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Insurance Regulatory eBulletin

Round up of regulatory developments in December 2023

IBDO

Welcome to our Insurance Regulatory eBulletin

Welcome to 2024 and to the latest edition of our Insurance Regulatory eBulletin, which aims to keep you updated with significant regulatory developments during December 2023 and their implications across the insurance sector.

December proved to be another busy month for regulatory developments. There was an interesting annual report published by the Office of Financial Sanctions Implementation.

The PRA have issued details of interim changes in the Solvency II requirements, in advance of the formal notification of changes to the Solvency II regime, post Brexit. Amongst other changes, these have the effect of the early implementation of reporting measures, including the removing the requirement for insurers to submit both the full triennial Regular Supervisory Report and the material change report. The requirement on firms to submit the RSR will be removed with effect from 31 December 2023. There was also a letter from the PRA to CROs communicating the key findings from its thematic review of expected underwriting profit allowed for in internal models for general insurance firms.

The FCA has provided feedback and a Policy Statement with final rules following its consultation to post-Brexit changes to the Insurance Distribution Directive. There are to be no material changes from the consultation, which in itself was intended by the FCA to provide continuity of the regulatory regime applying to insurance related activities.

As a stocking filler, the FCA, PRA and Bank, published the latest annual CBEST thematic report. This report is intended to make the lessons learned through regulatory programmes widely available to the UK financial sector and contains examples of good practice as well as weaknesses observed. With this area being a high priority area in risk registers this will be an interesting read for firms.

There has also been much activity within EU regulation, notably with details of many consultations being published during the month.

These are a few matters that I have noted. However, as usual there is much detail included in this eBulletin, referenced to the source documents. I hope you will find this helpful in identifying matters relevant to yourself. Please do not hesitate to contact myself or your usual BDO contact if you have any concerns over any matter highlighted in this update. For more information about our audit, tax and advisory services to the insurance sector, visit our [insurance services](#) page.

I hope you enjoy reading this latest update. I would like to take this opportunity of sending you my good wishes for 2024.



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PRUDENTIAL REGULATION

THE BANK OF ENGLAND'S SUPERVISION OF FINANCIAL MARKET INFRASTRUCTURES - ANNUAL REPORT 2023

On 18 December, the Bank of England [published](#) the 2023 Annual Report on its supervision of financial market infrastructures. This report sets out how the Bank has exercised its responsibilities in respect of supervising financial market infrastructure firms (FMIs) since the last report. The Bank's supervision of FMIs is essential for financial stability by ensuring that their risk management and resilience frameworks enable them to carry out their vital functions in normal times and during periods of stress. This is key to the Bank's objective to protect and enhance financial stability in the United Kingdom.

OFSI ANNUAL REVIEW 2022 TO 2023: STRENGTHENING OUR SANCTIONS

On 14 December, the Office of Financial Sanctions Implementation (OFSI) [published](#) the OFSI Annual Review for 2022-2023.

As part of the UK's response to the war in Ukraine, the OFSI has engaged in both expansions to meet the increased workload, and transformation to deliver a better service and more effective implementation and enforcement of sanctions. The Economic Crime (Transparency and Enforcement) Act 2022 enabled OFSI to strengthen their enforcement capabilities and tackle non-compliance through moving to a strict civil liability basis.

The OFSI's challenge for the current and future years is to continue working with domestic and international partners to make the crisis-induced improvements to the UK's sanctions system permanent and sustainable.

THE BANK AND THE CMA AGREE A NEW MEMORANDUM OF UNDERSTANDING TO IMPROVE COLLABORATION

On 19 December, the Bank and the Competition and Markets Authority (CMA) published a [memorandum of understanding](#) on how both organisations will work together to achieve their statutory objectives. The memorandum explains how the organisations will collaborate on issues where they have shared interests, including promoting a culture of cooperation and collaboration and sharing information to assist each other in carrying out their functions.

FINANCIAL POLICY SUMMARY AND RECORD - DECEMBER 2023

On 6 December, the Bank [published](#) the Financial Policy Committee's (FPC) Financial Policy Summary and Record for December 2023. Among other things, the FPC discussed:

- ▶ the overall risk environment;
- ▶ financial market developments;
- ▶ global vulnerabilities;
- ▶ the UK household and corporate debt vulnerabilities;
- ▶ the resilience of the UK banking sector; and
- ▶ the UK countercyclical capital buffer rate decision.

RESPONSE TO THE REMIT FOR THE FINANCIAL POLICY COMMITTEE - DECEMBER 2023

On 20 December, Andrew Bailey, Governor of the Bank, [wrote](#) to the Chancellor of the Exchequer in response to the recommendations set out in the Chancellor's letter to the FPC dated 22 November 2023.

