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ISLA

Securities Lending Regulatory Horizon Scanner

February 2024

Contents

01 Introduction

02 Securities Lending Regulatory Horizon Scanner

A. Securities Markets & Infrastructure
B. Sustainability
C. Asset Management
D. Digital Regulation
E. Prudential Regulation
F. Retail Developments
G. Tax Developments
H. Other Developments

03 Glossary

04 Index

INTRODUCTION

About the Securities Lending Regulatory Horizon Scanner

This 2024 Securities Lending Horizon Scanner provides a high-level overview of key ongoing and expected EU and UK regulatory developments that are likely to have an impact on the industry in the EU and UK over approximately the next 2 years.

Developments are grouped thematically. There are also spotlight sections on US developments relating to reporting of stock loans and short selling as well as certain EU tax-related developments.

Further Information

Further background information and commentary on many of these developments, as well as an overview of the EU legislative process, is available on the Clifford Chance Financial Markets Toolkit.

This horizon scanner has been prepared as of February 2024. It does not constitute legal advice and is not intended to provide an exhaustive list of all provisions or requirements applicable to firms during this period.

The EU Regulatory Landscape

The EU's work to strengthen its economic base is reflected via the continuation of revisions to the EU Capital Markets Union with a strong focus this year on competitiveness and EU autonomy.

Prudential reforms to implement Basel 3 standards have been agreed, and there is now a renewed prudential focus on non-bank financial institutions (shadow banks). Ongoing global geopolitical and economic challenges add complexity and have raised concerns over financial stability.

Market infrastructure and settlement efficiency also continues to be a key theme, at the same time, the EU continues to progress various priority ESG and digital-related initiatives, including Sustainability disclosure requirements and legislation on digital operational resilience, cryptoassets and artificial intelligence.

In addition, the EU is expected to agree retail investment package reforms during 2024 with a focus on consumer protection.

However, the clock is ticking with European Parliament elections scheduled for June 2024, which could delay progress of proposals, if not agreed beforehand.

The UK Regulatory Landscape

The UK is in the process of reforming its financial services regulatory framework, with the aim of creating a 'Smarter Regulatory Framework' (SRF) in the wake of Brexit. The Financial Services and Markets Act 2023 (FSMA 2023), enacted on 29 June 2023, enables the revocation of EU-derived financial services and markets legislation.

HMT published its plans for developing the SRF in July 2023, building on the December 2022 'Edinburgh Reforms' package, and prioritising the repeal and reform of EU-derived regulation by allocating files to different tranches. Alongside the development of the SRF, the UK, similarly to the EU, is also progressing development of ESG and digital regulation, including cyber security ensuring financial systems can withstand disruptions.

The focus in most key jurisdictions globally will be about implementation and adaptation. While new proposals and discussions exist, they are largely refinements or extensions of existing frameworks. Significant regulatory upheavals, like introducing entirely new regimes, are less prominent in 2024.

About Clifford Chance

FINANCIAL REGULATION PRACTICE

Our Financial Regulation Practice

The financial services industry currently faces unprecedented regulatory change on a global basis. No other law firm is better placed to address these challenges for banking and investment firm clients than Clifford Chance.

Our understanding of each part of the sector, coupled with our global network of expertise, allows us to tailor our advice to a client's exact needs while accessing the very latest market thinking and advice from around the world, whether in relation to SFTR, MiFID, ESG regulation, digital or prudential regulatory reforms.

Our clients include the world's leading banks, investment firms, insurance companies and private banking businesses. They range in size from household names with a five-continent footprint to start-up fintech firms.

Further Clifford Chance Resources

The Financial Markets Toolkit

The Financial Markets Toolkit provides the cutting-edge knowledge you need for your business. It brings together, in a "one-stop shop", a wide range of practical, user-friendly resources. The Financial Markets Toolkit comprises a growing collection of web-based videos, publications and other key resources on an expansive range of topics, from regulatory developments to transactional matters: (http://financialmarketstoolkit.cliffordchance.com) .

Training and events

Sharing know-how is central to our ethos. Our London Perspective series is a seasonal series of talks addressing a wide range of topical issues for financial institutions, from corporate and employment issues to tax and regulatory developments. Our Insights on Financial Regulation series is a programme of frequent, short calls on which we share our practical insights on topical developments, from the Edinburgh Reforms to cryptoasset regulation.

Alerter: Finance Industry

Our daily 'Alerter: Finance Industry' email and our weekly 'International Regulatory Update' email keep our clients up-to-date with a comprehensive, up-to-the-minute summary of regulatory and legal developments from around the world as well as links to relevant Clifford Chance publications and contacts.

Briefings

We regularly produce short, practical briefings on regulatory developments and longer, thought leadership pieces on industry and legal trends and issues. These are distributed to our existing clients and collated on our Financial Markets Toolkit.

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About ISLA

THE INTERNATIONAL SECURITIES LENDING ASSOCIATION

"ISLA fosters the growth of the securities lending and financing industry, and actively represents the long-term interests of all stakeholders"

Our Work

- The **International Securities Lending Association** (ISLA) is a leading non-profit industry association, representing the common interests of securities lending and financing market participants across *Europe, Middle East* and *Africa*.
- Working closely with the industry, as well as national, regional, and global regulators and policy makers, **ISLA advocates** for, amongst other things, the importance of securities lending to the broader financial services industry.
- Through member working groups, industry guidance, consultations and first-class events, ISLA plays a pivotal role in the creation and promotion of **market best practices** and processes, **thought leadership**, **standards for legal frameworks**, and **securities lending guides** and related documents.

Our Membership

Over **180** members including institutional investors, banks, broker-dealers, service providers and alternative investment managers (AIMs)

ISLA EVENTS

Be part of an active international securities lending community

Help shape the future of the securities lending industry

Grow your network

Gain access to a wide range of on-line resources

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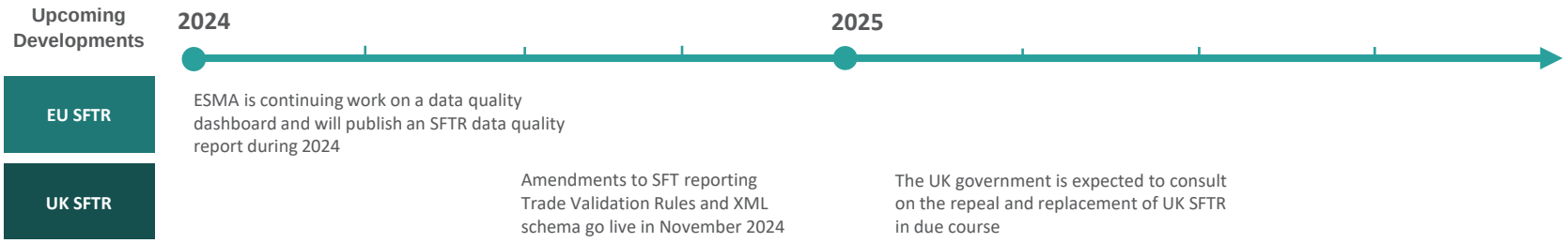
Want to Find Out More?

To find out more about our work and membership offering please contact the team or visit www.islaemea.org

A. SECURITIES MARKETS AND INFRASTRUCTURE

Securities Financing Transactions Regulation (SFTR)



SFTR Recap

SFTR requires counterparties to report securities financing transactions (SFTs) to a trade repository, it requires fund managers to make pre-contractual and periodical disclosures to investors about their use of SFTs and total return swaps and imposes conditions on the 'reuse' of financial instruments that have been provided as collateral.

What's on the horizon?

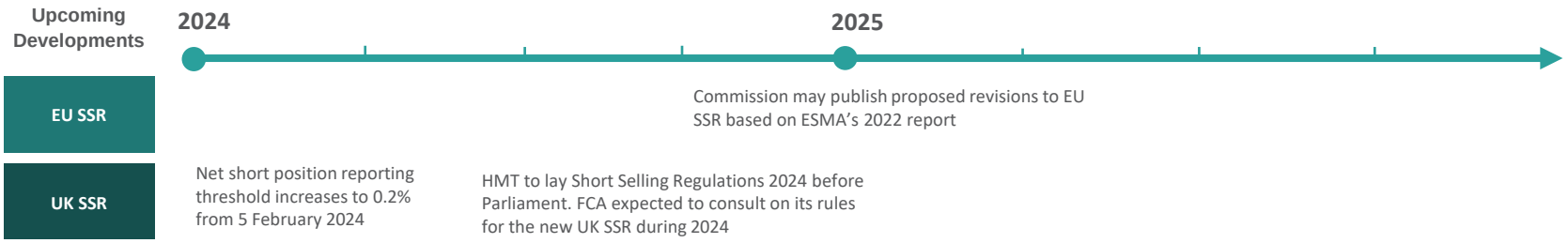
EU SFTR

- During 2024, ESMA's supervisory focus is on monitoring data quality and verification of accuracy and integrity of SFTR reports by trade repositories.
- ESMA is extending its EMIR data quality dashboard to cover SFT reporting and is implementing a data sharing framework which allows NCAs to follow up with counterparties in their jurisdiction upon a detection of a significant data quality issue. Similar to previous years, ESMA will publish an SFTR data quality report in 2024 to show the effectiveness of the collective supervisory efforts of ESMA and NCAs in supervising reporting entities.

