



BANK OF ENGLAND

February 2019

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

Bank of England and PRA Statement of Policy

Effective from the date of 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).

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 providers (FMIs) operating, or intending to operate, in the UK.

1.3 HM Treasury has set out its intention to use 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 regardless of the outcome of negotiations with the EU. Its approach is to ensure that EU-derived laws and rules that are currently in place in the UK will continue to apply at the point of exit to the extent that they remain operable in a UK regime. Changes will only be made to those laws or rules that would otherwise not operate appropriately. This will provide continuity and certainty for firms and FMIs as the UK leaves the EU.

1.4 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.

1.5 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 considers that ESA Q&As may continue to be relevant and that the Bank may have regard to these as appropriate.

1.6 The Bank and/or PRA may issue further statements in relation to this topic, including in relation to any EU materials issued after the publication of this statement.

2 Bank and PRA expectations for firms and FMIs

2.1 Guidelines and Recommendations are not saved by the Act and HM Treasury has stated that it intends to delete 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 with EU Guidelines and Recommendations to the extent that they remain relevant when the UK leaves the EU. Firms and FMIs that become authorised or recognised to continue to provide services in the UK on or after exit day (including firms and FMIs that previously provided rights services in the UK via EU rights, such as passporting) will become subject to these expectations.

2.2 Appendices 1 to 3 contain lists of Guidelines that are currently complied with in the UK. The Bank and PRA expect firms and FMIs to continue to comply with these after exit day to the extent that they are addressed directly to firms and FMIs and remain relevant. Where aspects

¹ 'Regulations relating to the European Supervisory Authorities and the European Systemic Risk Board', October 2018: <https://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>.

of Guidelines and Recommendations are addressed to competent authorities, the Bank and PRA expect firms and FMIs to continue to comply with any associated rules or expectations produced by the Bank or PRA that implement those Guidelines. The lists in Appendices 1 to 3 are not exhaustive. For example, Guidelines 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 or by other legislation.

2.3 The UK authorities have previously communicated that they have not complied with the Guidelines set out in Appendix 4. The Bank and the PRA do not expect firms and FMIs to comply with these Guidelines.

2.4 The Bank and the PRA do not propose to reproduce and make amendments to the content of individual Guidelines and Recommendations issued by the EU ahead of exit. However, if they remain relevant, firms and FMIs should interpret them in light of the UK's withdrawal from the EU 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.

2.5 Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations made by EU authorities, will not automatically apply when the UK leaves the EU. 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.

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

3.1 Below is a non-exhaustive list of onshoring changes that are proposed to be made by Government under the Act, which are relevant to firms' and FMIs' interpretation of non-binding EU materials. However, any 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 exit. Therefore, any reference to passporting or processes associated with passporting is redundant. However, HM Treasury has also brought forward legislation that will allow EEA firms, FMIs, and funds to continue their activities in the UK for a limited period after withdrawal. 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 is proposing to transfer 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.

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

- Detailed obligations for UK regulators to share information and co-operate with EU regulators will no longer be maintained. 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 detailed obligations on the Bank and PRA to share information and co-operate with EU regulators as redundant 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.
- Where capital or liquidity consolidation was only required at the EEA level previously, this will be required at the UK level after exit day. 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.

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Appendices

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

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

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

 - 4 Individual Guidelines where explanation has been provided that the UK does not intend to comply**

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

Solvency II

- Guidelines on the supervision of branches of third-country insurance undertakings
- Guidelines on Financial Stability Reporting
- 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 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
- 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

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 IV (CRD IV)

- 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

Capital Requirements Regulation (CRR)

- Guidelines on disclosure requirements under Part Eight of Regulation (EU)
- Guidelines on the LCR disclosure
- Guidelines on the application of the definition of default
- 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

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)

IFRS 9

- Guidelines on disclosure requirements of IFRS 9 transitional arrangements

Deposit Guarantee Scheme Directive (DGSD)

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

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

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

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

Capital Requirements Directive IV (CRDIV)

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

Prudential Assessment of Financial Sector Acquisitions Directive³

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

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³ 2007/44/EC.