The FPC welcomes the recommendations made, and their response can be found in this letter and the Annex. The FPC also supports the Chancellor's commitment to the effective

regulation of financial services, retaining high international standards, given the crucial role they play in underpinning the FPC's primary objective, and subject to that, supporting the government's economic policy to achieve strong, sustainable and balanced growth.

SOLVENCY II REVIEW - CONSIDERATIONS FOR YEAR-END 2023

On 8 December, the PRA issued a [statement](#) that relates to HM Treasury (HMT) and PRA reforms to Solvency II to be implemented at year-end 2023, in advance of the PRA's final decisions on its recent Solvency II reform proposals. The changes are informed by:

- ▶ relevant Solvency II reform proposals set out in PRA consultation papers (CPs) and the PRA's consideration of responses to the CPs; and
- ▶ HMT's reforms to certain aspects of Solvency II through the Insurance and Reinsurance Undertakings (Prudential Requirements) (Risk Margin) Regulations 2023, made on 7 December 2023, laid before Parliament on 8 December 2023, and coming into force on 31 December 2023.

The statement contains information on the PRA's changes to regulatory reporting requirements and the transitional measure on technical provisions (TMTP), which are facilitated by provisions in HMT's Insurance and Reinsurance Undertakings (Prudential Requirements) (Risk Margin) Regulations 2023. The statement also contains information to assist firms with implementation of the risk margin calculation, in light of HMT's regulations.

LETTER FROM THE PRA: 2023 THEMATIC REVIEW OF EXPECTED UNDERWRITING PROFIT ALLOWED FOR IN INTERNAL MODELS FOR GENERAL INSURANCE FIRMS

On 11 December 2023, the PRA wrote a [letter](#) to inform Chief Risk Officers of general insurance firms regulated by the PRA of the key findings from its thematic review of expected

underwriting profit allowed for in internal models for general insurance firms. The PRA says that, overall, general insurance companies have been assuming higher underwriting profits inside of their authorised internal models (IM), which is particularly evident in 2023. However, extending this optimism to IMs may result in an unwarranted decrease in the estimated Solvency Capital Requirement (SCR). Moreover, the impact on both the mean and the tail of the SCR distribution means that the SCR reduction is often larger than the nominal increase in assumed profits. For instance, variations in risk profile and reinsurance cause the impact to vary per insurer.

The PRA will use the findings from this review to shape its ongoing assurance work and develop the supervisory review process for IM ongoing review for the rest of the year and beyond.

FINANCIAL SERVICES REGULATION: MEASURING SUCCESS: RESPONSE TO THE CALL FOR PROPOSALS

On 8 December, HMT [published](#) its response to the Financial Services Regulation: Measuring Success - Call for Proposals. This sought views on what additional metrics the FCA and the PRA should publish to track progress and support scrutiny of their work to embed and advance their new secondary growth and competitiveness objectives. The Call for Proposals asked two questions of respondents:

- ▶ Do you agree with the government's approach to the exercise of the power of direction in Clause 372 of the Financial Services and Markets Bill? and
- ▶ What are the key metrics that the FCA and the PRA should publish in relation to their new secondary growth and competitiveness objectives?

PS19/23 RESPONSES TO PROPOSED MINOR AMENDMENTS IN CP8/23, CHAPTER 11 OF CP12/23 AND CP22/23

On 19 December, the PRA [published](#) a policy statement providing feedback to responses to the responses received to its consultation papers CP8/23, CP12/23 and CP22/23. The policy statement also contains the PRA's final policy in the form of final rules and an updated statement of policy (SoP).

CP25/23 - SUPERVISORY STATEMENT - PRUDENTIAL ASSESSMENT OF ACQUISITIONS AND INCREASES IN CONTROL

A consultation (CP25/23) has been [published](#) setting out the PRA and the FCA's proposals to replace the EU guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (3L3 Guidelines) with a new PRA supervisory statement - Prudential assessment of acquisitions and increases in control and new FCA guidance.

Responses are required by 23 February 2023.

CP27/23 THE PRUDENTIAL REGULATION AUTHORITY'S APPROACH TO POLICY

On 8 December, the PRA published details of the consultation on the [approach](#) it proposes to take to policy under the regulatory framework as amended by the Financial Services and Markets Act 2023 (FSMA 2023). It builds on Discussion Paper (DP) 4/22 - The PRA's future approach to policy - and is relevant to all PRA-regulated firms.

Comments must be submitted on or before 8 April 2024.

TCFD-ALIGNED DISCLOSURE EXPOSURE DRAFT: APPLICATION GUIDANCE

On 19 December, HMT issued a [consultation](#) on the Exposure Draft on new climate-related financial disclosures based on Task Force on Climate-related Financial Disclosures (TCFD) recommendations. This exposure draft sets out the proposed application guidance for Phase 2 of TCFD implementation, and the proposed

adaptations and interpretations for the TCFD framework, as well as UK public sector-specific considerations.