UK SFTR

- The FCA is also seeking to address data quality issues and published amendments to SFT reporting Validation Rules and XML schema in October 2023, which will go-live in November 2024.
- Looking further ahead, the UK government intends to repeal and replace UK SFTR under the SRF initiative. The UK government has not yet announced when this will happen.

Short Selling Regulation (SSR)



SSR Recap

SSR restricts uncovered short sales of shares and sovereign debt instruments and prohibits the entry into uncovered sovereign credit default swaps. It also imposes net short position notification requirements.

What's on the horizon?

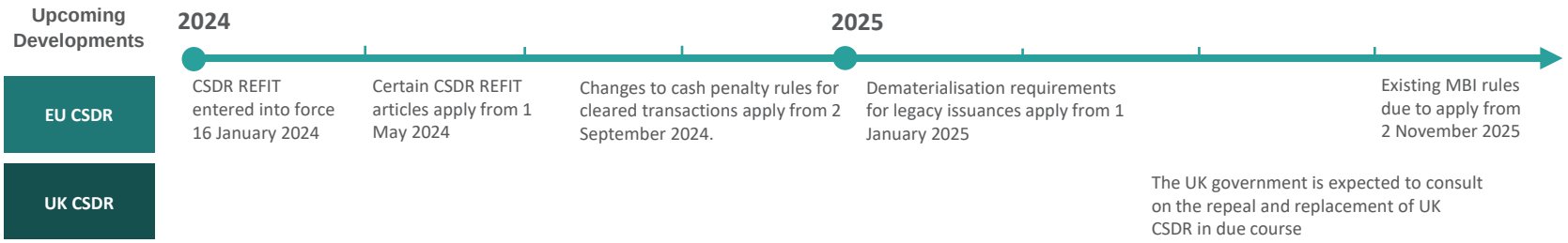
EU SSR

- In April 2022, ESMA published a final report setting out findings of its latest EU SSR review. ESMA proposed targeted amendments to the EU SSR relating to emergency measures, short sale record keeping requirements and centralised publication of net short positions, which are currently under consideration by the Commission.

UK SSR

- The Short Selling (Notification Threshold) Regulations 2023 increase the threshold for reporting of net short positions to the FCA from 0.1% to 0.2% of total issued share capital, effective from 5 February 2024
- In November 2023, HM Treasury published draft Short Selling Regulations 2024 along with a Policy Note. These Regulations will repeal and replace the UK SSR, making use of the DAR introduced under FSMA 2023. They also empower the FCA to make rules to replace the substantive requirements of the existing regime. HM Treasury intends to lay the Regulations before Parliament in 2024.
- The FCA also intends to consult on proposed rules for the new UK SSR regime in 2024.

Central Securities Depositories Regulation (CSDR)



CSDR Recap

CSDR aims to harmonise certain aspects of securities settlement, including settlement timeframes, dematerialisation of securities, settlement internalisation reporting and the authorisation and supervision of CSDs. EU CSDR also introduced a settlement discipline regime from 2 February 2022, though the rules relating to a mandatory buy-in (MBI) regime were suspended until 2 November 2025.

What's on the horizon?

EU CSDR

- CSDR REFIT was published in the Official Journal on 27 December 2023 and entered into force on 16 January 2024. Amongst other things, CSDR REFIT revises the settlement discipline regime, including introduction of a "two-step approach" to MBI. It also simplifies the CSD passporting process, facilitates CSDs access to banking-type ancillary services, introduces an end-date for the grandfathering clause for EU and third-country CSDs and a notification requirement for third-country CSDs.
- During 2024, ESMA is expected to consult on various technical standards under CSDR REFIT and is due to deliver a CSDR report on settlement efficiency and internalised settlement.
- There are also upcoming changes to cash penalty rules for cleared transactions from 2 September 2024 and dematerialization requirements are extended to legacy issuances from 1 January 2025.

UK CSDR

- The UK government intends to repeal and replace UK CSDR under the SRF initiative. The UK government has not yet announced when this will happen.

Both the EU and UK are exploring a broader move towards a T+1 securities settlement cycle.

Shareholder Rights Directive 2 (SRD2) & UK Digitisation Taskforce

SRD2 Recap

The revised Shareholder Rights Directive (SRD2) introduced amendments to SRD, including requirements on intermediaries in shareholding chains that aimed to help shareholders exercise voting and information rights in companies traded on regulated markets. Various concepts of SRD including the definition of "shareholder" are left to national corporate law, leading to a range of implementation approaches. The UK implemented SRD2 on the basis that the "shareholder" is the legal owner of shares (i.e. the person on the register).

What's on the horizon?

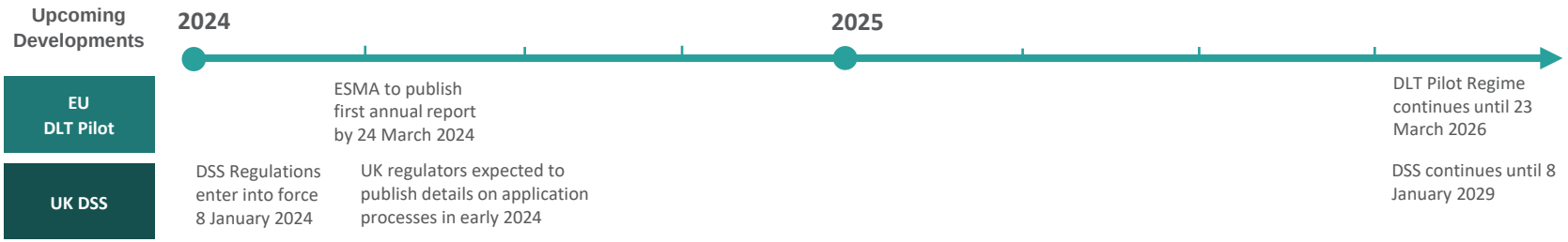
EU SRD2

- The EU Commission was due to report by 10 June 2023 on (and if appropriate propose changes to) provisions on shareholder identification, transmission of information and facilitation of exercise of shareholder rights and provisions on the transparency of proxy advisers. ESMA and the EBA provided input to the Commission in July 2023. The Commission's report is still awaited.

UK Digitisation Taskforce

- The UK Digitisation Taskforce was set up in 2022, to drive towards full digitization of shareholdings in UK companies. A key aim of the Taskforce is to identify improvements to the current intermediated system of share ownership so that issuers can identify and communicate more easily and efficiently with beneficial owners and beneficial owners can better exercise rights associated with their shareholdings. The Taskforce published in interim report in July 2023 and is due to publish final recommendations and an implementation plan by Spring 2024.

DLT Pilot Regime & Digital Securities Sandbox



DLT Pilot Regime and DSS Recap

The EU DLT Pilot Regime allows regulated allow regulated investment firms, market operators and CSDs to operate DLT-based market infrastructures for digital securities in a sandbox environment. This is intended to allow market participants to experiment with the use of DLT in issuance, trading and post-trade processes, free from certain regulatory constraints. It runs for a 3-year period from 23 March 2023.

The UK Digital Securities Sandbox (DSS) will allow certain financial market infrastructure providers (and market participants) to test the use of new technology including DLT in issuance, trading and post-trade processes, while benefiting from a temporary waiver or modification of legal requirements that may otherwise hinder the use of such technology. The UK DSS runs for a 5-year period from 8 January 2024.

What's on the horizon?

EU DLT Pilot Regime

- The DLT Pilot Regime will continue to operate during 2024 and 2025.
- ESMA expected to publish its first annual report on the operation of the DLT Pilot Regime by 24 March 2024. ESMA is also required submit a final report to the European Commission once the DLT Pilot Regime ends in 2026, together with its recommendations.

UK DSS

- The UK DSS Regulations came into force on 8 January 2024. UK regulators are expected to publish details on application windows and processes in early 2024.
- Permanent amendments to legislation can be made before the end of the DSS, if appropriate.

Other Securities Markets & Infrastructure Developments

EU

Settlement Finality Directive

- The European Commission published a report on its review of the SFD on 28 June 2023. It concluded that no major overhaul is needed at present, although the scope of SFD is being extended to allow payment institutions and e-money issuers to participate directly in designated payment systems.

Financial Collateral Directive

- The Commission published a report on its review of the FCD on 28 June 2023. It concluded no major revisions are required. Among other things, the report noted that the FCD can apply to DLT based collateral provided that the collateral complies with relevant conditions.
- It also noted that the current list of eligible financial collateral under the FCD could be reviewed keep up with market and regulatory developments, though findings from the DLT Pilot Regime are expected to inform any potential changes or extension to crypto assets.

