the standard formula](#)
 - [Guidelines on the use of internal models](#)
 - [Guidelines on the treatment of related undertakings, including participations](#)
 - [Guidelines on undertaking-specific parameters](#)
 - [Guidelines on valuation of technical provisions](#)

Appendix 2: Non-exhaustive list of EBA Guidelines and Recommendations that are complied with in the UK

Links to EBA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by the EBA after the end of the transition period are not relevant for the purposes of this SoP. The Bank and PRA acknowledge EBA as the source of these materials.

Bank Recovery and Resolution Directive (BRRD)

- [Guidelines on the rate of conversion of debt to equity in bail-in](#)
- [Guidelines on the treatment of shareholders in bail-in](#)
- [Guidelines on treatment of liabilities in bail-in](#)
- Guidelines on how information should be provided under the BRRD
- Guidelines on Business Reorganisation Plans
- Guidelines specifying the various conditions for the provision of group financial support
- Guidelines on simplified obligations
- Guidelines on the sale of business tool
- Guidelines on the asset separation tool
- Guidelines on necessary services
- Guidelines on failing or likely to fail
- Guidelines on early intervention triggers
- Guidelines on recovery plans indicators
- Guidelines on measures to reduce or remove impediments to resolvability
- Guidelines on the types of tests, reviews or exercises that may lead to support measures

- Guidelines on the range of scenarios to be used in recovery plans

Capital Requirements Directive (CRD)

- Guidelines on Outsourcing Arrangements
- Guidelines on internal governance (revised)
- Recommendation on the equivalence of confidentiality regimes
- ~~Guidelines on criteria to assess other systemically important institutions (O-SIIs)~~
- Guidelines on the data collection exercise regarding high earners
- Guidelines on the remuneration benchmarking exercise
- Guidelines on the applicable notional discount rate for variable remuneration
- Recommendations on the coverage of entities in a group recovery plan
- Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body
- Guidelines on common procedures and methodology for Supervisory review and Evaluation Process (SREP)
- ~~Guidelines on the management of interest rate risk arising from non-trading activities (IRRBB)~~
- ~~Guidelines on the 2020 pragmatic supervisory review and evaluation process (SREP) in light of the COVID-19 crisis~~
- Recommendation amending EBA/REC/2015/01 on the equivalence of confidentiality regimes
- Guidelines on ICT and security risk management

Capital Requirements Regulation (CRR)

- ~~Guidelines on disclosure requirements under Part Eight of Regulation (EU)~~
- ~~Guidelines on the LCR disclosure~~
- ~~Guidelines on corrections to modified duration for debt instruments~~
- Guidelines on implicit support for securitisation transactions

- Guidelines on limits on exposures to shadow banking
- Guidelines on materiality, proprietary and confidentiality and on disclosure frequency
- Guidelines on significant risk transfer (SRT) for securitisation transactions
- Guidelines on disclosure of encumbered and unencumbered assets
- Guidelines on Connected Clients
- Guidelines on the methodology to determine the weighted average maturity of contractual payments due under the tranche of a securitisation transaction

Financial Conglomerates Directive (FICOD)

- ~~Joint Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates~~

EBA Regulation Article 16

- ~~Guidelines on supervision of significant branches~~
- ~~Recommendations on outsourcing to cloud service providers~~
- Guidelines on ICT Risk Assessment under the SREP
- Guidelines on credit risk management practices and accounting for expected credit losses
- Guidelines on ICAAP and ILAAP information
- ~~Guidelines on communication between competent authorities and auditors~~
- Guidelines on harmonised definitions and templates for funding plans of credit institutions
- Recommendation on the use of Legal Entity Identifier (LEI)
- Guidelines on institutions' stress testing
- ~~Guidelines on product oversight and governance arrangements for retail banking products~~

IFRS 9

- Guidelines on disclosure requirements of IFRS 9 transitional arrangements

Deposit Guarantee Scheme Directive (DGSD)

- ~~Guidelines on stress tests of deposit guarantee schemes~~

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- ~~Guidelines on cooperation agreements between deposit guarantee schemes~~
 - ~~Guidelines on methods for calculating contributions to Deposit Guarantee Schemes (DGSs)~~
 - ~~Guidelines on payment commitments~~

Draft for consultation

Appendix 3: Non-exhaustive list of ESMA Guidelines that are complied with in the UK, excluding those that apply only to FCA-regulated firms

Links to ESMA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by ESMA after the end of the transition period are not relevant for the purposes of this SoP. The Bank and PRA acknowledge ESMA as the source of these materials.

Central Securities Depositories Regulation (CSDR)

- Guidelines on participant default rules and procedures under CSDR
- Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State
- Guidelines on the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place
- Guidelines on Internalised Settlement Reporting under Article 9 of CSDR
- Guidelines on Cooperation between Authorities under articles 17 and 23 of CSDR
- Guidelines on Access by a CSD to the Transaction Feeds of a CCP or of a Trading Venue under CSDR

European Market Infrastructure Regulation (EMIR)

- Guidelines and Recommendations regarding written agreements between members of CCP colleges
- Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties
- Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements
- Guidelines on CCP conflicts of interest management

- Guidelines on Anti-procyclicality Margin Measures for Central Counterparties

Markets in Financial Instruments Directive II (MiFID II)

- Joint ESMA and EBA guidelines on the assessment of suitability of members of the management body and key function holders
- Guidelines on certain aspects of the MiFID II suitability requirements

Draft for consultation

Appendix 4: Individual Guidelines where explanation has been provided that the UK does not intend to comply in whole or in part

Links to EBA Guidelines and Recommendations, in place as at the end of the transition period, where explanation has been provided are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by the EBA after the end of the transition period are not relevant for the purposes of this SoP. The Bank and PRA acknowledge the EBA as the source of these materials.

Capital Requirements Directive (CRD)

- Guidelines on sound remuneration policies⁴
- Guidelines for the identification of global systemically important institutions (G-SIIs)⁵

Prudential Assessment of Financial Sector Acquisitions Directive⁶

- Joint Guidelines for the prudential assessment of acquisitions of qualifying holdings⁷

EBA Regulation Article 16

- Guidelines on Covid-19 measures reporting and disclosure⁸

⁴ For overview of UK explanation see:

<https://eba.europa.eu/sites/default/documents/files/documents/10180/1314839/8b8ad3a4-30b6-46c2-a239-28608aeab219/EBA%20Guideline%202015%2022-Compliance%20TableGLs%20on%20sound%20remuneration%20policies.pdf>.

⁵ For overview of UK explanation see:

<https://eba.europa.eu/sites/default/documents/files/documents/10180/1388592/554034f8-f9fa-4fe6-9892-0a69bed6483e/EBA%20GL%202016%2001-Compliance%20Table-Guidelines%20for%20identification%20of%20G-SIIs.pdf>.

⁶ 2007/44/EC.

⁷ For overview of UK explanation see:

https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2016/JC-GL-2016-01/933372/JC%20GL%202017%2027%20%28Appendix%201%20-%20Qualifying%20Holdings%20GL%20-%20Compliance%20table_final%2024_09_2020.pdf.

⁸ For overview of UK explanation see:

https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020/Guidelines%20on%20