The proposed effective date for central government bodies is 1 April 2024. Other public sector bodies should follow the direction from their respective relevant authority. Public sector bodies may choose to voluntarily apply this guidance - in full or in part.

Comments should be submitted by 26 February 2024.

TRANSITION FINANCE MARKET REVIEW - TERMS OF REFERENCE

On 18 December, HMT [published](#) the terms of reference for the Transition Finance Market Review. The review will look at how best to create the conditions for:

- ▶ growing the UK market for new, innovative transition finance services, which should be designed as attractive, investible instruments to unlock long term capital;
- ▶ maximising the opportunity for UK based financial services to develop, structure and export high integrity transition finance services; and
- ▶ positioning the UK's professional services ecosystem as a global hub - supporting this innovative activity and ensuring market confidence.

It will report back to government by July 2024.

CONDUCT REGULATION

FINANCIAL OMBUDSMAN SERVICE ANNUAL REPORT 2022 TO 2023

On 6 December, HM Treasury [published](#) the annual report and accounts for the Financial Ombudsman Service (FOS) for 2022 to 2023. The report includes an overview of the FOS's performance in 2022/23, a strategic report, a directors' report, a finance report, and financial statements.

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF FINANCIAL SANCTIONS (OFSI) AND THE FINANCIAL CONDUCT AUTHORITY

On 4 December, the FCA [published](#) a Memorandum of Understanding (MoU) between the Office of Financial Sanctions Implementation (OFSI) and the FCA which replaces the MoU between OFSI and FCA dated April 2019. The MoU outlines the terms of cooperation and information exchange between the OFSI, which is part of His Majesty's Treasury, and the FCA in carrying out their respective tasks. This MoU is effective from the date of signature by both parties.

This document is dated 21 November 2023, but was published on FCA's website on 4 December 2023.

CONSUMER INVESTMENTS DATA REVIEW APRIL 2022 - MARCH 2023

On 8 December, the FCA [published](#) a summary of its work to tackle consumer harm in the investment market between 1 April 2022 and 31 March 2023. Its main findings include data regarding:

- ▶ preventing and reducing serious harm to consumers in this market;
- ▶ the significant increase in enquiries to its consumer helpline about potential scams; and
- ▶ the 12% increase in the ScamSmart website visitors for this year.

CYBER RESILIENCE GOOD PRACTICE FOR FIRMS

On 19 December, the FCA, together with the PRA and Bank, published the latest annual [CBEST thematic report](#) in respect of cyber resilience. This report is intended to make the lessons learned through regulatory programmes widely available to the UK financial sector. Firms should use the findings to consider threat intelligence observations and identified weaknesses, raise awareness in senior executive teams, and inform the work of risk and internal audit functions.

Findings were analysed in the following areas with details of positive examples as well as weaknesses being provided:

- ▶ Identity and access management
- ▶ Staff awareness and training
- ▶ Secure configuration
- ▶ Network security
- ▶ Incident response and security monitoring
- ▶ Data security

DRCF IMMERSIVE TECHNOLOGIES FORESIGHT PAPER

The Digital Regulation Cooperation Forum (DRCF) Horizon Scanning workstream has published its [Foresight Paper](#) on Immersive Technologies. The paper presents a novel approach using foresight methods to analyse how immersive environments might evolve over the next decade and the key uncertainties that could drive changes.

This considers the cross-regulatory implications across different areas of potential new products and services, the impact on consumers and what this would mean for DRCF members and their remits.

DP23/5 ADVICE GUIDANCE BOUNDARY REVIEW - PROPOSALS FOR CLOSING THE ADVICE GAP

On 8 December, the FCA, in collaboration with the Treasury, published a [discussion paper](#) as part of the Advice Guidance Boundary Review,

which seeks to design a regulatory system where commercially viable, high-quality models of support can emerge so consumers can access support through regulated channels. The paper also seeks to provide greater support to a larger number of people, since risk management - rather than risk elimination - will be required of businesses and consumers.

Comments must be submitted on or before 28 February 2024.

FCA BOARD MINUTES: 26 OCTOBER 2023

On 8 December, the FCA [published](#) the minutes of the FCA Board meeting held on 26 October 2023. Among other things, the Board received reports from the Chairs of Board Committees, the PRA, and the Chief Executive, discussed the Rules, Guidance and Technical Standards to be determined, and the Decisions of the Board/Board committee.

PASSPORTING BETWEEN THE UK AND GIBRALTAR

On 11 December, the FCA updated its information page on [passporting](#) between the UK and Gibraltar. The Brexit transition period has ended and the passporting regime is no longer available unless a firm wishes to passport between the United Kingdom and Gibraltar until 31 December 2024. This is a transitional arrangement until that date.