Listing Act Package

- The Listing Act Package aims to simplify listing requirements to make public capital markets more attractive for EU companies and facilitate SMEs' access to capital. It comprises two proposed Directives and a Regulation. Negotiations are ongoing.

MiFID3 / MiFIR2

- The MiFID3 / MiFIR2 package will make changes to MiFID2 and MiFIR to improve market data access and transparency, including measures to facilitate the introduction of an EU consolidated tape.
- MiFID2 and MiFIR will also be amended by other pieces of EU legislation including:

  The Listing Act package, which will amend MiFID 2 provisions on research unbundling and SME growth markets

  The Fintech Amending Directive, which will amend MiFID2 to apply relevant provisions of DORA to MiFID firms from January 2025

  The Retail Investment package, which will amend MiFID2 to introduce simplified/improved disclosures on products, new provisions relating to sophisticated retail investors and harmonisation of professional standards for advisers

MAR

- The European Commission has yet to publish its (overdue) report on MAR. However, amendments to MAR will be introduced as part of the Listing Act package.
- ESMA also expects to continue work on pre-hedging in 2024.

Other Securities Markets & Infrastructure Developments

UK

UK MiFID / MIFIR & the Wholesale Markets Review

- The Wholesale Markets Review (WMR) identified areas of reform to better calibrate the post-Brexit regulatory framework to the UK's secondary markets.
- Certain WMR changes were made under FSMA 2023 itself and others will be implemented via the planned repeal and replacement of retained EU law.
- Amongst other things:
  - the UK plans to introduce a regulatory regime to support a consolidated tape for market data in 2024
  - the FCA intends to implement recommendations of the Investment Research Review in H1 2024
  - a new wholesale intermittent trading venue (ITV) sandbox will be introduced by end-2024.
  - outcome of HMT and FCA work on the boundary between regulated financial advice and financial guidance is expected
  - outcome of HMT's Overseas Framework Review is expected, which may include proposals on potential changes to the UK's regime for overseas firms and activities.

Listing & Secondary Capital Raising Reforms

- In November 2023 HMT published a near final draft of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 to amend the UK prospectus regime.
- Among other things the draft Regulations would:
  - create a new prohibition on public offers of 'restricted securities' in the UK (subject to exemptions and exclusions);
  - establish a new regime for securities 'admitted to trading' on a regulated market or MTF;
  - introduce a new regulated activity of operating an electronic system for public offers of relevant securities; and
  - give the FCA powers to specify the content requirements for a prospectus for admission to trading of 'transferable securities' on a UK regulated market or UK primary MTF.

US Spotlight

SEC RULES ON REPORTING OF STOCK LOANS

Timing and Overview

- On 13 October 2023, the SEC adopted a new Rule 10c-1a requiring certain "covered persons" to report information about "covered securities loans" to an SEC-registered national securities association (RNSA). Currently, FINRA is the only RNSA.
- Rule 10c-1a is effective as of 2 January 2024 and FINRA must implement rules regarding the format and manner of its collection of information that are effective no later than 12 months after 2 January 2024.
- A “covered person” who agrees to a “covered securities loan” will be required to report specified information to FINRA starting on the first business day 24 months after 2 January 2024.
- A “covered person” may enter into a written agreement with a “reporting agent” (i.e., a broker-dealer or registered clearing agency) to fulfill its reporting obligations under the rule.

Key Concepts

- A "covered person" under Rule 10c-1a is:
  - (i) any person that agrees to a covered securities loan on behalf of a lender ("intermediary") other than a clearing agency when providing only the functions of a central counterparty or a central securities depository;
  - (ii) any person that agrees to a covered securities loan as the lender when an intermediary is not used; or
  - (iii) a broker or dealer when borrowing fully paid or "excess margin securities" (as that terms are defined under the so-called Customer Protection Rule (Exchange Act Rule 15c3-3)).
- A "covered securities loan" under Rule 10c-1a generally is a transaction in which any person on behalf of itself or one or more other persons, lends a "reportable security" to another person.
- A "reportable security" is a security for which information is already reported or required to be reported to existing US reporting regimes, including all securities reportable to FINRA's Trade Reporting and Compliance Engine ("TRACE") system.

Reporting Requirements

- Specified data elements that must be reported to FINRA by the end of the day on which a covered securities loan is effected include:
  - (i) name of the security issuer;
  - (ii) security identifier (e.g., ISIN, CUSIP);
  - (iii) transaction date and time and termination date of the securities loan;
  - (iv) platform/venue where transaction effected;
  - (v) amount of reportable securities loaned and lending fees/charges;
  - (vi) collateral-related information; and
  - (vii) type of borrower information.
- Most of these data elements must be publicly disclosed by FINRA by the morning of the business day after the covered securities loan is effected (amount loaned must be made publicly available after 20 business days).
- In addition, certain confidential data elements must be reported to FINRA (but not made publicly available), including:
- (i) the legal name of each party to the transaction;
- (ii) if the lender is a broker-dealer lending to its customer, whether the security loaned is from the broker-dealer's inventory; and
- (iii) if known, whether the securities loan is being used to close out a fail to deliver under Regulation SHO.

Cross-Border Application

- With respect to the Rule 10c-1a's cross-border application, the SEC has indicated that the rule's reporting requirements will generally be triggered whenever a covered person effects, accepts, or facilitates (in whole or in part) in the United States a lending or borrowing transaction (irrespective of US-person status of the transaction counterparties).
- The SEC also considered but declined to adopt an exemption for transactions by EU or UK lenders that are subject to the EU or UK SFTR reporting rules.

B. SUSTAINABILITY

Sustainable Finance Disclosures (EU SFDR and UK SDR)

Sustainable Finance Disclosures Recap

The EU Sustainable Finance Disclosure Regulation (SFDR) sets out harmonised rules on disclosures to investors regarding the integration of sustainability risks and the consideration of adverse sustainability impacts in investment decision-making and investment advice.

In the UK, the FCA published final rules in November 2023 on sustainability disclosure requirements and investment labels (SDR), which include a broad anti-greenwashing rule, product labelling, disclosure, naming and marketing rules for asset managers and rules for distributors of investment products to retail investors.

What's on the horizon?

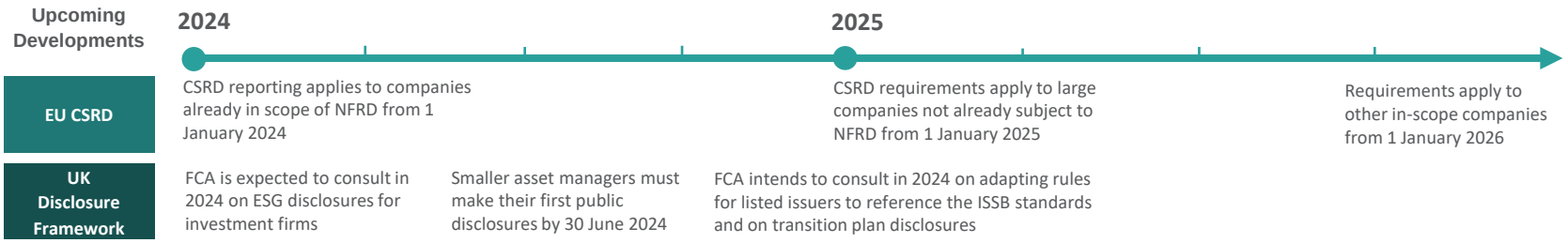
EU SFDR

- In late 2023, the European Commission consulted on its review of SFDR and options to improve the framework, focusing on legal certainty, usability and effectiveness in mitigating greenwashing. The Commission intends to adopt a report on the SFDR in Q2 2024.
- In parallel, various technical standards and guidelines under SFDR are being updated.

UK SDR

- SDR requirements start to apply in a staggered manner between 31 May 2024 and 2 December 2026, when ongoing product and entity-level disclosures will be extended to firms with over £5 billion AUM.
- The FCA is expected to consult on a proposed expansion of the SDR regime to other products and activities in due course.

Corporate Sustainability Reporting



Corporate Sustainability Reporting Recap

The EU Corporate Sustainability Reporting Directive (CSRD) was published in the Official Journal in December 2022 and introduces wide-ranging corporate sustainability reporting requirements in accordance with EU standards that were finalized in 2023.

The UK committed to using recommended disclosures from the Task Force on Climate-related Financial Disclosures (TCFD) as a basis for mandatory climate related financial disclosures by 2025. The PRA and FCA have introduced relevant disclosure rules and requirements for various types of regulated firms, including banks and PRA-regulated investment firms, listed issuers and asset managers.

What's on the horizon?

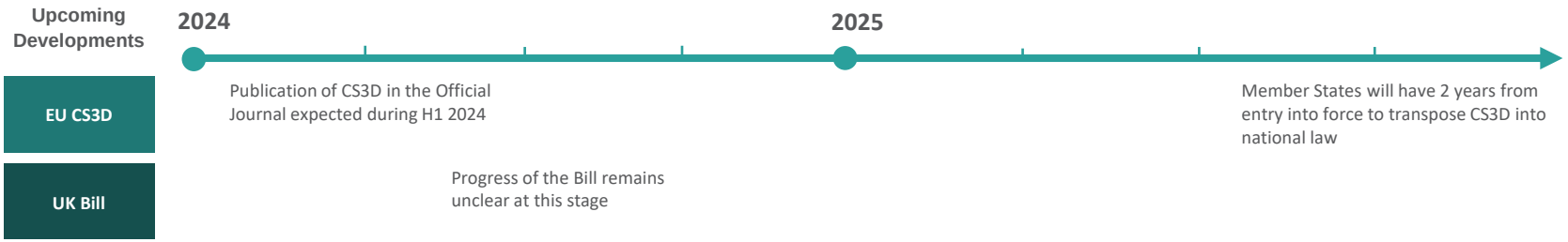
EU CSRD

- Reporting requirements are being phased in from 1 January 2024. They will apply to companies already subject to the Non-Financial Reporting Directive (NFRD) for financial years starting on or after 1 January 2024, to other large companies for financial years starting on or after 1 January 2025 and to other in-scope companies a year after that (subject to an opt-out for SMEs until 2028).

UK Disclosure framework

- The FCA intends to consult on ESG disclosure requirements for investment firms in 2024. It also plans to consult on adapting existing rules for listed issuers to reference International Sustainability Standards Board (ISSB) IFRS Sustainability Disclosure Standards and to cover transition plan disclosures. The PRA also continues to supervise compliance with its rules and supervisory expectations.

Corporate Sustainability Due Diligence (EU CS3D) & UK Bill



Corporate Sustainability Due Diligence Recap

Political agreement was reached in December 2023 on the EU Corporate Sustainability Due Diligence Directive (CS3D). Amongst other things, it will require in-scope companies to adopt human rights and environmental due diligence (HREDD) policies and processes.

Financial institutions will generally benefit from a temporary exclusion from scope of most requirements, meaning they will not need to ensure all their investments are not linked to human rights abuses. However, firms carrying on enough business to fall within scope of CS3D will need to carry out HREDD on 'upstream' elements of their value chain. Application to the financial sector is expected to be reviewed.

The UK government previously indicated it has no plans to replicate CS3D in the UK. However, in November 2023, the Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill was introduced into the House of Lords as a Private Members Bill. If passed, this would require in-scope commercial entities and public authorities to conduct reasonable HREDD.

What's on the horizon?

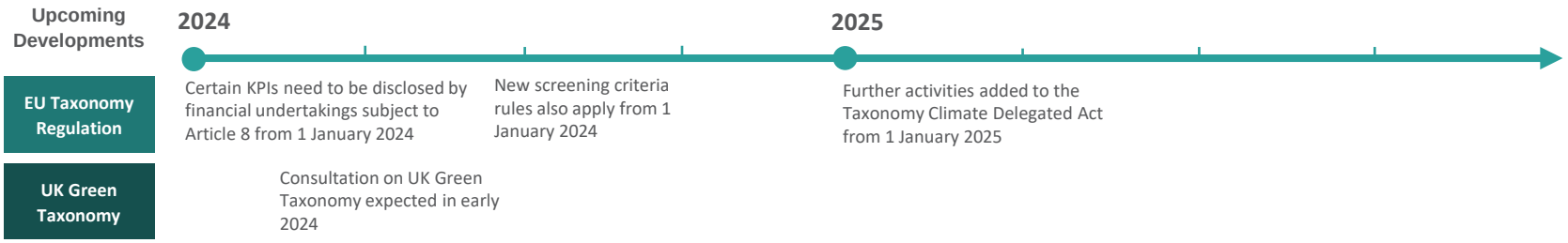
EU CS3D

- Once CS3D is published in the Official Journal and enters into force, Member States will have 2 years to transpose its requirements into national law. Non-EU companies are expected to have a further year to comply.

UK Bill

- It is not yet clear whether the Bill will be supported by the government and if so, what the timeframe for its passage through Parliament would be.

Taxonomy



Taxonomy Recap

The EU Taxonomy Regulation sets out criteria that an activity must satisfy to be referred to as 'environmentally sustainable'. Two such criteria are that the activity must contribute substantially to at least one 'environmental objective' and that the activity must not significantly harm an 'environmental objective'.

The six 'environmental objectives' are set out in the Taxonomy Regulation. The Taxonomy Regulation also creates disclosure obligations for certain products that are within the scope of the related SFDR.

A consultation on a UK Green Taxonomy was expected in Autumn 2023 but has not yet been published. The UK Green Taxonomy is expected to include nuclear energy.

What's on the horizon?

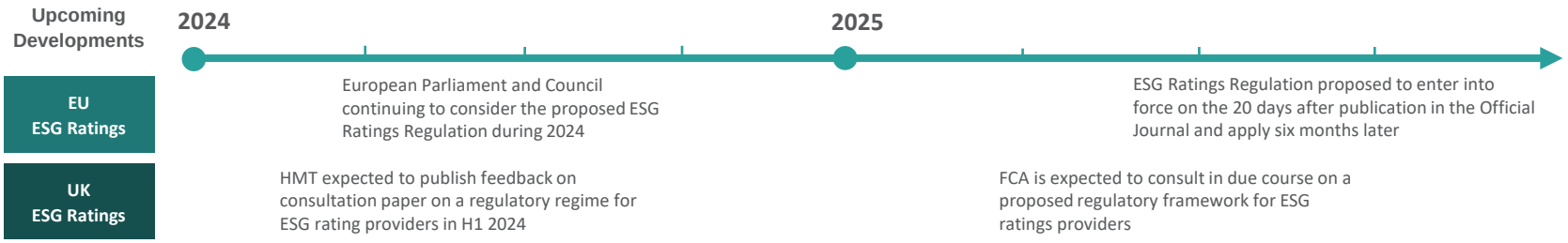
EU Taxonomy Regulation

- In-scope financial undertakings will need to disclose certain key performance indicators from 1 January 2024 under Article 8 Taxonomy Regulation and the related Commission Delegated Regulation 2021/2178.
- Rules on technical screening criteria and additional activities will also apply mainly from 1 January 2024 (with some additional activities added from 1 January 2025).

UK Green Taxonomy

- A consultation on the UK Green Taxonomy is now expected in early 2024.

Regulation of ESG Ratings Providers



ESG Ratings Providers Recap

ESG ratings providers offer products that opine on the ESG characteristics or exposure of products and firms. Provision of ESG ratings plays an important role in the ESG ecosystem but they are not currently regulated.

In the EU, the Commission published a legislative proposal in June 2023 for a Regulation on the transparency and integrity of ESG rating activities. This would require ESG rating providers offering services to investors and companies in the EU to be authorised and supervised by ESMA.

In the UK, HMT consulted in 2023 on proposals for bringing ESG ratings providers within the scope of regulation and for the scope of a regulatory regime for ESG ratings providers. The FCA has also indicated it supports regulation of ESG ratings providers.

At industry level, a voluntary Code of Conduct for ESG ratings and data products providers was finalised on 14 December 2023.

What's on the horizon?

EU ESG Ratings Regulation

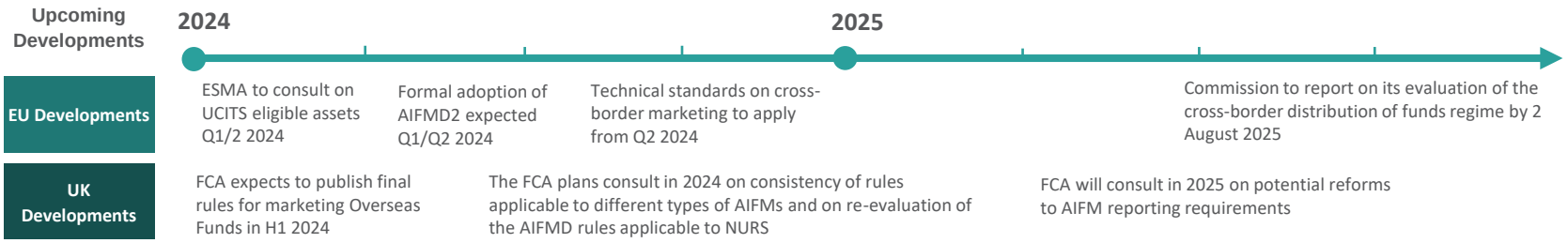
- The European Parliament and Council are continuing to consider the proposed ESG Ratings Regulation during 2024. Under the proposal, it would apply from 6 months after entry into force.