FCA WELCOMES THE LAUNCH OF INDUSTRY CODE OF CONDUCT FOR ESG RATINGS AND DATA PRODUCTS PROVIDERS

On 14 December, the FCA issued a [press release](#) announcing that the International Capital Market Association (ICMA) and the International Regulatory Strategy Group (IRSG) have launched a voluntary code of conduct for Environmental, Social and Governance (ESG) ratings and data products providers. In line with the International Organization of Securities commissions (IOSCO's) recommendations, the code focuses on promoting transparency, good governance, management of conflicts of interest, and strengthening systems and controls in the sector.

FCA 2023/46 CONDUCT OF BUSINESS SOURCEBOOK (EMPLOYERS' LIABILITY INSURANCE AMENDMENTS) INSTRUMENT 2023

On 15 December, the FCA [published](#) a Legal Instrument entitled Insurance: Conduct of Business Sourcebook (Employers' Liability Insurance Amendments) Instrument 2023, which is amended by the Annex to this instrument. These amendments have the effect of changing the reporting requirements for insurers.

This instrument comes into force on 22 December 2023.

PS23/18 SMARTER REGULATORY FRAMEWORK: THE INSURANCE DISTRIBUTION DIRECTIVE

On 15 December, the FCA [published](#) a policy statement titled, "Smarter Regulatory Framework: The Insurance Distribution Directive Feedback to CP23/19 and Final Rules".

The FCA conducted a consultation in CP23/19 regarding proposed modifications to multiple sourcebooks that aim to replace certain provisions of the retained EU law. These provisions are set to be repealed as part of the Treasury's Smarter Regulatory Framework (SRF) review, formerly known as the Future Regulatory Framework Review. The comments received, and feedback to those comments, are included in this paper. Based on the overall positive feedback, the FCA is making the instrument with no material changes.

The instrument will come into force on 5 April 2024.

FCA UPDATE - HOW TO APPLY FOR AUTHORISATION OR REGISTRATION

On 19 December, the FCA updated its [guidance](#) on how to apply for authorisation or registration under the Financial Services and Markets Act (FSMA), and/or authorisation or registration under the Payment Services Regulations 2017 (PSRs) or Electronic Money Regulations 2011 (EMRs).

Information was added to the section "After submitting your application".

PRIMARY MARKET BULLETIN 46

On 19 December, the FCA [published](#) the 46th edition of its Primary Market Bulletin (PMB). This edition includes articles on:

- ▶ Article 10 UK Market Abuse Regulation (MAR) and Environmental, Social and Governance (ESG) stewardship; and
- ▶ Task Force on Climate-Related Financial Disclosures (TCFD)-aligned disclosures: sponsor procedures.

FCA 2023/47 HANDBOOK ADMINISTRATION (NO 68) INSTRUMENT 2023

The FCA has [adopted](#) the Handbook Administration (No 68) Instrument 2023, which amends the following modules of the FCA's Handbook of rules and guidance:

- ▶ Conduct of Business sourcebook (COBS);
- ▶ Insurance: conduct of business sourcebooks (ICOBS);
- ▶ Claims Management: Conduct OFB sourcebook;
- ▶ Funeral Plan: Conduct Of Business Sourcebook (FPCOB);
- ▶ Supervision manual (SUP); and
- ▶ Consumer Credit sourcebook.

The Perimeter Guidance manual (PERG) is also amended in accordance with Annex I to this instrument.

HANDBOOK NOTICE 114

On 15 December, the FCA [published](#) Handbook Notice 114, which describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 23 November 2023, 4 December 2023, and 14 December 2023.

REGULATION ROUND UP

On 20 December, the FCA published its monthly Regulation Round-up. In addition to various

topics, noted either last month or above, this noted, the following:

▶ Market improvements

The FCA have [published](#) proposed new rules to encourage companies to list in the UK and set out other market improvements. The detailed proposals include a simplified listing regime with a single listing category, with streamlined eligibility and ongoing requirements. The FCA wants to hear from all sides of the market on the proposals before taking a final decision.

▶ Feedback on the prospectus regime

The FCA have [published](#) the feedback on their engagement on the prospectus regime. Detailed policy proposals for making FCA rules to support the new public offers and admissions to trading regime are being developed. The FCA may also carry out follow-up engagement on key topics. It aims to consult on proposals in Summer 2024, which will include draft rules and cost benefit analysis.

▶ Critical third parties proposals

The FCA, jointly with the Bank and PRA has set out [proposals](#) to oversee and strengthen the resilience of services provided by critical third parties (CTPs) to UK regulated financial services firms and financial market infrastructures (FMIs).

The proposals will create a new proportionate regulatory regime for CTPs but will not reduce firms' existing operational resilience and third-party risk management responsibilities.

Responses to the consultation should be by 15 March 2024.