UK ESG Ratings Regulation

- HMT is expected to provide feedback on its recent consultation in H1 2024. Any new regime is likely to require changes to the RAO and in some cases use of the DAR. The FCA would also need to make rules.

C. ASSET MANAGEMENT

UCITS & AIFMD Developments



UCITS & AIFMD Recap

The UCITS Directive regulates retail investment funds that meet relevant requirements and AIFMD regulates the management, administration and marketing of alternative investment funds (AIFs). UCITS are subject to stricter investor protection requirements than AIFs including with respect to eligible investments.

In the EU, amendments to the UCITS Directive and AIFMD have been proposed under the AIFMD2 proposal, on which political agreement was reached in July 2023. Other pieces of legislation including DORA, the Retail Investment Package and EMIR 3.0 will also amend the UCITS Directive and/or AIFMD.

In the UK, HMT and the FCA are reviewing the UK funds regulatory regime as part of the SRF. In October 2023, the FCA fed back on an initial discussion paper, highlighting priorities including making the AIF regime more proportionate, updating the regime for retain funds and supporting technological innovation. Alongside this, the FCA has also consulted on rules to operationalize the UK Overseas Funds Regime for the marketing of certain types of Overseas Funds in the UK.

What's on the horizon?

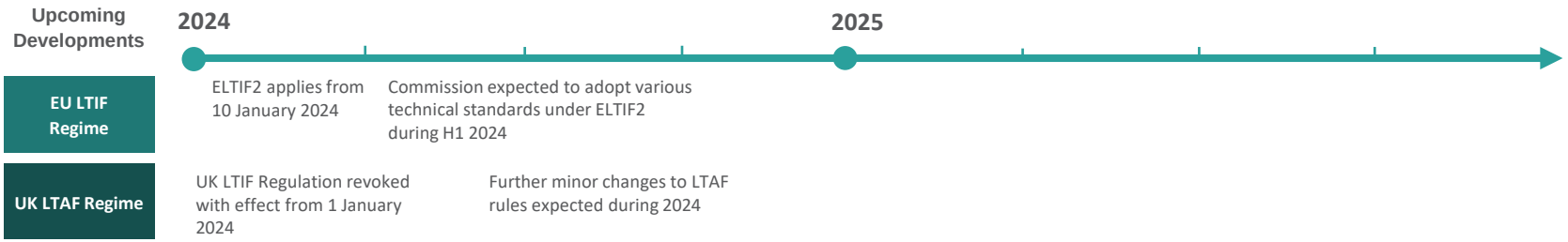
EU regime

- Formal adoption of AIFMD2 and publication in the Official Journal is expected in Q1 or Q2 2024. ESMA is also expected to consult on UCITS eligible assets requirements in early 2024. Separately, technical standards on cross-border marketing and management of funds will apply from Q2 2024.

UK regime

- Further consultations are expected on reforms to the UK asset management framework during 2024. The FCA intends to publish final rules on marketing of Overseas Funds in the first half of 2024. HMT is also required to make equivalence decisions before the regime can be used in practice.

Long Term Funds



LTIF and LTAF Regimes Recap

European long term investment funds (ELTIFs) are intended to invest in assets that require long-term capital and are regulated in the EU under the ELTIF Regulation.

The EU has completed a review of the ELTIF Regulation and resulting changes are set out in the ELTIF2 Regulation which applies from 10 January 2024.

The UK government revoked the onshored version of the ELTIF Regulation effective from 1 January 2024. This is replaced with a new UK regime for authorised long-term asset funds (LTAFs). FCA rules for LTAFs came into force in November 2021 and it authorized the first LTAF in 2023. LTAFs can be marketed to professional investors and certain categories of retail investors.

What's on the horizon?

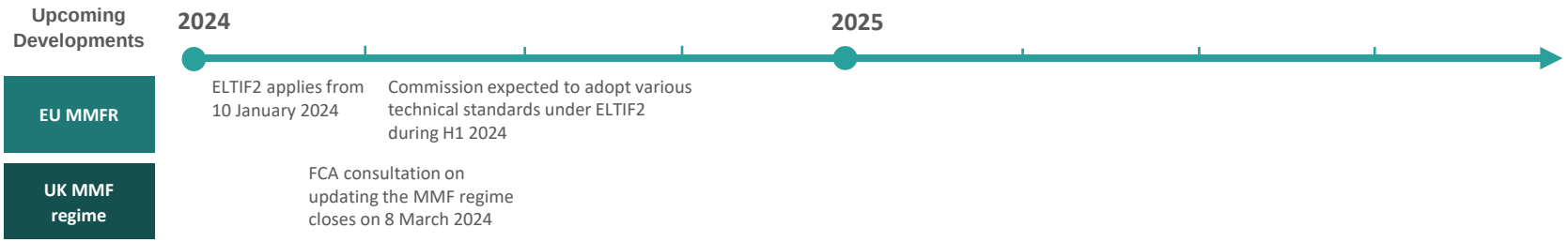
EU regime

- ELTIF2 changes apply from 10 January 2024. The Commission is also expected to adopt various technical standards under ELTIF2 in H1 2024.

UK regime

- Further consultations are expected on reforms to the UK asset management framework during 2024. The FCA intends to publish final rules on marketing of Overseas Funds in the first half of 2024. HMT is also required to make equivalence decisions before the regime can be used in practice.

Money Market funds



Money Market Funds (MMF) Regulation Recap

The MMF Regulation introduces a regulatory framework that aims to enhance the liquidity and stability of MMFs. It requires funds that meet the definition of an MMF to comply with rules relating to investment policies, internal credit quality assessments, risk management, valuation and transparency requirements. It also grants regulators powers to supervise MMFs and their managers on an ongoing basis.

In the EU, the European Commission published a final report on its review of the MMF Regulation in July 2023 confirming that it does not propose revisions to the MMF Regulation at present.

In the UK, in December 2023, the FCA published a consultation on updating the UK regulatory regime for MMFs to enhance their resilience and bring requirements that previously formed part of retained EU law into the FCA Handbook as part of the SRF,

What's on the horizon?

EU regime

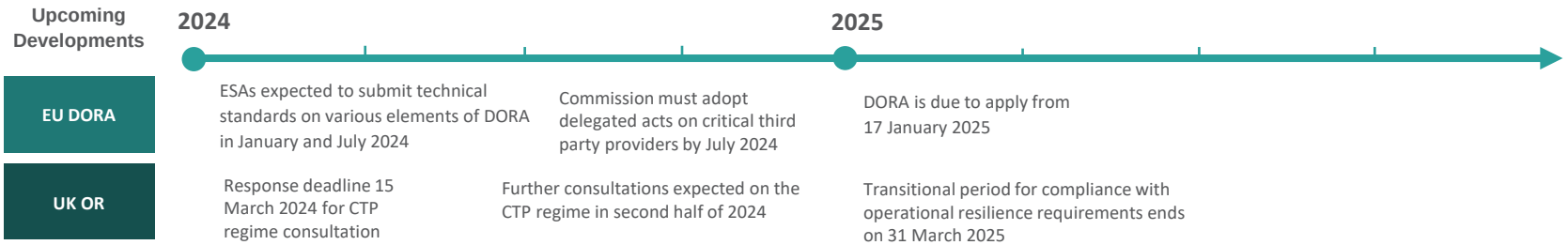
- EMIR 3.0 proposals will make targeted amendments to the MMF Regulation to encourage clearing of derivatives in the EU. Agreement on EMIR 3.0 is expected to be reached in H1 2024.
- ESMA publishes annual guidelines on MMF stress testing, with the next version due Q4 2024.

UK regime

- The FCA is consulting on proposals to enhance the resilience of UK MMFs and address vulnerabilities identified in the 2020 'dash for cash'. These include increasing the minimum proportion of highly liquid assets that MMFs have to hold. The consultation closes in March 2024.

D. DIGITAL REGULATION

Operational Resilience



Operational Resilience Recap

Both the UK and EU have introduced new rules on digital operational resilience for the financial sector.

In the EU, DORA has been published in the Official Journal and will apply from 17 January 2025. DORA puts in place a detailed and comprehensive framework on digital operational resilience for EU financial entities. DORA introduces an EU-level oversight framework to identify and oversee information and communication technologies (ICT) third party service providers deemed "critical" for financial entities.

In the UK, the FCA, PRA and BoE introduced a new operational resilience regime in 2021, subject to a transitional period ending on 31 March 2025. FSMA 2023 also introduces a framework for Critical Third Parties (CTP regime) giving regulators powers over critical third parties.

What's on the horizon?