▶ Innovation Advisory Group Survey

In collaboration with the Innovation Advisory Group, the FCA are conducting a short survey to understand stakeholder views on FCA Innovation which will inform future work and how the FCA engages with the industry.

▶ Reporting wrongdoing or misconduct in financial services

Directing readers to specific FCA website [pages](#).

EIOPA

We continue to monitor EIOPA's activity and draw your attention to it where we believe it to be necessary or helpful. This will, we hope, assist those firms operating in the EU.

Items of possible interest this month are as follows:

FINANCIAL STABILITY REPORT DECEMBER 2023

On 11 December, EIOPA [published](#) its Financial Stability Report for December 2023. This report explores the challenges and the shifting macroeconomic landscape poses for insurers and pension funds. The Report covers key developments in the sectors as well as four topical focuses on particular areas of interest:

- ▶ recent developments in the liquidity position of insurers;
- ▶ evolution of insurers' asset allocation in an environment of rising interest rates;
- ▶ the liquidity needs of IORPs on interest rate derivatives; and
- ▶ the impact of past recessions on insurers and lessons for the future.

EIOPA'S COSTS AND PAST PERFORMANCE REPORT DECEMBER 2023

On 18 December, EIOPA [published](#) a report on costs and past performance of insurance-based investment products (IBIPs) for the European Economic Area (EEA). The report provides an analysis of the costs and performance of IBIPs and pension schemes and products in the EEA for the period 2018-2022. Among other things, the report finds that due to consumers' real disposable income decreasing in 2022 and the rising cost of living, making consumers prioritise other expenses, life insurance Gross Written Premium in 2022 shrank by -9.4%, with (UL) business decreasing nearly 13% and profit participation (PP) business 7.7%.

REPORT ON THE USE OF LIMITATIONS AND EXEMPTIONS FROM SOLVENCY II REPORTING DURING 2022 AND Q1 2023

On 19 December, EIOPA [published](#) a report on the limitations and exemptions from regular supervisory reporting under Solvency II, as granted by the national competent authorities (NCAs) in the EEA to the 2022 year-end and to the first quarter of 2023 reporting.

EIOPA-BOS-23/302 FOLLOW-UP REPORT ON PEER REVIEW ON SUPERVISORY PRACTICES WITH RESPECT TO THE APPLICATION OF THE PPR FOR IORPS

On 8 December, EIOPA [published](#) its report on to what extent the NCAs have implemented the recommended actions addressed to them. It also covers the tracking of how the NCAs have considered, put into practice, or improved upon, the best practices that were also noted in the peer review report. It lists the advancements made through December 2022.

JC 2023 55 FINAL REPORT ON DRAFT RTS ON THE REVIEW OF PAI AND FINANCIAL PRODUCT DISCLOSURES IN THE SFDR DELEGATED REGULATION

On 4 December, European Banking Authority (EBA), EIOPA, and European Securities and Markets Authority (ESMA), together known as the European Supervisory Authority (ESAs) [published](#) their final report on draft Regulatory Technical Standards (RTS) on the review of principal adverse impacts (PAI) and financial product disclosures in the Sustainable Finance Disclosure Regulation (SFDR).

The joint draft amending RTS for Commission Delegated Regulation (EU) 2022/1288 (SFDR Delegated Regulation) is included in this final report. The ESAs are proposing the following changes to meet the European Commission (EC's) request:

- ▶ extension of the list of social indicators for principal adverse impacts;

- ▶ refinement of the content of a number of the other indicators for adverse impacts and their respective definitions, applicable methodologies, metrics and presentation; and
- ▶ amendments regarding decarbonisation targets.

In addition, the ESAs are also considering changes related to:

- ▶ “Do not significantly harm” (DNSH) disclosure design options;
- ▶ simplification of the templates; and
- ▶ other technical adjustments.

JC 2023 22 CONSOLIDATED Q&AS ON THE PRIIPS KEY INFORMATION DOCUMENT

On 18 December, the ESAs [published](#) the Consolidated questions and answers on the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID). This combined document includes answers from the EC to inquiries concerning the interpretation of Union Law in accordance with Article 16b(5) of the European Supervisory Authorities (ESAs) Regulations, as well as answers produced by the ESAs concerning the actual implementation or practical application of the PRIIPs Regulation and its Delegated Acts in accordance with Article 16b(1) of the ESAs Regulations.

EIOPA UPDATES REPRESENTATIVE PORTFOLIOS TO CALCULATE VOLATILITY ADJUSTMENTS TO THE SOLVENCY II RFR TERM STRUCTURES FOR 2024 AND THE TECHNICAL DOCUMENTATION

On 6 December, EIOPA [published](#) the updated representative portfolios to calculate volatility adjustments to the Solvency II risk-free interest rate (RFR) term structures for 2024 and the Technical Documentation. These revised representative portfolios will be used by EIOPA starting in March 2024 for the volatility adjustment (VA) end of March 2024 computation, which will be released in early April 2024. As per the Technical Documentation's article 11.1.3, EIOPA is updating the representative portfolios

every year. The next change is slated for the end of 2024.

EIOPA PUBLISHES AN EXAMPLE OF THE NEW METHOD TO CALCULATE THE CREDIT RISK ADJUSTMENT

On 6 December, EIOPA [published](#) an example of the new method to calculate the Credit Risk Adjustment (CRA) for “situation 3” according to paragraphs 7.3.8 to 7.3.14 of EIOPA's Technical Documentation on the methodology to derive EIOPA's risk-free interest rate term structures. The relevant end-of-month findings for this new approach will be released at the beginning of February 2024. EIOPA will begin utilising it for the CRA computation in January 2024.

ESA 2023 27 UPDATE ON THE FUNCTIONING OF INNOVATION FACILITATORS - INNOVATION HUBS AND REGULATORY SANDBOXES

On 11 December, the ESAs [published](#) a report providing an update on the functioning of innovation facilitators - innovation hubs and regulatory sandboxes.

This report gives an updated overview of the design and operation of innovation facilitators, observed practices, challenges and limitations faced by competent authorities. As of October 2023, there were 41 innovation hubs, with at least one in all 30 European Economic Area (EEA) countries, and 14 regulatory sandboxes in 12 EEA countries. Most innovation hubs have been established between 2016 and 2019, while most of the regulatory sandboxes have been launched between 2020 and 2021.

The ESAs outlined newly developed initiatives and features, such as virtual sandboxes, hackathons/TechSprints, or discussion forums with representatives of the FinTech sector in this report. Additionally, a number of EU-wide sandbox-related initiatives have been implemented, such as the forthcoming AI regulatory sandboxes, the distributed ledger technology (DLT) pilot program, and the European Blockchain Sandbox. Based on the outcomes of the analysis presented, the ESAs identify considerations and recommendations addressed to NCAs, the ESAs themselves and the EC.

MONTHLY UPDATE OF THE SYMMETRIC ADJUSTMENT OF THE EQUITY CAPITAL CHARGE FOR SOLVENCY II - END-NOVEMBER 2023

On 5 December, the EIOPA [announced](#) the publication of technical information regarding the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of November 2023.

JC 2023 67 CONSULTATION PAPER ON DRAFT RTS TO SPECIFY THE ELEMENTS WHICH A FINANCIAL ENTITY NEEDS TO DETERMINE AND ASSESS WHEN SUBCONTRACTING ICT SERVICES SUPPORTING CRITICAL OR IMPORTANT FUNCTIONS

The ESAs have [published](#) a Consultation Paper on Draft Regulatory Technical Standards. This is to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) of Regulation (EU) 2022/2554. The draft RTS will be finalised by the ESAs after public consultation, with the goal of submitting it for adoption to the EC in July 2024.

All comments must be received by 4 March 2024.

JC 2023 68 CONSULTATION PAPER ON JOINT GUIDELINES ON THE ESTIMATION OF AGGREGATED ANNUAL COSTS AND LOSSES CAUSED BY MAJOR ICT-RELATED INCIDENTS

The ESAs have [published](#) a consultation paper on its draft Joint Guidelines on costs and losses of major information and communications technology (ICT)-related incidents. Article 11(11) of Regulation 2022/2554 on digital operational resilience for the financial sector (DORA) mandates the ESAs, to develop common guidelines on the estimation of aggregated annual costs and losses caused by major ICT-related incidents. In view of the ESAs, this mandate is closely interlinked with the DORA mandates conferred to the ESAs as these also require an assessment of costs and losses of ICT-related incidents. Consequently, the ESAs seek to achieve consistency across these mandates to avoid contradictions, increase comparability of the reported figures under the different

mandates and reduce the reporting burden for financial entities.

Comments must be submitted on or before 4 March 2024 and the final Guidelines will be published after the consultation period.

JC 2023 69 CONSULTATION PAPER DRAFT REGULATORY TECHNICAL STANDARD ON THE HARMONISATION OF CONDITIONS ENABLING THE CONDUCT OF THE OVERSIGHT ACTIVITIES

The ESAs have [published](#) a consultation paper on draft Regulatory Technical Standards (RTS) to harmonise the conditions enabling the conduct of oversight activities. This paper covers the draft technical standards which aims to specify the following areas:

- ▶ the data that must be submitted by an ICT third-party service provider in order for a voluntary request to be classified as critical;
- ▶ the data that must be submitted by ICT third-party service providers in order for the Lead Overseer (LO) to perform its duties; and
- ▶ the specifics of the evaluation that the relevant authorities conducted of the actions performed by CTPPs in response to the LO's recommendations.

This document is dated 27 November 2023, but was published on ESMA's website on 8 December 2023.

Comments must be submitted on or before 4 March 2024.