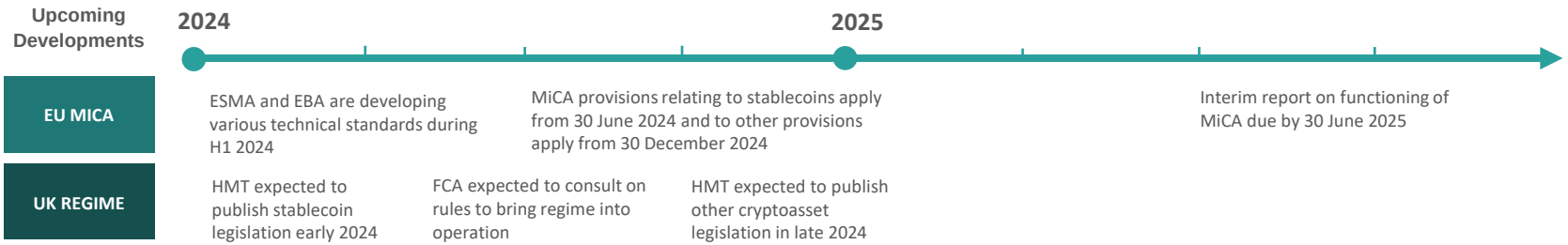
EU DORA

- DORA takes effect on 17 January 2025. The ESAs advised the EU Commission on designation criteria and fees for the oversight framework in late 2023. The Commission is to adopt related delegated acts by mid-2024. ESAs will develop and submit draft standards and guidelines for the DORA framework.

UK Operational Resilience Regime

- The regulators plan to consult on operational incident reporting and risk management ahead of full application of the operational resilience regime for financial firms from 31 March 2025.
- Work is underway for the introduction of the CTP regime. The regulators expect to finalise their rules for critical third parties with a view to the CTP regime becoming operational by end-2024.

Regulation of Cryptoassets



Cryptoassets Regime Recap

Both the UK and EU are introducing new regulatory regimes for cryptoassets.

In the EU, MiCA has been published in the Official Journal and will apply from 30 June 2024 for stablecoins (ARTs and EMTs) and 30 December 2024 for other cryptoassets.

In the UK, substantial progress is expected to be made in 2024 on the creation a regulatory regime for cryptoassets. The government plans to introduce regulation in two phases; first for fiat-backed stablecoins and then for other cryptoassets.

What's on the horizon?

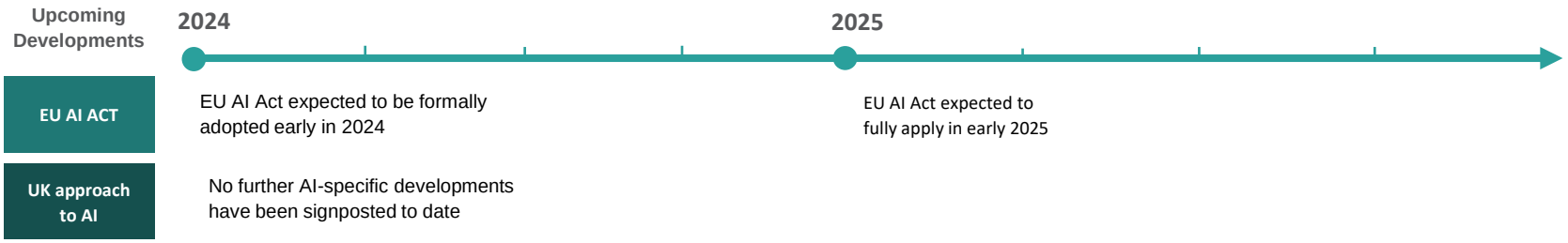
EU MiCA

- MiCA provisions on stablecoins will apply from 30 June 2024, with other provisions applying from 30 December 2024. In the meantime, ESMA and the EBA are consulting on various delegated acts, technical standards and guidelines under MiCA. The Commission is also due to publish an interim report on the functioning of MiCA by 30 June 2025.

UK Cryptoasset Regime

- Phase 1: HMT plans to bring forward legislation in early 2024 to bring issuance and custody of fiat-backed stablecoins within the regulatory perimeter. Comments are due on the FCA's related discussion paper by 6 February 2024. This will be followed by a further FCA consultation on draft rules and guidance.
- Phase 2: HMT plans to lay secondary legislation bringing other cryptoassets into scope of regulation later in 2024. The FCA plans to consult on draft rules in parallel.

AI Regulation Developments



AI Regulation Recap

In the EU, political agreement was reached in December 2023 on a proposed Regulation on artificial intelligence (AI). The 'AI Act' sets out rules relating to the placing on the market, putting into service and use of AI systems in the EU, as well as transparency requirements and rules on market monitoring and surveillance. The AI Act will apply to all sectors including financial services, except for private, non-professional use of AI.

In the UK, the regulators published a joint feedback statement in October 2023 on an earlier discussion paper exploring the impact of AI on their objectives for financial firms' prudential and conduct supervision. The feedback statement does not make any specific policy proposals. The UK government also consulted in March 2023 on a whitepaper for AI regulation, which does not propose introducing a UK equivalent to the EU AI Act but instead proposes a more light-tough approach to regulation of AI at sectoral level.

What's on the horizon?

EU AI Act

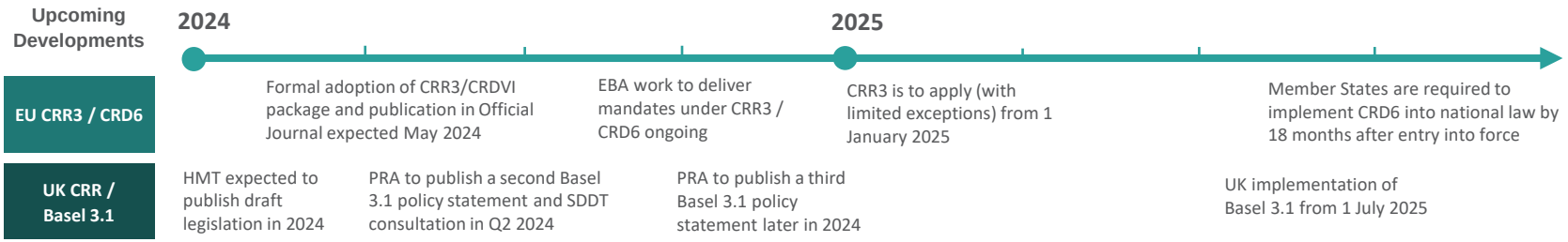
- It is expected that the adopted legislation will contain transitional periods of six months for prohibition requirements, 12 months for general purpose AI requirements and 24 months for everything else
- Due to the rapid pace of AI development, the European Commission plans a temporary voluntary AI Pact with global technology companies before the legislation's full application in 2025.

UK Regime

- There is currently no clear timeline for further developments. The UK regulatory initiatives grid published in November 2023 indicates the regulators' feedback statement marks the completion of their initiative on AI and machine learning.

E. PRUDENTIAL REGULATION

Basel 3.1 Implementation



Basel 3.1 Implementation Recap

Both the EU and UK are implementing the final Basel reforms agreed at international level in December 2017 (Basel 3.1).

The EU is implementing Basel 3.1 via CRR3. Political agreement on CRR3 was reached in 2023 and the rules are expected to be phased in from 1 January 2025. CRD6 will introduce various other changes to EU prudential regulation including a new third country regime for banks.

In the UK, the PRA published near-final rules in December 2023 that will implement Basel 3.1. These new rules are expected to be phased in from 1 July 2025. The PRA also plans to create a 'strong and simple' prudential framework for small domestic deposit takers (SDDTs).

What's on the horizon?

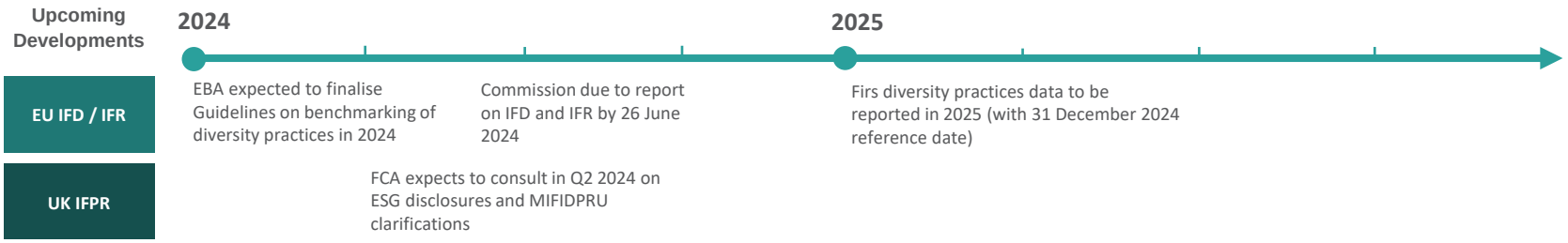
EU Basel 3.1 Implementation

- Publication of CRR3 and CRD6 in the Official Journal is expected in May 2024. The EBA has published a roadmap for delivery of its various mandates under CRR3 and CRD 6. Under the agreed texts, CRR3 will start to apply from 1 January 2025 (with some provisions phased in over the following years) and Member States will have 18 months to transpose CRD6 provisions into national law.