JC 2023 70 CONSULTATION PAPER DRAFT RTS ON THE CONTENT OF THE NOTIFICATION AND REPORTS FOR MAJOR INCIDENTS AND SIGNIFICANT CYBER THREATS

On 8 December, the ESAs [issued](#) for consultation draft Regulatory Technical Standards (RTS) and Implementing Technical Standards on major incident reporting under DORA. The second batch contains the following:

- ▶ RTS and ITS on content, timelines and templates on incident reporting;
- ▶ GL on aggregated costs and losses from major incidents;

- ▶ RTS on subcontracting of critical or important functions;
- ▶ RTS on oversight harmonisation;
- ▶ GL on oversight cooperation between ESAs and competent authorities; and
- ▶ RTS on threat-led penetration testing (TLPT).

Comments should be submitted by 4 March 2024.

JC 2023 71 CONSULTATION PAPER DRAFT JOINT GUIDELINES ON THE OVERSIGHT COOPERATION AND INFORMATION EXCHANGE BETWEEN THE ESAS AND THE COMPETENT AUTHORITIES

On 8 December, the Joint Committee of the ESAs [published](#) a consultation paper on draft joint guidelines on oversight cooperation and information exchange between the ESAs and the competent authorities under Regulation (EU) 2022/2554.

This document was dated 27 November 2023, but was published on the ESMA website on 8 December 2023.

Comments should be received by 4 March 2024. The ESAs will consider the responses that they received to this Consultation Paper and will finalise the draft guidelines to issue them by 17 July 2024.

JC 2023 72 CONSULTATION PAPER DRAFT REGULATORY TECHNICAL STANDARDS SPECIFYING ELEMENTS RELATED TO THREAT LED PENETRATION TESTS

The ESAs have [published](#) a consultation paper on Draft Regulatory Technical Standards specifying elements related to threat-led penetration tests. The ESAs have prepared this Consultation Paper to consult interested parties to elaborate on its draft RTS to be submitted to the EC.

This document is dated 27 November 2023 but was published on the website on 8 December 2023.

Comments must be submitted on or before 4 March 2024.

JC 2023 77 CONSULTATION PAPER ON THE SYSTEM ESTABLISHED BY THE ESAS FOR THE EXCHANGE OF INFORMATION RELEVANT TO THE ASSESSMENT OF THE FITNESS AND PROPRIETY BY COMPETENT AUTHORITIES

On 7 December, the ESAs [published](#) an updated consultation paper on the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities.

All three organisations are inviting the public to submit comments on amendments to the first consultation paper concerning only the inclusion of legal persons in the scope of the Guidelines and the information to be exchanged in relation to them, which must be submitted by 15 January 2024.

DORA PUBLIC CONSULTATION ON THE SECOND BATCH OF POLICY PRODUCTS

On 8 December, the ESAs [published](#) deals of its consultation on the second batch of policy products of the Digital Operational Resilience Act (DORA). DORA is intended to harmonise the rules relating to operational resilience for the financial sector applying to 21 different types of financial entities, covering topics such as: ICT risk management; ICT incident management and reporting; testing of the digital operational resilience of ICT systems; and the management of ICT third party risks.

Comments should be submitted on 4 March 2024.

Furthermore, to present the consultation papers and their rationale, and to provide clarification to questions raised by the stakeholders, the ESAs will organise an online public hearing on 23 January 2024.

Based on the feedback received to the public consultation, the legal instruments will be finalised and will be submitted to the EC by 17 July 2024.

EIOPA-BOS-23-460 CONSULTATION ON THE PRUDENTIAL TREATMENT OF SUSTAINABILITY RISKS

On 13 December, EIOPA [published](#) a Consultation Paper on the Prudential Treatment of Sustainability Risks. The first product of EIOPA's work under this mandate was a discussion paper published in 2022 that outlined the analysis's scope, methods, and data sources. Based on public comments on the discussion paper, as well as input from the EBA, the Platform on Sustainable Finance, and other sources, this consultation paper is the second outcome. It will serve as a basis for the report that is planned to be submitted to the Commission following European Systemic Risk Board (ESRB) consultation.

Comments should be submitted by 22 March 2024.

EIOPA SEEKS FEEDBACK ON ITS PROPOSED APPROACH TO TACKLE GREENWASHING IN THE INSURANCE AND OCCUPATIONAL PENSION SECTORS

On 12 December, EIOPA announced that it was releasing a [draft opinion](#) on sustainability claims and greenwashing for public comment. The criteria outlined in the draft opinion are intended to reduce the danger of greenwashing in the insurance and occupational pensions sectors by laying the groundwork for more efficient and uniform oversight of sustainability claims throughout Europe.

Comments should be submitted on or before 12 March 2024.

CONSULTATION ON THE METHODOLOGY ON VALUE FOR MONEY BENCHMARKS

On 15 December, EIOPA launched a [public consultation](#) on its proposed methodology for setting value-for-money benchmarks for unit-linked and hybrid insurance products. The work is not related to the benchmarks proposed by the EC under the Retail Investment Strategy and is part of the toolkit EIOPA began developing in 2020 to provide supervisors with additional risk-based tools and enhance their ability to identify

products in their markets that may not deliver fair value for money.

Comments should be submitted on or before 15 March 2024.

CORPORATE GOVERNANCE

FRC ANNOUNCES AREAS OF SUPERVISORY FOCUS FOR 2024/25

On 6 December, the Financial Reporting Council (UK) (FRC) issued a [press release](#) to announce its areas of supervisory focus for 2024/25, including priority sectors, for corporate reporting reviews and audit quality inspections.

FRED 85 DRAFT AMENDMENTS TO FRS 101 REDUCED DISCLOSURE FRAMEWORK - 2023/24 CYCLE

On 5 December, the FRC published [FRED 85](#): Draft amendments to FRS 101 Reduced Disclosure Framework - 2023/24 cycle, which proposes minor amendments for consistency with IAS 1 Presentation of Financial Statements in relation to the 2023/24 annual review of FRS 101.

Comments on FRED 85 are requested by 4 March 2024.

FRC PUBLISHES INSPECTION FINDINGS FOR THE TIER 2 AND 3 AUDIT FIRMS

On 13 December, the FRC [published](#) its annual inspection findings for Tier 2 and Tier 3 audit firms, together with the actions these firms must prioritise to produce audits of superior quality and support a more robust audit industry. The FRC has inspected 13 audits at 11 of these firms, with only 38% of audits needing no more than limited improvements, 24% requiring more than limited improvements, and a further 38% requiring significant improvements.

AUDIT MARKET AND COMPETITION DEVELOPMENTS: A SNAPSHOT

On 14 December, the FRC [published](#) a snapshot of the Audit market and competition developments. Particularly, the snapshot offers an overview of recent developments in the audit market and the FRC's work on competition over the last year with the aim of informing and supporting their ongoing engagement with stakeholders.

The FRC welcomes comments and feedback on this snapshot to help inform their ongoing and future work which should be submitted by 29 February 2024.

FRC LAUNCHES CONSULTATION ON DRAFT PLAN AND BUDGET FOR 2024-25

On 15 December, the FRC launched a [consultation](#) on its plan and budget for 2024-25, which outlines its objectives and resources for next year. The combined budgeted cost for the FRC and the UKEB in 2024-25, which is £72.0m, is 5% lower than anticipated but is higher than the previous year's £66.3m. The annual percentage change in our budget roughly corresponds to the rate of inflation during that time.

The UKEB's draft strategy and the FRC's draft plan and budget are both open for public comment until 26 January 2024.

INFORMATION COMMISSIONER'S OFFICE

We continue to monitor material being issued by the Information Commissioner's Office (ICO) with a view to highlighting high-level matters that may be relevant to readers.

JOHN EDWARDS SPEAKS AT TECHUK DIGITAL ETHICS SUMMIT 2023

On 6 December, the Information Commissioner John Edwards' [delivered](#) a keynote speech at TechUK's Digital Ethics Summit 2023.

He principally discussed artificial intelligence and the implications of this, stating that the ICO want to ensure that they are using AI in sensible, privacy-respectful ways, ensuring that people's personal information and privacy rights remain protected throughout.

He noted that AI offers many benefits, such as automating processes that would otherwise be time or labour-intensive. However, he gave a message that non-compliance with data protection will not be profitable.

The ICO wants to ascertain whether AI models introduce any unwanted bias or discrimination against minority groups or those who are not represented as widely in society and to ensure that any biases are not incorporated into later AI models.

To assist firms, the ICO has [published](#) guidance looking at the intersection and cross-regulatory positions of AI and data protection. In addition, the ICO works closely with its partners in the Digital Regulation Cooperation Forum (DRCF) to ensure a joined-up approach to innovation. Through the DRCF partners: Ofcom, the FCA and the Competition and Markets Authority, Mr Edwards stated that the ICO are piloting a multi-agency advice service, helping innovators to develop their ideas with regulatory compliance in mind.

TWO NEW EMPLOYMENT GUIDANCE PIECES OUT FOR CONSULTATION

The ICO are producing an online resource with topic-specific guidance on employment practices and data protection. Two new pieces of guidance are now out for public consultation:

- ▶ [Keeping employment records](#)
- ▶ [Recruitment and selection](#)

Both consultations close at 5pm on 5 March 2024.

ENFORCEMENT ACTION

PRA / FCA REGULATORY FINES ROUND-UP

We have reviewed key relevant enforcement action announced by the PRA / FCA during December and there were no relevant matters to report.

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