UK Basel 3.1 Implementation

- In 2024, HM Treasury is expected to publish the draft secondary legislation to implement Basel 3.1. The PRA is expected to publish two further policy statements on Basel 3.1 implementation during 2024, following the first policy statement published in December 2023. The PRA expects to consult further on the SDDT regime in 2024, again following a first policy statement from December 2023.

Investment Firms Prudential Regime



Investment Firms Prudential Regime Recap

In the EU, the Investment Firms Directive (IFD) and Investment Firms Regulation (IFR) created a new harmonised prudential regime for EU investment firms, replacing the Basel-based CRD prudential regime.

The UK introduced a similar Investment Firms Prudential Regime (IFPR), a revised prudential regime for FCA-authorised investment firms, on 1 January 2022. The majority of the FCA rules relating to the IFPR are located within the MIFIDPRU sourcebook. The FCA consulted on minor MIFIDPRU clarifications in its Quarterly Consultation in December 2023.

Both regimes include investment firm specific regulatory capital calculations using so-called 'K-factors', governance and risk management requirements and a separate remuneration code. The largest, systemic EU and UK investment firms remain subject to the relevant Basel-based prudential regulatory regime.

What's on the horizon?

EU IFD / IFR

- The Commission is required to report on the IFD and IFR, with legislative proposals to amend the package if it considers this to be necessary, by 26 June 2024.
- The EBA is expected to publish final Guidelines on benchmarking of diversity practices during 2024. The first reports will then be due in 2025, using a 31 December 2024 reference date

UK IFPR

- The FCA intends to consult in Q2 2024 in relation to ESG disclosures under the IFPR and further MIFIDPRU clarifications.

Other Prudential Regulatory Developments

EU Crisis Management and Deposit Insurance (CMDI) Reform

- The current EU CMDI framework is set out in BRRD and DGSD and, for banks subject to the single supervisory mechanism (SRM), the SRMR.
- The European Commission published legislative proposals for revisions to the CMDI framework in April 2023, which will make significant amendments to the BRRD, the SRMR and the DGSD.
- The amendments seek to make improvements to the framework to:

  improve its efficiency, flexibility and coherence;

  ensure depositors receive equal treatment; and

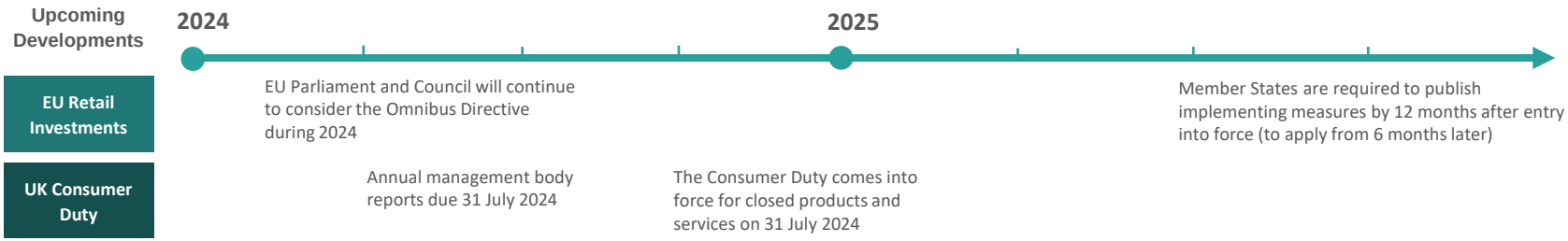
  give depositors more protection, including a possible common deposit protection mechanism.
- The European Parliament and Council will continue to consider the package during 2024. Once adopted and in force, most of the measures will apply 18 months later.

UK Ring-Fencing Regime Review

- The UK's ring-fencing regime requires banking groups within the scope of the ring-fencing requirements (those with more than £25 billion of core retail deposits) to split out their retail banking activities from their investment banking activities. This threshold is set to rise from £25 billion to £35 billion.
- An independent panel appointed by HMT to review the regime published its report in March 2022, noting that the regime has been beneficial for financial stability and should be retained, but that its benefit is likely to reduce with time once the UK's resolution regime is fully embedded. The panel made some recommendations for reforms.
- HMT is expected to publish legislation making near-term reforms to the regime in Q1 2024.
- HMT and the PRA are considering further reforms, including possible better alignment with the resolution regime. Further work is expected during 2024.

F. RETAIL DEVELOPMENTS

EU Retail Investments Package & FCA Consumer Duty



Retail Investments Regulation Recap

As part of the Capital Markets Union agenda, the Commission is focused on improving EU retail access to capital markets. The Commission published the 'retail investments package' Omnibus Directive on 24 May 2023, comprising wide-ranging measures to improve the information consumers receive about financial products, address conflicts of interest in the sales process, impose a ban on inducements for products sold without financial advice, enhance the "best interest" test for financial advisers, crack down on online "finfluencers" and introduce "value for money" obligations for costs and performance.

In the UK, focus remains on the FCA Consumer Duty, which requires regulated firms to ensure good outcomes for retail customers, where they engage directly with retail customers or can otherwise determine or materially influence retail customer outcomes. The Consumer Duty started to apply from 31 July 2023 for 'open' products and services.

What's on the horizon?

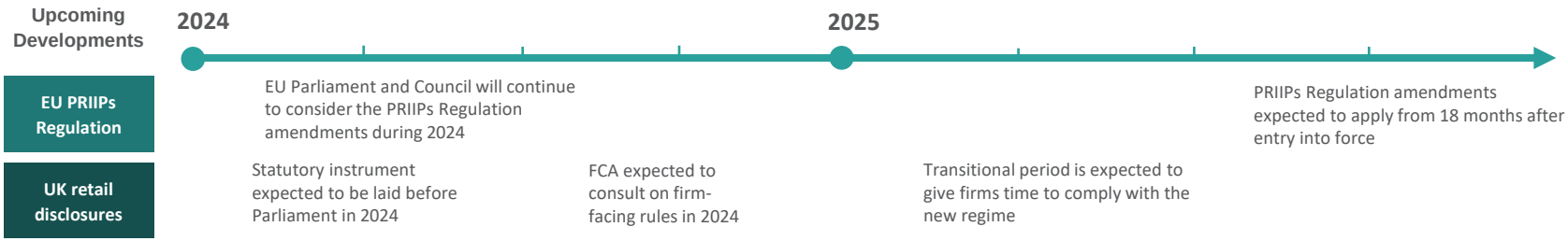
EU Retail Investments Package

- The EU Parliament and Council are considering the Omnibus Directive that will amend MiFID2, UCITS Directive and AIFM as regards retail investor protection rules during 2024. Once it is published in the Official Journal, Member States must publish implementing measures within 12 months and apply those measures within 18 months from entry into force.

UK FCA Consumer Duty

- The Consumer Duty starts to apply to 'closed' products that are no longer sold or provided to retail customers from 31 July 2024. Firms subject to the Consumer Duty are also required to publish their first management body reports by 31 July 2024.

PRIIPs Regime



PRIIPs Regulation Recap

The PRIIPs Regulation obliges manufacturers of PRIIPs to produce a concise pre- contractual disclosure document, the KID, where such products are made available to retail investors. It also obliges persons who advise upon or sell PRIIPs to provide investors with the KID. It sets out rules on the content and format of the KID, as well as guidance for its review and timing of delivery.

The EU has published proposed amendments to the PRIIPs Regulation as part of the Retail Investments Package.

As part of the SRF, the UK plans to repeal the UK PRIIPs regulation, replacing it with a more flexible retail disclosure regime for both PRIIPs and UCITS, using the DAR with detailed rules to be set out in the FCA Handbook. In November 2023, HMT published a near-final draft of the relevant Regulations on 22 November 2023, along with a Policy Note on the UK Retail Disclosure Framework.

What's on the horizon?

EU PRIIPs Regulation

- The EU Parliament and Council are considering the PRIIPs Regulation amendments during 2024. It is expected to apply from 18 months after entry into force.

UK Retail Disclosure Framework

- HMT is expected to lay the statutory instrument repealing the UK PRIIPs regulation and creating the new Retail Disclosure Framework before Parliament in 2024. The FCA is also expected to consult on firm-facing rules in 2024. It is expected that a transitional period will apply before firms must comply with the new regime, to allow firms time to adapt.

G. TAX DEVELOPMENTS

“FASTER” Proposal

Objective

- Making withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries and national tax authorities (**Faster and Safer Tax Excess Relief**)

Key Actions

- A common EU digital tax residence certificate to facilitate the reclaim process (no more paper-based procedures, investors will submit their refund request digitally)
- Two new standardised procedures to speed up and harmonise the relief process : a “relief at source” procedure (direct application of the double tax treaty reduced rate) and a “quick refund” system (maximum of 50 days to get a refund after the payment)
- A standardised reporting obligation (set up of a national register of certified financial intermediaries (CFIs) so that the Member State tax administrations can handle the refund process more efficiently)

Impact on Financial Intermediaries:

- All “large financial institutions” will be required to become a CFI and need to register with the competent authorities
- CFIs will be subject to reporting requirements and provide details on payments for which a refund/relief has been sought
- CFIs will have to put in place relevant procedures to assess investors’ eligibility to reduced withholding tax rates or exemptions

Next Steps

- The draft directive (issued on 19 June 2023) will follow the standard EU legislative process
- Once adopted by Member States, the proposal is expected to be transposed into national laws by 2027

Other Tax developments

FTT, FAT AND DAC6

Where Do We Stand?

Financial Transaction Tax (FTT) / Financial Activities Tax (FAT)

- Initial FTT proposal from the EU Commission in 2011: a low rates tax to be levied by all Member States on certain transactions involving financial instruments such as shares, bonds and derivative contracts
- No common agreement reached by Member States on an EU-wide FTT: only 10 Member States have been participating in the negotiations under the enhanced cooperation procedure on a revised FTT proposal
- While some Member States have introduced their own domestic FTT (e.g. France, Spain…) no substantial discussions have been held among all Member States since February 2021 on an EU-wide FTT initiative: as a result, the FTT is unlikely to materialize in short term.
- In contrast to the FTT, the FAT would directly target financial institutions (not the transactions) and be levied on profit linked to financial activities. No substantial discussions have been held on a FAT at EU level since 2010

Directive on administrative cooperation 6 (DAC 6)

- Mandatory disclosure of cross-border arrangements by intermediaries or taxpayers to the tax authorities and automatic exchange of this information among the Member States since 2021
- The objective of DAC 6 is to improve transparency, reduce uncertainty over beneficial ownership and combat aggressive tax planning
- Main impact on financial intermediaries : need for specific due diligence procedures on clients and their transactions to assess whether any DAC 6 “hallmark” would trigger a reporting obligation

H. OTHER DEVELOPMENTS

Other Selected Developments

EU

European Single Access Point (ESAP)

- The ESAP Regulation enables ESMA to create and maintain a single access point to financial and non-financial company data for investors. It is accompanied by an Omnibus Directive and an Omnibus Regulation, which amend a range of the relevant EU legislation to specify the content and format of information to be made accessible in the ESAP.
- The ESAP Regulation was published in the Official Journal in December 2023. Requirements on provision of information to ESMA start to be phased in from 10 July 2026 (including under the Short Selling Regulation and Transparency Directive), although the ESAP platform will not be operational util 10 July 2027. SFTR is brought into the ESAP framework from 10 July 2030.

Financial Data Access Regulation

- The proposed Financial Data Access Regulation (FiDA) would extend the EU Open Banking regime to a wider range of financial services and products.
- It will establish a framework of rights and obligations to manage customer data sharing in the financial sector and would require financial firms to allow third party financial information service providers access to online customer account data. The text remains under negotiation.

AML Regulation

- In July 2021, the Commission adopted a package of legislative proposals intended to further strengthen and update the AML and CTF framework, including (i) a regulation establishing a new EU AML and CTF authority (AMLA Regulation); (ii) a new regulation on AML and CTF (AML Regulation)'; (iii) a sixth directive on AML and CTF (MLD6).
- Trilogue negotiations with respect to the AML Regulation and MLD6 are ongoing. Political agreement has been reached on the AMLA Regulation, with adoption expected in Q2 2024.

Insolvency Reform

- In December 2022, the Commission adopted a proposed Directive harmonising certain aspects of insolvency law. The proposed Directive also includes new pre-pack insolvency processes, measures for simplified liquidation, a mandatory duty for directors to file for insolvency, measures on claw-back, availability of asset tracing registers and online auctions.
- The European Parliament and the Council will continue to consider the proposed Directive during 2024. Under the proposal, Member States would have 2 years to transpose its provisions and a further 3 years to apply them.

Other Selected Developments

UK

Financial Promotions Rules

- There are currently four key regulatory initiatives relating to financial promotions, namely:

  amendments to financial promotion exemptions for high net worth and sophisticated investors, which apply from 31 January 2024;

  changes to the FCA's financial promotion rules for high-risk investments (with final rules expected in 2024);

  the introduction of a regulatory 'gateway' through which an authorised firm must pass in order to be able to approve the financial promotion of an unauthorised firm, effective from 7 February 2024; and

  a recent expansion of the financial promotion regime to include unregulated cryptoassets, effective from 8 October 2023.

- The FCA is also updating its social media financial promotions guidance.

AML Regulation

- On 30 June 2023, HMT published a consultation on reform of the anti-money laundering and counter-terrorism financing supervisory regime, which set out four possible models for a future AML/ CTF supervisory system. The consultation closed for comments on 30 September 2023, with HMT planning to issue a response document in Q2 2024.
- On 20 June 2023, the government published an impact assessment on proposals for a change in the process by which regulations identifying high-risk third countries for money laundering purposes are implemented. Regulations will be laid in due course laid to make the proposed legislative amendments.
- The UK Economic Crime Plan 2023-2026 sets out a range of commitments aimed at combatting the criminal abuse of cryptoassets. The FCA is engaging in H1 2024 on various commitments

GLOSSARY

Glossary

Term	Definition
AI	Artificial Intelligence
AML	Anti-money laundering
Basel 3.1	The final Basel III standards agreed by the Basel Committee on Banking Supervision (BCBS) in December 2017
Commission	The European Commission
CMDI	Crisis Management and Depositor Insurance
CSD	Central securities depository
CSDR	Central Securities Depositories Regulation (Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012)
CTF	Counter-terrorist financing
DORA	Digital Operational Resilience Act (Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/101)
EBA	European Banking Authority
EMIR	European Market Infrastructure Regulation (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories)
EMIR 3.0 proposal	Proposal for a Regulation amending EMIR, the Capital Requirements Regulation (575/2013) (CRR) and the Regulation on Money Market Funds ((EU) 2017/1131) (MMF Regulation) as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets (COM(2022) 697) and for a Directive amending the UCITS Directive (2009/65/EC) the CRD IV Directive (2013/36/EU) and the Investment Firms Directive ((EU) 2019/2034) (IFD) as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (COM(2022) 698)

Glossary
(CONTINUED)

Term	Definition
ESAP	European Single Access Point
ESAs	European Supervisory Authorities
ESG	Environmental, social and governance
ESMA	European Securities and Markets Authority
FCA	Financial Conduct Authority
FSMA 2023	Financial Services and Markets Act 2023
IFD	Investment Firms Directive (Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU)
IFR	Investment Firms Regulation (Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014)
MAR	Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC)
MiCA	Markets in Cryptoassets Regulation (Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937)
MiFID2	Second Markets in Financial Instruments Directive (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU)
PRA	Prudential Regulation Authority

Glossary
(CONTINUED)

Term	Definition
PRIIPs	Packaged retail and insurance-based investment products
PRIIPs Regulation	Packaged Retail and Insurance-based Investment Products Regulation (Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products)
RTS	Regulatory Technical Standards
SFD	Settlement Finality Directive (Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems)
SFDR	Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector)
SFTR	Securities Financing Transactions Regulation (Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012)
SRD2	Second Shareholder Rights Directive (Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement)
SRF	Smarter Regulatory Framework initiative of the UK government
Taxonomy Regulation	Taxonomy Regulation (Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088)
TCFD	Task Force on Climate-Related Financial Disclosures

INDEX

Index

A. Securities markets & infrastructure [8]

- Securities Financing Transactions Regulation (SFTR) [9]
- Short Selling Regulation (SSR) [10]
- Central Securities Depositories Regulation (CSDR) [11]
- Shareholder Rights Directive 2 (SRD2) and UK Digitisation Taskforce [12]
- DLT Pilot Regime and Digital Securities Sandbox [13]
- Other EU developments [14]
- Other UK developments [15]
- US Spotlight – SEC rules on stock loan reporting [16]

B. Sustainability [18]

- EU Sustainable Finance Disclosures (SFDR and SDR) [19]
- Corporate Sustainability Reporting [20]
- Corporate Sustainability Due Diligence [21]
- Taxonomy [22]
- Regulation of ESG Ratings Providers [23]

C. Asset management [24]

- UCITS and AIFMD [25]
- Long Term Funds [26]
- Money Market Funds [27]

D. Digital regulation [28]

- Operational Resilience [29]
- Regulation of Cryptoassets [30]
- Regulation of AI [31]

E. Prudential regulation [32]

- Basel 3.1 Implementation [33]
- Investment firms prudential regime [34]
- Other prudential regulatory developments [35]

F. Retail developments [36]

- EU Retail Investments Package and FCA Consumer Duty [37]
- PRIIPs regime [38]

G. Tax developments [39]

- "FASTER" proposal [40]
- Other EU tax developments [41]

H. Other developments [42]

- Other EU developments [43]
- Other EU tax developments [44]

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